UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

December 28, 2007

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 Environmental Impact Statement (FEIS) for the Berths 136-147 (TraPac) Container Terminal Project in the Port of Los Angeles (CEQ # 20070500)

Dear Dr. MacNeil:

The U.S. Environmental Protection Agency (EPA) has reviewed the above 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) and EPA's ocean dumping regulations promulgated at 40 CFR 220-227 under the Marine Protection, Research and Sanctuaries Act (MPRSA). Our detailed comments are enclosed.

The purpose of the proposed Project is to expand and modernize the container terminal at Berths 136-147 within the Port of Los Angeles (POLA), upgrade existing wharf facilities, and install a buffer area between the terminal and the community. Impacts from the proposed Project include 10 acres (800,000 cubic yards) of fill into marine waters located in the Northwest Slip of the West Basin within the Los Angeles Inner Harbor. The Project also proposes to dredge approximately 295,000 cubic yards of material as part of the proposed wharf and berth work within the West Basin.

While the FEIS has addressed a number of our comments on the Draft EIS, we have continuing concerns with the selection of the Least Environmentally Damaging Practical Alternative (LEDPA), mitigation measures to reduce air quality impacts, compliance with general conformity requirements, mitigation measures to reduce health impacts to the local community, and commitments to avoid disposal of sediments into open ocean sites.

Printed on Recycled Paper

The FEIS states that Alternative 2 (Project without 10-Acre Fill) appears to be the LEDPA, pending further analysis of potential increased terminal efficiency and reduced air emissions that may result from fill of 10 acres of the Northwest Slip under the proposed Project. EPA concurs with the identification of Alternative 2 as the LEDPA. EPA supports air quality benefits from increased terminal efficiency; however, these benefits should not be achieved through the permanent fill of 10 acres of open waters and waters that have been identified as essential fish habitat by the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries). In accordance with the Clean Water Act 404(b)(1) Guidelines the U.S. Army Corps of Engineers (Corps) and POLA should select Alternative 2 as the LEDPA. If the proposed Project is selected as the LEDPA, we request a coordinated process be implemented to resolve the difference of opinion between our agencies regarding the LEDPA and to identify methods and technologies to improve terminal efficiency and air quality through construction, operations and improved technologies that avoid fill. If this process is required, please contact Allan Ota, Environmental Scientist, Water Division, Region 9 USEPA at (415) 972-3476, or by email at ota.allan@epa.gov.

We appreciate the opportunity to review this FEIS. Please send us a copy of the ROD when it is published to the address above (Mail Code: CED-2). If you have any questions, please contact me at 415-972-3846 or Paul Amato, the lead reviewer for this project. Paul can be reached at 415-972-3847 or amato.paul@epa.gov.

Sincerely,

Tamra Fujii, Acting for

Nova Blazej, Manager
Environmental Review Office

cc: Dr. Ralph Appy, Director
Environmental Management Division,
Los Angeles Harbor Department

Identification of the Least Environmentally Damaging Practicable Alternative (40 CFR-230.10(a))

Adopt Alternative 2 as the LEDPA or proceed with a process to resolve the different opinions between our agencies regarding the LEDPA. As stated in our comments on the Draft Environmental Impact Statement (DEIS), compliance with the Federal Guidelines under Clean Water Act (CWA) Section 404(b)(1) requires that the proposed Project represent the Least Environmentally Damaging Practicable Alternative (LEDPA) that achieves the basic project purpose while meeting the costs, technical, and logistical feasibility factors associated with that basic purpose. Following review of both the DEIS and the draft 404(b)(1) alternatives analysis, EPA recommended the Final EIS (FEIS) provide additional information supporting why Alternative 3 (Reduced Wharf) was dismissed from further analysis and noted that we could support identification of Alternative 2 (Project without the 10-Acre Fill) as the LEDPA if dismissal of Alternative 3 was deemed appropriate.

Based on information in the FEIS, EPA recognizes the need for the 705-foot wharf to increase throughput, based on year 2020 projected levels, and to meet the project purpose. However, EPA does not agree with the dismissal of Alternative 2 as the LEDPA because this alternative avoids fill of approximately 10 acres of open waters in the Northwest Slip. As stated in the FEIS, filling 10 acres will not increase terminal throughput but could increase efficiency and reduce annual terminal air emissions by 4 percent. While EPA supports the reduction of air emissions through increased efficiency, air quality improvements should be sought through improved construction, operations and technologies; not through permanent fill of waters. In addition, the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) has determined that the project area would impact essential fish habitat (EFH) that should be protected from fill (pp. 2-25 & 26). EPA concurs with the NOAA Fisheries recommendation to adopt Alternative 2 and avoid impacts to EFH in the project area.

Given that Alternative 2 would provide the same throughput as the proposed Project while avoiding permanent fill of 10 acres of waters and EFH, EPA has identified Alternative 2 as the LEDPA. EPA would not agree with a determination that the proposed Project is the LEDPA.

> *Recommendation:*
> We recommend the Record of Decision (ROD) state that Alternative 2 is the LEDPA and the Corps and POLA should adopt Alternative 2 in compliance with the Section 404(b)(1) Guidelines. If the Corps and POLA determine that the proposed Project is the LEDPA, EPA requests we implement a process to address this difference of opinion regarding the LEDPA amongst our agencies and to clarify how terminal efficiency and any purported air quality benefits could be gained through methods and technologies other than fill of 10-acres of waters. If this process is required, please contact Allan Ota, Environmental Scientist, Water Division, Region 9 USEPA at (415) 972-3476, or by email at ota.allan@epa.gov. We recommend NMFS be included in the LEDPA resolution process.

Air Comments

Proposed Mitigation Measures

Demonstrate that mitigation measures will remain consistent with or exceed the San Pedro Bay Ports Clean Air Action Plan (CAAP). Given the severe air quality problems within the project area, all steps should be taken to reduce and mitigate air quality impacts to the greatest extent possible. This is especially important for the nonattainment and severe nonattainment pollutants identified in Section 3 of the Draft EIS. The FEIS states that all feasible mitigation measures have been included in the Project and that they are consistent with or go beyond the CAAP. The CAAP includes minimum requirements and is still in the implementation phase. Changes to the CAAP measures may occur, such as specific implementation dates and minimal requirements. EPA is concerned that mitigation measures identified in the FEIS that would exceed the minimal CAAP requirements (Table 3.2-24, pp. 3.2-36 – 3.2-44) may not do so if CAAP measures change during implementation.

> *Recommendation:*
> All proposed mitigation measures in the FEIS should be included in the ROD. The ROD should demonstrate how these measures meet or exceed current CAAP emissions requirements. EPA recommends that the ROD ensure that mitigation measures that exceed the CAAP continue to do so despite potential future changes to CAAP measures.

Demonstrate how mitigation measures meet or exceed California Air Resources Board (CARB) and EPA requirements. Mitigation measures AQ-1, AQ-2, and AQ-3 (pp. 3.2-21 – 3.2-23) reference CARB and EPA exhaust emissions requirements for on-road or non-road sources. However, the FEIS does not clearly describe how these measures will meet or exceed CARB and EPA requirements for on-road or non-road sources. Further, some of these mitigation measures may be further strengthened to reduce the significant impact of emissions from construction equipment.

> *Recommendation:*
> The mitigation measures should be incorporated into the ROD. The mitigation measures should reference the applicable Federal or State requirements for on-road or non-road sources and demonstrate how each mitigation measure meets or exceeds these requirements. We recommend mitigation measures require the use of the highest tiered equipment available at the time of implementation to ensure that the Project uses the cleanest engines available. Similarly, mitigation measure AQ-2 (p. 3.2-22) may be strengthened by requiring the use of higher tiered engines in subsequent project phases.

General Conformity Comments

Provide a general conformity applicability analysis. A complete analysis is required to determine if the emissions associated with the Federal action (both construction and operational emissions) are subject to the requirements of a formal conformity determination under the General Conformity rule codified at 40 CFR 93, subpart B. The "applicability" analysis involves

quantification of emissions caused by a Federal action that are generated within nonattainment or maintenance areas, that are reasonably foreseeable, and that the Federal agency can practicably control and will maintain control over, due to a continuing program responsibility. A formal conformity determination is required for all such emissions that exceed de minimis thresholds set forth in the rule.

On page 3.2-7, the FEIS states that "the proposed Project criteria emissions are de minimis, as they are less than 10 percent of both the 1997 and 2006 TRP." General conformity applicability is determined by comparison of emissions associated with the Federal Action (both construction and operation) to the appropriate de minimis levels for all pollutants for which the South Coast Air Basin is nonattainment or maintenance. The "10 percent" test referenced in the FEIS refers to regionally significant actions (see 40 CFR 93.153(i)), and does not meet the criteria in 40 CFR 93.153(b) for general conformity applicability.

> *Recommendation:*
> Federal agencies are prohibited from supporting any activity which does not conform to an applicable implementation plan. Therefore the ROD should include a general conformity applicability analysis for all pollutants for which the South Coast Air Basin is nonattainment or maintenance.

Clarify consistency with the 1997/1999 South Coast State Implementation Plan (SIP). The discussion in the FEIS regarding whether the Project meets the applicable general conformity requirements does not explain whether emissions that are associated with the Federal Action (other than exhaust emissions from cargo operations) are accounted for in the 1997/1999 South Coast SIP. These types of emissions may include emissions from construction, dredging, or other activities associated with the Federal Action.

> *Recommendation:*
> The ROD should state whether all emissions associated with the Federal Action are accounted for in the 1997/1999 South Coast SIP.

Environmental Justice

The ROD should commit to sufficient mitigation measures to prevent air quality impacts to the local community from project inception. The response to comment USEPA-8 in the FEIS states that the proposed terminal operations would not result in increased air emissions on minority and low-income populations and that the proposed Project would reduce or only slightly increase health risks on minority and low-income populations relative to 2003 levels (p. 2-13). The FEIS describes efforts to improve air quality and reduce health risks including CARB auxiliary engine, heavy duty truck, and the shore-side power/cold ironing rules; Proposition 1B funds to reduce mobile source emissions; and EPA rulemaking to reduce diesel particulate matter. These rulemakings and funding decisions are not yet final and implementation may not occur for some time. Thus, the predominantly low income and minority communities in the project area could still experience adverse air quality-related health impacts upon project implementation. The local community is already heavily affected by existing air quality conditions which could be exacerbated by the many projects currently planned at and around the POLA. Therefore, even seemingly small impacts are important to consider and mitigate.

The response to comments also states that the CAAP will reduce air pollution 45 percent over the next five years. While EPA commends the POLA for adoption of the CAAP, the CAAP meets minimum requirements and we remain concerned that unmitigated air quality impacts from project construction will continue to have a negative impact on the health of the local community. The FEIS states that Phase 1 and 2 of construction would produce significant levels of criteria pollutants (p. 3.2-21). While mitigation measures AQ1-AQ5 are intended to reduce criteria pollutants, EPA is concerned with unmitigated construction-related air quality impacts and their contribution to existing impaired air quality at the community and regional level.

> *Recommendation:*
> The ROD should clearly state that mitigation will be implemented in a timely manner sufficient to ensure the maximum protection of the surrounding community from air quality impacts.

The Corps and POLA should continue to work with the local community to identify priority mitigation measures. The response to comment USEPA-9 in the FEIS regarding coordination and outreach with the affected communities appears to sufficiently address EPA's request. Outreach was extensive and sensitive to the needs of the community and topics were covered that address the public's concern regarding disproportionate impacts to nearby communities. However, to help address EPA's comments 8 and 10 from the DEIS, we encourage additional outreach to solicit community recommendations for potential mitigation measures that the Project could implement right away to address these concerns. The Los Angeles Environmental Justice (LAEJ) Network is an example of a forum that the POLA could engage to solicit input on priority mitigation measures. EPA is willing to participate as a partner with the community, POLA, and the Corps to assist in the identification of mitigation measures to reduce the impacts on the affected communities for this and future projects. Please contact Steven John, Associate Director of the Los Angeles Office at (213) 244-1850, or by email at john.steven@epa.gov.

> *Recommendation:*
> The ROD should include a commitment by the Corps and POLA to continue to work with the local community and partners in environmental justice issues to identify mitigation measures that could be implemented immediately to aid the already negatively affected community.

Develop a mitigation bank to fund priority mitigation measures for air quality impacts to the community. The DEIS does not directly address EPA's comments regarding mitigation measures such as a health clinic or an air filtration program (USEPA-10, p. 2-14). The Corps and POLA response states that air mitigation measures applied to the proposed Project would reduce emissions and related cancer risk below 2003 levels. In addition, the Ports will prepare a Ports-wide Health Risk Assessment to quantitatively estimate cumulative impacts from Port operations and individual projects (p. 2-15). EPA acknowledges the current efforts on behalf of the Ports to reduce pollutant levels and cancer risks. However, based on the substantial list of proposed and approved projects from Figure 4-1 and Table 4-1 of the DEIS, EPA anticipates cumulative air quality impacts to the Willmington and San Pedro communities will continue to be a significant health issue. To help address immediate air quality impacts of the proposed Project and impacts of future projects, EPA recommends the development of a science- and

community-based mitigation bank, financially supported by the POLA and other project proponents in the area. Mitigation measures like health clinics and air filtration systems, or other measures identified by the community, could be developed and funded through this mitigation bank to help address immediate needs of the communities.

> *Recommendation:*
> EPA recommends the Corps and POLA work with the local communities to develop a mitigation bank that funds priority measures that directly address health related air quality impacts of the proposed Project and future projects identified in Figure 4-1 and Table 4-1 of the DEIS. EPA recommends the ROD include a commitment to pursue development of an air quality mitigation bank.

Dredged Material Disposal from Berths 136-147

Provide a sequence for dredged sediment disposal and a commitment to seek alternatives other than ocean disposal. As stated in the FEIS, a portion of the sediment to be dredged is considered unsuitable for unconfined ocean disposal and it is assumed it will be disposed of at an approved confined disposal or upland site. The Pier 400 submerged disposal site or LA-2 or 3 will be considered for disposal of clean material (p. 1-37). EPA acknowledges the expected sequence for disposal and commends the Corps and POLA for considering beneficial reuse first and ocean disposal last.

> *Recommendation:*
> The ROD should include language describing this sequence and a commitment to investigate and exhaust all reuse opportunities before determining ocean disposal is appropriate, consistent with 40 CFR 227.1(a).

Beneficial Reuse and Fill Material for the Northwest Slip

Identify the 10-acre fill as a Confined Disposal Facility and include in the ROD a hierarchy for acceptance of fill material. As stated above, EPA has identified Alternative 2 as the LEDPA that should be adopted for implementation. However, if the proposed Project is identified as the LEDPA, then the 10-acre fill area should be identified as a Confined Disposal Facility.

> *Recommendation:*
> If the proposed Project is identified as the LEDPA, we recommend the ROD identify the 10-acre fill area as a Confined Disposal Facility. The ROD should also include the hierarchy for acceptance of material as described in the response to comments.