

103^D CONGRESS
1ST SESSION

S. 75

To amend the River and Harbor Act of 1970 to improve Great Lakes
Water Pollution Control, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. METZENBAUM, (for himself, Mr. GLENN, and Mr. LEVIN) introduced the
following bill; which was read twice and referred to the Committee on En-
vironment and Public Works

A BILL

To amend the River and Harbor Act of 1970 to improve
Great Lakes Water Pollution Control, and for other pur-
poses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Great Lakes Sediment
5 Control Act of 1993”.

6 **SECTION 2. SEDIMENT MANAGEMENT.**

7 (a) AMENDMENT TO HEADING.—The heading of sec-
8 tion 123 of the River and Harbor Act of 1970 (33 U.S.C.
9 1293a) is amended to read as follows:

1 “‘CONFINED SPOIL DISPOSAL FACILITIES’”.

2 (b) CONFORMING AMENDMENT.—Section 123 of the
3 River and Harbor Act of 1970 (33 U.S.C. 1293a) is
4 amended by striking “‘contained spoil disposal facilities’”
5 each place it appears and inserting “‘confined spoil dis-
6 posal facilities’”.

7 (c) REQUIREMENTS RELATING TO CONSTRUCTION,
8 OPERATION, AND MAINTENANCE.—Section 123(a) of the
9 River and Harbor Act of 1970 (33 U.S.C. 1293a(a)) is
10 amended—

11 (1) by striking “(a)” and inserting “(a) PUBLIC
12 INFORMATION.—(1)”;

13 (2) by striking “of section 21 of the Federal
14 Water Pollution Control Act, and”; and

15 (3) by adding at the end thereof the following
16 new paragraphs:

17 “(2) After December 31, 1994, it shall be unlawful
18 to dump or otherwise dispose of dredge spoil at any loca-
19 tion in the waters of the Great Lakes other than at a con-
20 fined spoil disposal facility unless—

21 “(A)(i) the Administrator has concurred in
22 writing with the decision of the Secretary of the
23 Army to allow the disposal (either with or without
24 conditions), if the concurrence is based on a deter-
25 mination that the proposed disposal is consistent

1 with the guidelines developed pursuant to paragraph
2 (3); or

3 “(ii) a 45-day period (or a 90-day period in a
4 case in which the Administrator has requested an
5 extension from the Secretary of the Army in writing)
6 beginning on the date on which the Administrator
7 receives from the Secretary all material necessary to
8 evaluate the proposed disposal has expired and the
9 Administrator has not—

10 “(I) concurred with (either with or without
11 conditions) the Secretary; or

12 “(II) declined concurrence with the deci-
13 sion of the Secretary; and

14 “(B) the Secretary of the Army has found that
15 the disposal is consistent with the guidelines devel-
16 oped pursuant to paragraph (3).

17 “(3)(A) Not later than December 31, 1994, the Ad-
18 ministrator shall, in consultation with the Secretary and
19 the Director of the Fish and Wildlife Service, develop spe-
20 cific guidelines for the disposal of sediment material in
21 the open waters of the Great Lakes. In developing the
22 guidelines, the Administrator shall provide notice and op-
23 portunity for public comment. At a minimum, the guide-
24 lines shall ensure that the disposal will—

1 “(i) not degrade the aquatic environment, in-
2 cluding the chemical, physical, and biological charac-
3 teristics of the substrate, or endanger human health
4 or welfare;

5 “(ii) be managed in a manner that is consistent
6 with an approved coastal zone management plan for
7 the State or States with an approved plan, bordering
8 the lake in which the disposal occurs; and

9 “(iii) be managed in a manner that protects—
10 “(I) municipal and private water supply in-
11 take zones;

12 “(II) recognized commercial or recreational
13 fishing grounds and the spawning, nursery,
14 food supply or migration areas on which fish
15 depend for their life processes; and

16 “(III) against persistent resuspension or
17 the spread of material to areas outside the dis-
18 posal area;

19 “(iv) allow for the protection and propagation
20 of a balanced, indigenous population of fish, shell-
21 fish, and wildlife in the area; and

22 “(v) not cause a violation of any water quality
23 standard adopted pursuant to the Federal Water
24 Pollution Control Act (33 U.S.C. 1251 et seq).

1 “(B) The guidelines developed under this paragraph
2 shall take into consideration alternative reuse and disposal
3 methods.

4 “(C) After providing notice and opportunity for pub-
5 lic comment, the Administrator shall, as appropriate, re-
6 vise the guidelines to incorporate any Federal guideline,
7 criterion, or restriction related to sediment disposal in the
8 Great Lakes that takes effect after the date of develop-
9 ment of the initial guidelines.

10 “(4)(A) Any person found to be in violation of this
11 subsection shall be subject to—

12 “(i) a civil penalty in an amount not to exceed
13 the amount provided under section 309(d) of the
14 Federal Water Pollution Control Act (33 U.S.C.
15 1319(d)), with respect to a civil penalty assessed by
16 a court; or

17 “(ii) an amount provided under section 309(g)
18 of such Act (33 U.S.C. 1319(g)) with respect to a
19 civil penalty assessed by the Administrator.

20 “(B) The assessment of a civil penalty under this
21 paragraph shall be conducted in the same manner as is
22 provided for the assessment of a civil penalty under section
23 309 of such Act (33 U.S.C. 1319).”.

1 (d) CONSIDERATION OF AREA NEEDS.—Section
2 123(b) of the River and Harbor Act of 1970 (33 U.S.C.
3 1293a(b)) is amended—

4 (1) by striking “(b)” and inserting “(b) CON-
5 sideration of Area Needs.—(1)”; and

6 (2) by adding at the end thereof the following
7 new paragraphs:

8 “(2) Beginning on April 1, 1993, the Secretary of
9 the Army may not establish any confined spoil disposal
10 facility in the waters of the Great Lakes unless—

11 “(A)(i) the Administrator has concurred in
12 writing with the decision of the Secretary to estab-
13 lish the facility, and the concurrence is based on—

14 “(I) a consideration of the environmental
15 and economic benefits of using a confined spoil
16 disposal facility to remove contaminated sedi-
17 ment from the aquatic habitat; and

18 “(II) a determination that the facility will
19 not affect the area surrounding the facility in a
20 manner that is inconsistent with the guidelines
21 established pursuant to paragraph (3); or

22 “(ii) a 45-day period beginning on the date on
23 which the Administrator receives from the Secretary
24 all material necessary to evaluate the proposed facil-
25 ity (or a 90-day period in the case in which the Ad-

1 administrator has requested an extension from the
2 Secretary in writing) has expired, and the Adminis-
3 trator has not—

4 “(I) concurred with the decision of the
5 Secretary; or

6 “(II) declined concurrence with the deci-
7 sion of the Secretary; and

8 “(B) the Secretary has—

9 “(I) provided an opportunity for public re-
10 view and comment; and

11 “(II) determined that the facility will not
12 affect the area surrounding the facility in a
13 manner that is inconsistent with the guidelines
14 established pursuant to paragraph (3).

15 “(3)(A) Not later than December 31, 1994, the Ad-
16 ministrator shall, with respect to each confined spoil dis-
17 posal facility located in the waters of the Great Lakes—

18 “(i) evaluate the present and projected integrity
19 of the facility; and

20 “(ii) assess the environmental consequences of
21 the facility.

22 “(B) Not later than December 31, 1994, the Admin-
23 istrator, in consultation with the Secretary of the Army,
24 shall identify any confined spoil disposal facility located
25 in the waters of the Great Lakes that is affecting, or pro-

1 jected to affect, the area surrounding the facility in a man-
2 ner that is inconsistent with the guidelines established
3 pursuant to paragraph (3).

4 “(4) Not later than December 31, 1994, the Admin-
5 istrator in conjunction with the Secretary of the Army and
6 Director of the United States Fish and Wildlife Service,
7 shall develop and implement a management plan for each
8 confined spoil disposal facility located in the waters of the
9 Great Lakes. In developing a plan, the Administrator shall
10 provide opportunity for public comment. Each plan shall
11 include the following:

12 “(A) A baseline assessment of conditions at the
13 site.

14 “(B) A program for monitoring the site.

15 “(C) Any special management conditions or
16 practices that are necessary for protection of human
17 health, wildlife, and the environment.

18 “(D) A consideration of the quantity of the ma-
19 terial to be disposed of at the site, and the presence,
20 nature and bioavailability of contaminants in the
21 material.

22 “(E) A consideration of the anticipated use of
23 the site over the long term including the anticipated
24 closure date for the site, if applicable, and any need
25 for management of the site after its closure.

1 “(F) Any restrictions on public access to con-
2 fined spoil disposal facilities that are necessary for
3 environmental, safety, and health reasons.

4 “(G) A schedule for review and revision of the
5 plan, which shall be reviewed and revised not later
6 than 10 years after the date of adoption, and every
7 10 years thereafter.

8 “(5)(A)(i) Not later than December 31, 1996, the
9 Secretary of the Army shall, in consultation with the Di-
10 rector of the United States Fish and Wildlife Service and
11 the host State and local sponsors—

12 “(I) develop a confined spoil disposal facility re-
13 mediation plan for each confined spoil disposal facil-
14 ity identified in paragraph (3)(B); and

15 “(II) submit each remediation plan referred to
16 in subclause (I) to the Administrator.

17 “(ii) The remediation plan referred to in clause (i)(I)
18 shall include a schedule of engineered improvements, clo-
19 sure, or restrictions of the facility or other measures to
20 ensure that the facility will not affect the surrounding area
21 in a manner that is inconsistent with the guidelines devel-
22 oped pursuant to paragraph (3).

23 “(B) Any confined spoil disposal facility remediation
24 plan that recommends restriction or closure of the con-
25 fined spoil disposal facility shall—

1 “(i) identify appropriate alternative disposal op-
2 tions, including the estimated costs of the alter-
3 natives; and

4 “(ii) include a schedule for initiating the alter-
5 natives, if applicable.

6 “(C) The Administrator, in consultation with the Di-
7 rector of the United States Fish and Wildlife Service and
8 the host State and local sponsors, shall not later than 90
9 days after receipt of a confined spoil disposal facility reme-
10 diation plan, make a determination whether to approve the
11 plan.

12 “(6)(A) The Secretary of the Army is authorized to
13 design, engineer, and construct components of any con-
14 fined spoil disposal facility remediation plan in a manner
15 consistent with this section.

16 “(B) If, by January 1, 1999, a confined spoil disposal
17 facility remediation plan has not been undertaken for a
18 confined spoil disposal facility identified under paragraph
19 (3)(B), the Administrator shall terminate the continued
20 use of the confined spoil disposal facility.

21 “(7) On and after the date of enactment of this para-
22 graph, the Secretary of the Army shall continue dredging
23 and disposal operations in the Great Lakes basin to main-
24 tain current navigational channels in a manner that is
25 consistent with this section.

1 “(8) Nothing in this section is intended to prohibit
2 the Administrator from considering other relevant envi-
3 ronmental laws (including regulations), or such other cri-
4 teria as the Administrator determines to be appropriate,
5 in making concurrence decisions based on the guidelines
6 developed pursuant to paragraph (3).”.

7 (e) GENERAL AMENDMENTS.—Section 123 of the
8 River and Harbor Act of 1970 (33 U.S.C. 1293a) is
9 amended—

10 (1) in subsection (c), by striking “(c)” and in-
11 serting “(c) WRITTEN AGREEMENT.—”;

12 (2) in subsection (d), by striking “(d)” and in-
13 serting “(d) WAIVER OF CONSTRUCTION COSTS.—”;

14 (3) in subsection (e), by striking “(e)” and in-
15 serting “(e) FEDERAL PAYMENT OF COSTS.—”;

16 (4) in subsection (f), by striking “(f)” and in-
17 serting “(f) PROPERTY INTERESTS.—”;

18 (5) in subsection (g), by striking “(g)” and in-
19 serting “(g) FEDERAL LICENSES OR PERMITS.—”;

20 (6) in subsections (c) and (f), by inserting “and
21 the Administrator” after “Secretary of the Army”
22 each place it appears;

23 (7) by redesignating subsections (h) through (k)
24 as subsections (i) through (l), respectively;

1 (8) in subsection (i), as redesignated by para-
2 graph (7)—

3 (A) by striking “(i)” the first place it ap-
4 pears and inserting “(i) PROVISIONS APPLICA-
5 BLE TO GREAT LAKES.—”; and

6 (B) striking “other than subsection (i)”
7 and inserting “other than subsection (j)”;

8 (9) in subsection (j), as redesignated by para-
9 graph (7), by striking “(j)” and inserting “(j) RE-
10 SEARCH, STUDY AND EXPERIMENTATION PRO-
11 GRAM.—”;

12 (10) in subsection (k), as redesignated by para-
13 graph (7), by striking “The Secretary” and inserting
14 “Except as provided in subsection (b)(6)(B), the
15 Secretary”;

16 (11) by inserting after subsection (g) the follow-
17 ing new subsection:

18 “(h) PERMIT REQUIREMENTS.—(1) Beginning on
19 December 31, 1994, any person who disposes of dredge
20 spoil at a confined spoil disposal facility shall obtain from
21 the Secretary of the Army, with the concurrence of the
22 Administrator, a permit that specifies conditions for the
23 disposal. The permit shall be in the form, and under the
24 conditions, described in subsection (a)(2).

1 “(2) A permit issued pursuant to this subsection shall
2 specify such conditions as are necessary to ensure that dis-
3 posal at the confined spoil disposal facility will be consist-
4 ent with the management plan for the confined spoil dis-
5 posal facility that is the subject of the permit.

6 “(3) A permit issued pursuant to this subsection shall
7 be issued for the term of the disposal activity specified
8 pursuant to paragraph (1), except that no permit shall be
9 issued for a period of more than 7 years.

10 “(4) A permit issued pursuant to this subsection shall
11 include such conditions concerning monitoring and assess-
12 ment as are necessary to determine compliance with the
13 permit.”; and

14 (12) by adding at the end of the section the fol-
15 lowing new subsections:

16 “(m) GREAT LAKES TRIBUTARY SEDIMENT TRANS-
17 PORT MODELS.—(1) For each major river system or set
18 of major river systems that flows into a Great Lakes feder-
19 ally authorized commercial harbor, channel maintenance
20 project site, or area of concern, the Secretary of the Army,
21 in cooperation and coordination with the Administrator,
22 and in consultation and coordination with the Great Lakes
23 States, the heads of the Soil Conservation Service of the
24 Department of Agriculture, the Geological Survey and the
25 United States Fish and Wildlife Service of the Depart-

1 ment of the Interior, shall develop a tributary sediment
2 transport model.

3 “(2) Each model referred to in paragraph (1) shall—

4 “(A) measure stream discharge rates, total sus-
5 pended solids loadings, and bedload transport;

6 “(B) measure additional parameters, such as
7 nitrates, phosphates, persistent toxic substances, and
8 heavy metals, on a river-by-river basis in accordance
9 with any agreement between the Secretary of the
10 Army, the Administrator, the host State and any
11 other relevant non-Federal entity;

12 “(C) estimate the percentage of total sediment
13 loadings into the harbors, channels and areas of con-
14 cern originating from each subwatershed of river
15 system; and

16 “(D) characterize the physical nature of the
17 sediment materials.

18 “(3) In developing a tributary sediment transport
19 model under this subsection, the Secretary of the Army
20 shall—

21 “(A) coordinate tributary sediment transport
22 modeling efforts with the efforts of the Adminis-
23 trator to produce comprehensive Lakewide Manage-
24 ment Plans, Remedial Action Plans, and mass bal-
25 ance models;

1 “(B) build upon data and monitoring infra-
2 structure generated in earlier studies and programs;
3 and

4 “(C) complete models for an additional 30 river
5 systems within the 5-year period beginning on the
6 date of enactment of this subsection.

7 “(n) SEDIMENT LOAD REDUCTION.—(1)(A) Not
8 later than 18 months after the date of enactment of this
9 subsection, the Secretary of the Army, with the concur-
10 rence of the Administrator, and in consultation and co-
11 ordination with the Great Lakes States, the heads of the
12 Soil Conservation Service of the Department of Agri-
13 culture, the United States Geologic Survey of the Depart-
14 ment of the Interior, and the heads of such other Federal
15 agencies as the Administrator determines to be appro-
16 priate, shall—

17 “(i) develop an analytical method to project the
18 effectiveness and efficiency of sediment source re-
19 duction approaches and scenarios in reducing up-
20 stream sediment loadings into specific Great Lakes
21 federally authorized commercial harbors, channel
22 maintenance project sites, and areas of concern of
23 the Great Lakes;

24 “(ii) for each model developed under subsection
25 (m), use the method described in clause (i) to con-

1 duct sediment load reduction analyses to estimate
2 the potential effectiveness and efficiency of upstream
3 sediment source reduction approaches and scenarios
4 to reduce sedimentation in Great Lakes federally au-
5 thorized commercial harbors, channel maintenance
6 sites, and areas of concern of the Great Lakes; and

7 “(iii) provide sediment load reduction analysis
8 information to the Administrator appropriate States
9 upon request regarding river systems within their ju-
10 risdictions.

11 “(B) In developing and using the analytical method
12 described in subparagraph (A)(i), the Secretary of the
13 Army shall consider only those sediment reduction ap-
14 proaches and scenarios that are consistent with—

15 “(i) the guidance issued pursuant to section
16 6217(g) of the Omnibus Budget Reconciliation Act
17 of 1990 (16 U.S.C. 1455b(g)) where applicable;

18 “(ii) relevant State nonpoint source pollution
19 control programs that have been approved in a man-
20 ner consistent with section 319 of the Federal Water
21 Pollution Control Act (33 U.S.C. 1329); and

22 “(iii) recommendations of any relevant Reme-
23 dial Action Plans and programs and measures con-
24 tained in Annex 3 of the Great Lakes Water Quality
25 Agreement and the supplement to the Annex.

1 “(2)(A) The Secretary of the Army shall in coopera-
2 tion with the Administrator, and within three months of
3 the date of appropriation transfer funds appropriated pur-
4 suant to subsection (o)(1) of this Act to the Environ-
5 mental Protection Agency for the purpose of making
6 grants to States pursuant to section 319 of the Federal
7 Water Pollution Control Act (33 U.S.C. 1329) for specific
8 projects to reduce the erosion that contributes to the sedi-
9 mentation of federally authorized commercial harbors,
10 channel maintenance project sites, and areas of concern.

11 “(B) A State or a group of States, on the initiative
12 of the State or group of States or at the request of a reme-
13 dial action planning committee, local government, port au-
14 thority, or any other governmental, public, or private en-
15 tity, may submit a proposal for funding for a project pur-
16 suant to this paragraph.

17 “(C) A grant from funds made available pursuant to
18 this paragraph shall be—

19 “(i) awarded only for a project conducted by a
20 State (or a group of States) that is incorporated in
21 the nonpoint source pollution control program of the
22 State (or, with respect to a project conducted by
23 each recipient State (under applicable provisions of
24 section 319 of the Federal Water Pollution Control
25 Act (33 U.S.C. 1329)));

1 “(ii) in conformity with the guidance issued
2 pursuant to section 6217(g) of the Omnibus Budget
3 Reconciliation Act of 1990 (16 U.S.C. 1455b(g));

4 “(iii) consistent with the recommendations of
5 any relevant Remedial Action Plans and Lakewide
6 Management Plans;

7 “(iv) administered by agencies designated in the
8 nonpoint source management program of the State;

9 “(v) improve water quality; and

10 “(vi) have the potential to reduce projected
11 dredging costs, including environmental dredging, in
12 an amount comparable to the cost of the erosion
13 control project, within the lifetime of the dredging
14 project.

15 “(3) To carry out a project under this subsection, a
16 State may award grants from funds made available under
17 this subsection for the implementation of an erosion con-
18 trol measure. The amount of each grant under this para-
19 graph may not exceed 75 percent of the cost erosion con-
20 trol measure.

21 “(4)(A) Each grant under this section shall be in
22 such amount and subject to such conditions as the Sec-
23 retary of the Army, with the concurrence of the Adminis-
24 trator, shall determine.

1 “(B) The Federal share of a grant made under this
2 subsection shall be an amount equal to 75 percent of the
3 cost of the project funded by the grant.

4 “(C) The State share of a grant made under this sub-
5 section shall be provided from non-Federal sources.

6 “(o) AUTHORIZATIONS.—(1) There are authorized to
7 be appropriated, to the Department of the Army, to carry
8 out subsections (m) and (n), \$15,000,000 for each of fis-
9 cal years 1994 through 1999. Not less than 50 percent
10 of the amounts authorized in this paragraph shall be re-
11 served for the implementation of subsection (n)(2).

12 “(2) In addition to the amounts authorized to be ap-
13 propriated under paragraph (1), there are authorized to
14 be appropriated to the Department of the Army and the
15 Environmental Protection Agency such sums as may be
16 necessary to carry out the provisions of this section relat-
17 ing to the management and remediation of confined spoil
18 disposal facilities and the issuance of permits for the facili-
19 ties.

20 “(p) DEFINITIONS.—As used in this section:

21 “(1) The term ‘Administrator’ means the Ad-
22 ministrator of the Environmental Protection Agency.

23 “(2) The term ‘area of concern’ has the mean-
24 ing given the term under section 118(a)(3)(F) of the

1 Federal Water Pollution Control Act (33 U.S.C.
2 1268(a)(3)(F)).

3 “(3) The term ‘Great Lakes States’ has the
4 meaning given the term under section 118(a)(3)(G)
5 of the Federal Water Pollution Control Act (33
6 U.S.C. 1268(a)(3)(G)).

7 “(4) The term ‘Great Lakes Water Quality
8 Agreement’ has the meaning given the term under
9 section 118(a)(3)(H) of the Federal Water Pollution
10 Control Act (33 U.S.C. 1268(a)(3)(H)).

11 “(5) The term ‘Lakewide Management Plan’
12 has the meaning given the term under section
13 118(a)(3)(I) of the Federal Water Pollution Control
14 Act (33 U.S.C. 1268(a)(3)(I)).

15 “(6) The term ‘Remedial Action Plan’ has the
16 meaning given the term under section 118(a)(3)(J)
17 of the Federal Water Pollution Control Act (33
18 U.S.C. 1268(a)(3)(J)).

19 “(7) The term ‘remedial action planning com-
20 mittee’ means a committee that is involved in the
21 development of a Remedial Action Plan.”.

○