



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270-2102

August 1, 2019

Mr. Myles J. Greenway
Commander, U.S. Coast Guard
Chief, Vessel and Facilities Operating
Standard Division by Direction
2703 Martin Luther King Jr. Ave. SE
Washington, DC 20593-7509

Dear Mr. Greenway:

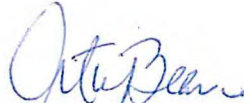
The Region 6 Office of the U.S. Environmental Protection Agency (EPA) has reviewed the July 3, 2019, Department of Transportation, Maritime Administration (MARAD), Notice of Intent (NOI) to prepare a Draft Environmental Impact Statement (DEIS) for the proposed Bluewater Texas Terminal located in San Patricio County, Texas [Docket No. MARAD-2019-0094]. The U.S. Coast Guard (USCG), in coordination with the MARAD, is now requesting comments on the scope of the DEIS for the construction and operation of facilities by Bluewater Texas Terminal, LLC. USCG and MARAD will use this DEIS in its decision-making process to assess the associated impacts on natural resources and the human environment and to determine whether this project is in the public's best interest.

To assist in the scoping process for this project, we enclosed detailed scoping comments for your consideration. Our scoping comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act. EPA is most interested about the following issues: mitigation, alternative development, impacts to water and biological resources, wetlands, endangered species, invasive species management, habitat protection, air quality, cumulative impacts, cultural/ historic resource impacts and environmental justice.

Because the Deepwater Port Act designates the proposed type of facility a "new source" for Clean Water Act and Clean Air Act purposes, EPA intends to rely on this EIS and incorporated consultations for its NPDES permitting actions and the consultations for air permitting actions. Of particular 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 and the consultations with the Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act. We request that particular consideration be given to EPA's actions in these consultations.

EPA looks forward to continued involvement and cooperation in the EIS development for this project. Please send one hard copy of the DEIS and a web link to this office when completed and submitted for public comment. You may now electronically file your EIS using our *e-NEPA Electronic Filing* by linking to EPA's web site at <http://www.epa.gov/compliance/nepa/submiteis/index.html>. If you have any questions, please contact Robert Houston of my staff at (214) 665-8565; or by e-mail at houston.robert@epa.gov.

Sincerely,



Arturo J. Blanco

Director

Office of Communities, Tribes and
Environmental Assessment

cc (email): Ms. Yvette Fields, Maritime Administration, Yvette.Fields@dot.gov
Mr. Patrick Clark, U.S. Coast Guard, Patrick.W.Clark@uscg.mil
Mr. Linden Houston, Maritime Administration, Linden.Houston@dot.gov
Mr. Timothy O'Brien, U.S. Coast Guard, Timothy.P.O'Brien@uscg.mil
Mr. Roddy Bachman, U.S. Coast Guard, Roddy.C.Bachman@uscg.mil
Mr. Brad McKittrick, U.S. Coast Guard, Bradley.K.McKittrick@uscg.mil

Enclosure

**DETAILED SCOPING COMMENTS
FOR THE US COAST GUARD (USCG)
AND MARITIME ADMINISTRATION (MARAD)
NOTICE OF INTENT (NOI)
TO PREPARE AN
ENVIRONMENTAL IMPACT STATEMENT (EIS)
FOR THE PROPOSED
BLUEWATER TEXAS TERMINAL, LLC
SAN PATRICIO COUNTY, TEXAS**

BACKGROUND

The U.S. Coast Guard (USCG), in coordination with the Maritime Administration (MARAD), will prepare an Environmental Impact Statement (EIS) as part of the environmental review of the Bluewater Texas Terminal LLC (Bluewater) Deepwater Port License Application. The application proposes the ownership, construction, operation and eventual decommissioning of an offshore oil export deepwater port that would be located in Federal waters approximately 15 nautical miles off the coast of San Patricio County, Texas in a water depth of approximately 89 feet. The deepwater port would allow for the loading of Very Large Crude Carriers (VLCCs) and other sized crude oil cargo carriers via a single point mooring buoy system.

DETAILED COMMENTS

Statement of Purpose and Need

The DEIS should clearly identify the underlying purpose and need to which the USCG is responding in proposing the alternatives (40 CFR 1502.13). The purpose of the proposed action is typically the specific objectives of the activity, while the need for the proposed action may be to eliminate a broader underlying problem or take advantage of an opportunity. The purpose and need should be a clear, objective statement of the rationale for the proposed project.

Alternatives Analysis

The National Environmental Policy Act (NEPA) requires evaluation of reasonable alternatives, including those that may not be within the jurisdiction of the lead agency (40 CFR Section 1502.14(c)). A robust range of alternatives will include options for avoiding significant environmental impacts. The DEIS should provide a clear discussion of the reasons for the elimination of alternatives which are not evaluated in detail.

The environmental impacts of the proposal and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). The potential environmental impacts of each alternative should be quantified to the greatest extent possible (e.g., acres of bay bottom impacted, tons per year of emissions produced).

Stormwater Considerations

The DEIS should describe the original (natural) drainage patterns in the project locale, as well as the drainage patterns of the area during project operations. Also, the DEIS should identify whether any components of the proposed project are within a 50 or 100-year floodplain. The DEIS should note that, under the Federal Clean Water Act (CWA), any construction project disturbing a land area of one or more acres requires a construction stormwater discharge permit.

Waters of the United States and Compliance with Section 404 CWA

The impacts from the construction, operation and maintenance of the proposed Bluewater Texas Offshore Terminal Deepwater Port and its associated facilities will result in impacts to wetlands that require permit authorization under Section 404 of the Clean Water Act (CWA 404) for the placement of dredged or fill material. As such, the DEIS should include a thorough evaluation that demonstrates planning efforts to avoid, minimize, and compensate for wetland losses associated with the construction, operation and maintenance of the proposed project. This evaluation is necessary to demonstrate the project's compliance with the Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 CFR 230), promulgated pursuant to Section 404(b)(1) of the CWA. Impacts to aquatic resources and wetlands should include direct, indirect and cumulative effects reasonably associated with the proposed project. Along with the CWA 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 DEIS.

Specific to the existing documentation, please ensure wetland impacts are consistently identified and quantified throughout the project documentation. If portions of the current evaluation of wetland impacts is based upon a desktop analysis, the EPA recommends a field-based assessment of the project impacts to be included as soon as possible and be available with the DEIS. For the evaluation of alternatives, providing a clear comparative analysis of project alternatives with all associated wetland impacts (preferably in a tabular form with supporting map of alternatives) would be beneficial. The alternatives evaluation should include a thorough discussion of avoidance and minimization measures considered such as use of horizontal directional drilling throughout the project footprint and not limited to where conventional construction practices are not feasible.

The mitigation plan should include all components as required by the 2008 Mitigation Rule and compensate for unavoidable impacts to aquatic resources, including of the conversion wetland resources along with any temporal losses that may result from project construction. The mitigation plan should incorporate an analysis of lost wetland functions along with the wetland functions to be enhanced, restored or created. The proposed mitigation should be in the same watershed as the proposed impacts and should be of the same type to ensure adequate compensation is provided for the types and quantities of aquatic resources impacted by the project. Please provide the revised draft mitigation plan with the DEIS as providing this material for public review allows for the optimum analysis of the entire range of significant potential environmental impacts by the Corps, the EPA and other interested stakeholders.

Biological Resources, Habitat and Wildlife

The DEIS should identify all petitioned and listed threatened and endangered species and critical habitat that might occur within the project area, including any areas. The DEIS should identify which species or critical habitat might be directly, indirectly, or cumulatively affected by each alternative and describe possible mitigation for each of the species. EPA recommends that the USGS consult with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act. We also recommend that the USCG coordinate across field offices and with USFWS, NMFS, and the Texas Parks and Wildlife Department (TPWD) to ensure that current and consistent surveying, monitoring, and reporting protocols are applied in protection and mitigation efforts.

Invasive Species

Human actions are the primary means of invasive species introductions. Pipeline construction causes disturbance of ROW soils and vegetation through the movement of people and vehicles along the ROW, access roads, and lay down areas. These activities can contribute to the spread of invasive species.

Executive Order 13112, *Invasive Species* (February 3, 1999), mandates that federal agencies take actions to prevent the introduction of invasive species, provide for their control, and minimize the economic, ecological, and human health impacts that invasive species cause. Executive Order 13112 also calls for the restoration of native plants and tree species. If the proposed project will entail new landscaping, the DEIS should describe how the project will meet the requirements of Executive Order 13112.

In addition, we encourage alternative management practices that limit herbicide use (as a last resort), focusing instead on other methods to limit invasive species vegetation and decrease fire risk. Possible alternatives include mowing and weed control fabric, which may need a layer of soil to prevent degradation due to ultraviolet light.

Air Quality

The DEIS should discuss the existing, or baseline, ambient air conditions in the vicinity of the project. This includes identification of applicable National Ambient Air Quality Standards (NAAQS), non-NAAQS pollutants, and criteria pollutant nonattainment areas. The project must be evaluated for cumulative and indirect air quality impacts, with potential impacts from temporary, long-term, or cumulative degradation of air quality addressed. This evaluation should estimate and quantify project-related criteria and hazardous air pollutant (air toxics) emissions, identify specific emissions sources, and consider any expected air quality/visibility impacts to any Class I Federal Areas identified in 40 CFR Part 81, Subpart D. Such discussions should describe and estimate air emissions from potential construction and maintenance activities, and proposed mitigation measures as part of a construction emissions mitigation plan to limit these emissions.

Hazardous Materials/Hazardous Waste/Solid Waste

The DEIS should address potential direct, indirect and cumulative impacts of hazardous waste from construction and operation of the proposed transmission line and other facilities. The document should identify projected hazardous waste types and volumes, and expected storage, disposal, and management plans. It should address the applicability of state and federal hazardous waste requirements. Appropriate mitigation should be evaluated, including measures to minimize the generation of hazardous waste (i.e., hazardous waste minimization). Alternate industrial processes using less toxic materials should be evaluated as mitigation since such processes could reduce the volume or toxicity of hazardous materials requiring management and disposal as hazardous waste.

Indirect Impacts

Per CEQ regulations at CFR 1508.8(b), the indirect effects analysis "may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." We recommend the DEIS consider available information about the extent to which drilling activity might be stimulated by the construction of an offshore crude oil export facility on the Gulf coast, and any potential environmental effects associated with that export terminal expansion.

Cumulative and Indirect Impacts

The cumulative impacts analysis should identify how resources, ecosystems, and communities in the vicinity of the project have already been, or will be, affected by past, present, or future activities in the project area. These resources should be characterized in terms of their response to change and capacity to withstand stresses. Trends data should be used to establish a baseline for the affected resources, to evaluate the significance of historical degradation, and to predict the environmental effects of the project components.

For the cumulative impacts assessment, we recommend the DEIS focus on resources of concern or resources that are "at risk" and/or are significantly impacted by the proposed project, before mitigation. For this project, the USCG should conduct a thorough assessment of the cumulative impacts, especially in the context of the other developments occurring and proposed in the area, including pending and proposed projects.

Coordination with Tribal Governments

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian tribes. If applicable, the DEIS should describe the process and outcome of government-to-government consultation between the USGS and with each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternative.

National Historic Preservation Act and Executive Order 13007(NRHA)

Consultation for tribal cultural resources is required under Section 106 of the National Historic Preservation Act. Historic properties under the NHPA are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, consult with the appropriate State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO), Indian tribes, or any other interested party. Under NEPA, any impacts to tribal, cultural, or other treaty resources must be discussed and mitigated. Section 106 of the NHPA requires that Federal agencies consider the effects of their actions on cultural resources, following regulation in 36 CFR 800. The DEIS should address the existence of cultural and historic resources, including Indian sacred sites, in the project areas, and address compliance with Section 106 of the NHPA. The DEIS should provide a summary of all coordination with Tribes, the SHPO/THPO, or any other party; and identify all NRHP listed or eligible sites, and the development of a Cultural Resource Management Plan.

Environmental Justice and Impacted Communities

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994) and the Interagency Memorandum of Understanding on Environmental Justice (August 4, 2011) direct federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process. Guidance¹ by CEQ clarifies the terms low-income and minority population (which includes Native Americans) and describes the factors to consider when evaluating disproportionately high and adverse human health effects. The DEIS should also describe outreach conducted to all other communities that could be affected by the project, since rural communities may be among the most vulnerable to health risks associated with the project.

The USGS should evaluate environmental justice populations within at least one-mile radius of the proposed project boundaries and use of available tools (i.e., EJ Screen, U.S. Census Bureau, area knowledge) to identify and screen environmental justice populations. EPA recommends using the Promising Practice Report to supplement the applicable requirements for considering and analyzing Environmental Justice population, which can be found at the following link:

https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

¹ Environmental Justice Guidance under the National Environmental Policy Act, Appendix A (Guidance for Federal Agencies on Key Terms in Executive Order 12898), CEQ, December 10, 1997.