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

January 28, 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 Environmental Impact Statement for the Berths 97-109 (China Shipping) Container Terminal Project in the Port of Los Angeles (CEQ # 20080536)

Dear Dr. MacNeil:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) for the Berths 97-109 (China Shipping) Container Terminal 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) and the EPA's ocean dumping regulations promulgated at 40 CFR 220-227 under the Marine Protection, Research and Sanctuaries Act (MPRSA).

Comments Addressed

We appreciate the U.S. Army Corps of Engineers (Corps) and the Port of Los Angeles (Port) addressing several of the comments that we provided in our July 21, 2008, letter of review for the Recirculated Draft Environmental Impact Statement (RDEIS). Specifically, we acknowledge assurances that the Port's Clean Air Action Plan (CAAP) and other Project emission reduction measures will be required as part of the new terminal lease agreement, and that most mitigation measures would be implemented, maintained, and monitored by the Port. Adequate responses are also provided for several other EPA air quality-related comments. We also appreciate the Corps including the Draft General Conformity Determination in the FEIS, and will provide a separate written response. With regard to sediment sampling and disposal, thank you for providing sediment sampling protocols as an appendix in the FEIS and for committing to beneficially reuse any clean dredged material from the Project. In addition, we concur with the disposal of contaminated sediments at the Anchorage Road or other suitable upland site.

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. Thank you for clarifying that construction, and associated noise, for Port projects generally ends at 6:00 PM, Monday through Saturday, and for explaining the logistical, economic, and environmental disadvantages that could result from our recommendation to expand the terminal as throughput demand increases. We also appreciate the Corps addressing our concern with the purpose and need statement by replacing the word "maximize" with "optimize."

Primary Continuing Concerns

Unmitigated Cumulative Impacts on Neighboring Communities

We continue to have concerns with several issues that we raised in our RDEIS 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, both from the Project and in the context of cumulative impacts from other port activities. Our comments on this topic are generally consistent with those recently sent in our January 9, 2009 comment letter on the Port's Final Supplemental EIS for the Pacific LA Marine Terminal Project. 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 Fund[1], 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 in the FEIS.

Specifically, both the RDEIS and FEIS state 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, increased noise levels, and transportation impacts. 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 the information provided for the Project 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 adequate mitigation measures. Additional information is needed to better inform decision making in the context of current and 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, nor are they designed to

[1] We refer to the Community Mitigation Trust Fund that was established through the Port of LA TraPac Terminal Expansion Project settlement agreement, memorandum of understanding (MOU).

identify mitigation measures to address such cumulative effects. The CEQ regulations specify that "[e]nvironmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts" (10 CFR 1502.6). A potentially useful approach for meeting this requirement with regard to the impacts of a project on human health would be to conduct a health impact assessment (HIA). Health impact assessments focus on the distribution of health impacts and health benefits within a given population.[2] Noting, with regard to previous Port-related EISs, that "...the current environmental impact statements provide a relatively narrow and incomplete perspective on potential health impacts of proposed port expansion projects", the County of Los Angeles Public Health Departement (CLAPHD) has commented 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 arising from the physical environment but also consideration of the influences of the social and economic environments on health."[3] We agree with the CLAPHD on this matter.

The EPA continues to recommend that the Port of LA partner with the Port of Long Beach, CLAPHD- a willing participant[4]- 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. The EPA is also available to participate in this process to the extent resources allow. We are currently in the process of identifying willing partners to help screen specific needs that could be met by an HIA and to develop the scope of what a port-wide health assessment would entail. We recognize that such an HIA may be beyond the scope of any one Port project NEPA document, and note that an HIA may be consistent with studies described in the Community Mitigation Trust Fund MOU that would include assessing off-Port impacts on health and land use in Wilmington and San Pedro. As discussed with the Port during our January 22, 2009, phone call, our intent is to work with appropriate parties, which could include signatories of the MOU, as well as the CLAPHD, and the Long Beach Department of Health and Human Services, to develop and present a proposed scope for a comprehensive port-wide HIA to both ports as well as to the future nonprofit that will be established to operate the Community Mitigation Trust Fund. We would welcome the Port's early participation in this effort.

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. To further discuss a HIA, please contact Paul Amato (contact information provided below)

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

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[2] 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.

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

[4] In a 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.

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 all mitigation measures will be incorporated into the China Shipping terminal operation lease agreement and that most of the mitigation measures for air quality will be implemented, maintained, and monitored by the Port. The response also states that noncompliance with the mitigation requirements could result in lease termination. As stated above, the EPA appreciates this assurance that lease agreements and Port obligations 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).

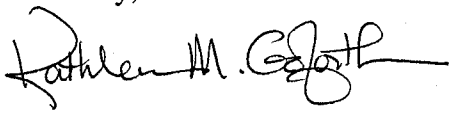
For questions regarding air quality issues, please contact Francisco Donez, EPA Air Division, in our Los Angeles Office at 213-244-1834, or by email at donez.francisco@epa.gov.

Fill of Water of the U.S.

The EPA maintains that the proposed Project does not appear to be the Least Environmentally Damaging Practicable Alternative (LEDPA), consistent with Clean Water Act Section 404 (b)(1) Guidelines (Guidelines). As stated in our RDEIS comments, Alternative 4, *Reduced Fill: No South Wharf Extension at Berth 100* would meet the Project purpose while avoiding impacts to the Inner Harbor that would result from converting 1.3 acres of soft bottomed habitat to hard bottomed habitat, placement of piles, and shading from the proposed wharf extension. As stated in the FEIS response to comments, placement of fill would not result in a permanent loss of waters, and potentially greater impacts would likely result from construction of new wharfage elsewhere in the Port complex or at another port along the California coast. While it may be reasonable to assume that fill elsewhere would be proposed to meet throughput demands, the impacts of such action are speculative at this time and do not necessarily support a determination that the proposed Project is the LEDPA. We continue to recommend the Corps consider Alternative 4, unless additional impacts of this alternative warrant support of the proposed Project, consistent with the Guidelines.

We appreciate the opportunity to review this FEIS and look forward to continued coordination with the Corps and the Port. When it is published, please send a copy of the Record of Decision to us at the address above (Mail Code: CED-2). If you have any questions, please contact me at 415-972-3521, or contact Paul Amato, the lead reviewer for this project. Paul can be reached at 415-972-3847 or amato.paul@epa.gov.

Sincerely,



Kathleen Goforth, Manager
Environmental Review Office

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;
Ms. Cynthia Marvin, Assistant Division Chief for Planning and Technical Support, California Air Resources Board;
Ms. Susan Nakamura, South Coast Air Quality Management District;
Mr. Hassan Ikrhata, Executive Director, Southern California Association of Governments;
Dr. Jonathan Fielding, Director, and Dr. Paul Simon, Director, Division of Chronic Disease and Injury Prevention, County of Los Angeles Public Health Department;
Mr. Ronald Arias, Director, Long Beach Department of Health and Human Services;
Mr. Richard Cameron, Director of Environmental Planning, Port of Long Beach;
Mr. Jesse Marquez, Executive Director, Coalition For A Safe Environment;
Ms. Melissa Lin Perella, Staff Attorney, Natural Resources Defense Council