

Judge OKs Delaware River dredging | Philadelphia Inquirer

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It's a go for deepening the Delaware River shipping channel an additional 5 feet.

U.S. District Judge Sue L. Robinson in Wilmington yesterday denied Delaware's request to block the U.S. [Army Corps of Engineers](#) from starting the 102.5-mile deepening, in a stretch of water off Delaware.

Robinson rejected Delaware's arguments that if the Corps proceeded without a state permit, Delaware would suffer significant and irreparable environmental harm. She also rejected a state's-rights argument, the notion that Delaware would be harmed if its role in regulating waters off its shore were tossed aside.

The court, while allowing the deepening to 45 feet to start immediately from the Chesapeake and Delaware Channel to a point just south of Wilmington, indicated she expected the Corps to work closely with neighboring states - Delaware, New Jersey, and Pennsylvania - on future stages of the project.

The judge enjoined the next stages "until further order of the court."

For the Philadelphia Regional Port Authority, the project's local sponsor, the decision "is great news for tens of thousands of families whose livelihoods depend on Philadelphia-area ports and for the taxpayers who will reap the economic benefits of the deepening," chairman John Estey said.

Delaware Attorney General Beau Biden's office last night did not know whether Delaware would appeal.

"We are in the process of reviewing with our client the District Court's ruling, granting in part and denying in part our request for injunctive relief," said [Jason Miller](#), a spokesman for Biden.

The "client" - the Department of Natural Resources and Environmental Control - in July turned down the Corps' application for a permit that had been pending since 2001.

The first phase of the deepening was always planned for waters off Delaware, with later stages - off Pennsylvania and New Jersey - not to begin until December 2010.

Army Corps spokesman Ed Voigt said last night that "it appears that we're OK to begin deepening work" and that the Corps was "ready to move forward." The Corps' option with a dredging contractor expires Feb. 11, and so the deepening will begin before that date, Voigt said.

Dennis Rochford, president of the Maritime Exchange for the Delaware River and Bay, said: "The court's decision validates that there's no irreparable harm to the environment to move forward with this project. And it sends an unequivocal message that the Delaware River ports are open for business and positioned to compete with other East Coast ports that have deeper shipping channels."

"The public's interest" in the "consequences of this litigation are significant," the judge wrote.

On one hand, the public has "a vested interest" in environmental preservation. On the other hand, she wrote, "the public holds an equally compelling stake in the continued economic vitality of the Delaware River ports."

"Based on the volume of business passing through these ports, any loss in market share" because the river cannot "handle ships of a certain draft will harm the local economy," said the judge. "Congress has made the determination that it is in the public interest to proceed with the deepening project."

Delaware - joined by New Jersey and five environmental groups - asked Robinson to keep the project from starting.

The Corps in October said it would begin as early as this month, without a permit from Delaware. The Corps cited its federal supremacy to maintain navigation.

Robinson said in the ruling that the combined ports of the Delaware River support about 75,000 jobs, generate billions in revenue and wages, and contribute more than \$150 million in state and local taxes.

The court noted that deepening the river to 45 feet "is not vastly different" from the annual maintenance dredging that has gone on for decades to keep the river at its current 40 feet.

The lack of evidence "demonstrating environmental harm, when considered with the Corps' sediment study," showed the effect of the first part of the deepening off Delaware "will be largely identical to impacts that have been occurring since 1973 with regular maintenance dredging," Robinson wrote. The Corps contended applicable water quality laws have been complied with, and the river bottom sediments have had "numerous rounds" of biological and chemical testing.

In conclusion, Robinson said that Delaware environmental officials "conspicuously failed" to handle the permit process "in a timely, efficient, and efficacious way."

"This decision reflects the competing interest of the environment and the economy," the judge wrote, "and gives the parties the opportunity to satisfy their respective obligations to govern responsibly."

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