

# PORTSMOUTH: NEW MAERSK- SEALAND TERMINAL

## Group says port permit doesn't meet regulations

**BY SCOTT HARPER THE VIRGINIAN-PILOT**

NORFOLK — A local environmental group is challenging a federal permit for the huge Maersk-Sealand cargo terminal now under construction on the Portsmouth waterfront.

The Norfolk-based group, Wetlands Watch, will meet with the Army Corps of Engineers next week to discuss its concerns and allegations, and it said it has not ruled out legal action.

Group leaders charge that corps regulators last year violated the National Environmental Policy Act by issuing the permit without adequate study. They say the corps, by law, should have reviewed the potential harm to the Elizabeth River from the Maersk terminal along with another, even larger port proposal nearby — this one on a 600-acre eastern expansion of Craney Island, across from Norfolk Naval Station.

The Maersk hub, being built just south of Craney Island, is expected to bring hundreds of jobs and millions of tax dollars to Portsmouth. But it also will ruin 189 acres of shallowwater habitat in the Elizabeth River through one of the largest dredging projects in the river's modern history.

"We're not against Maersk, and we don't want to stop the project," said J. Lewis Taylor, a group leader. "We just want the corps to follow the law, to do what they're supposed to do. We have to stand up for this." It's unclear whether a new study will be ordered, or what the consequences of that study might be. There is little or no precedent. Taylor said an additional review, if conducted, could result in Maersk paying more money for environmental harm or altering work plans along the river.

But the main goal, he said, is to push the corps and other regulators to make decisions based on the most complete science available.

A corps administrator in Norfolk, William Sorrentino, described the group's allegations as "misperceptions" that he hopes can be clarified next week.

Sorrentino said the corps stands by its decision to grant Maersk a permit, noting that the company, the world's largest shipping line, already has paid \$5.3 million to compensate for environmental losses and has begun deepening the river for its marine terminal. The facility is scheduled to open in 2007.

"Everything was done in a fair and open manner," said Tom Boyd, a spokesman for APM Terminals, part of the parent company of Maersk-Sealand. "We don't see any grounds to change what has happened." At issue is a controversial provision in environmental law that many activists say is frequently ignored or sidestepped by federal and state regulators — a slight, they add, that leads to piecemeal, permitted destruction of the environment that agencies are charged to protect.

The provision requires a "cumulative impact" study of how a project may damage a surrounding ecosystem — in this case, the Elizabeth River, one of the most polluted waterways on the East Coast and the subject of a popular restoration effort.

Cumulative studies are intended to give regulators a picture of the overall threats to an ecosystem, instead of a snapshot of one project and its individual detriments.

Officials are supposed to measure the impacts of construction work to wetlands, fish, forests and other natural features, including the estimated damage of "past, present and reasonable foreseeable future actions" in the same ecosystem, according to legal code.

Regulators then are supposed to tally up the anticipated damage and use this calculus to decide whether to issue a permit.

The "cumulative impact" of the proposed King William Reservoir to fish stocks, wetlands, water quality and American Indian culture along the Mattaponi River on the Peninsula was cited by the corps in rejecting that waterworks project several

years ago.

Environmentalists say, however, that the ruling was one of the only times the provision has ever played a role in managing growth.

“Many times it’s completed disregarded,” said Ann Jennings, a wetlands scientist with the Chesapeake Bay Foundation.

Alleging that cumulative impacts were ignored, among other failings, the foundation is suing the State Water Control Board over its decision to issue a permit last year to developer Eddie S. Garcia Sr., whose company wants to build a major residential and commercial project in Chesapeake near Stumpy Lake. The case is pending in court.

With Maersk, Wetlands Watch alleges that the corps simply listed other riveraffecting projects nearby and never attempted a serious study of their implications. The group has expressed its concerns in private letters and meetings with the corps for more than a year, without headway.

“If we walk away from this, we might as well fold our tent,” said John Blandin, the group’s president.

In correspondence and interviews, corps officials said the group has not gained any ground because it has no viable legal argument.

The corps explained its decision this way: It did not require a cumulative impact study with Maersk because the Virginia Port Authority’s Craney Island project had been labeled “speculative,” meaning it had little chance of passing federal muster, due to cost, navigational safety problems and environmental harm. Under federal law, speculative projects do not have to be rolled into a cumulative analysis.

Craney Island “is as speculative today as it was a year ago,” Sorrentino said. “Nothing has changed.” Many believe otherwise.

Last July, the head of the corps in Norfolk, Col. David L. Hansen, essentially put the eastern expansion, as designed, on hold. He apologized to the port authority for doing so, and port officials expressed concern and disappointment at his decision.

Then Hansen left and was replaced by Col. Yvonne Prettyman-Beck. In February, she told the Hampton Roads Maritime Association that she was reconsidering Hansen’s decision, and she appointed a technical review team to consider a continuation of the eastern expansion study.

Two months later, as Maersk was poised to obtain its permit, Prettyman-Beck said new information persuaded her to keep studying an eastern expansion. Port officials described the announcement as “big news.” In response, Wetlands Watch complained about “being snookered” and insisted that the corps should have done the cumulative analysis before but certainly should do it now.

Other environmentalists are not sure. The Elizabeth River Project, which helped negotiate a compensation package with Maersk, said it seems to late to review the permit.

“Cumulative impacts are appropriate to look at, very important,” said the project’s executive director, Marjorie Mayfield Jackson. “But it seems reasonable that, since Maersk has its permit and abided by the rules as explained to them, that analysis be done later,” with further study of the Craney Island project.

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