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April 20, 2026

The Honorable Lee Zeldin, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue  
NW Washington, DC 20004

Re: Vessel Loading Operations: Technology Review  
Docket EPA-HQ-OAR 2025-0207; RIN 2060-AW22

Dear Administrator Zeldin:

As noted in our April 3<sup>rd</sup> submission to OMB's Office Of Information and Regulatory Affairs (which was copied to this docket and is incorporated by reference herein) the Blueprint Initiative was founded in the early days of the first Trump Administration by the late Norman Anderson, an infrastructure visionary who passionately believed that the U.S., as the World's best and most advanced nation,<sup>1</sup> should have the World's best and most advanced infrastructure. Blueprint's advisors have been engaged in infrastructure issues, particularly those affecting Oceans, Deepwater Ports, the OCS, the Deep Seabed and related environmental issues, since the early 1970s. Since the U.S. prohibition on oil exports was repealed in 2015, we have actively commented on licensing and permitting proceedings for new deepwater ports that might have facilitated U.S. crude exports—advancing this Administration's policies and mitigating the hardships to global consumers that result from actions like embargos, foreign nations' export controls or military conflicts as we see today in the Persian Gulf.

The Deepwater Port Act (DWPA) was enacted at a seminal time in the development of the U.S. legal system for authorization of major infrastructure projects. Its sponsors, Congressional proponents and advisors included Senators Jackson, Baker and Muskie—prime forces behind adoption of NEPA and the Clean Air Act-- and Senators Magnusson and Hollings—top policy leaders regarding Oceans and International law. Senators Russell Long, Congressman John Breaux and Louisiana Governor Edwin Edwards provided input from the State of Louisiana—which had conceived the notion of deepwater ports and passed its own Offshore Terminal Act in advance of the federal act's passage. Texas had also passed an Offshore Terminal Act (TOTA) and provided input through Senator Lloyd Bentsen and Governor Dolph Briscoe. This all-star cast was informed by the National Oceans Policy Study (NOPS)—a Congressionally directed, multi-year (1969-1974) study which laid the intellectual and policy groundwork for modern U.S. ocean and coastal government policies as well as by very recent experience with the Trans Alaska Oil Pipeline- which identified and developed solutions for many of the problems

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<sup>1</sup> Norman's premises are laid out in his book: [VISION-Strategic-Infrastructure-Roadmap-Forward](#). Our Initiative and Institute are working to carry it forward.

encountered in licensing and overseeing construction of major projects like deepwater ports. Finally, the Senate's consideration of the DWPA was coordinated through a special joint subcommittee of the Interior, Commerce and Public Works Committees established to assure a single efficient and coordinated regulatory regime,

The law yielded by this detailed and carefully considered process was, and still should be, the model for effective infrastructure management. The DWPA achieved its objective of putting in place a system that could provide final authorization to proceed within 330 days from application. The Act has been continuously simplified and improved through Congressional oversight over the years and, at present, provides a very efficient legislative framework for authorization of the export terminals that will enable our country to deal with its continually increasing production capabilities and the increasing demands of global markets.<sup>2</sup>

Unfortunately, though the legislative process has created an efficient and continuously improving law, the administrative process appears to have continuously eroded that efficiency. Though Congress, over a decade ago, passed a law designed to allow and increase exports and prohibiting actions by any person that might impede that objective and the President issued a similar mandate at the same time, not a single new offshore export terminal has commenced construction. We have been working since 2015 to reverse that erosion but, to date, those efforts have largely been ignored.

These comments are submitted based on our hope and expectation that this Administration's announced initiatives for reforming the Executive Branch are serious and will be effective. As we understand it, executive orders E.O. s 14158, 14192, and 14219 put in place a new regulatory management system which:

1. Carries out the *Loper Bright v. Raimundo* mandate requiring courts to enforce the "best reading" of laws rather than deferring to agency expertise;
2. Requires agencies to review existing regulations and guidance to assure conformity with both the *Loper Bright* mandate and the policies of the Administration;
3. Requires Agencies to establish embedded DOGE teams to assess whether existing and proposed agency actions, including both regulations and guidance, are consistent with the best reading of the law and Administration policies;
4. Amends the E.O. 12866 process—to broaden traditional OMB/OIRA review of all actions with a potential impact of more than \$100 million by adding to the traditional

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<sup>2</sup> In the DWPA's early days, licenses were issued for a port offshore Louisiana and a port offshore Texas. The Texas port declined its license due to what it viewed as excessive restrictions related to antitrust and other issues. Although, since those early days, the demand for imports has radically decreased due to new unconventional drilling technologies and increased offshore production, the Louisiana port has been instrumental in facilitating imports, as well as enabling receipt and efficient use of the increasing OCS production. Since the export prohibition was repealed in 2015, the Louisiana port has installed alterations to allow exports through its terminal and has facilitated the export of billions of dollars' worth of American crude. Presently, there is intense demand for licensing and construction of additional deepwater port export terminals. However, only two such facilities have been licensed in the decade since the prohibition was lifted, both in 2026 under the current Administration, and both of which have spanned a period of more than six years since original License applications were made. None have commenced construction—arguably as a result of costly and unfeasible emission control requirements imposed by EPA.

cost/benefit analysis requirements to connect with the process outlined above, and give due consideration to the questions of compliance, with the best reading of law and with Administration policy.

Even minimal fulfillment of these directives will require not only withdrawal of the NPRM insofar as it purports to apply to deepwater ports, but a broad scale reexamination of the premises underlying EPA's current approach to regulation of deepwater ports and the basis for the agency's participation in the deepwater port regulatory process. Primary issues to be addressed in such a reexamination include the following:

**The Critical Question: Do the MACT Provisions and the related EPA requirements permit requirements apply to vessels and terminals beyond territorial limits?**

As noted above, the Joint Committee that generated the Deepwater Port Act was informed by the detailed, multi-year blue-chip NOPS study and carried out by extremely well qualified and experienced Senators, Congressmen and Governors—perhaps the group in our history best qualified to deal with issues related to Oceans and Maritime Law, Clean Air regulation, International Law and the necessary role of States under the notion of Federalism.

The question of which agency should exercise jurisdiction over deepwater ports was the issue most debated during the period leading up to the Act's passage. The Departments of Interior and Commerce hotly competed for the role but, in the end, the Coast Guard's long history of being the prime overseer of offshore and maritime laws, and the negotiator and enforcer of international agreements pertaining to vessels and the seas, prevailed. The Department of Transportation – in the DWPA's parlance, "the Department in which the Coast Guard is operating" was designated as the Cabinet Department with jurisdiction over the DWPA. Since the Department of Homeland Security was created in 2002 and to which the Coast Guard was transferred, HLS the Coast Guard and Department of Transportation have shared jurisdiction over the DWPA.

Having answered the lead Agency question, the drafters of the DWPA specifically declined to increase the scope of authority for any agency other than DOT and the Coast Guard but instead, focused on the need to coordinate the exercise of all cognizant agencies' existing authorities. Thus, under the Licensing process established in Section 4(C)(6) of the DWPA, Congress did not give EPA new authority to regulate air emissions from deepwater ports, but instead, allowed for substantive input through a "one-window" licensing process, which provided EPA the ability to inform the Secretary, within 45 days of the last public hearing on the proposed license, whether the proposed license will conform with applicable provisions of the CAA, Clean Water Act or Marine Protection, Research and Sanctuaries Act (MPRSA). If EPA was of the opinion that the proposed license would conflict with these laws, then EPA could submit to the Secretary conditions to be included, by the Secretary, in the proposed license. Nowhere in this Section or

elsewhere does the DWPA provide authority for EPA to issue separate permits under the CAA. The Department of Transportation, acting through the Maritime Administration, has strayed from the precise intent of the law, which has undoubtedly hampered additional deepwater ports from being licensed.

Neither the "one window" process nor anything else in the Deepwater Port Act granted or expanded EPA's jurisdiction, and EPA has never had extraterritorial authority to impose restrictions on loading operations at oil terminals beyond territorial limits. Nothing in the DWPA changes that. To regulate a port's air emissions, there must be a finding that those emissions threaten to violate a State's health or safety laws. Such a finding requires action to prevent or remedy those violations and where authority has been delegated, it is the coastal state that takes that action. Under Section 19 of the Act, deepwater ports must be treated as areas of exclusive federal jurisdiction within the adjacent coastal State. Thus, State laws applies and the Coast Guard is the enforcing agency. The EPA's extraterritorial role is precisely defined in the Act. As discussed above, under Section 4, it has a consultative role in the licensing process. The EPA also consults with the Secretary and the Coast Guard, "subject to recognized principals of International law" regarding "loading and unloading procedures" and the "equipment, training and maintenance required . . . to prevent pollution of the marine environment", but the State and the Coast Guard have the lead role with respect to loading operations and the resulting air emissions.

### **International Law and the Limits of EPA's Offshore Authority**

As Congress well understood, air quality control requirements enforced pursuant to the DWPA must conform to established principles of international maritime law.<sup>3</sup> Deepwater ports are offshore installations "beyond the territorial limits of the United States". Thus, deepwater ports by definition are located within the U.S. Exclusive Economic Zone (EEZ), or, under the U.S. Convention of the Law of the Sea (UNCLOS), within the contiguous zone. Under international law — including UNCLOS and longstanding customary practice — they are not located in U.S. territory. Deepwater ports have no territorial sea and create no sovereign U.S. airspace. The air above a deepwater port remains subject to the freedoms of the high seas, including freedom of overflight and other air or air quality related rights. Section 19's treatment of the port "as if" it were federal territory is a practical legal tool to allow limited application of U.S. law, including air quality laws, to the facility; it does not transform the EEZ into U.S. sovereign territory or bring the port's airspace under the Clean Air Act's domestic framework.

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<sup>3</sup> The DWPA's continued references to "the marine environment" rather than "the environment" confirm the Congress' understanding that International Law precludes extension of Clean Air Act requirements beyond territorial limits and its unwillingness to violate that precept. Nothing in the DWPA extends EPA jurisdiction beyond territorial limits.

International law does recognize that a coastal state may regulate air emissions from an offshore facility to the extent necessary to prevent violations of health or safety laws in force within its own territory. The DWPA tracks this principle directly. Application of Sections 4, 5 and 19 limits EPA's role to situations where port emissions threaten to violate a State's health or safety laws. That is an appropriate and internationally consistent role. Broad and direct EPA authority over the port or its emissions is not.

For vessels calling at the deepwater port, the applicable framework is even clearer. Under International law, the applicable requirements are determined by the International Maritime Organization — specifically in MARPOL Annex VI, which the United States has adopted through the Act to Prevent Pollution from Ships. The United States cannot unilaterally impose CAA permitting requirements on foreign-flagged vessels in the EEZ as a condition of port access. The DWPA in Section 19 deals with this limitation through a specific notification and non-objection requirement which allows flag states to "opt out" of the air control requirements and send the vessels elsewhere. Section 19's instruction that EPA's consultative role be conducted "subject to recognized principles of International law" reflects exactly this understanding.

To summarize, Congress designed the DWPA with a clear understanding of where U.S. authority ends and international law begins. EPA's proposed requirements exceed those boundaries. Insofar as it applies to deepwater ports, the NPRM is beyond EPA's authority and should be withdrawn.

### **EPA Cost and technological feasibility analysis and misrepresentations concerning same**

The second major issue with the EPA proposal is that the agency appears to have misrepresented to OIRA, as well as to the public, the actual effect of the proposed revisions on new and, potentially, existing ports. What we know is that the proposed NPRM regulations would change the control requirement for major facilities beyond territorial limits from Submerged Fill, which is the current requirement, initially imposed by the Coast Guard and later confirmed by EPA, to 95% by weight reduction. This change, updated to take into account new safety requirements related to safety risks of required technologies, will result in increased costs for any new terminal in excess of \$100 million. Cost per existing facility, if the requirements are made applicable to them, would substantially exceed \$250 million. In short, we are looking at a cost in the hundreds of thousands of dollars per ton reduction of HAPs, as well as increased safety risks and perhaps a negative number regarding lives saved. Just as important, the downplaying of numbers has apparently prevented "significant impact" OIRA review—which we would hope would have identified these problems. Finally, we find that EPA's assessment of "available technologies" borders on the pitiful and should not pass muster anywhere. OIRA should reopen and review these issues.

With respect to the technology assessment, EPA has not identified a single instance in which an offshore terminal without directly and permanently attached berths has consistently met a 95% by weight reduction requirement. The NPRM changes will impose a technologically unfeasible and economically unjustifiable performance standard which will create safety hazards and potentially cost lives at deepwater ports. The NPRM proposal as it applies to deepwater ports must be withdrawn.

### **“Guidance” Issues**

As noted above, the Executive Orders set up a process to ensure review of every agency’s “Guidance” to determine whether it is consistent with the “best reading” of the applicable law as well as with Administration policy. EPA’s assertion of jurisdiction over air emissions from deepwater ports rests primarily on two guidance documents—a 2003 letter to a proposed deepwater port LNG applicant from an EPA Region 6 Official-- asserting EPA extraterritorial jurisdiction over deepwater ports beyond territorial jurisdiction (the “Sheehan Letter”) and a 2005 letter from an Acting Deputy Assistant Secretary for Oceans and Fisheries (the “Hayes” letter), asserting that deepwater ports are “Roadsteads” under UNCLOS, and thus have territorial seas of their own and therefore create jurisdiction over the air column above the port and, presumably, the safety zone. Based on the analysis above, these letters are contrary to both the clear words of the DWPA and, to the best of our knowledge, any Presidential Administration’s policy since 1974. Such positions almost certainly should have been addressed legislatively, rather than by agency regulation or fiat, but even to be adopted as guidance should have required public review and comment. These informal agency opinions, which have apparently accepted by the Department of Transportation and incorporated into the licensing process, must be reviewed by OIRA and the EPA DOGE team and immediately withdrawn. While we have not found the guidance supporting EPA’s position that emissions from vessels at offshore terminals must be treated as emissions from the terminal themselves, that position is also contrary to the best reading of the law and must be reviewed and revoked.

### **Questions of Timeliness and Efficiency**

Since EPA has asserted, with the Department of Transportation’s and Homeland Security’s acquiescence, that the DWPA gives it authority to permit air emissions from deepwater ports, the time from completed application to authority to proceed has increased from 330 days to 55-plus months and has resulted in the imposition of restrictions that cannot be achieved. No ports have commenced construction in more than a decade since oil exports have been allowed and encouraged. That result, again, is contrary to the best reading of the law as well as to this Administration’s policy.

## **The Question of Agency Cooperation**

Though our earlier submission raised a number of questions that must be addressed before the proposed regulations are finalized, the last one we will address today is whether EPA staff will cooperate with or subvert OIRA's mission. Since we first analyzed the current E.O.s and their apparent objectives, our major concern has been whether this well-conceived and carefully formulated initiative can overcome Agency inertia and staff resistance. Our review of the documentation available to us regarding OIRA/EPA pre-notice consultation suggests that OIRA was misinformed regarding the potential impact of the proposed revision, and given short-shrift, non-answers to an extremely serious questions which it posed. This suggests that the E.O. program needs teeth. We hope that they will be provided.

### **Conclusion:**

In closing, we observe that at the time the DWPA was enacted, there were few, if any, double bottomed tankers, no submerged fill requirements and limited safety or control standards for either vessels or offshore operations. Over the years since original passage of the Deepwater Port Act, the Coast Guard's broad and comprehensive authority over maritime and waterfront issues, its global focus and expertise, and its careful stewardship of the maritime environment, working cooperatively with state, federal and international agencies with relevant jurisdiction, has resulted advancement of offshore safety and environmental protection protocols and technologies. So too has the legislative framework of the DWPA and accepted deepwater port operating procedures been kept up to date. We are confident that continued adherence to the concept that maritime regulation is an international concern requiring special expertise and a global focus, and strict adherence to a remarkable, highly specialized law passed more than 50 years ago, and just as relevant today as it was then, will result in the continued accomplishments of U.S. combined energy, national security, and competitiveness goals, all the while preserving environmental principals as well.

We appreciate the Administration's efforts to institute change which will allow this to happen as well as the opportunity to submit these comments and are available for further discussions and consultations with EPA, its DOGE team or OIRA if that, in any way, might be helpful.

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