

103D CONGRESS
1ST SESSION

H. R. 2651

To amend the Federal Water Pollution Control Act to provide for confined spoil disposal facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 1993

Mr. OBERSTAR introduced the following bill; which was referred to the Committee on Public Works and Transportation

A BILL

To amend the Federal Water Pollution Control Act to provide for confined spoil disposal facilities, 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 “Great Lakes Sediment
5 Management and Reduction Act of 1993”.

6 **SEC. 2. SEDIMENT MANAGEMENT.**

7 Section 118 of the Federal Water Pollution Control
8 Act (33 U.S.C. 1268) is amended—

9 (1) by redesignating subsections (d) through (h)
10 as subsections (f) through (j), respectively; and

1 (2) by inserting after subsection (c) the follow-
2 ing new subsection:

3 “(d) SEDIMENT MANAGEMENT.—

4 “(1) IN GENERAL.—After December 31, 1994,
5 it shall be unlawful to dump or otherwise dispose of
6 dredge spoil at any location in the waters of the
7 Great Lakes, other than at a confined spoil disposal
8 facility, unless—

9 “(A) the Administrator has concurred in
10 writing with the decision of the Secretary of the
11 Army (referred to in this subsection as the
12 ‘Secretary’) to allow the disposal (either with or
13 without conditions), if the concurrence is based
14 on a determination that the proposed disposal is
15 consistent with the guidelines developed pursu-
16 ant to paragraph (2); or

17 “(B) 45 days (or 90 days, in a case in
18 which the Administrator has requested an ex-
19 tension from the Secretary in writing) have
20 elapsed since the date on which the Adminis-
21 trator received from the Secretary all material
22 necessary to evaluate the proposed disposal,
23 and—

24 “(i) the Administrator has not issued
25 an opinion regarding the project; and

1 “(ii) the Secretary has found that the
2 disposal is consistent with the guidelines
3 developed pursuant to paragraph (2).

4 “(2) GUIDELINES FOR DISPOSAL OF SEDIMENT
5 MATERIAL.—

6 “(A) DEVELOPMENT OF GUIDELINES.—
7 Not later than December 31, 1994, the Admin-
8 istrator shall, after notice and opportunity for
9 public comment, and in consultation with the
10 Secretary and the Director of the Fish and
11 Wildlife Service, develop guidelines for the dis-
12 posal of sediment material in the open waters
13 of the Great Lakes.

14 “(B) REQUIREMENTS.—The guidelines
15 shall ensure that the disposal of sediment mate-
16 rial will be managed and disposed of in a man-
17 ner that will—

18 “(i) not degrade the aquatic and ter-
19 restrial environment, including the chemi-
20 cal, physical, and biological characteristics
21 of the substrate;

22 “(ii) not endanger human health or
23 welfare;

24 “(iii) be consistent with any approved
25 coastal zone management plan for the

1 State or States bordering the lake in which
2 the disposal occurs;

3 “(iv) protect municipal and private
4 water supply intake zones;

5 “(v) protect recognized commercial or
6 recreational fishing grounds and the
7 spawning, nursery, food supply, or migra-
8 tion areas on which fish are dependent;

9 “(vi) protect against excessive
10 resuspension or the spread of material to
11 areas outside the disposal area;

12 “(vii) ensure the protection and prop-
13 agation of a balanced, indigenous popu-
14 lation of fish, shellfish, and wildlife in the
15 area; and

16 “(vi) not cause a violation of any
17 water or sediment quality standard adopt-
18 ed pursuant to this Act.

19 “(C) REUSE AND DISPOSAL METHODS.—
20 The guidelines developed pursuant to this para-
21 graph shall take into consideration the environ-
22 mental impacts and benefits of alternative reuse
23 and disposal methods.

24 “(D) REVISIONS.—After providing notice
25 and opportunity for public comment, the Ad-

1 administrator shall, as appropriate, revise the
2 guidelines to incorporate any Federal or State
3 guideline, criterion, or restriction related to
4 sediment disposal in the Great Lakes that takes
5 effect after the date of development of the ini-
6 tial guidelines.

7 “(3) ENFORCEMENT.—

8 “(A) PENALTIES.—Any person found to be
9 in violation of this subsection shall be subject
10 to—

11 “(i) a civil penalty in an amount not
12 to exceed the amount provided under sec-
13 tion 309(d) with respect to a civil penalty
14 assessed by a court; or

15 “(ii) an amount provided under sec-
16 tion 309(g) with respect to a civil penalty
17 assessed by the Administrator.

18 “(B) ASSESSMENT.—The assessment of a
19 civil penalty under this paragraph shall be con-
20 ducted in the same manner as is provided for
21 the assessment of a civil penalty under section
22 309.

23 “(4) ESTABLISHMENT OF CONFINED SPOIL DIS-
24 POSAL FACILITIES.—The Secretary may not estab-
25 lish, expand, or substantially modify any confined

1 spoil disposal facility in the waters of the Great
2 Lakes unless—

3 “(A) the Administrator has concurred in
4 writing with the decision of the Secretary to es-
5 tablish, expand, or modify the facility, and the
6 concurrence is based on—

7 “(i) a consideration of the environ-
8 mental and economic benefits of using a
9 confined spoil disposal facility to remove
10 contaminated sediment from the aquatic
11 habitat;

12 “(ii) a consideration of the potential
13 effects of the project on pollutant and sedi-
14 ment transport; and

15 “(iii) a determination that the facility
16 is consistent with the guidelines established
17 pursuant to paragraph (2); or

18 “(B) 45 days (or 90 days, in a case in
19 which the Administrator has requested an ex-
20 tension from the Secretary in writing) have
21 elapsed since the date on which the Adminis-
22 trator received from the Secretary all material
23 necessary to evaluate the proposed facility,
24 and—

1 “(i) the Administrator has not issued
2 an opinion regarding the proposed facility;
3 and

4 “(ii) the Secretary has—

5 “(I) provided an opportunity for
6 public review and comment; and

7 “(II) determined that the facility
8 is consistent with the guidelines estab-
9 lished pursuant to paragraph (2).

10 “(5) EVALUATION AND IDENTIFICATION OF FA-
11 CILITIES.—

12 “(A) EVALUATION.—Not later than De-
13 cember 31, 1994, the Administrator shall, with
14 respect to each confined spoil disposal facility
15 located in the waters of the Great Lakes, evalu-
16 ate the existing and projected integrity of the
17 facility.

18 “(B) IDENTIFICATION.—Not later than
19 December 31, 1994, the Administrator, in con-
20 sultation with the Secretary, shall identify each
21 confined spoil disposal facility located in the
22 waters of the Great Lakes that is at risk of
23 causing an exceedance of water or sediment
24 quality standards or interfere with the protec-

1 tion and propagation of a balanced, indigenous
2 population of fish, shellfish, and wildlife.

3 “(6) MANAGEMENT PLANS.—

4 “(A) IN GENERAL.—Not later than Octo-
5 ber 1, 1994, the Administrator, in cooperation
6 with the Secretary and the Director of the Fish
7 and Wildlife Service, an appropriate official of
8 each host State, and local sponsors shall de-
9 velop and implement a management plan for
10 each confined spoil disposal facility located in
11 the waters of the Great Lakes.

12 “(B) PUBLIC COMMENT.—In developing a
13 plan, the Administrator shall provide an oppor-
14 tunity for public comment on the scope and
15 content of the plan.

16 “(C) REQUIREMENTS.—Each plan shall in-
17 clude—

18 “(i) a baseline assessment of condi-
19 tions at the site;

20 “(ii) a program for monitoring the
21 site;

22 “(iii) special management conditions
23 or practices that are necessary for the pro-
24 tection of human health, wildlife, and the
25 environment;

1 “(iv) a consideration of the quantity
2 of material to be disposed of at the site,
3 and the presence, nature, and
4 bioavailability of contaminants in the ma-
5 terial;

6 “(v) a program for reducing to a min-
7 imum the volume and toxicity of sediment
8 disposed of at the site;

9 “(vi) a schedule of the anticipated use
10 of the site over the long term, including
11 the anticipated closure date for the site, if
12 applicable, and any post-closure manage-
13 ment of the site that will be implemented
14 pursuant to clause (iii);

15 “(vii) any restrictions on public access
16 or access by wildlife to confined spoil dis-
17 posal facilities that are necessary for envi-
18 ronmental, safety, and health reasons;

19 “(viii) a schedule for the review and
20 revision of the plan, that shall include pro-
21 visions for review and revision not later
22 than 5 years after the date of adoption of
23 the plan, and every 5 years thereafter; and

24 “(ix) an allocation of the costs of im-
25 plementing the plan, including the share of

1 the Environmental Protection Agency, the
2 Department of the Army, each host State,
3 local sponsors, and any other party that
4 the Administrator, in cooperation the offi-
5 cials and entities referred to in subpara-
6 graph (A), determines appropriate.

7 “(7) REMEDIATION PLANS.—

8 “(A) IN GENERAL.—Not later than De-
9 cember 31, 1996, the Secretary shall, in con-
10 sultation with the Administrator, the Director
11 of the Fish and Wildlife Service, the appro-
12 priate official of each host State, and local
13 sponsors—

14 “(i) develop a confined spoil disposal
15 facility remediation plan for each confined
16 spoil disposal facility identified in para-
17 graph (2)(B); and

18 “(ii) submit each remediation plan to
19 the Administrator.

20 “(B) REQUIREMENTS.—The remediation
21 plan shall include a schedule of engineered im-
22 provements, closure or post-closure require-
23 ments, or restrictions of the facility, or other
24 measures to ensure that the facility will not ex-
25 ceed water or sediment quality standards or

1 interfere with the protection and propagation of
2 a balanced indigenous population of fish, shell-
3 fish, and wildlife.

4 “(C) RESTRICTION OR CLOSURE OF FACIL-
5 ITY.—Any confined spoil disposal facility reme-
6 diation plan that recommends restriction or clo-
7 sure of the confined spoil disposal facility
8 shall—

9 “(i) identify appropriate alternative
10 disposal options, including the estimated
11 costs and environmental benefits and im-
12 pacts of the alternatives; and

13 “(ii) include a schedule for initiating
14 the alternatives and allocating costs, if ap-
15 plicable.

16 “(D) APPROVAL OF PLAN.—Not later than
17 90 days after receipt of a confined spoil dis-
18 posal facility remediation plan, the Adminis-
19 trator, in consultation with the Director of the
20 Fish and Wildlife Service, shall make a deter-
21 mination whether to approve the plan.

22 “(E) COSTS.—Costs associated with imple-
23 menting any approved confined spoil disposal
24 facility remediation plan shall be allocated in a

1 manner consistent with the confined spoil dis-
2 posal facility project authorization.

3 “(F) DESIGN AND CONSTRUCTION.—

4 “(i) IN GENERAL.—The Secretary
5 may design, engineer, and construct com-
6 ponents of any confined spoil disposal facil-
7 ity remediation plan in a manner consist-
8 ent with this section.

9 “(ii) DEADLINE.—If, by January 1,
10 1999, a confined spoil disposal facility re-
11 mediation plan has not been undertaken
12 for a confined spoil disposal facility identi-
13 fied under paragraph (5)(B), the Adminis-
14 trator shall terminate the use of the facil-
15 ity and shall develop a post-closure remedi-
16 ation plan to be implemented jointly by the
17 Administrator, the Secretary, and the host
18 State.

19 “(8) DREDGING AND DISPOSAL OPERATIONS.—

20 The Secretary shall continue dredging and disposal
21 operations in the Great Lakes basin to maintain
22 navigational channels to authorized depths in a man-
23 ner that is consistent with this section.

24 “(9) OTHER CONSIDERATIONS.—Nothing in
25 this section shall prohibit the Administrator from

1 considering other relevant environmental laws, regu-
2 lations, or such other criteria as the Administrator
3 determines to be appropriate, in making a decision
4 to concur or decline to concur with respect to the
5 applying any provision of this section in cooperation
6 with another person or entity.

7 “(10) PERMIT REQUIREMENT.—

8 “(A) REQUIREMENT.—Beginning on Octo-
9 ber 1, 1994, any person who disposes of dredge
10 spoil at a confined spoil disposal facility shall
11 obtain a permit from the Secretary, who shall
12 issue the permit with the concurrence with the
13 Administrator.

14 “(B) PERMITS.—

15 “(i) CONDITIONS.—A permit issued
16 under this paragraph shall specify such
17 conditions as are necessary to ensure that
18 disposal will be consistent with the man-
19 agement plan for a confined spoil disposal
20 facility.

21 “(ii) MONITORING.—A permit issued
22 under this paragraph shall contain such
23 provisions for monitoring and assessment
24 as are necessary to determine compliance
25 with the permit.

1 “(C) TERM.—

2 “(i) IN GENERAL.—Subject to clause
3 (ii), a permit issued under this paragraph
4 shall be issued for the term of the disposal
5 activity specified pursuant to subparagraph
6 (B)(i).

7 “(ii) LIMITATION.—No permit shall
8 be issued for a period exceeding 5 years.

9 “(11) AUTHORIZATION OF APPROPRIATIONS.—
10 There are authorized to be appropriated such sums
11 as are necessary to carry out this subsection.”.

12 **SEC. 3. SEDIMENT REDUCTION.**

13 (a) IN GENERAL.—Section 118 of the Federal Water
14 Pollution Control Act (33 U.S.C. 1268), as amended by
15 section 2, is further amended by inserting after subsection
16 (d) the following new subsection:

17 “(e) SEDIMENT REDUCTION.—

18 “(1) GREAT LAKES TRIBUTARY SEDIMENT
19 TRANSPORT MODELS.—

20 “(A) MODELS.—For each major river sys-
21 tem or set of major river systems depositing
22 sediment into a Great Lakes federally author-
23 ized commercial harbor, channel maintenance
24 project site, or area of concern, the Secretary of
25 the Army (referred to in this subsection as the

1 ‘Secretary’), in cooperation with the Adminis-
2 trator, shall develop a tributary sediment trans-
3 port model that shall—

4 “(i) measure stream discharge rates,
5 total suspended solids loadings, and
6 bedload transport within the tributary and
7 harbor;

8 “(ii) measure additional parameters,
9 such as nitrates, phosphates, persistent
10 toxic substances, and heavy metals, using a
11 protocol approved by the Administrator, on
12 a river-by-river basis in accordance with
13 any agreement between the Secretary, the
14 Administrator, the host State, and any rel-
15 evant non-Federal entity;

16 “(iii) estimate the percentage of total
17 sediment loadings into the harbors, chan-
18 nels, and areas of concern originating from
19 each subwatershed of the river system; and

20 “(iv) characterize the physical nature
21 of the sediment materials.

22 “(B) COORDINATION WITH OTHER ENTI-
23 TIES.—In developing the tributary sediment
24 transport models, the Secretary shall cooperate,
25 consult, and coordinate with—

1 “(i) the Administrator;

2 “(ii) the Governors of the Great
3 Lakes States;

4 “(iii) the Chief of the Soil Conserva-
5 tion Service of the Department of Agri-
6 culture;

7 “(iv) the Director of the United
8 States Geological Survey of the Depart-
9 ment of the Interior;

10 “(v) the Director of the United States
11 Fish and Wildlife Service of the Depart-
12 ment of the Interior; and

13 “(vi) the heads of such other Federal
14 agencies as the Administrator determines
15 to be appropriate.

16 “(C) OTHER CONSIDERATIONS.—In devel-
17 oping the tributary sediment transport models,
18 the Secretary shall—

19 “(i) coordinate tributary sediment
20 transport modeling efforts with the efforts
21 of the Administrator to produce com-
22 prehensive Lakewide Management Plans,
23 Remedial Action Plans, mass balance mod-
24 els, and water quality models;

1 “(ii) build upon data and monitoring
2 infrastructure generated in earlier studies
3 and programs; and

4 “(iii) complete models for 30 major
5 river systems within the 5-year period be-
6 ginning on the date of enactment of this
7 clause.

8 “(2) SEDIMENT LOAD REDUCTION.—

9 “(A) ANALYTICAL METHOD.—Not later
10 than 18 months after the date of enactment of
11 this subparagraph, the Secretary, with the writ-
12 ten concurrence of the Administrator, shall—

13 “(i) develop an analytical method to
14 project the effectiveness and efficiency of
15 sediment source reduction approaches and
16 scenarios in reducing upstream sediment
17 loadings into, and transport within, spe-
18 cific Great Lakes federally authorized com-
19 mercial harbors, channel maintenance
20 project sites, and areas of concern of the
21 Great Lakes;

22 “(ii) for each model developed under
23 paragraph (1), use the method described in
24 clause (i) to conduct sediment load reduc-
25 tion analyses to estimate the potential ef-

1 fectiveness and efficiency of upstream sedi-
2 ment source reduction approaches and sce-
3 narios to reduce sedimentation in Great
4 Lakes federally authorized commercial har-
5 bors, channel maintenance sites, and areas
6 of concern of the Great Lakes; and

7 “(iii) provide sediment load and trans-
8 port reduction analysis information to the
9 States, upon request, regarding river sys-
10 tems within the jurisdiction of the State.

11 “(B) COORDINATION WITH OTHER ENTI-
12 TIES.—In developing the analytical method de-
13 scribed in subparagraph (A), the Secretary shall
14 work in cooperation, consultation, and coordina-
15 tion with—

16 “(i) the Administrator;

17 “(ii) the Governors of the Great
18 Lakes States;

19 “(iii) the Chief of the Soil Conserva-
20 tion Service of the Department of Agri-
21 culture;

22 “(iv) the Director of the United
23 States Geological Survey of the Depart-
24 ment of the Interior;

1 “(v) the Director of the United States
2 Fish and Wildlife Service of the Depart-
3 ment of the Interior; and

4 “(vi) the heads of such other Federal
5 agencies as the Administrator determines
6 to be appropriate.

7 “(C) DEVELOPMENT AND APPLICATION.—
8 In developing and using the analytical methods
9 described in subparagraph (A), the Secretary
10 shall consider only sediment reduction ap-
11 proaches and scenarios that are consistent
12 with—

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

17 “(ii) relevant State coastal zone man-
18 agement programs approved pursuant to
19 section 306 of the Coastal Zone Manage-
20 ment Act of 1972 (16 U.S.C. 1455);

21 “(iii) relevant State nonpoint source
22 pollution control programs approved in a
23 manner consistent with section 319; and

24 “(iv) recommendations of any relevant
25 Remedial Action Plans and programs and

1 measures contained in Annex 3 of the
2 Great Lakes Water Quality Agreement and
3 the supplement to the Annex.

4 “(D) TECHNICAL SUPPORT.—The Sec-
5 retary shall encourage and provide technical
6 support for Federal, State, and local efforts to
7 reduce sedimentation in harbors through im-
8 proved upstream land management practices,
9 consistent with—

10 “(i) State coastal zone management
11 programs approved pursuant to section
12 306 of the Coast Zone Management Act of
13 1972 (16 U.S.C. 1455); and

14 “(ii) State nonpoint source pollution
15 control programs pursuant to section 319.

16 “(3) LOAD REDUCTION GRANTS.—

17 “(A) IN GENERAL.—Not later than 90
18 days after funds are made available under para-
19 graph (4), the Secretary, in cooperation with
20 the Administrator, shall make grants available
21 to States for projects to reduce erosion that
22 contribute to the sedimentation of federally au-
23 thorized commercial harbors, channel mainte-
24 nance project sites, and areas of concern.

1 “(B) GRANT REQUESTS.—A State or a
2 group of States, on the initiative of the State
3 or group of States or at the request of a reme-
4 dial action planning committee, local govern-
5 ment, port authority, or any other govern-
6 mental, public, or private entity, may submit a
7 proposal for funding for a project pursuant to
8 this paragraph.

9 “(C) GRANT CONDITIONS.—A grant under
10 this paragraph shall—

11 “(i) be awarded only for a project con-
12 ducted by a State (or a group of States)
13 that is consistent with any applicable ap-
14 proved coastal zone management plan and
15 is incorporated in the nonpoint source pol-
16 lution control program of the State (or,
17 with respect to a project conducted by each
18 recipient State, under applicable provisions
19 of section 319);

20 “(ii) conform with the guidance issued
21 pursuant to section 6217(g) of the Omni-
22 bus Budget Reconciliation Act of 1990 (16
23 U.S.C. 1455b(g));

24 “(iii) be consistent with the rec-
25 ommendations of any relevant Remedial

1 Action Plans and Lakewide Management
2 Plans;

3 “(iv) be administered by agencies des-
4 ignated in the nonpoint source manage-
5 ment program of the State;

6 “(v) improve water quality; and

7 “(vi) have the potential to reduce pro-
8 jected dredging costs, including environ-
9 mental dredging, in an amount comparable
10 to the cost of the erosion control project,
11 within the lifetime of the dredging project.

12 “(D) STATE GRANTS.—

13 “(i) IN GENERAL.—Subject to clause
14 (ii), to carry out a project under this para-
15 graph, a State may award grants from
16 funds made available under this paragraph
17 for the implementation of an erosion con-
18 trol measure.

19 “(ii) LIMITATION.—The amount of a
20 grant under this subparagraph may not ex-
21 ceed 75 percent of the cost erosion control
22 measure.

23 “(E) AMOUNT OF GRANT AWARD.—

24 “(i) IN GENERAL.—A grant under
25 this paragraph shall be in such amount

1 and subject to such conditions as the Sec-
2 retary, with the concurrence of the Admin-
3 istrator, shall determine.

4 “(ii) FEDERAL SHARE.—The Federal
5 share of a grant made under this para-
6 graph shall be 75 percent of the cost of the
7 project.

8 “(iii) STATE SHARE.—The State
9 share of a grant made under this sub-
10 section shall be provided from non-Federal
11 sources.

12 “(4) AUTHORIZATION OF APPROPRIATIONS.—

13 “(A) IN GENERAL.—Subject to subpara-
14 graph (B), there are authorized to be appro-
15 priated to the Department of the Army to carry
16 out this subsection, \$15,000,000 for each of fis-
17 cal years 1994 through 1999.

18 “(B) LIMITATION.—Not less than 50 per-
19 cent of the amounts made available under sub-
20 paragraph (A) shall be reserved to carry out
21 paragraph (3).”.

22 (b) REMEDIAL ACTION PLANNING COMMITTEE.—

23 Section 118(a)(3) of such Act (33 U.S.C. 1268(a)(3)) is
24 amended—

1 (1) in subparagraph (I), by striking “and” at
2 the end;

3 (2) in subparagraph (J), by striking the period
4 at the end and inserting “; and”; and

5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(K) ‘Remedial action planning committee’
8 means a committee that is involved in the devel-
9 opment of a Remedial Action Plan.”.

○

HR 2651 IH—2