



DNREC denies permit to deepen Delaware River and Bay *Decision applauded by many*

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Delaware Department of Natural Resources and Environmental Control Secretary Collin P. O'Mara recently signed an order denying the permit application from the U.S. Army Corps of Engineers to deepen the main navigational channel of the Delaware River and Bay from 40 to 45 feet. O'Mara's action is consistent with the recommendation of the hearing officer who presided over the hearing and development of the record – one of the largest in department history.

“The scale of the project has changed substantially from the project envisioned in the 2001 application, and there has been a great deal of new information developed in the intervening period about the Delaware River and Bay,” wrote O'Mara in his letter to Army Corps District Commander Thomas Tickner.

“Given the hearing officer's recommendations, the significant changes to the scale of the project, the outdated nature of the record, and the potential procedural flaws in making such an important decision based upon the existing record, I have no alternative than to deny the permits. Please note that having reviewed the record, I take this action without prejudice to any future permit application.”

The Corps' application, submitted in 2001 and the subject of a public hearing the same year, sought state wetlands and subaqueous lands permits to dredge the navigational channel. The application originally sought to remove nearly 22.5 million cubic yards of material from the channel that runs from the mouth of the Delaware Bay at Lewes to the Delaware-Pennsylvania border near Claymont, and was revised to 17.7 million cubic

yards during the application review process.

Along with insufficient information about several important environmental issues in the application record, a local project sponsor, required of many Corps projects, was not finalized until June 2008 when the Corps signed a contractual agreement with the Philadelphia Regional Port Authority. Identification of a local sponsor is important in order to provide responsibility for environmental liabilities that may arise from the project.

The Department of Natural Resources and Environmental Control has also requested that the Corps initiate a supplemental review to determine consistency with all applicable federal requirements as part of the department's Coastal Management Program. The program previously issued a conditional concurrence over a decade ago in a letter dated May 1, 1997. Additional review is necessary, however, because even though the project construction has not begun, substantial project modifications have occurred and new information has emerged relevant to natural resource impacts. The secretary's order, letter to Lt. Colonel Tickner, U.S. Army Corps of Engineers and hearing officer's report are available for review at www.dnrec.delaware.gov/Pages/default.aspx

Decision applauded by many Maya van Rossum, the Delaware Riverkeeper, applauded the decision: "DNREC made the decision it needed to protect the environments and citizens of Delaware. The science, facts and economic studies have shown us all the tremendous harm deepening the Delaware to 45 feet could cause. If the Army Corps attempts to ignore the need for a Delaware permit and move the project forward without one, as it has repeatedly threatened, we will take whatever steps necessary and possible to challenge and stop them." Bill Moyer, former section manager of the Wetlands and Subaqueous Lands Section, and Delaware Riverkeeper Network member, was elated with the decision to deny the issuance of a permit to the Corps of Engineers.

The proposal was first put forth officially in 1992. The Army Corps submitted an application to DNREC seeking a subaqueous lands and wetlands permit and water quality certification for the project in January

2001. In December 2003 the administrative hearing officer issued a report to the secretary of DNREC recommending the secretary deny the Corps' permit application, finding that the Army Corps failed to provide "sufficient and necessary information to meet the regulatory burden to obtain a permit under the authority of Chapter 66, as potential adverse effects have not been proven to be minimized." (Hearing Officer's Report, p. 58).

Until this decision was issued, DNREC had been challenging the petition filed by the organizations.