

DUMP THE DEEPENING

Alliance to Dump the Delaware River Deepening

Organizations from throughout the Delaware River Watershed
Against the Main Channel Deepening project

October 20, 2008

Governor Ruth Ann Minner
Tatnall Bldg.
William Penn St., 2nd Fl.
Dover, DE 19901

Dear Governor Minner,

The Army Corps has been working hard to set a new and dangerous precedent – one that will undermine the future authority of Delaware, New Jersey and other states when it comes to permitting of major federal projects. I urge you to pay heed and to not play into their hand.

The Army Corps of Engineers has entered into a Project Partnership Agreement (PPA) with the Philadelphia Regional Port Authority (the non-federal project sponsor) to undertake the long-proposed Delaware deepening project. The PPA states that while the Army Corps will continue to seek a Delaware State Subaqueous Land and Wetlands Permit for the project, if the state permit is not forthcoming within a time frame or with terms that the Army Corps deems acceptable they could choose to move forward without it. Specifically, the Project Partnership Agreement explicitly states that “If the State of Delaware does not issue said state permit with terms and conditions acceptable to the Government [Army Corps], and within a period of time deemed by the Government [Army Corps] to be reasonable and timely, the Government [Army Corps] reserves the right to determine whether said Delaware state permit is legally required as a matter of Federal law.”

It was only after years of pressure from DNREC that the Army Corps originally agreed to pursue a permit from Delaware, after asserting originally that one was not necessary. This most recent pronouncement in the PPA is a clear reversion back to their original position – that the Army Corps is not obliged to seek state permitting for its projects.

Further, the Army Corps continues to state publicly and privately, in the press and on its website, that it is not obligated to secure any permitting or approvals from the State of New Jersey for the Delaware deepening – this despite the fact that Governor Corzine, including in a letter to the Army Corps on June 27, 2008, has stated that the Army Corps is in need of both a valid Federal Consistency Determination and Water Quality Certificate since the ones originally issued have been revoked and/or expired.

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It is clear from the record that the Army Corps has been trying to establish a path whereby it can set the precedent that it does not need state permits and approvals for the Delaware deepening, or by extension, other Army Corps projects.

If the State of Delaware issues a Delaware State Subaqueous Land and Wetlands Permit for the Delaware deepening project without valid New Jersey permits in place, while it will have succeeded in ensuring that a Delaware permit was pursued and secured before the project moved forward, it will also have set up a dynamic and a precedent that will undermine its future permitting authority as well as that of New Jersey.

It is clear that as soon as the Delaware permit is issued the Army Corps will seek to pursue the deepening project without securing the valid permits/approvals from New Jersey that the State has clearly stated on the record are needed. If the Army Corps were successful in avoiding updated and valid New Jersey permits/approvals for the deepening project it will have set the precedent that it is legally entitled to pursue its major federal projects despite a lack of valid State permits and approvals.

The end result will be that the future permitting authority of Delaware, New Jersey, and all other states in the nation will be undermined when it comes to Army Corps projects.

I urge you, consider your actions carefully. Please do not issue the Delaware State Subaqueous Land and Wetlands Permit they have been seeking – a permit which the public record has clearly demonstrated is not justified and which at this point would not be legally defensible.

Yours sincerely,

Maya K. van Rossum
the Delaware Riverkeeper
Delaware Riverkeeper Network

Delaware Organizations

Rashmi Rangan, President
Pat Todd, Water and Solid Waste Chair
League of Women Voters of Delaware

Richard H. Anthony, Director
Plan Delaware

David Keifer
Delaware Chapter of the Sierra Club

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Delaware Nature Society

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New Jersey Organizations

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National Organizations

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cc:

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Governor Jon Corzine, New Jersey
Commissioner Lisa Jackson, NJDEP
Attorney General Anne Milgram, State of New Jersey
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Congressman Michael Castle, Delaware District 1
Senator Frank Lautenberg, New Jersey
Congressman Robert Andrews, New Jersey District 1
Senator Robert Menendez, New Jersey
NJ Senator Stephen Sweeney, New Jersey District 3
Congressman Frank Lobiando, New Jersey District 2
Congressman Jim Saxton, New Jersey District 3
Congressman Rush Holt, New Jersey District

