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Attorney for Defendant
THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

CLEAN OCEAN ACTION, a New Jersey,
non-profit corporation; THE AMERI-
CAN LITTORAL SOCIETY, a New Jersey
non-profit corporation, FISHER-
MAN'S DOCK COOPERATIVE, INC., a
New Jersey corporation, and
UNITED FISHERMAN'S ASSOCIATION,
a New York non-profit corporation;
The Corporation of the THE
ASSOCIATION OF ATLANTIC CHARTER-
BOATS AND CAPTAINS, INC., a New
York Corporation.

Plaintiffs,

v.

COLONEL THOMAS A. YORK, in his
capacity as District Engineer of
the United States Army Corps of
Engineers; GENERAL STANLEY T.
GENEGA, in his capacity as
Director of Civil Works of Army
Corps of Engineers; ARMY CORPS OF
ENGINEERS, an agency of the
United States; CAROL M. BROWNER,
in her capacity as Administrator
of the United States Environmental
Protection Agency; WILLIAM J.
MUSZYNSKI, in his capacity as
Acting Regional Administrator of
the United States Environmental
Protection Agency; ENVIRONMENTAL
PROTECTION AGENCY, an agency of
the United States; the PORT
AUTHORITY OF NEW YORK AND NEW
JERSEY, a bi-state governmental
agency,

Defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CIVIL ACTION NO.: 93-2402 (DC)

Affidavit of Lillian C. Liburdi

FILED

JUN 5 1993

AT 2:55 p.m.
WILLIAM H. WELSH
CLERK

STATE OF NEW YORK :
 : SS :
COUNTY OF NEW YORK :

LILLIAN C. LIBURDI, being duly sworn, deposes and says:

1. I am the Director of the Port Department of the Port Authority of New York and New Jersey. As Director I am generally responsible for the management of the Department and the operation of Port Authority marine facilities. It is my obligation to insure that the Port Department manages those facilities responsibly and that every effort is undertaken to maintain and expand the oceanborne commerce of the Region. I have personal knowledge of the facts surrounding this litigation, and I have been authorized to make this Affidavit in opposition to the Plaintiffs' Verified Complaint for Declaratory Judgment and Injunctive Relief.

2. The Port Authority of New York and New Jersey is a body corporate and politic of the States of New Jersey and New York and is charged with the responsibility of providing transportation, terminal and other facilities of commerce within the Port of New York District (the "Port District"). For such purpose the States of New Jersey and New York have from time to time authorized specific transportation and terminal facilities and facilities of commerce and economic development. Among these facilities is the Port Authority Marine Terminal at Port Newark and Port Elizabeth.

Port Newark is a waterfront terminal development located on Newark Bay on approximately 930 acres adjacent to Newark International Airport. The marine terminal includes wharves, about 23,600 lineal feet of ship berths, seven container cranes, transit sheds, open storage areas, buildings, roadways and railroad trackage. The marine terminal was first developed by the City of Newark and has been leased by the City to the Port Authority since March 22, 1943, for a term ending December 31, 2031. The Port Authority has also developed the south side of Port Newark along a new channel which adjoins the Elizabeth-Port Authority Marine Terminal.

In 1958, the Port Authority undertook the development of an entirely new marine terminal presently occupying approximately 1,257 acres on Newark Bay in Elizabeth, N.J. The south side of Port Newark and the Elizabeth-Port Authority Marine Terminal jointly are served by a channel.

3. The Port of New York/New Jersey is one of many Ports in the United States and Canada capable of handling oceanborne commerce in a highly competitive international marketplace. The maritime industry sets the standards for vessel size and draft and the Port of New York/New Jersey must accommodate the channel and berth demands of the industry or fail in its efforts to capture its fair share of trade for the Region. With the exception of Halifax, Nova Scotia, the east coast of North America lacks a natural deep water port. Thus, to maintain access to harbors for modern cargo vessels, all ports along the east coast,

including the Port of New York/New Jersey must dredge regularly to meet the demands of the maritime industry.

4. The maritime industry categorizes cargo vessels by "generation" with the older vessels generally being of the first, second or third generation and those of more recent vintage being of the fourth and fifth generations. The older (first, second and third generation) vessels are of shallower draft and smaller capacity than the fourth which draws up to 40 feet of water and can carry up to 4,000 twenty-foot containers or their equivalent.

5. Over time the array of vessels calling at Port Newark and Port Elizabeth has changed from the older shallow draft vessels to the more modern, deep draft, large capacity later generation ships. With this change has come the need to maintain sufficient channel and berth depths to accommodate these deep draft vessels. Whereas ten years ago an average depth of 35 feet would have been sufficient to accommodate most vessels' operation in and out of the Port, today, a minimum depth of 40 feet is required to allow the vessels which call at the Port of New York/New Jersey to do so safely and efficiently.

6. In recognition of the worldwide trend toward larger and deeper vessels and the concurrent requirement for deeper harbors, the Congress of the United States authorized the Kill Van Kull and Newark Bay Deepening Project at a total cost of \$345 million of which \$121,000,000 is to be paid by the Port Authority as the local sponsor and the balance of \$224,000.00 by the federal government. When that project is completed


in mid 1995, vessels drawing up to 39 feet will have access to Port Newark and Port Elizabeth. If the Port Authority is not allowed to proceed with the berth maintenance dredging for which the Corps of Engineers has issued it a permit, the expenditure of \$345 million of public funds for the deepening of the channels leading to Port Newark and Port Elizabeth will have been wasted since the vessels Congress expected would call at the Port will be forced to go elsewhere. If the dredging is not begun at once and ships are forced to go elsewhere the Port of New York/New Jersey will be relegated to the status of a "feeder" or "barge" Port. This is so because the newer, deeper draft vessels can only be operated economically when they are fully loaded and thus those vessels will seek ports such as Halifax, Nova Scotia or Norfolk, Virginia where they can now be accommodated; Halifax, because it is a naturally deep port and Norfolk because it has been dredged to 55 feet. This will result in the diversion of cargo that presently passes through New York, shrinking the market served by the Port of New York/New Jersey and resulting in a contraction of the regional economy. The only ships that will be able to safely and economically call at our Port will be those smaller, shallow draft ships delivering cargo to what will become a very localized and immediate market.

7. The berths at Port Newark/Port Elizabeth silt at an average rate in excess of 6" per year. As a result, routine maintenance dredging is essential to ensure that marine berth depths are maintained at the facility. Maintenance dredging was projected to have begun 2 1/2

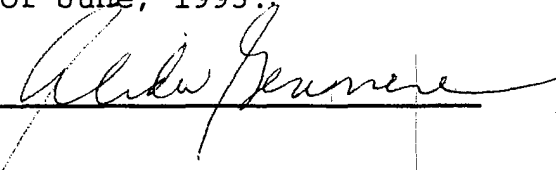
years ago but was delayed by the lengthy process that resulted in the Corps' issuance of the permit that is now being challenged. In that period, there is every indication that ships that would have called at New York have diverted to other ports. While the numerical data is still being compiled to conclusively establish this with respect to general cargo, there is ample evidence that such diversions are taking place. For example, major steamship lines have indicated that ships are being diverted to other ports. Representatives of terminal operators, stevedores, longshore labor and truckers report a decline in activity that they attribute to the Ports inability to handle deep draft vessels. Perhaps the best indicators of the severity of the problem are the reports we have received that a number of vessels have grounded in the berths in Port Newark/Port Elizabeth. It is also clear that vessels which carry bulk commodities are among the deepest draft vessels and have diverted away from the Port of New York/New Jersey because of a lack of berth depth to accommodate those ships in our facilities and other privately owned terminals. In 1990, 36,514,364 long tons of bulk cargo passed through the Port of New York/New Jersey. In 1991, that tonnage had dropped to 30,056,763 and by 1992 to 25,286,886. All indications are that this important component of the Port's business and the Region's economy is continuing to severely erode in 1993.

8. On May 26, 1993 the Corps of Engineers reinstated the maintenance dredging permit it issued to the Port Authority on January 6, 1993 and work began on the project on the morning of June 2, 1993. Unless

the dredging operations are permitted to continue uninterrupted, the economic viability of the Port of New York/New Jersey will be seriously threatened. Accordingly, on behalf of the Port Authority I respectfully request that the Court deny the relief the Plaintiffs have demanded.


Lillian C. Liburdi

Sworn to and subscribed
before me this 3rd day
of June, 1993..


Alida Genovese

ALIDA GENOVESE
Notary Public, State of New York
No. 41-4832248
Qualified in Queens County
Commission Expires March 30, 1995