

R E P O R T

National Environmental Law Center

Summer 2006

Offices in Boston, Seattle and San Francisco

Vol. 12, No. 1

NELC Challenges Dioxin Waste Site[Newsletter Home](#)**In this issue:**[R.I. Lawsuit Targets Air Water Pollution](#)[NELC Challenges Dioxin Waste Site](#)[NELC Challenges Pacific Surimi's Discharge Permit](#)[A History Of Protecting Saginaw Bay](#)[Theresa Labriola Joins NELC Staff](#)[Interview With U.S. PIRG's Anna Aurilio](#)[Recent Litigation At A Glance](#)

Zilwaukee, MI—On May 3, 2006, NELC attorneys filed suit against the U.S. Army Corps of Engineers, the Department of Housing and Urban Development, and the County of Saginaw, Michigan, for their failure to study the environmental impacts of the Army Corps' proposed dredging of dioxin-contaminated sediments from the Upper Saginaw River and the disposal of these sediments on a floodplain in Zilwaukee, Michigan.



The Army Corps of Engineers proposes dredging dioxin-contaminated sediments from the Upper Saginaw River and disposing these sediments on a floodplain in Zilwaukee, Michigan. Above, a navigational river dredging operation. *Photo: Shutterstock.*

The suit was filed in federal court, on behalf of plaintiffs Environment Michigan and the Lone Tree Council, to enforce the National Environmental Policy Act (for more on NEPA, see page 5).

NELC was alerted to the ill-conceived project by a Zilwaukee resident alarmed by the Corps' proposal to dump dioxin-contaminated dredge spoils next to people's homes without comprehensive review of potential environmental and human health hazards.

The Corps' plan is to construct a 3.1 million-cubic-yard, 281-acre "dredged material disposal facility," or "DMDF"—that is, an open dump site—in Zilwaukee and Frankenlust townships. The dump site will hold material to be dredged

National Environmental Law Center Report is the report of the National Environmental Law Center, a nonprofit, nonpartisan research and litigation organization working to stop polluters through legal action and pollution prevention policies.

Director of Litigation:
Charles C. Caldart

Litigation Staff:
Sarah Bergman
Theresa Labriola
Joshua Kratka
Joseph Mann
Stephanie Matheny

 [Print this newsletter.](#)
(388 KB)

over the course of the next 20 years from the Upper Saginaw River, for the purpose of improving navigation for ship traffic.

NEPA requires federal agencies, like the Army Corps, to prepare a rigorous environmental impact statement (EIS) before embarking on any “major” project that may “significantly” affect the environment.

In 2005, the U.S. Environmental Protection Agency sent a letter to the Army Corps strongly suggesting that, in order to fulfill its obligations under NEPA, the Corps needed to conduct additional review of dioxin levels in the dredged material before finalizing the project. The Corps ignored EPA and did no further environmental studies. NELC stepped in when it became clear that state and local agencies would also fail to require a thorough review of the environmental and human health impacts of the project. Significant quantities of dioxins have been found in sediments sampled from the Corps’ proposed dredging sites.

Dioxins have been linked to birth defects, immunodeficiency, and some forms of cancer. The dioxins in the Upper Saginaw likely came from Dow Chemical Company’s facility in Midland, MI (for more on NELC’s work in Midland, see page 3).

The Corps asserts that dioxin levels in the Upper Saginaw are not high enough to warrant additional review before proceeding with the dredging and disposal project. However, in 2004 the Corps found



Gulls nest on a dredge disposal facility in Saginaw Bay, Lake Huron. The Army Corps of Engineers does not intend to cover the proposed dump site with clean materials that would prevent wind-blown drift of toxic materials into surrounding areas. Photo: USFS.

dioxin levels as high as 11,812 parts per trillion in the river channel it plans to dredge; that number is 131 times higher than state law allows for residential exposure.

Poor Planning

Because the dredge spoils are contaminated, the proposed placement and design of the DMDF dumpsite raise serious environmental concerns.

First, the 281-acre site is located on a Saginaw River floodplain. EPA commented that the earthen walls planned for the facility are not sufficient to prevent the release of contaminated sediment during even routine flood events.

Second, the site is next to the Crow Island State Game Park and a bald eagle nesting area. The bald eagle is listed as threatened under the Endangered Species Act.

Third, while most toxic waste dumps use impermeable bottom layers to seal in the toxic materials, the proposed disposal basin will be lined only with pre-existing clay deposits. This clay layer has significant cracks that could allow toxic pollutants to seep into local groundwater.

Fourth, the Army Corps does not intend to cover the dump site with clean material that would prevent the wind-blown drift of toxic materials into surrounding areas.

Moreover, the perfunctory environmental assessment the Corps did perform was confined solely to the disposal site. The Corps failed to analyze the environmental impact of the 20-year dredging project itself, which could stir up dioxins, furans, PCBs, and metals left by a long history of industrial pollution and send them downstream.

Despite the large size and scope of the project, the presence of toxic pollutants in the river sediment, and the site's precarious location, the Army Corps claims the dredging and disposal will have no significant impact on the

environment.

Put simply, explains NELC Attorney Stephanie Matheny, “The Corps will be violating NEPA if it moves forward with the dredging and disposal of thousands of tons of dioxin-contaminated wastes from Upper Saginaw River without preparing an environmental impact statement.”

With this lawsuit, NELC hopes to force the Army Corps to prepare a study of all the environmental impacts to the river from the proposed dumpsite before any dredging begins.

Litigation Update

In a May 3 court filing in U.S. District Court in Bay City, NELC attorneys sought an immediate injunction preventing the Corps from beginning construction of the dump site. Chief Judge Bernard A. Friedman heard arguments on the motion in Detroit. Judge Friedman ruled that, since the Corps stated that it would not deposit sediments in the DMDF until the summer of 2007 at the earliest, construction of the storage basin alone would not cause “immediate irreparable harm” to human health or the environment. However, Judge Friedman allowed the case to proceed before District Court Judge David M. Lawson in Bay City, so that NELC’s claims can be resolved before dredging begins. NELC will seek a ruling on the merits of the case, and a permanent injunction until a full EIS is prepared.

[Next Article >](#)

44 Winter Street, 4th floor • Boston, MA 02108 • (617) 422-0880
3240 Eastlake Avenue E., Suite 100 • Seattle, WA 98102 • (206) 568-2853
369 Broadway, Suite 200 • San Francisco, CA 94144 • (415) 622-0086, x306
www.NELCOnline.org • nelc@nelconline.org
