

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

STATE OF DELAWARE DEPARTMENT	:	
OF NATURAL RESOURCES AND	:	
ENVIRONMENTAL CONTROL	:	
	:	
Plaintiff,	:	C A No. 09-cv-821-SLR
	:	
v.	:	
	:	
UNITED STATES ARMY CORPS OF	:	
ENGINEERS, <i>et al.</i>	:	
	:	
Defendants.	:	

DECLARATION OF ANTHONY DEPASQUALE

I, Anthony Depasquale, declare and state as follows:

1. I am currently employed by the U.S. Army Corps, Philadelphia District as the Chief of the Operations Division. I have held this position since January 2008. In this position I am responsible for the ongoing operation of all of the District's Civil Works projects including the maintenance of the 40 foot Delaware River Navigation Channel and the initiation of the 45 foot Project currently ongoing in Reach C of the Delaware River.

2. Dredging to deepen Reach C to 45 feet started in March, 2010. Until August 13, 2010 all of the dredged material from the Reach C deepening was placed into Cells 2 and 3 at the Killcohook Confined Disposal Facility ("CDF"). Cells 2 and 3 are located in Delaware. The return water from Cells 2 and 3 is discharged into a segment of the Delaware River that is in the State of Delaware.

3. Prior to the Reach C Deepening the Corps had performed a survey of the river bottom that allowed the Corps to estimate that approximately 2.6 million cubic yards of material would be dredged from Reach C as part of the Deepening Project. After the preconstruction survey, greater than usual natural shoaling in the Reach C navigation channel north of the Killcohook CDF resulted in the need to dredge and dispose of approximately 1 million cubic yards of additional material not anticipated in the Reach C contract. Due to this unanticipated quantity of dredged material generated from the Reach C Deepening, the Corps determined on or about

August 10, 2010 that it was no longer feasible to utilize only cells 2 and 3 and efficiently complete the Reach C Deepening for two reasons. First, at that point in time Cell 2 was already at capacity and would not have allowed sufficient time for suspended solids to fall out in the disposal facility, thus resulting in an unacceptable level of suspended solids in the return water. Second, additional discharges into Cell 2 may have jeopardized the integrity of the disposal facility. Cell 3 could not be used at that point because the contractor had employed a second dredge for Reach C that was already discharging into Cell 3, and two dredges discharging into Cell 3 at the same time would have resulted in insufficient time for suspended solids to settle. In mid-August the contractor had indicated that the second dredge would be working and utilizing Cell 3 until the end of August. Therefore the decision was made to utilize Cell 1, which is located within the State of New Jersey.

4. Cell 1 contains two sluices that convey return waters to the Delaware River. One sluice discharges into New Jersey waters and the other sluice discharges into Delaware waters. In order to direct discharges from Cell 1 into Delaware waters, an internal dike was constructed within Cell 1 precluding any water from entering the sluice that discharges into New Jersey waters.

5. Starting on or about August 13, 2010, dredged material from the Reach C Deepening was placed into Cell 1 in a manner that forced the return water through the sluice that then empties into Delaware waters.

6. On or about August 28, 2010, the internal dike referenced in paragraph 4 failed, and water from the Reach C Deepening spread into the whole area of Cell 1. The internal dividing dike failed because the dredged material slurry being pumped into Cell 1 undermined the dike.

7. On August 30, 2010 return water from Cell 1 reached the sluice that empties into New Jersey waters. On August 31, 2010, the contractor was directed to stop utilizing Cell 1 and the New Jersey sluice was closed precluding the discharge of any additional return water. The contractor is now formulating a proposal to complete the Reach C 45 foot contract utilizing Cell 3. It is anticipated that the contractor will finish working in Reach C in mid-September, 2010.

8. The Corps has been monitoring Killcohook CDF return water resulting from the 45 foot deepening in Reach C since the work was initiated in March 2010. Approximately 10 weeks of data (March 1 to May 17, 2010) have been evaluated and summarized in an "Interim Report" (Exhibit 1). The Report concludes that return water resulting from the 45 foot Reach C Deepening is not adversely impacting water quality (Exhibit 1 at page 5-1). Therefore, there is no reason to expect that the return water discharged into New Jersey waters on August 30 and 31 have resulted in any adverse impacts.

Based upon personal knowledge, I hereby declare under penalty of perjury that the foregoing is true and correct.


ANTHONY DEPASQUALE

9/2/10
DATE