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## Portsmouth Oil Refinery: Recent Developments

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PORTSMOUTH OIL REFINERY:  
RECENT DEVELOPMENTS

A three-year struggle continues over the proposed oil refinery to be located on the Elizabeth River in Portsmouth, Virginia. The refinery plan was made public by its backers, the Hampton Roads Energy Company (HREC), in January of 1975. Since then, a nonprofit group known as Citizens Against the Refinery's Effects (CARE) has been one of the chief opponents of the project.

All four state permits that were required for the 175,000 barrel-a-day refinery have been granted. The Virginia Resources Commission granted a permit to dredge the Elizabeth River; the State Air Pollution Control Board gave its approval of air emission; and the State Water Control Board issued permits both for construction of the terminal facility and for discharge of treated waste into the Elizabeth.

The last permit needed, the only one from a federal agency, is a marine-terminal dredging permit from the Army Corps of Engineers required by the Federal Water Pollution Control Act, 33 U.S.C.

1344, and the River and Harbor Act of 1899, 33 U.S.C. 403. The permit application is now being reviewed by the office of the Army Corps of Engineers in Washington, D.C. According to the Corps' district engineer in Norfolk, Col. Newman A. Howard, a decision should be forthcoming as early as May (Virginian-Pilot article dated March 6, 1978).

Various opinions on the refinery were voiced by other federal and state agencies during the Corps' public comment period for its environmental impact statement (EIS) on the project. Notably, the Environmental Protection Agency, the

National Marine Fisheries Service, and U.S. Fish and Wildlife Service were opposed. Their combined opposition concerned the following: (1) ozone-creating hydrocarbon emissions, (2) strain on the area's ground-water supply, (3) disposal of 3.4 million cubic yards of soil to be dredged from the Elizabeth, (4) the threat to the marine life of the area from potential oil spills and refinery effluent. Of particular concern was the potential for harm to the breeding and overwintering grounds of the blue crab in the lower Chesapeake Bay and harm to the seed oyster beds of the lower James (Virginian-Pilot editorial, December 8, 1977).

However, two federal agencies wrote letters of support for the refinery. The U.S. Department of Labor and Department of Energy recommended that the permit be granted, pointing out the economic benefits of the project (Virginian-Pilot, December 30, 1977).

There were three state agencies that recommended approval and two others urged disapproval. The crucial State pronouncement, however, was made by retiring Governor Mills E. Godwin, Jr. last December. The Governor gave a cautious endorsement of the project, saying that he did so in order to ensure review at the highest levels of the Department of the Army (Virginian-Pilot, December 29, 1977).

Approval of the dredging permit by the Corps will not completely end the problems of the refinery backers. There are two lawsuits currently pending challenging the State Water Control Board's issuance of the discharge permit, as authorized by 33 U.S.C. 1342, a National Pollution Discharge Elimination System (NPDES) permit.

One of the two suits challenging the NPDES permit was filed by the Virginia Oyster Packers and Planters Association in the Richmond Circuit Court. The State Water Control Board was the original defendant in the action, and HREC successfully intervened as a party-defendant. Arguments in the case ended on December 1, 1977, at which time Circuit Judge Marvin

F. Cole took the matter under advisement.

The oystermen claim that the permit should not have been granted due to the risk that the refinery's effluent or potential oil spills will destroy the natural seed oyster beds of the lower James River. According to the office of their attorney, Ammon G. Dunton, Jr., reversal of the Water Board's action is being sought on the grounds that the Board did not have substantial evidence to support its findings, as required both by the State Water Control Law, VA. CODE ANN. § 62.1-44.29 (7) (1973), and Virginia Administrative Process Act, VA. CODE ANN. § 9-6.14:17 (1975), and on the grounds that the Water Board should have but did not consider an environmental impact statement. Since the state was given authority to conduct the NPDES permit program by the E.P.A., the Virginia Oyster Packers and Planters Assoc. contends that approval of the permit was a "major federal action" requiring consideration of an EIS under the National Environmental policy Act, 42 U.S.C. § 4332.

The second suit involving the discharge permit was filed in federal district court in Richmond by the Chesapeake Bay Foundation and CARE, which is a chapter of the Foundation. Original defendants were the United States, Douglas M. Costle as Administrator of E.P.A., the Virginia State Water Board, and HREC. Both the city of Portsmouth and the Hampton Roads Building and Construction Trades Council were permitted to intervene in behalf of defendants.

The first count of the complaint states that issuance of the NPDES permit was a major federal action for which an environment impact statement should have been prepared under 42 U.S.C. § 4332. The three remaining counts were dismissed on motion of defendants and intervenors on February 28, 1977, for lack of federal jurisdiction. Plaintiffs have on motion asked the court to reconsider the dismissal, and to reinstate the three counts, which deal with failure to prepare total maximum daily loads for pollutants in the Elizabeth, lack of substantial evidence

supporting the findings of the Water Board, and improper procedures followed in consideration of the permit application.

District Court Judge Robert Mehrige will hear arguments on plaintiff's motion for summary judgment on the remaining count within the next few months.