March 5, 2019

Federal Docket Management System (FDMS)
http://www.regulations.gov
Docket Number: MARAD-2018-0114

Attention: Mr. Roddy C. Bachman, USCG, Roddy.C.Bachman@uscg.mil
Mr. Wade Morefield, MARAD, Wade.Morefield@dot.gov

Subject: MARAD-2018-0114. Request for inclusion in the public record and comments regarding EPA Proposed Procedures

Dear Sirs:

The Blueprint 2025 coalition recently became aware of the attached correspondence between the United States Environmental Protection Agency (EPA), Region 6, and the United States Coast Guard pertaining to the procedures and legal analyses that EPA Region 6 proposes to follow in its participation in the licensing process for the Texas Gulf Coast Terminals, Inc. Deepwater Port Project. We believe the regulatory approach described by the EPA Region 6 in this letter is unsupported by any grant of authority in the Deepwater Port Act, the Clean Air Act or the outer Continental Shelf Lands Act and is directly contrary to the clearly announced policy of this Administration as well as our Country's national interest and the public interests of adjacent coastal States. For that reason, as well as to provide a minimal level of transparency and administrative due process, we are requesting that this letter be included in the docket and made available for public comment.

Regarding the basis for this outreach and by way of background, Blueprint 2025 is a collaboration among infrastructure professionals, leading infrastructure development companies and public sector project managers, which advances and supports plans and policies to restore the U.S. position as the country with the world's best, most efficient and most productive infrastructure. Over the past few years, Blueprint 2025 has commented on a number of executive branch regulatory reform initiatives, presented related congressional testimony, hosted major leadership conferences addressing infrastructure and related regulatory reform issues, produced independent studies evaluating the worthiness of, and existing impediments to, large scale nationally-significant projects, and published detailed suggestions for improvement of the permitting process. [1] In this regard, Blueprint 2025 takes

[1] CGLA Infrastructure/Blueprint 2025 hosts annual events both in Washington, D.C. and in major cities throughout North America, attended by high-level government officials and top infrastructure/major project professionals to

great, non-partisan interest in assuring that the permitting process being applied to projects of major domestic and global significance, such as this Deepwater Port Project, will conform to applicable legal requirements and this Administration's clearly enunciated policies, which are forward looking and encourage thorough but expeditious consideration of major projects. Permitting or licensing processes should never hinder infrastructure development by duplicative and unnecessary review that falls outside of statutory authority.

The benefits and importance of this and similar Deep Water Port Projects in the Gulf of Mexico cannot be overstated. This project is one of a number of gulf coast deepwater port infrastructure initiatives critical to the development of oil and gas infrastructure opportunities in the region and the nation as a whole. In short, these gulf projects:

- Reduce overall VOC emissions by displacing uncontrolled emissions from onshore terminals loading at levels less than the 100 million bpd threshold, emissions beyond limits of control technology for large onshore sources and emissions from reverse lightering operations in the Gulf;
- Reduce fuel use and stack emissions from reverse lightering operations;
- Further reduce prospects for exceedances of NAAQS and health based limits by moving the reduced emissions offshore;
- Reduce risks of accidents and spills from near shore traffic congestion;
- Provide the most cost-effective and safe access to VLCC and ULCC tankers capable of carrying up to two million barrels per trip and enabling effective competition with exporters in Russia and the Middle East;
- Support tens of thousands of very high quality jobs;
- Maintain oil and gas export competitiveness and domestic economic growth by providing VLCC and ULCC loading capacity estimated to exceed six million barrels per day within the next five years;
- Directly address the need for efficient access to VLCC's and ULCC's without the major dredging required at alternative onshore ports;
- Allow the U.S.-based oil and gas industry to compete effectively in a highly competitive international marketplace.

Blueprint 2025 is concerned that the licensing approach outlined in the above-referenced EPA correspondence, in a number of respects, appears to be based on both erroneous interpretations of the applicable law and disregard of Executive Order 1383 that clearly articulates this Administrations' intent "to promote clean and safe development of our Nation's

---

encourage public/private sector dialogue and to share real-world data with those responsible for approving and overseeing such development.

BLUEPRINT 2025
729 15th St NW Suite 600, Washington, DC 20005; Tel: +1 202.776.0990; Email: isaac@cg-la.com

vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation."

Addressing Administration policy and Executive Order 1383 first, it is important to note that Region 6's seven-page letter references dozens of federal statutes and regulations, more than a half dozen overlapping federal jurisdictional entities, and a host of proposed new actions it is pursuing regarding exercise of jurisdictional oversight, yet gives no consideration to the questions of whether these unilateral actions create an "undue burden," or unduly "encumber energy production, constrain economic growth, and prevent job creation." In fact, nothing in the overall docket suggests directly, or even indirectly, that the burdens created by a new independent federal agency role in this project have been considered by any federal regulator as part of the design of their licensing approach. Furthermore, the Region's justification for adding new layers of regulatory burden and considerable expense, does not mention or recognize the primary role of state law and state regulators in addressing the potential impacts of the project.[2]

Just as important, the process outlined in the Region 6 letter deviates, in important respects, from the procedure mandated by the Deepwater Port Act and, further, relies on erroneous legal conclusions regarding the scope and applicability of EPA regulatory authority in the Central and Western Gulf of Mexico. These issues are briefly discussed below:

1. The Region 6 proposed procedures are a departure from the "one window" process mandated by the DWPA. The DWPA was enacted contemporaneously with the groundbreaking legislation which continues to serve as the foundation for our Nation's system of environmental regulation—NEPA, the Clean Air Act, the Clean Water Act and others. It was drafted and enacted by the same Members of Congress that passed these landmark environmental laws and, as a result, is effectively harmonized and coordinated within that body of law. Since the ports were to be located beyond territorial jurisdiction, the enactors were completely free to determine the extent to which domestic law would be applicable[3] and the manner in which domestic regulatory authority would apply. They exercised this freedom through the establishment of a "one window" licensing process in which concerned agencies[4]

[2] In addition to the U.S. Coast Guard, five other federal agencies are copied on the EPA correspondence but no state law entity has been afforded a copy of the letter which would, in effect, take away their authority to oversee critical aspects of the project.

[3] An exception to this is the Clean Water Act, pursuant to which EPA has jurisdiction to issue permits from sources subject to U.S. jurisdiction into the Ocean. The NPDES permit for an ocean discharge is the only environmental permit issued in the licensing process for the one existing port.

[4] Agencies having "expertise concerning or jurisdiction over any aspect of the construction or operation of deepwater ports…." (33 U.S.C. 1504 (e)

729 15th St NW Suite 600, Washington, DC 20005; Tel: +1 202.776.0990; Email: isaac@cg-la.com

were required to participate, rather than conducting their own procedures. At the conclusion of this process, the participating agencies, rather than issuing their own permits or authorizations, were required to make recommendations, based on legal considerations within their areas of responsibility, regarding any conditions necessary to bring the port into compliance with any applicable laws and regulations. EPA participated in this process and submitted recommendations that appear to be reflected in the conditions of the only crude oil deepwater port license that has been issued to date. DWPA licenses, unlike permits under the Clean Air and Clean Water Acts or other comparable laws, require both continuous monitoring of environmental effects and continuous technology assessment to assure continuous upgrades in the "best available technology" standards which the ports are required to have in place. The DWPA thus provides superior environmental protection while avoiding redundant and potentially conflicting procedures which could unduly burden the development of critical energy resources. Both the law and this Administration's clearly enunciated policy would thus appear to require rigorous adherence to, rather than departure from, the DWPA's "one window" process.

2. EPA has no direct Clean Air Act authority in the Central and Western Gulf and the Clean Air Act is not the federal law applicable to air emissions from deepwater ports. Contrary to Region 6's assertion, neither the DWPA nor OCSLA make the Clean Air Act directly applicable to deepwater ports but, instead, designate the law of the nearest adjacent coastal state as the "federal law" applicable to the deepwater port.[5] Further, consistent with international treaty requirements, neither law asserts jurisdiction over the "superjacent airspace" of ports or OCS structures but limits the clean air related regulatory scope to that which is necessary to protect ambient air quality in the adjacent coastal areas.[6] Thus, the Court of Appeals' *Kleppe*[7] decision made clear that, at that time, the Secretary of Interior's Clean Air Act related authority on the outer Continental Shelf was exclusive and EPA had no jurisdiction.

The Secretary of Interior's exclusive jurisdiction regarding air emissions on the OCS continued until 1990, at which time the Congress, at the instigation of East Coast, Eastern Gulf and West Coast states, passed section 328 of the Clean Air Act[8] which essentially reversed *Kleppe* for the East Coast, Eastern Gulf and West Coast by providing EPA with clear authority to establish regulations and permitting procedures, and otherwise control emissions from "OCS sources" in those areas. With respect to the Central and Western Gulf, however, Interior's authority remains essentially unchanged; it remains the exclusive Clean Air Act authority for OCS emissions and is to consult with EPA and potentially affected states to coordinate regulation of

[5] 43 U.S.C.1333 (a) (2); 33 U.S.C. 1518 (b)
[6] 33 U.S.C. 1501 (b) 1518; 33 U.S.C. 1518; 43 U.S.C. 1333.
[777] 9 ELR 20661 (9th Cir. 1979).
[8] Id

729 15th St NW Suite 600, Washington, DC 20005; Tel: +1 202.776.0990; Email: isaac@cg-la.com

offshore and onshore emissions. EPA's authority in the Central and Western Gulf is limited to consultation with the Secretary of Interior in connection with the exercise of the Secretary's authority to assure coordination of air control regulation for outer Continental Shelf emissions and for emissions in adjacent onshore areas.[9]

This conclusion is given further weight by the Supreme Court's ruling in *RJR Nabisco, Inc. v. European Community,* which held that "Absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application." [10] While Section 328 does establish such a clear intent with respect to the East Coast, Eastern Gulf and West Coast, its carve out of the Central and Western Gulf clearly enunciates exactly the opposite intent with respect to that geographic area. The Region 6 assertion of jurisdiction to support its proposed regulatory approach in the Central and Western Gulf is contrary to applicable law.

3. A deepwater port is not a "new source" *as defined* in the Clean Water Act.

As noted above, the Clean Water Act, unlike the Clean Air Act, is supported by a clear expression of intention that the NPDES permit program is extraterritorially applicable to discharges to the ocean from sources, other than vessels, which are otherwise subject to U.S. jurisdiction. Thus EPA's jurisdiction to issue permits for the largely inconsequential point source discharges into the oceans from deepwater ports is not in question. In its letter, however, Region 6 takes the position that, because Section 1506 (9) (d) of the DWPA provides that a deepwater port "shall be considered a 'new source' for purposes of the … Federal Pollution Control Act…" the issuance or reissuance of such permits will always be subject to NEPA. While this may seem to be an issue of little consequence, it will put this and future EPAs in the position of deciding, based on environmental factors, whether or not a facility may continue to operate, unless it can eliminate water discharges to the ocean. The contingency created by this interpretation, while perhaps remote, could significantly affect the financing of some projects. Such a result would not be in the national interest nor can it be supported by any reasonable interpretation of either the DWPA or the Federal Pollution Control Act

At the time the DWPA was enacted, the CWA, in 33 U.S.C. section 1316, defined "new source" as follows:

> The term "new source" means any source, the construction of which is commenced *after the publication of proposed regulations* prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section [emphasis added].

[9] 42 U.S.C 7627

[10] 579 U.S. (2016); 136 S. Ct. 2090 (June 20, 2016.)

729 15th St NW Suite 600, Washington, DC 20005; Tel: +1 202.776.0990; Email: isaac@cg-la.com

And provided, in section 33 U.S. C. 1376 that:

> Except for …I issuance of a permit under section 1342 of this title for the discharge of any pollutant by a new source as defined in section 1316 of this title, no action of the Administrator taken pursuant to this chapter shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [emphasis added].

Obviously, since no standards of performance for deepwater ports were proposed at that time (nor have they been at any time since), a deepwater port could never have been a "new source" as defined in the FWPCA, and the issuance of a permit for a port could have never been deemed a major federal action significantly affecting the quality of the human environment.

The DWPA language suggesting that deepwater ports should be "considered" a new source for purposes of the FWPCA must be read, at most, as a suggestion to consider adoption of new source performance standards. EPA, over a period of forty plus years, has consistently taken the position that water discharges from deepwater ports are not sufficiently significant to merit the adoption of new source performance standards. In this context, it would clearly be unfair and contrary to common sense to subject a deepwater port, which is clearly "existing" in every commonly understood sense of the word, to the consequences of retroactive designation as "new". The agency cannot be allowed to leverage a simple expression of congressional concern into an every five year life or death decision over projects which will cost in the billions. The distinction between "shall be considered "and "defined as" must be recognized, taken into account and fully implemented. The idea that somehow the renewal of permits for these insignificant discharges triggers a need for a facility wide environmental review every five years is counterproductive and detrimental to both our economy and the environment.

A central tenet of Blueprint 2025's policy is the recognition that reform of the permitting process for major infrastructure projects is absolutely essential if the U.S. is to modernize its infrastructure in time to allow development of the new technologies which will enable us to keep pace with the modernization programs of our major global competitors.

The deepwater port projects provide case studies for evaluation of the success of national regulatory reform efforts. We assume that there will be agreement that all stakeholders are entitled to permitting processes which are efficient, realistic, transparent and consistent, and also which conform to applicable laws and provide reasonable certainty. Efficiency and fairness of the federal permitting process are critical for realization of critical Gulf Coast infrastructure projects and all critical infrastructure projects throughout the United States.

729 15th St NW Suite 600, Washington, DC 20005; Tel: +1 202.776.0990; Email: isaac@cg-la.com

This experience with the DWPA demonstrates that, absent strong policy leadership and a strong sense of direction, even the most efficient permitting process will have a tendency to lose its way and fall into disrepair. We strongly urge restoration of the consultative processes which led to the early successes of the DWPA program and, we would hope, to broader application of key elements of that process, such as the "one window" approach and firm time limitations, which made it successful.

We appreciate your consideration of these comments. Our intention is to continue monitoring this and similar proceedings and to participate as necessary to assure efficiency and fairness.

Thank You.

Best Regards,

Norman F. Anderson
Chief Executive Officer
CG/LA Infrastructure
Founder, Blueprint 2025

ATTACHMENTS: Letter from Mr. Robert D. Lawrence, Senior Policy Advisor, Energy Issues; EPA Region 6 to Mr. Roddy C. Bachman, USCG regarding *EPA Authority Over Construction and Operation Texas Gulf Terminals Inc. Deepwater Port Act Project*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

July 26, 2018

Mr. Roddy C. Bachman
U.S. Coast Guard (CG-OES-2)
Vessel and Facilities Operating
2703 Martin Luther King, Jr. Avenue S.E.
Washington, DC 20593-7509

Subject: EPA Authority Over Construction and Operation
Texas Gulf Terminals Inc. Deepwater Port Act Project

Dear **Mr.** Bachman:

EPA Region 6 received a copy of the deepwater port license application package for Texas Gulf Terminals Inc. (TOTI) crude oil export terminal on July 13, 2018, and provides these comments to assist the United States Coast Guard/ Maritime Administration (USCG/ MARAD) and their contractors as the agencies determine the administrative completeness of the Deepwater Port Act (DPA) license application package and initiate scoping for the Environmental Impact Statement (EIS) under the DPA and the National Environmental Policy Act (NEPA). The overall project will consist of three distinct, but interrelated components: 1) the "offshore" component, 2) the "inshore" component, and 3) the "onshore" component.

The proposed deepwater port (offshore component) would be located approximately 12.7 nautical miles off the coast of North Padre Island (Kleberg County, Texas) and consist of 14.71 miles of two (2) new parallel 30-inch diameter crude oil pipelines, which terminate at a single point mooring (SPM) buoy. The SPM buoy system would be positioned in water depths of approximately 93 feet and consist of a pipeline end manifold, catenary anchor leg mooring system, and other associated equipment.

The inshore components associated with the proposed project includes 5.74 miles of two (2) new 30-inch diameter crude pipelines and onshore valve station used to connect the onshore project components to offshore project components. The inshore portions of the proposed pipeline infrastructure cross the Laguna Madre bay complex, the Gulf Intracoastal Waterway, and extend across North Padre Island to the mean high tide line located at the interface of North Padre Island and the Gulf of Mexico. Additionally, the inshore project components include the installation of an onshore valve station on North Padre Island to allow for the isolation of portions of the proposed pipeline infrastructure for servicing, maintenance, and inspection operations.

Onshore components associated with the proposed project include the construction and operation of an onshore storage terminal facility (OSTF), booster station, and approximately 6.36 miles of two (2) new 30-inch diameter parallel crude pipelines with Nueces and Kleberg counties, Texas. The OSTF would occupy approximately 150 acres in Nueces County, and would consist of all necessary infrastructure to receive, store, measure, and transport crude oil through the proposed

inshore and deepwater port pipeline infrastructure. (Note - At the time of the application, the TGTI has not determined the number, precise routing, ownership, extent to which destinations other than the OSTF will be served and other details related to the shipment of oil from the production fields to the OSTF. TGTI will be required to supplement the application when this information is available.) The proposed booster station would occupy approximately 8.25 acres in Kleberg County, and would consist of the necessary pumping infrastructure to support the transportation of crude oil from the OSTF to the deepwater port. Onshore pipeline infrastructure would extend from the OSTF to the landward side of the mean high tide line located at the interface of the western shoreline of the Laguna Madre.

EPA Region 6 appreciates this opportunity to provide the following information to the Coast Guard and Maritime Administration as part of the coordinated licensing effort for this facility.

We reviewed the TGTI documents and have determined that the applications for EPA Clean Air Act permit actions are administratively complete in that all of the required EPA forms and certifications were included. However, there is an issue with the Clean Water Act permit application (see below). In addition to the comments below, we reserve the right to request additional information as we more fully examine the permit applications and begin to develop Agency decisions regarding permits for the proposed facility. The NEPA and cross-cutting statutes and regulatory consultation documents need to be sufficient for our use in our regulatory permit actions. EPA would appreciate the opportunity to participate in the consultations as an action agency.

CLEAN WATER ACT. Due to the nature of the delegation of the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit authority in Texas, EPA Region 6 is the NPDES permitting authority for the project, including onshore, inshore, and offshore discharges.

The Texas Gulf Terminals Inc. deepwater port license application received by EPA Region 6 included a copy of the NPDES permit application forms. In accordance with the applicable Environmental Permit Regulations, (40 CFR 124.3(c), 54 FR 18785, May 2, 1989) this information was reviewed and determined to be administratively incomplete. During the technical analysis of the application, other deficiencies may be determined and a request for additional or clarifying information will be made to the applicant.

The applicant should submit NPDES Form 2E - Application for facilities which do not discharge process wastewater for its hydrostatic test discharge water. NPDES Form 2C is the Application for a permit to discharge wastewater for existing industrial facilities (including manufacturing, commercial, mining and silvicultural operations).

Because the Deepwater Port Act (DPA) designates the proposed type of facility a "new source" for CWA purposes, EPA will consider the information in the MARAD/Coast Guard's EIS and consultation documents in its NPDES permit action in accordance with CWA § 51 l(c)(l) and DPA § 5(f). Of particular interest will be the conclusion of consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act; including affects on fish, shellfish, and threatened and endangered species, in all life stages, caused by the construction and operation of the facility. EPA is also intending to reply on the

National Historic Preservation Act consultations with Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

CLEAN AIR ACT. EPA does not normally administer the Clean Air Act (CAA) in the western Gulf of Mexico because under CAA Section 328, the Department of Interior's Bureau of Ocean Energy Management is responsible for regulating outer continental shelf (OCS) sources in that area. As presented in the application, the proposed source is not an OCS source, so Section 328 does not apply. Instead, EPA is the CAA permitting authority. EPA regards a provision of the DPA, 33 U.S.C. § 1501, *et seq,* as the primary source of its authority to apply the CAA to activities associated with deepwater ports. The DPA applies federal law and applicable State law to deepwater ports, and further designates deepwater ports as "new sources" for CAA purposes. Accordingly, for the source's pre-construction and operating permits, EPA will rely on the provisions of Title 1 and Title V of the CAA, supporting applicable regulations and on the state's law to the extent applicable and not inconsistent with federal law. EPA will also consider the information in the MARAD / Coast Guard's EIS and consultation documents in its CAA permit actions, and in particular will rely on the MARAD / Coast Guard's consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act as well as consultations with the Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

The applicant asserted that the nearest adjacent coastal state to the operation is Texas, based on the location of the terminal. EPA concludes that, in accordance with Section 19 of the DPA, the applicable state laws and regulations governing air quality at TOTI are those of Texas.

We have not completed our review the permit applications or the supporting modeling analysis included in *Appendix Vof* the DWP License application for technical completeness. This is only a preliminary review for administrative completeness. In EPA's preliminary review, air permit related application materials appear to generally include regulatorily required administrative information. After EPA completes a technical review of the applications, additional technical information may be requested in writing or though meeting$ with the applicant. We reserve the right to infonn the applicant that their air permit related applications are technically incomplete pursuant to each set of implementing regulations the applicant has applied under. At this point in EPA's review, we believe that the applications as submitted are administratively complete.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT. Under Section 101 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), 33 U.S.C. § 1401, no person may transport material from the United States or on an American flagged vessel for the purpose of dumping it in ocean waters in the absence of a permit issued by EPA pursuant to MPRSA § 102. A MPRSA §102 permit is also required for any person transporting material from anywhere for the purpose of dumping it in the territorial seas or to the contiguous zone where it might affect the territorial seas.

Based on our current understanding, it does not appear that this proposal includes transporting materials for the purpose of dumping it in connection with the construction or operation of the Texas Gulf Terminals Inc. facility. Moreover, "dumping" does not include "construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters, or

on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or state law ... " MPRSA § 3(f). The construction of this deepwater port appears to fall within this statutory exclusion. However, if this understanding is not correct or if dredged materials associated with the construction/placement of the SPM facility and pipelines require disposal, MRPSA Sections 101 and 103 may apply, as well as provisions of the Clean Water Act. The following information is provided in that event.

The Corpus Christi Ship Channel Ocean Dredged Material Disposal Site (ODMDS) was primarily developed in consultation with US Army Corps of Engineers (USACE)- Galveston to provide placement of suitable navigational sediment. EPA believes it would be beneficial to understand what pertinent information would be helpful should you choose to utilize the ODMDS site.

First, EPA Region 6 looks forward to working with Texas Gulf Terminals Inc. should you choose to utilize the ODMDS. However, EPA also realizes that sometimes dredged material may not be suitable to be used beneficially but the Agency encourages that suitable material should be considered for beneficial uses. EPA encourages that the facility continues to work with all local, state and federal entities to look for suitable beneficial placements. EPA believes that suitable dredged material provides productive purpose from which economic, social or other benefits may be derived. Compared to disposal of dredged material in confined sites, beneficial use reduces the need for disposal. Examples of beneficial use include wetlands restoration, beach nourishment, shoreline construction, and habit(:lt creation. The Clean Water Act (CWA) Section 404 governs discharge of dredged or fill material into "waters of the United States," including the placement of dredged material in the territorial sea for a purpose other than disposal. For information on dredged material permitting under CWA 404, please see our Section 404 of the Clean Water Act Web page.

Second, should the Texas Gulf Terminals Inc. facility choose to utilize the Corpus Christi ODMDS, it is imperative that early coordination with USACE - Galveston and EPA be conducted due to potential site capacity issues for this site. This is an enormous undertaking and will require that all parties work together collaboratively to achieve a successful outcome.

Third, EPA and USACE jointly published the Ocean Testing Manual, a national testing manual for the evaluation of dredged material proposed for ocean dumping (also known as the Green Book). Under section 103 of the MPRSA, any proposed dumping of dredged material into ocean waters must be evaluated through use ofEPA's ocean dumping criteria (40 CFR 220-229). The Ocean Testing Manual provides guidance for sampling, testing, and analysis of water, sediment and tissue to evaluate the environmental acceptability of dredged material proposed for ocean disposal. Uncharacterized materials are prohibited from ocean disposal (40 CFR 227.S(c)). Therefore, EPA and USACE review sampling and analysis plans to ensure that each project's sediments are appropriately characterized. EPA recommends that Texas GulfTenninals Inc. look at the requirements for utilization of the ODMDS should you choose to utilize this site. It is critical that if you should have any questions; to work **with** USACE - Galveston regulatory to better understand USACE and EPA's role during the permitting process. All 3rd party dredging permits are handled by the USACE in coordination with EPA. Evaluation of dredged material for ocean disposal under the Marine Protection, Research and Sanctuaries Act (MPRSA), sometimes referred to as the Ocean Dumping Act, relies on standardized testing using biological organisms (bioassays). The purpose of the evaluation procedures is to ensure efficient and reliable

protection against toxicity and bioaccumulation that otherwise may impair the marine environment or human health. The technical guidance is intended for use by dredging applicants, laboratory scientists, and regulators. Regional guidance is provided in the Regional Implementation Agreement.

Also, if you should need further information about the Region 6 program for Ocean Disposal, please feel free to visit our website at: https://www.e pa.gov/ocean-dumping/managing-ocean-dumping-epa-region-6 or an overview of the entire program nationally at: https://www.epa.gov/ocean-dumping

COASTAL AND WETLAND RESOURCES. As we currently understand the project, it would involve anchoring a Single Point Mooring (SPM) buoy in about 93 feet of water approximately 12.7 nautical miles off the coast of North Padre Island and connecting it to inshore components via 14.71 miles of two (2) new parallel 30-inch diameter crude oil pipelines. The inshore components include 5.74 miles of two (2) new 30-inch diameter pipelines and an onshore valve station on North Padre Island. The latter pipelines would transit the Laguna Madre Bay system, the Gulflntracoastal Waterway, and North Padre Island. The onshore components would include a storage terminal facility that would require a 150-acre site in Nueces County, a booster station located on an 8.5-acre site in Kleberg County, and 6.36 miles of two new 30-inch diameter parallel pipelines crossing through Nueces and Kleberg counties.

It is clear that these components, taken individually and considered cumulatively, could have significant impacts to vital coastal and wetland resources. Therefore, it is imperative that all necessary measures be taken to avoid such impacts to the degree possible and to fully mitigate or compensate for those that cannot be avoided. Beyond compliance with the National Environmental Policy Act and the Clean Water Act, there is also a fundamental need to ensure that the proposed project is consistent with federal and State efforts to restore coastal resources. The rapid deterioration of coastal areas in the northern Gulf of Mexico is regarded by many as one of the nation's most critical ecological problems.

Accordingly, all practicable efforts should be taken to ensure that the proposed project does not inhibit or otherwise conflict with reasonably foreseeable future restoration efforts irt this area. Special attention should be afforded to the alternative plans currently being analyzed as part of the Texas Coastal Restoration and Protection Feasibility Study (U.S. Army Corps of Engineers) and to those found in the Texas Coastal Resiliency Master Plan (Texas General Land Office). Any proposed projects under the Deepwater Horizon Natural Resource Damage Assessment and RESTORE Act programs that might be located in areas potentially impacted by this proposal should be evaluated. Coastal natural resource and sensitive species impact mitigation should be coordinated with the Coastal Bend Bays and Estuaries Program.

The impacts from construction and operation of the deepwater port and ancillary facilities, including dredging and any projected impacts to wetlands and special aquatic sites (including seagrass beds), are of particular interest to us and 'Should be analyzed in the draft Environmental Impact Statement (EIS). We would look for a thorough evaluation in the draft EIS that demonstrates planning efforts to avoid, minimize, and compensate for wetland and special aquatic site losses associated with any proposed dredged material disposal, construction work, and operation and maintenance activities. All unavoidable direct and indirect impacts would need to be fully compensated. In summary, the planning for this project must ensure that adverse

impacts to natural marine resources, coastal wetlands, and special aquatic sites (including seagrass beds) have been avoided to the maximum extent practicable, taking advantage of every opportunity for beneficial use of any dredged material produced.

We recommend that an aquatic resource and wetland mitigation plan be included within the draft EIS, along with the Clean Water Act Section 404 (b)(1) analysis. The mitigation plan should be included in the draft EIS along with the alternatives analyses and any additional infonnation relevant to potential impacts to wetlands and other special aquatic resources. This would ensure that the draft EIS has sufficient infonnation to demonstrate whether potential adverse impacts have been adequately addressed. Providing this material after public review of the draft EIS does not allow optimum analysis of the entire range of significant potential environmental impacts. Impacts to aquatic resources and wetlands should include direct and indirect effects, which might include deepwater port service and maintenance functions such as harboring of supply boats and other support vessels. Provisions for ensuring adequate post-implementationproject monitoring should be included. In addition, means of assuring mitigation success should also be incorporated into the proposed plan.

Over the years, human uses and natural events have combined to cause a critical habitat loss in this ecologically sensitive area that is important to the long-term protection of resident and migratory shorebirds and sea turtles. Construction and maintenance operations should include plans for avoiding impacts to nesting avian and sea turtle speci,es particularly those that utilize the shoreline, wetland, and shallow water habitats of North Padre Island and Laguna Madre for any portion of their life cycle.

The environmental analyses should explain whether the SPM location will negate the need for ballast water exchange and the concomitant potential for invasive species introduction. The potential for introduction of these species via other pathways associated with the vessels should also be evaluated.

The draft EIS should include an analysis of marine pollution issues that might arise from the potential increase in foreign vessel traffic in the area.

In addition, the EIS should address any projected marine and coastal natural resource impacts to be expected as a result of hurricanes or tropical storms. As we understand it, the Single Point Mooring system.includes anchors attached to the seabed and anchor chains and chain stoppers that allow the buoyed facility to move freely within a defined area. The environmental analysis should explain whether these features would cause bottom scour and impacts to benthic communities. The analysis of alternatives to reduce environmental impacts should also include a comparison of various types of Single Point Mooring systems, including Catenary Anchor Leg Mooring and Single Anchor Leg Mooring.

NATIONAL ENVIRONMENTAL POLICY ACT. EPA Region 6 desires to be a cooperating agency in the development of the EIS by MARAD and USCG. Additionally, Section 309 of the Clean Air Act requires EPA to review EISs prepared by other agencies and refer projects it finds "environmentally unacceptable" to the President's Council on Environmental Quality (CEQ).

MARAD/USCG should submit the EIS to EPA through thee-NEPA electronic filing system. Filing instructions are available on EPA's NEPA website at https://wv,w.epa.gov/nepa/environrnental-impact-statement-filing-guidance

Please provide an additional copy of both draft and final EISs to EPA Region 6 for consideration in its NPDES permit action.

POINT OF CONTACT. I will be the primary EPA point of contact for communications on the TGTI project. Correspondence should be directed to me as follows:

Robert D. Lawrence
Senior Policy Advisor - Energy Issues
EPA Region 6
1445 Ross Avenue (6MM-A)
Dallas, TX 75202
(214) 665-6580

Once again, EPA Region 6 looks forward to working with the Coast Guard and Maritime Administration on this project.

Sincerely yours,

-R4 o u --

Robert D. Lawrence
Senior Policy Advisor - Energy Issues

cc: **Mr.** Matt Kimmel
Corps of Engineers, Corpus Christi, TX

Ms. Terri Thomas
Bureau of Ocean Energy Management, New Orleans LA

Dr. Roy E. Crabtree
NOAA National Marine Fisheries Service, St. Petersburg, FL

Mr. Pat Clements
Fish & Wildlife Service, Corpus Christi, TX

Ms. Yvette Fields
Maritime Administration, Washington, DC

Ms. Denise Rogers
Texas Gulf Terminals, Inc., Houston, TX