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Delaware Riverkeeper Network Sues Army to Stop VX

Delaware Riverkeeper Network and co-plaintiffs from organizations in New Jersey, Pennsylvania, Delaware and Kentucky have filed a Complaint in federal District Court against the U.S. Army. The suit challenges the Army's plan to import VX nerve agent waste to New Jersey and dump it into the Delaware River. The Army is proposing to transport the partially treated nerve agent waste, known as VX hydrolysate, from their Newport, Indiana Chemical Depot to the Dupont Chambers Works facility in Deepwater, NJ. The hydrolysate would be put through the treatment plant at Dupont with the effluent discharged to the Delaware River near the Delaware Memorial Bridge.

The complaint challenges the transport of VX hydrolysate from Indiana to New Jersey based on a federal statute which bans the transportation of chemical weapons across state lines. The complaint also calls on the Army to complete an environmental impact statement for the project. According to the court filed documents the Army has not undertaken the necessary studies and documentation regarding the impacts of the proposed project on the Delaware River and environs.

Co-plaintiffs in the law suit are the American Littoral Society and Chemical Weapons Working Group, both national organizations; Pennsylvania Clean Water Action; Delaware Audubon Society; New Jersey Environmental Federation; and New Jersey Audubon Society.

Maya van Rossum, the Delaware Riverkeeper, said her organization has taken this action because "the Army has consistently refused to fulfill the requirements of the law and it has become clear that without citizens taking a stand this project will be railroaded through the process and foisted upon our River and communities regardless of what the law says and requires." "It is imperative that the Army thoroughly and comprehensively analyze all of the environmental issues involved in this proposal. They have only taken a cursory look at transportation and have proposed to move ahead without any environmental study. That is an outrageous proposal – the law requires more and our citizens deserve more", said van Rossum.

The filing was made in the U.S. District Court in Washington, D.C. John Fritschie, attorney for Delaware Riverkeeper Network's River Resources Law Clinic, said "While Congress already banned the interstate transport of VX in 1994 unfortunately it appears that legal action and additional legislation is necessary to persuade the Army to treat this material on-site as originally intended."

The Governors of New Jersey and Delaware, elected representatives, municipal and county governments, fishermen and boaters, conservationists, environmental groups and thousands of residents in New Jersey, Pennsylvania and Delaware have gone on record in opposition to the Army's Dupont plan.

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The controversial proposal was made in 2004 when the Army was denied approval to ship the waste to Ohio. Originally the VX stockpile was going to be destroyed on site in Indiana through a less risky process with no discharge of toxics to a waterway. After the attacks of September 11, 2001 the federal administration made a decision to try to dispose of the weapons at an existing facility, arguing it would be faster than building a plant at the Army Depot at Newport.

The option of off-site disposal, however, has been time-consuming and fraught with unforeseen problems. Live VX, the deadliest nerve agent ever produced, is difficult to break down, highly flammable, more caustic than expected, and not uniform in its constituents due, in part, to various stabilizers used in the batches that make up the approximately 1,269 tons stored at Newport.

Critics of the Dupont plan are insisting that VX nerve agent waste should not be brought to New Jersey, but should be treated on site in Newport, Indiana. This would avoid the risks inherent in trucking VX waste across 4 states, 2 to 3 tank trucks per day for 2 to 3 years.

“The public has worked long and hard to bring the Delaware Bay back from being an open sewer. Today, we are seeing a restored oyster industry and new industries based around ecotourism. The Army’s plan to dump VX could bring all that to an end. People will not eat seafood that they are not sure is safe, nor will they visit places they fear are contaminated. This is an ill-considered plan that should be stopped in its tracks,” said Tim Dillingham, Executive Director of the American Littoral Society. Delaware Riverkeeper Network is an affiliate of ALS; ALS is a plaintiff in the lawsuit.

Elizabeth Crowe, Program Director, Chemical Weapons Working Group, a national organization based in Kentucky that is a co-plaintiff in the suit, stated “Chemical Weapons Working Group stands for safe disposal of chemical weapons and secondary waste in a manner that is acceptable to all affected communities. In fact, the shipment of hydrolysate is completely unacceptable to those communities and we will continue to urge the Army to revert back to the original plan for safe treatment in Indiana.”

Bob Wendelgass of Clean Water Action, Pennsylvania, also a co-plaintiff said "Clean Water Action is very concerned about the danger of trucking this highly toxic material from one end of Pennsylvania to the other. The risk of possible accidents on I-80 or other highly traveled routes is a serious concern for us. Equally important is the ultimate impact on the Delaware River of dumping the treated hydrolysate. Unless EPA and other reputable scientists can guarantee that the project will not harm aquatic life in the river, it should not be allowed to proceed."

"Delaware Audubon has a long history of efforts to protect the Delaware River and Bay. The Delaware River and Bay and Coastal Zone are considered a globally Important Bird Area and deserving of the highest level of protection. We believe the Army’s VX proposal threatens the health of the river ecosystem, presents a risk to public health and safety and sets a precedent for Dupont in New Jersey becoming the Department of Defense's preferred disposal option for additional chemical weapons stockpiles from throughout the country. We are proud to join the Delaware Riverkeeper in this action," said Nicholas DiPasquale, Conservation Chair for Delaware Audubon, a co-plaintiff in the law suit.

Jane Nogaki, New Jersey Environmental Federation, also a co-plaintiff, said “The transport and disposal of VX hydrolysate is a risky plan that puts millions of people, our environment and water systems in harms way. Dupont Chambers Works discharges almost a million gallons of pollutants a year to the Delaware River. We do not want any portion of VX nerve agent at the plant, in the river, nor in the river’s fish and other aquatic life. What will happen to the region's drinking water when VX byproducts combine with the already present chemicals that pollute our drinking water? VX nerve agent should be destroyed on site at Newport, Indiana, as was originally proposed by the Army.”

Susan Kraham, Director of Policy and Counsel to the President, New Jersey Audubon Society, a co-plaintiff, stated, “New Jersey Audubon Society is extremely concerned about the potential for serious adverse impacts to the aquatic ecosystem should the Army’s plan proceed. We ask the Court to ensure that the National Environmental Policy Act is followed rigorously to protect New Jersey’s residents and ecosystem.”

For a copy of the filing, email Shannon@delawareriverkeeper.org