Contact Name
Company
Address
City, State Zip

Subject: EPA Review of the Proposed Modification to the Louisiana Offshore Oil Port (LOOP)

Dear Contact Name:

The Maritime Administration (MARAD) and the United States Coast Guard (USCG) have contacted EPA Region 6 concerning their review and analysis of the proposed modification to LOOP's Port Operations Manual and Deepwater Port License. To assist the MARAD and USCG review, other Federal agencies, including EPA, are providing comments to determine the adequacy of LOOP's submission for compliance with the Deepwater Port Act (DPA) license requirements, National Environmental Policy Act (NEPA), and other applicable Federal and state statues.

On November 21, 2017, EPA Region 6 received a copy of the project description dated March 22, 2017 and the LOOP's Bi-Directional Main Oil Line Environmental Impact Analysis dated September 2017 from the MARAD and USCG. We have also received a copy of the legal analysis memorandum completed by a private law firm regarding the Department of Interior (DOI) and EPA jurisdiction of Outer Continental Shelf (OCS) air emissions and submitted to MARAD and USCG on LOOP's behalf. The proposed modification includes conversion of a portion of the existing crude oil importing operation to accommodate crude oil exporting operation

We reviewed the referenced LOOP documents and have determined additional information is needed to complete EPA's portion of the N/LPDES permit and to make a determination on whether the facility and associated conversion project require permits under the Clean Air Act. The NEPA and cross-cutting statutes and regulatory consultation documents need to be sufficient for our use in regulatory permit actions. In addition to the comments below, please note that additional information may be needed as we more fully examine LOOP's existing and proposed project's plans.

CLEAN WATER ACT (CWA). The LOOP deepwater port license project description received by EPA Region 6 did not include a copy of the National Pollutant Discharge Elimination System (NPDES) permit application forms. We have, however, been working with the Louisiana Department of Environmental Quality on an amendment to the existing joint EPA / Louisiana issued N/LPDES permit. 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 complete. EPA and LDEQ are drafting a permit for public notice.

Prior to issuance of a final permit, EPA must comply with and complete consultations under the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the

National Environmental Policy Act.

CLEAN AIR ACT (CAA). EPA regards provisions of the DPA, 33 U.S.C. § 1501, *et seq,* as the primary source of its authority to apply the CAA and CWA to activities associated with deepwater ports. In relevant part, 33 U.S.C. § 1518(a)(1) extends the Constitution and laws of the United States "to deepwater ports . . . and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State." The DPA defines a "deepwater port" to mean "any fixed or floating manmade structure other than a vessel, or any group of such structures, …used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any state, …include[ing] all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed or approved for construction and operation as part of a deepwater port…." Id. The DPA also states at 33 U.S.C. § 1502(9)(D) that a deepwater port "shall be considered a 'new source' for purposes of the Clean Air Act." LOOP has a DPA license first issued by Department of Transportation (DOT) on December 17,1976. LOOP is subject to CAA jurisdiction.

EPA has reviewed the legal memorandum, dated November 22, 2017, completed by a private law firm and sent to the Maritime Administration and USCG on LOOP's behalf. In this Memorandum, LOOP claims that it's an offshore marine terminal and operations at the terminal which is located in the Gulf of Mexico west of 87.5 degrees longitude and are therefore subject to exclusive DOI jurisdiction and not EPA's jurisdiction. The Memorandum also states that in designing, building and operating the Bi-directional Oil Pipeline Project, LOOP is not required to engage in the EPA permitting process or to consider EPA emissions standards. The Memorandum is predicated upon the assumption that LOOP's operations are by definition an "OCS source" and subject to 42 U.S.C. § 7627 of CAA. This provision does transfer air permitting to the Department of Interior (DOI) for OCS sources west of 87.5 degrees longitude. 42 U.S.C §7627(a)(4)(C) of the CAA identifies a "OCS source" by referring back to the Outer Continental Shelf Lands Act (OCSLA), see 43 U.S.C. § 1331, *et seq,* An OCSLA source is one that has a lease that provides for the exploration, development and production of minerals including offshore wind farm installations. The LOOP facility is not engaged in the exploration/development/production of oil or natural gas. The facility and its operation descriptions contained in the existing deepwater port license and supporting documentation do not meet the definition of an "OCS source", but instead a deepwater port. LOOP applied for and received a License to operate a deepwater port in 1976 not a lease for the development of mineral resources covered by OCSLA. Therefore, LOOP's legal Memorandum is not supported by the facts and it is a misinterpretation of the OCSLA and § 7627 of the CAA. If 42 U.S.C. § 7627 of the CAA was meant to apply to deepwater ports, Congress would have referenced the DPA in § 7627 as they did OCSLA sources. In discussions, with all cooperating Agencies, DOI claims they have no documentation of LOOP being an OCSLA source engaging in oil or gas exploration and/or production. Recent correspondence from DOI to MARAD and USCG states "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."

Based on the above analysis and the information contained in the LOOP deepwater port license, LOOP does not meet the definition of an OCS source, so § 7627 of the CAA does not apply. Instead, EPA is the CAA permitting authority. To date, EPA has not received an air permit application for construction

and operation of the existing LOOP facility or proposed modifications to LOOP's Marine Offshore Loading operations.

The DPA applies federal law and applicable state law to deepwater ports, and based on the location of the existing Marine Offshore Loading Terminal, it appears that the nearest coastal state to the operation is Louisiana. EPA concludes, in accordance with Section 19 of the DPA, the applicable state laws and regulations governing air quality at LOOP are those of Louisiana.

In EPA's review of other similar proposed DPA projects (but without the benefit of an air permit application from LOOP), project air emission levels and emission unit applicability have often triggered the applicability requirements to be considered a Prevention of Significant Deterioration (PSD) New Source Review (NSR) and Title V Operating Permit source. However, a thorough facility / project review detailing LOOP's current and past air emissions in conjunction with an analysis of potential emission changes from additional associated construction projects would be needed to establish if LOOP would have triggered minor or major NSR permitting requirements and construction permitting obligation under the CAA.

In accordance with the DPA, EPA applies applicable State law such as minor New Source Review (NSR) permitting regulations to deepwater ports. An evaluation to determine minor NSR permitting obligations in accordance with the minor NSR regulations of the nearest adjacent coastal state is needed. In general, if LOOP is found to be subject to the Federal PSD requirements, the following will need to be submitted to EPA Region 6: (1) a control technology review; (2) a source impact analysis; (3) an air quality model; (4) an air quality analysis for ambient air quality; (5) source information necessary to perform any analysis or make any determination; (6) any additional impact analyses of the impairment to visibility, soils and vegetation; (7) information on sources impacting Federal Class I areas and notice to Federal Land Managers, if applicable; (8) adequate public participation; and, (9) an application which specifies how the facility will be constructed and operated before construction commences. An additional facility / project review would be needed to establish if LOOP would trigger any Title V Operating Permitting requirements and subsequent obligations to apply for and obtain an operating permit issued by EPA Region 6 for air emissions associated with LOOP's Marine Offshore Loading Terminal. If the Title V Operating Permit requirements are triggered for LOOP's operations, then a CAA part 71 permit application is required to be submitted to EPA Region 6 for review. Additional information and copies of the CAA part 71 permit application forms may be found on EPA's website at: https://www.epa.gov/title-v-operating-permits/epa-issued-operating-permits. Please note that any technical issues that are identified during the preparation of a draft permit will require coordination with the company prior to any final agency action.

We also note that prior to issuance of a final NSR permit (if necessary), EPA will be required to comply with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act.

POINT OF CONTACT: The primary EPA point of contact for communications on the LOOP project. Correspondence should be direct to me as follows:

Robert D. Lawrence, Senior Policy Advisor – Energy Issues
EPA Region 6

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

Sincerely yours,

EPA Contact
Title

cc: LTJG Curtis E. Borland, U.S. Coast Guard, Washington, D.C.

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