To: thardy@roedelparsons.com[thardy@roedelparsons.com]
Cc: Jones, Bruced[Jones.Bruced@epa.gov]
From: Lawrence, Rob
Sent: Tue 2/6/2018 9:01:20 PM
Subject: DOI position on air jurisdiction and LOOP

Tim – this is the email from Interior's Solicitor General's office on BOEM's behalf.

From: Vorkoper, Stephen [mailto:stephen.vorkoper@sol.doi.gov]
Sent: Friday, January 26, 2018 4:47 PM
To: Curtis.E.Borland@uscg.mil; Brennan, Bernadette (MARAD) <bernadette.brennan@dot.gov>
Cc: Cason, Susan <susan.cason@sol.doi.gov>; Dennis Daugherty <dennis.daugherty@sol.doi.gov>
Subject: BOEM Air Quality Regulatory Authority and LOOP

Curtis and Bernadette,

Unfortunately, I was out of the office for last week's call on this issue, but Susan Cason informs me that you requested something in writing to memorialize our understanding that LOOP's marine terminal is not subject to BOEM's air quality jurisdiction. I've worked with Susan and some other colleagues on the following.

Section 5(a)(8) of OCSLA (43 U.S.C. §1334(a)(8)) provides limited statutory authority to BOEM to regulate air quality impacts. That section authorizes the Secretary of the Interior to issue regulations "for compliance with the national ambient air quality standards ... to the extent that activities authorized under this subchapter [i.e., OCSLA] significantly affect the air quality of any state." § 5(a)(8) (emphasis added). The operation of LOOP's marine terminal is not an activity authorized under OCSLA nor conducted by a BOEM lessee or operator and is therefore not subject to BOEM's air quality regulations.

Moreover, BOEM's air quality regulations implement this statutory charge by setting requirements for facilities that are described in Exploration Plans (EPs), Development Operations and Coordination Documents (DOCDs), and Development and Production Plans (DPPs). 30 C.F.R. § 550.303(a)-(d). These plans are required to be approved by BOEM before OCS lessees or operators may conduct activities related to the exploration and production of oil and gas resources on their leases. *See* 43 U.S.C. §§ 1340 and 1351. They are not required for the operation of a facility authorized under the Deep Water Ports Act, such as LOOP's marine terminal. While LOOP's Dome Storage Terminal may receive production from OCS leases through pipelines for which DOI has granted rights-of-way (ROW), those BOEM-issued ROWs do not make the marine terminal subject to BOEM's regulations. Moreover, BOEM does not regulate air quality impacts of pipelines independent of its review of DPPs or DOCDs in which new pipelines are described. 30 C.F.R. § 550.256.

Finally, LOOP's assertions that the activities at its marine terminal are "OCS production activities" under OCSLA are at odds with the fact that the LOOP has never sought any approval under OCSLA for those activities. While the definition of

"production" under OCSLA mentions transfer of minerals to shore, BOEM's regulatory authority is strictly limited to the implementation of the Secretary's authority to issue leases, ROWs, rights of use and easement (RUEs), and exploration permits and regulate activities conducted under those leases, ROWs, RUEs, and permits. *See, e.g.*, 43 U.S.C. § 1334(a). LOOP does not hold a BOEM-issued lease, ROW, or RUE nor are they an operator of a lease, and therefore LOOP is not subject to BOEM regulations.

Since I am unsure who else on the invitation for last week's call needs this email, I leave it up to you two to distribute as you see fit. Let me know if you have any questions.

Best,

Stephen

Stephen Vorkoper | Attorney-advisor

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U.S. Department of the Interior

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