

**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**

EXHIBIT 1

IEPA LETTER TO ARMY CORP. OF ENGINEERS  
RE : CALUMET DREDGED DISPOSAL FACILITY



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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JB PRITZKER, GOVERNOR

JAMES JENNINGS, ACTING DIRECTOR

January 15, 2025

U.S. Army Corps of Engineers, Chicago District  
Colonel Kenneth P. Rockwell, District Commander  
231 South LaSalle Street, Suite 1500  
Chicago, IL 60604

Re: U.S. Army Corps of Engineers, Chicago District (Cook County)  
Calumet Dredged Material Disposal Facility

Dear Colonel Rockwell:

I am writing regarding the proposed vertical expansion of the Chicago Confined Disposal Facility (“CDF”), in light of a pending 2021 permit application submitted to the Agency by the Corps, as well as recent statements made by the Corps, the Illinois Attorney General’s Office, and Plaintiffs in a federal court proceeding challenging the proposed expansion. *Alliance for the Southeast v. Army Corps*, Civil Action No. 23-1524 (N.D. Ill.). In short, the applications for the new upland dredged material disposal facility (“DMDF”) submitted to the Agency to date—including the pending 2021 Application and the withdrawn 2023 Application discussed below—are not adequate to address all Illinois environmental requirements that would be applicable to the proposed new facility. As described by the Corps in its 2021 Application, the proposed DMDF would include unpermitted waste disposal in violation of the Illinois Environmental Protection Act. 415 ILCS 5/21(d)(1). Accordingly, the Agency urges the Corps to explore alternative means to manage dredged materials, which could include, based on characterization of the materials, upland beneficial use or disposal at permitted landfills.

On March 19, 2021, the Corps submitted to the Agency an application to renew and modify Water Pollution Control Permit No. 2016-EO-60898, pertaining to the Corps’ operation of the existing CDF (“2021 Application”). The Corps proposed changes to the CDF’s existing water quality monitoring program to accommodate a vertical expansion. The application described the vertical expansion as a new upland DMDF with an estimated capacity for 530,000 cubic yards of dredged material. 2021 Application, Encl. 4, at 1-2. The application noted that the existing CDF had been filled nearly to the same grade as the lakeshore and estimated that the DMDF, supported by new 11-foot tall berms, would allow disposal of dredged material at the site for another 20 years. 2021 Application, Enc. 3, at 1, 3. Per the 2021 Application, mechanically dredged sediment would be dewatered on a drying pad in the DMDF, and dewatered dredged material would be transported “via truck or other earthmoving equipment” to an expanded dike area for disposal. *Id.* at 5. The Corps has indicated in subsequent discussions with the Agency that it now believes that the DMDF does not require coverage under a State Water Pollution Control Permit, but it has not yet withdrawn its application. Accordingly, the 2021 Application remains pending.

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On March 1, 2023, the Corps submitted to the Agency a request for certification under Section 401 of the Clean Water Act related to its proposed vertical expansion of the CDF (“2023 Application”). On April 6, 2023, the Agency by letter to the Corps requested additional information. On January 24, 2024, the Corps sent the Agency a letter withdrawing its request, stating that additional time was required to address the Agency’s outstanding concerns regarding the proposed vertical expansion. Should the Corps wish to proceed with the vertical expansion, it would need to submit a new request for certification under Section 401, addressing the Agency’s concerns.

To emphasize one of the Agency’s concerns, the proposed new DMDF, as detailed by the Corps in its 2021 Application, would include an unpermitted “waste-disposal operation,” which is prohibited by Section 21(d)(1) of the Illinois Environmental Protection Act (“Act”). 415 ILCS 5/21(d)(1). The United States Environmental Protection Agency has confirmed that States maintain authority to regulated dredged material as a “solid waste” pursuant to the Resource Conservation and Recovery Act. *Hazardous Remediation Waste Management Requirements*, 63 Fed. Reg. 65874, 65923-5924 (Nov. 30, 1998). In Illinois, the Illinois Environmental Protection Act defines “waste” broadly, as including “any . . . discarded material.” 415 ILCS 5/5.535. Absent a demonstration by the Corps that all dewatered dredged material is “uncontaminated soil,” pursuant to Section 3.160(c) of the Act, 415 ILCS 5/3.160(c), and therefore not “waste,” the Corps’ placement of any contaminated dewatered dredged material within the DMDF under the conditions described in the 2021 Application would create an impermissible “waste-disposal operation.” See 415 ILCS 5/3.185 (defining “disposal”). Additionally, the Corps’ placement of any contaminated dewatered dredged material in the DMDF would constitute “open dumping,” defined by Section 3.305 of the Act as “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill,” and prohibited by Section 21(a) of the Act. 415 ILCS 5/21(a); see 415 ILCS 5/3.305 (defining “open dumping”); 415 ILCS 5/3.385 (defining “refuse” as “waste”); 415 ILCS 5/3.445 (defining “sanitary landfill”). See also 415 ILCS 5/21(e) (prohibiting disposal of waste “except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder”). This issue could not be cured by obtaining a solid waste permit from the Agency for this facility. Indeed, Section 22.43a of the Act expressly prohibits establishing a new sanitary landfill or expanding an existing sanitary landfill within Cook County, in which the CDF is located. 415 ILCS 5/22.43a. Further, the Agency is prohibited from permitting such a landfill in this location. *Id.*

As described above, the applications for the proposed DMDF submitted to the Agency to date are not adequate to address all Illinois environmental requirements that would be applicable to the proposed new facility. Further, the Illinois EPA would lack authority to permit the proposed DMDF as it is described in the 2021 Application. To comply with applicable Illinois environmental law, the Corps should identify alternative means to manage any contaminated dredged material, including those detailed in this letter. The Agency will support the Corps in its consideration of such alternatives.

Sincerely,



James M. Jennings  
Acting Director  
Illinois Environmental Protection Agency