

## **SUMMARY OF THE BASIS FOR DECISION**

Name of Applicant: Operations Division  
Philadelphia District,  
U.S. Army Corps of  
Engineers

Application Number: 14-WQC-02

Project Manager: Elder A. Ghigiarelli, Jr.

Date of Decision: December 19, 2014

The Environment Article, Annotated Code of Maryland and the Code of Maryland Regulations establish criteria for the Maryland Department of the Environment (“MDE” or “the Department”) to consider when evaluating projects that propose discharges to jurisdictional wetlands or waterways that require a water quality certification (WQC) pursuant to Section 401 of the federal Clean Water Act. If the criteria are satisfied, the Department may issue a WQC for the proposed activity. The Department may deny a WQC for an activity that it believes is inadequate, wasteful, dangerous, impracticable or detrimental to the best public interest. The Department may not issue a WQC for a regulated activity unless it finds that the applicant has demonstrated that a regulated activity has no practicable alternative and will not cause or contribute to a degradation of ground or surface waters.

In the case of the proposed maintenance dredging of the Chesapeake and Delaware (C&D) Canal and its approach channel and placement of the dredged material at the Pearce Creek Dredged Material Containment Facility (DMCF) by the Corps of Engineers (Corps), the question for the Department to address is whether or not the proposed project impacts are acceptable under the regulations as they pertain to the proposed project activities.

### **PUBLIC NOTICE**

Adjoining property owners, local government officials and other interested persons must be notified of proposed impacts resulting from discharges from dredged material containment facilities to jurisdictional wetlands and waterways. In addition, an opportunity to comment and request a public informational hearing must be provided via a local newspaper. The public notice on this application was published in the Cecil Whig and the Cecil Guardian on September 18, 2014.

A public informational hearing on the application was held on September 27, 2014 at Cecilton Elementary School, 251 West Main Street, Cecilton, Maryland. At the public hearing, the Corps announced its intention to modify its application by retaining the existing sluice box/discharge location on Pearce Creek, as opposed to relocating the discharge to the Elk River. A public

notice on this modification to the application was issued on October 9, 2014. Comments raised at the public informational hearing are addressed in the Public Comments section, below.

## **PROJECT PURPOSE AND NEED**

The purpose of the project is to maintain the federally-authorized depths of the C&D Canal and its approach channel, and to provide a placement site for the dredged material generated during the calendar years 2015 – 2016 and beyond.

The Port of Baltimore is a major economic engine for the State of Maryland. The C&D Canal is an import transit route to and from the Port of Baltimore. Maintenance dredging of the C&D Canal and its approach channel, including a site for the placement of the dredged material, is necessary to maintain the federally-authorized depth of these channels at 35 feet.

Historically, the Pearce Creek DMCF was an important upland site for the placement of dredged material from the C&D Canal and its approach channel. Approximately 260 acres in size, the site has sufficient capacity to handle years of maintenance dredging of the Canal. However, the site has not been authorized for the placement of dredged material since the mid-1990's when groundwater deterioration was detected in public drinking water wells in the nearby communities of West View Shores and Bay View Estates. A recent independent study conducted by the U.S. Geological Survey concluded that the historic placement at the DMCF was a source of the groundwater deterioration in the vicinity of the site.

During the interim, the dredged material was placed at the Pooles Island open water placement site(s) and, intermittently, at the Courthouse Point DMCF. Due to the closure of the Pooles Island site(s) in 2010, there is a need to reactivate the Pearce Creek DMCF (see Alternatives Analysis section, below).

## **ALTERNATIVES ANALYSIS**

Alternatives are considered by the Department to demonstrate that a proposed activity has no practicable alternative. With regard to the placement of the dredged material, the Department considered alternatives to the placement of the dredged material at the Pearce Creek DMCF.

Alternatives considered by the Department included the following: (1) No Action; (2) Pooles Island Open Water Placement site(s); (3) Poplar Island Environmental Restoration Project; (4) Courthouse Point DMCF; and (5) Chesapeake City and Bethel DMCF's. These alternatives are briefly discussed below.

No Action Alternative. This alternative would consist of no proposed maintenance dredging of the Canal and its approach channel and, therefore, no need for a dredged material placement site. The Department determined that the no action alternative does not meet the demonstrated purpose and need for the project.

Pooles Island Open Water Placement Site(s). By State law, the Pooles Island Open Water Placement Site(s) were prohibited from receiving the placement of dredged material after

December 31, 2010. Thus, this alternative is no longer a viable option for the open water placement of dredged material from the C&D Canal and its approach channel.

Poplar Island Environmental Restoration Project. For several years, dredged material from the approach channel to the Canal was transported and placed at the Poplar Island Environmental Restoration Project in Talbot County. However, the Department has determined that this alternative is not economically feasible as a long-term option for the placement of dredged material from the C&D Canal and its approach channel due to the placement site's distance from the proposed dredging and the additional costs associated with transporting the material.

Courthouse Point DMCF. The Courthouse Point DMCF in Cecil County is another upland site historically used for the placement of dredged material from the Canal and its approach channel. Based on recent data/information provided by the Corps, this facility may also be contributing to groundwater deterioration beneath the site. Recognizing that the Pearce Creek DMCF will ultimately be needed for the placement of dredged material, the Corps has chosen to address the issues associated with activating the Pearce Creek site at this time. In addition, reactivation of the Pearce Creek DMCF at this time will result in the additional benefit of providing a new water system to residents of those communities which have been negatively impacted by the past placement of dredged material at the site.

Chesapeake City and Bethel DMCF's. These upland placement sites are small and are traditionally reserved for the placement of dredged material from the interior portions of the C&D Canal within Maryland. The Department has determined these sites, due to their limited capacity and purpose, are not an option for the placement of dredged material from the approach channel to the C&D Canal.

Based on these considerations, MDE has determined that the reactivation of the Pearce Creek DMCF is the most practicable alternative for the placement of dredged material from the proposed project.

## **APPLICATION REVIEW**

The Department's consideration of this application to reactivate the Pearce Creek DMCF for the placement of dredged material from the C&D Canal and its approach channel was based on the following key considerations: (1) the avoidance of any future contamination/deterioration of groundwater resources from the placement of additional dredged material at the site; and (2) the provision of a new potable water supply system for those communities/residents whose drinking water wells have been adversely impacted by the historic placement of dredged material at the Pearce Creek DMCF.

To avoid impacts from the future placement of dredged material, the Department is requiring that a liner be installed at the Pearce Creek DMCF to ensure that dredged material does not impact groundwater in the area. The final design plans for the liner must be reviewed and approved by MDE prior to the commencement of any construction/installation activities associated with the liner. In addition, all construction activity at the site must comply with the State's erosion and sediment control, and stormwater management requirements.

Regarding the water supply issue, the Department believes that the communities/residents in the vicinity of the Pearce Creek DMCF have been adversely impacted by the historic placement of dredged material at the facility. A recent study conducted by the U.S. Geological Survey identified the Pearce Creek DMCF as the likely source of groundwater contamination that has been found in drinking water wells in the area. The Maryland Port Administration, a major stakeholder in this project, has initiated a project to address these impacts by extending public water service from the Town of Cecilton to the affected communities.

Regarding the operational discharges from the DMCF, the Corps initially proposed relocating the sluice box/discharge location to the Elk River from the preexisting discharge location to Pearce Creek. Subsequently, the Corps modified its application to maintain the existing sluice box location which discharges to Pearce Creek. Regardless of the discharge location, the Department is requiring the Corps to monitor operational discharges from the facility. If the surface water discharge monitoring results indicate any violation of the State's water quality standards, discharges will cease and treatment measures will be required by the Department prior to further discharges from the facility.

In addition, the Department is requiring the Corps to submit and, based upon MDE's review and approval, implement a plan for monitoring the groundwater in the Magothy and Patapsco aquifers. The purpose of the groundwater monitoring plan is to ensure that the integrity of the liner is maintained and to obtain data/information on the long-term quality of groundwater resources under and in the surrounding areas of the Pearce Creek DMCF. The Department anticipates that the monitoring will indicate a gradual improvement in the quality of groundwater resources over the long term.

## **PUBLIC COMMENTS**

As previously noted, a public hearing was held on the Corps' application on September 27, 2014 at the Cecilton Elementary School in Cecilton, Maryland. The Department's record for the submission of public comments remained open until October 27, 2014.

Testimony at the public hearing and the numerous written comments received on the application generally supported issuance of the WQC with qualifying considerations. Several comments opposed the issuance of the WQC and the provision of a new central water supply system citing cost considerations and the availability of less expensive alternative methods for water treatment. The Department finds that denial of the WQC would not accomplish the demonstrated purpose and need for the project; prevent the necessary maintenance of a major transit route to the Port of Baltimore; and prevent or delay action on addressing a water supply issue/problem that has impacted the area for the past 15-20 years.

The major issues raised in the public comments received by the Department included: (1) the timing of the proposed placement of dredged material as related to the completion of the water supply system; (2) the location of the discharge point from the facility; (3) issues associated with the provision of the public water supply; and (4) other issues related to the reactivation of the Pearce Creek DMCF.

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Timing of Activities. The major comment received in response to the application is that the Corps should not be allowed to place any dredged material at the Pearce Creek DMCF until completion of the public water supply extension project from Cecilton to the affected communities. The Corps' proposal is to commence construction of the liner in March, 2015, and complete the installation in approximately 6-8 months. This will be followed by the placement of dredged material in late 2015 through March, 2016. At this point, the estimated date of completion of the public water supply extension project is in the summer of 2017. Thus, according to these schedules, dredged material placement is proposed to take place prior to the completion of the extension of the public water supply system.

Although the Department understands and appreciates the concerns raised in this regard, MDE believes that the placement of dredged material subsequent to the installation of the liner, and compliance of the operational discharges from the site with the State's water quality standards, will not exacerbate the current conditions that exist at the Pearce Creek DMCF. The Department's major concern is that the provision of a new water supply system continue to move forward and be implemented as required by the WQC. If this requirement is not, or cannot be met for any reason, MDE will require that all dredged material placement and discharges from the site be terminated.

Discharge Location. The majority of the comments received on this issue strongly favor the initially proposed discharge to the Elk River, as opposed to discharging to Pearce Creek. Several comments requested that another public hearing be conducted if the Department intended to approve discharges to Pearce Creek. The public notice on the Corps' modification to the application was issued on October 9, 2014, well within the public comment period which closed on October 27, 2014. The Department believes that this provided ample opportunity for the public to comment on the modification and that a second public hearing, nor an extension of the public comment period, was necessary.

The Department's position on this issue is that all discharges from the facility, regardless of location, must comply with the State's water quality standards. Discharges from the site will be monitored and if the results indicate any violation of the State's water quality standards, discharges will cease and treatment measures required prior to any further discharges from the facility.

Provision of Public Water Supply. Comments related to the new water supply system included providing bottled water to residents until the new system is in operation; placing the funding for the water supply system in an escrow account to ensure that the funding is not lost or rededicated for other purposes; the inclusion of fire hydrants; and the required capping of existing wells. Regarding the latter, some residents would like to retain their wells for watering and irrigation purposes.

As noted previously, the Department's major concern is that the water supply project continue to move forward to completion in order to rectify/correct the impacts resulting from the past placement of dredged material at the Pearce Creek facility. Although MDE appreciates these comments and concerns, these issues are beyond the scope of the Department's review of the Corps' application for a WQC.

Other Issues. Other issues raised in the public comments received included minimizing dust, and moving the staging area along Pond Neck Road closer to the site during construction activities; the provision of landscaping along Pond Neck Road for aesthetic purposes; mosquito control spraying of the site by the Corps; and monitoring of the beaches in the vicinity of the site.

Construction activities associated with installation of the liner must comply with the State's erosion and sediment control, and stormwater management requirements. Aside from issues associated with these requirements, these concerns and comments are beyond the scope of the WQC review and the Department's authority in that regard.