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Part 1

GREAT LAKES LEGACY REAUTHORIZATION ACT OF 2008

SEPTEMBER 15, 2008.—Ordered to be printed

Mr. OBERSTAR, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 6460]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 6460) to amend the Federal Water Pollution Control Act to provide for the remediation of sediment contamination in areas of concern, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Great Lakes Legacy Reauthorization Act of 2008".

SEC. 2. DEFINITIONS.

Section 118(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1268(a)(3)) is amended—

(1) in subparagraph (I) by striking "and" at the end;

(2) in subparagraph (J) by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

"(K) 'site characterization' means a process for monitoring and evaluating the nature and extent of sediment contamination in accordance with the Environmental Protection Agency's guidance for the assessment of contaminated sediment in an area of concern located wholly or partially within the United States; and

"(L) 'potentially responsible party' means an individual or entity that may be liable under any Federal or State authority that is being used or may be used to facilitate the cleanup and protection of the Great Lakes.".

SEC. 3. REMEDIATION OF SEDIMENT CONTAMINATION IN AREAS OF CONCERN.

(a) ELIGIBLE PROJECTS.—Section 118(c)(12)(B)(ii) of the Federal Water Pollution Control Act (33 U.S.C. 1268(c)(12)(B)(ii)) is amended by striking "sediment" and inserting "sediment, including activities to restore aquatic habitat that are carried out in conjunction with a project for the remediation of contaminated sediment".

(b) LIMITATIONS.—Section 118(c)(12)(D) of such Act (33 U.S.C. 1268(c)(12)(D)) is amended—

(1) in the subparagraph heading by striking "LIMITATION" and inserting "LIMITATIONS";

(2) in clause (i) by striking "or" at the end;

(3) in clause (ii) by striking the period and inserting a semicolon; and

(4) by adding at the end the following:

"(iii) unless each non-Federal sponsor for the project has entered into a written project agreement with the Administrator under which the party agrees to carry out its responsibilities and requirements for the project; or

"(iv) unless the Administrator provides assurance that the Agency has conducted a reasonable inquiry to identify potentially responsible parties connected with the site.".

(c) IN-KIND CONTRIBUTIONS.—Section 118(c)(12)(E)(ii) of such Act (33 U.S.C. 1268(c)(12)(E)(ii)) is amended to read as follows:

"(ii) IN-KIND CONTRIBUTIONS.—

"(I) IN GENERAL.—The non-Federal share of the cost of a project carried out under this paragraph may include the value of an in-kind contribution provided by a non-Federal sponsor.

"(II) CREDIT.—A project agreement described in subparagraph (D)(iii) may provide, with respect to a project, that the Administrator shall credit toward the non-Federal share of the cost of the project the value of an in-kind contribution made by the non-Federal sponsor, if the Administrator determines that the material or service provided as the in-kind contribution is integral to the project.

"(III) WORK PERFORMED BEFORE PROJECT AGREEMENT.—In any case in which a non-Federal sponsor is to receive credit under subclause (II) for the cost of work carried out by the non-Federal sponsor and such work has not been carried out by the non-Federal sponsor as of the date of enactment of this subclause, the Administrator and the non-Federal sponsor shall enter into an agreement under which the non-Federal sponsor shall carry out such work, and only work carried out following the execution of the agreement shall be eligible for credit.

"(IV) LIMITATION.—Credit authorized under this clause for a project carried out under this paragraph—

"(aa) shall not exceed the non-Federal share of the cost of the project; and

"(bb) shall not exceed the actual and reasonable costs of the materials and services provided by the non-Federal sponsor, as determined by the Administrator.

"(V) INCLUSION OF CERTAIN CONTRIBUTIONS.—In this subparagraph, the term 'in-kind contribution' may include the costs of planning (including data collection), design, construction, and materials that are provided by the non-Federal sponsor for implementation of a project under this paragraph.".

(d) NON-FEDERAL SHARE.—Section 118(c)(12)(E) of such Act (33 U.S.C. 1268(c)(12)(E)) is amended—

(1) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively;

(2) by inserting after clause (ii) the following:

"(iii) TREATMENT OF CREDIT BETWEEN PROJECTS.—Any credit provided under this subparagraph towards the non-Federal share of the cost of a project carried out under this paragraph may be applied towards the non-Federal share of the cost of any other project carried out under this paragraph by the same non-Federal sponsor for a site within the same area of concern."; and

(3) in clause (iv) (as redesignated by paragraph (1) of this subsection) by striking "service" each place it appears and inserting "contribution".

(e) SITE CHARACTERIZATION.—Section 118(c)(12)(F) of such Act (33 U.S.C. 1268(c)(12)(F)) is amended to read as follows:

"(F) SITE CHARACTERIZATION.—

"(i) IN GENERAL.—The Administrator, in consultation with any affected State or unit of local government, shall carry out at Federal expense the site characterization of a project under this paragraph for the remediation of contaminated sediment.

"(ii) LIMITATION.—For purposes of clause (i), the Administrator may carry out one site assessment per discrete site within a project at Federal expense.".

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 118(c)(12)(H) of such Act (33 U.S.C. 1268(c)(12)(H)) is amended—

(1) by striking clause (i) and inserting the following:

"(i) IN GENERAL.—In addition to other amounts authorized under this section, there is authorized to be appropriated to carry out this paragraph—

"(I) $50,000,000 for each of fiscal years 2004 through 2008; and

"(II) $150,000,000 for each of fiscal years 2009 through 2013."; and

(2) by adding at the end the following:

"(iii) ALLOCATION OF FUNDS.—Not more than 20 percent of the funds appropriated pursuant to clause (i)(II) for a fiscal year may be used to carry out subparagraph (F).".

(g) PUBLIC INFORMATION PROGRAM.—Section 118(c)(13)(B) of such Act (33 U.S.C. 1268(c)(13)(B)) is amended by striking "2008" and inserting "2013".

SEC. 4. RESEARCH AND DEVELOPMENT PROGRAM.

Section 106(b)(1) of the Great Lakes Legacy Act of 2002 (33 U.S.C. 1271a(b)(1)) is amended to read as follows:

"(1) IN GENERAL.—In addition to amounts authorized under other laws, there is authorized to be appropriated to carry out this section—

"(A) $3,000,000 for each of fiscal years 2004 through 2008; and

"(B) $5,000,000 for each of fiscal years 2009 through 2013.".

PURPOSE OF THE LEGISLATION

H.R. 6460, the "Great Lakes Legacy Reauthorization Act of 2008", amends section 118 the Federal Water Pollution Control Act ("Clean Water Act" or "Act") to reauthorize and increase appropriations for projects to remediate contaminated sediment in the Great Lakes areas of concern, and to make several additional modifications to the implementation of the program to accelerate the completion of remediation projects.

BACKGROUND AND NEED FOR LEGISLATION

The Great Lakes basin includes all of the state of Michigan, parts of Illinois, Indiana, Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and the Canadian provinces of Ontario and Quebec. Approximately 40 million people live within the Great Lakes basin. Water in the Lakes is used for a multitude of activities including fishing, swimming, boating, agriculture, industry, and shipping. In addition, the Lakes contain around 84 percent of North America's and 21 percent of the world's surface fresh water supplies.

Industrialization and development have had a significant impact on the Great Lakes ecosystem. The region's industrial development has included mining, steel production, and machine tool and automobile manufacturing. Agriculture is also a significant component of the regional economy. The Great Lakes have historically provided convenient waterways for the movement of goods. They also provide process and cooling water for industrial users, and are used to generate hydroelectric power. While industrialization, agriculture, power generation, and other activities have produced significant economic development in the region, water quality has also been adversely impacted.

In its 2002 National Water Quality Inventory, the Environmental Protection Agency ("EPA") reports that 91 percent of assessed Great Lakes shoreline miles were impaired—meaning that the shoreline did not meet all of its designated uses, including fishing, swimming, and suitability for aquatic wildlife habitat. The leading

causes of impairment include the presence of pathogens, metals, and toxic organic compounds in the shoreline waters of the Great Lakes. EPA notes that the dominant cause of reported shoreline impairment is legacy, or historical, pollution—chiefly contaminated sediment. In the same report, EPA reports that 99 percent of the assessed Great Lakes open waters were rated as impaired. The predominant causes of this impairment include the presence of priority organics, metals (primarily mercury), and pesticides in the open waters of the Great Lakes. The primary sources of open water impairments are atmospheric deposition, industrial sources, agriculture, and legacy (historical) pollutants.

The impaired nature of the Great Lakes is also reflected in the biennial assessment of EPA and Environment Canada, entitled the "State of the Great Lakes" report, which is carried out pursuant to the 1987 Great Lakes Water Quality Agreement. In 2007, this report identified the status of the Great Lakes ecosystem as "mixed", with the particular concern expressed on the localized toxic contamination that continues to exist in high levels in the Great Lakes areas of concern.

Under the Boundary Waters Treaty of 1909, the United States and Canada created the International Joint Commission ("IJC") to monitor, periodically inspect, and make recommendations on actions to be taken by the United States and Canada to protect the Great Lakes. The IJC has six commissioners, three from each nation. In 1972, the United States and Canada signed the Great Lakes Water Quality Agreement to address mutual interests and improve water quality. In 1987, the two nations revised the agreement and committed to ecosystem cleanup plans for "areas of concern". The IJC monitors progress toward these commitments and issues biennial reports.

To support the commitments made in the Great Lakes Water Quality Agreement, Congress added section 118 to the Clean Water Act in 1987. Section 118 formally established the Great Lakes National Program Office within EPA. One of the functions of the Office is to ensure that Remedial Action Plans are developed and implemented for the areas of concern identified by the United States and Canada.

At present, there are 43 areas of concern within the Great Lakes Basin, 26 areas wholly within the United States, 12 areas located wholly within Canada, and 5 areas that are shared by both countries. The areas of concern were defined under the Great Lakes Water Quality Agreement as "ecologically degraded geographic areas requiring remediation". An area is considered ecologically degraded if at least one of 14 beneficial use impairments is present as a result of contamination—restrictions on fish and wildlife consumption; tainting of fish and wildlife flavor; degradation of fish and wildlife populations; fish tumors or other deformities; bird or animal deformities or reproduction problems; degradation of benthos; restrictions on dredging activities; eutrophication or undesirable algae; restrictions on drinking water consumption, or taste and odor problems; beach closings; degradation of aesthetics; added costs to agriculture or industry; degradation of phytoplankton and zooplankton populations; or loss of fish and wildlife habitat.

GREAT LAKES LEGACY ACT OF 2002

In 2002, Congress enacted the Great Lakes Legacy Act of 2002 (P.L. 107–303). The Great Lakes Legacy Act, which amends section 118 of the Clean Water Act, authorizes funding for projects to monitor, evaluate, and remediate contaminated sediment in the areas of concern located wholly within, or shared by, the United States, to increase public awareness of contaminated sediments, and to promote research and development for innovative approaches, technologies, and techniques for the remediation of contaminated sediments. Funding authorized pursuant to the Great Lakes Legacy Act for remediation of contaminated sediment is primarily focused on sites within the areas of concern that are not Superfund sites.

Sediment remediation projects funded under the Great Lakes Legacy Act authorization are negotiated agreements between EPA (through the Great Lakes National Program Office) and a non-Federal sponsor. Cleanup projects are cost-shared 65 percent Federal and 35 percent non-Federal, with the non-Federal sponsor being responsible for 100 percent of the operation and maintenance costs. The non-Federal share may include in-kind services.

The Great Lakes Legacy Act authorized appropriations of $270 million over five years (fiscal years 2004 through 2008). The actual appropriations for the same period totaled $126.3 million. This authorization of appropriations consists of $50 million per year for projects (contaminated sediment remediation and monitoring); $3 million per year for research; and $1 million per year for outreach activities.

GREAT LAKES LEGACY REAUTHORIZATION ACT OF 2008

On May 21, 2008, the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure held a hearing on reauthorization of the Great Lakes Legacy Act, at which the Subcommittee received testimony from representatives of the EPA, the Lieutenant Governor of the State of Michigan, and stakeholder organizations from the Great Lakes region.

Several witnesses at this hearing expressed support for reauthorization and recommended several improvements that could be made to the Great Lakes Legacy Act of 2002 to accelerate the pace of remediation and delisting of contaminated sites within the areas of concern.

Specific recommendations included: (1) increasing the authorization of appropriations for the remediation of contaminated sediments from $50 million annually to $150 million annually; (2) allowing the use of Legacy Act funds for the restoration of aquatic habitat restoration at sites where contaminated sediment has occurred; (3) maximizing the leverage and use of non-Federal contributions to remediation projects from non-Federal sponsors, including potentially responsible parties; (4) extending the life of appropriated Legacy Act funding beyond two years; (5) reducing the cost-share requirement for sediment remediation projects at "orphan sites"—where no viable responsibility party can be identified; and (6) striking the "maintenance of effort" requirement of the Great Lakes Legacy Act of 2002 (*see* 33 U.S.C. 1268(c)(12)(F)).

SUMMARY OF THE LEGISLATION

Section 1. Short title

This section designates the title of the bill as the "Great Lakes Legacy Reauthorization Act of 2008".

Section 2. Definitions

This section amends section 118(a)(3) of the Clean Water Act to add definitions to the terms "site characterization" and "potentially responsible party".

New subparagraph 118(a)(3)(K) defines the term "site assessment" as "a process for monitoring and evaluating the nature and extent of sediment contamination in accordance with the Environmental Protection Agency's guidance for the assessment of contaminated sediment in an area of concern located wholly or partially within the United States." In this definition, the Committee intends for the term "site assessment" to be limited to those activities, such as sampling, monitoring and evaluating sediment, necessary to assess the nature and extent of contaminated sediments present at a site; however, this definition does not include activities directly related to the design of a potential remediation project, which would be subject to normal cost share under section 118(c)(12)(E) of the Clean Water Act.

The Committee also intends for EPA to utilize, to the maximum extent practicable and where appropriate, existing authorities and guidance within its contaminated sediment program for the conduct of site assessments, such as the EPA's Assessment and Remediation of Contaminated Sediments ("ARCS") Assessment Guidance. However, this definition does not preclude the development of additional approaches and guidance, where appropriate, to conduct site assessments and characterizations.

New subparagraph 118(a)(3)(L) defines the term "potentially responsible party" as "an individual or entity that may be liable under any Federal or State authority that is being used or may be used to facilitate the cleanup and protection of the Great Lakes." This definition is consistent with the provisions of the Great Lakes Legacy Act of 2002, codified at 33 U.S.C. 1268(g).

Section 3. Remediation of sediment contamination in areas of concern

Section 3 of the Great Lakes Legacy Reauthorization Act of 2008 amends various paragraphs of section 118(c) of the Clean Water Act to expand the scope of projects eligible for funding under section 118(c)(12)(H) of the Act, provide additional clarity and flexibility for non-Federal sponsors to meet their statutory cost share obligation for projects, and to increase the overall authorization of appropriations for projects eligible under section 118(c)(12)(B) of the Act.

Subsection 3(a) amends section 118(c)(12)(B) of the Clean Water Act to authorize activities to restore aquatic habitat that are carried out in conjunction with a project for the remediation of contaminated sediment. According to EPA, of the 30 remaining Great Lakes' areas of concern located wholly within the United States or shared with Canada, 26 areas include within the beneficial use impairments the "loss of fish and wildlife habitat" for the site that

must be addressed before the site can be delisted as an area of concern. In many instances, the continued presence of contaminated sediment has resulted in degradation of sustainable aquatic habitat for native fish and wildlife populations, and activities to remediate these sediments, alone, can similarly impact the sustainability of aquatic habitat.

During the Subcommittee on Water Resources and Environment hearing on reauthorization of the Great Lakes Legacy Act, several witnesses testified in support of expanding the existing Clean Water Act authority for the Great Lakes' areas of concern to include restoration of degraded aquatic habitat. In the view of many of the witnesses, oftentimes, remediation of existing contaminated sediments alone may not be enough to delist an area of concern, and additional aquatic habitat restoration work would be required to address beneficial use impairments at the site, and to move the site toward delisting as an area of concern. In addition, the Committee expects that carrying out restoration activities for degraded habitat at the same time as projects for the remediation of contaminated sediment will be more efficient and less costly than if the same types of restoration activities were carried out separately, and should result in the delisting of areas of concern in a more expedited and cost-effective manner.

To address these concerns, subsection 3(a) would expand the existing authorization for projects to remediate contaminated sediment to include activities to restore aquatic habitat that are carried out in conjunction with a project for the remediation of contaminated sediment. The Committee expects that aquatic habitat restoration activities carried out under this new authority will be related to and carried out in conjunction with a project for the remediation of contaminated sediment, and will typically be smaller, both in terms of scale and overall cost, than the corresponding projects to remediate contaminated sediment. The Committee does not intend aquatic habitat restoration activities to overtake the program or change its primary focus, which is remediation of contaminated sediment in the Great Lakes' areas of concern.

Subsection 3(b) amends section 118(c)(12)(D) of the Clean Water Act to provide that the EPA Administrator may not carry out a project for the remediation of contaminated sediment unless: (1) each non-Federal sponsor has entered into a written project agreement with the Administrator under which the non-Federal sponsor agrees to carry out its responsibilities and requirements for the project; and (2) the Administrator provides assurance that the Environmental Protection Agency has conducted a reasonable inquiry to identify potentially responsible parties connected with the site.

The requirement of new clause 118(c)(12)(D)(iv) is consistent with the intent of the Great Lakes Legacy Act of 2002 that funds authorized for the remediation of contaminated sediment sites not affect "any other Federal or State authority that is being used to may be used to facilitate the cleanup and protection of the Great Lakes." 33 U.S.C. 1268(g). Potentially responsible parties ("PRPs") are eligible to participate as non-Federal sponsors for projects undertaken pursuant to section 118(c)(12) of the Clean Water Act. As noted in the legislative history of the Great Lakes Legacy Act of 2002, the intent of the providing Federal support for remediation of contaminated sediment in the areas of concern is to encourage

"greater cooperation", "leverage [additional] contributions by local communities and the private sector" toward cleanup, and "expediting the remediation of sites with contaminated sediment." However, consistent with the statutory language of the Great Lakes Legacy Act of 2002 and the principle of "polluter pays", the Committee continues to believe that funding for the remediation of contaminated sediments under section 118(c)(12) of the Clean Water Act supplement (but not replace) potential contributions from responsible parties.

The Committee is concerned with the overall level of effort undertaken by EPA in the identification of responsible parties related to potential projects to remediate contaminated sediment under section 118(c)(12) of the Clean Water Act. The Committee has reviewed the Stage 1 and Stage 2 review process identified by EPA in its 2006 final rule for "Implementation of the Great Lakes Legacy Act of 2002" (71 Fed. Reg. 25504), including the requirement that representatives from Great Lakes National Program Office ("GLNPO") and EPA enforcement and regulatory programs coordinate with other Federal agencies to review potential Legacy Act projects. However, the Committee is concerned that this review is limited to avoiding duplication with on-going enforcement or regulatory actions or other Federal, State, local, or tribal efforts rather than an effort to proactively identify viable responsible parties related to the sites.

Given these concerns, new clause 118(c)(12)(D)(iv) requires the Administrator to provide assurance that the Environmental Protection Agency has conducted a reasonable inquiry to identify potentially responsible parties connected with the site. This provision builds upon the existing authorities of section 118(c)(12) to maximize the potential for leveraging additional funds from non-Federal sources through the identification and encouraged participation of responsible parties in remediation activities. The Committee does not intend this language to require EPA to conduct an additional inquiry to identify potentially responsible parties in instances where EPA has already conducted a reasonable inquiry under other Federal authorities, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), nor does it intend for this language to impose an absolute responsibility on EPA to identify every responsible party related to the site, including parties that are likely to have contributed only *de minimis* amounts of contamination to the site or parties that are no longer financially viable to act as non-Federal sponsors of Legacy Act projects.

The Committee understands that this provision may require EPA to take some additional time to ensure that a reasonable inquiry has taken place, but does not expect this additional requirement to significantly delay cleanup projects within the areas of concern, nor to divert additional sites to other Federal or State remediation authorities. In addition, EPA is encouraged to coordinate this effort with State authorities, and where appropriate, utilize existing State efforts to identify potentially responsible parties as a basis for its responsibilities under this Act.

Subsection 3(c) amends section 118(c)(12)(E)(ii) of the Clean Water Act to provide additional clarification on non-Federal, in-kind contributions for eligible projects under section 118(c)(12) of

the Clean Water Act. The requirements of subsection 3(c) apply to all projects carried out under section 118(c)(12) of the Clean Water Act, including those projects that may have been initiated prior to the date of enactment of the Great Lakes Legacy Reauthorization Act of 2008.

First, this amendment retains the provisions of existing 118(c)(12)(E)(ii) that the non-Federal share of the cost of a project may include the value of an in-kind contribution provided by a non-Federal sponsor, but requires that, after the date of enactment, the non-Federal sponsor identify, in a written project agreement those potential in-kind contributions for which the non-Federal sponsor intends to seek credit against the non-Federal share of the cost of the project.

In addition, new subclause 118(c)(12(E)(ii)(II) requires the EPA Administrator to make a determination that the material or service for which the non-Federal sponsor seeks credit is integral to the project before the material or service would be eligible as credit against the non-Federal share of the cost of the project.

New subclause 118(c)(12)(E)(ii)(III) requires that in-kind work that has not been carried out prior to the date of enactment of this new subclause and for which the non-Federal sponsor may seek credit against its non-Federal share must be included as part of a written agreement between EPA and the non-Federal sponsor.

New subclause 118(c)(12)(E)(ii)(IV) provides that credit for an in-kind contribution authorized under clause 118(c)(12)(E)(ii) shall not exceed the non-Federal share of the cost of the project and shall not exceed the actual and reasonable costs of the material or service provided by the non-Federal sponsor, as determined by the Administrator.

Subsection 3(d) amends section 118(c)(12)(E) of the Clean Water Act to allow the Administrator to apply non-Federal credit (in excess of the non-Federal share of the cost of a project) toward the non-Federal share of any other project carried out under section 118(c)(12) of the Clean Water Act by the same non-Federal sponsor for a site within the same area of concern. Consistent with the intent of the Great Lakes Legacy Act of 2002, this provision is intended to maximize the cooperation and financial participation of local community and private sector non-Federal sponsors by allowing non-Federal contributions in excess of the non-Federal share at any one discrete site to be utilized at other impaired sites within the same area of concern. The objective of this new provision is to ensure that any credit in excess of the non-Federal share for an individual project can be carried over to other remediation projects by the same non-Federal sponsor within the same area of concern.

Subsection 3(e) amends section 118(c)(12)(F) to authorize the Administrator to carry out a site assessment for potential projects eligible under section 112(c)(12) at Federal expense. During the Subcommittee hearing on "Reauthorization of the Great Lakes Legacy Act", several witnesses testified in support of increased Federal funding for remediation projects to accelerate the pace of cleanup and delisting of areas of concern. New subparagraph 118(c)(12)(F) of the Clean Water Act achieves this objective by authorizing the Administrator to carry out the initial site assessment of a potential project at Federal expense, rather than as a cost-shared component of an overall project as required by current law.

A site characterization is a necessary precursor to remediation projects by providing much needed information regarding the project size and scope, and is critical in the identification of potential non-Federal sponsors who may be wiling to act as cost-sharing partners for subsequent stages of the remediation project.

The Committee believes that increasing Federal participation in site assessments should accelerate the movement of Legacy Act projects from assessment to remediation by providing needed information to EPA's technical review committees. This new authority is modeled on similar authority for the United States Army Corps of Engineers ("Corps") to carry out a reconnaissance study for a potential water resources development project at Federal expense. It is during the reconnaissance phase that the Corps determines the water and related land concerns that may warrant Federal participation, and the level of interest and support from non-Federal sponsors for a proposed water resources project. Similarly, the Committee expects that during the "site assessment" phase of a project carried out under section 118(c)(12) of the Clean Water Act, the Administrator will sample, monitor, and assess the nature and extent of sediment contamination, identify potential non-Federal sponsors that may be willing to act as cost-share partners for later remediation projects, and provide sufficient information for the evaluation of the proposed costs and benefits of a remediation project at the site.

In addition, the Committee believes that EPA can utilize this authority to be proactive in working with State and local officials, and private sector interests, in identifying and funding the assessment of sites the cleanup of which will eliminate potential threats to public health and safety and otherwise benefit the economic or ecological health of communities neighboring the areas of concern. The information gathered in these initial site assessments may also be helpful in potentially ranking future remediation projects, based upon the potential benefits of the project.

Finally, the Committee has included language (new clause 118(c)(12)(F)(ii)) to ensure that only one site assessment may be carried out at Federal expense for each individual site within an area of concern. The Committee does not intend for the Administrator to utilize this new authority to carry out multiple site assessments at Federal expense for the same site. Once a site assessment has been completed utilizing this new authority, the individual site would no longer be eligible for additional site assessment work to be carried out at Federal expense.

The amendment made by subsection 3(e) also deletes the language of the Great Lakes Legacy Act of 2002 related to maintenance of effort.

Subsection 3(f) amends section 118(c)(12)(H) of the Clean Water Act to increase the overall authorization of appropriations for section 118(c)(12) from $50 million to $150 million annually through 2013. New clause 118(c)(12)(H)(iii) provides that not more than 20 percent of funds appropriated under this subparagraph may be used to carry out site assessments at Federal expense pursuant to new subparagraph 118(c)(12)(F).

Subsection 3(g) amends section 118(c)(13) of the Clean Water Act to reauthorize appropriations for EPA's public information program through 2013.

Section 4. Research and development program

This section amends section 106(b)(1) of the Great Lakes Legacy Act of 2002 (33 U.S.C. 1271a) to reauthorize appropriations, at increased levels, for a research and development program within the Environmental Protection Agency.

The Committee strongly supports the establishment a research and development program within EPA to develop innovative approaches, technologies, and techniques for the remediation of contaminated sediment within the Great Lakes areas of concern. The Committee believes that this program could be instrumental in developing new technologies for the remediation of contaminated sediment which could substantially reduce the overall cost of remediation activities for contaminate sediment projects, both within the Great Lakes areas of concern as well as nationwide. The Committee strongly recommends that the administration include funding for this important program in the President's budget request for fiscal year 2010.

Consistent with House Report 107–587 (Part 1), the Committee expects that the EPA Administrator will collaborate with non-Federal entities, including colleges, universities, and private entities, in carrying out the Administrator's responsibilities under this section. In selecting non-Federal entities to participate in research projects under this section, the Administrator is directed to give preference to non-Federal entities located within the Great Lakes watershed.

ADDITIONAL MATTERS

During Committee consideration of H.R. 6460, several stakeholder groups expressed concern about the expiration of funds appropriated under the Great Lakes Legacy Act of 2002 that remain unexpended two years after appropriation. The Committee strongly supports the continued availability of funds appropriated under section 118(c)(12) of the Clean Water Act until they are expended (consistent with the authority found in section 118(c)(12)(H)(ii)).

The Committee intends to work with the Committee on Appropriations to ensure that funds appropriated to address contaminated sediment in the Great Lakes areas of concern may remain available until expended.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On May 21, 2008, the Subcommittee on Water Resources and Environment held a hearing, entitled "Reauthorization of the Great Lakes Legacy Act".

On July 10, 2008, Representative Vernon Ehlers introduced H.R. 6460, the "Great Lakes Legacy Reauthorization Act of 2008". No similar legislative proposal was introduced in previous Congresses.

On July 31, 2008, the Committee on Transportation and Infrastructure met in open session to consider H.R. 6460. The Committee adopted by voice vote an amendment in the nature of a substitute that made several technical changes to the bill. The Committee ordered the bill, as amended, reported favorably to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 6460 or ordering the bill reported. A motion to order H.R. 6460, as amended, reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included in the report.
2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to reauthorize appropriations for projects to remediate contaminated sediments in the Great Lakes areas of concern and for research on the development of sediment remediation technologies and techniques, and to make targeted improvements to the implementation of the program.
3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 6460 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 8, 2008.

Hon. JAMES L. OBERSTAR,
Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6460, the Great Lakes Legacy Reauthorization Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 6460—Great Lakes Legacy Reauthorization Act of 2008

Summary: H.R. 6460 would authorize the Enviromnental Protection Agency (EPA), in conjunction with nonfederal sponsors, to carry out projects aimed at cleaning up certain areas of the Great Lakes where contamination has settled into sediments at the bottom of the lakes. The bill would authorize the appropriation of $750 million over the 2009–2013 period to EPA for that purpose. In addition, the bill would authorize the appropriation of $25 million over the five-year period for EPA to conduct research on the development and use of innovative methods for cleaning up the Great Lakes. Under current law, the amounts authorized for those two programs for 2008 totaled $50 million and $3 million, respectively.

Assuming appropriation of the specified amounts, CBO estimates that implementing this legislation would cost $639 million over the 2009–20013 period. Enacting H.R. 6460 would not affect direct spending or receipts.

H.R. 6460 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: CBO estimates that implementing the bill would cost $639 million over the 2009–2013 period, assuming appropriation of the amounts authorized for each year. Those estimated outlays are based on historical patterns for similar activities. The estimated budgetary impact of H.R. 6460 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
EPA Funding for Cleanup Projects:						
Authorization Level	150	150	150	150	150	750
Estimated Outlays	60	120	138	147	150	615
Research and Development:						
Authorization Level	5	5	5	5	5	5
Estimated Outlays	4	5	5	5	5	24
Total Changes:						
Authorization Level	155	155	155	155	155	775
Estimate Outlays	64	125	143	152	155	639

Intergovernmental and private-sector impact: H.R. 6460 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would extend EPA programs to cleanup sediment contamination in the Great Lakes. Any costs state, local, or tribal governments might incur, including matching funds, would result from complying with conditions of aid.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Neil Hood; Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 6460, the Great Lakes Legacy Reauthorization Act of 2008, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 6460 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY OF THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

TITLE I—RESEARCH AND RELATED PROGRAMS

* * * * * * *

SEC. 118. GREAT LAKES.

(a) FINDINGS, PURPOSE, AND DEFINITIONS.—

(1) * * *

* * * * * * *

(3) DEFINITIONS.—For purposes of this section, the term—

(A) * * *

* * * * * * *

(I) "Lakewide Management Plan" means a written document which embodies a systematic and comprehensive ecosystem approach to restoring and protecting the beneficial uses of the open waters of each of the Great Lakes, in accordance with article VI and Annex 2 of the Great Lakes Water Quality Agreement; [and]

(J) "Remedial Action Plan" means a written document which embodies a systematic and comprehensive ecosystem approach to restoring and protecting the beneficial uses of areas of concern, in accordance with article VI and Annex 2 of the Great Lakes Water Quality Agreement[.]*;*

(K) "site characterization" means a process for monitoring and evaluating the nature and extent of sediment contamination in accordance with the Environmental Protection Agency's guidance for the assessment of contaminated sediment in an area of concern located wholly or partially within the United States; and

(L) "potentially responsible party" means an individual or entity that may be liable under any Federal or State authority that is being used or may be used to facilitate the cleanup and protection of the Great Lakes.

* * * * * * *

(c) GREAT LAKES MANAGEMENT.—

(1) * * *

* * * * * * *

(12) REMEDIATION OF SEDIMENT CONTAMINATION IN AREAS OF CONCERN.—

(A) * * *

(B) ELIGIBLE PROJECTS.—A project meets the requirements of this subparagraph if the project is to be carried out in an area of concern located wholly or partially in the United States and the project—

(i) * * *

(ii) subject to subparagraph (D), implements a plan to remediate contaminated [sediment] *sediment, including activities to restore aquatic habitat that are*

carried out in conjunction with a project for the remediation of contaminated sediment; or

* * * * * * *

(D) [LIMITATION] *LIMITATIONS*.—The Administrator may not carry out a project under this paragraph for remediation of contaminated sediments located in an area of concern—

(i) if an evaluation of remedial alternatives for the area of concern has not been conducted, including a review of the short-term and long-term effects of the alternatives on human health and the environment; [or]

(ii) if the Administrator determines that the area of concern is likely to suffer significant further or renewed contamination from existing sources of pollutants causing sediment contamination following completion of the project[.]*;*

(iii) unless each non-Federal sponsor for the project has entered into a written project agreement with the Administrator under which the party agrees to carry out its responsibilities and requirements for the project; or

(iv) unless the Administrator provides assurance that the Agency has conducted a reasonable inquiry to identify potentially responsible parties connected with the site.

(E) NON-FEDERAL SHARE.—

(i) * * *

[(ii) IN-KIND CONTRIBUTIONS.—The non-Federal share of the cost of a project carried out under this paragraph may include the value of in-kind services contributed by a non-Federal sponsor.]

(ii) IN-KIND CONTRIBUTIONS.—

(I) IN GENERAL.—The non-Federal share of the cost of a project carried out under this paragraph may include the value of an in-kind contribution provided by a non-Federal sponsor.

(II) CREDIT.—A project agreement described in subparagraph (D)(iii) may provide, with respect to a project, that the Administrator shall credit toward the non-Federal share of the cost of the project the value of an in-kind contribution made by the non-Federal sponsor, if the Administrator determines that the material or service provided as the in-kind contribution is integral to the project.

(III) WORK PERFORMED BEFORE PROJECT AGREEMENT.—In any case in which a non-Federal sponsor is to receive credit under subclause (II) for the cost of work carried out by the non-Federal sponsor and such work has not been carried out by the non-Federal sponsor as of the date of enactment of this subclause, the Administrator and the non-Federal sponsor shall enter into an agreement under which the non-Federal sponsor shall carry out such work, and only work carried out following the

execution of the agreement shall be eligible for credit.

(IV) LIMITATION.—Credit authorized under this clause for a project carried out under this paragraph—

(aa) shall not exceed the non-Federal share of the cost of the project; and

(bb) shall not exceed the actual and reasonable costs of the materials and services provided by the non-Federal sponsor, as determined by the Administrator.

(V) INCLUSION OF CERTAIN CONTRIBUTIONS.—In this subparagraph, the term "in-kind contribution" may include the costs of planning (including data collection), design, construction, and materials that are provided by the non-Federal sponsor for implementation of a project under this paragraph.

(iii) TREATMENT OF CREDIT BETWEEN PROJECTS.—Any credit provided under this subparagraph towards the non-Federal share of the cost of a project carried out under this paragraph may be applied towards the non-Federal share of the cost of any other project carried out under this paragraph by the same non-Federal sponsor for a site within the same area of concern.

[(iii)] *(iv)* NON-FEDERAL SHARE.—The non-Federal share of the cost of a project carried out under this paragraph—

(I) may include monies paid pursuant to, or the value of any in-kind [service] *contribution* performed under, an administrative order on consent or judicial consent decree; but

(II) may not include any funds paid pursuant to, or the value of any in-kind [service] *contribution* performed under, a unilateral administrative order or court order.

[(iv)] *(v)* OPERATION AND MAINTENANCE.—The non-Federal share of the cost of the operation and maintenance of a project carried out under this paragraph shall be 100 percent.

[(F) MAINTENANCE OF EFFORT.—The Administrator may not carry out a project under this paragraph unless the non-Federal sponsor enters into such agreements with the Administrator as the Administrator may require to ensure that the non-Federal sponsor will maintain its aggregate expenditures from all other sources for remediation programs in the area of concern in which the project is located at or above the average level of such expenditures in the 2 fiscal years preceding the date on which the project is initiated.]

(F) SITE CHARACTERIZATION.—

(i) IN GENERAL.—The Administrator, in consultation with any affected State or unit of local government, shall carry out at Federal expense the site characterization of a project under this paragraph for the remediation of contaminated sediment.

(ii) LIMITATION.—For purposes of clause (i), the Administrator may carry out one site assessment per discrete site within a project at Federal expense.

* * * * * * *

(H) AUTHORIZATION OF APPROPRIATIONS.—

[(i) IN GENERAL.—In addition to other amounts authorized under this section, there is authorized to be appropriated to carry out this paragraph $50,000,000 for each of fiscal years 2004 through 2008.**]**

(i) IN GENERAL.—In addition to other amounts authorized under this section, there is authorized to be appropriated to carry out this paragraph—

(I) $50,000,000 for each of fiscal years 2004 through 2008; and

(II) $150,000,000 for each of fiscal years 2009 through 2013.

* * * * * * *

(iii) ALLOCATION OF FUNDS.—Not more than 20 percent of the funds appropriated pursuant to clause (i)(II) for a fiscal year may be used to carry out subparagraph (F).

* * * * * * *

(13) PUBLIC INFORMATION PROGRAM.—

(A) * * *

(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph $1,000,000 for each of fiscal years 2004 through **[**2008**]** *2013*.

* * * * * * *

GREAT LAKES LEGACY ACT OF 2002

* * * * * * *

TITLE I—GREAT LAKES

* * * * * * *

SEC. 106. RESEARCH AND DEVELOPMENT PROGRAM.

(a) * * *

(b) AUTHORIZATION OF APPROPRIATIONS.—

[(1) IN GENERAL.—In addition to amounts authorized under other laws, there is authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2004 through 2008.**]**

(1) IN GENERAL.—In addition to amounts authorized under other laws, there is authorized to be appropriated to carry out this section—

(A) $3,000,000 for each of fiscal years 2004 through 2008; and

(B) $5,000,000 for each of fiscal years 2009 through 2013.

* * * * * * *

COMMITTEE CORRESPONDENCE

U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

Washington, DC 20515

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

September 4, 2008

The Honorable Bart Gordon
Chairman
Committee on Science and Technology
U.S. House of Representatives
2320 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Gordon:

I write to you regarding H.R. 6460, the "Great Lakes Legacy Reauthorization Act of 2008".

I appreciate your willingness to waive rights to further consideration of H.R. 6460, notwithstanding the jurisdictional interest of the Committee on Science and Technology. Of course, this waiver does not prejudice any further jurisdictional claims by your Committee over this or similar legislation. Furthermore, I agree to support your request for appointment of conferees from the Committee on Science and Technology if a conference is held on this matter.

This exchange of letters will be placed in the Committee Report on H.R. 6460 and inserted in the *Congressional Record* as part of the consideration of this legislation in the House. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

James L. Oberstar

James L. Oberstar, M.C.
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable John L. Mica, Ranking Member
The Honorable Ralph M. Hall, Ranking Member, Committee on Science and Technology
The Honorable John Sullivan, Parliamentarian

BART GORDON, TENNESSEE
CHAIRMAN

RALPH M. HALL, TEXAS
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September 4, 2008

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Oberstar:

Thank you for your letter regarding H.R. 6460, the "Great Lakes Legacy Reauthorization Act of 2008." This legislation was initially referred to both the Committee on Transportation and Infrastructure and the Committee on Science and Technology.

H.R. 6460 was marked up by the Committee on Transportation and Infrastructure on July 31, 2008. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner, and, accordingly, I will waive further consideration of this bill in Committee. However, agreeing to waive consideration of this bill should not be construed as the Committee on Science and Technology waiving its jurisdiction over H.R. 6460.

Further, I request your support for the appointment of Science and Technology Committee conferees during any House-Senate conference convened on this legislation. I also ask that a copy of this letter and your response be placed in the legislative report on H.R. 6460 and the Congressional Record during consideration of this bill.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

Bart Gordon

BART GORDON
Chairman

cc: The Honorable Ralph M. Hall, Ranking Member
The Honorable John Sullivan, Parliamentarian

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