

One Hundred Second Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Friday, the third day of January,

one thousand nine hundred and ninety-two

An Act

To provide for the conservation and development of water and related resources, to authorize the United States Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, 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; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Water Resources Development Act of 1992'.

(b) TABLE OF CONTENTS-

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Secretary defined.

TITLE V--CONTAMINATED SEDIMENT AND OCEAN DUMPING

SEC. 501. SHORT TITLE AND DEFINITIONS.

(a) SHORT TITLE- This title may be cited as the 'National Contaminated Sediment Assessment and Management Act'.

(b) DEFINITIONS- For the purposes of sections 502 and 503 of this title--

(1) the term 'aquatic sediment' means sediment underlying the navigable waters of the United States;

(2) the term 'navigable waters' has the same meaning as in section 502(7) of the Federal Water Pollution Control Act (33 U.S.C. 1362(7));

(3) the term 'pollutant' has the same meaning as in section 502(6) of the Federal Water Pollution Control Act (33 U.S.C. 1362(6)); except that such term does not include dredge spoil, rock, sand, or cellar dirt;

(4) the term 'contaminated sediment' means aquatic sediment which--

(A) contains chemical substances in excess of appropriate geochemical, toxicological or sediment quality criteria or measures; or

(B) is otherwise considered by the Administrator to pose a threat to human health or

the environment; and

(5) the term 'Administrator' means the Administrator of the Environmental Protection Agency.

SEC. 502. NATIONAL CONTAMINATED SEDIMENT TASK FORCE.

(a) ESTABLISHMENT- There is established a National Contaminated Sediment Task Force (hereinafter referred to in this section as the 'Task Force'). The Task Force shall--

- (1) advise the Administrator and the Secretary in the implementation of this title;
- (2) review and comment on reports concerning aquatic sediment quality and the extent and seriousness of aquatic sediment contamination throughout the Nation;
- (3) review and comment on programs for the research and development of aquatic sediment restoration methods, practices, and technologies;
- (4) review and comment on the selection of pollutants for development of aquatic sediment criteria and the schedule for the development of such criteria;
- (5) advise appropriate officials in the development of guidelines for restoration of contaminated sediment;
- (6) make recommendations to appropriate officials concerning practices and measures--
 - (A) to prevent the contamination of aquatic sediments; and
 - (B) to control sources of sediment contamination; and
- (7) review and assess the means and methods for locating and constructing permanent, cost-effective long-term disposal sites for the disposal of dredged material that is not suitable for ocean dumping (as determined under the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.)).

(b) MEMBERSHIP-

- (1) IN GENERAL- The membership of the Task Force shall include 1 representative of each of the following:
 - (A) The Administrator.
 - (B) The Secretary.
 - (C) The National Oceanic and Atmospheric Administration.
 - (D) The United States Fish and Wildlife Service.
 - (E) The Geological Survey.
 - (F) The Department of Agriculture.
- (2) ADDITIONAL MEMBERS- Additional members of the Task Force shall be jointly selected by the Administrator and the Secretary, and shall include--
 - (A) not more than 3 representatives of States;
 - (B) not more than 3 representatives of ports, agriculture, and manufacturing; and
 - (C) not more than 3 representatives of public interest organizations with a demonstrated interest in aquatic sediment contamination.

(3) COCHAIRMEN- The Administrator and the Secretary shall serve as cochairmen of the Task Force.

(4) CLERICAL AND TECHNICAL ASSISTANCE- Such clerical and technical assistance as may be necessary to discharge the duties of the Task Force shall be provided by the personnel of the Environmental Protection Agency and the Army Corps of Engineers.

(5) COMPENSATION FOR ADDITIONAL MEMBERS- The additional members of the Task Force selected under paragraph (2) shall, while attending meetings or conferences of the Task Force, be compensated at a rate to be fixed by the cochairmen, but not to exceed the daily equivalent of the base rate of pay in effect for grade GS-15 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Task Force. While away from their homes or regular places of business in the performance of services for the Task Force, such members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(c) REPORT- Within 2 years after the date of the enactment of this Act, the Task Force shall submit to Congress a report stating the findings and recommendations of the Task Force.

SEC. 503. SEDIMENT SURVEY AND MONITORING.

(a) SURVEY-

(1) IN GENERAL- The Administrator, in consultation with the Administrator of the National Oceanic and Atmospheric Administration and the Secretary, shall conduct a comprehensive national survey of data regarding aquatic sediment quality in the United States. The Administrator shall compile all existing information on the quantity, chemical and physical composition, and geographic location of pollutants in aquatic sediment, including the probable source of such pollutants and identification of those sediments which are contaminated pursuant to section 501(b)(4).

(2) REPORT- Not later than 24 months after the date of the enactment of this Act, the Administrator shall report to the Congress the findings, conclusions, and recommendations of such survey, including recommendations for actions necessary to prevent contamination of aquatic sediments and to control sources of contamination.

(b) MONITORING-

(1) IN GENERAL- The Administrator, in consultation with the Administrator of the National Oceanic and Atmospheric Administration and the Secretary, shall conduct a comprehensive and continuing program to assess aquatic sediment quality. The program conducted pursuant to this subsection shall, at a minimum--

(A) identify the location of pollutants in aquatic sediment;

(B) identify the extent of pollutants in sediment and those sediments which are contaminated pursuant to section 501(b)(4);

(C) establish methods and protocols for monitoring the physical, chemical, and biological effects of pollutants in aquatic sediment and of contaminated sediment;

(D) develop a system for the management, storage, and dissemination of data concerning aquatic sediment quality;

(E) provide an assessment of aquatic sediment quality trends over time;

(F) identify locations where pollutants in sediment may pose a threat to the quality of drinking water supplies, fisheries resources, and marine habitats; and

(G) establish a clearing house for information on technology, methods, and practices available for the remediation, decontamination, and control of sediment contamination.

(2) REPORT- The Administrator shall submit to Congress a report on the findings of the monitoring under paragraph (1) on the date that is 2 years after the date specified in subsection (a) (2) and biennially thereafter.

SEC. 504. CONCURRENCE BY THE ADMINISTRATOR.

(a) CONCURRENCE BY THE ADMINISTRATOR- Section 103(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413(c)) is amended to read as follows:

`(c) CONCURRENCE BY THE ADMINISTRATOR-

`(1) NOTIFICATION- Prior to issuing a permit to any person under this section, the Secretary shall first notify the Administrator of the Secretary's intention to do so and provide necessary and appropriate information concerning the permit to the Administrator. Within 30 days of receiving such information, the Administrator shall review the information and request any additional information the Administrator deems necessary to evaluate the proposed permit.

`(2) CONCURRENCE BY ADMINISTRATOR- Within 45 days after receiving from the Secretary all information the Administrator considers to be necessary to evaluate the proposed permit, the Administrator shall, in writing, concur with (either entirely or with conditions) or decline to concur with the determination of the Secretary as to compliance with the criteria, conditions, and restrictions established pursuant to sections 102(a) and 102(c) relating to the environmental impact of the permit. The Administrator may request one 45-day extension in writing and the Secretary shall grant such request on receipt of the request.

`(3) EFFECT OF CONCURRENCE- In any case where the Administrator makes a determination to concur (with or without conditions) or to decline to concur within the time period specified in paragraph (2) the determination shall prevail. If the Administrator declines to concur in the determination of the Secretary no permit shall be issued. If the Administrator concurs with conditions the permit shall include such conditions. The Administrator shall state in writing the reasons for declining to concur or for the conditions of the concurrence.

`(4) FAILURE TO ACT- If no written documentation is made by the Administrator within the time period provided for in paragraph (2), the Secretary may issue the permit.

`(5) COMPLIANCE WITH CRITERIA AND RESTRICTIONS- Unless the Administrator grants a waiver pursuant to subsection (d), any permit issued by the Secretary shall require compliance with such criteria and restrictions.'

(b) CONFORMING AMENDMENT- Section 103(e) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413(e)) is amended by inserting 'and section 104 (a) and (d)' before the period.

SEC. 505. STATE OCEAN DUMPING REQUIREMENTS.

Section 106(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1416(d)) is amended to read as follows:

`(d) STATE PROGRAMS-

(1) STATE RIGHTS PRESERVED- Except as expressly provided in this subsection, nothing in this title shall preclude or deny the right of any State to adopt or enforce any requirements

respecting dumping of materials into ocean waters within the jurisdiction of the State.

`(2) FEDERAL PROJECTS- In the case of a Federal project, a State may not adopt or enforce a requirement that is more stringent than a requirement under this title if the Administrator finds that such requirement--

`(A) is not supported by relevant scientific evidence showing the requirement to be protective of human health, aquatic resources, or the environment;

`(B) is arbitrary or capricious; or

`(C) is not applicable or is not being applied to all projects without regard to Federal, State, or private participation and the Secretary of the Army concurs in such finding.

`(3) EXEMPTION FROM STATE REQUIREMENTS- The President may exempt a Federal project from any State requirement respecting dumping of materials into ocean waters if it is in the paramount interest of the United States to do so.

`(4) CONSIDERATION OF SITE OF ORIGIN PROHIBITED- Any requirement respecting dumping of materials into ocean waters applied by a State shall be applied without regard to the site of origin of the material to be dumped.'

SEC. 506. SITE DESIGNATION.

(a) SITE DESIGNATION AMENDMENTS- Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1412(c)) is amended to read as follows:

`(c) DESIGNATION OF SITES-

`(1) IN GENERAL- The Administrator shall, in a manner consistent with the criteria established pursuant to subsection (a), designate sites or time periods for dumping. The Administrator shall designate sites or time periods for dumping that will mitigate adverse impact on the environment to the greatest extent practicable.

`(2) PROHIBITIONS REGARDING SITE OR TIME PERIOD- In any case where the Administrator determines that, with respect to certain materials, it is necessary to prohibit dumping at a site or during a time period, the Administrator shall prohibit the dumping of such materials in such site or during such time period. This prohibition shall apply to any dumping at the site or during such time period. This prohibition shall apply to any dumping at the site or during the time period, including any dumping under section 103(e).

`(3) DREDGED MATERIAL DISPOSAL SITES- In the case of dredged material disposal sites, the Administrator, in conjunction with the Secretary, shall develop a site management plan for each site designated pursuant to this section. In developing such plans, the Administrator and the Secretary shall provide opportunity for public comment. Such plans shall include, but not be limited to--

`(A) a baseline assessment of conditions at the site;

`(B) a program for monitoring the site;

`(C) special management conditions or practices to be implemented at each site that are necessary for protection of the environment;

`(D) consideration of the quantity of the material to be disposed of at the site, and the presence, nature, and bioavailability of the contaminants in the material;

`(E) consideration of the anticipated use of the site over the long term, including the anticipated closure date for the site, if applicable, and any need for management of

the site after the closure of the site; and

`(F) a schedule for review and revision of the plan (which shall not be reviewed and revised less frequently than 10 years after adoption of the plan, and every 10 years thereafter).

`(4) GENERAL SITE MANAGEMENT PLAN REQUIREMENT; PROHIBITIONS- After January 1, 1995, no site shall receive a final designation unless a management plan has been developed pursuant to this section. Beginning on January 1, 1997, no permit for dumping pursuant to this Act or authorization for dumping under section 103(e) of this Act shall be issued for a site unless such site has received a final designation pursuant to this subsection or an alternative site has been selected pursuant to section 103(b).

`(5) MANAGEMENT PLANS FOR PREVIOUSLY DESIGNATED SITES- The Administrator shall develop a site management plan for any site designated prior to January 1, 1995, as expeditiously as practicable, but not later than January 1, 1997, giving priority consideration to management plans for designated sites that are considered to have the greatest impact on the environment.'.

(b) SITE USE CLARIFICATION- Section 103(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413(b)) is amended--

(1) in the last sentence by inserting `maximum' before `extent feasible'; and

(2) by adding at the end the following: `In any case in which the use of a designated site is not feasible, the Secretary may, with the concurrence of the Administrator, select an alternative site. The criteria and factors established in section 102(a) relating to site selection shall be used in selecting the alternative site in a manner consistent with the application of such factors and criteria pursuant to section 102(c). Disposal at or in the vicinity of an alternative site shall be limited to a period of not greater than 5 years unless the site is subsequently designated pursuant to section 102(c); except that an alternative site may continue to be used for an additional period of time that shall not exceed 5 years if--

`(1) no feasible disposal site has been designated by the Administrator;

`(2) the continued use of the alternative site is necessary to maintain navigation and facilitate interstate or international commerce; and

`(3) the Administrator determines that the continued use of the site does not pose an unacceptable risk to human health, aquatic resources, or the environment.'.

SEC. 507. PERMIT CONDITIONS.

(a) MANAGEMENT PLAN- Section 104(a)(4) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1414(a)(4)) is amended to read as follows: `(4) such requirements, limitations, or conditions as are necessary to assure consistency with any site management plan approved pursuant to section 102(c);'.

(b) PERMIT TERM- Section 104(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1414(a)), is amended by adding at the end the following: `Permits issued under this title shall be issued for a period of not to exceed 7 years.'.

(c) REVIEW- Section 104(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1414(d)) is amended by adding after `where he finds' the following: `, based upon monitoring data from the dump site and surrounding area,'.

SEC. 508. OCEAN DUMPING PENALTIES.

(a) PENALTY- Section 105(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C.

1415(b)) is amended to read as follows:

`(b) CRIMINAL PENALTIES- In addition to any action that may be brought under subsection (a)--

`(1) any person who knowingly violates any provision of this title, any regulation promulgated under this title, or a permit issued under this title, shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; and

`(2) any person who is convicted of such a violation pursuant to paragraph (1) shall forfeit to the United States--

`(A) any property constituting or derived from any proceeds that the person obtained, directly or indirectly, as a result of such violation; and

`(B) any of the property of the person which was used, or intended to be used in any manner or part, to commit or to facilitate the commission of the violation.'.

(b) SEIZURE AND FORFEITURE- Section 105 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1415) is amended by adding at the end the following:

`(i) SEIZURE AND FORFEITURE-

`(1) IN GENERAL- Any vessel used to commit an act for which a penalty is imposed under section 105(b) shall be subject to seizure and forfeiture to the United States under procedures established for seizure and forfeiture of conveyances under sections 413 and 511 of the Controlled Substances Act (21 U.S.C. 853, 881).

`(2) LIMITATION ON APPLICATION- This subsection does not apply to an act committed substantially in accordance with a compliance agreement or enforcement agreement entered into by the Administrator under section 104B(c).'

SEC. 509. AUTHORIZATION OF APPROPRIATIONS.

(a) GENERAL AUTHORIZATION- Section 111 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1420) is amended by striking `for each of' and all that follows through the period at the end of the section and inserting the following: `for fiscal year 1993 and not to exceed \$14,000,000 for each of the fiscal years 1994, 1995, 1996, and 1997, to remain available until expended.'.

(b) TASK FORCE, SURVEY AND MONITORING- There is authorized to be appropriated to the Administrator to carry out sections 502 and 503 such sums as may be necessary.

SEC. 510. REPORT TO CONGRESS.

Section 112 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1421) is amended by adding at the end the following: `Such report shall include a description of the number of permits issued under this title (including the number of permits issued by the Secretary with the concurrence of the Administrator), any actions taken under subsections (c) and (d) of section 103, and for each permit, the site receiving the material, the volume and characteristics of material dumped (including the extent and nature of pollutants in such material), and the management practices implemented in connection with each disposal activity.'.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.