



For Immediate Release

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Environmental Organization Legal Motion Claims Bad Faith on the Part of the Army Corps Re Deepening

Trenton, NJ, May 13, 2010. Environmental plaintiffs in the litigation challenging the Delaware Deepening project filed a motion asking Judge Joel Pisano, U.S.D.J., United States District Court, District of New Jersey, “to compel completion of the Army Corps’ administrative record” for the project.”

According Elizabeth Koniers Brown, attorney for the environmental plaintiffs, “the administrative record provided by the Army Corps to the Court as the basis for Corps’ decision to begin the Deepening Project is clearly deficient. The Plaintiffs have identified numerous omitted documents that provide important evidence regarding the Army Corps’ decision-making and compliance with important environmental protection laws. Because of these deficiencies, the Army Corps’s existing administrative record should not be the sole basis of the Court’s review.”

Maya van Rossum, the Delaware Riverkeeper, adds, “the bad faith on the part of the Army Corps demonstrated by the missing documents are important information for the Court. That the Army Corps would perpetuate its bad faith actions by trying to hide these documents from the Courts is a further violation of the public trust and the Army Corps’ duty to earnestly represent the public’s interests.”

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The motion documents filed by the environmental organizations supplements and supports a similar motion filed by the State of New Jersey. Collectively the parties identify over one hundred documents as known examples of the kinds of information missing from the project "record" filed with the Court and ask the Court for supplementation or limited discovery.

"Environmental groups and the State of NJ are asking the court to require the Army Corps to tell the full truth about the deepening project and supply missing documents that the Corps has withheld from the court's eyes. The Army Corps continues to act in flagrant disregard of the Clean Water Act, the Clean Air Act, and the law of common decency," said Jane Nogaki, Vice Chair, NJ Environmental Federation

The Delaware Riverkeeper Network, National Wildlife Federation, New Jersey Environmental Federation, Delaware Nature Society, and Clean Water Action filed legal actions in November, 2009 in both New Jersey Federal District Court and Delaware Federal District Court challenging the Deepening project. The organizations claim the Army Corps' pursuit of the project violates the National Environmental Policy Act, the Clean Water Act, the Clean Air Act, the Coastal Zone Management Act, the Magnuson-Stevens Act, the Fish and Wildlife Coordination Act and Delaware State law. The organizations seek a court finding that the Army Corps is in violation of these State and Federal laws and a court order prohibiting the project from moving forward until all legal permits, approvals and documents have been finalized.

The Delaware deepening project is a 1992 proposal by the US Army Corps of Engineers, in partnership with the Philadelphia Regional Port Authority, to deepen the Delaware River's main navigation channel from 40 to 45 feet, for 102 miles from Philadelphia to the Ocean. The last environmental impact statement for the project was completed in 1997. The New Jersey Department of Environmental Protection revoked its Coastal Zone Consistency Determination for the project in 2003 in response to new environmental and economic concerns and changed conditions. In 2009 the Delaware Department of Natural Resources and Environmental Control denied the project needed State Subaqueous Lands and Wetlands permits. The Army Corps has been permitted to deepening a 12 miles stretch known as Reach C, but is under a preliminary injunction preventing any deepening beyond this River reach.

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