119TH CONGRESS
2D SESSION

S. _____

To require the Secretary of the Army, acting through the Chief of Engineers, to propose a new nationwide permit under the Federal Water Pollution Control Act for dredging projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. LEE introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require the Secretary of the Army, acting through the Chief of Engineers, to propose a new nationwide permit under the Federal Water Pollution Control Act for dredging projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Dredging to Ensure the Empowerment of Ports Act'' or the ''DEEP Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CERTIFYING AUTHORITY.—The term ''certifying authority'', with respect to an activity for which a certification is required under section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341) from a State or interstate water pollution control agency, means the State or interstate water pollution control agency, as applicable, from which the certification is requested.

(2) DREDGING PROJECT.—

(A) IN GENERAL.—The term ''dredging project'' means a project permitted or solicited by the Secretary that involves the dredging of a port or a navigation channel of a port within the navigable waters of the United States.

(B) DREDGING OF PORTS.—For purposes of subparagraph (A), a dredging project that involves the dredging of a port includes dredging for the purposes of—

(i) maintaining the port;

(ii) expanding the port; or

(iii) deepening the port up to a depth of 60 feet.

(3) NAVIGABLE WATERS OF THE UNITED STATES.—The term ''navigable waters of the United

States'' has the meaning given the term in section 2101 of title 46, United States Code.

(4) NWP.—The term ''NWP'' means the new nationwide permit required to be proposed by the Secretary under section 3(a).

(5) PERMITTEE.—The term ''permittee'' means an individual or entity that proposes an activity under section 4(a)(1) to be carried out under the NWP.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Army, acting through the Chief of Engineers.

SEC. 3. DREDGING PROJECT NATIONWIDE PERMIT.

(a) PROPOSAL.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall propose a new nationwide permit under section 404(e) of the Federal Water Pollution Control Act (33 U.S.C. 1344(e)) relating to Federal and non-Federal dredging projects within the navigable waters of the United States.

(2) REQUIREMENT.—In proposing the NWP under paragraph (1), the Secretary shall require each Division Engineer to propose regional conditions for inclusion in the NWP.

(b) DURATION.—Notwithstanding section 404(e)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1344(e)(2)), the NWP shall be valid for a term of not more than 10 years.

(c) NEPA.—

(1) IN GENERAL.—In carrying out the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the issuing of the NWP, the Secretary or a cooperating agency, as applicable—

(A) shall—

(i) complete the requirements under that Act for the NWP not later than 2 years after the date on which the Secretary proposes the NWP under subsection (a);

(ii) subject to paragraph (2), ensure that there is produced, with respect to the NWP, not more than 1—

(I) environmental impact statement;

(II) record of decision; and

(III) if necessary, environmental assessment; and

(iii) consider mitigation standards and metrics, including standards and metrics

other than just compensation, to ensure that the impacts of the NWP on the environment are minimal; and

(B) shall not consider—

(i) an alternative or condition of the NWP if it is not technically or economically feasible to permittees; and

(ii) an alternative to the NWP that is not within the jurisdiction of the Secretary or the cooperating agency, as applicable.

(2) DIVISION ENGINEERS.—Each Division Engineer that proposes regional conditions for inclusion in the NWP under subsection (a)(2) may prepare not more than 1 environmental document required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) FINAL NWP.—The Secretary shall issue the final NWP not later than 60 days after the date on which the Secretary completes the requirements with respect to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) under paragraph (1).

(d) STATE OR INTERSTATE WATER POLLUTION CONTROL AGENCY CERTIFICATIONS.—

(1) CERTIFICATION REQUIRED.—

(A) IN GENERAL.—If, in developing the NWP, the Secretary is required to seek a water quality certification from a certifying authority under section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341), the certifying authority shall, within a reasonable period of time (which shall not exceed 14 days) after the date on which the Secretary submits the certification application pursuant to that section, make a determination on whether or not the application submitted by the Secretary is complete.

(B) NO RESPONSE.—If a certifying authority fails or refuses to make a determination with respect to a certification application submitted pursuant to subparagraph (A) within the timeframe referred to in that subparagraph, the certification shall be considered to be complete.

(2) INCOMPLETE APPLICATION.—If a certifying authority determines that an application referred to in paragraph (1) is incomplete, the certifying authority shall, not later than 14 days after that determination, issue to the Secretary a detailed list of items required in order for an application to be considered complete.

(3) COMPLETE APPLICATION.—

(A) IN GENERAL.—If a certifying authority determines that an application referred to in paragraph (1) is complete, the certifying authority shall, notwithstanding section 401(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1341(a)(1)), act on the application within a reasonable period of time, which may not exceed 1 year from the date on which the certifying authority determines the application is complete.

(B) NO RE-FILING.—If a certifying authority determines that an application submitted by the Secretary is complete, the certifying authority may not require the Secretary to re-file an application for the same proposed activity.

(e) PERMITS FOR DREDGED OR FILLED MATERIAL.—

(1) IN GENERAL.—In carrying out the requirements under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) with respect to activities carried out under the NWP, the Secretary shall only issue guidelines that are technologically and economically feasible for a permittee.

(2) CERTAIN DISPOSAL SITES.—Notwithstanding section 404(c) of the Federal Water Pollution Control Act (33 U.S.C. 1344(c)), the Administrator of the Environmental Protection Agency may consult with the Secretary on a defined disposal site or the application of guidelines, but may not—

(A) prohibit the disposal site determination made by the Secretary; or

(B) exercise any enforcement authority for a determination made by the Secretary, or against a permittee, in compliance with the NWP.

(f) GRANT OF PERMISSION.—For purposes of the NWP, full compliance with section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) shall be deemed to be a grant of permission under section 14(a) of the Act of March 3, 1899 (commonly known as the ''Rivers and Harbors Act of 1899'') (30 Stat. 1152, chapter 425; 33 U.S.C. 408(a)).

(g) RULE OF CONSTRUCTION.—Nothing in this Act requires an additional permit under section 10 of the Act of March 3, 1899 (commonly known as the ''Rivers and Harbors Act of 1899'') (30 Stat. 1151, chapter 425; 33 U.S.C. 403).

SEC. 4. PROPOSED ACTIVITIES UNDER THE NATIONWIDE PERMIT.

(a) AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—If a permittee seeks to carry out an activity authorized under the NWP, the permittee shall—

(A) notify the Secretary of that proposed activity; and

(B) seek approval, in writing, from the Secretary that the proposed activity complies with the NWP.

(2) DECISION.—Not later than 14 days after the date on which the Secretary receives a written notification from a permittee under paragraph (1), the Secretary shall notify the permittee whether or not the application of the permittee is complete.

(3) INCOMPLETE APPLICATION.—If the Secretary determines that an application submitted by a permittee under paragraph (1) is incomplete, the Secretary shall, not later than 14 days after that determination, provide to the permittee a list of information missing from that application in order for the application to be considered complete.

(4) COMPLETE APPLICATION.—

(A) IN GENERAL.—If the Secretary determines that an application submitted by a per-

mittee under paragraph (1) is complete, the Secretary shall, not later than 30 days after that determination, approve or deny the proposed activity of the permittee.

(B) DENIED PROPOSED ACTIVITIES.—If the Secretary denies the proposed activity of the permittee under subparagraph (A), the Secretary shall, not later than 14 days after that denial, provide to the permittee, in writing—

(i) a list of reasons for that determination; and

(ii) recommendations on how to improve the proposed activity to be in compliance with the NWP.

(5) NO RESPONSE.—If the Secretary does not comply with a deadline described in paragraph (2), (3), or (4), or fails to respond to an application submitted by a permittee, the proposed activity of the permittee, as described in that application, shall be deemed in compliance with the NWP.

(6) MITIGATION FLEXIBILITY.—In considering mitigation-specific requirements for a proposed activity for which approval is sought under subsection (a)(1), the Secretary, acting through the applicable Division Engineer, shall have the flexibility to deter-

mine which mitigation is needed with respect to the proposed activity, on the condition that each mitigation requirement is—

(A) technically and economically feasible; and

(B) within the jurisdiction of the Secretary, acting through the applicable Division Engineer, to require.

(b) NEPA.—If a proposed activity for which approval is sought under subsection (a)(1) includes 1 or more activities that may likely have a significant effect on the quality of the human environment, as determined by the Secretary, the Secretary shall—

(1) consider whether mitigating the circumstances or conditions of the proposed activity is sufficient to avoid the significant effects on the quality of the human environment that may result from that circumstance or condition of that proposed activity; and

(2) if the Secretary determines under paragraph (1) that the significant effects that may likely result from the circumstance or condition of the proposed activity can be avoided, mitigate the circumstances or conditions of the proposed activity without—

(A) denying the proposed activity; or

(B) requiring the permittee to carry out the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for the proposed activity (or any portion of the proposed activity).

(c) STATE OR INTERSTATE WATER POLLUTION CONTROL AGENCY CERTIFICATIONS.—

(1) CERTIFICATION REQUIRED.—

(A) IN GENERAL.—If the NWP requires a permittee to request a water quality certification from a certifying authority under section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341), the certifying authority shall, within a reasonable period of time (which shall not exceed 14 days) after the date on which the permittee submits the certification application pursuant to that section, make a determination on whether or not the application submitted by the permittee is complete.

(B) NO RESPONSE.—If a certifying authority fails or refuses to make a determination with respect to a certification application submitted pursuant to subparagraph (A) within the

timeframe referred to in that subparagraph, the certification shall be considered to be complete.

(2) INCOMPLETE APPLICATION.—If a certifying authority determines that an application referred to in paragraph (1) is incomplete, the certifying authority shall, not later than 14 days after that determination, issue to the permittee a detailed list of items required in order for an application to be considered complete.

(3) COMPLETE APPLICATION.—

(A) IN GENERAL.—If a certifying authority determines that an application referred to in paragraph (1) is complete, the certifying authority shall, notwithstanding section 401(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1341(a)(1)), act on the application within a reasonable period of time, which may not exceed 1 year from the date on which the certifying authority determines the application is complete.

(B) NO RE-FILING.—If a certifying authority determines that an application submitted by a permittee is complete, the certifying agency may not require the permittee to re-file an application for the same proposed activity.

SEC. 5. DREDGING; DREDGED MATERIAL.

(a) REPEAL.—

(1) IN GENERAL.—Section 55109 of title 46, United States Code, is repealed.

(2) CONFORMING AMENDMENT.—The analysis for chapter 551 of title 46, United States Code, is amended by striking the item relating to section 55109.

(b) EXCLUDING DREDGED MATERIAL FROM TRANSPORTATION REQUIREMENTS.—

(1) IN GENERAL.—Section 55110 of title 46, United States Code, is amended—

(A) in the section heading, by striking ''**OR DREDGED MATERIAL**'' and inserting ''**(EXCLUDING DREDGED MATERIAL)**''; and

(B) by striking ''or dredged material'' and inserting ''(excluding dredged material)''.

(2) CONFORMING AMENDMENT.—The analysis for chapter 551 of title 46, United States Code, is amended by striking the item relating to section 55110 and inserting the following:

''Sec. 55110. Transportation of valueless material (excluding dredged material).''.