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September 9, 2010

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Natural Resources Section  
P.O. Box 663  
Washington, DC 20044-0663

Re: State of Delaware Department of  
Natural Resources and Environmental  
Control v. USACOE, et al.  
Civil No. 09-cv-821-SLR  
Notice of Event filed September 7, 2010

Dear Mr. Hanson and Mr. Swanson:

We have received the Notice of Events ("Notice") that you filed with the Delaware District Court on September 7, 2010. The Notice advised that commencing August 13, 2010, Army Corps of Engineers ("ACOE") began to dispose of dredge material from its deepening project in Cell 1 of the Killcohook Confined Disposal Facility in New Jersey without notice to the parties or the Court. This action was contrary to the representations made by ACOE to the Delaware District Court and in violation of that Court's preliminary injunction. In addition, the Notice further advises



that on August 30, 2010, an internal dike that was directing discharges from Cell 1 to Delaware waters malfunctioned, resulting in an uncontrolled discharge. From that point it would have entered an unnamed tributary of the Delaware in Pennsville Township, New Jersey.

The New Jersey Department of Environmental Protection ("DEP") strongly disagrees with the ACOE's assessment that concerns as to the environmental impact of disposal in Cell 1 and resulting discharges have been fully addressed by the June 2010 Interim Report, which relies on data that predates the events by some months and therefore does not address the additional dredge material placed in Cell 1. Moreover, even if these samples were adequate to characterize the impact of the materials placed in Cell 1, DEP's own independent review of that data does not lead it to the same conclusion as ACOE reaches, based on contaminant levels as well as the nature of the uncontrolled discharge on August 30 and 31, 2010. At a minimum, DEP expects the ACOE to commit to the following:

1. Immediate cessation any further disposal to Cell 1 and placement of an independent engineer approved by DEP onsite to monitor any additional disposal to Cell 1;
2. Immediate provision on an ongoing basis of all sampling data to date, and an agreement to provide all sampling data, both raw and qa/qc'd, to DEP as soon as it is received;
3. Notification as to any contracts or contract modifications for all aspects of the project at the point when ACOE commences negotiation or other proceedings for any contract or modification;
4. An agreement that ACOE will perform additional sampling of Cell 1 and the adjacent waterways, wetlands, and ecosystems to assess damages and potential long term impacts of the disposal, and to identify and undertake remedial action to the satisfaction of DEP, including but not limited to removal of material, necessary to repair any damages;
5. To the extent environmental damages are revealed, natural resource damages claims will be reserved;
6. An independent evaluation by an engineer approved by DEP of (a) the current structural stability of the berms at each of the upland CDFs, and (b) the future capability to safely increase the height of these berms to provide the capacity needed for the disposal of the dredged material from future maintenance and deepening operation; and

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7. Appointment of an independent engineer approved by DEP to act as an independent monitor to watch over all dredging and disposal activities going forward at ACOE's cost.

In light of the emergent nature of the issues and the need to take any necessary legal action as soon as possible, we ask for your response by close of business on September 10, 2010.

Thank you for your attention to this matter.

Sincerely yours,

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_

  
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Kevin Maloney, Esq.