



4/6/2009

Army Corps Deepening Release “Shocks the Conscience” says the Delaware’s Riverkeeper

April 6, 2009, Philadelphia, PA, the Army Corps of Engineers released an Environmental Assessment asserting that no new environmental studies were required by law for the proposal to deepen the Delaware River’s main navigation channel.

“That the Army Corps of Engineer’s would take this position in light of the wealth of questions and concerns raised by state and federal environmental agencies and experts as recently as December shocks the conscience,” says Maya van Rossum, the Delaware Riverkeeper.

The public notice announcing the release provides no opportunity for public review or comment, nor does it seem to seek input from other state and federal environmental agencies who have legal obligations to review the project. (public notice can be found at <http://www.nap.usace.army.mil/cenap-pa/news.htm#public>)

“The position that the Army Corps is not required to conduct an updated Environmental Impact Statement for the project is a clear violation of law; as is their assertion that they no longer need a valid Coastal Zone Consistency determination from the State of New Jersey,” asserts van Rossum. “The Army Corps is a federal agency and therefore has a heightened responsibility to comply with our country’s laws – if they refuse to fulfill this obligation by choice then we are fully prepared to force them through the courts” van Rossum emphasizes.

The New Jersey Coastal Zone Consistency determination issued in 1997 for the Project was revoked by letter dated September 30, 2002, from then NJDEP Commissioner Bradley Campbell. This determination of revocation was based upon a 5-year lapse of time since issuance, the significant amount of new economic and environmental information that had been received on the project, and changes to the Project. In addition, according to New Jersey, the Clean Water Act Section 401 certification it issued for the project expired on its own terms in 2002.

Delaware has yet to issue a State Subaqueous Lands and Wetlands Permit needed for the Project to move forward. The Army Corps submitted an application to the 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

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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).

The deepening proposal would take the Delaware River’s main navigation channel from 40 to 45 feet for a distance of 102 miles. The project has been twice considered by the Government Accountability Office and found not to be economically justified.