



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 ELM STREET, SUITE 500
DALLAS, TX 75270

August 6, 2019

Mr. Roddy Bachman
U.S. Coast Guard (CG-OES-2)
Vessel and Facilities Operating
2703 Martin Luther King, Jr. Avenue S.E.
Washington, DC 20593-7509

Subject: EPA Authority Over Construction and Operation
Phillips 66 Bluewater Texas Deepwater Port Act Project

Dear Mr. Bachman:

The EPA Region 6 received a copy of the Deepwater Port Act (DPA) license application package for the Phillips 66 Bluewater Texas Terminal (Bluewater), a crude oil export terminal, on July 2, 2019. We provide these comments to assist the United States Coast Guard/Maritime Administration (USCG/MARAD) and their contractors as the agencies initiate scoping for the Environmental Impact Statement (EIS) under the DPA and the National Environmental Policy Act (NEPA), evaluate the application for a DPA license, as well as conducting consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act and with Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

The proposed project involves the design, engineering, and construction of a deepwater port, 56.48 miles of pipeline infrastructure, and a booster station. The overall project will consist of three distinct, but interrelated components: 1) the “onshore” component, 2) the “inshore” component, and 3) the “offshore” component.

Onshore components associated with the proposed project include the construction and operation of approximately 22.20 miles of two (2) new paralleling 30-inch diameter pipelines located within San Patricio and Aransas counties, Texas. The proposed onshore pipelines extend from the planned multi-use terminal located south of the City of Taft in San Patricio County, Texas to the western Redfish Bay mean high tide (MHT) line. The planned multi-use terminal will consist of multiple inbound and outbound crude oil pipelines. Two of those outbound pipelines are the proposed pipeline infrastructure extending to the proposed Harbor Island Booster Station. We note that there is no explanation why the “multi-use” terminal is not considered as part of the overall Bluewater facility.

Inshore components associated with the proposed project include the construction and operation of approximately 7.15 miles of two (2) new 30-inch-diameter pipelines and the Harbor Island Booster Station. The proposed inshore components serve to connect the onshore components to offshore

components for the transport of crude oil and operation of the proposed deepwater port. The approximate 7.15 miles of the proposed inshore pipeline infrastructure extends from the western Redfish Bay MHT line and the MHT line located at the interface of San Jose Island and the Gulf of Mexico. The proposed inshore pipeline infrastructure crosses three navigable waterways including the Gulf Intracoastal Waterway (GIWW), the Aransas Pass Channel, and the Lydia Ann Channel. The inshore pipelines would intersect portions of Texas state submerged lease tract 306 near the Lydia Ann Channel. The alignment of the inshore pipeline generally parallels Highway 361 from Aransas Pass to Harbor Island. The proposed Harbor Island Booster Station would occupy approximately 19 acres on Harbor Island in Nueces County, Texas. The proposed Harbor Island Booster Station would consist of the necessary operating and pumping infrastructure to support the transport of crude oil and operations of the deepwater port.

Offshore components associated with the proposed project include approximately 27.13 miles of two (2) new paralleling 30-inch diameter offshore pipelines and the deepwater port. The proposed deepwater port consists of two (2) Single Point Mooring (SPM) buoy systems (SPM Buoy System 1 and 2). The proposed SPM buoy systems would be connected via approximately 1.68 miles of two (2) 30-inch diameter submerged pipelines. The proposed SPM buoy systems would serve as the primary device for the loading vessels berthed at the deepwater port. The SPM buoy systems would each consist of a pipeline end manifold (PLEM), catenary anchor leg mooring (CALM) system, mooring hawsers, submarine hoses, and floating hoses for the transfer of crude oil from each of the SPM buoy systems to moored vessels.

The EPA Region 6 appreciates this opportunity to provide the following information to the Coast Guard and Maritime Administration as part of the coordinated licensing effort for this facility.

We reviewed the Bluewater documents and have determined that the applications for EPA Clean Air Act Prevention of Significant Deterioration permit, the Title V operating permit, and the Case-by-Case Maximum Available Control Technology determination action are administratively incomplete in that all of the required information for the EPA forms and certifications were not included. Please see enclosed letters from Jeff Robinson to David Farris dated June 28, July 19, and July 31 of 2019 for detailed deficiencies. Also, there are issues with the Clean Water Act permit applications. In addition to the comments below, we reserve the right to request additional information as we more fully examine the permit applications and begin to develop Agency decisions regarding permits for the proposed facility. The NEPA and cross-cutting statutes and regulatory consultation documents need to be sufficient for our use in our regulatory permit actions. The EPA would appreciate the opportunity to participate in the consultations as an action agency.

CLEAN WATER ACT. Due to the nature of the delegation of the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit authority in Texas, the EPA Region 6 is the NPDES permitting authority for the project, including onshore, inshore, and offshore discharges.

The Bluewater Texas Terminal, LLC (Bluewater), a subsidiary of Phillips 66 Pipeline LLC, Deepwater Port Act (DPA) license application received by the EPA Region 6 included a copy of the NPDES permit application forms. In accordance with the applicable Environmental Permit Regulations, (40 CFR 124.3(c), 54 FR 18785, May 2, 1989), this information was reviewed and determined to be administratively incomplete. During the technical analysis of the application, other deficiencies may be determined and a request for additional or clarifying information will be made to the applicant.

- 1) Bluewater stated in the NPDES application that it is investigating the use of biocides, corrosion inhibitors, and environmentally friendly oxygen scavengers for the hydrostatic testing of offshore pipeline infrastructure. The application should clearly state whether these chemicals are used in the process. The EPA notes that the use of these chemicals may trigger biomonitoring requirements.
- 2) The EPA finalized revisions to the application requirements at 40 CFR 122.21 in the final NPDES Applications and Program Updates Rule. The final rule became effective on June 12, 2019. The permittee should resubmit the application on the revised forms that may be downloaded at <https://www.epa.gov/npdes/npdes-applications-and-forms>

Because the Deepwater Port Act (DPA) designates the proposed type of facility a “new source” for CWA purposes, the EPA will consider the information in the MARAD/Coast Guard’s EIS and consultation documents in its NPDES permit action in accordance with CWA § 511(c)(1) and DPA § 5(f). Of interest will be the conclusion of consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act; including effects on fish, shellfish, and threatened and endangered species, in all life stages, caused by the construction and operation of the facility. The EPA is also intending to rely on the National Historic Preservation Act consultations with Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

CLEAN AIR ACT. The EPA does not normally administer the Clean Air Act (CAA) in the western Gulf of Mexico because under CAA Section 328, the Department of Interior’s Bureau of Ocean Energy Management is responsible for regulating outer continental shelf (OCS) sources, as defined in the Outer Continental Shelf Lands Act, in that area. As presented in the application, the proposed source is not an OCS source, so Section 328 does not apply. Instead, the EPA is the CAA permitting authority for non OCS facilities in federal waters. The EPA regards a provision of the DPA, 33 U.S.C. § 1501, et seq, as the primary source of its authority to apply the CAA to activities associated with deepwater ports. The DPA applies federal law and applicable State law to deepwater ports, and further designates deepwater ports as “new sources” for CAA purposes. Accordingly, for the source’s pre-construction and operating permits, the EPA will rely on the provisions of Title 1 and Title V of the CAA, supporting applicable regulations and on the state law to the extent applicable and not inconsistent with federal law. Since the applicant asserted that the nearest adjacent coastal state to the operation is Texas, based on the location of the terminal, the EPA concludes that, in accordance with Section 19 of the DPA, the applicable state laws and regulations governing air quality at Bluewater are those of Texas.

The EPA will also consider the information in the MARAD/Coast Guard’s EIS and consultation documents in its CAA permit actions, and in particular will rely on the MARAD / Coast Guard’s consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act as well as consultations with the Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

Based on our recent discussions with Phillips 66 Bluewater Texas Terminal representatives, and a review of the applications from Bluewater for the required Prevention of Significant Deterioration (PSD)

permit, Case-by-Case Maximum Available Control Technology determination, and Title V operating permit, we have declared the applications to be administratively incomplete. We issued letters of administrative incompleteness to Bluewater on June 28, July 19, and July 31 of 2019 outlining the deficiencies, and have enclosed copies for the record. Until the deficiencies have been resolved, we reserve the right to request more information from the applicant to complete and substantiate their air permit applications, Appendices Z, ZAA, and ZBB of the DWP License application package, pursuant to each set of CAA implementing regulations the applicant seeks coverage.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT. Under Section 101 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), 33 U.S.C. § 1401, no person may transport material from the United States or on an American flagged vessel for the purpose of dumping it in ocean waters in the absence of a permit issued by the EPA pursuant to MPRSA § 102. A MPRSA §102 permit is also required for any person transporting material from anywhere for the purpose of dumping it in the territorial seas or to the contiguous zone where it might affect the territorial seas.

Based on our current understanding, it does not appear that this proposal includes transporting materials for the purpose of dumping it in connection with the construction or operation of the Bluewater facility. Moreover, "dumping" does not include "construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters, or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or state law . . ." MPRSA § 3(f). The construction of this deepwater port appears to fall within this statutory exclusion. However, if this understanding is not correct or if dredged materials associated with the construction/placement of the offshore platform, SPM facilities and pipelines require disposal, MPRSA Sections 101 and 103 may apply, as well as provisions of the Clean Water Act.

Also, if you should need further information about the Region 6 program for Ocean Disposal, please feel free to visit our website at: <https://www.epa.gov/ocean-dumping/managing-ocean-dumping-epa-region-6> or an overview of the entire program nationally at: <https://www.epa.gov/ocean-dumping>

COASTAL AND WETLAND RESOURCES. As described, these project components, taken individually and considered cumulatively, could have significant impacts to vital coastal and wetland resources. Therefore, all necessary measures should be taken to avoid such impacts to the degree possible and to mitigate or compensate for those that cannot be avoided. Beyond compliance with the National Environmental Policy Act and the Clean Water Act, there is also a need to ensure that the proposed project is consistent with federal and State efforts to restore coastal resources. Accordingly, all practicable efforts should be taken to ensure that the proposed project does not conflict with reasonably foreseeable future restoration efforts in the proposed project area. Special attention should be given to alternative plans currently being analyzed as part of the Texas Coastal Restoration and Protection Feasibility Study (U.S. Army Corps of Engineers), the Texas Coastal Resiliency Master Plan (Texas General Land Office), and any proposed projects under the Deepwater Horizon Natural Resource Damage Assessment and RESTORE Act programs.

The impacts from the construction, operation and maintenance of the deepwater port and its ancillary facilities, including dredging and any projected impacts to wetlands and special aquatic sites (including seagrass beds), are of particular interest to us and should be analyzed in the draft Environmental Impact Statement (EIS). A thorough evaluation should be presented in the draft EIS that demonstrates planning efforts to avoid, minimize, and compensate for wetland and special aquatic site losses associated with

the construction, operation, and maintenance of the proposed project. Impacts to aquatic resources and wetlands should include direct, indirect and cumulative effects reasonably associated with the proposed project. Along with the Clean Water Act Section 404 (b)(1) analysis, all unavoidable direct and indirect impacts would need to be compensated. We recommend that an aquatic resource and wetland mitigation plan, consistent with the 2008 Final Rule for Compensatory Mitigation for Losses of Aquatic Resources, be included within the draft EIS. Please note that providing this material after public review of the draft EIS does not allow optimum analysis of the entire range of significant potential environmental impacts.

In addition, the draft EIS should address any other projected marine and coastal natural resource impacts such as losses of habitat important to resident and migratory shorebirds and sea turtles, the introduction of invasive species, bottom scour and benthic community impacts from the mooring system, and marine pollution issues.

NATIONAL ENVIRONMENTAL POLICY ACT. The EPA Region 6 desires to be a cooperating agency in the development of the EIS by MARAD and USCG. A formal invitation for cooperating agency status should be addressed to the Region 6 NEPA program to the attention of Robert Houston. Additionally, Section 309 of the Clean Air Act requires the EPA to review EISs prepared by other agencies. This review will be coordinated by the Region 6 NEPA office.

I have enclosed a copy of the Region 6 scoping comment letter, issued on August 1, 2019.

MARAD/USCG should submit the EIS to EPA through the e-NEPA electronic filing system. Filing instructions are available on the EPA's NEPA website at <https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance>

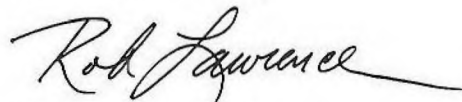
Please provide an additional copy of both draft and final EISs to the EPA Region 6 for consideration in its NPDES permit action.

POINT OF CONTACT. I will be the primary EPA point of contact for communications on the Bluewater project. Correspondence should be directed to me as follows:

Robert D. Lawrence
Senior Policy Advisor – Energy Issues
EPA Region 6
1201 Elm Street (6AR)
Dallas, TX 75270
(214) 665-6580

Once again, the EPA Region 6 looks forward to working with the Coast Guard and Maritime Administration on this project.

Sincerely yours,



Robert D. Lawrence
Senior Policy Advisor - Energy Issues

Enclosures:

June 28, 2019 letter to David Farris (PSD permit)
July 19, 2019 letter to David Farris (112G determination)
July 31, 2019 letter to David Farris (Title V permit)
August 1, 2019 letter to Myles Greenway (scoping comments)

cc: Ms. Kimberly Baggette
US Army Corps of Engineers, Galveston, TX

Ms. Terri Thomas
Bureau of Ocean Energy Management, New Orleans LA

Dr. Roy E. Crabtree
NOAA National Marine Fisheries Service, St. Petersburg, FL

Mr. Chuck Ardizzone, Project Leader
U.S. Fish & Wildlife Service, Houston, TX

Ms. Yvette Fields
Maritime Administration, Washington, DC

Ms. Chaitali Dave
Bluewater Texas Terminal LLC., Houston, TX