

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.

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## 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

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## 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           (1) CERTIFYING AUTHORITY.—The term “certi-  
2       fying authority”, with respect to an activity for  
3       which a certification is required under section 401 of  
4       the Federal Water Pollution Control Act (33 U.S.C.  
5       1341) from a State or interstate water pollution con-  
6       trol agency, means the State or interstate water pol-  
7       lution control agency, as applicable, from which the  
8       certification is requested.

9           (2) DREDGING PROJECT.—

10           (A) IN GENERAL.—The term “dredging  
11       project” means a project permitted or solicited  
12       by the Secretary that involves the dredging of  
13       a port or a navigation channel of a port within  
14       the navigable waters of the United States.

15           (B) DREDGING OF PORTS.—For purposes  
16       of subparagraph (A), a dredging project that  
17       involves the dredging of a port includes dredg-  
18       ing for the purposes of—

19                   (i) maintaining the port;

20                   (ii) expanding the port; or

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

23           (3) NAVIGABLE WATERS OF THE UNITED  
24       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(e)(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-

1           mittee under paragraph (1) is complete, the  
2           Secretary shall, not later than 30 days after  
3           that determination, approve or deny the pro-  
4           posed activity of the permittee.

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

10                   (i) a list of reasons for that deter-  
11                   mination; and

12                   (ii) recommendations on how to im-  
13                   prove the proposed activity to be in compli-  
14                   ance with the NWP.

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

21           (6) MITIGATION FLEXIBILITY.—In considering  
22           mitigation-specific requirements for a proposed ac-  
23           tivity for which approval is sought under subsection  
24           (a)(1), the Secretary, acting through the applicable  
25           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 mate-  
rial).”.

○