Reading File

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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January 9, 2009

Dr. Spencer D. MacNeil
U.S. Army Corps of Engineers
Los Angeles District
Attn: Regulatory Division
P.O. Box 532711
Los Angeles, California 90053-2325

Subject: Final Supplemental Environmental Impact Statement for the Pacific L.A. Marine Terminal LLC Pier 400, Berth 408 Project in the Port of Los Angeles, California (CEQ # 20080478)

Dear Dr. MacNeil:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Supplemental Environmental Impact Statement (FSEIS) for the Pacific L.A. Marine Terminal LLC Pier 400, Berth 408 Project (Project) pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. These comments were also prepared under the authority of, and in accordance with, the provisions of the Federal Guidelines (Guidelines) promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act (CWA).

Comments Addressed

We appreciate the Corps and Port addressing several of the comments that we provided in our October 20, 2008 letter of review for the Draft Supplemental Environmental Impact Statement (DSEIS). Specifically, the FSEIS adequately addresses our comments regarding adequacy of oil containment dikes at the proposed tank farms, the ineffectiveness of additional pipeline block valves to further prevent oil leaks at water crossings, and construction hour limits to avoid impacts to local residents. We acknowledge that an acoustic whale protection program, similar to the one off Cape Cod Bay, may not be appropriate or as effective for San Pedro Bay due to differences in environmental characteristics and species behavior, but we encourage the Port to vigorously monitor whale strikes and consider any future strike prevention technologies as they emerge. We also encourage the Port and Corps to continue coordinating with the U.S. Fish and Wildlife Service and California Department of Fish and Game to see if relocation of Tank Farm 1 to another location on Pier 400 (not necessarily Tank Farm 2) and expanding the acreage of the existing California least tern preserve would be of benefit to the species. We appreciate the Port's and Corps' updating the FSEIS to state that in the event of a spill, they would coordinate with the National Marine Fisheries Service to ensure any eelgrass impacts from oil spills are mitigated. We acknowledge improvements to existing air quality mitigation

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measures MM AQ-14 to increase the use of low sulfur fuel in ship engines, and MM AQ-15 to increase the use of Alternative Maritime Power and allow flexibility to employ an Alternative Maritime Emission Control System. We also acknowledge the removal of construction fleet modernization exemptions and the result that all applicable construction equipment will meet mitigation measure requirements for air quality.

Primary Continuing Concerns

Unmitigated Cumulative Impacts on Neighboring Communities

We continue to have concerns with several issues that we raised in our DSEIS comment letter. In particular, we remain very concerned with the lack of adequate mitigations to address disproportionately high adverse effects to the Port's neighboring environmental justice (EJ) community. We acknowledge the Port's efforts to reduce effects of air pollution by controlling sources through various programs, and we recognize the potential community health benefits that could come from the Port Community Mitigation Trust, as well as Project-specific mitigation measures. Nevertheless, the Port has assessed and disclosed disproportionately high and adverse unmitigated direct and cumulative effects on the EJ community as a result of the Project.

Specifically, the DSEIS stated that the EJ community would experience disproportionately high adverse effects, either directly, cumulatively, or both, due to increased concentrations of criteria air pollutants, increased cancer and acute or chronic non-cancer risks, odor, noise, and access to recreation. Because the FSEIS does not contain any discussion of impacts to the EJ community, EPA assumes these impacts to remain the same for the FSEIS. While the Port and Corps provide mitigation measures to reduce these impacts, they remain disproportionately high and adverse. Further mitigation measures are needed to offset adverse health effects; however, EPA is concerned that information provided in the Port's Environmental Impact Assessments does not adequately characterize impacts to the Port's neighboring EJ communities in terms of impact type, degree, and spatial and temporal extent, in such a way that can sufficiently inform the identification of appropriate and adequate mitigation measures. Additional information is needed to better inform decision making in the context of future Port planning, operations, and policy, and to improve public information about measures that should be taken to reduce health risk and impacts in the neighboring communities.

Project-specific health risk assessments (HRA) and the planned port-wide HRA are important sources of information for identifying cancer risk and chronic and acute non-cancer health risks in the adjacent communities from Port activities; however these studies are not specifically designed to take into account how those health risks will compound the already underserved and overburdened health conditions in those communities. Health impact assessments focus on the distribution of health impacts and health benefits within a given population.[1] We concur with the County of Los Angeles Public Health Department (CLAPHD) comment that "...the current environmental impact statements provide a relatively narrow and incomplete perspective on potential health impacts of proposed port expansion projects." and that, "HIA represents an important complementary tool for more comprehensively assessing the broad range of health effects of proposed policies and projects, including not only the impacts

[1] Bhatia R, Whernam A. 2008. Integrating human health into environmental impact assessment: an unrealized opportunity for environmental health and justice. Environmental Health Perspectives 116:991-1000.

arising from the physical environment but also consideration of the influences of the social and economic environments on health."[2]

EPA continues to recommend that the Port of LA partner with the Port of Long Beach, CLAPHD- a willing participant[3]- as well as the Corps to develop a health impact assessment to better inform mitigation to offset health impacts to the affected communities. We further recommend involving representatives of the affected communities in this process in order to improve the scope of the analysis, and identify health impacts of concern and appropriate mitigation. EPA is also willing to participate in this process to the extent resources allow. For further coordination with EPA on environmental justice issues, please contact Zoe Heller at (415) 972-3074 or by email at heller.zoe@epa.gov. You can also contact Steven John, Director of EPA's Los Angeles Office at (213) 244-1804, or by email at john.steven@epa.gov.

Mitigation to Achieve Health Risk Assessment Reduction Targets

We also continue to recommend that the Corps and Port commit in the Record of Decision (ROD) to implementing mitigation measures to ensure that health risk reduction levels described in the Health Risk Assessment are met, including any additional mitigation measures if needed to meet these reduction levels. In your response to our comments on the DSEIS, the Port and Corps explain that most of the mitigation measures for air quality will be implemented, maintained, and monitored by the Port and enforced through lease agreements. The response also states that noncompliance with the mitigation requirements could result in lease termination. EPA appreciates this assurance that lease agreements will dictate mitigation compliance; however, this does not fully address our original comment, which was intended to solicit a commitment from the Port and Corps to implement whatever mitigation measures are necessary to ensure achievement of the health risk reduction targets identified in the DSEIS Health Risk Assessment (HRA).

Air Quality

EPA remains concerned about the Project's significant impacts to air quality in the South Coast Air Basin (SCAB) and the neighboring communities. We note that updated peak daily construction emissions described in Table 3.2-13 of the FSEIS show increased emissions of all criteria pollutants, including approximately 40 percent greater CO and 44 percent greater NOx than reported in the DSEIS. Given the severe air quality problems within the Project area and the SCAB, and the potential cumulative health impacts to neighboring communities, all feasible measures should be implemented to reduce and mitigate air quality impacts to the greatest extent possible. This is especially important for nonattainment criteria pollutants ozone, PM_{10}, and $PM_{2.5}$; and CO, which is designated attainment/maintenance in the SCAB. We acknowledge the improvements to Mitigation Measures AQ-14, Low Sulfur Fuel Use, and AQ-15, Alternative Maritime Power, and their potential to further reduce air emissions, even though their benefits have not been quantified. We encourage the Port to continue to improve existing mitigation measures and develop new ones to reduce emissions from the Project. One option to consider for improved and new mitigations is EPA's West Coast Collaborative grants program for

[2] September 28, 2008 letter from Dr. Jonathan Fielding, Director to the Port.

[3] In their September 18, 2008 letter to the Port, Dr. Jonathan Fielding, Director, stated that the CLAPHD strongly supported a health impact assessment as a tool to assess impacts and inform mitigations to public health from Port activities. He also stated that they would be a willing partner in a health impact assessment process.

deployment of innovative emission reduction technologies.[4] For questions regarding air quality issues, please contact Francisco Donez, EPA Air Division, in our Los Angeles Office at (213) 244-1834, or by email at donez.francisco@epa.gov.

Fill of Waters of the U.S.

EPA acknowledges the position of the Port and Corps that the Project pilings do not constitute fill and that shade impacts would be negligible; however we remain concerned with the lack of mitigation for direct impacts from rock fill to soft bottom habitat in the Outer Harbor. According to the FSEIS, the placement of a total of 0.09 acre of rock at the base of the pilings would be regulated as fill but would not warrant mitigation. The Port and Corps assert that the functional effect would be negligible because the rock would be placed at several relatively small areas and would not result in adverse alteration or elimination of aquatic functions. We recommend preparation of a site-specific functional assessment to determine whether or not pilings and rock would negatively affect the existing soft bottom habitat. Appropriate mitigation should be determined based on this assessment.

Mitigation for Oil Spills

EPA remains concerned with the lack of mitigation for oil spills resulting from the Project, and suggests the Port consider additional measures such as a fine-based mitigation fund as suggested in our DSEIS comment letter. We understand that the Port would implement MM WQ-1.2 to prevent to spread of oil slicks to other areas, and we appreciate that the development of the future Water Resources Action Plan may be a means to further reduce water quality impacts from spills. We also understand that the LA Harbor District (LAHD) has initiated MM 4B-7 from the Port and Corps DEEP Draft FEIS/FEIR; however there is no guarantee that petitioning the State for increased staff from the Department of Fish and Game Office of Spill Prevention and Response will result in additional staff at the proposed Project site, especially given the current economic climate. We continue to recommend the Port commit in the ROD to develop a mitigation program that would hold responsible parties accountable for oil spills and impose fines that would fund restoration efforts to offset impacts to water quality and habitat. We encourage the Port to coordinate with the Port of Long Beach and appropriate federal, state and local agencies on such a program.

We appreciate the opportunity to review this FSEIS, and look forward to continued coordination with the Corps and the Port. When the Record of Decision is signed, please send a copy to the address above (Mail Code: CED-2). If you have any questions, please contact Paul Amato, the lead reviewer for this project. Paul can be reached at (415) 972-3847 or amato.paul@epa.gov.

Sincerely,

Kathleen M. Goforth

Kathleen M. Goforth, Manager
Environmental Review Office

[4] More information on West Coast Collaborative grant funding opportunities can be found at http://www.westcoastdiesel.org/grants.htm and http://www.epa.gov/cleandiesel/grantfund.htm

cc: Dr. Ralph Appy, Director, Environmental Management Division, Port of LA;
Ms. Lena Maun-DeSantis, Marine Environmental Supervisor, Port of LA;
Ms. Cindy Tuck, Assistant Undersecretary, California Environmental Protection Agency;
Mr. Rick Cameron, Director, Environmental Planning, Port of Long Beach;
Ms. Cynthia Marvin, Assistant Division Chief for Planning and Technical Support, California Air Resources Board;
Mr. Steve Smith, South Coast Air Quality Management District;
Mr. Hassan Ikrhata, Executive Director, Southern California Association of Governments;
Dr. Paul Simon, Director, Division of Chronic Disease & Injury Prevention, County of LA Public Health Department;
Mr. Bryant Chesney, NOAA Fisheries;
Mr. Ken Corey, U.S. Fish & Wildlife Service;
Mr. Bill Paznokas, California Department of Fish & Game