

Participating Organizations

Alliance for a Living Ocean

American Littoral Society
Arthur Kill Coalition
Ashbury Park Fishing Club
Bayberry Garden Club
Bayshore Saltwater Flyrodders
Belford Seafood Co-op
Belmar Fishing Club
Beneath The Sea
Bergen Save the Watershed Action Network
Berkeley Shores Homeowners Civic Association
Cape May Environmental Commission
Central Jersey Anglers
Citizens Conservation Council of Ocean County
Clean Air Campaign
Coalition Against Toxics
Coalition for Peace & Justice
Coastal Jersey Parrot Head Club
Coast Alliance
Communication Workers of America, Local 1034
Concerned Businesses of COA
Concerned Citizens of Bensonthurst
Concerned Citizens of COA
Concerned Citizens of Montauk
Dossil's Sea Roamers
Eastern Monmouth Chamber of Commerce
Environmental Response Network
Explorers Dive Club
Fisheries Defense Fund
Fishermen's Dock Cooperative
Fisher's Island Conservancy
Friends of Island Beach State Park
Friends of Liberty State Park
Friends of Long Island Sound
Friends of the Boardwalk
Garden Club of Englewood
Garden Club of Fair Haven
Garden Club of Long Beach Island
Garden Club of Morristown
Garden Club of Navesink
Garden Club of New Jersey
Garden Club of New Vernon
Garden Club of Oceanport
Garden Club of Princeton
Garden Club of Ridgewood
Garden Club of Rumson
Garden Club of Short Hills
Garden Club of Shrewsbury
Garden Club of Spring Lake
Garden Club of Washington Valley
Great Egg Harbor Watershed Association
Highlands Business Partnership
Highlands Chamber of Commerce
Hudson River Fishermen's Association/NJ
Interact Clubs of Rotary International
Jersey Coast Shark Anglers
Jersey Shore Audubon Society
Jersey Shore Captains Association
Jersey Shore Running Club
Junior League of Monmouth County
Junior League of Summit
Kiwans Club of Manasquan
Kiwanis Club of Shadow Lake Village
Leonardo Party & Pleasure Boat Association
Leonardo Tax Payers Association
Main Street Wildwood
Marine Trades Association of NJ
Monmouth Conservation Foundation
Monmouth County Association of Realtors
Monmouth County Audubon Society
Monmouth County Friends of Clearwater
Montauk Fisherman's Emergency Fund
National Coalition for Marine Conservation
Natural Resources Protective Association
Navesink River Municipalities Committee
Newcomers Club of Monmouth County
NJ Beach Buggy Association
NJ Commercial Fishermen's Association
NJ Council of Dive Clubs
NJ Environmental Federation
NJ Environmental Lobby
NJ Marine Educators Association
NJ PIRG Citizen Lobby
NJ Sierra Club
NJ Windsurfing Association
Nottingham Hunting & Fishing Club
NYC Sea Gypsies
NY/NJ Baykeeper
NY Marine Educators Association
Ocean Advocates
Ocean Conservancy
Ocean County Citizens for Clean Water
Ocean Divas
Ocean Wreck Divers
Outreach/First Presbyterian Church of Rumson
Piscataway Saltwater Sportsmen Club
Raritan Riverkeeper
Riverside Drive Association
Rotary Club of Long Branch
Saint George's by the River Church, Rumson
Saltwater Anglers of Bergen County
Sandy Hook Bay Catamaran Club
Save Barnegat Bay
Save the Bay
SEAS Monmouth
Seaweeders Garden Club
Shark River Cleanup Coalition
Shark River Surf Anglers
Sheepshead Bay Fishing Fleet Association
Shore Adventure Club
Shore Surf Club
Sierra Club, Shore Chapter
Soroptimist Club of Cape May County
South Monmouth Board of Realtors
Staten Island Friends of Clearwater
Strathmere Fishing & Environmental Club
Surfers' Environmental Alliance
Surfider Foundation, Jersey Shore Chapter
TACK I
Terra Nova Garden Club
Unitarian Universalist Congregation of Mon. County
United Boatmen of NY/NJ
United Bowhunters of NJ
Volunteer Friends of Boaters
Waterspirit
Women's Club of Brick Township
Women's Club of Keyport
Women's Club of Long Branch
Women's Club of Merchantville
Zen Society

Clean Ocean Action

www.CleanOceanAction.org



*Ocean Advocacy
Since 1984*

■ Main Office

18 Hartshorne Drive
P.O. Box 505, Sandy Hook
Highlands, NJ 07732-0505
Voice: 732-872-0111
Fax: 732-872-8041
SandyHook@CleanOceanAction.org

May 11, 2009

Mr. Steven Schumach, Project Manager
Mr. Richard L. Tomer, Chief, Regulatory Branch
US Army Corps of Engineers
New York District
26 Federal Plaza
New York, NY 10278-0900

Mr. Doug Pabst, Team Leader
Dredged Material Management Team
US Environmental Protection Agency
290 Broadway
New York, N.Y. 10007-1866

VIA FACSIMILE AND ELECTRONIC MAIL

RE: PN # NAN 2007-1133-WSC; Permit Application for Consolidated Edison Co. of NY Maintenance Dredging with Placement of Dredged Material at the HARS

Dear Mr. Schumach, Mr. Tomer, and Mr. Pabst;

Enclosed are comments on behalf of Clean Ocean Action (COA), including the over 200,000 citizens who signed petitions against ocean dumping of contaminated dredged materials. The project proposes maintenance dredging of the Consolidated Edison South Berthing Area of Pier 98 to the authorized depth of 21 feet MLW plus 2 feet overdepth with disposal of approximately 35,000 CY of dredged material at the HARS.

Clean Ocean Action has concerns about the quality of this sediment for use as remediation material at the HARS for the following reasons:

1. Bioaccumulation of Contaminants from Project Sediments

The 28-day Bioaccumulation Test results reported the following toxins were bioaccumulated to statistically significant levels in worms and clams exposed to Consolidated Edison sediments as compared to reference sediments.

Clam – All 16 PAHs plus total PAHs, 20 PCBs of 22 plus total PCBs, 5 Pesticides including Dieldrin, Endosulfan sulfate, 4,4-DDD, 2,4-DDD,



and 4,4-DDE plus Total DDT, 4 Dioxins and 3 Metals for a total of 51 contaminants significantly above reference.

Worm – 15 of 16 PAHs plus total PAHs, 20 of 22 PCBs plus total PCBs, 7 Pesticides including a-Chlordane, trans-Nonachlor, Dieldrin, Endosulfan I, 4,4-DDT, 4,4-DDD, 2,4-DDD, 4,4-DDE, and 2,4-DDE plus Total DDT, 3 Dioxins, and 5 Metals for a total of 53 contaminants significantly above reference.

In addition, **the concentration of 107.5 ug/kg total PCBs in worms, *Nereis virens*, exposed to Consolidated Edison sediments** was only 5.5 ug/kg below the regional matrix value for PCBs of 113ug/kg. Since this is a mean value, there were likely a subset of worms that bioaccumulated total PCBs at a concentration that exceeded the regional matrix value, a clear indication that the sediments are too contaminated to use for remediation of the HARS.

Taken together, the near exceedance of the PCB regional matrix value, the extremely low LC50 & EC50 for blue mussel larvae, *Mytilus edulis* of 22.4% (normal larval development) and 41% (larval survival) and the substantial number of contaminants that bioaccumulated to significant levels in both the clam and the worm, all raise serious concerns about the quality of the sediments in the project area. To cite USACOE/EPA's own language:" the presence in the HARS of toxic effects, dioxin bioaccumulation exceeding Category I levels in worm tissue and TCDD/PCB contamination in area lobster stocks. Individual elements of the aforementioned data do not prove that sediments within the Study Area are imminent hazards to the New York Bight Apex ecosystem, living resources, or human health. However, the collective evidence presents cause for concern, justifies that a need for remediation exists, that the site is Impact Category I and the site should be managed to reduce impacts to acceptable levels¹

Using the above-cited logic exhibited by the USACOE/EPA, the collective evidence presented in the sediment test results conclude the project sediments presents a "cause for concern". Sediments from Consolidated Edison will not reduce levels of Dioxins, PCBs or PAHs at HARS and the use of these sediments will allow elevated levels of these contaminants to persist at this site relative to areas outside of the HARS.

2. Continued Use of an Outdated Evaluation Framework

An outdated and inappropriate evaluation framework is being used, including effects levels that do not incorporate new information regarding effects of toxins on benthic communities and associated food chains. COA's previous comments have consistently specified technical reasons why the evaluation framework currently used for assessing bioaccumulation and chronic toxicity cannot be used for determining Material for Remediation and why it cannot protect against adverse effects. Failure of the USACOE/EPA to update the evaluation framework developed in 1996 (using data from 1980) in a timely manner has undermined remediation efforts at the HARS by continuously allowing the disposal of sediments containing elevated levels of Dioxins, PAHs and PCBs. The approval of sediments from this maintenance dredging operation is a perfect example of the lack of protection provided by the current framework. The fact that the

¹ HARS rulemaking preamble (62 Fed. Reg. 46142; 62 Fed. Reg. 26267).

current framework did not identify these sediments as inappropriate serves to illustrate the fact that the framework cannot select for sediments that will reduce levels of contamination at HARS and cannot select against sediments that have the potential to cause adverse ecological effects to the NY Bight.

Clean Ocean Action attended a meeting on June 25, 2007, held by the USEPA and USACOE to introduce RMW members to an entirely different approach to determining HARS suitability of project sediments that is currently being developed exclusively by the two agencies without input from the RMW. Clean Ocean Action was told at that time, that the RMW would receive quarterly updates to report on progress and activities conducted on the Testing Evaluation Framework (TEF). The USEPA/USACOE also agreed to organize workshops for the RMW to participate in detailed technical discussions of specific areas of the evaluation process that may be considered for inclusion in any final or proposal TEF. We have yet to receive a single update or report and no follow-up meetings or workshops have been announced.

As we have stated, Clean Ocean Action is alarmed by this new direction and the exclusive manner in which it is being developed.

In conclusion, Clean Ocean Action has presented numerous issues regarding the proposed placement of 35,000 CY of dredged material at HARS from maintenance dredging operations at Pier 98 at the Consolidated Edison Co. of NY. A written response to these comments is requested.

Sincerely,



Cindy Zipf
Executive Director



Jennifer Samson, Ph.D.
Principal Scientist

cc: Consistency Coordinator, New York State Department of Environmental Protection