



MID-ATLANTIC ENVIRONMENTAL LAW CENTER

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**Sierra Club Takes DNREC to Court to Prevent Canal Dredge Project
Delaware Legislature's Clearing of the Assawoman Dredge Said to Be
Unlawful**

WILMINGTON -- Mid-Atlantic Environmental Law Center filed suit in the Delaware Chancery Court today on behalf of the Sierra Club Delaware Chapter seeking temporary, preliminary and permanent injunctive relief to block the potentially imminent dredging of the Assawoman Canal in Sussex County by the Delaware Department of Natural Resources and Environmental Control (DNREC). The stated intention of DNREC to commence dredging the 4-mile canal comes despite a May 2005 Environmental Appeals Board (EAB) decision in Sierra Club's favor which required a specifically designed cost-benefit analysis as a pre-condition to permit approval.

DNREC's decision to dredge relies upon section 81 of the June 2005 Bond Bill, in which the Delaware General Assembly attempted to override the administrative appeals process and its outcome by declaring that the "benefits exceed the costs" of the Assawoman project and directing DNREC to begin dredging.

"This lawsuit seeks to protect the integrity of every citizen's right to appeal the decisions of state government," said Ken Kristl, an attorney for the Center and counsel to Sierra Club. "DNREC's actions violate state law, and the unconstitutional intervention of Section 81 does not excuse DNREC from complying with the law and its own regulations."

The Assawoman Canal links Little Assawoman Bay to Indian River Bay and is currently of a shallow depth that permits only canoeing and kayaking, which has been enjoyed for years by Sierra Club members and others. Since acquiring the canal from the federal government, DNREC has been interested in dredging the Canal in order to make it navigable for power boats.

"We have been fighting to preserve the quiet beauty of this Canal for more than five years," said David Keifer, conservation chair of the Sierra Club Delaware Chapter. "If DNREC follows the law and conducts a true cost-benefit analysis, there's no way this dredging is justified. It's outrageous that the legislature would interfere to erase our Appeals Board win." "The legislature made the rules, now they must play by them," Keifer added.

(more)

The suit alleges that DNREC must be restrained from dredging because: 1) it is prohibited by the Delaware Subaqueous Lands Act from dredging without a validly issued permit; 2) dredging without a validly issued permit violates Sierra Club's due process rights by nullifying its successful appeal to the EAB; and dredging in reliance on the unconstitutional section 81 of the Bond Bill also deprives the Club of due process. The legislature's maneuver is unlawful because it: violates constitutional separation of powers doctrine by intervening in and overturning an essentially lawful judicial function of the EAB; the Bond Bill violates a Delaware constitution prohibition on multiple subjects within a single bill; and the Bill fails to alter the Subaqueous Lands Act in order to remove the EAB's authority to require an appropriate cost-benefit analysis.

Along with a Complaint seeking declaratory relief, the Center has also filed a Motion for a Temporary Restraining Order, to halt the dredging during the pendency of the case, arguing that Sierra Club would be irreparably harmed if the dredging were allowed to proceed before the case could be heard on the merits.

Sierra Club is also represented in the matter by Wilmington attorney Albert M. Greto.

The Sierra Club, founded in 1892, is the nation's oldest grass-roots environmental organization. The Club is dedicated to the protection and preservation of the natural and human environment, including the Delaware shoreline and its waters. There are thousands of Sierra Club members in the state of Delaware, including individuals who reside near and frequently visit the Assawoman Canal in Delaware. Many Sierra Club members recreate in the waters of the Canal – mainly in canoes and kayaks – and observe and enjoy numerous migratory birds and indigenous flora and fauna species in the land surrounding the Canal.

The Mid-Atlantic Environmental Law Center is a not-for-profit environmental law firm that provides legal services to individuals and public interest organizations in environmental matters. The Center works to ensure that environmental requirements are met, and that legislation and regulations are adequately implemented by responsible federal, state and local agencies. The Center is located at Widener University School of Law and works in tandem with students in Widener's Environmental and Natural Resources Law Clinic.

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