



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

May 13, 2011

Office of Counsel

Ms. Susan Lessard  
Board of Environmental Protection  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

Re: Appeal of Water Quality Certification for Kennebec River Maintenance  
Dredging Project, DEP #L-16281-4E-E-N

Dear Ms. Lessard:

Enclosed you will find an appeal of the Department of Environmental Protection's April 15, 2011 "Corrected Order," DEP #L-16281-4E-E-N, issuing the Water Quality Certification for the U.S. Army Corps of Engineers Lower Kennebec River Federal Navigation Project maintenance dredging project. As discussed in the appeal, the Corps is appealing Condition 4 and seeking an amendment to prevent delay to this time sensitive project.

Please contact me at (978)318-8014 if you have any questions regarding this appeal or if there are issues requiring my attention. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "John P. Almeida". The signature is written in a cursive, flowing style.

John P. Almeida  
Assistant District Counsel

Enclosure

cc Department of Environmental Protection Acting Commissioner Jim Brooks

IN THE MATTER OF

U.S. ARMY CORPS OF ENGINEERS	)	WATER QUALITY CERTIFICATION
Bath and Phippsburg, Sagadahoc County	)	APPEAL
MAINTENANCE DREDGING	)	
L-16281-4E-E-N (approval)	)	

The U.S. Army Corps of Engineers (“Corps”), by and through the undersigned Assistant District Counsel John Almeida, hereby appeals the April 15, 2011 “Corrected Order” issuing the Maine Department of Environmental Protection’s (“DEP”) Water Quality Certification (“WQC”) for the Lower Kennebec River Federal Navigation Project maintenance dredging project. Specifically, the Corps appeals Condition 4 of the Corrected Order and seeks a modification to this condition as set forth more fully below.

1. *Aggrieved Status:* The Corps is the applicant for the WQC at issue in this appeal, and as such has standing to appeal the findings of DEP. The Corps is injured by the decision inasmuch as Condition 4 could be interpreted in a manner that could preclude the Corps from accomplishing its proposed maintenance dredging project.

2. *The findings, conclusions or conditions objected to or believed to be in error:* The Corps objects to Condition 4 of the Corrected Order as it may be interpreted in a manner that could preclude the Corps from completing its work in a timely manner, and thereby jeopardizing national security. As described in the Project Description portion of the Corrected Order, the Corps is performing the maintenance work at the request of the U.S. Navy to allow the passage of U.S.S. Spruance from Bath Iron Works to sea. The Navy has indicated that this must occur by September 1, 2011 to allow the addition of the U.S.S. Spruance to the fleet for operations critical to national defense. Condition 4 appears to preclude the Corps from disposing of dredged material at the in-river Bluff Head Disposal Area “unless and until the Maine Legislature corrects the classification of the intertidal portion of the Kennebec River from the mouth of the river to the Bath town line to be Class SB waters as is currently proposed in the

125<sup>th</sup> Session of the Maine Legislature.” It is our understanding that the Maine legislature has taken up this issue and may pass legislation that will clarify that the Bluff Head Disposal Area is, in fact, considered Class SB waters, consistent with the interpretation and practice of DEP in its WQC review of past Kennebec dredging operations by the Corps and Bath Iron Works. However, should the legislature pass such legislation, it is our understanding that there may be a ninety (90) day delay to the effective date of such legislation. If Condition 4 is interpreted in a manner that would preclude disposal until such a 90 day timeframe has passed, such a delay could impair the ability of the Corps to perform its maintenance dredging work to accomplish the needs of the Navy in taking the U.S.S. Spruance to sea and its operations with the fleet. Likewise, to the extent that Condition 4 is interpreted to preclude disposal of dredged materials in waters that DEP has concluded to be Class SB waters—the portions of the Bluff Head Disposal Area on the Georgetown side of the Kennebec River—such an interpretation would be erroneous.

3. *The basis of the objections or challenge:* In the Corrected Order, DEP recognized the timeframe that the Corps was operating under in order to accomplish the maintenance dredging work to allow passage of the U.S.S. Spruance by September 1, 2011. See Section 1.A Project Description. DEP also stated that it has always viewed the Bluff Head Disposal Area to be classified as a Class SB water, and that the proposed legislative action, HP 1027, would represent no more than a correction to a “drafting error” in the existing classification. See Section 5 Water Quality Considerations. Indeed, DEP notes that a literal interpretation of the statute leads to the conclusion that half the river—the Georgetown side—would not be considered Class SA but Class SB waters. Id. The proposed legislation would clarify that the entire tidal portion of the Kennebec represents Class SB waters. In light of the technical nature of the correction, and the timeframe in which the Corps must perform its dredging operation, it cannot have been the intent of DEP to impose a condition that may result in a 90 day delay that would preclude the validity of the WQC beyond the time in which the Navy requires the passage of the U.S.S. Spruance. Nor could DEP have intended to prevent disposal of materials in waters that—even if the existing water quality designation is deemed unclear—would consist of Class SB waters.

4. *The remedy sought:* The Corps seeks a modification to WQC Condition 4 to clarify that disposal of dredged material at the Bluff Head Disposal Area is not contingent upon the operative date for legislation clarifying the water quality classification of the tidal Kennebec waters, but only upon legislative enactment by the Maine Legislature (as defined in the Joint Rules of the 125<sup>th</sup> Maine State Legislature). The Corps would also seek a modification to WQC Condition 4 to clarify that it does not preclude disposal of dredged material in Class SB waters on the Georgetown side of the Kennebec River at the Bluff Head Disposal Area.

5. *All the matters contested:* The Corps only seeks to contest the items of Condition 4 that are the subject of the present appeal.

6. *Request for hearing:* The Corps does not seek a hearing on this appeal, but does respectfully request expedited consideration, with a decision no later than June 15, 2011, in light of the timeframe by which the maintenance dredging work must be accomplished.

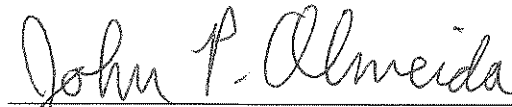
7. *New or additional evidence to be offered:* The Corps does not present new or additional evidence on this matter.

For the reasons stated herein, the Corps seeks modification to Condition 4 of the April 15, 2011 Corrected Order Condition 4.

DATE: May 13, 2011

Respectfully submitted,

FOR U.S. ARMY CORPS OF ENGINEERS,



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