December 31, 2020

Jeffrey Robinson
Jeff Robinson, Branch Chief
Air Permits, Air Monitoring & Grants
EPA Region 6
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Dear Mr. Robinson:

Thanks very much for the attached letter. To follow up on our request to the Administrator, we are enclosing:

1. A copy of Administrator Barbara Blum's Notice of Final Determination of Applicability regarding Exxon's Platform Hondo offshore California; and

2. Copies of some of the submissions which we have filed in an effort to obtain similar due process in connection with EPA's determination to assert Clean Air Act jurisdiction over offshore deepwater ports.

As you will note, Administrator Blum concluded that:

> Because this is a question of first impression, and because the decision as to the Exxon Hondo facility is based on a determination of national scope and effect, the decision is being made by the Administrator. It is my intent that the same legal principles will be applied to all future activities on the Outer Continental Shelf. In the future, decisions as to the applicability of the requirements discussed below to facilities on the Outer Continental Shelf will be made by the EPA Regional Administrators, as are other routine applicability determinations.

It is our view that the Sheehan letter dealt with a matter of first impression (extraterritorial application of the Clean Air Act pursuant to the DWPA -- rather than OCSLA) and, since it was a matter of national scope and effect and a substantial departure from decades of prior precedent, the matter should have been addressed by the Administrator. Further, even if it could be characterized as a "routine applicability determination", which it obviously cannot, it must be decided by the Regional Administrator in a proceeding subject to public review and comment. This has always been true as a matter of Administrative Law. EPA's recent Guidance regulations confirm this.

Because the Sheehan letter policies were never subjected to public review and comment, it was wrong for Region VI to publish them as Guidance and correct to withdraw that Guidance. It no longer has the force or effect of law and it would be wrong to continue to give it any effect.

As you are likely aware, since the Region appears to us to be proceeding in a number of instances as if the Sheehan letter policies were still in effect, we have been working for some time to convince either the Region or the Administrator to conduct a proper proceeding subject to review, comment and appeal before taking any further actions in accordance with the Sheehan letter policies. Our petition of April 8, 2020 seeking initiation of an appropriate proceeding, has not yet been responded to.

The situation in which critical infrastructure decisions and expenditures have been seriously impacted by policies which have never been legally adopted cannot be justified and must be ended. Please grant the relief which we have requested.

Best Regards,

Norman F. Anderson
President & CEO
CG/LA Infrastructure, Inc.
Founder, Blueprint 2025

Cc Andrew Wheeler; Wheeler.andrew@Epa.gov
David Garcia; Garcia.David@epa.gov

Attachments

paragraph 7, the Assistant Secretary may postpone any procedural date or make other procedural changes for good cause shown at the request of any party or on his own motion. Subsequent to the Assistant Secretary's decision of paragraph 7, the Economic Regulatory Administration may similarly act.

Issued in Washington, D.C., April 12, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration.

[FR Doc. 78-10375 Filed 4-17-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 881-8]

CONCRETE PRODUCTS INDUSTRY

Availability of Guidance Development Document and Economic Impact Analysis

The Environmental Protection Agency (EPA) is hereby announcing that a document entitled "Guidance Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Concrete Products Point Source Category" has been prepared and is available for public review and comment and for use as technical guidance in pollution abatement and control.

This guidance development document sets forth information collected about the concrete products industry and summarizes available effluent data and applicable treatment processes.

In addition to the technical guidance development document, the Agency has developed an economic impact analysis of this category. This analysis is set forth in a document entitled "Guidance Economic Impact Analysis for the Concrete Products Industries.

Interested persons may participate (comment on these guidance documents) by submitting written comments to the Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Attention: Distribution Officer, WH-552. Comments on all aspects of the guidance development document and economic analysis document are solicited. In the event comments are in the nature of criticism as to the adequacy of data which are available or which may be relied upon by the Agency, comments should identify and if possible provide any additional data which may be appropriate.

FOR FURTHER INFORMATION CONTACT:

Harold B. Coughlin, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, WH-552, 202-426-2560.

A copy of all public comments will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M Street SW., Washington, D.C. 20460. A copy of the guidance development document and a copy of the economic study referred to above and certain supplementary materials supporting the study will be maintained at this location for public review and copying. The EPA information regulation 40 CFR, Part 2 provides that a reasonable fee may be charged for copying. Additionally, a small number of copies of both documents are available for public distribution and can be obtained by addressing requests to the Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Attention: Distribution Officer, WH-552.

All comments received on or before September 1, 1978 will be considered.

Dated: March 30, 1978.

THOMAS C. JORLING,
Assistant Administrator for Water and Hazardous Materials.

[FR Doc. 78-103387 Filed 4-17-78; 8:45 am]

[6560-01]

[FRL 88-4]

APPLICABILITY OF CLEAN AIR ACT TO MODIFICATION OF EXXON CORP.'S PLATFORM HONDO

Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of applicability.

SUMMARY: It is the determination of the Environmental Protection Agency (EPA) that Exxon Corp.'s proposed installation of an Offshore Storage and Treatment facility on the Outer Continental Shelf off the coast of Santa Barbara County, Calif., will constitute a modification of Exxon's platform Hondo. It is the further determination of EPA that this modification is subject to review under the new source review and prevention of significant deterioration provisions of the Clean Air Act, as amended (42 U.S.C. 7401 et seq.) and EPA's implementing regulations (40 CFR 52.233 and 52.270).

FOR FURTHER INFORMATION CONTACT:

William Pierce, Chief, Permits Branch, Enforcement Division, Region IX, 215 Fremont Street, San Francisco, Calif. 94105, 415-556-3450.

SUPPLEMENTARY INFORMATION:

PRELIMINARY STATEMENT

This decision marks the first time that EPA has sought to apply the provisions of the Clean Air Act and the regulations promulgated thereunder to activities on the Outer Continental Shelf. In the past there has been uncertainty as to the applicability of these laws on the Outer Continental Shelf, and it is with respect to the Exxon Hondo facility that the legal questions have first been systematically addressed.

Because this is a question of first impression, and because the decision as to the Exxon Hondo facility is based on a determination of national scope and effect, the decision is being made by the Administrator. It is my intent that the same legal principles will be applied to all future activities on the Outer Continental Shelf. In the future, decisions as to the applicability of the requirements discussed below to facilities on the Outer Continental Shelf will be made by the EPA Regional Administrators, as are other routine applicability determinations.

DESCRIPTION OF PROJECT

In 1968, several oil companies including Exxon Corp. obtained oil exploration and production leases for 17 tracts located on the Federal Outer Continental Shelf in the northwest portion of the Santa Barbara Channel. These leases were consolidated into the Santa Ynez Unit with Exxon Corp. named as the unit operator. The first tract to be developed in the Santa Ynez Unit is the Hondo field. Initial production from the Hondo field is expected to be 30,000 bbl/day of oil and 30 MMSCF/day of natural gas.

The development plan submitted in 1971 by Exxon to the U.S. Geological Survey proposed two alternatives for development of the Hondo field. Under both alternatives, Exxon proposed to construct a platform for exploration and production which is referred to as platform Hondo. Exxon, however, developed alternative plans for storage and treatment of the oil produced by platform Hondo. Under the "onshore" alternative, it was proposed that the oil would be sent to shore for treatment and storage via pipeline until it could be loaded onto tankers from a terminal facility anchored within State waters. An "offshore" alternative was proposed by Exxon in case the necessary permits and approvals for the "onshore" alternative could not be obtained. Under the "offshore" alternative, Exxon proposed to construct an offshore storage and treatment (OS&T) facility which would be anchored near platform Hondo beyond the 3 mile limit of State jurisdiction. The transfer of oil to tankers would occur from the OS&T under the offshore alternative.

Exxon's development plan for the Hondo field was approved by the Department of Interior in August 1974 after preparation and circulation of a

lenthy Environmental Impact Statement. Subsequently, Exxon was unable to obtain approval for the onshore alternative from the Coastal Commission of the State of California on terms which were acceptable to Exxon. Exxon abandoned its attempts to receive a permit from the State of California for its onshore facility in March 1976. Exxon then sought approval from the Department of Interior for the offshore alternative which approval was obtained in July 1976. Fabrication of platform Hondo occurred at a shipyard near San Francisco. The platform was then towed from San Francisco Bay to the Santa Barbara channel where it was set in position. Installation of platform Hondo was completed in June 1976.

Production and support facilities on the platform will perform the major functions of oil and gas separation, gas compression and dehydration, and produced-water injection. Oil/water emulsion from the production separators flows into surge tanks from which it will be metered and transferred by electric motor driven pumps to the OS&T via a submarine pipeline. A portion of the gas which has been compressed and dehydrated will be used for gas lift and for fuel on both the platform and the OS&T. For an interim period, excess gas will be reinjected into the reservoir.

The OS&T facility is a converted tanker with processing equipment mounted on its deck. It will be moored to a Single Anchor Leg Mooring System (SALM) approximately 3.2 miles from shore, just outside State jurisdiction. The OS&T will provide equipment for crude oil dehydration and sweetening, water treating and power generation both for Platform Hondo and for the OS&T. In addition, the OS&T will store the treated crude oil until it can be transferred to a tanker for transport to refineries.

On the OS&T, free water will first be removed from the oil/water emulsion. Then the emulsion will be heated and electrostatically treated to break the tight emulsion. The dedhydrated crude oil will then go to a crude stabilization system where hydrogen sulfide will be stripped out. The resulting sweet crude oil be cooled and stored in the OS&T cargo tanks.

Produced water from the crude oil dehydration process will flow to a series of tanks and vessels equipped with skimming devices to remove oil and suspended solids. Oil that is collected will go to a rerun tank for reprocessing. The water will be filtered and returned to the Hondo platform for injection into a subsurface formation.

Natural gas will flow from the platform to the OS&T through a separate subsea pipeline. The gas will be sweetened and used for fuel gas and for gas blanketing of various tanks and processing equipment. Electric power for the OS&T and supplemental power for the Hondo platform will be supplied by gas-fired turbine generators on the OS&T. Power will be transferred to the platform via a subsea power cable.

An ocean-going tug-barge is planned for transport of oil from the OS&T to marine terminals for delivery to refineries. Other vessels may also be used in this service to supplement the primary shuttle vessel. At a daily oil rate of 30,000 barrels per day, an average per day, an average of 5.2 loads per month will be required. It is anticipated that 50 more wells may be drilled from two subsea production facilities in the early 1980's and that peak field production may total 60,000 bbl/day of oil and 60 MMSCF per day of gas.

Legislative Background

In 1970, Congress adopted extensive amendments to the Clean Air Act (Pub. L. 91-604) in order to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare. Section 109 of the amendments directed the Administrator of EPA to promulgate national ambient air quality standards for any air pollutant which the Administrator determined has an adverse effect on public health and welfare and for which air quality criteria had been established. Pursuant to this authority, the Administrator promulgated national primary ambient air quality standards at levels necessary to protect public health for sulfur dioxide (SO_2), particulate matter (PM), carbon monoxide (CO), nitrogen dioxide (NO_2), hydrocarbons (HC), and photochemical oxidants (40 CFR part 50). The Administrator also promulgated national secondary ambient air quality standards for these pollutants at levels necessary to protect public welfare (40 CFR part 50).

Under the Clean Air Act, the various states have the primary responsibility for attaining and maintaining the national ambient air quality standards. Section 110 of the Clean Air Act requires each State to adopt a State Implementation Plan (SIP) containing emission limitations and such other measures as necessary to insure attainment and maintenance of the national standards as expeditously as practicable but in no case later than 3 years from the date of plan approval by the Administrator (42 U.S.C. 7410). The Administrator of ERA is required by section 110(b) to promulgate substitute regulations if the State fails to submit an implementation plan or if portions of the plan are inadequate to attain and maintain national ambient standards. Pursuant to this authority, the Administrator has promulgated regulations for California which will assure prevention of significant deterioration (PSD) of air quality (40 CFR 52.270) and which will require review of new and modified stationary sources of air pollution for specific air quality control regions (40 CFR 52.233).

Prevention of Significant Deterioration

In August 1977, Congress adopted comprehensive amendments to the Clean Air Act which substantially strengthened provisions governing prevention of significant deterioration of air quality and new source review for non-attainment areas. (Pub. L. 95-95). Section 165 of the Act regarding prevention of significant deterioration specifies that no major emitting facility may be constructed in any area after date of enactment of the 1977 amendments unless a permit has been issued for the proposed facility in accordance with the requirements of section 165 (42 U.S.C. 7474). The term "major emitting facility" is defined by section 169(1) of the act as a stationary source of air pollutants within specified categories of sources, including petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels, which emit, or have the potential to emit, one hundred tons per year or more of any air pollutant. (42 U.S.C. 7479(1)). In addition to specific source categories, section 169(1) provides that the term "major emitting facility" also includes any source with the potential to emit two hundred and fifty tons per year or more of any air pollutant (42 U.S.C. 7479(1)).On November 3, 1977, EPA published proposed regulations for the purpose of implementing the permit requirements of section 165 (42 FR 57479). Under EPA's proposed regulations, the new pre-construction review requirements of section 165(a) would be applicable to any new or modified major stationary source subject to EPA's existing prevention of significant deterioration regulations and which has not obtained a PSD permit pursuant to those regulations prior to March 1, 1978.

EPA's existing PSD regulations, promulgated on December 5, 1974 (39 FR 42510), prohibit construction of a new stationary source without a PSD permit where the new source is in one of 19 specified categories (40 CFR 52.21). A modification to a stationary source is subject to review under EPA's present PSD regulations only where there will be a net increase in emissions of sulfur dioxide or particulate matter. Pursuant to section 168, these regulations will remain in effect until EPA promulgates final revisions to the proposed PSD regulations published on November 3, 1977.

New Source Review

On June 18, 1973, EPA promulgated requirements for State implementa-

tion plans regarding review of new and modified stationary sources of air pollution (40 CFR 51.18, 38 FR 15836). Subsequently, EPA disapproved the new source review provisions of California's State implementation plan for several air pollution control districts and promulgated substitute regulations applicable to construction of new and modified stationary sources within those districts (40 CFR 52.233). Section 52.233(f) provides in part that no owner or operator of a new or modified stationary source may commence construction within the Santa Barbara County Air Pollution Control District or Ventura County Air Pollution Control District without obtaining approval from the Administrator of EPA. Approval may be granted by EPA only where the owner or operator of the source demonstrates that the source will be operated without violating the State implementation plan and will not prevent or interfere with attainment or maintenance of any national standard.

On December 21, 1976, EPA promulgated an Interpretative Ruling prescribing procedures for implementation of the new source review rules in nonattainment areas (41 FR 55524). The Interpretative Ruling prohibits construction of a "major source" or "major modification" in a nonattainment area, or which would impact a nonattainment area, without a permit specifying stringent requirements. A "major source" is defined by the Interpretative Ruling to cover any structure, building, facility, installation, or operation (or combination thereof) for which the allowable emission rate of particulate matter, sulfur oxides, nitrogen oxides, or non-methane hydrocarbons is 100 tons or more per year, or for which the allowable emission rate of carbon monoxide is 1,000 tons per year or more. The Interpretative Ruling also applies to a "major modification" which is defined as a modification to an existing source which increases the allowable emission rate of particulate matter, sulfur oxides, nitrogen oxides, or non-methane hydrocarbons by 100 tons per year or more or increases allowable emissions of carbon monoxide by 1,000 tons per year or more.

The principal requirements imposed by the Interpretative Ruling on a new source which would exacerbate an existing violation of a National Ambient Air Quality Standard are: (1) that the new source or major modification will meet an emission limitation which specifies the lowest achievable emission rate for the particular type of source; (2) that all existing sources owned by the applicant located in the air quality control region are in compliance with all requirements of the State implementation plan; (3) that emission reductions from existing sources in the area of the proposed source are required such that total emissions from the existing and proposed source are sufficiently less than total allowable emissions from existing sources under the state implementation plan so as to represent reasonable progress toward attainment of national ambient air quality standards; and (4) that emission offsets will provide a positive net air quality benefit in the affected area. These requirements were established by EPA in order to assure that construction of major sources and major modifications would not further aggravate air quality in nonattainment areas but would result in reasonable progress toward attainment of the applicable national ambient air quality standards.

Congress expressly ratified this approach by enacting section 129 of the Clean Air Act Amendments of 1977 (Pub. L. 95-95). That section provides that EPA's Interpretative Ruling shall apply, with a minor change regarding the appropriate baseline for emission offsets, in nonattainment areas until July 1, 1979, when the more stringent permit requirements of section 173 (42 U.S.C. 7503) will become applicable in nonattainment areas.

Pursuant to section 107(d) of the Clean Air Act Amendments of 1977 (42 U.S.C. 7407(d)), EPA promulgated a list of attainment and nonattainment areas (43 FR 8962, March 3, 1978). This list was developed from submissions by the various states and is to be used in implementing the prevention of significant deterioration and new source review provisions of the Act. Santa Barbara County and Ventura County are in the South Central Coast Air Basin. All of Santa Barbara County and Ventura County are officially classified as nonattainment areas for photochemical oxidants. The air quality maintenance area (AQMA) of Santa Barbara County is classified as a nonattainment area for total suspended particulate matter (TSP) and carbon monoxide (CO). A portion of the Santa Barbara non-AQMA and the southern portion of Ventura County are also classified as nonattainment areas for TSP. Ventura County is classified as an attainment area for SOx. Except for these areas and these pollutants, Santa Barbara and Ventura Counties are designated as areas which cannot be classified on the basis of existing data for TSP, SOx, CO, and NO_2. Orange County and portions of Los Angeles, Riverside, and San Bernardino Counties are within the South Coast Air Basin. This air basin is officially classified as a nonattainment area for photochemical oxidants, CO, NOx and TSP. In addition, the portion of Los Angeles County within the South Coast Air Basin is classified as nonattainment for SO_2. Orange County and the portions of Riverside and San Bernardino Counties within the basin are listed as attainment areas for SO_2.

Estimated Emissions from Exxon's Facilities

EPA's initial estimates of air pollutant emissions from Exxon's platform Hondo and the proposed associated offshore oil storage and treating facility (OS&T) were based on information supplied by Exxon in a letter dated October 1, 1976. Subsequently, Exxon submitted additional information on several occasions to either replace or supplement information in their original submittal. This subsequent information has been considered in EPA's updated emission estimates.

Emission sources located on Exxon's platform Hondo can be classified into three general categories, based on the frequency at which they can be expected to emit pollutants: (1) continuous, (2) intermittent, or (3) unscheduled. For the initial level of Hondo development (30,000 BBL/D oil, 30 MM CF/D natural gas) continuous sources will include three (3) 800 KW gas fired turbine generators, one (1) 1.0 MM BTU/hr gas fired stack pilot and fugitive hydrocarbon sources including hydrocarbon pumps and valves and 3-200 BBL fixed roof diesel storage tanks. Intermittent sources of emissions include two (2) emergency firewater pumps, each of which will be operated approximately fifteen (15) minutes per week for test purposes, tank filling emissions from the diesel storage tanks and two (2) diesel engine crane engines. Unscheduled emissions, which were not considered in EPA's emission estimates would occur from the flare stack as a result of a compressor malfunction. Information regarding additional emission sources on the platform for peak Hondo production (60,000 BBL/D oil, 60 MM CF/D gas) and the resultant emissions has not been submitted to EPA.

Exxon submitted estimates of annual average emissions from initial phase production at platform Hondo in their October 1, 1976, letter to EPA. These estimates included 2.62 lbs/hr (11.5 T/yr) total hydrocarbons, 6.98 lbs/hr (30.6 T/yr) SO_2, 10.54 lbs/hr (46.2 T/yr) NOx, and 0.08 lbs/hr (0.4 T/yr) particulate matter. Assuming that annual emissions would double for the ultimate production scenario of 60,000 BBL/D oil, 60 MM CF/D gas, the emissions would be expected to be 23 T/yr of total hydrocarbons, 61 T/yr of SO_2, 92 T/yr NOx and 0.8 T/yr particulate matter. Assuming the emission rates listed above, Exxon's platform Hondo by itself would not be considered a "major source" (100 T/yr) as defined by EPA's Interpretative Ruling.

Emission sources associated with the proposed OS&T can also be classified

as continuous, intermittent or unscheduled. Continuous emission sources on the proposed OS&T include two (2) 25000 HP gas-fired turbines; the acid gas incinerator, a 1.0 MM BTU/hr gas fired flare stack pilot and fugitive leaks of hydrocarbons. Intermittent sources include a 800 KW auxilary generator, fired by a 1100 HP diesel fired turbine and (2) 200 HP diesel driven emergency firewater pumps to run once a week to insure operability and operation and loading of the crude oil shuttle tanker. Estimated emissions from the operation of the OS&T at a production rate of 30,000 bbl/day are listed in Table I while estimated emissions at a production rate of 60,000 bbl/day are listed in Table II:

TABLE I.— *Atmospheric emissions from Exxon OS&T (30,000 bbl/d)*

[From data supplied by Exxon in pounds per hour (tons per year)]

	NOx	Hydrocarbons	CO	Particulates	SOx
Continuous emissions					
Acid gas incinerator	0.6				247
	(2.6)				(1,080)
25,000 hp turbine generator	93	12.3	61.6	0.53	1.8
	(407)	(54)	(270)	(2.3)	(7.8)
Flare stack pilot	.1	.006	.016	.011	.011
	(.42)	(.028)	(.069)	(.050)	(.047)
Total Continuous emissions	94	12.3	61.6	.54	249
	(410)	(54)	(270)	(2.35)	(1,088)
Intermittent emissions					
Shuttle vessel	46	1,483	19		4.9
	(5.9)	(323)	(2.4)		(.62)
Acid gas incinerator	.78				320
	(.17)				(70)
800 kW, generator	4.6	.38	1.1	.35	3.6
	(.12)	(.01)	(.027)	(.01)	(.094)
Firewater	3.1	.25	.67	.22	.20
	(.08)	(.006)	(.017)	(.0057)	(.0053)
Total maximum hourly emission	148	1,496	82	1.1	579
Total annual emissions	(416)	(377)	(272)	(2.37)	(1,159)

TABLE II.—*Atmospheric emissions (from Exxon OS&T (60,000 bbl/d in pounds per hour (tons per year))*

	NOx	Hydrocarbons	CO	Particulates	SOx
Continuous emissions					
Acid gas incinerator	1.2				365
	(5.2)				(1,600)
25,000 hp turbing generator	110	2.34	11.7	0.7	2.4
	(482)	(10.2)	(51.2)	(3.1)	(10.3)
Flare stack pilot	.1	.006	.016	.011	.011
	(.42)	(.028)	(.069)	(.050)	(.047)
Total continuous emissions	111	2.35	11.7	.71	367
	(488)	(10.2)	(51.3)	(3.2)	(1,610)
Intermittent emissions					
Shuttle vessel	46	1,483	19		4.9
	(11.8)	(646)	(4.8)		(1.24)
Acid gas incinerator	.78				320
	(.34)				(140)
800 kW generator	4.6	.38	1.1	.35	3.6
	(.12)	(.01)	(.027)	(.01)	(.094)
Firewater pump	3.1	.25	.67	.22	.20
	(.08)	(.006)	(.017)	(.0057)	(.0053)
Total maximum hourly emission	165	1,486	32.5	1.3	696
Total annual emissions	(500)	(656)	(56.1)	(3.2)	(1,751)

The data listed in Tables I and II establishes that the operation of the OS&T will result in emissions greater than 100 tons per year for hydrocarbons (even accepting Exxon's calculations, which assume the application of some control systems), nitrogen oxides and sulfur oxides. The OS&T will thus be a "major source" for those pollutants for purposes of new source review. Since emissions of those pollutants will be greater than 250 tons per year, the OS&T will also be a major emitting facility for purposes of prevention of significant deterioration.

EPA's estimates of emissions from the proposed OS&T for the initial and final phases of production are included in Table I and Table II, respectively. Information submitted by Exxon on January 20, 1978, indicates minor changes to EPA's estimates but these changes have not been incorporated as of this date because they have not been substantiated.

On January 20, Exxon presented information on a vapor balance system which is being studied as a possible means of controlling hydrocarbon emission during loading of the shuttle tanker and which would purportedly significantly reduce SO_2 emissions from the acid gas incinerator. The impact of such a system has not been considered in EPA's estimates of emissions because Exxon has stated that the balance line has not been fully developed. It is not known, therefore,

whether Exxon will be able to install the vapor balance system in the future. It is clear, however, that the vapor system will not be installed until after the OS&T has begun operation.

Applicability of Clean Air Act to Outer Continental Shelf

Although the Clean Air Act is not expressly applicable to facilities located on the Outer Continental Shelf, EPA has determined that the new source review and prevention of significant deterioration provisions of the Clean Air Act are applicable to sources located on the Outer Continental Shelf pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. 1331, et seq. Section 1333(a)(1), of the OCS Lands Act provides that the laws of the United States are applicable to fixed structures located on the Outer Continental Shelf:

> The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the Outer Continental Shelf were an area of exclusive Federal Jurisdiction located within a State: *Provided, however,* That mineral leases on the Outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

Clearly, the Clean Air Act is a law of the United States within the meaning of the OCS Lands Act. Although the OCS Lands Act was enacted several years before the Clean Air Act, the legislative history of the OCS Lands Act reveals that Congress intended to extend the whole law of the United States to the seabed of the OCS and fixed structures located thereon.

The basic goals of the Clean Air Act are the attainment and maintenance of the national ambient air quality standards and the prevention of significant air quality deterioration. Air quality must be assured "within the entire geographic area" comprising each State (§107(a)) through the submission of SIP's by States under section 110(a) (or the promulgation of SIP's by EPA under section 110(c)).

SIP's are the basic mechanisms for protecting air quality in the United States; it would therefore be meaningless to "extend" the Clean Air Act to OCS structures without also extending SIP's. However, because the act is concerned only with protecting air quality over the United States, SIP's should not be extended to a structure which is so far from shore that its emissions could not impact on the U.S. air quality. EPA should therefore determine whether a structure could impact on U.S. air quality before applying a SIP requirement.

Fine questions as to whether a State-submitted SIP provision is "State" or "Federal" law are irrelevant. The OCS Lands Act provides:

> To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent state, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the Outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the Outer Continental Shelf.

In view of sections 1333(a) (1) and (2) of the OCS Lands Act, the Clean Air Act and the State Implementation Plans promulgated thereunder apply to all activities on the Outer Continental Shelf that can have an adverse effect on air quality over the United States.

EPA has determined, moreover, that application of the applicable State implementation plan to exploration and production facilities located on the Outer Continental Shelf is necessary to assure that national ambient air quality standards can be achieved in those areas presently classified as nonattainment areas. Unless regulated, emissions of air pollutants from sources located on the Outer Continental Shelf will adversely impact air quality in such areas by adding additional pollutants to areas where air quality is presently worse than national ambient air quality standards. This problem is particularly severe with respect to emissions of hydrocarbons which are the precursors of photochemical oxidants.

Similarly, where the air quality in on-shore areas adjacent to Outer Continental Shelf areas is better than the National Ambient Standards, it is necessary that the provisions of the Clean Air Act and applicable State implementation plans relating to Prevention of Significant Deterioration apply as well. Unless the emissions from offshore facilities that may impact these areas are controlled, the objectives of the Clean Air Act will not be achieved.

Applicability of the Clean Air Act to the Hondo Facility

Among the principal pollutants that will be emitted by the Exxon Hondo facility are hydrocarbons, the precursors of photochemical oxidants. Photochemical oxidants are created principally by the oxidation of hydrocarbons when exposed to sunlight. Since photochemical oxidants or their precursors can be transported long distances, the focus of regulatory action has been, and must be, on areas where the hydrocarbons originate, not necessarily on areas where the photochemical oxidant levels are measured. Since hydrocarbons are oxidant precursors and because hydrocarbon emissions from the proposed project are anticipated to impact air quality in the South Coast and South Central Coast Air Basins, hydrocarbon emissions will interfere with attainment of the national ambient air quality standards for photochemical oxidants in those areas. Application of the Clean Air Act to facilities located on the Outer Continental Shelf is thus necessary to prevent frustration of the purposes of the Clean Air Act where emissions from those facilities will impact air quality within California.

Since it is believed that emissions from Exxon's operations in the Santa Barbara channel will have an adverse impact upon air quality within Santa Barbara, Ventura, and Los Angeles counties, EPA has determined that the new source review and prevention of significant deterioration provisions of the California State implementation plan should be applied to Exxon's facilities. Since EPA has not yet approved new source review rules or regulations for prevention of significant deterioration for Santa Barbara or Ventura Air Pollution Control Districts, EPA has determined that the new source review and PSD regulations promulgated by EPA for those districts are applicable to Exxon's operations on the Outer Continental Shelf.

Under the new source review requirements of the California State implementation plan, no owner or operator shall commence construction or modification of a stationary source within the Santa Barbara or Ventura Air Pollution Control Districts without obtaining approval from the Administrator of EPA (40 CFR 52.233(f)). Although platform Hondo and Exxon's OS&T will be located on the Outer Continental Shelf beyond the boundaries of those districts, EPA has determined that the new source review requirements are applicable to Exxon's facilities since section 1333(a)(1) of the OCS Lands Act provides that the law of the United States is applicable to fixed structures located on the Outer Continental Shelf "to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State."

For similar reasons EPA has determined that the preconstruction review requirements of EPA's PSD regulations are applicable to the construction or modification of fixed structures on the Outer Continental Shelf. The provisions of EPA's PSD regula-

tions applicable to the Santa Barbara Air Pollution Control District are thus applicable to facilities located on the Outer Continental Shelf adjacent to Santa Barbara county (40 CFR 52.270).

It should be noted that EPA's determination regarding Exxon's planned modification of platform Hondo to incorporate an offshore storage and treatment facility is a matter of first impression. EPA did not assert jurisdiction under the Clean Air Act regarding the initial construction and installation of platform Hondo in 1976 because of uncertainty regarding EPA's authority and because it was believed that emissions of air pollutants from platform Hondo itself would not be significant. Subsequent to the installation of platform Hondo, EPA determined that it has authority under the OCS Lands Act to extend application of the Clean Air Act to facilities located on the Outer Continental Shelf where necessary to assure attainment of national ambient air quality standards. Since the available data indicates that the installation of Exxon's OS&T will result in significant emissions of hydrocarbons, sulfur dioxide, nitrogen dioxide, and carbon monoxide, EPA has concluded that jurisdiction under the Clean Air Act should be asserted regarding this modification of platform Hondo even though jurisdiction was not asserted regarding the initial construction of platform Hondo.

Since the available data indicates that emissions of hydrocarbons, sulfur dioxide, and nitrogen dioxide from the operation of Exxon's OS&T will be greater than 100 tons per year, EPA has determined that the installation of the OS&T will be a major modification to platform Hondo and thus subject to the preconstruction review requirements of the new source review rules for nonattainment areas. In addition, the installation of Exxon's OS&T will be a modification subject to preconstruction review under section 165 of the Clean Air Act and EPA's regulations regarding prevention of significant deterioration since emissions of HC, NOx and SO_2 will be greater than 250 tons per year.

For purposes of new source review in nonattainment areas, the Interpretative Ruling defines the term "major modification" to include a modification to any structure, building, facility, installation, or operation (or combination thereof) which increases the allowable emission rate of any criteria pollutant by 100 tons per year except carbon monoxide which requires an increase of 1,000 tons per year (41 FR 55528, December 21, 1976). The term "modification" is defined by section 111(a)(4) of the Act to include "any physical change in, or change in the method of operation of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted" (42 U.S.C. 7411(a)(4)). This definition is applicable to both new source review and prevention of significant deterioration regulations.

Information available to EPA indicates that the installation of Exxon's planned OS&T will involve several physical changes to platform Hondo in order to permit the transfer of oil through a submarine pipeline from the platform to the OS&T. The installation of the OS&T will also constitute a change in the method of operation of platform Hondo which will result in an increase in emissions as the platform converts from the exploration phase of the project to production. Although the development plan for the Santa Ynez Unit contemplated possible use of an OS&T under the "offshore" alternative, this does not exempt the OS&T from the preconstruction review requirements of the new source review and PSD regulations. Under those regulations and sections 165 and 169 of the Clean Air Act, review is required for any source which has not commenced physical on-site construction or which has not entered into binding agreements or contractural obligations for physical on-site construction prior to the effective date of the regulations. Since the information submitted to EPA by Exxon indicates that physical on-site construction of the OS&T has not yet begun, installation of the OS&T is subject to review.

Response to Comments

During the past year EPA has been in contact with Exxon, the California Air Resources Board, Santa Barbara and Ventura Air Pollution Control Districts, and other entities regarding the application of the Clean Air Act to facilities located on the Outer Continental Shelf. These groups have made various comments regrding EPA's proposed approach which will now be addressed.

Exxon has pointed out in its comments to EPA that EPA has never previously asserted jurisdiction under the Clean Air Act with respect to facilities located on the Outer Continental Shelf despite the fact that hundreds of exploration and production platforms are located on the OCS. As discussed previously, EPA has not asserted jurisdiction in the past over facilities located on the OCS because of uncertainty regarding its authority to subject such facilities to regulation under the Clean Air Act. EPA has subsequently determined that the provisions of the Clean Air Act are applicable to facilities located on the OCS by virtue of section 1333(a) of the OCS Lands Act. In addition, EPA has determined that it is necessary to assert jurisdiction at this time over platform Hondo and the proposed OS&T because it is anticipated that Exxon's operation of the OS&T will have a significant impact upon air quality in Santa Barbara, Ventura, and Los Angeles counties. Since those areas are presently classified as non-attainment areas for several pollutants, EPA determined that emissions from Exxon's operations should be regulated in order to prevent further deterioration of air quality in those areas despite the fact that EPA has not previously asserted jurisdiction under the Clean Air Act over facilities located on the OCS.

The comments submitted by Exxon also assert that the application of the clean Air Act to its facilities on the OCS would be inconsistent with its development and production rights as a lessee of the Santa Ynez tract. The acquisition of a leasehold interest, however, does not exempt the lessee from reasonable regulation. It is only where regulation amounts to a taking of the lessee's property rights without compensation that regulation becomes unconstitutional. This principal was affirmed by the U.S. Court of Appeals for the Ninth Circuit in *Gulf Oil corporation* v. *Morton*, 493 F. 2d 141 (1974) and *Union Oil Company* v. *Morton*, 512 F. 2d 743 (1975). In those cases, the Ninth Circuit concluded that the Secretary of Interior had authority to subject oil leases in the Santa Barbara channel to reasonable environmental regulations as long as the regulation did not have the effect of cancelling the leases. Since regulation of Exxon's facilities on the OCS under the Clean Air Act is intended only to control emissions of air pollutants and not intended to prohibit development of the Santa Ynez Unit, such regulation is not inconsistent with Exxon's vested rights under its lease.

In addition, Exxon contends that EPA does not have authority to regulate facilities located on the OCS since the OCS Lands Act confers exclusive authority upon the Secretary of Interior to administer OCS leases. EPA, however, does not intend to interfere with the administration of OCS leasing by the Secretary of Interior. More importantly, section 1333(a)(2) of the OCS Lands Act provides that applicable State laws "shall be administered and enforced by the appropriate officers and courts of the United States." Since the new source review and PSD regulations applicable to Santa Barbara and Ventura Air Pollution Control Districts are administered by EPA, it is apparent that the Administrator of EPA is the appropriate officer of the United States to administer and enforce the applicable provisions of the California State implementa-

tion plan. It is equally apparent that the Secretary of Interior would not be the appropriate official to administer the provisions of the Clean Air Act on the OCS since the Secretary does not presently have any responsibility for administration of the Clean Air Act.

Finally, Exxon asserts that the regulations of the Santa Barbara Air Pollution Control District are not State law and cannot, therefore, be extended to the Outer Continental Shelf. In response, EPA does not intend to apply the new source review regulations adopted by the Santa Barbara Air Pollution Control District to facilities located on the OCS until those regulations have been approved as part of the California State implementation plan. When approved by EPA as part of the State implementation plan, those regulations will become enforceable as the laws of the United States pursuant to sections 110 and 113 of the Clean Air Act (42 U.S.C. 7410 and 7413). Moreover, Exxon is incorrect in its assertion that the regulations adopted by an air pollution control district are not State law. In fact, the California Supreme Court determined precisely this question in its decision in *Orange County Air Pollution Control District* v. *Public Utilities commission*, 4 C. 3d 945, 95 Cal. Rptr. 17 (1971), holding that air pollution control districts are public agencies of the State. Thus, regulations adopted by the Santa Barbara Air Pollution Control District are State law for purposes of the OCS Lands Act.

In this regard, both the California Air Resources Board and the Santa Barbara Air Pollution Control District have asserted in discussions with EPA that the Santa Barbara APCD new source review regulation should be applied to the OCS even though the regulation is not part of the approved California State implementation plan. While it is true that section 1333(a)(2) of the OCS Lands Act provides that, applicable State laws shall be considered to be the law of the United States for that portion of the OCS adjacent to the State, the legislative history of the OCS Lands Act indicates that State laws are applicable only where there are gaps in relevant Federal law. There are no gaps, however, in the new source review requirements of the California State implementation plan since the substitute new source review regulations promulgated by EPA for the Santa Barbara APCD are presently in effect (40 CFR 52.233(f)). For this reason, EPA does not believe that it is appropriate to apply the new source review rule adopted by the Santa Barbara APCD to facilities located on the OCS until the rule becomes part of the approved State implementation plan for California. It should be noted, however, that EPA will continue to be the appropriate agency to administer and enforce the provisions of the Santa Barbara new source review rule on the OCS after it becomes part of the California SIP.

Conclusion

For the foregoing reasons, EPA has determined that the installation of Exxon's Offshore Storage and Treatment facility is subject to preconstruction review under EPA's new source review and prevention of significant deterioration regulations as a major modification to platform Hondo. Pursuant to the provisions of those regulations, Exxon Corp. must obtain the approval of the Administrator prior to the commencement of on-site construction of the OS&T. Commencement of on-site construction of the OS&T without such approval will be a violation of the Clean Air Act and may subject Exxon Corp. to enforcement pursuant to section 113 of the Act (42 U.S.C. 7413). Exxon may, however, continue with off-site fabrication of the OS&T prior to receiving approval to construct from EPA.

Dated: April 13, 1978.

BARBARA BLUM,
Acting Administrator.

[FR Doc. 78-10464 Filed 4-17-78; 8:45 am]

[6560-01]

[OPP-50366; FRL 833-8]

ISSUANCE OF EXPERIMENTAL USE PERMITS

The Enivornmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 100-EUP-55. Ciba-Geigy Corp., Greensboro, N.C. 27409. This experimental use permit allows the use of 2,400 pounds of the insecticide O-(4-Bromo-2-chlorophenyl) O-ethyl S-propyl phosphorothioate on cotton to evaluate control of cotton bollworms, tobacco budworms, heliothis virescens, and cotton boll weevils. A total of 400 acres is involved; the program is authorized only in the States of Arkansas, California, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas. The experimental use permit is effective from August 1, 1978 to August 1, 1979. The experimental use permit is being issued with the limitation that all treated cottonseed will be destroyed or used for seed purposes only. Treated cottonseed may not be used for food, feed or oil purposes.

No. 100-EUP-58. Ciba-Geigy Corp., Greensboro, N.C. 27409. This experimental use permit allows the use of a formulation of 200 pounds of the herbicide metolachlor and 160 pounds of the herbicide atrazine on corn to evaluate control of various weeds. A total of 100 acres is involved; the program is authorized only in the 48 contiguous states. The experimental use permit is effective from March 1, 1978 to March 1, 1979. Permanent tolerances for residues of the active ingredient in or on corn have been established (40 CFR 180.368 and 180.220).

No. 4090-EUP-21. Gulf Oil Co., Merriam, Kans. 66202. This experimental use permit allows the use of the remaining supply of approximately 88.8 pounds of the herbicide 2-(1,3,3-trimethyluredio)-1,3,4-thiadiazole-5-N,N-dimethyl sulfonamide on non-crop areas to evaluate control of general vegetation; this use was authorized in a previous experimental use permit. A total of 18.5 acres is involved; the program is authorized only in the States of Alabama, Arkansas, California, Georgia, Illinois, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, and Washington. The experimental use permit is effective from March 2, 1978 to March 2, 1979.

No. 707-EUP-83. Rohm & Haas Co., Philadelphia, Pa. 19105. This experimental use permit allows the use of 3,072 pounds of the herbicide 2-chloro-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl) benzene on soybeans to evaluate control of various weeds. A total of 6,850 acres is involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, and Wisconsin. The experimental use permit is effective from June 4, 1978 to June 4, 1979. A temporary tolerance for the active ingredient in or on soybeans has been established.

No. 275-EUP-20. Abbott Laboratories, North Chicago, Ill. 60064. This experimental use permit allows the use of 876 pounds of the fungicide *Hirsutella thompsonit Fisher* on citrus, blueberries and turf to evaluate control of citrus rust mites, blueberry bud mites and Bermuda turf mites. A total of 24 acres is involved; the program is authorized only in the States of Florida, North Carolina, and Texas. The experimental use permit is effective from February 24, 1978 to February 24, 1979. A temporary exemption from the requirement of a tolerance for residues of the spores of *Hirsutella thompsonii* when used as a mycocaracide on citrus and small fruits has been established.

No. 27585-EUP-15. U.S. Forest Service, U.S. Department of Agriculture, Washington, D.C. 20250. This experimental use permit allows the use of 20,000 baits attached to the center of traps which will dispense a total of 7 pounds of the synthetic pheromones 2-cubebene, 4-methyl-3-heptanol and 2-multistriatin in an effort to reduce populations of in-flight beetles and bring about a corresponding reduction in beetle-vectored cases of dutch elm disease. The program is authorized only in the States of California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Massachusetts, Michigan, Minnesota, New York, North Carolina, Rhode Island, South Carolina, Virginia, and Wisconsin. The experimental use permit is effective from March 2, 1978 to March 2, 1979.

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460. It is suggested that such interested persons call

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

November 20, 2020

Norman F. Anderson
Chief Executive Officer
CG/LA Infrastructure
729 15th Street NW Suite 600
Washington, D.C. 20005

Dear Mr. Anderson:

Thank you for your letter of October 13, 2020, to Administrator Andrew Wheeler of the U.S. Environmental Protection Agency regarding the use of guidance documents. The EPA acknowledges receipt and is reviewing your letter.

If you have any questions, please contact Jeff Robinson, Air Permits, Monitoring & Grants Branch Chief, at (214) 665-6435 or Cynthia Kaleri, Air Permits Section Chief, at (214) 665-6772.

Sincerely,

11/20/2020

X 

David F. Garcia, P.E.

Signed by: DAVID GARCIA

Director
Air and Radiation Division

From: Isaac Taylor [mailto:isaac@cg-la.com]
Sent: Wednesday, April 8, 2020 9:09 AM
To: Wheeler.Andrew@epa.gov; McQueen.ken@epa.gov
Cc: leopold.matt@epa.gov; Craft, Zachary; Norman Anderson
Subject: Docket Number EPA RO6-OAR-219-0576-001,002

Dear Sirs,

On behalf of Norman Anderson, Chairman & CEO of CG/LA Infrastructure, and Blueprint 2025, please accept the attached letter as a petition for the initiation of mandatory Administrative actions. Particularly at a time when our economy is seeking to recover from the dual exigencies imposed by the coronavirus threat and Saudi/Russian dumping activities, we need to be examining and resolving situations such as this. We are, of course, available to discuss at your convenience.

Best Regards,

Isaac Taylor

--

Isaac Taylor

Director

729 15th Street NW, Suite 600, Washington, DC 20005

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BLUEPRINT 2025 CG/LA Infrastructure

April 8, 2020

Re: Docket Number EPA RO6-OAR-219-0576-001,002

Andrew Wheeler
EPA Administrator
Wheeler.Andrew@epa.gov

Ken McQueen
Region 6 Administrator
McQueen.ken@Epa.gov

Dear Sirs:

As you may be aware, Blueprint 2025, as part of its program to eliminate unnecessary impediments to the development of critical infrastructure projects, filed the attached comments in the above captioned EPA Region 6 proceeding. We filed these comments because we believe that the appeal process in this proceeding will provide an opportunity for eventual judicial resolution of what we believe to be critical deficiencies in the process by which EPA Region 6 has sought to apply the Clean Air Act to Deepwater Port facilities located beyond territorial limits in the Central and Western Gulf of Mexico. Specifically, but not by way of limitation, we believe that the Region 6 efforts to extraterritorially apply the Clean Air Act to facilities beyond territorial limits in the Central and Western Gulf of Mexico:

1. Violate applicable international treaties.
2. Fail to make any proper regulatory determination as to which, if any, provisions of the Clean Air Act and regulations thereunder are applicable in the central and Western Gulf of Mexico.
3. Fail to make any proper determination as to which, if any, regulatory authority which EPA may have in the Central and Western Gulf must be delegated to the states—as it must be in other areas.
4. Are contrary to the Deepwater Port Act which provides that only the applicable law of the nearest adjacent coastal state is the U.S. law applicable to a Deepwater Port beyond territorial limits.
5. Are contrary to the Deepwater Port Act's directive that the Coast Guard is the appropriate federal agency to apply U.S. law to a Deepwater Port.
6. Give a 2003 letter from then-EPA Regional Counsel (the "Sheehan Letter") the force and effect of law without ever properly publishing that letter, subjecting it to public scrutiny or complying with applicable requirements of administrative law.
7. Give informally published "guidance" and "roadmaps" the force and effect of law without ever subjecting them to public scrutiny or complying with applicable requirements of administrative law.
8. Determine, without any proper regulatory procedure, that onshore regulatory requirements are reasonable, appropriate and technologically feasible for offshore facilities located beyond territorial limits.

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9. Violate Section 328 of the Clean Air Act by failing to defer to or consult with the Department of Interior regarding the need for "any additional actions" necessary to meet national ambient air quality standards for ozone or nitrogen oxide for adjacent coastal states in the Central and Western Gulf.
10. Violate the Administrative Procedure Act by failing to promulgate regulations, comparable to those published in 40 CFR Part 55, governing the application of section 328 in the Central and Western Gulf of Mexico.
11. By virtue of the failures listed above, Region 6 has evaded cost benefit analysis requirements imposed by both statutes, a number of Presidential Executive Orders and Agency policies.

As noted above, we believe that all of these issues can be raised and dealt with in an appeal from any final action which your Agency may issue in the above referenced proceeding. However, it is not our intention to delay any such final action. Accordingly, we will agree to withdraw the attached comments upon your Agency's commitment to engage in a determination of applicability or other proper Administrative proceeding to address the issues outlined above. We believe that such a proceeding is mandated by law and emphatically reiterated in this Administration's policies as set out in E.O. 13891 and related Orders and statements of policy.

Particularly at a time when our economy is seeking to recover from the dual exigencies imposed by the coronavirus threat and Saudi/Russian dumping activities, we need to be examining and resolving situations such as this.

Please accept this letter as a petition for initiation of mandatory Administrative actions. We are, of course, available to discuss at your convenience.

Sincerely,

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

cc: Matt Leopold, General Counsel: leopold.matt@epa.gov
Zachary Craft, Enterprise Products: zlcraft@eprod.com

Attachment

BLUEPRINT 2025 CG/LA Infrastructure

December 19, 2019

Federal Docket Management System (FDMS)
http://www.regulations.gov
Docket Number: EPA RO6-OAR-2019-0576-001,002

Subject: Substantive and Procedural Deficiencies

The Blueprint 2025 Initiative 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. To advance this objective, we take positions in opposition to the imposition of procedures and policies which unnecessarily delay authorization of important projects, or which impose unnecessary or legally unauthorized restrictions on the construction or operation of such projects. In the current context, we are particularly interested in assuring that President Trump's initiatives to streamline procedures and assure both transparency and strict adherence to the applicable laws are fully effectuated.

To this end, we are submitting for the record in this matter a copy of our comments filed in a Deepwater Port licensing proceeding which was initiated just prior to the licensing proceeding for SPOT. The comments address procedures proposed to be followed by EPA Region VI in issuing permits for Deepwater Ports in the Gulf of Mexico. As will be noted, they raise serious questions regarding the applicability of the Clean Air Act to facilities located beyond territorial limits in the Central and Western Gulf of Mexico, as well as associated issues relating to which provisions of the laws of the nearest adjacent coastal state (Texas) are the applicable laws of the Deepwater Port, and which federal agency is the "appropriate agency" to enforce those laws against Deepwater Port facilities located beyond territorial limits.

Although these issues were responsibly raised in our comments, there has never been a response, and EPA appears to have proceeded with permit issuance proceedings in exactly the manner forewarned in our comments.

At a minimum, our comments, and the public interests which they reflect, must be addressed in a public notice proceeding comparable to that for OCSLA facilities described in EPA's *Notice of final determination of Applicability (43 FR 16393, April 18, 1978.) As made clear in the notice,* such a proceeding is mandatory in cases of first impression such as this one, would provide legally mandated meaningful public notice of these critical issues and would allow for public discussion of the key questions:

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Is the Clean Air Act directly applicable to offshore facilities in the Central and Western Gulf of Mexico?

What provisions of the law of the nearest adjacent coastal state are "applicable" under the Deepwater Port Act?

What is the appropriate federal agency to enforce the applicable laws?

What 40 CFR Regulations authorize issuance of these permits? Part 55?, Part 70?, Part 71?

What "Guidance" did EPA consider in drafting these permits? Has that Guidance ever been subject to public comment and does it accurately state the law?

These questions are given increased urgency by the clear mandates in Executive Order 13891 of October 19, 2019.

> Americans deserve an open and fair regulatory process that imposes new obligations on the public only when consistent with applicable law and after an agency follows appropriate procedures. Therefore, it is the policy of the executive branch, to the extent consistent with applicable law, to require that agencies treat guidance documents as non-binding both in law and in practice, except as incorporated into a contract, take public input into account when appropriate in formulating guidance documents, and make guidance documents readily available to the public. Agencies may impose legally binding requirements on the public only through regulations and on parties on a case-by-case basis through adjudications, and only after appropriate process, except as authorized by law or as incorporated into a contract.

We appreciate the opportunity to submit these comments. Please address any questions to the undersigned.

Best Regards,

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

February 27, 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

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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

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

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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)

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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

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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.)

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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.

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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*

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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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. (TGTI) 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 § 511(c)(1) 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 TGTI are those of Texas.

We have not completed our review the permit applications or the supporting modeling analysis included in *Appendix V* of 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 meetings with the applicant. We reserve the right to inform 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 habitat 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 of EPA'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 227.5(c)). Therefore, EPA and USACE review sampling and analysis plans to ensure that each project's sediments are appropriately characterized. EPA recommends that Texas Gulf Terminals 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.epa.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 Gulf Intracoastal 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 in 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 information relevant to potential impacts to wetlands and other special aquatic resources. This would ensure that the draft EIS has sufficient information 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-implementation project 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 species, 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 the e-NEPA electronic filing system. Filing instructions are available on EPA's NEPA website at https://www.epa.gov/nepa/environmental-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:

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(214) 665-6580

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

Sincerely yours,

Robert D. Lawrence
Senior Policy Advisor - Energy Issues

cc: Mr. Matt Kimmel
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Ms. Terri Thomas
Bureau of Ocean Energy Management, New Orleans LA

Dr. Roy E. Crabtree
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