

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALLIANCE OF THE SOUTHEAST)
and FRIENDS OF THE PARKS,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES ARMY CORPS OF)
ENGINEERS et al.,)
)
Defendants.)

Civil Action No. 23-1524
Honorable Thomas M. Durkin

**AMICUS CURIAE THE ATTORNEY GENERAL OF ILLINOIS’
SUPPLEMENTAL INFORMATION REGARDING STATE PERMITTING
OF THE PROPOSED EXPANSION OF THE CONFINED DISPOSAL FACILITY**

Amicus curiae the Attorney General of Illinois, respectfully submits this supplemental information to provide a response to questions posed by the Court during the August 28, 2024 oral argument on the parties’ cross motions for summary judgment, concerning the status of certain permits from the Illinois Environmental Protection Agency for the expansion of the Confined Disposal Facility as an upland dredged material disposal facility, and hereby states as follows:

1. On July 11, 2024, the Illinois Attorney General sought and was granted leave to file a brief as *amicus curiae*, acting on his own behalf as the chief legal officer of the State of Illinois and stating that it did “not reflect information or deliberations internal to the [Illinois Environmental Protection Agency]”. *See* Mot. of Att’y. Gen. of IL for Leave to File Brief as Amicus Curiae, ECF No. 65 at ¶7; *see also* Order Granting Att’y. Gen. Mot. for Leave to File Brief as Amicus Curiae, 07/11/24, ECF No. 66.

2. On August 28, 2024, the Court heard argument on the parties’ cross motions for summary judgment. During the argument, the Court asked regarding its “ripeness argument”

whether Defendants would need a state permit to build the expansion of the Confined Disposal Facility (“CDF”) as an upland dredged material disposal facility (“DMDF”), given the State’s moratorium on landfills in Cook County that has been in place since 2012 (415 ILCS 5/22.43a). Tr. Proc. Held on 08/28/2024 at 69:2-70:17, ECF No. 73.

3. Since the Court’s remarks at oral argument, the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) has advised the Army Corps that Illinois law requires the Agency to evaluate the proposed DMDF as a “waste-disposal operation” that implicates the State’s moratorium on new landfills in Cook County under Section 22.43a of the Illinois Environmental Protection Act (“Act”). 415 ILCS 5/22.43a.

4. On January 15, 2025, the Illinois EPA Acting Director James M. Jennings submitted a letter to Colonel Kenneth P. Rockwell, District Commander of the U.S. Army Corps of Engineers’ (“Corps”), concerning the CDF and the proposed DMDF. A true and correct copy of the January 15, 2025 letter is attached hereto as Exhibit 1.

5. As the Court has expressed a continuing interest in the status of Illinois EPA permits for the proposed DMDF, as recently as August 28, 2024,¹ the Illinois EPA requested that *amicus curiae* Attorney General of Illinois provide a copy of the letter to the Court for its consideration.

6. In the letter, the Illinois EPA advised the Corps on 1) the applicability of Section 22.43a of the Act to the Corps’ proposed DMDF, and 2) the inadequacy of the Corps’ applications for the proposed DMDF submitted to date.

7. The Illinois EPA advised the Corps that placement of contaminated dewatered dredged material within the proposed DMDF constitutes a “waste-disposal operation” and that

¹ The Court inquired into the status of the necessary State permits during each of the April 25, 2023, February 6, 2024, and May 3, 2024 hearings. *See* Tr. Proc. Held on 4/25/2023 at 9-10, ECF No. 17; Tr. Proc. Held on 02/06/2024 at 4-5, ECF No. 42; and Tr. Proc. Held on 05/03/2024 at 4, ECF No. 54.

Illinois EPA lacks authority to permit due to Section 22.43a of the Act. 415 ILCS 5/22.43a. In addition, the Illinois EPA concluded that, to comply with applicable Illinois environmental laws, the Corps would need to identify alternative means to manage any contaminated dredged material and that Illinois EPA would support the Corps in its consideration of such alternatives.

WHEREFORE, *amicus curiae* Attorney General of Illinois respectfully submits the supplemental information for the Court's information and consideration.

Respectfully submitted,

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