



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE
DALLAS, TEXAS 75202-2733

August 27, 2019

Mr. Bobby Jones
Regulatory Division, CESWG-RD-E
U.S. Army Corps of Engineers
2000 Fort Point Road
Galveston, Texas 77550

Dear Mr. Bobby Jones:

The Environmental Protection Agency (EPA) Region 6 has reviewed Public Notice (PN) SWG-2019-00067, dated August 1, 2019. The applicant, the Port of Corpus Christi Authority (PCCA), proposes to deepen a portion of the Corpus Christi Ship Channel (CCSC) to accommodate the transit of fully laden very large crude carriers (VLCCs). In addition to providing the following comments for use in reaching a decision relative to compliance with the EPA's *404(b)(1) Guidelines for the Specification of Disposal Sites for Dredged or Fill Material* (Guidelines) (40 CFR Part 230), the EPA has accepted invitation from the U.S. Army Corps of Engineers Galveston District (Corps) to participate as a cooperating agency in the preparation of an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). The EPA has also been engaged in the Interagency Workgroup associated with the Title 41 of Fixing America's Surface Transportation Act (FAST-41) project designation.

Upon review of the current proposal, it is unclear whether the information provided by the applicant on the proposed project will sufficiently enable the Corps to make a legally defensible permit decision in regard to compliance with the Guidelines. Under the Guidelines, no discharge of dredged or fill material may be permitted by the Corps if: (1) a practicable alternative exists that is less damaging to the aquatic environment so long as that alternative does not have other significant adverse environmental consequences or (2) the nation's waters would be significantly degraded. Under the Guidelines, a project must incorporate all appropriate and practicable measures to first avoid impacts to wetlands, streams, and other aquatic resources and then minimize unavoidable impacts; after avoidance and minimization measures have been applied, the project must include appropriate and practicable compensatory mitigation for the remaining unavoidable impacts. It does not appear that compliance with the requirements of Section 230.10(c) of the Guidelines has not been clearly demonstrated. Section 230.10(c) requires that no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. The Guidelines explicitly require evaluation of all direct secondary and cumulative impacts reasonably associated with the proposed discharge in determining compliance with Section 230.10(c). In determining significant degradation, the Guidelines direct consideration of effects on such functions and values as wildlife habitat, aquatic ecosystem diversity, stability and productivity, recreation, aesthetics,

and economic values. As provided in the PN, the information provided by the applicant does not appear to adequately reflect consideration of all potential direct, secondary, and cumulative impacts to these functions and values.

It is anticipated there is potential for significant impacts to the Corpus Christi and Redfish Bays and Estuaries due to the increased channel dimensions that may result in changes to salinity regimes, tidal velocities and amplitudes, shoaling, nutrient and sediment exchange and estuarine hydrology. Specifically, it is unclear if possible environmental losses related the impacts upon aquatic ecosystems, nearby seagrasses, and organisms have been evaluated. These estuarine habitats are vital to supporting the food webs that maintain populations of commercially and recreationally important finfish and shellfish, migratory and grassland bird species, and other wildlife. It is anticipated that a thorough evaluation would 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. The provided information should also assist the Corps in making its factual determinations for compliance or non-compliance with the 404(b)(1) Guidelines based upon the final single and complete project being identified. 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.

The PN notes that PCCA's application includes a statement that impacts to seagrasses or wetlands would be offset by reconfiguring the BU placement sites to be able to host the impacted habitat. If the Corps determines it is in the public's interest to issue a permit for the project, the applicant must compensate for any unavoidable impacts to waters of the United States. For unavoidable impacts to aquatic resources, the 2008 Final Mitigation Rule states in Section 230.93(c)(1)(i) that for individual permits, the permittee must prepare a draft mitigation plan and submit it to the district engineer for review. The final mitigation plan must include the items describe in paragraphs (c)(2) through (c)(14) of the same section, at a level of detail commensurate with the scale and scope of the impacts [emphasis added]. At the district engineer's discretion, some of the elements may be addressed as special conditions to the permit. These required elements include: objectives, site selection, site protection, baseline information, determination of credits, mitigation workplan, maintenance plan, performance standards, monitoring requirements, long-term management plan, adaptive management plan, financial assurances and other information as required by the district engineer. While it is not required to submit this complete plan at the time of the PN, providing additional details at the earliest stage possible allows the public and commenting agencies to have a more complete understanding of the net impacts of the proposal, taking into account mitigation.

The EPA recommends the development of a final mitigation plan that contains more detailed information about the proposed BU work. As currently provided, it is unclear if the quantifiable functional lift for the types and quantities of aquatic resources proposed to be hosted by the proposed BU placement sites would exceed the functions provided by the existing aquatic resources adversely impacted by the CDP and the associated disposal of dredged material. It is recommended that additional BU design details be based on reference-area approaches and information be included such as geotechnical analysis, settlement curves, dredging plans, construction sequencing, containment degradation, planting plans, target elevations, sediment

budgets and transport modeling. Mitigation success criteria and monitoring requirements should also be sufficiently robust to ensure the mitigation approaches effectively compensate for the significant projects impacts to aquatic resources. The plan should address how the resources will be maintained in perpetuity including site protection, financial assurances and/or adaptive management. The EPA recommends development of a final mitigation plan for resource agency and public review once a comprehensive alternatives analysis and avoidance and minimization measures have been evaluated. Finally, given the time between impacts being realized by construction activities and the proposed BU sites achieving success criteria, it may also be appropriate to require additional mitigation for temporal losses that occur.

In summary, the EPA recommends the Corps work with the applicant to enhance the information provided to assist the Corps in determining compliance with the Guidelines especially in regard to the evaluation of all direct, secondary, and cumulative impacts of the proposed project. Additionally, the EPA recommends the Corps work with the applicant to develop a revised plan to address unavoidable impacts to seagrasses or wetlands. Thank you for the opportunity to review and comment on this PN, and if you have any questions on these comments, please contact Paul Kaspar of my staff, at kaspar.paul@epa.gov or 214-665-7459.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Hayes", written in a cursive style.

Mark A. Hayes, Chief
NPDES/Wetlands Review Section

cc: U.S. Fish and Wildlife Service, Corpus Christi, TX
National Marine Fisheries Service, Galveston, TX
Texas Commission on Environmental Quality, Austin, TX
Texas Parks and Wildlife Department, Corpus Christi, TX