

COE Corps Disposal Facility Can Receive Both “Navigational” Dredgings and “Environmental” Dredgings From Conner Creek

The United States District Court for the Eastern District of Michigan has held that Pointe Mouillee Confined Disposal Facility (Pointe Mouillee) can receive Conner Creek environmental dredgings (“dredge spoils”) generated by the Detroit Water and Sewer Department, because receiving “environmental” dredge spoils from Conner Creek is not a new use of the facility just because Pointe Mouillee was originally approved to receive “navigational” dredgings from the same creek.

In 1974, the State of Michigan and the United States entered into an agreement allowing the United States COE Corps of Engineers (the Corps) to dispose of dredgings from Conner Creek in the Pointe Mouillee facility. The agreement was created under the River and Harbor Act of 1970, which authorizes the Corps to construct and operate disposal facilities for dredge spoils that it generates while maintaining navigational waterways. The River and Harbor Act requires state concurrence before the Corps can build such a facility.

In 1997, the United States Environmental Protection Agency (EPA) found the Detroit Water and Sewer Department (DWSD) in violation of the Clean Water Act. In settling its violation with EPA, the DWSD agreed to construct a new sewer overflow retention basin and to dredge and dispose of approximately 146,000 cubic yards of sediment from Conner Creek as part of the retention basin project. But the Corps objected to allowing Pointe Mouillee to receive the DWSD dredgings. The City of Detroit sought a court order allowing the DWSD to dispose of its sediment in Pointe Mouillee.

The Corps’ main objection to placing the new dredgings in Pointe Mouillee was that the disposal site was approved on the basis of receiving “navigational” dredgings only. The Corps’ 1974 approval process involved preparing an Environmental Impact Statement (EIS) as required under the National Environmental Policy Act. The Corps’ 1974 EIS for Pointe Mouillee was developed based on the disposal

of dredge spoils to “enhance the navigability of the Detroit and Rouge Rivers.” The Corps contended that the EIS did not contemplate including dredgings removed from Conner Creek for the purpose of enhancing environmental quality.

In addition, the Corps was concerned about its liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) if the DWSD dredge spoils contaminated Pointe Mouillee with hazardous substances. But the original 1974 agreement between Michigan and the United States contained a provision in which Michigan agreed to hold the United States harmless from damages due to construction, operation, and maintenance of the Pointe Mouillee facility. The Corps contended in its court argument that the agreement pre-dated CERCLA and did not protect the Corps from liability.

The Court found that the River and Harbor Act was not specific as to whether a dredge spoils disposal facility is limited to navigational dredgings or whether other types of spoils could be placed there. The court examined the legislative history of the River and Harbor Act and found that, in addition to promoting navigation on the nation’s waterways, the Act was intended to improve water quality, an objective that could be attained by dredging Conner Creek.

In addition, the court found no language in the 1974 agreement between Michigan and the Corps limiting Pointe Mouillee to receiving only navigational dredgings. Moreover, the Corps’ EIS for Pointe Mouillee has no such limitation. The court noted that the EIS states Pointe Mouillee’s main environmental impact as “containment of polluted dredge spoil [which will] remove it as a source of pollution.” Therefore, neither the EIS nor the 1974 agreement preclude placing environmental dredge spoils in the Pointe Mouillee disposal facility.

Finally, the court disagreed with Corps’s concern that the 1974 agreement would not hold the Corps harmless from CERCLA liability. In the 1974 agreement, the State of Michigan indemnified the Corps from “damages due to construction, operation, and maintenance of the facility.” The court found that this language was sufficiently broad to hold the United States harmless if environmental liability for the facility arises under CERCLA.

The court concluded that the disposal of “environmental” dredgings from Conner Creek at Pointe Mouillee did not constitute a new use of the facility necessitating a new EIS. The 1974 Agreement protected the United States from CERCLA liability arising from disposal of the “environmental” dredgings. Therefore, the court ordered the Corps to accept the DWSD dredge spoils from Conner Creek at the Pointe Mouillee facility.

U.S. v. Michigan, 2000 WL 1752237, No. Civ. A. 77-71100 (E.D. Mich. Nov. 22, 2000)

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