

THE STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE

In Re:)
)
Corps of Engineers Main)
Channel Deepening Project)
)

TRANSCRIPT OF PUBLIC HEARING

Delaware State University
Bank of America Bldg, Room 113
College Road
Dover, Delaware 19904
July 13, 2010
6:00 p.m.

HEARD BEFORE: TIMOTHY BUREAU

APPEARANCES:

Kathy Bunting-Howarth
Laura Herr

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1 MS. BUNTING-HOWARTH: Good evening
2 and welcome. My name is Kathy Bunting-Howarth.
3 I'm the director of the Division of Water at the
4 Delaware Department of Natural Resources and
5 Environmental Control, and I'd like to welcome
6 everyone to the first of two nights of public
7 hearings regarding the United States Army Corps
8 of Engineers' permit application for the Delaware
9 main channel deepening project.

10 First I'd like to express thanks on
11 behalf of everyone here to Delaware State
12 University, for making this facility available
13 for our use.

14 Tonight is the first of two evenings
15 set aside to take testimony and receive public
16 comments and questions regarding the Corps'
17 application for State permits to conduct the
18 proposed deepening of the Federal Navigational
19 Channel in the Delaware River and Bay. Tonight's
20 session will run from 6:00 to 10 p.m., if
21 necessary.

22 If you have not done so, please sign
23 in at the back of the room and indicate whether
24 you wish to present comments here tonight. Based

1 on the number of people so far that have signed
2 up to make comments, we anticipate allowing
3 everyone a maximum of ten minutes to make their
4 testimony.

5 Speakers may also be allowed an
6 opportunity to present additional testimony after
7 everyone who wants to has had a chance to
8 testify, and based upon the amount of time
9 remaining.

10 Whether listening or speaking, we
11 ask that everyone here tonight be respectful of
12 opinions regarding the project that may be
13 different from your own.

14 Also, of course, please silence your
15 cellular phones, as we want to not disturb the
16 speakers.

17 I'd also like to introduce the
18 individuals on stage. Laura Herr is the manager
19 of our Wetlands and Subaqueous Lands Section.
20 Secretary Collin O'Mara has asked Laura to
21 coordinate the Department's review of the Corps'
22 application for the deepening project, and we
23 thank her and the technical experts that have
24 been working on that project. Before we get to

1 the public testimony, Laura will present the
2 Department's exhibits to be entered into the
3 record.

4 And our hearing officer this evening
5 is Mr. Timothy Bureau. Mr. Bureau is an
6 environmental consultant from Timothy Bureau
7 Consulting, LLC. The Department has entered into
8 a professional services contract with him to
9 serve in this capacity. He will also have a few
10 opening remarks to lay the groundwork for
11 tonight's hearing.

12 So, with that, I'd like to once
13 again thank you for letting your voices be heard,
14 and being a part of the public process, and I
15 would like to turn the hearing over to
16 Mr. Bureau.

17 MR. BUREAU: Well, good evening,
18 ladies and gentlemen. Can everybody hear me?
19 Okay. Good. My name is Timothy Bureau. I'm an
20 independent environmental consultant from
21 Michigan. I've been appointed as hearing officer
22 on the proposed project by the Secretary of the
23 Delaware Department of Natural Resources and
24 Environmental Control, the Honorable Collin P.

1 O'Mara.

2 As many of you may know, I was also
3 the hearings officer on the original Corps of
4 Engineers' application for the main channel
5 deepening project in 2001 through 2003.

6 My charge is to conduct these public
7 hearings, review the record, including technical
8 analysis and recommendations from DNREC, and
9 prepare a report with recommendations to the
10 Secretary.

11 My report will summarize the
12 evidence in the record regarding public and
13 environmental impacts. As set forth in State of
14 Delaware law and regulations, for each issue of
15 concern I will make specific findings of fact,
16 and where necessary, conclusions of law.

17 The report will be published to the
18 Secretary with conclusions as to whether the
19 applicant has adequately and completely addressed
20 the issues and met the statutory requirements.

21 The report will recommend whether to
22 issue or to deny the permit. And if the
23 recommendation is for issuance, what conditions,
24 specifications, and/or requirements, should be

1 included in the permit. I will not make the
2 decision on this matter, the Secretary,
3 Mr. O'Mara, will make the final decision.

4 This hearing constitutes the record
5 from which my recommendation to the Secretary
6 will be made. Therefore, it is important that
7 any comments, concerns, or advocacy each of you
8 may have be entered into the record. To ensure
9 the record is complete as possible, and to
10 provide ample opportunity for everyone to review
11 the large amount of record documents, I have
12 decided this record will remain open for written
13 comment for 60 days, or until Monday, September
14 13th, 2010.

15 Please note that any correspondence
16 must be received by that date, by 4:30 p.m., to
17 be part of the record. You may hand-deliver,
18 fax, e-mail, or mail comments to Hearing Officer,
19 care of DNREC, 89 King's Highway, Dover, 19901.
20 And please refer to the main channel deepening
21 project.

22 Now, I ask that each of you conduct
23 yourself in a professional, courteous, and
24 respectful manner. There are diverse opinions

1 present, all of which are important, and all of
2 which deserve to be heard. Let's all try to be
3 good listeners tonight. If anyone is disruptive,
4 they may be requested to leave the proceedings.

5 To ensure everyone has the
6 opportunity to testify, please be as concise and
7 succinct as you can. I would prefer you not read
8 lengthy letters into the record, but rather,
9 summarize the content and submit the written
10 document, such that it is acknowledged and
11 becomes part of the record.

12 With that introduction, Laura Herr
13 of DNREC has a few brief remarks, and will
14 discuss the exhibits.

15 MS. HERR: Good evening, everyone.
16 I just have a few very brief remarks before we
17 get into the public testimony phase of the
18 hearing. I wanted to take a moment to stress the
19 importance to the Department of the public
20 process that we're engaged in tonight.

21 The Delaware laws and regulations
22 which govern the permits at issue for this
23 project all require that the Department solicit
24 and consider carefully public comments and public

1 input into our decision-making process, and the
2 Department takes that responsibility to seek
3 public input very seriously. So I wanted to
4 thank you all for your attendance tonight, for
5 your interest, and for your participation in the
6 hearing.

7 I just wanted to very briefly draw
8 your attention to two of the handouts that were
9 provided at the rear of the auditorium on your
10 way in. The first one includes a Department
11 summary statement, and please note that embedded
12 in that statement is the link to the main channel
13 deepening section of the Department's website.

14 On the reverse side of that summary
15 statement there is a chronology, and that
16 chronology includes the key items that have
17 occurred since the Corps of Engineers'
18 application was submitted in March of 2010.

19 I hope you'll take a moment to
20 review that document, because taken together,
21 it's intended to just give you an overall sense
22 of the current status of the Department's review
23 of the application.

24 The second handout is equally

1 important. It is a detailed list of the 22
2 documents that make up the Department's hearing
3 exhibits for tonight. These documents are all
4 available in the back of the auditorium for
5 public inspection. They've also been posted
6 online on DNREC's website since June 20th, when
7 we ran the notice for this hearing.

8 And I'd like to remind everyone that
9 as we indicated in the public notice for
10 tonight's hearing, we will be continuing to
11 update that website. Should additional
12 information or additional documents be submitted,
13 we will be continuing to update our website with
14 that information going forward.

15 And just lastly, I want to take this
16 moment to formally submit the 22 hearing exhibits
17 that are found at the back of the room to the
18 hearing officer for incorporate into the public
19 record for tonight's proceeding. And with that,
20 I'll turn it back to the hearing officer. Thank
21 you.

22 MR. BUREAU: Thanks, Ms. Herr. The
23 Department of Natural Resources and Environmental
24 Control scheduled this hearing after receiving an

1 application for subaqueous lands and wetlands
2 permits from the U.S. Army Corps of Engineers on
3 March 22, 2010, for the construction of the
4 Delaware main channel deepening project.

5 The Department is conducting this
6 hearing in accordance with section 6004 of Title
7 7 of Delaware Code, and in compliance with the
8 Court's January 29, 2010 decision in the Delaware
9 District Court action, Delaware Department of
10 Natural Resources and Environmental Control
11 versus United States Army Corps of Engineers, et
12 al., case number 09-821.

13 The Department has identified
14 deficiencies in the Army Corps permit
15 application, and has requested that the Army
16 Corps supplement its permit application.

17 Despite those permit application
18 deficiencies, the Department is processing the
19 permit application in an expedited fashion, based
20 on the Court's decision and Secretary O'Mara's
21 commitment to the Court that the Department would
22 conduct a timely, efficient, and transparent
23 permitting process.

24 The Department will make any

1 additional information available to the public on
2 the website as soon as the Department receives it
3 from the U.S. Army Corps of Engineers.

4 Now, you are welcome to pose
5 questions this evening, but there will be no
6 question and answer format. I will consider each
7 question in light of the application documents,
8 the appropriate statutes, and the weight of the
9 issue within the overall application context.

10 Due to the expedited process, as
11 hearing officer, I will convey questions to the
12 Army Corps or to DNREC which I believe are
13 pertinent and important to my eventual
14 recommendation to the Secretary.

15 I may convey questions to the Army
16 Corps on multiple occasions. Those questions,
17 and any responses, will also be made available to
18 the public on the Department website.

19 I will make a decision on whether to
20 provide the public with a further opportunity to
21 comment based on the timing and content of future
22 Corps submittals for the record. Be advised,
23 should an additional public comment period be
24 warranted in my opinion, that period will vary

1 likely be extremely limited.

2 Should this occur, those of you who
3 have provided an e-mail address on the sign-up
4 sheets will be provided the subject document or
5 documents, and advised of the comment deadline.

6 Now, the Department has invited the
7 Army Corps of Engineers to present their project
8 at the hearing this evening, but they have
9 declined to make a presentation. So, we're going
10 to go directly to your comments regarding the
11 pending permit application.

12 A project summary taken from the
13 application, as Laura said, is available as a
14 handout in the back of the room.

15 Now, I will call on each of you who
16 indicated on the sign-up sheet that you wished to
17 make a presentation, and I will also indicate
18 who's on deck, or who's the next speaker, so we
19 can keep the hearing moving.

20 In order to give everyone who wishes
21 the opportunity to speak this evening, I do ask
22 that you attempt to limit your comments to around
23 ten minutes. If time permits, I will then ask if
24 anyone else has changed their mind and decided to

1 make a comment.

2 It is important that each of you has
3 signed in and completed the sign-up sheet,
4 because it is the legal record of attendance at
5 the hearing this evening.

6 I will now acknowledge for the
7 record, and hereby accept into the record, the
8 list of exhibits offered by DNREC today. With
9 that accomplished, we will now begin the public
10 comments.

11 And the first person we have is
12 Brenna Goggin. On deck, Jane Nogaki. And if you
13 would please state your name, where you're from,
14 address. Name and address, and if you're
15 representing an organization, that would be
16 helpful as well. Thank you.

17 THE COURT REPORTER: And please
18 spell your name.

19 MR. BUREAU: Please spell your name,
20 as well.

21 MS. GOGGIN: Good evening. Oh, I
22 don't think this thing is on. Check. All right.
23 Good evening. My name is Brenna Goggin.
24 B-r-e-n-n-a. G, as in girl, o-g-g-i-n. I am the

1 environmental advocate for the Delaware Nature
2 Society. The Delaware Nature Society is a
3 private nonprofit membership organization with
4 more than 8000 members statewide.

5 For nearly 45 years, the Delaware
6 Nature Society has been an advocate for the
7 protection of our local waterways, including the
8 Delaware River and its watershed.

9 We are deeply concerned about the
10 environmental impacts of the dredging operation
11 on the Delaware River, and with State and
12 regional conservation partners, have closely
13 followed and frequently commented on this project
14 over the past decade.

15 Based on information found in the
16 Corps' wetlands and subaqueous lands permit
17 application, the Delaware Nature Society strongly
18 urges the Secretary to deny this permit.

19 The Society believes that the Corps
20 has not supplied sufficient accurate scientific
21 and economic information to allow DNREC to
22 approve the permit application. We request the
23 Secretary to consider the following concerns when
24 reviewing the permit application:

1 Cost benefit analysis. According to
2 Title 7 of the Delaware Code, the Secretary's
3 required to consider the public interest in any
4 proposed activity which might affect the use of
5 subaqueous lands. Public interest is defined as
6 demonstrable environmental, social and economic
7 benefits that would accrue to the public at large
8 as a result of a proposed action, and which would
9 exceed all demonstrable environmental, social and
10 economic costs of the proposed action.

11 The Society does not believe that
12 this project provides the necessary economic
13 benefits, nor adheres to the guidelines of public
14 interest required for the Secretary to approve
15 this permit.

16 Over the past 20 years, the Corps
17 has claimed numerous times that this project will
18 provide substantial benefit to the nation, to the
19 region, and to the State of Delaware. Yet, in
20 March, 2010, the General Accountability Office,
21 the GAO, released its third cost of benefit
22 analysis on the Delaware River deepening project,
23 and found that the Corps continues to use
24 inconsistent and outdated economic information.

1 Additionally, the Corps has yet to
2 supply adequate and substantiated data proving
3 that the deepening of the Delaware River will
4 create Delaware jobs or have any positive impact
5 on Delaware's economy.

6 In their permit application, the
7 Corps claims that all environmental concerns have
8 been addressed, either through their almost
9 decade old environmental impact statement or
10 their 2009 environmental assessment.

11 A supplemental EIS, issued in July,
12 1997, is based, in part, on data from the 1980s.
13 Since then, there have been many substandard --
14 sorry -- substantive changes in the proposed
15 project, but no follow-up assessment of
16 environmental consequences.

17 Furthermore, the Corps has stated in
18 the permit application that they will be unable
19 to adhere to recommended seasonal restrictions,
20 which would subsequently endanger Delaware's
21 wildlife and tourist industry.

22 Changes in fragile beach habitats,
23 wetlands, and water quality threaten all manner
24 of wildlife. Species directly affected by the

1 dredging project include horseshoe crabs, female
2 blue crabs, sea turtles, sandbar sharks, and the
3 now endangered Atlantic sturgeon. The
4 unwillingness expressed by the Corps to adhere to
5 Delaware River Basin Fish and Wildlife Management
6 Cooperative's recommended windows raises serious
7 concerns that the Corps claims to be
8 environmentally responsible.

9 The Delaware estuary is one of the
10 largest estuaries in the United States, offering
11 unique opportunities for wildlife viewing and
12 outdoor recreation. In 2006, approximately \$300
13 million were spent on outdoor recreational
14 activities, including hunting, fishing, and
15 wildlife viewing.

16 Environmental damage often is not
17 readily apparent. It can take many seasons, even
18 years, to become evident. If damage occurred and
19 this unique habitat destroyed, Delaware would
20 lose not only a critical natural resource but
21 also an important revenue stream.

22 Delaware has worked to protect its
23 coastline from development and potential
24 environmental and industrial threats. Through

1 protection of its tidal wetlands and 25 percent
2 of coastal acreage, Delaware residents and
3 citizens enjoy unspoiled beaches, abundant
4 fishing and recreational opportunities, as well
5 as a close connection to the natural world.

6 The Delaware Code provides specific
7 language to ward against the destruction of
8 Delaware's tidal waterways. Title 7, chapter 73
9 of the Delaware Code states that "subaqueous
10 lands within the boundaries of Delaware
11 constitute an important resource of the State and
12 require protection against uses or changes which
13 may impair the public interest in the use of
14 tidal or non-tidal waters."

15 The Corps has not provide adequate
16 assurances to Delaware that they will avoid or
17 mitigate environmental impacts in Delaware.
18 Therefore, the project should not be moved
19 forward as proposed.

20 Originally, Kelly Island was an
21 agreed-upon disposal site for dredge spoils. The
22 dredge spoils would be used to restore intertidal
23 wetlands, stem erosion of Kelly Island's
24 shorelines, and provide much needed sandy beach

1 for spined horseshoe crabs. However, recently
2 completed sediment studies and drastic
3 proposal -- project changes made by the Corps
4 strongly suggests that Kelly Island is no longer
5 the ideal disposal location.

6 The Corps' proposed changes to Kelly
7 Island outlined in a letter to Lieutenant Tickner
8 dated June 15th, 2010, will have significant
9 impacts on the subaqueous bottom and living
10 resources. However, the Corps has not supplied
11 adequate and necessary information for a
12 comprehensive scientific review of the project.

13 Locations originally suggested by
14 the Corps to be used for beach replenishment and
15 wetland restoration are no longer viable. The
16 location for the restored wetlands would require
17 continuous maintenance to ensure long-term
18 protection.

19 To our knowledge, the Corps has not
20 accepted responsibility to manage and maintain
21 the site. Therefore, the responsibility would
22 fall on the State's already strapped financial
23 and staff resources.

24 Additionally, according to DNREC,

1 the Corps' proposed design for the sandy beach
2 does not meet the requirements that must be met
3 to create the type of habitat needed by horseshoe
4 crabs. Without updated and sufficient
5 geophysical studies, DNREC cannot make a
6 competent review of the project.

7 Dredging can stir up toxic sediments
8 from the Delaware River. In an adequate aquatic
9 habitat, these toxins are absorbed or consumed by
10 wildlife at all levels of the food chain,
11 possibly accumulating at unhealthy levels.

12 Studies of the Delaware River
13 sediments collected outside the main channel
14 strongly indicate that these sediments have
15 chronic effects on marine organisms.

16 We understand the Corps has
17 completed an analysis of potential toxics impacts
18 associated with the deepening of the Sunoco
19 Marcus Hook and Conoco Phillips berthing areas in
20 response to DNREC's concerns over toxins.

21 However the Society finds it unacceptable that
22 the Corps has not supplied the information in a
23 timely matter and DNREC has allowed the permit to
24 move forward without this information.

1 Given the lack of accurate and
2 up-to-date information, the Delaware Nature
3 Society strongly urges the DNREC Secretary to
4 deny the permit application unless and until the
5 Corps can provide additional information such as
6 an updated EIS, a revised cost benefit analysis,
7 additional sedimentary data and a full toxicity
8 report needed to make a scientifically based
9 decision.

10 Thank you for the opportunity to
11 comment.

12 MR. BUREAU: Thank you. Jane
13 Nogaki. On deck, Eric Grugel.

14 MS. NOGAKI: Good evening. My name
15 is Jane Nogaki. I represent the New Jersey
16 Environmental Federation. N-o-g-a-k-i, Jane.
17 And I'm from Marlton, New Jersey.

18 The organization I represent, the
19 New Jersey Environmental Federation, is New
20 Jersey's largest environmental group, with over
21 100,000 members. We are also the State chapter
22 of Clean Water Action, a national organization
23 with chapters in 14 states, including
24 Pennsylvania and Washington, D.C.

1 We wish to go on record as opposing
2 the dredge permit from DNREC to the Army Corps of
3 Engineers for the purposes of deepening the
4 Delaware River by five feet. The New Jersey
5 Environmental Federation has filed, suit along
6 with the Delaware Riverkeeper Network, Clean
7 Water Action, the National Wildlife Federation,
8 and the Delaware Nature Society, to put the
9 brakes on this Army Corps deepening project,
10 which threatens South Jersey and Philadelphia's
11 major drinking water source, the Delaware River,
12 as well as the fish and oyster populations that
13 provide recreational enjoyment and commercial
14 employment in the region.

15 The Environmental Federation
16 supports the more detailed testimony that will be
17 provided to DNREC by the Delaware Riverkeeper
18 Network this evening, including the request that
19 DNREC require of the Army Corps a full, accurate,
20 and up-to-date environmental impact assessment,
21 so that the full impact of the project can be
22 understood and evaluated.

23 The State of New Jersey is doubly
24 threatened by the deepening project, because New

1 Jersey, under the current Army Corps plan, is the
2 receiver of the majority of the dredge spoils
3 which will be piled up to 80 feet high along the
4 Jersey side of the Delaware River at Salem and
5 Gloucester County dredge disposal sites.

6 And South Jersey's major drinking
7 water source, the river itself, and the
8 underlying aquifer, the Potomac Raritan Magothy,
9 would be tainted by the stirring up of toxic
10 sediments in the dredging process. The toxic
11 dredge spoils themselves pose a groundwater and
12 surface water leaching threat as they pile up
13 alongside the river.

14 The public health threat from
15 contaminated drinking water is only one danger of
16 the project. The danger to fish and shellfish
17 populations in the river and bay through the
18 direct disturbances caused by dredging, and the
19 resulting suspending of toxins such as lead,
20 mercury, PCBs, and chromium, into the water
21 column, mean that fish and shellfish will have a
22 higher concentration of contaminants in them,
23 potentially affecting their numbers through
24 impaired reproduction, as well as their quality

1 as a food source and economic driver for the
2 fishing industry in this region.

3 Two New Jersey Governors in prior
4 years, Governor McGreevey and Governor Corzine,
5 and our newly elected Governor, Chris Christie,
6 have opposed this project, and maintained their
7 right to require a new environmental impact
8 statement, in compliance with New Jersey DEP
9 permitting rules, as well as the Clean Water Act
10 and the Clean Air Act. New Jersey, the state,
11 has filed suit to make the Army Corps do that.

12 The least the Army Corps can do is
13 to submit itself to the same rules and process
14 any other industrial project would be subjected
15 to in New Jersey, and in the state of Delaware.
16 We are asking the Army Corps to comply with the
17 laws of New Jersey and the laws of Delaware.

18 And to quote from our newly elected
19 Governor Chris Christie, "I oppose this project
20 because it is ultimately a waste of money,
21 provides no economic incentive for New Jersey
22 companies, and will have a serious negative
23 environmental impact, especially because it will
24 allow the dredge spoils to be dumped in New

1 Jersey."

2 I'm going to submit to you a list of
3 those cites, you know, the amount of increase in
4 height and volume that will occur. And just to
5 point out that while two of the sites of dredge
6 spoil dumping will be in Delaware, the rest of
7 them, 80 percent will be in the state of New
8 Jersey, that derives no economic benefit from
9 this project, but just bears the result of the
10 toxic spoils.

11 On an aside that was brought up by
12 the prior speaker regarding Kelly Island as a
13 potential "beneficial reuse" site, I just wanted
14 to raise the issue of colonization of dredge
15 spoil sites by phragmites, which is considered an
16 invasive nuisance species of low ecological
17 value.

18 You all know what phragmites are.
19 They're huge reeds. They love disturbed soil.
20 They will be the first plants to colonize a
21 dredge spoil site. And while they're very good
22 at taking up mercury and other toxins from
23 sediments, they are very poor ecological habitat.

24 And if the purpose of so-called

1 mitigating Kelly Island is to make it a more
2 viable habitat for horseshoe crabs or other
3 wildlife, this isn't going to do it. In fact,
4 when there's attempts made to control phragmites,
5 the measures used to control them are almost
6 worse than the phragmites themselves, because
7 it's perpetual herbiciding, over and over and
8 over again, to try to reduce the volume of the
9 phragmites.

10 The typical protocol is to spray by
11 aircraft one year, wait a year, go in the next
12 year and spray again. PSE&G, the electric
13 company in New Jersey, has been doing a 2000 acre
14 so-called restoration project of restoring
15 wetlands, degraded wetlands that were impacted by
16 phragmites. They have sprayed over 2000 pounds
17 of glyphosate on these phragmites over a 12-year
18 period, and they haven't reached their success
19 level yet in many of the areas.

20 And so, I caution you that in -- you
21 know, potentially using a beneficial reuse of
22 dredge spoils to recreate an island or to make an
23 island, there could be creating another problem
24 that will require more chemicals, dangerous

1 chemicals to the ecosystem, to control the
2 phragmites that will ensue.

3 The fact, too, that right next door
4 to Kelly Island is the Bombay Hook National
5 Wildlife Refuge, which is a relatively
6 high-quality habitat, does not have a big
7 phragmites problem. That could be impacted by a
8 phragmites population that would colonize Kelly
9 Island, which would provide a seed bed of new
10 phrag that could blow over to Bombay Hook. So,
11 the caution is that in trying to make a
12 restoration, that a worse habitat isn't created
13 in the process.

14 So that concludes my remarks, and
15 thank you very much.

16 MR. BUREAU: Thank you. Eric
17 Grugel. On deck, Darrell Baker, Jr., I think, on
18 deck. And forgive me if I mispronounce these
19 names or anything. So, Eric, are you up?

20 MR. GRUGEL: I'm up. Good evening.
21 My name is Eric Grugel, G-r-u-g-e-l. I'm from
22 Philadelphia, Pennsylvania. I am a legal intern,
23 and I represent the Delaware Riverkeeper Network.
24 In the interest of time, please accept these

1 comments on behalf of the Delaware Riverkeeper
2 and the Delaware Riverkeeper Network. The
3 Delaware Riverkeeper, an advocate and protector
4 of the Delaware River Watershed, and the Delaware
5 Riverkeeper Network, an organization founded in
6 1988 to protect and restore the Delaware River,
7 would like to thank you for the opportunity for
8 us to share our concerns with the Army Corps of
9 Engineers, DNREC wetlands and subaqueous lands
10 permits application relating to the overall
11 Delaware River main stem and channel deepening
12 project.

13 DRN will be submitting more
14 comprehensive comments. However, I was asked to
15 remark on several aspects of the Corps' permit
16 application. We are concerned overall with the
17 Army Corps' approach with the deepening project,
18 specifically with potential problems concerning
19 Federal and State laws.

20 We would like to note that DRN and
21 the Delaware Riverkeeper are parties to a lawsuit
22 challenging the legality of the project.

23 Now our hope was that the subaqueous
24 permit application, by being a more recent

1 document required for the approval of the
2 Delaware River deepening, would remedy a
3 significant number of the project deficiencies
4 that many organizations, including DRN, have
5 voiced, and thus, resolved some of the litigation
6 issues. This hope is based on the fact that as a
7 more recent document, the application would
8 remedy previously-voiced concerns from past
9 environmental documents.

10 Unfortunately, not all of our
11 concerns have been satisfied, and outstanding
12 concerns from other agencies remain completely or
13 inadequately unaddressed.

14 The following comments will flesh
15 out these specific concerns. A separate level of
16 concern relates to understanding the reasoning
17 behind the Army Corps, the reasoning why the Army
18 Corps has not answered these on going concerns.

19 Finally, there is a concern with the
20 enforcement and review of the subaqueous permit
21 application itself. From statements made by the
22 Army Corps, there is concern that they do not
23 believe they need to even apply for a State
24 subaqueous permit at all. With all deference to

1 DNREC, there is concern that the application and
2 review of the application permit is questionable.

3 We have concerns with DNREC's
4 application specific to NEPA. DRN is concerned
5 with the applicant -- is concerned the applicant
6 has not followed the procedural requirements
7 mandated by both the State and Federal law.
8 Namely, the National Environmental Protection
9 Act, the Clean Air Act, the Clean Water Act, the
10 Water Resource Development Act, the
11 Magnuson-Stevens Fishery Conservation and
12 Management Act, and finally, the Fish and
13 Wildlife Coordination Act.

14 Under NEPA, an environmental impact
15 statement, or an EIS, must be prepared for all
16 major Federal actions that significantly affect
17 the quality of the human environment. An EIS may
18 be supplemented if significant changes or new
19 circumstances or data arise, or if there is
20 public controversy concerning the project, or if
21 there are significant changes to the project.

22 Federal agencies must cooperate with
23 states on environmental studies, and address
24 inconsistencies between a Federal action and

1 State plans, as required by 40 CFR section
2 1506.2.

3 Now, many sections of the permit
4 application are answered by referring to either
5 the 1997 SEIS, or the April, 2009 EA.
6 Specifically, 11 different sections in appendix
7 S, the new dredging projects, including but not
8 limited to the characterization of the substrate
9 to be dredged, the characterization of the
10 biological community, and characterization of the
11 existing water quality.

12 Now, it is our concern that the EA
13 is inadequate, and enough evidence exists to
14 warrant a new EIS, including documented changes
15 to the project, new scientific data regarding
16 species and habitats within the Delaware River,
17 the overall level of public controversy,
18 cumulative impacts regarding the project, and
19 changes to the economic benefit of the project.

20 An EIS would benefit the project by
21 requiring a more detailed analysis of the
22 resulting environmental impacts. By not issuing
23 a new EIS, the 2009 EA does not sufficiently
24 answer the questions in the previously-mentioned

1 sections.

2 By accepting the 2009 EA as an
3 appropriate document, DNREC does not have the
4 accurate information to review the application.

5 It is our concern, by not conducting
6 a new EIS, or at least an SEIS, the true
7 environmental impacts of these changes have not
8 been fully quantified, resulting in an
9 insufficient analysis for the application review.

10 This is concerning, for it further
11 perpetuates the consistent outdated, inaccurate,
12 and incomplete data that the Army Corps has
13 supplied for this project.

14 Now, the following comments support
15 our concern that a new EIS is warranted, and as
16 such, we strongly believe that the 2009 EA
17 submitted as support to the application permit is
18 suspect.

19 Now, in the interests of time, I
20 will not be going through all of our concerns.
21 This will be a summary of some of the more major
22 ones.

23 There is concern with the project
24 dredge spoils. The permit application states

1 that dredge spoils are slated for placement at
2 upland confined disposal facilities, or CDFs, in
3 New Jersey and Delaware, including Kelly Island
4 and Broadkill Beach.

5 There is ongoing concern that this
6 is not an accurate description of the spoils'
7 placement. A plan to place all spoils associated
8 with the deepening project in existing CDFs have
9 not been the subject of an EIS process.

10 There is additional concern that
11 changes to the disposal plan, including raising
12 dikes higher than originally anticipated, the
13 reduction in the useful life of the existing
14 CDFs, and the potential Pennsylvania alternative
15 plans to place them in abandoned mines, have not
16 been included in the cost projections for the
17 project.

18 There are specific dredging concerns
19 about the Kelly Island project. The State of
20 Delaware and the National Marine Fisheries
21 Service have advocated the use of an alternative
22 location to Kelly Island for beneficial reuse of
23 the spoils, and should not be considered a
24 beneficial use of dredge material due, to its

1 environmental effects.

2 We support DNREC's concern that the
3 fine grain quality of the sand material is not
4 suited for the intended habitat at Kelly Island,
5 and that an alternative site to Kelly Island
6 should be considered.

7 We also support their additional
8 concerns relating to their June 15th, 2010 letter
9 to the Army Corps over many additional unanswered
10 Kelly Island questions.

11 Now, DNR has outstanding concerns
12 regarding the environmental -- the economic
13 impact and the benefits of the deepening project.
14 The permit application relies on a comprehensive
15 economic reanalysis report from December of 2002,
16 a February, 2004 supplement, an April, 2008
17 economic update, and finally, a 2009 economic
18 update.

19 Now, through the life of the
20 deepening project, the GAO has released several
21 reports analyzing the project's economics. On
22 March 31, 2010, roughly a week after this permit
23 application was filed, the GAO issued a report
24 analyzing the Corps' comprehensive analysis.

1 Now, this GAO report noted that
2 while the Corps has accounted for several key
3 issues by updating previously invalid
4 assumptions, there are still outstanding issues
5 that need to be addressed. This report stresses
6 that market conditions have changed since the
7 2004 reanalysis, and anticipated future markets
8 and industry conditions have changed, as well.

9 An updated assessment to Congress of
10 the relevant industry trends and outlook that
11 specifies how the data and underlying assumptions
12 have changed was recommended. And as such,
13 decision-makers do not have sufficient
14 information currently to realistically judge how
15 market and industry changes will affect the
16 project's net benefits.

17 Now, while we recognize that the
18 Corps could obviously not comment on this report
19 due to the timing of its release, this report
20 does raise valid concerns that the 2004
21 reanalysis is outdated, it needs to be revised,
22 and as such, the project benefits may be
23 currently inflated.

24 In appendix S, section 10 requires

1 discussion of the existing water quality. Now,
2 the applicant relies on sections 4.1.3.1, and
3 4.1.3.2 of the 2009 EA, which then relies heavily
4 on information from a 2001 report.

5 There is ongoing concern that the
6 impacts to water quality, wetlands, marshes and
7 drinking water have not been addressed, and rely
8 on stale scientific information.

9 We do know that the applicant has
10 recently been working with DNREC on some of these
11 issues. But again, our concern is that these
12 studies were not included in the 2009 EA, and
13 thus, were not able to be fully commented on at
14 that time.

15 Other concerns include updated
16 sediment data, and the patches of time make it
17 unnecessary to reevaluate the impacts of the
18 proposed project on surface water quality and
19 groundwater quality.

20 Now, potential impacts of
21 terrestrial ecosystems and public health exist
22 from contamination of surface water and drink
23 water, which the Army Corps does not present
24 enough data to evaluate.

1 Because the Army Corps has performed
2 only a limited characterization and evaluation of
3 the quality of existing sediments to be dredged
4 since the last sampling presented in the 1997
5 SEIS, it is not possible to evaluate the
6 potential impacts of the proposed project to
7 surface water quality, groundwater quality, the
8 aquatic and terrestrial ecosystems, and to public
9 healths.

10 New Jersey's Department of
11 Environmental Protection has provided new
12 information in studies regarding sediment quality
13 for the Delaware River which would help in
14 determining whether contaminants would be
15 present. And the Army Corps has yet to evaluate
16 the data.

17 They commented that the sediment
18 data is not reflective of the sediment from the
19 channel side banks and the bends widening areas.
20 Now we support DNREC's concern that spur channels
21 and berthing areas have been undercharacterized;
22 that they are truly secondary impacts, and that
23 the permit application should be supplemented to
24 include water quality impacts from dredging of

1 officer submitted a 157-page report to the
2 Secretary, recommending that DNREC deny the
3 permits as a result of the Corps' failure to
4 satisfy various permitting requirements under
5 chapter 66 and 72 of the Delaware Code. And that
6 their respective -- and their respective
7 implementing regulations.

8 In April, 2009, the Army Corps
9 decided to proceed without the required Delaware
10 State permit. Their rationale was based on
11 section 404(T) and 511(A) of the Clean Water Act,
12 asserting that the measure was necessary in order
13 to maintain navigation.

14 The Army Corps has an obligation to
15 obtain Delaware State permits for the project.
16 The Army Corps' invocation of its power to
17 override a waiver of sovereign immunity under the
18 Clean Water Act section 511(A) in order to
19 maintain navigation is not applicable to this
20 project.

21 Implementing the deepening project
22 without obtaining a subaqueous lands permit is a
23 violation of 33 USC section 1344(T). Now section
24 313(A) of the Clean Water Act provides that a

1 Federal agency such as the Corps shall be subject
2 to and comply with all Federal, State, interstate
3 and local requirements, administrative authority,
4 and process and sanctions respecting the control
5 and abatement of water pollution, in the same
6 manner and to the same extent as any
7 non-governmental entity, including the payment of
8 reasonable service charges.

9 Before undertaking the deepening
10 project, the Corps is required to comply with the
11 Clean Water Act, including obtaining a subaqueous
12 permit from Delaware. Without obtaining the
13 subaqueous lands permit, the Corps announced
14 their intent to proceed with the project, and has
15 awarded a contract for maintenance dredging and
16 deepening construction.

17 The Clean Water Act does provide an
18 exception to regulation, under certain
19 provisions, for Federal projects specifically
20 authorized by Congress which meet the criteria of
21 404(R). However, the Clean Water Act section
22 404(R) does not exempt the Corps from obtaining
23 State certificates.

24 As the underlying information

1 regarding discharge effects is significantly
2 different than presented in the 1992 or 1997 EIS
3 documents, it is thus not in compliance with the
4 Clean Water Act sections 404(B)(1) and 404(R).

5 The 1997 SEIS and 2009 EA was sent
6 to Congress in April of 2009 without having
7 followed the procedure of section 404(R), and it
8 is, thus, substantively inapplicable, due to the
9 outdated nature of information regarding the
10 Corps' discharges for the deepening project, and
11 insufficient and outdated NEPA documents upon
12 which the exemption is based.

13 Now to our knowledge, DNREC has not
14 responded to the Corps application's
15 deficiencies, or under the Clean Water Act,
16 including the binding nature of a DNREC permit,
17 the exemption from 404(R), or the State water
18 quality certification issues. The permit
19 application still does not avail DRN's concerns
20 about this issues.

21 Now this brings to us our main
22 procedural concern with the permit process, which
23 is what teeth does the permit application have in
24 relation to the overall deepening project and

1 ongoing litigation?

2 The concern that DRN and other
3 organizations have is that the application is
4 just a formality the applicant is undertaking.
5 If the Corps believed their permit is not legally
6 necessary, then there is a real danger that due
7 diligence was not employed in completing
8 necessary information and submitting the
9 application, and as such, information that DNREC
10 would need to make a complete determination has
11 not been included in this application.

12 It is not to imply that the
13 applicant consciously would omit potentially
14 harmful information, but it rather suggests that
15 if they believed a permit was not needed, a full
16 effort to present all the sides of this
17 controversial issue was not as pressing.

18 On the other hand, there is concern
19 that DNREC -- that DNREC may sense that a permit
20 decision is irrelevant, regardless of DNREC's
21 legal position regarding the permit. If there is
22 a possibility that the Corps will ignore the
23 DNREC determination and proceed, even if the
24 application is turned down, then there is concern

1 that DNREC may not give the application a
2 complete and thorough review, or may feel undue
3 pressure to approve the permit to avoid further
4 legal action.

5 DRN also has unresolved concerns
6 regarding the Clean Air Act, the Coastal Zone
7 Management Act, wildlife resource statutes, and
8 the Water Resources Development Act, but in the
9 nature of time, I will submit them later.

10 Thank you for this opportunity.

11 MR. BUREAU: Thank you, Eric.

12 Mr. Baker?

13 MR. BAKER: Yes, sir.

14 MR. BUREAU: On deck is going to be
15 Captain James Roach.

16 MR. BAKER: Good evening, ladies and
17 gentlemen. My name is Darrell Baker. I'm an
18 attorney in Wilmington. I represent Murphy
19 Marine Services, which is a large stevedoring
20 operation in Wilmington, Delaware, located at the
21 Port of Wilmington.

22 At this time, I'd like to submit a
23 written letter from John Coolahan, who is the
24 president of Murphy Marine, and to supplement

1 that letter, I'll make a few remarks.

2 MR. BUREAU: Thank you.

3 MR. BAKER: Ms. Herr, Mr. Bureau,
4 ladies and gentlemen, as I said, I represent
5 Murphy Marine Services. It is currently the
6 largest stevedoring operation in the city, or at
7 the Port of Wilmington.

8 Murphy Marine is emphatically in
9 favor of the deepening of the channel, based upon
10 various items and things.

11 First off, currently, last year, for
12 example, it issued more than 900 W2s to different
13 employees of the company. This does not include,
14 ladies and gentlemen, all the other people that
15 work at the Port to maintain the facility itself,
16 to be able to help maintain the warehouses, the
17 truck drivers, the gentlemen and ladies that work
18 at the railroad, that transport the products; the
19 building products that come in and go out, the
20 people that work for the State of Delaware who
21 work at the facility.

22 There are thousands of people that
23 depend upon a port that has deep water.

24 Currently, the competitors in the East Coast are

1 already deepening. Baltimore, which frankly, is
2 next to an oyster bed, is deepening to 50 feet.

3 We would say at this time, that
4 frankly, the time for scientific study has gone
5 on for a number of years, again and again and
6 again. And yet, despite that, there is no
7 scientific evidence that is concrete in its
8 nature to deny the viability and the safety of
9 this project.

10 We have waited patiently, patiently,
11 patiently, for this process to transpire. We are
12 coming up on at least two decades. I think, and
13 the company thinks, that's enough. If there was
14 something out there -- I mean frankly, to be
15 blunt, my company believed that there was
16 something out there. We thought that there would
17 be. But obviously, there isn't.

18 And without lapsing into incredible
19 legalese, as a lawyer, as we are apt to do from
20 time to time, let's get down to the real numbers.

21 I already told you how many people
22 work for the company. To give you an idea of the
23 customer base, we are talking about Chiquita and
24 Dole, the largest producers of bananas in the

1 world, as well as other products.

2 For example, Wilmington, for those
3 of you that don't know, and perhaps the economic
4 impact of this deepening has not really been
5 fully appreciated, we are a large port for grapes
6 and other products. Lamb chops from time to
7 time. And for that matter, other products such
8 as cars, and other things of that nature. We are
9 in the business of safe cargoes.

10 Oil is yesterday, frankly. It's
11 yesterday. Anybody that thinks this is about oil
12 is naive. This is about new cargoes. This is
13 about stuff in the 21st century, not the 20th
14 century.

15 We are interested in containers.
16 Containers mean jobs, and containers mean
17 business. I don't know if anybody realizes this
18 here, but Wilmington has more refrigerated
19 warehouses than anywhere else in North America.

20 That is our -- what the economic
21 influence -- or impact is. It's about big
22 refrigerators, if you will. Okay? With bananas
23 that arrive here and go to Chicago, and
24 Pittsburgh, and Cleveland, and Akron, and

1 Sandusky, and Louisville.

2 Tonight my clients could not be
3 here, because they're in a meeting with the
4 Dole/Chiquita people in Cincinnati. So, we are
5 talking about a port that is at least, for
6 Wilmington, as well as Philadelphia, for that
7 matter, but I'm here for the Wilmington folks.
8 Obviously, that is interconnected with the rest
9 of the United States, incredibly well.

10 Just remember, ladies and gentlemen,
11 Indiana does not have a sea port. So, you know,
12 we may not have oil, we may not have gas
13 underneath us, but we do have geographic
14 position. And we have one heck of an interstate
15 system next to us, and a railroad system next to
16 us. Or in us. So, let us adapt to that, and
17 let's go with the clean cargoes.

18 Many of the folks here tonight are
19 from the ILA, the building trades and other
20 unions and other people that support the port.
21 Oil doesn't employ that many people. These kind
22 of cargoes employ lots of people. It takes a lot
23 of people to keep refrigerated warehouses
24 running. It takes a lot of people to keep

1 rebuilding the port itself, to keep rebuilding
2 those. It keeps a lot of people employed, to
3 move all those containers.

4 Now let's talk about, well, what
5 does this really mean? Okay. I'm actually in
6 the marine business myself. I've got a marina,
7 which is a little version of this, obviously, but
8 you don't understand the size of what is coming.

9 The Panama Canal is being expanded.
10 We built the first one. They're building an
11 expansion of it. The new ships that will be able
12 to come through that canal are greater than the
13 size of some of the aircraft carriers that you
14 see on television today. They are huge.

15 They're not going to come here
16 bringing oil. Because those ships even draw more
17 footage than the 45 feet. What they're going to
18 bring are all your things that you bought at
19 Target, and everything else made in China, and
20 everything else made in Vietnam, and all your
21 T-shirts and all your underwear, and things of
22 that nature.

23 And here's the way it's going to
24 work, just to really reduce it down. A ship

1 leaving China -- this is like an eighth grade
2 word problem -- could or does currently stop in
3 Long Beach, California, or Los Angeles. And it
4 drops the stuff off there, because why? It can't
5 make it through the Panama Canal.

6 And what does it do then? When it
7 drops off those containers, those containers go
8 into a railroad. And those containers are
9 flatbeds, or whatever version by which Union
10 Pacific and Burlington Northern Santa Fe,
11 whatever it's called this week, transport those
12 items. It costs about 5 to \$600 more per
13 container to ship that across the United States.

14 Those ships then, instead, will do
15 the classic end run. They will go through the
16 Panama Canal, avoid the western coast docks, and
17 they'll come right to where the market is, which
18 is the Eastern United States.

19 I think, a point of reference, we
20 can all acknowledge, just for today, as we would
21 say, judicial notice in the law business, that
22 most of the people in the United States live east
23 of the Mississippi River, okay? Is that really
24 too much of a stretch? Okay.

1 Currently, New York is booked. If
2 you really went into the delving of, you know,
3 how hard is it to get a dock, you know, it's like
4 trying to get a room on the night of the
5 Superbowl somewhere. Wherever the Superbowl is,
6 in that city. You can't get into New York now.
7 Okay?

8 So what's the next one down? It's
9 us. It's the Delaware River. It's going to be
10 Gloucester, New Jersey, it's going to be
11 Philadelphia, and it's going to be Wilmington,
12 that I'm here for tonight.

13 If we do not deepen the river, let's
14 get to the next number. Currently, according to
15 the economists in the International Newspaper, or
16 magazine, and this is also available on the web,
17 three-quarters of the merchant fleet in the
18 world, the world, draws more than 42 feet. That
19 means that three-quarters of the ships in the
20 world today can't make it up the Delaware.

21 And folks, if you haven't realized
22 this by the time you are now, I hope you're
23 getting it now, is that the world is going in two
24 directions: Everything's either getting smaller,

1 like your cell phones shrunk down to the point
2 where now it can do everything but your taxes,
3 and maybe that's on the next app, or it gets
4 bigger. For example, you know, we all have
5 probably been on a 747. Guess what? That's not
6 the biggest plane anymore. It's a 380 from Air
7 Bus.

8 Well, okay. What's happening? The
9 ships are getting larger. And now let's go to
10 the next number. Currently, your basic vanilla
11 flavored container ship that comes to Wilmington
12 might hold 8000 TEUs, as they call them. All
13 right. We'll just call them containers for the
14 sake of keeping it simple.

15 The new ships, although they may
16 only draw three or four more feet, because
17 they're bigger and they're wider, can carry 12 to
18 15,000 containers.

19 Yeah. It's a geometric progression
20 up. All right? Now, what does that do? That's
21 a lot of jobs, for these folks, for those folks.
22 A lot of jobs. A geometric progression. Because
23 it still takes just as many crane operators, as
24 one of these gentlemen is over here, to move that

1 container off the ship and put it onto either a
2 flatbed, or move it, or move that cargo into a
3 refrigerated warehouse, where then eventually it
4 moves to somewhere else.

5 So every time it gets touched or
6 moved, guess what? The folks at the Port of
7 Wilmington are making money, including, I'll say,
8 my client.

9 Because my client, a stevedoring
10 company -- they're the people that arrange for
11 stuff to either be put on a ship or to be taken
12 off a ship. And they help the customer, who is
13 selling whatever they're selling, getting their,
14 say, for example, bananas, from where they're
15 shipping it, and say Lima, or Limon, rather,
16 Costa Rica, and shipping it up here so that it
17 eventually gets to the grocery store where you
18 and I are able to buy it. Okay? They're the
19 lynchpin.

20 Now, as these ships get larger and
21 the river stays shallow, that means these jobs
22 will disappear. Ship by ship, just fluttering
23 away.

24 So again, in summary, we are

1 emphatically in favor of this. We believe it can
2 safely be done, and we believe the economic
3 impact is immense, and that, in fact, we believe
4 that the business will double at the Port if you
5 and others allow for the dredging to proceed.

6 And I also make note, dredging has
7 been going on. The world did not end. You know.
8 I mean it's been going on for a few months now I
9 guess. Has anybody heard anything about it?

10 I would submit to the hearing
11 officer that you review and see what the dredging
12 records are, because I would think just for the
13 record that they would be submitted to you, and
14 see if there was any adverse environmental impact
15 up to date.

16 Thank you very much.

17 MR. BUREAU: Thank you, Mr. Baker.

18 I know some people may be a little frustrated in
19 sitting and listening, but that's the purpose of
20 our hearing tonight. And again, I ask you to try
21 to limit your comments to ten minutes or less,
22 and you can always submit written comments, which
23 will carry just as much weight as any verbal
24 comments made this evening.

1 So, thank you. With that, then,
2 we've got Captain Roach.

3 CAPTAIN ROACH: Yes.

4 MR. BUREAU: And on deck, Tom Byers.

5 CAPTAIN ROACH: Good evening, and
6 thank you for the opportunity to speak. Much of
7 my material, you just heard from Mr. Baker, and I
8 couldn't agree with him more. I'm -- my name is
9 Captain James Roach. I'm president of the Pilots
10 Association for the Bay and River Delaware. Our
11 main office is up at 800 South Columbus
12 Boulevard, Philadelphia.

13 Our association is comprised of bay
14 and river pilots, licensed pilots by the states
15 of Delaware and Pennsylvania, and we work
16 exclusively upon the Delaware River and Bay.

17 I came here tonight to speak in
18 favor of the project. Much of what I said was
19 just echoed, like I said, by Mr. Baker of Murphy
20 Marine. He couldn't be more correct.

21 I'm not going to get into different
22 laws and studies and things like that. I came
23 here, really, to keep it simple. The short of it
24 is, world shipping patterns are changing, as

1 Mr. Baker said. The new Panama Canal locks are
2 going to change everything. The new size will be
3 1200 feet long by 180 feet wide.

4 And he was absolutely correct, the
5 new class of ship that will be passing direct
6 from Asia to the East Coast of the United States
7 will be larger than aircraft carriers. If you
8 can only imagine ships carrying 8, 10, 12,000
9 containers at a time. They cannot discharge all
10 in one port. I mean they could, but that cargo
11 would sit there on the dock for weeks.

12 They need to hit multiple ports on
13 the East Coast of the United States. That's the
14 key. New York, Savannah, Norfolk, Baltimore.
15 They're all in excess of 40 feet.

16 The standard at World War II, when
17 everybody was, was at 40 feet. And we're still
18 there. They've all increased, and we haven't.

19 As the ships get larger, they won't
20 be able to come here, the cargo won't be
21 arriving. As the cargo leaves, the jobs will
22 leave. It's that simple.

23 We recently had the sale of Delaware
24 City refinery from Valero to a new company, PBF.

1 Valero's plan for that refinery was to
2 disassemble it, put it on a ship, and send it
3 overseas. Talk about the ultimate outsourcing.
4 That's just the beginning, if we don't deepen the
5 Delaware River.

6 It couldn't be any more clear.
7 Whether it's a refinery, whether it's cargo,
8 container ships, whether it's bananas, the ships
9 just keep getting bigger. We've accommodated
10 them over the years, from 5, 600 feet, up to 1000
11 feet now.

12 But at 40 feet, it's not just going
13 to cut it on the Delaware. Whether it's Delaware
14 City, the Port of Wilmington, the Port of
15 Claymont, Delaware, or further up the river.
16 That's just the way it is.

17 And I think that's all I have that
18 hasn't been said.

19 MR. BUREAU: Very good, thank you,
20 Captain Roach. Tom Byers. Bill Moyer on deck.

21 MR. BYERS: Good evening, Ms. Herr,
22 Mr. Bureau. My name is Tom Byers, B-y-e-r-s. My
23 address is One Williams Center, in Tulsa,
24 Oklahoma. I'm the senior government affairs

1 representative for Magellan Mid-Stream Partners.

2 Magellan is a refined products
3 pipeline and terminal company that owns and
4 operates, among other assets, a fuel terminal at
5 the Port of Wilmington. We purchased the
6 facility from Delaware Terminal Company in 2005,
7 and since that time, we have spent in excess of
8 \$70 million, an amount that was invested in
9 additional tankage, a truck rack, dock
10 infrastructure, and other improvements.

11 Our expansion also allowed us to
12 install state-of-the-art vapor recovery
13 equipment, which set the standard, at the time,
14 for similar equipment across the country. It
15 also allowed us to install blending
16 infrastructure, which allows us to blend ethanol
17 with gasoline at our terminal.

18 The expansion has allowed us to
19 assist our customers with their options for
20 supplying fuel to the citizens of Delaware and
21 the surrounding region.

22 As the Port of Wilmington continues
23 to grow, and develops the potential for deeper
24 draft ships and barges, new opportunities will

1 arise which enhance the business environment in
2 Wilmington, as well as for the entire state of
3 Delaware. The deepening of the Delaware River
4 channel to 45 feet creates market changes which
5 otherwise may not exist.

6 Magellan is pleased to be a part of
7 the Delaware business community. We look forward
8 to being a good corporate citizen, and to
9 assisting in the efficient distribution of
10 competitive fuels for many years to come.

11 We support the Delaware River
12 deepening project and the many opportunities that
13 it provides to the residents of the State of
14 Delaware.

15 I thank you for the opportunity to
16 comment tonight.

17 MR. BUREAU: Thank you very much.
18 Mr. Moyer, and on deck, Jim Bailey.

19 MR. MOYER: Hi. My name is William
20 Moyer. M-o-y-e-r. I reside at 554 Troon Road,
21 Dover, Delaware 19904.

22 I am a member of the advocacy
23 committee of the Delaware Nature Society. I'm a
24 member of the Delaware Riverkeeper. I'm a member

1 of the scientific and technical advisory
2 committee for the Center for the Inland Bays.
3 I'm a past member of the Association of State
4 Wetlands Managers, a board member. I'm a member
5 of the Delaware Environmental Summit
6 Organization.

7 I'm a past manager of the wetlands
8 and subaqueous lands sections of DNREC, and I've
9 attached a resume as an exhibit to my testimony
10 tonight, as additional information of my
11 qualifications.

12 So, here we are again. Another
13 public hearing on the Corps of Engineers'
14 deepening project. The Corps continues with its
15 marching orders to assure that the deepening of
16 the Delaware River to a 45-foot depth is
17 accomplished, in spite of the overwhelming
18 evidence that it is unacceptable environmentally
19 and economically.

20 We have here this -- we have here --
21 had here on the evenings of December 4th and
22 December 5th, a public hearing for the same --
23 public hearing for the same project. Our hearing
24 officer tonight knows that this project is

1 flawed. He stated 56 flaws in his 156-page
2 December, 2000 report to DNREC.

3 DNREC's own April 14th, 2002 report,
4 which I prepared for the Department, to
5 Mr. Bureau, listed 26 issues that were
6 unresolved.

7 Mr. Bureau recommended that the
8 permit be denied, or that if one were issued, it
9 would contain unachievable conditions so that the
10 permit could never be utilized without the Corps
11 violating its terms and conditions.

12 Our presence at this hearing will
13 have no effect on the outcome of this permit
14 application, and no amount of public testimony in
15 opposition to the deepening project is going to
16 be utilized in making a permit decision.

17 DNREC is in the proverbial lose/lose
18 situation with respect to this application. If
19 it denies a permit, the Corps of Engineers will
20 return to Federal District Court and ask Judge
21 Robinson to again give her permission to proceed
22 with completing the dredging in the Delaware, as
23 she did for the dredging that the Corps recently
24 completed in Delaware waters in reach C.

1 The Corps of Engineers had the
2 audacity to argue before Judge Robinson that it
3 was the State of Delaware that delayed this
4 project. They seriously made this argument, for
5 a project that they have been working on since
6 1983.

7 If DNREC issues a permit with
8 conditions which cannot be met, the Corps will
9 simply proceed with the dredging, arguing yet
10 again that it really doesn't need a permit from
11 Delaware, and that they only applied in, quote,
12 "a spirit of comity."

13 To quote from Colonel Tickner's
14 December 4, 2004 letter to then Senator Biden,
15 Senator Carper, and Representative Castle -- and
16 this is my Exhibit Number 1. "I really think
17 they meant to say they applied in the spirit of
18 comedy."

19 This project has been studied by the
20 Corps of Engineers, as I said, since 1983. In
21 1987, the Corps of Engineers submitted a report
22 to Congress that stated that the deepening
23 project was economically justified and
24 environmentally sound.

1 Based on these now proven erroneous
2 conclusions, Congress authorized the project in
3 1992. Thus began the unyielding pursuit of the
4 project by the Corps of Engineers to deepen the
5 channel to 45 feet.

6 The Delaware River had a controlling
7 depth of 18 feet in World War II, when the Corps
8 dredged to the 40 foot depth channel. To get to
9 45 feet, portions of the river will have to be
10 dynamited, since a rock bottom will be reached.
11 Is there any way that this can be successful?

12 As a previous manager of the
13 wetlands and subaqueous lands section of DNREC,
14 from 1974 to 2004, I was intimately involved with
15 this project, and closely coordinated its
16 progress, seemingly on a daily basis, with the
17 Philadelphia District of the Corps of Engineers.

18 I have read and reread every
19 document, letter, report, and environmental
20 assessment of the impacts of the dredging.

21 I've sent a detailed letter to the
22 Corps -- I sent a detailed letter to the Corps in
23 1990, outlining DNREC's specific concerns with
24 this project.

1 Over 20 years later, Secretary
2 Collin O'Mara sent a May 22, 2010 letter to the
3 Corps containing the Department's request for
4 needed information to complete the permit
5 application.

6 The Corps responded with a letter to
7 Secretary O'Mara dated May 21, 2010. A June 15,
8 2010 letter to the Corps from Secretary O'Mara
9 listed the Corps' deficiencies and the response.
10 This has been typical of the back and forth
11 communication that has been occurring for
12 decades, with no resolution.

13 Some of the information that I sent
14 in my 1990 letter to the Corps has never been
15 submitted to DNREC. Secretary Hughes sent a
16 similar request for additional information in a
17 letter dated December 30th, 2008.

18 One of the first documents that I
19 read as a new DNREC employee in 1974 was a fancy
20 Corps publication entitled "Nature: To Be
21 Commanded."

22 This has been the mindset of the
23 Corps of Engineers since its creation in 1776.
24 For decade after decade, the Corps has been

1 of Engineers requires a permit for anyone wanting
2 to conduct an activity in a waterway and wetland.
3 An application to the Corps of Engineers for a
4 permit is closely scrutinized by the Corps, the
5 Environmental Protection Agency, The U.S. Fish
6 and Wildlife Service, and the National Marine
7 Fisheries Service. If these Federal agencies do
8 not sign off on a project applied for, a permit
9 will not be issued.

10 If the Corps applied to its own
11 regulatory branch for a permit to deepen the
12 Delaware River, it would never be approved,
13 because all of the other sister Federal agencies
14 have expressed serious reservations with the
15 deepening, and the application would be deemed
16 incomplete.

17 This deepening project is another in
18 a series of Corps of Engineer flawed assaults on
19 the Delaware estuary.

20 In the early 1950s, the Corps
21 proposed to dam the last remaining major river
22 system in the county by constructing the Tocks
23 Island dam project which would have dammed the
24 Delaware River and created a 40-mile long lake.

1 It's my Exhibit 2.

2 This was to be the largest dam east
3 of the Mississippi River, and was touted as the
4 ultimate solution to the periodic flooding of the
5 Delaware River. Another command over nature.

6 The problem which the Corps did not
7 consider to be a hurdle was that the people who
8 lived in the area would be covered with water.

9 Thus began a decades long process of
10 the Corps using the force of condemnation and
11 eminent domain to spend millions of dollars
12 acquiring 72,000 acres of land, and subsequently
13 destroying communities, towns, homes, farms, and
14 individual lives.

15 To quote from "A Walk in the Woods"
16 by Bill Bryson, "And here was the nimble Army
17 Corps of Engineers, planning to hold back
18 250,000 -- 250 billion gallons of water, when the
19 notoriously unstable glacial till. Besides that,
20 there are all kinds of environmental worries that
21 salinity levels would be -- below the dam would
22 rise catastrophically. For example, devastating
23 the ecology of lower down, not the least of which
24 was valuable oyster beds of the Delaware Bay."

1 It's on page 199 of that book.

2 Finally, the project was scrapped in
3 2002. It took nearly half a century for the
4 Corps to realize the futility of their efforts.
5 Does this sound too familiar? There are similar
6 stories about failed Corps projects around the
7 country.

8 Let me give three substantial
9 examples of the myriad flaws with the deepening
10 project. Section 2.3.2.3 of the 1997
11 supplemental environmental impact statement
12 states that the number of bends of the Delaware
13 River requiring widening has been reduced from 16
14 to 12. Number of bends has been reduced from 16
15 to 12.

16 Section 3.1.1.1 of this same
17 document states that the 16 bends that would be
18 widened, quote, "To accommodate the operating and
19 handling characteristic of the design vessels
20 operating at the 45-foot depth."

21 It sounds like B.P. might have
22 assisted in the preparation of this impact
23 statement.

24 Page 16 of the April, 2009

1 environmental assessment states that the Miah
2 Maul - Cross Ledge bend is no longer going to be
3 widened, in addition to the other ones that have
4 been now eliminated. So instead of widening 16
5 bends to allow for the safe passage of vessels,
6 the Corps now proposes only to widen 11.

7 Why is this? It is simply to reduce
8 the amount of material to be dredged, thereby
9 reducing costs, so that hopefully, the economic
10 justification for the project will be reviewed
11 favorably.

12 These type of decision shortcuts
13 have been used throughout the country by the
14 Corps, with devastating results. The Corps is
15 now restoring the bends of the Kissimmee River in
16 Florida that it straightened, resulting in the
17 severe degradation of Lake Okeechobee.

18 MR. BUREAU: Are we about there,
19 Mr. Moyer?

20 MR. MOYER: Another three minutes.
21 I'll try to speed up.

22 MR. BUREAU: Thank you.

23 MR. MOYER: So the Corps is
24 sacrificing the safety of larger oil tankers

1 navigating up the Delaware River so that its
2 command of nature can be fulfilled. This, in
3 spite of the fact that at the 40-foot channel
4 depth, there have been seven major and five minor
5 oil spills in the Delaware River between 1973 and
6 1979.

7 Between April of 1974 and July 29,
8 2008, there have been 27 significant oil spill
9 events in the Delaware River and Bay, as reported
10 by the Delaware River and Bay Oil Spill Advisory
11 Committee, my Exhibit 13.

12 Down to my last page. The Corps is
13 also guilty of continually reducing the amount of
14 material that it needs -- that needs to be
15 dredged by stating they did not take into account
16 sea level rise, and were now using more refined
17 equipment to determine the actual depth of the
18 river.

19 This once again demonstrates the
20 incompetency of the Corps in project design, and
21 begs the question of what is fact and what is
22 fiction with respect to the dredging of the
23 river.

24 Second, in my November 11th, 2009

1 letter to Assistant Secretary of the Army Jo
2 Ellen Darcy, I implored the Secretary to put an
3 end to this needless project.

4 Her April 9, 2010 response was that
5 the Department of the Army is simply carrying out
6 the intent of Congress.

7 I have since sent a letter, May 10,
8 2010 letter to Ms. Darcy, pointing out that the
9 FY 2010 Federal budget, in HR 3183, appropriated
10 \$4,844,000 for fiscal year 2010 for the deepening
11 project. Page 50 of that law and my Exhibit 4.

12 However, conference report 111-278,
13 published on September 30th, 2009, to accompany
14 HR 3183, states on page 63 that, quote, "None of
15 the funds provided for this project are to be
16 used in the State of Delaware during fiscal year
17 2010 for any construction activities."

18 "During fiscal year 2010, the Corps
19 is urged to work" -- continuing with the quote,
20 "During fiscal year 2010, the Corps is urged to
21 work with the State of Delaware on any permits
22 necessary for project construction," Exhibit 5.

23 The Corps of Engineers appears to be
24 selective in what intent of Congress it chooses

1 to follow. Clearly it was the intent of Congress
2 that no deepening occur in Delaware until the
3 requisite permits were obtained by the Corps, and
4 yet dredging began, purportedly using funds
5 provided by the State of Pennsylvania and the
6 Philadelphia Regional Port Authority.

7 In my most recent letter to
8 Assistant Secretary of the Army Darcy, I
9 requested her to clarify the source of funding
10 for dredging in Delaware waters without a permit.

11 Finally, in spite of three reports
12 from the U.S. General Accounting Office soundly
13 criticizing the Corps' handling of the deepening
14 project, and an in-depth March, 2000 report by
15 the Taxpayers for Common Sense and the National
16 Wildlife Federation, deepening project is the
17 second most wasteful water project in the
18 country.

19 We will probably hear testimony at
20 this hearing from the Delaware Maritime
21 Association and the Philadelphia Regional Port
22 Authority and dock union workers on how this
23 project will improve the economy and create jobs,
24 and so, the Corps will continue to forge ahead

1 and buckle under this pressure.

2 How much more proof does the Corps
3 need to be convinced that a clean environment is
4 better for the economy of the area than oil
5 tankers spilling crude oil into the ecosystem?
6 Just examine what is happening in the Gulf of
7 Mexico.

8 What are my conclusions? They are
9 simply this: When it comes to supposedly
10 improving the economy, creating jobs, or
11 protecting the environment, it is protection of
12 our environment which always comes in third. At
13 least for the Corps of Engineers projects.

14 And until Congress does something to
15 reign in the U.S. Army Corps of Engineers'
16 insatiable desire to, quote, "command nature," we
17 might as well sit back and let the Corps continue
18 to march all over us.

19 I'm requesting that all documents
20 referred to in my testimony be made part of this
21 hearing record, and I have two additional
22 exhibits that are part of my statements.

23 Thank you for allowing me to
24 testify.

1 MR. BUREAU: Thank you, Mr. Moyer.

2 And you're going to submit that with the
3 exhibits?

4 MR. MOYER: Yes.

5 MR. BUREAU: Okay. Thanks. We were
6 at Mr. Bailey. Jim Bailey. On deck, Robert
7 Martin.

8 MR. MARTIN: Excuse me. I'm going
9 to need a microphone, and somebody to help me
10 navigate the -- your laptop.

11 MR. BUREAU: Are you Mr. Bailey?
12 Mr. Martin? Okay.

13 MR. MARTIN: Martin.

14 MR. BUREAU: Very good. We'll do
15 that for you. Go ahead, Mr. Bailey.

16 MR. BAILEY: Good evening. My name
17 is Jim Bailey, B-a-i-l-e-y, just like the cartoon
18 character. I live at 401 North Bay Shore Drive,
19 Milton, Delaware, which is Broadkill Beach. I
20 represent the Broadkill Beach Preservation
21 Association.

22 At Broadkill Beach, our front yard
23 is the Delaware Bay and our backyard is the Prime
24 Hook National Wildlife Refuge. Living in this

1 community, one cannot but be consistently
2 conscious of the ecology and the surrounding
3 environment and its health. Therefore, we have
4 been closely following the developments of this
5 project.

6 There have been many accusations
7 from several quarters that the core sampling data
8 that was furnished by the Corps of Engineers was
9 suspect, and that there may be contaminants in
10 the sediments. There was never science to prove
11 it.

12 The sampling and testing of the
13 spoils yielded by the recent dredging of the
14 reach from the C and D Canal to the Delaware
15 River Bridge has confirmed and conformed to the
16 original core sample data. Therefore, so, the
17 accuracy of the original data should be accepted
18 as such.

19 When you look out across the waters
20 of the Delaware Bay from Broadkill, you almost
21 always see several tankers sitting out there.
22 They are either engaged in lightering, or they're
23 waiting to be lightered, so that their draft can
24 be reduced and they can negotiate the channel to

1 the ports.

2 Historically, over 100 million
3 barrels of oil are lightered in the Delaware Bay
4 per annum. A major spill would not only be an
5 environmental disaster, it would be an economic
6 disaster, as well. We're dealing with people.
7 People make mistakes. All you got to do is look
8 at the Gulf. Okay?

9 A major spill would destroy the
10 beaches of all the communities along the Delaware
11 Bay, from Kitt's Hummock to Lewes. The cost to
12 property values is astronomical. Broadkill
13 alone, 40 or \$50 million, just in the blink of an
14 eye.

15 It would also negatively impact all
16 the beaches along the Atlantic Coast, going down
17 from Rehoboth on down to Ocean City. Figure what
18 the cost of a loss of a tourist season would be.
19 I think \$300 million would be chicken feed
20 compared to that loss.

21 We believe that it is not a matter
22 of if, but it's a matter of when the spills will
23 occur. Like we said, we're dealing with human
24 beings. They make mistakes.

1 Three years ago, we had people in
2 white hazmat suits going up and down Broadkill
3 Beach picking up tar balls. You know, spills do
4 happen. But that one never made the media. Kind
5 of curious about that.

6 Incidentally, while we agree that
7 the lightering companies, they have a very good
8 record, you know, on their spills, they're
9 reporting and so forth. But then, so did B.P.

10 In light of the recent events of the
11 Gulf of Mexico, it stands to reason that a
12 project that is going to eliminate or greatly
13 reduce the risk of such a disaster should be
14 pursued.

15 The Broadkill Beach Preservation
16 Association solidly endorses the channel
17 deepening project, and believes that it should be
18 continued to completion with all due dispatch.

19 Thank you.

20 MR. BUREAU: Thank you, Mr. Bailey.
21 Mr. Martin, we're bringing you a microphone here,
22 and on deck, we're going to have Tad --
23 J-a-n-e-h-n?

24 MR. JANEKA: Janeka.

1 MR. MARTIN: Thank you. If you can
2 bring up my slides. Are we ready to go?

3 MR. BUREAU: We are, Mr. Martin. At
4 your convenience, please.

5 MR. MARTIN: My name is Robert
6 Martin. I'm a retired Navy officer and a
7 resident of Delaware, Georgetown. My comments,
8 really, are tip of the iceberg. My input is
9 covered in more detail in my submitted material,
10 which I have here, plenty of it.

11 Really, it is tempting to address
12 some of the verbal comments made this evening.
13 So, I will not even attempt to do that.

14 The Corps really does not
15 sufficiently address the problems of the
16 deepening project on land, lands, wetlands,
17 subaqueous lands of Delaware.

18 I believe that the Corps' letter to
19 DNREC dated May 21, 2010 -- and the availability
20 of it is outside, I guess -- indicates that they
21 will continue to use outdated studies with minor
22 changes to validate the project. They really put
23 new dates on outdated material and studies.

24 I'll go directly to my Power Point,

1 and make it as brief as I can. I've already
2 reduced it from an original 28 slides -- oh, I'm
3 not going to be able to read this.

4 MS. HERR: Can we turn up the lights
5 a bit, you guys?

6 MR. MARTIN: Well, let's see if I
7 can do it. I want you to see what I have. Next
8 slide, please. This is the replenishment at
9 Broadkill Beach.

10 MR. BUREAU: Can we turn the lights
11 up a little bit?

12 MR. MARTIN: This was done in the
13 year 2005. 152,000 cubic yards of sand was
14 placed on this beach, at a cost of about 1.2
15 million dollars.

16 Next one. It was lost within six
17 months. These groins were covered, if you would
18 have noticed during the first slide. This is
19 what these groins look like today. To indicate
20 to you how fast erosion does occur along the
21 shores.

22 The next slide, please. These
23 sabeliaria vulgaris reefs occur right there next
24 to the Broadkill shoreline, as they do all the

1 way up to Prime Hook. They also occur outward to
2 the bay.

3 Next one. You will see they were
4 covered during that 2005 replenishment. This is
5 what they looked like after the replenishment.

6 Next one. We speak of the
7 replenishment at Broadkill Beach. It's rather
8 interesting to note that these are really beach
9 houses. As you note, they are on the beach, and
10 the tideline is really aft, or rather, the
11 tideline goes up to the dune line, which is
12 landward of these houses on the beach. And not
13 incidentally, there are several like this along
14 the road.

15 This is the design for replenishment
16 project. You will note that that beach was about
17 50 feet wide. This design, and I don't expect
18 you to read it all, is going to be -- is the
19 result of 1.5 million cubic yards of sand. That
20 is ten times the amount you saw in the previous
21 slides.

22 This dune that they will erect --
23 I'd like you to note one thing about those houses
24 that you saw, first. They were on pilings 8 feet

1 high, and the houses were probably 8 to 10 feet
2 more. The pilings were 8 feet high. This dune
3 is proposed to be 16 feet high, 25 feet across
4 the top, 100 feet across the bottom, and 120 feet
5 seaward.

6 Now, this is quite a change from a
7 50-foot beach, which already impacts a
8 deteriorating slide.

9 Let's move up to Kelly Island. This
10 is the photograph, this photograph represents the
11 Army Corps' -- it represents what they base their
12 original design on. The original design, as you
13 see here, is 5000 feet long. This one had to be
14 eliminated, because as you will note in a
15 subsequent Kelly Island slide, the tip to your
16 left has disappeared.

17 This particular design is 300 feet
18 wide. The groins fronting it go as much as an
19 additional 300 feet to 350 feet, placing the
20 whole thing 650 feet, approximately, bayward of
21 the Kelly Island itself.

22 This is Kelly Island as it is today.
23 You can see it's considerably different from the
24 original slide that was used for the design of

1 the CDF, the confined disposal facility.

2 You will note the position of the
3 public dock, the mouth of the Mahon River right
4 next door. Next slide.

5 This is a Google slide of the whole
6 area. Now, I don't know whether all of you can
7 see that white line. That white line is right
8 adjacent to Kelly Island, and it is five miles
9 long. The area you see is marshland, and you
10 will note that Kelly Island really is not an
11 island, it's an extension of the marsh.

12 This type area exists from the --
13 from Lewes all the way up to the suburbs of
14 Wilmington.

15 Now, we know that there's going to
16 be, or the Army Corps, in their own publications,
17 which I include in my submitted material, which
18 includes a couple of CDs, as well, you will
19 notice the proximity of the oyster beds to Kelly
20 Island. They range anywhere from a half mile
21 out.

22 Sand is projected by the Corps to
23 erode at a minimum rate of 35,000 cubic yards of
24 sand per year. During storms, it will be much

1 greater. Sand from the Kelly -- the resulting
2 sand or silt from Kelly Island can go as far as
3 seven miles, these are Corps records, away from
4 Kelly Island itself.

5 I fail to rationalize, I wish I
6 could -- there are a couple of comments I'm going
7 to miss, and I don't need this slide. If you
8 would recall the slide and bring up the lights
9 for me to finish my closing comment, I would
10 appreciate it very much. Thank you.

11 My closing comments, in speaking of
12 the environmental impact statements for the
13 deepening of the Delaware River shipping channel,
14 I'd like to see a copy of the Corps'
15 environmental impact statement prepared for the
16 construction of the faulted levees during
17 Hurricane Katrina.

18 Also, I would like to see the
19 environmental impact statement that was prepared
20 for the construction of BP's oil rig, which has
21 been spouting millions of gallons of oil in Gulf
22 waters. This has to do with credibility,
23 competency, and credentials.

24 And final C, and that would be

1 common sense. Secretary O'Mara and Governor
2 Markell, please be careful of what you permit.
3 Delaware may get it.

4 You judge whether Delaware should be
5 a beneficiary of the Corps' so-called "beneficial
6 use" of over 4 million cubic yards of deepening
7 disposal material.

8 Thank you for the opportunity to
9 present this documented opinion, and here is the
10 document, and two folders, plus two CDs, which
11 are pasted at the end of this particular folder.
12 These cover in detail these rather limited
13 comments.

14 Thank you. You can put it in this
15 envelope. I'm not going to use any bit of it.

16 MR. BUREAU: Thank you very much,
17 Mr. Martin.

18 MR. MARTIN: Thank you very much.

19 MR. BUREAU: Tad? And on deck is
20 going to be Dennis Rochford, or Rockford.

21 MR. JANEKA: Good evening. My name
22 is Ted Janeka, J-a-n-e-k-a. I'm a native
23 Delawarean. I reside in the state of Delaware
24 and I live in Brandywine Hundred, not far from

1 the Delaware River.

2 I've followed this process, and I am
3 convinced that with the technology that exists
4 today, that this project could be achieved with
5 little disturbance to our watermen's concerns.

6 The issues that concern me are
7 directly economical. We are all aware of the
8 economic conditions of our country, but the
9 regional economic conditions should be paramount
10 to all of our interest.

11 We are aware of the projects being
12 planned to expand and deepen the Suez and Panama
13 Canals to allow larger vessels to pass through
14 these shortcuts to bring products to the West.

15 My concern is if we do not prepare
16 our river to accommodate these vessels, they will
17 go to other ports along the Eastern Seaboard:
18 New York, Baltimore, Virginia, or even as far
19 south as Savannah, Georgia. Therefore depriving
20 not only unemployed Delawareans an opportunity
21 for gainful employment and improve the nearly
22 depleted State Unemployment Fund, but more
23 importantly, deny the State of Delaware much
24 needed tax revenue.

1 As the business representative for
2 the International Union of Operating Engineers
3 local 542, and on behalf of nearly 1000 members
4 out of work, I implore the Secretary to support
5 this most vital revenue-producing project. Thank
6 you for the opportunity to speak.

7 MR. BUREAU: Thank you, Mr. Janeka.
8 Dennis Rockford.

9 MR. ROCKFORD: Yes. My name is
10 Dennis Rockford. I'm the president of the
11 Maritime Exchange for the Delaware River and Bay,
12 and here in support of the deepening project for
13 the Delaware River main channel.

14 Let me begin by stating I had
15 submitted yesterday my testimony, as well as 15
16 or 20 letters, studies, and I'd like to submit
17 two more that came in today, one from the
18 Delawareans for Environmental and Economic
19 Development, and one from the Committee of 100.

20 In addition to that, we have any
21 number of port operators, the International
22 Longshoremens' Association, the Delaware -- the
23 Delaware AFL-CIO, the building trades, the
24 operating engineers, and the State Chamber of

1 Commerce, the New Castle County Chamber of
2 Commerce, and today, a letter from Mayor Baker of
3 Wilmington.

4 I'll be very brief. I want to
5 associate myself with the remarks made by Captain
6 Roach, with the representatives of port
7 operators, and certainly, labor, here today in
8 support of this.

9 This is a critical project. We have
10 been working on this project for some 20 years.
11 If we do not complete this project in a timely
12 manner, we will be the only major East Coast
13 port, from New York to Savannah, restricted to 40
14 feet of water, in a marketplace where ships,
15 container ships, bulk ships, break bulk ships,
16 are increasing in size.

17 I know that Captain Roach referred
18 to the fact that there is a significant amount of
19 Far East trade diverting from West Coast ports,
20 coming through the Suez Canal. And in 2014, will
21 start to divert through the Panama Canal, once
22 it's expanded.

23 So, there is, I believe, an
24 unquestioned, unquestioned logic and rationale to

1 move this project forward, if we want to keep the
2 ports in the Delaware River competitive not only
3 on the East Coast, but throughout the world.

4 And I will also submit, because
5 there's been some discussion here with respect to
6 the General Accounting Office, a study, in terms
7 of studies and analysis and reanalysis. And what
8 I will attempt to do, in the King's English, is
9 to point out the fact that what has gone on with
10 GAO since 2002 with an audit, a reanalysis in
11 2004, on the GAO website, stating specifically
12 that the Corps had responded to all the questions
13 effectively that were put to them through the
14 reanalysis, where the benefit cost ratio came up
15 1.15 to 1.

16 I don't know what the final results
17 are of the current reanalysis, but one would
18 think, with a reduction in the amount of material
19 that's going to be dredged by 38 percent, and the
20 fact that they're not going to build two or three
21 additional dredge disposal sites to accommodate
22 this project, that my sense is that the benefit
23 cost ratio for this project will be north of
24 1.15. And I will submit that for the record.

1 Thank you very much.

2 MR. BUREAU: Thank you,
3 Mr. Rockford.

4 And I will confirm that those
5 exhibits you submitted were received, and they
6 are now part of the record.

7 MR. ROCKFORD: Thank you.

8 MR. BUREAU: You're welcome to
9 confirm that. They will be in Exhibit 22 at the
10 back of the room.

11 MR. ROCKFORD: Great. Thank you.

12 MR. BUREAU: You're welcome. Gene
13 Bailey. On deck, Sam Latham.

14 UNIDENTIFIED SPEAKER: Sam's gone.
15 Sam Latham left.

16 MR. BUREAU: Sam left?

17 UNIDENTIFIED SPEAKER: Yes.

18 MR. BUREAU: So on deck we'll have
19 Alfonso Plant, Sr.

20 MR. BAILEY: Hi. My name is Gene
21 Bailey. I'm the executive director of the
22 Diamond State Port Corporation. We're
23 responsible for the sound fiscal management of
24 marine operations, commercial activity, and

1 property assets of the Port of Wilmington.

2 Consistent with these fiduciary
3 responsibilities, I strongly support the
4 deepening project and the continuation of the
5 ongoing deepening of the channel from 40 to 45
6 feet.

7 This project is vital to keep the
8 Port of Wilmington competitive today and
9 tomorrow, and to protect good-paying
10 maritime-related jobs within the area.

11 Our maritime community, and I say
12 our because we're collectively a community, of
13 shippers, truckers, longshoremen, management,
14 various, various other companies that work at the
15 Port. We're a major employer. We generate tax
16 revenue, and we're an economic engine for the
17 State of Delaware. A June, 2007 report, economic
18 impact report, said we are responsible for
19 sustaining 4600 direct and indirect jobs.

20 We create about 14,700 related jobs
21 throughout the region. We have local personal
22 income of \$300 million, and we produce
23 approximately \$28 million in State and local
24 taxes.

1 Our maritime community concurs and
2 supports the State's obligation and absolute
3 requirement to ensure we enjoy a safe and clean
4 environment. And we should be placed in a
5 position to sustain and grow the Port of
6 Wilmington's business, consistent with a sound
7 environmental plan.

8 If, after careful review of the
9 required information for DNREC, there are no
10 objections, we are requesting speedy issue of a
11 permit by DNREC, and avoid any more disruption of
12 deepening the channel.

13 And before I leave, I'm going to
14 leave you with this: Providing a deeper draft
15 for cargo vessels is similar to adding lanes to
16 existing highways, improving bridges, to meet and
17 promote growth within our state.

18 Without those improvements,
19 businesses will find it more difficult to grow.
20 Our citizens will soon find it more difficult to
21 get to the beaches, get to work on time, on a
22 timely manner, every day.

23 In summary, economic development
24 would be hampered, and the continued growth of

1 our region would be seriously threatened.

2 Thank you.

3 MR. BUREAU: Thank you, Mr. Bailey.

4 Alfonso Plant. And on deck, William Ashe, Jr.

5 MR. PLANT: My name is Alfonso N.
6 Plant, Sr., and I'm one of those workers that you
7 speak of down at the Port of Wilmington, ILA
8 local 1694, and on behalf of my representative,
9 representative Hazel D. Plant, who is in total
10 support of the deepening of the Delaware River
11 project by the Army Corps of Engineers.

12 On or about January of this year,
13 myself, Comoco Harris, Julius Seyfus, and I
14 believe it was the gentleman before Gene Bailey
15 came up here and spoke, we spoke in support to
16 educate the public on the deepening of this
17 canal, of the river itself. And the economic
18 impact that it would have, and the benefits of
19 the deepening of that river.

20 We are in total support of it.

21 Representative Plant asked me to announce those
22 sentiments. And I think, as other people do, we
23 also enjoy these so-called water sports that
24 everybody's complaining about, that's going to be

1 taken away from them. Because we make enough
2 money for us to try to enjoy ourselves and live
3 the way some of these people live on some of
4 these beach front homes. We would like to live
5 that way, too.

6 And having these superships that's
7 going to come in within the next four years, or
8 less, would help us, you know, to live the way we
9 want to live, also.

10 Thank you.

11 MR. BUREAU: Thank you, Alfonso.

12 William Ashe, Jr. And on deck, Harry Gravell.

13 MR. ASHE: Good afternoon, ladies
14 and gentlemen. I would like this opportunity to
15 speak. My name is William Ashe, Jr. I'm the
16 president of 1694, and I would like to say a
17 couple of things that I've noticed here tonight,
18 that labor and management are working together to
19 try to get this dredging done.

20 I'm definitely for the dredging. I
21 definitely, we need it, and here is some of the
22 facts that Adam just spoke about.

23 At the Port of Wilmington, the
24 revenue and the local economy last year was \$500

1 million. 6000 direct and indirect jobs. 44
2 percent of those residents live in New Castle
3 County. Another 36 percent live in the City of
4 Wilmington.

5 Total business revenue is over \$212
6 million. To the State of Delaware, \$22 million
7 in local taxes.

8 And with my membership of over 300
9 members, I would like to say this: Without the
10 deepening project, I don't know what to tell my
11 members, in the next two or three years. Because
12 Dole right now and Chiquita, especially Chiquita,
13 is in the process of having two ships come to the
14 port, because the one ship is too small to hold
15 the containers on it that they need.

16 So actually, they got a second ship.
17 And how long can that stevedore stay in the
18 business of running two vessels, when he can get
19 a larger vessel to come into the port, at less
20 the cost than it would cost for two vessels to
21 run up and down the Delaware River?

22 Also we spoke about the Suez Canal.
23 We have something on the table right now that's
24 in process, if we can get the deepening of the

1 river done, that would allow a vessel to come
2 from the Suez Canal, come to Sidney, Canada,
3 offload 3000 containers, and then bring the 3000
4 containers in the Delaware River. And I'm hoping
5 that Wilmington -- we have an agreement right now
6 on the table -- that Wilmington would get some of
7 that cargo.

8 I'm looking at the economic issues
9 of the State of Delaware. We've lost GM, we've
10 lost Chrysler, we've lost the Valero plant. We
11 also lost the A vine. Right now, where to do
12 people in Delaware go to get jobs?

13 A lot of them come to the Port of
14 Wilmington. And when we need extra people, we
15 hire them. There's three other locals in the
16 Port, and each one of them have at least 150 to
17 200 members.

18 Like Gene said, we employ, on a
19 daily basis, anywhere from 3 to 400 people.
20 Where do we tell those people to go if we can't
21 get this deepening project done?

22 And I submitted a letter yesterday,
23 it should have been Fed Exed down here, and also,
24 I have something from the Corps of Engineers,

1 talking about the geological study with the water
2 from the Delaware, I'd like to submit, that's
3 going over to Jersey. Without the water from the
4 Delaware going over to the quarries in Jersey,
5 the quarries in Jersey will soon dry up.

6 And I'd like to thank you for giving
7 me an opportunity to speak.

8 MR. BUREAU: Thank you for your
9 comments. Harry Gravel is up, and Ronald
10 Farrell is on deck.

11 MR. GRAVELL: I'm so used to be
12 called Gravel. It's G-r-a-v-e-l-l.

13 MR. BUREAU: Gravel?

14 MR. GRAVELL: Yes.

15 MR. BUREAU: I'm sorry.

16 MR. GRAVELL: That's all right. It
17 happens so often, I respond to Gravel. I don't
18 even correct half the time. I'm president of the
19 Delaware Boating Trades Council. I'm Harry
20 Gravel.

21 I'm here tonight, as you may
22 suspect, I stand in support of the deepening of
23 the waterway. I had a professor when I was at
24 Purdue University who once said, if you fail to

1 plan, you might as well plan to fail. And that's
2 what this is all about. This deepening is about
3 planning for the future.

4 The ships that are coming in are
5 going to have to have that 45-foot draft. So, if
6 they don't, the Port of Wilmington will dry up,
7 and most people here will get their wish. So, I
8 rise in support of deepening the waterway.

9 But let me get something straight,
10 too. Of course, Delaware Boating Trades members,
11 the 5000 members, are sportsmen, and they do not
12 support anything that would permanently and
13 irreversibly damage our environment.

14 We understand that with careful
15 planning and with great attention to detail, a
16 project like this can be done with minimal
17 damage. But we understand that there will be
18 damage. That's understood.

19 Yet, we at the trades know that
20 projects of this sort have been done in other
21 areas of the country with a minimum of
22 invasiveness.

23 This project would also insulate
24 Delaware from another economic collapse. There

1 are businesses that were -- what were the
2 businesses that were hit the hardest? They were
3 the banks and the auto industry. What are two of
4 the cornerstones of Delaware's economy? The
5 banks and the auto industry.

6 So when Chrysler left, GM left, the
7 banks are still suffering right now. If you have
8 any friends who are in that industry, you
9 understand that they're suffering. This would
10 actually insulate us. It would increase the
11 number of jobs, so that that impact would not be
12 as significant as it is now.

13 Today I learned that because of an
14 extension, the refusal to extend unemployment
15 benefits, there are 900, right now, 900 people in
16 my association that cannot collect unemployment.

17 So, if we had a project like this
18 deepening, and there were places to go to work,
19 we would not have 900 people who are literally
20 starving.

21 So, the Commodore Barry Bridge.
22 Let's talk about the benefit to Delaware. The
23 Commodore Barry Bridge is the lowest bridge on --
24 in the portway on the Delaware River. So, where

1 would they have to go? The ships that come up
2 would most likely have to come to Wilmington.

3 Wilmington would be the key. There
4 would be thousands of jobs. Gene Bailey had
5 talked about 4000 jobs, I think it was. It would
6 quadruple. There would be 16,000 jobs. Okay?
7 16,000 jobs.

8 I think that this can be done
9 responsibly. Increasing -- this would increase
10 our tax base, grow our economy, and it can be
11 done responsibly, with a minimum of environmental
12 impact.

13 Thank you very much.

14 MR. BUREAU: Thank you, sir. Ronald
15 Farrell, and on deck, Ron Kernehan.

16 MR. FARRELL: My name is Ron
17 Farrell. I'm a member of ILA local 1694, in
18 Wilmington, Delaware. Many of the things that I
19 am going to say, the president, my president,
20 Bill Ashe, has already said.

21 I appreciate this opportunity to
22 offer the economic impact of the Delaware River
23 main channel deepening project on behalf of the
24 ILA members who work at the Port of Wilmington

1 and live in the state of Delaware.

2 Joining ILA local 1694 in this
3 written statement are ILA local 1883 and ILA
4 1884.

5 The Delaware River main channel
6 deepening project will significantly benefit the
7 State of Delaware, both economically and
8 environmentally, at no cost to the State.
9 Economically, the State is not investing any
10 funds to the project, so that any gains from the
11 project are all benefits.

12 Due to the long-term international
13 trends, the potential to market and to expand the
14 Port of Wilmington is unmatched. The resulting
15 job creation for the State of Delaware residents
16 and State tax revenues is a one-time opportunity.

17 Port jobs and related jobs, such as
18 truck drivers, do not require advanced education,
19 and are well-paying, family-sustaining positions.

20 Environmentally, the project will
21 provide horseshoe crab and shorebird habitat,
22 stabilize the erosion at Kelly Island, thereby
23 protecting the downriver oyster beds, and create
24 and protect wetlands.

1 Specifically, the State of Delaware
2 will receive sand for beach replenishment,
3 wetland protection, and creation -- for the
4 creation of different habitats.

5 The project has been thoroughly
6 studied, reviewed, analyzed, and found to be
7 environmentally acceptable by the respective
8 Federal regulatory agencies, and has received
9 associated permits from Pennsylvania and New
10 Jersey regulatory agencies.

11 Economic benefits. The ILA supports
12 the Delaware River main channel deepening
13 project, because completion of the project is
14 essential to maintain the current level of
15 employment at ILA facilities along the Delaware
16 River.

17 Furthermore, the economic potential
18 of port development in Delaware is undeniable.
19 The Port of Wilmington is an important economic
20 engine to the State of Delaware.

21 A 2006 report from John Martin &
22 Associates determined that the economic impact of
23 the Port included \$500 million a year injected
24 into the local economy, 6000 direct and indirect

1 jobs, with 44 percent of those employed residing
2 in New Castle County, and 36 percent residing in
3 Wilmington. In addition, total business revenues
4 of over \$212 million, and over \$22 million in
5 State and local taxes annually.

6 A Delaware River 45-foot main --
7 45-foot channel is vital to maintaining the
8 current economic impact on the Port of
9 Wilmington. Major shipping lines have indicated
10 that the existing 40-foot draft is not sufficient
11 to guarantee long-term commitments of traffic for
12 containerized cargo.

13 Furthermore, there is a significant
14 potential to increase the traffic to the Port of
15 Wilmington. The Port of Wilmington's 20-year
16 strategic master plan calls for the development
17 of new ship berths on the Delaware River, to
18 supplement existing berths on the Christiana
19 River.

20 The port also made this commitment
21 to the Federal environmental agencies as a part
22 of the creation of the Wilmington south disposal
23 area as a pre-condition for the approval of that
24 development.

1 Currently, the Port of Wilmington is
2 facing the need for additional disposal capacity,
3 at a considerably higher cost than they have paid
4 historically. Movement onto the Delaware River
5 will reduce that cost, since berths along the
6 Delaware will not require maintenance, because
7 the water is naturally deep in this area.

8 Despite the economic downturn, there
9 is still a significant long-term demand for
10 container capacity at East Coast ports. There is
11 heavy congestion in the Panama Canal, as well as
12 the port of New York and New Jersey, and in Los
13 Angeles, Long Beach.

14 The Panama Canal expansion is
15 scheduled to be completed in 2014. Shipping
16 lines will begin to bring increased traffic for
17 the entire United States through the Canal and
18 the East Coast. The majority of the current
19 container ships, and those of the next
20 generation, need a deeper draft than Delaware
21 River currently provides.

22 Delaware River ports are well
23 positioned to capture additional cargo. This
24 region has the densest population base in the

1 country. Based on figures from the 2000 U.S.
2 census, there are 27,351,566 people living within
3 100 miles of Philadelphia, and 94,717,650 people
4 within 500 miles.

5 Many experts believe that because
6 Port development and the expansion of the Panama
7 Canal are projects that should be considered as
8 long-term investments, the potential for growth
9 is still robust, because consumer spending will
10 rebound in the long term.

11 Projects such as these are still
12 good investments for governments and for private
13 developers.

14 The Port of Wilmington is
15 geographically blessed with its convenient
16 location along international shipping routes and
17 having close proximity to both rail and the I-95
18 corridor.

19 In addition, the State's tax
20 structure makes Delaware particularly attractive
21 as a home to regional distribution centers for
22 the entire Mid-Atlantic hinterland.

23 The Port of Wilmington has the
24 potential to increase their traffic with a

1 45-foot channel. If the port chooses to improve
2 or expand their facilities, the potential for job
3 creation is significant. The demand for East
4 Coast capacity is present, and will continue to
5 grow. There is a private market for
6 opportunities to develop ports.

7 The port itself is 60 miles away
8 from the mouth of the Delaware Bay. Shorter and
9 faster voyages for container ships than the Ports
10 of Philadelphia or Paulsboro, New Jersey. It has
11 an excellent road access and is served by rail.
12 Given the state of the current economy, there are
13 few opportunities for massive economic
14 development like this.

15 Furthermore, because the State of
16 Delaware is not contributing financially to the
17 deepening project, a failure to support the
18 project robs residents of opportunities that they
19 desperately need.

20 Local support of the project. On
21 December 8, 2009, the New Castle County Council
22 passed resolution number R09-217 supporting the
23 Delaware River main channel deepening project.

24 On December 17th, 2009, the

1 Wilmington City Council passed resolution 09-121,
2 supporting the project. The resolution states,
3 in pertinent part, "Whereas, the Council of the
4 City of Wilmington recognizes the significant
5 economic value of the project, now, therefore, be
6 it resolved by the Council of the City of
7 Wilmington that the City Council supports the
8 Delaware River main channel deepening project.

9 "The city council urges the U.S.
10 Army Corps to comply with the proper permitting
11 procedures through DNREC, and encourage the
12 Governor, the Lieutenant Governor, and the
13 Delaware Department of Natural Resources and
14 Environmental Control to support this project."

15 New Castle County Councilman J.P.
16 Street, whose district includes the Port of
17 Wilmington, recognizes that jobs are at risk if
18 dredging does not go forward. I quote, "We lost
19 GM. We lost Chrysler. We lost Valero. Not only
20 does deepening the channel give us more jobs, but
21 it helps us maintain the jobs we already have at
22 the Port. They're going to move large
23 containers, and we need to bring the port up to
24 where it needs to be, to be competitive in the

1 future."

2 Councilman Street, along with the
3 city -- along with the New Castle County Council,
4 the Wilmington City Council, and members of the
5 State legislature, recognize the extreme value of
6 the dredging on the local economy.

7 Delaware has lost several area
8 plants, which had opportunities for skilled and
9 unskilled workers alike. The difference is that
10 the loss of the manufacturing jobs was out of the
11 control of the State of Delaware. In this case,
12 Delaware can control its own fate.

13 These port jobs can be saved by
14 DNREC approving the permits to allow the U.S.
15 Army Corps of Engineers to proceed with the
16 Delaware River main channel deepening project.

17 Social and economic benefits.
18 Beyond the statistics and projections, the
19 reality is that the Port of Wilmington provides
20 family-sustaining incomes to men and women who
21 work at the Port, of which the overwhelming
22 majority live in the State of Delaware. ILA
23 members perform a variety of job functions at
24 port facilities, which include skilled and

1 unskilled labor.

2 ILA jobs do not require a college or
3 advanced degree, and many do not require a high
4 school diploma. Most of the money earned by ILA
5 members at the Port of Wilmington stays in
6 Delaware.

7 MR. BUREAU: Are we about wrapped up
8 here, Mr. Farrell?

9 MR. FARRELL: Yes.

10 MR. BUREAU: Thank you.

11 MR. FARRELL: Supporting local
12 businesses and charitable organizations. If
13 these jobs are lost because the Delaware River
14 cannot support the larger shipping vessels, there
15 will be a profound impact on the local economy.
16 Not only will longshoremen jobs be lost, there
17 will be a loss of trucking jobs, distribution
18 center jobs, and jobs at area businesses around
19 the port.

20 The majority of ILA members who work
21 at the Port of Wilmington live with their
22 families in Delaware. They appreciate DNREC's
23 responsibility to the citizens of the State to
24 protect our waterways and wetlands.

1 ILA members enjoy the many
2 recreational benefits of the Delaware River, as
3 well as work along the river.

4 In researching the impact of
5 dredging, the ILA did look into the environmental
6 impact, and were impressed by the Army Corps of
7 Engineers' efforts, thorough mod -- and thorough
8 modern technology to protect the wildlife in and
9 around the Delaware River.

10 In conclusion, based upon the
11 economic advantages to the channel deepening
12 project, as well as the Army Corps of Engineer's
13 ability to maintain the integrity of the wildlife
14 of the Delaware River, the Delaware ILA locals
15 1694, 1883, and 1884 respectfully request that
16 DNREC approve the permits filed by the Army Corps
17 of Engineers on March 22nd, 2010.

18 Thank you again for allowing the ILA
19 to comment on this matter. Thank you.

20 MR. BUREAU: Thank you, Mr. Farrell.
21 Ron Kernehan, and on deck, Mr. Richards.

22 MR. RICHARDS: Mr. Richards?

23 MR. BUREAU: Ron Kernehan here? 9
24 Clayton Avenue, Lewes, Delaware? Okay. Go

1 ahead, Mr. Richards. And on deck, will be
2 Coralie Pryde.

3 MR. RICHARDS: My name is
4 Mr. Richards, R-i-c-h-a-r-d-s. Just like to
5 greet the panel. What I'm hearing here this
6 evening, and what I would like to share, is the
7 fact that larger means better. And it's a proven
8 fact that it doesn't.

9 We talk about -- first of all, let
10 me just say that I do longshoreman's work. I am
11 not a longshoreman. I do longshoreman's work. I
12 work out of Port of Wilmington.

13 And I hear about how we can bring in
14 these larger vessels, which will bring in larger
15 numbers of people to work. Whereas the truth of
16 the matter is, larger never means larger. Only
17 for the few. Only for the proven few.

18 My concerns and questions were to be
19 directed to the Army Corps of Engineers, who had
20 the arrogance not to even show up here today.

21 My concern are for my grandchildren.
22 I'm not worrying about putting money in my pocket
23 in the next three or four, five years. My
24 grandchildren got to live.

1 See this water? I'm spending 10
2 percent of my income on water. Okay? Dredging,
3 how much am I going to be spending? I'm already
4 spending 10 percent on water now. That ain't
5 even talking about taxes on water.

6 So we really got to really look at
7 the big picture, and not the big shipping lines.
8 You have to look at me, the little man. The man
9 who is not a longshoreman, that does longshore
10 work.

11 Statistics, statistics, statistics,
12 I'm hearing all of these statistics, of which
13 none have been proven. None. And talk about it
14 forever, it all boils down to one thing. Who's
15 got the dollars? I don't. So, I don't have to
16 worry about paying for the dredging to come up
17 through Delaware. My money's going in water
18 already.

19 We need the work. We definitely
20 need the work. But also, let's not forget about,
21 you know what I mean, some dignity, also.

22 MR. BUREAU: Excuse me? I missed
23 that.

24 MR. RICHARDS: Dignity.

1 MR. BUREAU: Thank you.

2 MR. RICHARDS: Let's not forget it.

3 We always have a responsibility. I'm just sorry
4 that I wasn't able to address my questions
5 directly to the -- someone from the Army Corps of
6 Engineers. Anyone would have been just fine with
7 me.

8 This is the only reason why I'm
9 here. The only reason why. You know. I need
10 something in writing, too. I need for them to
11 take responsibility for their actions. I can't
12 dredge my basement, go back and dredge that up,
13 or dig up this without getting a permit,
14 permission.

15 Just start doing things, because you
16 are who you are? Come on now. I'd get threw out
17 of here if I speak out of turn. It's a lot of
18 power. And I tell you right now, it ain't
19 putting nothing in my pockets, to be absolutely
20 frank.

21 I appreciate the time that you've
22 given me to share this. I -- like I said, I
23 wanted to direct my questions to the Army Corps
24 of Engineers. Okay? Because right now, you

1 know, it's -- it's -- it's a mess. I mean like I
2 know what they been doing, and how they doing it,
3 you know what I mean?

4 I can't even walk over the St.
5 George's Bridge. Thank you.

6 MR. BUREAU: Well, thank you. But I
7 would -- I would remind you that if you'd like to
8 ask the questions, and they're pertinent to the
9 decision-making process here, that I may very
10 well convey those questions to the Corps of
11 Engineers. So if you'd like -- if you have them
12 written down, or you'd like to write them down
13 and submit them, or --

14 MR. RICHARDS: Would I have time for
15 that? I hear that there's another meeting taking
16 place.

17 MR. BUREAU: Tomorrow evening.

18 MR. RICHARDS: Tomorrow evening.
19 I'll see if I can't come up with something.

20 MR. BUREAU: Very good. We would
21 appreciate that. Thank you.

22 MR. RICHARDS: Thank you.

23 MR. BUREAU: Let's see. Where were
24 we? Coralie Pryde is up, and John O'Donnell is

1 next.

2 MR. PRYDE: My name is Coralie
3 Pryde, C-o-r-a-l-i-e and P-r-y-d-e. I live at
4 1902 Beachwood Drive in Wilmington. I am a
5 member of a number of environmental
6 organizations, but I am speaking as a private
7 citizen.

8 I am a retired chemist and material
9 scientist, and I've used that background in
10 looking at the data that the Army Corps of
11 Engineers has sent in over the past almost two
12 decades.

13 I spoke at the 2002 hearing, and
14 basically, at that hearing, I described the
15 inadequacies in the Army Corps of Engineering's
16 analysis regarding toxic chemicals and heavy
17 metals in the river, because the analyses in the
18 1992 EIS and the 1997 SEIS, supplemental
19 environmental study, and the further data we
20 received before the last hearing, and then that
21 since the last hearing, does not really describe
22 properly where these samples came from, and the
23 exact protocol that was used in analyzing them.

24 We really, in order for the data to

1 be meaningful, we need to know that the -- the
2 samples have been taken some places where we
3 believe a given contaminant might be in the
4 highest -- in the highest concentration.

5 If you could look at those places of
6 high concentration, and see that they're really,
7 even at the worst cases, it's not enough to be
8 dangerous, then you can say yeah, there probably
9 is no danger in dredging this up, and you don't
10 really have to worry about where you put the
11 spoils.

12 If there are just a few limited
13 regions where there's high concentration of toxic
14 materials, you say, well, all right. We can be
15 very careful in dredging those, so that none
16 escape, and we can put them in extra safe
17 containers, so there's no possibility of leakage
18 back into the river. And that would also be
19 environmentally safe.

20 But basically, in all the data I've
21 looked at, I don't know what it means
22 technically. The samples are taken from various
23 spots, but we don't know why those spots were
24 chosen. In many cases, the sample material from

1 one spot might have been combined with another.

2 We don't know how the contaminant
3 was distributed during the height of this when a
4 core sample is taken out. Was it higher in that
5 core or lower? All of those things would help us
6 understand what the contamination in the river
7 is, and how we can safely handle it. We simply
8 don't have that.

9 And so, there's no way that these
10 studies show anything about the safety of
11 dredging.

12 Now, for this hearing, I read the
13 June 15th letter from Secretary O'Mara to the
14 Army Corps. I saw that there were really,
15 basically, analogous or similar problems when we
16 looked at the analysis of particle size in the
17 dredge materials, and particularly in those
18 dredge materials that are proposed for the
19 beneficial use on Kelly Island.

20 According to the DNREC studies, the
21 dredge spoils would need to be comprised of sand
22 particles in a very specific and very large size
23 range, and furthermore, the location and general
24 design and detailed reinforcement plan for

1 enhancing the beaches must be precisely planned
2 and implemented.

3 And we've already seen from some
4 prior speakers, the shape of Kelly Island has
5 changed since these plans were made, and the
6 Secretary's letter complained about the fact that
7 the Army Corps' plans for the shape of that
8 reinforcement, the shape of that enhancement, and
9 the type of reinforcement used seemed to be very
10 vague.

11 The problems are, if you have large
12 amounts of sediment in the sand, or if they're
13 very fine particles of sand, then this added
14 material that's put on the beach, instead of
15 helping the horseshoe crabs, could actually
16 suffocate the horseshoe crab eggs.

17 And at the same time, if you put a
18 lot of this fine particulate matter on the beach,
19 when a storm comes it will wash into the ocean,
20 and as you heard, it can go as far as seven miles
21 from the point at which it was put. In that
22 case, this could have a very deleterious effect
23 on the oyster beds.

24 In addition to that, according to

1 the letter, the samples supplied by the Corps
2 just aren't properly characterized, in the same
3 way I talked want chemicals. They're not sure
4 exactly where these samples came from, and why
5 those sampling points were chosen. But even with
6 that, it appeared that the particle size in the
7 samples that were mentioned were really, did not
8 fit the desired requirements for replenishment.

9 And so, basically, the whole plan
10 there to replenish the beach does not seem to be
11 adequately thought out. And the sample, the size
12 of the particles that would be included in the
13 replenishment is not guaranteed. And in net, the
14 beneficial replacement on Kelly Island could
15 actually be highly detrimental to our oyster beds
16 and the horseshoe crab.

17 Similarly, worrying about the
18 oysters, there are great concerns that the
19 deepening of the channel can bring greater
20 encroachment of the saltwater line to a higher
21 level. That could also affect these beds.

22 These are a very valuable part of
23 Delaware's economy, and they supply good jobs for
24 many people in southern Delaware, where there's

1 not a lot of other -- a lot of employment
2 otherwise.

3 Basically, in going ahead with this
4 replacement, it's really too dangerous.
5 Basically, DNREC has carried out a lot of
6 analyses over the past 15 to 20 years, and in
7 looking at necessary studies scientifically, one
8 can say they provide a good guide for what a
9 proper study should be, to show whether or not
10 there would be harm in using the dredge spoils or
11 storing them.

12 Unfortunately, what comes from the
13 Army Corps of Engineers has not really changed
14 since the original EIS. We get more of the data,
15 but it really is not more precise.

16 And no matter how much data we get,
17 it still doesn't give a way of saying, okay, we
18 can eliminate that there's any serious problem
19 here.

20 I don't know that this dredging will
21 be dangerous, but anyone who said that it
22 wouldn't be dangerous is not speaking from a
23 scientifically valid viewpoint, because the
24 scientific data isn't there.

1 I realize the proponents of dredging
2 are very frustrated that this has gone on, but I
3 think those of us who are worried about the
4 environmental effects are equally frustrated,
5 because we simply get more and more and more data
6 that really has no meaning, that doesn't help the
7 situation in so many cases.

8 I think basically, I would join
9 others in saying that no further deepening of the
10 river should be allowed until we get both an
11 up-to-date environmental impact study, but also,
12 one that is really based on good scientific
13 principles, such as those that have been
14 demonstrated in some of the DNREC studies.

15 Thank you. I will submit a longer
16 version of this by e-mail.

17 MR. BUREAU: Very good. Thank you,
18 Ms. Pryde. I'm going to ask the court reporter,
19 would you like a break?

20 THE COURT REPORTER: Let's keep
21 going.

22 MR. BUREAU: Okay. Marathon
23 session. Next John O'Donnell, please. And on
24 deck, Dan Car -- Carwile?

1 MR. O'DONNELL: My name is John
2 O'Donnell. I'm director of sales and marketing
3 for Port to Port International Corporation,
4 located in New Castle, Delaware, close to the
5 Port of Wilmington.

6 We are a privately-owned small NVOCC
7 shipping company, international freight forwarder
8 and terminal operator, with 25 full-time
9 employees at our terminal location in New Castle.

10 Our core business is exporting of
11 used vehicles, cars, SUVs, other type vehicles,
12 to Central America and the Caribbean, mainly
13 through the Port of Wilmington in the empty
14 banana containers in the banana ships going back
15 to Central America.

16 In the recent years, we have also
17 added an additional 3 to 5000 units of oversized
18 vehicles, like trucks, buses, trailers, new and
19 used construction equipment, and also,
20 containerized cargoes, to many different other
21 markets in the world, including Europe, West
22 Africa, South America, Asia Pacific, and other
23 regions.

24 These also -- these oversized units

1 also go out of other ports. Some go out of
2 Wilmington, but they also go out of other ports
3 on the East Coast and the Gulf Coast, mainly.

4 We strongly support, our company
5 strongly supports the approval of the Corps of
6 Engineers' permit, and the deepening of the main
7 river channel to 45 feet, helping to -- helping
8 Delaware and Wilmington and the ports on the
9 Delaware River to keep pace with other ports on
10 the East Coast and the U.S.

11 The main reason we support this is
12 to preserve the existing jobs at our facility,
13 and existing jobs at other small companies like
14 ourselves, located near the port; to allow our
15 company to grow and expand in the future through
16 increased exports of cargo; to lower the
17 transportation costs for our customers, the
18 majority of whom are the general public.

19 Lower transportation costs will help
20 increase exports by water from our region. And
21 we believe that increased exports will help lift
22 the economy out of a recession and create more
23 jobs in Delaware and the Delaware River, as was
24 the case through the first half of this decade,

1 up until the beginning of the recession, when
2 exports began to fall off.

3 The deeper main channel of the
4 Delaware River will allow larger vessels to
5 navigate the river and call at Wilmington and
6 other Delaware river ports. Our company uses all
7 kinds of vessels to export our cargoes for our
8 customers, including container vessels, rowboat
9 vessels, break bulk vessels and bulk vessels to
10 name a few.

11 And as Captain Roach pointed out,
12 and some other speakers, the trend in the
13 shipping industry is and has been for larger and
14 larger vessels, in order to increase the
15 efficiency and lower transportation costs
16 overall. This includes all of the types of ships
17 that are now calling in Wilmington.

18 Keeping to the existing 40-foot
19 depth in the river, we feel, could impact the
20 shipping industry greatly in the Delaware River,
21 and prevent these larger vessels, or larger
22 vessels from entering the river, coming up the
23 river into Wilmington and other ports, and
24 causing them to bypass the Delaware River ports,

1 and go instead to deeper ports of Baltimore,
2 Newark, New Jersey, Norfolk, and other ports.

3 This would cut our lifeline, the
4 lifeline of our company to the world markets, and
5 impact the survival of our company, in fact.

6 We also use other ports for exports
7 of our cargoes as an NVOCC shipping company,
8 especially the oversized units, including
9 Baltimore, Newark, Norfolk, Charleston,
10 Jacksonville, Houston, and Galveston, just to
11 name a few. And we see that all those ports have
12 either already gone to 45 feet in their channels,
13 or are in the process of doing so, or in some
14 cases have even gone deeper, like 50 feet.

15 In short, our business and our
16 future viability and survival depends on the
17 deeper vessels and the deepening of the river
18 channel.

19 And we believe that it will greatly
20 benefit the public at large, the state, the
21 region, and small businesses like ourselves, and
22 in fact, the whole U.S. economy.

23 Thank you.

24 MR. BUREAU: Thank you,

1 Mr. O'Donnell. Dan Carwile? Or is it Carlisle?

2 MR. CARWILE: Carwile.

3 MR. BUREAU: And on deck, James

4 Johnson.

5 MR. CARWILE: My name is Dan

6 Carwile. Last name is C-a-r-w-i-l-e. I

7 represent Delaware River Stevedores. It's the

8 other -- one of two stevedoring companies at the

9 Port of Wilmington. Delaware River Stevedores

10 works directly with the International

11 Longshoremens Association to safely load and

12 unload various cargo from international marine

13 terminals, marine vessels.

14 Through our operations in

15 Wilmington, Delaware River Stevedores provides

16 meaningful work at competitive wages to a

17 dedicated and skilled ILA workforce.

18 As a professional port operator in

19 Wilmington, we fully support the deepening of the

20 Delaware River's main shipping channel from 40 to

21 45 feet.

22 Over the years, or in recent years,

23 we have witnessed the size of these marine cargo

24 vessels increasing. As a result, we have seen

1 the deeper drafts required to dock them at our
2 terminals. In some cases, these vessels must
3 dock at high slack tides and then begin
4 discharging immediately, if they're able to dock
5 in Wilmington at all.

6 From the ports along the Delaware
7 River and in Wilmington, Delaware, specifically,
8 we need the additional five feet of water to
9 remain competitive with our existing customers,
10 as well as to attract new customers and business
11 into Delaware.

12 It's a fact that these marine cargo
13 vessels will continue to get larger and require
14 additional water depth. And just as airport
15 authorities have had to build longer runways to
16 accommodate larger airplanes, the Delaware River
17 must be dredged to accommodate larger vessels.

18 The successful dredging of the
19 Delaware River to 45 feet is a critical component
20 to the ongoing and future success of Delaware
21 River Stevedores at the Port of Wilmington. Our
22 success, our employees' success, the Port's
23 success, and the State of Delaware's success, in
24 terms of economic sustainability along the

1 Delaware River, is dependent on the successful
2 dredging to a 45-foot depth.

3 Thank you.

4 MR. BUREAU: Thank you, Mr. Carwile.

5 James Johnson? No? It could be Tom -- Brawin?

6 B-r-a-w-i-n?

7 MR. BRANIN: Tom Branin.

8 MR. BUREAU: Sorry.

9 MR. BRANIN: That's good.

10 B-r-a-n-i-n. My name is Tom Branin, and I work
11 on the Delaware. And just in my career, I spent
12 like about -- I spent five years on research
13 ships, and five years on tall ships.

14 And so, I was really torn here,
15 because you know, I work on the Delaware, and I
16 understand how important it is for me to have --
17 you know, for the deepening, for our jobs.

18 And on the other hand, I'm very
19 interested in the environment. So, I poured over
20 this material. I went up and down, checked
21 everything out, I read documents after documents.
22 And what I found, in general, was that a lot of
23 the environmental arguments were like half
24 truths, and partial, you know, like readings that

1 were done out of context.

2 And it was just amazing to me that
3 it just wasn't a lot of -- the material had no
4 depth to it. You know, that you'd hear these
5 arguments, like the PCBs are going to be out in
6 the environment. And the PCBs -- nobody wants to
7 eat fish with PCBs in them.

8 But like I think DNREC did a study,
9 and that 90 percent of the -- 98 percent of the
10 PCBs would be sucked up with the dredging, and
11 would be put in the confined disposal sites.
12 Well, if you're taking out 90 percent of the
13 PCBs, how is that not helping the environment? I
14 don't understand your argument.

15 The aquifer. You have the aquifer,
16 and then for the last 100 years, ever since we've
17 been pulling water out of the aquifer, the
18 Delaware has been partially filling it back up
19 again.

20 Well, for 100 years, that water has
21 been going through this toxic -- you know,
22 supposedly toxic soil. Where are the toxins?
23 That's the aquifer. How is dredging going to
24 change that? I don't understand.

1 The salt line. The salt line moves
2 up and down the Delaware 20 miles, depending on,
3 you know, the tides, the time of year, droughts.
4 And so, that line isn't a stagnant line. It
5 moves up and down the Delaware, even just on the
6 regular tide, because the freshwater is coming
7 out and the saltwater is coming up.

8 Well, if you think about it -- and
9 I'm just thinking logically. I'm not an expert.
10 I'm not a lawyer. I'm just a guy working on the
11 river. And if you think about it, if that moves
12 up, you know, those marsh vegetation and things
13 like that, they're exposed to different salt
14 levels and things like that. And they recover,
15 and they come back, and this is just a natural
16 process.

17 I don't understand. Because I hear
18 these arguments, that you're going to kill this,
19 and this is going to be killed, and the fish are
20 going to be killed, and everything. I don't see
21 it.

22 Now, dredging has taken place,
23 recently, in every major East Coast port. Well,
24 if the dredging's taking place in all the other

1 places, where is the harmful effects? Where's
2 these fish kills, and where's all this
3 contamination that's occurring? I don't see it.

4 You know, let's see. You know, the
5 other thing is, New York's doing it. And New
6 York is -- that's unquestionably more polluted
7 than the Delaware is.

8 Well, they're spending 2 billion
9 plus dollars to make sure that's taken care of.
10 Well, you know, and their environmental advocates
11 are all for it. They think it's helping to clean
12 the soil, or to clean out the bottom of the
13 river.

14 Don't understand our argument here,
15 environmentally. And I -- it's really -- like to
16 me, I used to trust the environmental lobbyists
17 to indicate what the problems were. You know,
18 like hey, what we have to watch out for. Well,
19 if, you know, if this is the case, you sit there,
20 and you -- the problems aren't there. You know.

21 Well, there's problems there, and
22 but they're all taken out of context. Yes,
23 there's PCBs, but there's probably PCBs in my
24 backyard. I use pesticides to kill things. I --

1 you know, I use fertilizer, and all that stuff
2 works its way. So, that's in the soil there, and
3 it's in very limited numbers.

4 Well, when I hear that 98 percent of
5 it is going to be taken out, how is that going to
6 hurt the environment? And why are you fighting
7 that? Why wouldn't you be like, hey, that's a
8 great idea? Don't understand.

9 On the freshwater, it's going to
10 contaminate our freshwater. Well, from all my
11 understanding, because the salt line moves up and
12 down the Delaware, the freshwater intakes, the
13 closest one I could find was 110 miles up the
14 river.

15 They're only going to dredge to 102.
16 How is it -- that's eight miles above where
17 they're dredging. Where is this argument coming
18 from? Why are these arguments -- it's just like
19 they're throwing stuff out there to fight it, and
20 I don't understand it.

21 I don't understand. It's not --
22 you're not helping the environment. To a certain
23 extent, I don't understand why you're fighting
24 it. It is politically motivated? What's the

1 deal?

2 I think there's been \$21 million in
3 studies. Do we have to start all over doing the
4 studies again? I mean that's a lot of money.
5 You know, to go over and start things -- as far
6 as I know, horseshoe crabs have been around for a
7 billion years. How -- how are things going to
8 change? Let's see.

9 I did the other ports. The ships
10 coming up the Delaware. Right now there's bigger
11 ships. Ships carrying thousands of containers.

12 You know, the reason why Delaware
13 has this opportunity now is because we have
14 trains. We have good train connections back from
15 the 1800s. Well, these trains carry hundreds
16 of -- hundreds of containers. It can bring --
17 you know, to the center of America. Right?
18 That's what makes a viable port.

19 We're a long trip up the Delaware.
20 And I'm like, well, how come ships -- you know,
21 they don't want to take container ships up the
22 Delaware. It's too long.

23 Well the reason why is the
24 infrastructure is there. The intermodal

1 infrastructure is there to do it. And that
2 keeps -- you know, there's less ships going up
3 the Delaware. There's more depth in it on the
4 way back out. They're more efficient. That
5 alone saves the carbon that's being put in the
6 atmosphere.

7 The thousands of ships that -- or
8 the thousands of trucks that won't be trucked
9 down from New York to us saves crowded on -- you
10 know, crowds on the highway. It saves a lot of
11 gas and fuel.

12 Instead, it's going to be put on a
13 train, and the train goes there, and then still,
14 truckers are still going to have jobs. It's just
15 going to be shorter routes.

16 Ironically, Delaware City, I think
17 this is a good example. You know, Delaware City
18 was dredged. One of the rumors was that Valero
19 shut down because Delaware City was having
20 problems getting their permit to dredge, for
21 these -- these reasons. Right?

22 Well, 500 people are out of jobs.
23 Delaware City, you know, here you have, you know,
24 the original plan -- if it wasn't for Governor

1 Markell being able to, you know, get another
2 company in there, their original plan was going
3 to be it was all going to be dismantled and sent
4 overseas. Well, if it's sent overseas, do you
5 think they're going to care how well the
6 environment is going to be taken care of, like we
7 are?

8 That's just going to be pumping out
9 more pollution. Just like all the steel mills
10 that went in the '70s and '80s, they all were
11 packed up and sent overseas. They're still
12 pumping out -- that's what's part of the
13 pollution problem. Here is a way that's helping
14 the environment. I mean I don't understand the
15 argument. I don't understand what the basis is.

16 You know, I can see, you know, yes,
17 there's going to be some effect on the
18 environment, but I just see a lot of difference
19 here in what I see in reality, and what I'm being
20 told in the papers, and what, you know, you read
21 every day. If you actually look into the
22 material, it's not there.

23 Now, as far as shipping goes,
24 November 22nd -- I don't have the article,

1 it, because on their websites they're like hey,
2 let's stop the South Port project. You know,
3 it's going to -- they have to fill in land and
4 they have to do this. They want to stop that.

5 Well, is there something else going
6 on here that I'm not seeing? You know, that
7 there is such an argument. I mean the
8 environmentalists for all the other rivers, they
9 seem to encourage the dredging, you know, and
10 it's been going on all the time.

11 What makes us so different? Why --
12 why are we being singled out as this bad apple?
13 You know, we're no different from any other river
14 system.

15 Now, they're talking about the
16 sediment and the oysters, you know, getting --
17 you know, if you've ever seen an aerial shot of
18 the sediment that comes down after a -- you know,
19 after a spring storm, you know, you can see it
20 from space, how much sediment goes down the
21 Delaware with a storm.

22 You know, now we're talking about a
23 pipe, you know, three feet in diameter with like
24 what? A five or six-foot dredging head that

1 sucks everything up behind it. It's a big vacuum
2 cleaner. I don't understand how that relates to
3 everything else.

4 I'm just a guy. I spent a lot of
5 time just looking at this stuff, and I'm just a
6 little confused, because I look to the
7 environmental advocates as the people that are
8 supposed to watch over things, and, you know,
9 like me, I have one foot, I have to work on the
10 Delaware, but I'm also concerned about the
11 environment. And I got to find that balance.

12 And I don't understand where the
13 environmentalists aren't trying to help make that
14 balance. Figure out how to do it well, so that
15 we can all move on happily. I don't see it. To
16 me, it's obstructionist. You know, there's a
17 difference between working and trying to figure
18 out a common solution, and just throwing stuff
19 out there to fight.

20 And I'm disappointed in that. I'm
21 terribly disappointed, because I -- I was an
22 environmental advocate, and then, when I looked
23 through the material, you know, to the most part,
24 I didn't see where they were coming from.

1 I appreciate your time.

2 MR. BUREAU: Thank you, Mr. Branin.

3 Where were we? Anthony Jackson? Did I miss
4 somebody? No. Mary Jacobson?

5 MS. JACOBSON: I'm going to wait
6 till tomorrow.

7 MR. BUREAU: Okay. Wait till
8 tomorrow? Okay. Oh, we've got Mr. Jackson here?
9 Very good.

10 MR. JACKSON: Anthony Jackson from
11 Smyrna, Delaware. There's been a lot said
12 tonight. Of course, a lot of it is not going
13 make a darn bit of difference, unfortunately.
14 And I got to say I'm a bit pessimistic myself
15 that I can have much of an impact on anything
16 that happens in the Delaware Bay, but I got to
17 stand up and try to say something when I can.

18 There's been a lot said, especially
19 about the financial incentives, and the jobs and
20 the so on. And if you've taken note, most of the
21 people that have come up and spoken in favor of
22 dredging this channel have had some kind of
23 financial incentive to do so. Certainly, with
24 the lawyers that are well-paid to be here, and

1 then, unfortunately, also for the dock workers.

2 But I seriously got to question, we
3 were brought to a point earlier with our
4 longshoremen, about -- we keep on talking about
5 jobs. We're talking about jobs that somebody
6 doesn't even have enough money in his pocket to
7 buy his water. We're talking about what's
8 happening here is we have these large companies,
9 these rich people, that are taking the cake and
10 leaving us the crumbs, and we're not taking into
11 consideration what truly is at risk.

12 Like we heard the previous speaker
13 talking about, he doesn't understand. He doesn't
14 understand what is going on. What this is about,
15 or what DNREC is charged to do here is to take
16 into consideration the scientific facts, not all
17 of the emotional appeals that we try to put
18 before them.

19 Fear's always a factor. Fear's
20 always a factor when you're talking about losing
21 jobs, but if we were talking about a tidal creek,
22 and wanting to turn it into a canal, I mean where
23 do we draw the line? Where do we draw the line?

24 If we're talking about digging it

1 five feet deeper, what happens in ten more years
2 when the ships are even bigger, and we got to dig
3 it another five feet deeper? At what point do we
4 say we can no longer take these impacts to our
5 bay, for the sake of a few jobs that are barely
6 keeping people's heads above water for their
7 bills?

8 In case we haven't noticed -- one of
9 the reasons why I'm here tonight, I probably
10 wouldn't have showed up, but we've seen what's
11 happened down in the Gulf. We've seen BP sit
12 there and say there's no risk. We've seen BP sit
13 there and say everything's going to be all right.
14 We got an emergency plan for everything that
15 could possibly happen out there.

16 We've seen them say that we care
17 about the people, that we care about the jobs,
18 that we care about making sure that people are
19 making money. But where are they when it ends up
20 that everything goes wrong? Where are all of
21 those jobs that we didn't think about things
22 impacting?

23 There's a lot happening on -- going
24 on here in this whole debate. There's a whole

1 lot going on in this bay that none of us can
2 fully understand, that none of us can fully grasp
3 all the potential of the impacts.

4 No matter what, how many studies we
5 do, there's still going to be a potential for
6 disasters. There's still going to be a potential
7 for damage, that we could have never foreseen, no
8 matter how well we study it.

9 It's a matter of whether we can
10 afford to take that risk. It's a gamble, folks.
11 It boils down to the money, and it's a gamble.
12 Can we afford, for a few jobs at the docks, can
13 we afford to risk our entire bay? I don't think
14 so.

15 JACKSON DAUGHTER: Daddy, can I show
16 my picture?

17 MR. JACKSON: Okay. Okay. You can
18 show your picture. This is my daughter. I have
19 absolutely no financial incentive to be here. My
20 whole incentive for being here is this. This is
21 my daughter. This is the next generation. I
22 want to make sure that the Delaware Bay doesn't
23 end up like the Gulf of Mexico. That's why I'm
24 here tonight.

1 And if you don't think that these
2 tankers are going to have an impact on the
3 Delaware River, how well do you think these
4 things can navigate up and down the river? How
5 long is it going to be before we get another Athos
6 spill? How long is it going to be before another
7 ship gets smashed into from one of these larger
8 ships? They'll run it over like it was a duck
9 boat.

10 Thank you.

11 MR. BUREAU: Thank you, Mr. Jackson.
12 Now, I believe I've gone through and called on
13 everyone who indicated that they wished to make a
14 presentation this evening. Did I miss somebody?

15 MS. VAN ROSSUM: You did, I'm
16 afraid.

17 MR. BUREAU: Well, I apologize.

18 MS. CARMINE: You missed me. That's
19 okay.

20 MR. BUREAU: Please come up, and --

21 MS. CARMINE: Thank you. Thank you.

22 MR. BUREAU: And your name?

23 MS. VAN ROSSUM: I'm Maya Van
24 Rossum. I'm the Delaware Riverkeeper.

1 MR. BUREAU: Oh. Maya, I didn't see
2 your name on here.

3 MS. VAN ROSSUM: It might be because
4 my handwriting is so abominable that you couldn't
5 read it, but I swear I signed up. It's maya,
6 m-a-y-a Van Rossum, V-a-n space R-o-s-s-u-m, and
7 I'm the Delaware Riverkeeper.

8 And I thank you so much for the
9 opportunity to speak. I thought you might run
10 out of time before getting to me tonight, so I'm
11 glad that that didn't happen. But I will be back
12 tomorrow night with my written comments, so you
13 know.

14 I just brought a few sort of
15 visuals, not as good as Bob Martin's visuals,
16 which were fabulous, but I wanted to share with
17 you a copy of the final environmental impact
18 statement that was done in 1992 by the Army Corps
19 for the deepening project. I think it's missing
20 some appendices and things, I couldn't find the
21 original copy in my files, but we went online and
22 we got it, and we printed it up and copied it
23 double sided, like everything else they do. So
24 there we go. Which is good environmentally.

1 But five years after the final
2 environmental impact statement was done, the Army
3 Corps of Engineers realized that there was more
4 science to be done, there were changes in the
5 river. There was more information to be had;
6 that what they had done was insufficient, and
7 over the period of five years, things change and
8 you get new information. And so that they had to
9 do a supplemental environmental impact statement.

10 And after just five years, this is
11 the supplemental environmental impact statement
12 that they did. (Indicates). You can see it's
13 many inches thick, bigger than the final
14 environmental impact statement. Very large
15 document, very dramatic. And it was necessary.

16 12 years later, just last year, in
17 2009, the Army Corps of Engineers did its next
18 look environmentally at the deepening project,
19 and changed circumstances and changed science.
20 And it decided that there really wasn't many
21 changes; that there wasn't much new science; that
22 there was nothing to warrant anything really new,
23 other than these original two documents. And it
24 released this rather piddly environmental

1 assessment.

2 After five years, many inches.

3 After 12 years, half an inch? Well, a lot
4 changed in the Delaware River in those 12 years,
5 now 13 years. There was a lot of significant new
6 science put forth to the Army Corps of Engineers
7 by agencies, by experts, and by a well-informed
8 public.

9 The Army Corps of Engineers just
10 chose to ignore it. And just by way of example,
11 when it comes to sturgeon, since 1997, when they
12 did the rather thick document, we had new science
13 that showed us that the Atlantic sturgeon that
14 live in the Delaware River are very special.
15 They're genetically unique.

16 We have a population of Atlantic
17 sturgeon in the Delaware River that are
18 genetically unique. They are not found anywhere
19 else but in the Delaware estuary, and if we lose
20 them, they will be wiped from the face of the
21 earth, and they will be wiped clean from the
22 Atlantic sturgeon population, which is
23 significant.

24 And we also now know that we have

1 maybe less than 100 Atlantic sturgeon in the
2 Delaware River. And because of the new science
3 since 1997, we know that the Atlantic sturgeon
4 and the short-nosed sturgeon, which are already
5 declared Federally endangered, use the river in
6 ways, times, places, and locations that subject
7 them to harm from deepening, and the many aspects
8 of deepening.

9 The Army Corps of Engineers chose to
10 ignore this. This was not important to them.
11 They decided to cast it aside. But this is a
12 significant new body of information that has come
13 forth. Significant science. Very important.

14 I'll tell you that the Atlantic
15 sturgeon -- might say, oh, just a couple of fish.
16 Well, you know what? If what you care about is
17 jobs, then you should be caring about the
18 Atlantic sturgeon and you should be caring about
19 the short-nosed sturgeon, because in the 1900s,
20 the Delaware River had the largest caviar
21 industry in the United States. It was called the
22 caviar capital of the world.

23 \$16 million of economic benefit came
24 to our region because of the caviar that came out

1 of the sturgeon in the Delaware River. You bring
2 that to present day value, \$400 million.

3 The deepening inhibits our ability
4 to restore the sturgeon populations for a whole
5 wealth of reasons, including restoring that
6 historically important industry.

7 And I know that our gentleman who
8 doesn't understand anything is continuing his
9 comedy routine there in the back, and I'm sorry
10 that you don't understand, but I know why you
11 don't understand.

12 MR. BRANIN: I understand this.

13 MS. CARMINE: You don't understand.

14 MR. BRANIN: Yes, I do.

15 MR. BUREAU: Please. No
16 interaction.

17 MS. VAN ROSSUM: Thank you. Sorry.
18 I apologize for that. That was not appropriate.
19 With regards to red knots and horseshoe crabs, we
20 have a lot of tremendous and dramatic new
21 information that has come forth since 1997. In
22 fact, we have an international group of
23 ornithologists that come to the Delaware Bay
24 every year to amass science on the horseshoe

1 crabs, the horseshoe crabs and the migrating
2 shorebirds that come to our region because of
3 those horseshoe crabs.

4 The Army Corps of Engineers has
5 decided, rather than rely on that new growing
6 important body of information, to rely on their
7 old data, that experts found deficient.

8 With regards to the horseshoe crabs
9 and migratory shorebirds, \$34 million of economic
10 benefit to our region from the eco-tourism that
11 results from the horseshoe crabs and the arrival
12 of the migratory shorebirds and the feasting that
13 happens. It's a very dramatic, beautiful
14 experience. A lot of money comes to the region
15 because of it. A third to a half of those -- of
16 that \$34 million estimated to go to the State of
17 Delaware.

18 We have new and increasing science
19 on global climate change and on sea level rise.
20 The science is showing that the Delaware River,
21 that the Delaware estuary is going to be
22 subjected to even more extreme levels of sea
23 level rise than will happen nationally. It's
24 going to be much more significant here than

1 elsewhere.

2 And in fact, the range of figures
3 that's being put out by regulatory experts in our
4 region from the Delaware River Basin Commission,
5 2.3 to 5.5 feet of sea level rise by the end of
6 the century for the Delaware River.

7 I know it's a wide range, but it's
8 significant. And it's important. And it's new
9 information. And it's what regulatory agencies
10 in the basin are starting to look to, and report
11 on, when they speak at public engagements.

12 Now, a moving sea level is important
13 based on the new information that's been coming
14 out since 1997. It's very important for a moving
15 salt line. It's very important for drinking
16 water supplies. It's very important with regards
17 to erosion and changed habitats and marshlands
18 that are very important ecologically, but also
19 for storm protection.

20 It's very important for the oysters.
21 The salt line does move in the Delaware River.
22 It does have a movement with the tides, but it's
23 a net change. It's where that movement back and
24 forth happens. Right now it happens lower down

1 the river.

2 With deepening, with sea level rise,
3 and with the changed flexible flow management
4 plan the way they manage the reservoirs in New
5 York City so the freshwater flows that are coming
6 down the river, the concern by the experts is
7 that that salt line, the net change is farther up
8 river.

9 And it's that net change, and having
10 those salt levels higher up and more significant,
11 that are so meaningful. Meaningful for the
12 marshes and the oysters and the drinking water
13 supplies.

14 We have a new spoil disposal plan
15 since 1997. All of the spoils are going to go to
16 eight existing confined disposal facilities. And
17 in order to accommodate those spoils, the size of
18 the berms are going to increase anywhere from 67
19 percent to 150 -- or by 67 percent to 150 percent
20 for seven of the eight confined disposal
21 facilities that are going to become home to these
22 dredge spoils.

23 That's a big change for the
24 communities where those spoils are going to be

1 placed. That's also a potential change for
2 habitat, and water quality.

3 As recently as May 27th, 2010, the
4 Army Corps proposed new changes to the project,
5 and to the construction of the project and
6 elements of the project. Changes in the timing,
7 location and construction of important elements
8 of the deepening project were put on the record
9 May 27, 2010. That's certainly since 1997.
10 That's significant. That's important.

11 As you heard earlier from Eric, an
12 intern who has been working with my organization
13 this summer, the Delaware Riverkeeper Network
14 does believe that Federal law requires a new EIS.

15 But as I have been looking at the
16 regulations, in anticipation of this comment, I
17 focused on section 7504.4.7.2 of the regulations,
18 the subaqueous lands regulations, and they talk
19 about for major commercial activities, or other
20 activities which may have a substantial
21 environmental impact, the Department may require
22 an environmental impact assessment.

23 And from reading this law and how
24 the law is laid out, and from trying to do some

1 research into finding a definition of EIA, it
2 seems to me that this environmental impact
3 assessment is something more than the traditional
4 application process.

5 This is something different. This
6 is actually something more akin to an EIS, but
7 within the context of the subaqueous lands
8 program.

9 And so, we think that based on all
10 of the new information and all of the new
11 science, and the changing dynamics that are
12 taking place even now, it is most appropriate and
13 most needed for DNREC to require a full,
14 complete, up-to-date environmental impact
15 assessment. Not allow the Army Corps to rely on
16 the old data, the 1997 and 1992 EIS's. Not allow
17 them to rely on the old data regarding horseshoe
18 crabs and sturgeon and salt lines and global
19 climate change, but to really bring everything to
20 the present.

21 And let's take a look at it
22 honestly, earnestly, based on full information.
23 Not sort of the dribs and the drabs that the Army
24 Corps has chosen to put forward in its

1 application, a lot of which is simply references
2 to other documents, where you're supposed to
3 figure out kind of which -- which point they want
4 you, or which part they want you to take as the
5 answer to the question.

6 It's just a wholly inappropriate
7 process. It's a flawed process, and it's a
8 flawed body of information.

9 When it comes to the deepening
10 project, it's really, it's the size of the
11 project, it's the wealth and the vast array of
12 harms. It's the large number of species and
13 habitats and environmental elements that are
14 going to be impacted, that make this project
15 unacceptable environmentally. Particularly when
16 you look at it in light of the lack of benefit
17 and the lack of need.

18 The Army Corps asserts, in its
19 application materials, \$1.35 of benefit for every
20 \$1 invested. And they talk about \$32 million of
21 benefit a year to the region.

22 Well, I talked to you about the
23 harms to horseshoe crabs and migratory shorebirds
24 and the eco-tourism business that brings to the

1 region in the range of \$34 million. The oysters
2 that get put on the line because of deepening,
3 and the harms that result from deepening, both
4 from sedimentation and a moving salt line.
5 That's \$80 million of economic benefit to our
6 region that gets put on the line.

7 Again, I mentioned the sturgeon
8 populations. We were able to restore the
9 sturgeon and bring that industry back. That is a
10 tremendous wealth of money for the region.

11 The fishing, the commercial and the
12 recreational fishing that's dependent upon a
13 healthy river and healthy river species. That is
14 also tens of millions of dollars to our region
15 and to the State of Delaware. That gets put on
16 the line.

17 And I think \$34 million, 80 million,
18 400 million, you know, any one of those numbers,
19 any single one of those numbers, compared to the
20 \$32 million of economic benefit the Army Corps
21 claims, and it's outweighed. Just one of those
22 species alone.

23 And that's a short list of the
24 economic benefits, of the job benefits that come

1 to our region and come to the State of Delaware
2 from a healthy Delaware River. And those jobs
3 matter, and they're important. And some of those
4 jobs are in some of the poorest communities in
5 our region. And I find it untenable that people
6 think it's okay to put those jobs on the line.

7 Importantly, when it comes to the
8 economic claims by the Army Corps, we've heard
9 folks reference the GAO review and other
10 analyses. When I put my comment on the record,
11 I'm going to give you the GAO review and let you
12 figure it out yourself, what it says, but
13 certainly, we say we believe that it shows that
14 the Army Corps continues to mischaracterize the
15 economics.

16 But when it comes to the need, even
17 the Army Corps, who is so desperate to make this
18 project work, can't find a way to demonstrate
19 need for the project.

20 And I will quote from a number of
21 their documents that we will put on the record.
22 This is the Army Corps speaking. The mix and
23 volume of cargoes coming to the benefitting
24 terminals will be the same for either the current

1 40 foot or proposed 45 foot channel depths.

2 The projects navigation benefits
3 from the channel deepening are based upon
4 transportation cost savings from more efficiently
5 managing vessel operating costs. There is no
6 induced tonnage as a result of the deepening
7 project.

8 The future volume of cargo passing
9 through the Delaware River port system is
10 determined by factors not affected in any
11 measurable way by channel depth. With a deeper
12 channel, in fact, total fewer -- or fewer total
13 vessel calls will be required.

14 When it comes to Delaware's
15 facilities, which of course is what you're going
16 to be focusing heavily on in your permit review,
17 the only facility that Delaware, as I understand
18 it from their materials, describes any benefits
19 to, is Magellan. And the -- the Magellan
20 terminal.

21 And even there, the Corps says,
22 quote, "construction of the berth is not
23 dependent on implementation of the 45-foot
24 project." And as I understand it, that's where

1 they're ascribing the benefit to this -- this new
2 berth. So, that berth, the construction of the
3 berth and getting increased business from that is
4 not dependent upon a deepened channel.

5 But, if you're going to give
6 benefits to the construction of that new berth,
7 well, you better look at all of the environmental
8 harms, then, because that's a foreseeable
9 outcome. And that's a direct outcome, then, by
10 the Army Corps' own paperwork. So we're going to
11 need a full environmental analysis on that, which
12 I don't believe I have seen in their -- in their
13 materials.

14 The Corps is also clear that no
15 other Delaware facilities are considered by them
16 to be beneficiaries from deepening in the State
17 of Delaware. DNREC asked them flat out, and they
18 came flat out and answered the question, that
19 none of the following facilities that I'm going
20 to list are going to get any economic benefit, or
21 benefit, from deepening.

22 The Port of Wilmington, the Delaware
23 City refinery, the Sunoco refinery, the Ocean
24 Port industries, General Chemical, Delmarva Power

1 and Light, Logan Generating Station, DuPont
2 Edgemoor and Chambers Works facilities.

3 In fact, the Delaware facilities are
4 so unlikely to receive any benefits from
5 deepening, that the Corps says, quote, "There is
6 no rational economic basis to postulate that they
7 will dredge their access channels/berthing areas
8 to 45 feet."Because they're not going to get
9 benefits.

10 So, you know, we've heard a lot
11 tonight about jobs. Well, I'm here to say that a
12 healthy Delaware River and healthy Delaware River
13 ecosystems is about jobs. I'm also here to say
14 that when you look at the record, it is not about
15 the container ships and the other industries that
16 people have been putting forth figures for, or
17 the facilities that people have been putting
18 forth figures for.

19 It is very clear the majority of the
20 benefits go to the oil facilities, in terms of
21 the State of Delaware. You've got Magellan, and
22 the rest, they don't get anything.

23 And if, if there is a genuine
24 belief, and we have said this time and time

1 again, if there's a genuine belief that all of
2 these other businesses and industries and port
3 operations are going to benefit from deepening,
4 show it. You've had plenty of time. Make the
5 Army Corps put it in their analysis, and put it
6 forth.

7 But nobody's been able to do that.
8 The Army Corps has never included it. They've
9 always been very clear, that it's not going to
10 happen. And I think that that's significant.

11 So one may want it, one may wish it,
12 but saying it doesn't make it so.

13 And so, I appreciate the opportunity
14 to speak this evening and I'll see you tomorrow
15 night.

16 MR. BUREAU: Okay. Thank you very
17 much. Now, I realized how I missed you there.
18 It was a checkmark, rather than a yes, and I
19 simply overlooked it.

20 MS. VAN ROSSUM: I apologize.

21 MR. BUREAU: There are two other
22 people who put checkmarks down. M.J. Globetti?
23 Oh. Okay. And Laurie Bronstein. Is Laurie
24 here?

1 Okay. What time do we have?

2 MS. HERR: It is 9:12.

3 MR. BUREAU: Okay. Is there anyone
4 who indicated -- did I miss anyone else? Is
5 there anyone who indicated, and has changed their
6 mind and would like to make a comment that has
7 not had the opportunity to speak this evening?

8 Sir? I also will say that you are
9 welcome to come tomorrow night. If we have time,
10 you're welcome to make further statements, but
11 we're going to give preference to people who have
12 not had the opportunity to speak so far. But if
13 there's time at the end of the night tomorrow
14 night, you're welcome to make additional
15 comments.

16 Sir, your name, please?

17 MR. PAYLOR: Mr. Chairman, my name
18 is Jim Paylor. That's P, as in Paul, a-y-l-o-r.

19 MR. BUREAU: Oh. Maya, did you want
20 your documents back?

21 MS. VAN ROSSUM: I did. Thank you.

22 MR. BUREAU: You're welcome.

23 MS. VAN ROSSUM: Thank you very
24 kindly.

1 MR. PAYLOR: May I proceed?

2 MR. BUREAU: Yes.

3 MR. PAYLOR: Thank you.

4 Mr. Chairman, I came down here today only to
5 support my fellow union officials from
6 Wilmington, Delaware. Again, my name is Jim
7 Paylor. I live at 33 Delaware Drive, Penn's
8 Grove, New Jersey. My house is directly on the
9 Delaware River.

10 I'm an environmentalist. I fish and
11 I kayak in the Delaware River. I invested every
12 penny of my life earnings into that house on the
13 Delaware River.

14 I have the ability to do the fishing
15 that I do, kayak in the river, see wildlife on a
16 daily basis, and actually look and see, and
17 monitor the ship calls, or the vessel calls that
18 come in the river, both going to South Jersey
19 Port Authority Corporation on the Jersey side of
20 the river, the Philadelphia facilities, and
21 directly across the river is where I live from
22 the Port of Wilmington.

23 So I have, I think, a vested
24 interest, a sincere environmental interest, based

1 on my own personal investment, and the ability to
2 monitor it all. Okay?

3 I also have the -- the pleasure of
4 negotiating directly with the major shipping
5 lines that have been talked about here. I am
6 vice-president with the International
7 Longshoremen's Association. My jurisdiction is
8 from Portland, Maine, to Corpus Christi, Texas,
9 including the Great Lakes area, Puerto Rico,
10 including Canada, and I have recently been
11 involved in the new adventure of developing a
12 port in Sidney, Canada, which is 300 miles north
13 of Halifax, which was referred to earlier.

14 I negotiate directly with the major
15 shipping lines. I don't sit in the audience, I
16 sit at the negotiating table with them.

17 My concern of what I hear from the
18 environmentalists is not what I hear, or what's
19 not backed up by evidence. It's based on
20 concern, and what if's. And I also sat as a
21 commissioner on the Delaware River Port Authority
22 in 1991, and I have been involved in the dredging
23 program at some level, either analyzing the
24 development, or the objections to. And also,

1 deeply involved, unfortunately, in the political
2 views, both for the supporters of and the
3 naysayers to the project. I'm very familiar with
4 it all.

5 My assessment goes back to
6 there's -- there's the potential, okay, and the
7 ability to -- to develop something that's already
8 existing in our region. That is, one, a safe
9 environment for everything that was talked about
10 by the last speaker. And also, the ability to
11 generate hundreds of thousands of jobs for our
12 region.

13 I agree, we shouldn't respond to
14 every speaker, we should stay with the facts.

15 For the purpose of making what I'm
16 going to say a little painless, and expedite the
17 process, because I know we have been here for a
18 long time. I thought we were going to end at
19 9:00.

20 There's a presentation that I have,
21 and I actually made this in North Jersey
22 yesterday, in Newark. Because some people think
23 that the competition between the north ports of
24 North Jersey are interfering with the support

1 from certain Jersey politicians, and that's why
2 they take the position of no dredging on the
3 Delaware.

4 There's some truth to that, but it's
5 based on lack of understanding. That the
6 competitiveness between the ports is basically
7 nonexistent, and it's going to become more
8 irrelevant, for the reasons that I'm going to
9 show you.

10 I actually thought putting the
11 slides up would be a better way, but I really
12 believe that the facts only warrant me explaining
13 them to you, and then you having the ability to
14 research the data and the sources of the
15 information.

16 I will present this presentation to
17 you as evidence, with the understanding that
18 there's approximately three or four pages that
19 are all part of a New Jersey presentation, while
20 explaining the details. And also part of the
21 presentation that was made directly to the
22 Governor of Delaware, which was Governor Markell,
23 and other political figures.

24 So, there's some common elements to

1 the two presentations, and they're the ones I
2 would like to focus on.

3 It was stated earlier about the
4 change in direction of the movement of cargo.
5 Once again, here's the way it went. The Far East
6 was the manufacturing hub for many products that
7 go around the world. They ship from the Far East
8 to the West Coast. Then they use what they refer
9 to as mini bridging, where they rail or truck the
10 cargo to the highly-populated areas on the East
11 Coast.

12 That's all changing. Not just for
13 the reason of what was talked about earlier.
14 It's changing for that reason, meaning the Panama
15 Canal will be expanded, larger vessels will be
16 able to get there and bring the cargo to the East
17 Coast. It's been analyzed, different than
18 yesteryear, that the cheapest way of conveying
19 cargo is to keep it on the water.

20 The ability of taking that cargo
21 that went from the Far East to the West Coast is
22 now going to go through Panama Canal when the
23 expansion comes.

24 Already, though, it already

1 happening. The larger vessels are going through
2 the Middle East, through the Suez Canal, and the
3 ports along the Delaware River are sitting in a
4 very advantageous position, because logistically,
5 if you draw a straight line from the Rock of
6 Gibraltar, which is the Suez Canal, it lines up
7 almost perfectly with the Delaware Bay. So, we
8 are sitting in a very good position.

9 What's happening now that some
10 people haven't analyzed is that the manufacturing
11 hub that the far northeast was for many years is
12 shifting into the Middle East area. We have --
13 we have ships that we load now with project
14 cargo, that whole factories are moving into the
15 Middle East area.

16 And if you check on the Rickmers
17 website, you would see all their cargo, which is
18 the high value equipment, or factory parts, is
19 going into the Middle East. Closer to the Rock
20 of Gibraltar, closer to the Suez Canal.

21 Therefore, closer to the ports along the
22 Delaware.

23 We're sitting in this great
24 opportunity now to take advantage of something

1 that's going to grow. Okay? The facts are
2 there, and I'll show them to you in a second.

3 The real issues are communicating
4 directly with the major shipping lines. We're
5 not going to be impacted, is what I heard, and
6 we're not going to grow.

7 The fact is, the people who operate
8 and own the major shipping lines that come into
9 this area are mostly food based. Bananas, chile
10 and fruit, Australian meat, cocoa beans, and I
11 think I said earlier chile and fruit.

12 The reason why they come into this
13 area, we're in the center of a highly populated
14 area. We're in the middle of Baltimore,
15 Washington, Cincinnati, Chicago, New York, or
16 even Montreal.

17 When everybody else was experiencing
18 a 25 percent decrease, the ports along the
19 Delaware River, we didn't see that drastic
20 dropoff. We had a little bit of a downturn,
21 okay, but we were maintaining our own for the
22 most part, because we handle food products.
23 People were not buying cars, they weren't not
24 buying homes, but they were still eating. That's

1 one of the attractiveness to our area.

2 The fact that what used to be a
3 hinderance, meaning that we were eight hours from
4 breakwater to discharge of vessel, has now been
5 analyzed that keeping the cargo in the water is
6 the cheaper form of transportation. It's now
7 being looked at as an advantage. Okay?

8 Meeting with USMX. They represent
9 95 percent of all the carriers around the world.
10 I'm sorry. They carry 95 percent of all the
11 cargo around the world. The CEO's name is James
12 Capo. Met with him. Asked him to support the
13 dredging.

14 When he did his own analysis, this
15 is what he came up with. That the ports along
16 the Delaware have been insignificant in the
17 container trade. If they dredge the river and
18 expand on their facilities, they have the
19 capabilities of becoming the number one container
20 port on the East Coast.

21 So you could go from being
22 insignificant, because we're only 5 percent of
23 the total volume, to possibly being one of the
24 leading or top container facilities on the East

1 Coast. I don't think that's something that you
2 should blink an eye on. You probably should
3 study that a little further, okay?

4 The experts in the industry, if not
5 myself as a local union official, but the experts
6 in the industry have done their analysis, and
7 they are predicting, by the year 2010, that cargo
8 will increase.

9 They measure in TEUs. TEUs are
10 20-foot equivalence units, like your 20 foot
11 tractor trailer that you see going up and down
12 the highway. They say by the year 2020, and
13 that's what this chart reflects, that you will
14 reach the 100 million TEU category in this
15 country.

16 That's taking into consideration in
17 2009, after 2008 having a banner year, bringing
18 increased cargo in, that in 2009 it dropped off.
19 They expected that it's going to double and reach
20 the 100 million TEU capability by the year 2020.
21 They're concerned, and the Government's
22 concerned, that we don't have the infrastructure
23 capable of handling that type of increase.

24 So, the industry itself is saying,

1 where do we go, what are the other options,
2 knowing that if we even get back to the 2008
3 levels of container volume in this country, we
4 had a problem.

5 If it goes up to 100 million, when
6 we were only up 40 million in 2008, where are we
7 going to put this cargo? How are we going to
8 handle it?

9 The Delaware River's sitting in a
10 position now that it could take advantage of
11 what's growing in our industry. Now, what does
12 that mean? Another chart I want you to look at,
13 and the sources of information are available --

14 MR. BUREAU: You're going to submit
15 that document?

16 MR. PAYLOR: Yes. Yes, I am. The
17 other chart I want to show you is basically
18 showing the component or the percentage of volume
19 that we handle on the Delaware River, which is
20 only 5 percent. Okay? Of the container volume.

21 If it's only 5 percent, we don't
22 have to be in competition with Baltimore or New
23 York to take advantage of the projected growth.
24 5 percent of 100 million TEUs, meaning you only

1 maintain your market share, is 5 million
2 containers.

3 But you have to dredge the river,
4 and you have to have certain work facilities
5 expanded on, like the South Port project,
6 including expanding on the Port of Delaware.
7 More specifically, in the Port of Delaware. And
8 I'll go into the reasons why.

9 I have another -- this is a matrix,
10 okay? What this matrix shows is it lists the
11 port, and it lists the TEUs from 2009, and then
12 the jobs that are associated with it, personal
13 income, business income, and tax revenues.

14 Now, I just said if we could reach 5
15 million, based on the reality that we only have
16 to maintain our market share based on what's
17 being predicted, 5 million TEUs is what the port
18 of New York has right now.

19 In New York, there's 269,000 jobs,
20 direct and indirect jobs associated with the port
21 activity, based on 5 million TEUs. Personal
22 income of 11.2 billion. Business income of 36.1
23 billion. Tax revenue of 5 billion.

24 Let's say, all right, we're never

1 going to be in New York. When you're in Tokyo
2 and think about shipping your cargo, you think
3 New York. You aren't going to think Wilmington,
4 Delaware.

5 Let's look at it from that point of
6 view. Go to the Port of Charleston. Charleston
7 has 1.6 million TEUs. Very doable, with the
8 right project here. 260,000 direct and indirect
9 jobs. \$11 billion personal income, 45 billion
10 business income, tax revenue of 1.5 billion.

11 You don't have to have pie in the
12 sky to reach those levels. Just need a good
13 comprehensive plan, and some insight into the
14 industry. It's there.

15 When somebody says we destroy the
16 environment to protect a few jobs, right now in
17 the region, there's 75,000 direct and indirect
18 jobs, which I would think that Wilmington is
19 close to about one-third of that.

20 That's not a few jobs. They're
21 family-sustaining jobs that allow somebody to pay
22 for a mortgage, pay for a car payment, pay your
23 utilities, and pay a tuition, and go to the shore
24 and spend more money recreating, or fishing.

1 That's what those type of jobs do.

2 In 1996, the ports along the
3 Delaware were stuck with a real serious problem.
4 We were losing our cargo base. We weren't
5 competitive, is what they claimed.

6 And the reason why we weren't
7 competitive is our facilities were outdated,
8 number one, and we also had the issue of being
9 eight hours up the river, which was -- which was
10 a different piece of the equation. Because at
11 that time, it was expensive to keep it on the
12 water, compared to trucking and rail. Which has
13 now shifted and changed. Completely turned
14 around.

15 What the longshoremen did in the
16 Port of Wilmington, we did something that nobody
17 else has done in the longshore industry. Not
18 then, and even as of today have not done it. We
19 froze our pensions.

20 Our pensions -- and this is another
21 chart I'll submit -- is the lowest paid pension
22 on the East Coast in the longshore industry.
23 Okay? Compared to New York, Boston, Baltimore.
24 Some ports bigger. Some ports are actually

1 smaller tonnage wise.

2 The longshoremen knew that they had
3 to freeze their pensions in order to be
4 economically competitive and maintain the cargo
5 base that we had at that time.

6 Second part of this chart is a wage
7 rate chart. And it goes back to 1999, but I'll
8 try to bring it more recent. In 1991, the
9 longshoreman was making \$21 an hour. And if you
10 go by this chart, you can see the concessions
11 that we made in order to make this work on the
12 Delaware River, and in the year 2004, our ship
13 work is only up to \$23 an hour.

14 So, since 1991, we only came up with
15 a \$2 an hour increase. All being responsible to
16 the economic conditions of this area, in order to
17 remain competitive.

18 I was the one who stood on a stack
19 of pallets to the longshoremen and said you got
20 to take these concessions. You got to make them
21 in order for to us survive. They filed civil
22 rights charges against me saying I was wrong for
23 doing that. They did it.

24 And as a result, we have 65 percent

1 of all break bulk cargoes coming into the ports
2 along the Delaware River. The highest in any
3 part of the country. All as a result of the
4 longshoremen making the sacrifice to have a
5 future.

6 The industry is now changing once
7 again. Okay? And it's requiring the ports to
8 look at their infrastructure issues, their
9 distribution issues. And what comes first, the
10 chicken or the egg? If you can't get the ship
11 in, none of the other stuff is relevant. You
12 have to be able to get the ship in.

13 To ask the industry, okay, to look
14 at us as a legitimate operation, which they are
15 doing, including private investors, which that
16 gentleman said earlier, willing to spend a half a
17 million dollars -- I'm sorry, a half a billion
18 dollars of private money to invest in this area,
19 because they see what's going on in our industry,
20 tells a tall tale.

21 That's another page of this, meaning
22 the investment of the banks willing to spend that
23 money. In there, okay?

24 MR. BUREAU: Are we about wrapped

1 up?

2 MR. PAYLOR: I'll wrap it up real
3 quick. Okay? I hope what I provided to you
4 helps you understand the issue. I sympathize
5 with Maya, and I actually appreciate her
6 compassion. I've heard her before.

7 But what I've looked at for all my
8 years, I've raised, and listened, and read
9 documents, and I see suspicion. I call the
10 concerns unnecessary hysteria. That's not
11 supposed to be judgmental.

12 Because I do believe, I'm the
13 environmentalist that agrees with some of their
14 position. But look into the details, to
15 determine whether the position is factual or not.

16 And I think in this case, and along
17 with the caution, or precautions that the Army
18 Corps has offered, by allowing DNREC to
19 participate in the monitoring system for all
20 environmental concerns, shows that if there's
21 some monster 35 feet or 40 feet down, that you're
22 going to be on top of it and be able to make
23 whatever necessary and healthy adjustments are
24 warranted for whatever monsters may surface that

1 hasn't as of yet.

2 And I think you take that into
3 consideration, this is a project where the
4 environmental issues definitely outweigh the
5 economic concerns, based on today's economic
6 conditions, but in this case, the environmental
7 concerns are still only one of what if, instead
8 of actual fact.

9 Thank you.

10 MR. BUREAU: Thank you. Well,
11 unless somebody really wants to talk, and can't
12 attend tomorrow evening, I think -- yes, sir?

13 MR. MARTIN: I just have a question.
14 I would like you to repeat, maybe Ms. Herr can,
15 the announcement that DNREC made as to the reason
16 of this public hearing.

17 MR. BUREAU: I will read it for you,
18 and then we'll call it a good evening, I think.
19 The Department of Natural Resources and
20 Environmental Control scheduled this hearing
21 after receiving an application for subaqueous
22 lands and wetlands permits from the U.S. Army
23 Corps of Engineers on March 22nd, 2010, for the
24 construction of the Delaware main channel

1 deepening project.

2 The Department is conducting the
3 hearing in accordance with section 6004 of Title
4 7 of the Delaware Code, and in compliance with
5 the Court's January 29, 2010 decision in the
6 Delaware District Court action DNREC versus the
7 Corps of Engineers, et al., case 09-821.

8 The Department has identified
9 deficiencies in the Army Corps's permit
10 application, and has requested that the Army
11 Corps supplement its permit application.

12 Despite those permit applications
13 deficiencies, the Department is processing the
14 current permit application in an expedited
15 fashion, based on the Court's decision and
16 Secretary O'Mara's commitment to this Court that
17 the Department would conduct a timely, efficient,
18 and transparent permit process.

19 MR. MARTIN: Thank you.

20 MR. BUREAU: You're welcome.

21 MR. MARTIN: Possibly you could
22 elaborate just briefly, Ms. Herr, on what the
23 permit -- or what the permit is about. Is it
24 about economics? Is it about shipping? Is it

1 about oil? Is it about environment? Is it about
2 the impact? Or satisfying the requirements that
3 DNREC has set up in Title 7, for example.

4 MR. BUREAU: All right. Let me
5 respond, and then we're going to wrap it up here.
6 I can only respond that DNREC has no idea, and I
7 wouldn't hazard a guess as to the ultimate
8 purpose, methods, methodology, inspiration, which
9 prompted the permit application. That's on the
10 other side.

11 DNREC's responsibility is to analyze
12 the information that's given, under Delaware
13 statutes and regulation, and to make as informed
14 a decision as possible on the permit application
15 based, on the merits of the record.

16 And so, what we're attempting to do
17 is, in as efficient a manner as possible, is to
18 create as good a record as we can to make that
19 decision.

20 MR. MARTIN: I want to be sure of
21 one thing. This is the Department of Natural
22 Environmental Resources. Is that so?

23 MR. BUREAU: That's correct, sir.

24 MR. MARTIN: This is what we're

1 talking about, and this is the Department that's
2 making an environmental decision; is that
3 correct?

4 MR. BUREAU: The Department -- the
5 decision and my recommendation to the Secretary
6 will be based on my evaluation of the record in
7 the context of the pertinent Delaware Codes and
8 regulations.

9 And with that, because this isn't
10 really -- I'm going to close the hearing,
11 formally close the hearing and the record for
12 this evening. And I'll be happy to have a
13 further discussion with you off the record. All
14 right?

15 I want to thank everyone for coming
16 this evening. It's been a long evening. We've
17 heard some extensive testimony, and if anyone
18 wants to make further comment to the record, I
19 urge you to make written comments, or attend the
20 hearing tomorrow night for the opportunity to
21 make further verbal comments.

22 (Hearing closed at 9:35 p.m.)

23

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I, JULIANNE LaBADIA, Registered Diplomate Reporter and Notary Public, do hereby certify that the foregoing record, pages 1 through 181 inclusive, is a true and accurate transcript of my stenographic notes taken on July 13, 2010, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of July, 2010, at Wilmington.

Julianne LaBadia, RDR, CRR