

117TH CONGRESS
1ST SESSION

S. 3355

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

DECEMBER 9, 2021

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

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.

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 “Dredging to Ensure
5 the Empowerment of Ports Act” or the “DEEP Act”.

6 **SEC. 2. DEFINITIONS.**

7 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

1 States” has the meaning given the term in section
2 2101 of title 46, United States Code.

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

6 (5) PERMITTEE.—The term “permittee” means
7 an individual or entity that proposes an activity
8 under section 3(c)(1) to be carried out under the
9 NWP.

10 (6) SECRETARY.—The term “Secretary” means
11 the Secretary of the Army, acting through the Chief
12 of Engineers.

13 **SEC. 3. DREDGING PROJECT NATIONWIDE PERMIT.**

14 (a) PROPOSAL.—

15 (1) IN GENERAL.—Not later than 60 days after
16 the date of enactment of this Act, the Secretary
17 shall propose a new nationwide permit under section
18 404(e) of the Federal Water Pollution Control Act
19 (33 U.S.C. 1344(e)) relating to Federal and non-
20 Federal dredging projects within the navigable
21 waters of the United States.

22 (2) REQUIREMENT.—In proposing the NWP
23 under paragraph (1), the Secretary shall require
24 each Division Engineer to propose regional condi-
25 tions for inclusion in the NWP.

1 (b) DURATION.—Notwithstanding section 404(e)(2)
 2 of the Federal Water Pollution Control Act (33 U.S.C.
 3 1344(e)(2)), the NWP shall be valid for a term of not
 4 more than 10 years.

5 (c) NEPA.—

6 (1) IN GENERAL.—In carrying out the require-
 7 ments of the National Environmental Policy Act of
 8 1969 (42 U.S.C. 4321 et seq.) with respect to the
 9 issuing of the NWP, the Secretary or a cooperating
 10 agency, as applicable—

11 (A) shall—

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

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

19 (I) environmental impact state-
 20 ment;

21 (II) record of decision; and

22 (III) if necessary, environmental
 23 assessment; and

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

1 other than just compensation, to ensure
2 that the impacts of the NWP on the envi-
3 ronment are minimal; and

4 (B) shall not consider—

5 (i) an alternative or condition of the
6 NWP if it is not technically or economi-
7 cally feasible to permittees; and

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

11 (2) DIVISION ENGINEERS.—Each Division En-
12 gineer that proposes regional conditions for inclusion
13 in the NWP under subsection (a)(2) may prepare
14 not more than 1 environmental document required
15 under the National Environmental Policy Act of
16 1969 (42 U.S.C. 4321 et seq.).

17 (3) FINAL NWP.—The Secretary shall issue the
18 final NWP not later than 60 days after the date on
19 which the Secretary completes the requirements with
20 respect to the National Environmental Policy Act of
21 1969 (42 U.S.C. 4321 et seq.) under paragraph (1).

22 (d) STATE OR INTERSTATE WATER POLLUTION CON-
23 TROL AGENCY CERTIFICATIONS.—

24 (1) CERTIFICATION REQUIRED.—

1 (A) IN GENERAL.—If, in developing the
2 NWP, the Secretary is required to seek a water
3 quality certification from a certifying authority
4 under section 401 of the Federal Water Pollu-
5 tion Control Act (33 U.S.C. 1341), the certi-
6 fying authority shall, within a reasonable period
7 of time (which shall not exceed 14 days) after
8 the date on which the Secretary submits the
9 certification application pursuant to that sec-
10 tion, make a determination on whether or not
11 the application submitted by the Secretary is
12 complete.

13 (B) NO RESPONSE.—If a certifying author-
14 ity fails or refuses to make a determination
15 with respect to a certification application sub-
16 mitted pursuant to subparagraph (A) within the
17 timeframe referred to in that subparagraph, the
18 certification shall be considered to be complete.

19 (2) INCOMPLETE APPLICATION.—If a certifying
20 authority determines that an application referred to
21 in paragraph (1) is incomplete, the certifying au-
22 thority shall, not later than 14 days after that deter-
23 mination, issue to the Secretary a detailed list of
24 items required in order for an application to be con-
25 sidered complete.

1 (3) COMPLETE APPLICATION.—

2 (A) IN GENERAL.—If a certifying authority
 3 determines that an application referred to in
 4 paragraph (1) is complete, the certifying au-
 5 thority shall, notwithstanding section 401(a)(1)
 6 of the Federal Water Pollution Control Act (33
 7 U.S.C. 1341(a)(1)), act on the application with-
 8 in a reasonable period of time, which may not
 9 exceed 1 year from the date on which the certi-
 10 fying authority determines the application is
 11 complete.

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

17 (e) PERMITS FOR DREDGED OR FILLED MATE-
 18 RIAL.—

19 (1) IN GENERAL.—In carrying out the require-
 20 ments under section 404 of the Federal Water Pol-
 21 lution Control Act (33 U.S.C. 1344) with respect to
 22 activities carried out under the NWP, the Secretary
 23 shall only issue guidelines that are technologically
 24 and economically feasible for a permittee.

1 (2) CERTAIN DISPOSAL SITES.—Notwith-
2 standing section 404(c) of the Federal Water Pollu-
3 tion Control Act (33 U.S.C. 1344(c)), the Adminis-
4 trator of the Environmental Protection Agency may
5 consult with the Secretary on a defined disposal site
6 or the application of guidelines, but may not—

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

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

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

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

1 **SEC. 4. PROPOSED ACTIVITIES UNDER THE NATIONWIDE**
2 **PERMIT.**

3 (a) **AUTHORIZED ACTIVITIES.—**

4 (1) **IN GENERAL.**—If a permittee seeks to carry
5 out an activity authorized under the NWP, the per-
6 mittee shall—

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

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

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

17 (3) **INCOMPLETE APPLICATION.**—If the Sec-
18 retary determines that an application submitted by
19 a permittee under paragraph (1) is incomplete, the
20 Secretary shall, not later than 14 days after that de-
21 termination, provide to the permittee a list of infor-
22 mation missing from that application in order for
23 the application to be considered complete.

24 (4) **COMPLETE APPLICATION.—**

25 (A) **IN GENERAL.**—If the Secretary deter-
26 mines 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-

1 mine which mitigation is needed with respect to the
2 proposed activity, on the condition that each mitiga-
3 tion requirement is—

4 (A) technically and economically feasible;
5 and

6 (B) within the jurisdiction of the Sec-
7 retary, acting through the applicable Division
8 Engineer, to require.

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

14 (1) consider whether mitigating the cir-
15 cumstances or conditions of the proposed activity is
16 sufficient to avoid the significant effects on the qual-
17 ity of the human environment that may result from
18 that circumstance or condition of that proposed ac-
19 tivity; and

20 (2) if the Secretary determines under para-
21 graph (1) that the significant effects that may likely
22 result from the circumstance or condition of the pro-
23 posed activity can be avoided, mitigate the cir-
24 cumstances or conditions of the proposed activity
25 without—

1 (A) denying the proposed activity; or

2 (B) requiring the permittee to carry out
3 the requirements of the National Environmental
4 Policy Act of 1969 (42 U.S.C. 4321 et seq.) for
5 the proposed activity (or any portion of the pro-
6 posed activity).

7 (c) STATE OR INTERSTATE WATER POLLUTION CON-
8 TROL AGENCY CERTIFICATIONS.—

9 (1) CERTIFICATION REQUIRED.—

10 (A) IN GENERAL.—If the NWP requires a
11 permittee to request a water quality certifi-
12 cation from a certifying authority under section
13 401 of the Federal Water Pollution Control Act
14 (33 U.S.C. 1341), the certifying authority shall,
15 within a reasonable period of time (which shall
16 not exceed 14 days) after the date on which the
17 permittee submits the certification application
18 pursuant to that section, make a determination
19 on whether or not the application submitted by
20 the permittee is complete.

21 (B) NO RESPONSE.—If a certifying author-
22 ity fails or refuses to make a determination
23 with respect to a certification application sub-
24 mitted pursuant to subparagraph (A) within the

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

3 (2) INCOMPLETE APPLICATION.—If a certifying
4 authority determines that an application referred to
5 in paragraph (1) is incomplete, the certifying au-
6 thority shall, not later than 14 days after that deter-
7 mination, issue to the permittee a detailed list of
8 items required in order for an application to be con-
9 sidered complete.

10 (3) COMPLETE APPLICATION.—

11 (A) IN GENERAL.—If a certifying authority
12 determines that an application referred to in
13 paragraph (1) is complete, the certifying au-
14 thority shall, notwithstanding section 401(a)(1)
15 of the Federal Water Pollution Control Act (33
16 U.S.C. 1341(a)(1)), act on the application with-
17 in a reasonable period of time, which may not
18 exceed 1 year from the date on which the certi-
19 fying authority determines the application is
20 complete.

21 (B) NO RE-FILING.—If a certifying author-
22 ity determines that an application submitted by
23 a permittee is complete, the certifying agency
24 may not require the permittee to re-file an ap-
25 plication for the same proposed activity.

1 **SEC. 5. DREDGING; DREDGED MATERIAL.**

2 (a) REPEAL.—

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

5 (2) CONFORMING AMENDMENT.—The analysis
6 for chapter 551 of title 46, United States Code, is
7 amended by striking the item relating to section
8 55109.

9 (b) EXCLUDING DREDGED MATERIAL FROM TRANS-
10 PORTATION REQUIREMENTS.—

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

13 (A) in the section heading, by striking “**OR**
14 **DREDGED MATERIAL**” and inserting “**(EX-**
15 **CLUDING DREDGED MATERIAL)**”; and

16 (B) by striking “or dredged material” and
17 inserting “(excluding dredged material)”.

18 (2) CONFORMING AMENDMENT.—The analysis
19 for chapter 551 of title 46, United States Code, is
20 amended by striking the item relating to section
21 55110 and inserting the following:

“Sec. 55110. Transportation of valueless material (excluding dredged material).”.

