Insights: News Releases

KT Client Success: Environmental Team Helps Protect Lake Erie and Ohio's Economy

JUNE 1, 2017

For the first time in decades, in 2015, the U.S. Army Corps of Engineers unilaterally determined that disposing of PCB-contaminated dredged material in Lake Erie was environmentally acceptable. Under its federally-granted authority, the State of Ohio responded that the contaminated dredged material was unsuitable for open-lake dumping and required placement in a confined disposal facility. Faced with increased disposal costs, the Corps refused to dredge a critical section of the channel unless the State of Ohio paid millions of dollars to properly dispose of the material, threatening to shut down one of the largest and most productive steel mills in the world.

The State of Ohio retained Kilpatrick Townsend to serve as Special Counsel in a federal lawsuit filed against the Corps in the Northern District of Ohio. The firm successfully assisted the State in obtaining a preliminary injunction requiring the Corps to dredge the entire Cleveland Harbor and dispose of the contaminated dredged material in a confined disposal facility rather than Lake Erie. The district court required the State to reserve $1.2 million for the estimated disposal costs pending final resolution of the case.

In May 2017, the district court granted summary judgment in favor of the State of Ohio requiring the Corps to dredge the entire channel and dispose of all dredged material in a confined disposal facility at full federal expense. The district court stated:

The Corps does not have the authority to simply disregard or eliminate any requirements or restrictions it is subject to by statute or by its own properly enacted regulations. The attempt to do so can indeed be considered arbitrary and capricious, unlawful, and/or in excess of its delegated authority.

Related People



Steven J. Levitas
Raleigh, NC
t 919.420.1707



Todd S. Roessler
Raleigh, NC
t 919.420.1726

slevitas@ktslaw.com troessler@ktslaw.com