UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

February 11, 2011

Janelle Stokes
U.S. Army Corps of Engineers,
Galveston District
P.O. Box 1229
Galveston, Texas 77553-1229

Dear Ms. Stokes:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Environmental Impact Statement (DEIS) prepared by the Galveston District, U.S. Army Corps of Engineers for the Freeport Harbor Channel Improvement Project, Brazoria County, Texas. The Brazos River Harbor Navigation District (also known as Port Freeport) proposes to deepen and widen the Freeport Harbor Channel and associated turning basins (except Brazos Harbor), up to and including the Stauffer Turning Basin to eliminate existing operational constraints.

EPA rates the DEIS as "**EC-2**" i.e., EPA has "Environmental Concerns and Requests Additional Information in the Final EIS (FEIS)". Detailed comments are enclosed with this letter which more clearly identifies our concerns and the informational needs requested for incorporation into the FEIS.

EPA appreciates the opportunity to review the DEIS. Please send our office five copies of the FEIS when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Federal Building, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20004. Our classification will be published on the EPA website, www.epa.gov, according to our responsibility under Section 309 of the CAA to inform the public of our views on the proposed Federal action. If you have any questions or concerns, please contact Michael Jansky of my staff at jansky.michael@epa.gov or 214-665-7451 for assistance.

Sincerely,

Rhonda Smith
Chief, Office of Planning
and Coordination

Enclosure

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DETAILED COMMENTS ON THE
U.S. ARMY CORPS OF ENGINEERS
GALVESTON DISTRICT
DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR THE
FREEPORT HARBOR CHANNEL IMPROVEMENT PROJECT
BRAZORIA COUNTY, TEXAS

BACKGROUND: The U.S. Army Corps of Engineers (USACE), Galveston District, under the authority of Section 216 of the 1970 Flood Control Act, proposes to widen and deepen the Freeport Channel system. The USACE has prepared a DEIS to satisfy the Federal requirements established by the National Environmental Policy Act (NEPA).

COMMENTS: The following are offered for your agency's consideration in completing the FEIS:

Alternatives

The channel is currently authorized for 45-ft. The DEIS considers a range of depths from 50 to 60-ft. This section should clearly describe how the 55-ft project was chosen. EPA recommends that the rationale behind choosing the 55-ft project be stated clearly and concisely by summarizing the benefit cost ratios (BCRs), ship draft requirements, environmental impacts, and other pertinent reasons. Please include a detailed summary of the alternatives screening analysis found in the Draft Feasibility Report, including a comparison of alternatives and reasons why alternatives were eliminated or carried forward for detailed analysis. In addition, the FEIS should address if there was consideration of developing nonstructural alternatives that would utilize offshore terminals for both crude oil and/or liquefied natural gas (LNG) off loading.

Air Quality

The proposed project is federally funded and will be located in the Houston/Galveston/Brazoria ozone nonattainment area (HGB), and is therefore potentially subject to Federal and State General Conformity Regulations. Your analysis of nitrogen oxide (NOx) and volatile organic compound (VOC) emissions indicates that NOx emissions from this project will exceed the de minimis threshold of 25 tons per year for all years of construction (2011 – 2016) for both the National Economic Development (NED) Plan alternative and the Locally Preferred Plan (LPP) alternative. VOC emissions have been demonstrated to not exceed de minimis levels. As a result, a General Conformity determination for NOx emissions is required pursuant to 41 CFR Part 51. A General Conformity analysis was included as Appendix C to the DEIS.

We have reviewed the documents and find the estimated emissions from the proposed project to be well illustrated and quantified. These emissions, together with all other emissions in the nonattainment area, would not exceed the NOx emissions budget in the HGB State Implementation Plan (SIP) allocated to construction activities.

However, any demolition, construction, rehabilitation, repair, dredging, or filling activities have the potential to emit air pollutants and we recommend best management practices be implemented to minimize the impact of any air pollutants. Furthermore, construction and waste disposal activities should be conducted in accordance with applicable local, state and Federal statutes and regulations. We offer the following comments:

- The DEIS and appendices do not indicate plans for this project to use cleaner, newer equipment with lower NOx emissions. EPA encourages the use of clean, lower-emissions equipment and technologies to reduce pollution. Further, EPA's final Highway Diesel and Nonroad Diesel Rules mandate the use of lower-sulfur fuels in non-road and marine diesel engines beginning in 2007. The General Conformity Determination in Volume II – Draft Environmental Impact Statement states that Texas Low-Emission Diesel (TxLED) is expected to be available for use in non-road equipment such as bulldozers and dump trucks. Please include a discussion of additional measures the project will incorporate to reduce emissions and the anticipated reductions in emissions. Initiatives such as the EPA Voluntary Diesel Retrofit Program, the EPA Diesel Emission Reduction Program (DERA), and the Texas Emissions Reduction Plan (TERP) on the State level offer the opportunity to apply for resources for upgrading or replacing older equipment to reduce NOx emissions.

- In the Air Quality Analysis Results discussions for the NED and LPP alternatives (Volume I – Draft Environmental Impact Statement, Sections 4.4.3.1 and 4.4.4.1, respectively), it is suggested that the high moisture content of the dredged material should prevent any particulate matter emissions from upland placement areas. Please clarify if the dredged materials will remain in place during the 50 year life of the project, or if disposal/relocation of the materials may occur. Disposal or relocation activities may present fugitive dust concerns that are not addressed within the scope of this analysis.

It is ultimately the responsibility of the TCEQ to make the final general conformity determination for this project per 30 TAC 101.30, and find that the HGB State Implementation Plan budget can accommodate emissions associated with this project

Water Quality

Ocean Dredged Material Disposal Site

In 2006 and 2007, EPA worked with the USACE, the Port, and an interagency Dredged Material Management Team on a related non-Federal proposal by the Brazos River Harbor Navigation District to widen the same channel. The current Federal project is largely a deepening and channel extension project, though alternatives related to various outcomes of the widening project are also analyzed. During our review of the earlier non-Federal project, several significant issues related to the use of two EPA-designated Ocean Dredged Material Disposal Sites (ODMDS) for Freeport Harbor were addressed. For the most part, those issues were resolved in a manner applicable to both the non-Federal and the Federal project proposals. However, three EPA actions remain with regard to dredged material management of this Federal channel deepening project.

First, we concur with the findings presented in the DEIS with regard to the suitability of the dredged material for disposal at the two ODMDS and with the application of the ocean dumping criteria (40 CFR 220-227). Though we see no issues of concern with regard to the sediment testing and evaluation performed to date, additional sediment sampling from the Stauffer Channel and from the Outer Bar Channel extension area is proposed to be conducted during the Preconstruction, Engineering, and Design phase of the project. We request an opportunity to review that data and to coordinate further with the Corps, depending on the testing results.

Second, the Galveston District of the USACE has proposed to use their authority under Section 103(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA) to place approximately 12.7 million cubic yards of the new construction material that was dredged from the Channel Extension, Outer Bar, and Jetty channel into the existing, but inactive, 45-foot project "New Work ODMDS". EPA

has reviewed the designation proposal, as outlined in the DEIS and associated modeling and sediment testing studies, and makes the following stipulations: 1) the disposal and evaluation requirements of MPRSA Section 102 continue to be met by the USACE; 2) the maximum disposal mound height not exceed 12 feet, as monitored by the USACE; and 3) the material does not stack up more than 0.3 feet outside the boundary of the ODMDS, as monitored by the USACE.

Third, a Site Management and Monitoring Plan covering both the "New Work ODMDS" and the "Maintenance ODMDS" has been coordinated with EPA and will require approval by both EPA Region 6 and the USACE prior to disposal of the material and preferably in time for publication in the FEIS. Consequently, EPA will continue to coordinate with the USACE on formal adoption of that plan, as documented in the DEIS, Volume II, Appendix B. A modification will be considered to add a site management goal to encourage continued interagency reviews prior to each maintenance event in order to evaluate the potential for beneficial use of the dredged material.

Socioeconomics and Environmental Justice

The DEIS provides a somewhat limited analysis of the environmental justice implications regarding the implementation of this project; however, it does make clear that the benefits of the project will be enjoyed by all the residents, regardless of income levels. The need for the improvements in the harbor channel are clearly laid out, and the DEIS shows that the benefits to the entire community and to the nation far outweigh any negative aspects detailed in the document in general.

The DEIS took the average of the demographics of the entire county of Brazoria into account in its analysis, rather than emphasizing those of the communities that will be most impacted by this project. The DEIS concludes that there will be no disproportionate and adverse impacts on any community. In light of the huge difference between the demographics of Freeport, the city that will be most impacted by both the construction activity and the implementation of this improvement project, it appears that more care should have been taken to carefully analyze possible negative impacts on this community in particular. As of the 2008 Census figures, Texas has a 53.4% minority population, Brazoria County has a 44.9% minority population, and the city of Freeport has 81.8% minority. Texas has a 15.8% poverty level, Brazoria County has only a 9.6% poverty level, and Freeport has a 19.6% poverty level. Clearly Freeport cannot be compared with most of Brazoria County.

The entire county will reap much of the increased employment and business opportunities brought about by the project, but one possible impact was not really analyzed. In the event of oil spills, hazardous material spills, LNG explosions, or collisions of vessels in the harbor or channel, the entire area would be impacted, but the city of Freeport would probably be the most affected. This low-income community would have less resources and be less resilient to overcome such a disaster than would higher-income communities in the area. EPA recommends the FEIS discuss the possibility of catastrophic events and measures that would be taken to decrease the likelihood of impacts from such catastrophes.

Executive Order (EO) 13045-Protection of Children from Environmental Health Risks and Safety Risks

EPA recommends the FEIS consider the April 1997 Executive Order (EO) 13045 - Protection of Children from Environmental Health Risks and Safety Risks when evaluating project impacts. This EO requires that all Federal agencies "(a) shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children, and (b) shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks." Multiple schools and residences are located within one mile of the harbor channel. EPA recommends the FEIS discuss possible catastrophic events and the measures that would be taken to minimize the impact to children.

Cumulative Impacts

As stated in the DEIS, cumulative impacts are those impacts "on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or persons undertake such actions." EPA suggests that additional projects listed elsewhere in the DEIS be included in this section if appropriate. These projects may include highway expansions, industrial complex expansions (AirLiquide), and land purchases and annexations (and subsequent development).

Greenhouse Gas Emissions and Climate Change

By statutes, Executive Orders, and agency policies, the Federal government is committed to the goals of energy conservation, reducing energy use, and eliminating or reducing greenhouse gas (GHG) emissions. Although the proposed project's annual GHG emissions are projected to be less than 25,000 metric tons per year, due to the long-term utility and location, EPA recommends the DEIS include a discussion of GHG emissions and climate change. Please see CEQ's "Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions" for guidance.

General

EPA recommends construction staging areas and the dredge material transport pipeline be analyzed for both direct and indirect impacts. Although the actions may be temporary, the impacts require analysis.