July 26, 2018

Mr. Roddy C. 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
Texas Gulf Terminals Inc. Deepwater Port Act Project

Dear Mr. Bachman:

EPA Region 6 received a copy of the deepwater port license application package for Texas Gulf Terminals Inc. (TGRI) crude oil export terminal on July 13, 2018, and provides these comments to assist the United States Coast Guard / Maritime Administration (USCG / MARAD) and their contractors as the agencies determine the administrative completeness of the Deepwater Port Act (DPA) license application package and initiate scoping for the Environmental Impact Statement (EIS) under the DPA and the National Environmental Policy Act (NEPA). The overall project will consist of three distinct, but interrelated components: 1) the "offshore" component, 2) the "inshore" component, and 3) the "onshore" component.

The proposed deepwater port (offshore component) would be located approximately 12.7 nautical miles off the coast of North Padre Island (Kleberg County, Texas) and consist of 14.71 miles of two (2) new parallel 30-inch diameter crude oil pipelines, which terminate at a single point mooring (SPM) buoy. The SPM buoy system would be positioned in water depths of approximately 93 feet and consist of a pipeline end manifold, catenary anchor leg mooring system, and other associated equipment.

The inshore components associated with the proposed project includes 5.74 miles of two (2) new 30-inch diameter crude pipelines and onshore valve station used to connect the onshore project components to offshore project components. The inshore portions of the proposed pipeline infrastructure cross the Laguna Madre bay complex, the Gulf Intracoastal Waterway, and extend across North Padre Island to the mean high tide line located at the interface of North Padre Island and the Gulf of Mexico. Additionally, the inshore project components include the installation of an onshore valve station on North Padre Island to allow for the isolation of portions of the proposed pipeline infrastructure for servicing, maintenance, and inspection operations.

Onshore components associated with the proposed project include the construction and operation of an onshore storage terminal facility (OSTF), booster station, and approximately 6.36 miles of two (2) new 30-inch diameter parallel crude pipelines with Nueces and Kleberg counties, Texas. The OSRF would occupy approximately 150 acres in Nueces County, and would

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consist of all necessary infrastructure to receive, store, measure, and transport crude oil through the proposed inshore and deepwater port pipeline infrastructure. (Note – At the time of the application, the TGTI has not determined the number, precise routing, ownership, extent to which destinations other than the OSTF will be served and other details related to the shipment of oil from the production fields to the OSTF. TGTI will be required to supplement the application when this information is available.) The proposed booster station would occupy approximately 8.25 acres in Kleberg County, and would consist of the necessary pumping infrastructure to support the transportation of crude oil from the OSTF to the deepwater port. Onshore pipeline infrastructure would extend from the OSTF to the landward side of the mean high tide line located at the interface of the western shoreline of the Laguna Madre.

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 TGTI documents and have determined that the applications for EPA permit actions are administratively complete in that all of the required EPA forms and certifications were included. 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 draft permits for the proposed facility. The NEPA and cross-cutting statutes and regulatory consultation documents need to be sufficient for our use in the regulatory permit actions.

Commented [LR1]: NPDES application

CLEAN WATER ACT. The TGTI deepwater port license application received by 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 complete. 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. Due to the nature of the delegation of the CWA National Pollutant Discharge Elimination System (NPDES) permit authority in Texas, EPA Region 6 is the NPDES permitting authority for the project, including onshore, inshore, and offshore discharges.

Commented [LR2]: DG – wording?

Because the Deepwater Port Act (DPA) designates the proposed type of facility a "new source" for CWA purposes, 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 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; including affects on fish, shellfish, and threatened and endangered species, in all life stages, caused by the operation of the water intake structure and discharges. EPA is also relying 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.

Commented [LR3]: Tina – wording?

CLEAN AIR ACT. 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 in that area. As presented in the application, however, the proposed source is not an OCS source, so

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Section 328 does not apply. Instead, EPA is the CAA permitting authority. The DPA applies federal law and applicable State law to deepwater ports, and further designates deepwater ports as "new sources" for CAA purposes. Accordingly, in considering the source's operating and construction permit, EPA will rely on 40 CFR Part 70 and Titles I and V of the Clean Air Act, and also on state law to the extent applicable and not inconsistent with federal law. EPA will consider the information in the Coast Guard's EIS and consultation documents in its CAA permit action, and in particular will rely on the 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.

The applicant asserted that the nearest adjacent coastal state to the operation is Texas, based on the location of the terminal. EPA concludes that, in accordance with Section 19 of the Deepwater Port Act, the applicable state laws and regulations governing air quality at TGTI are those of Texas.

Specifically, we did not review the permit application or the modeling files included in *Appendix D* of the permit application for technical accuracy/approvability. This is only a review for administrative completeness. It appears that the application does contain a discussion and information on each of the PSD components listed below. The application also contains a signature from , Vice President - TGTI confirming his knowledge that the information contained in the application are true and correct. Therefore, we believe that the application as submitted is administratively complete.

Commented [LR4]: Check citation

Commented [LR5]: Who signed?

Any technical issues that are identified during the preparation of the draft permit(s) will require coordination with the company. The Federal PSD requirements clearly require preparation and submittal of (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.

As an initial matter, during our administrative completeness review, we identified several initial items for which we have technical concerns and comments. Be advised, this is not an exhaustive list of comments due to the restrictive review timeline for administrative completeness.

Commented [LR6]: Applicable discussion

1. TOPS, in its analysis, should provide a detailed administrative record that documents appropriate BACT determinations for the new emissions of nitrous oxide (NOx), particulate matter (PM) nominally 10 microns and less, sulfur dioxide (SO2), volatile organic compounds (VOC) and carbon monoxide (CO). This analysis should follow the EPA recommended BACT Top Down approach. In particular, there should be a comparison of emission rates/control units with other similar types of operations nationwide. The BACT evaluation process involves reviewing not only the emission rates in EPA's BACT/LAER Clearinghouse, but also in Federal/State/Local NSR permits across the country. Please provide a rationale for the BACT

determinations, including an analysis of the technical and economic feasibility of available control technologies.

2. The applicant should provide an on-the-record analysis as to whether compliance with normal BACT limits is feasible or not, during startup, shutdown, and maintenance (SSM). The EPA's long held policy is that BACT emission limitations apply at all times and that BACT limits may not be waived during periods of SSM. If compliance with normal BACT limits is not feasible, then secondary BACT limits for such periods should be established. To the extent that the applicant determines that a technical or economic constraint on the application of a measurement methodology would make the imposition of an emissions standard infeasible during startup-shutdown periods, the applicant should specify what design, control methodology, work practice (such as a limitation on total startup and shutdown event time) would be appropriate for EPA's consideration for a permit condition to minimize excess emissions during those periods. See 40 CFR 52.21(b)(12). Such secondary limits or work practices must be justified as BACT to ensure that all PSD requirements are met, including compliance with NAAQS and PSD increment provisions.

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 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 Texas Gulf Terminals Inc. 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 SPM facility and pipelines require disposal, MRPSA Sections 101 and 103 may apply, as well as provisions of the Clean Water Act. The following information is provided in that event.

The Corpus Christi Ship Channel Ocean Dredged Material Disposal Site (ODMDS) was primarily developed in consultation with US Army Corps of Engineers (USACE) – Galveston to provide placement of suitable navigational sediment. EPA believes it would be beneficial to understand what pertinent information would be helpful should you choose to utilize the ODMDS site.

First, EPA Region 6 looks forward to working with Texas Gulf Terminals Inc. should you choose to utilize the ODMDS. However, EPA also realizes that sometimes dredged material may not be suitable to be used beneficially but the Agency encourages that suitable material should be considered for beneficial uses. EPA encourages that the facility continues to work with all local, state and federal entities to look for suitable beneficial placements. EPA believes that suitable

dredged material provides productive purpose from which economic, social or other benefits may be derived. Compared to disposal of dredged material in confined sites, beneficial use reduces the need for disposal. Examples of beneficial use include wetlands restoration, beach nourishment, shoreline construction, and habitat creation. The Clean Water Act (CWA) Section 404 governs discharge of dredged or fill material into "waters of the United States", including the placement of dredged material in the territorial sea for a purpose other than disposal. For information on dredged material permitting under CWA 404, please see our Section 404 of the Clean Water Act Web page.

Second, should the Texas Gulf Terminals Inc. facility choose to utilize the Corpus Christi ODMDS, it is imperative that early coordination with USACE – Galveston and EPA is warranted due to potential site capacity issues for this site. This is an enormous undertaking and will require that all parties work together collaboratively to achieve a successful outcome.

Third, EPA and USACE jointly published the Ocean Testing Manual, a national testing manual for the evaluation of dredged material proposed for ocean dumping (also known as the Green Book). Under section 103 of the MPRSA, any proposed dumping of dredged material into ocean waters must be evaluated through use of EPA's ocean dumping criteria (40 CFR 220-229). The Ocean Testing Manual provides guidance for sampling, testing, and analysis of water, sediment and tissue to evaluate the environmental acceptability of dredged material proposed for ocean disposal. Uncharacterized materials are prohibited from ocean disposal (40 CFR 227.5(c)). Therefore, EPA and USACE review sampling and analysis plans to ensure that each project's sediments are appropriately characterized. EPA recommends that Texas Gulf Terminals Inc. look at the requirements for utilization of the ODMDS should you choose to utilize this site. It is critical that if you should have any questions, to work with USACE – Galveston regulatory to better understand USACE and EPA's role during the permitting process. All 3rd party dredging for permits are handled by the USACE in coordination with EPA. Evaluation of dredged material for ocean disposal under the Marine Protection, Research and Sanctuaries Act (MPRSA), sometimes referred to as the Ocean Dumping Act, relies on standardized testing using biological organisms (bioassays). The purpose of the evaluation procedures is to ensure efficient and reliable protection against toxicity and bioaccumulation that otherwise may impair the marine environment or human health. The technical guidance is intended for use by dredging applicants, laboratory scientists, and regulators. Regional guidance is provided in the Regional Implementation Agreement.

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 we currently understand the project, it would involve anchoring a Single Point Mooring buoy (SPM) in about 93 feet of water approximately 12.7 nautical miles off the coast of North Padre Island and connecting it to inshore components via 14.71 miles of two new parallel 30-inch diameter crude oil pipelines. The inshore components include 5.74 miles of two new 30-inch diameter pipelines and an onshore valve station on North Padre Island. The latter pipelines would transit the Laguna Madre Bay system, the Gulf Intracoastal Waterway, and North Padre Island. The onshore components would include a storage terminal facility that would require a 150-acre site in Nueces County, a booster

station located on an 8.5-acre site in Kleberg County, and 6.36 miles of two new 30-inch diameter parallel pipelines crossing through Nueces and Kleberg counties.

It is clear that these components, taken individually and considered cumulatively, could have significant impacts to vital coastal and wetland resources. Therefore, it is imperative that all necessary measures be taken to avoid such impacts to the degree possible and to fully 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 fundamental need to ensure that the proposed project is consistent with federal and State efforts to restore coastal resources. The rapid deterioration of coastal areas in the northern Gulf of Mexico is regarded by many as one of the nation's most critical ecological problems.

Accordingly, all practicable efforts should be taken to ensure that the proposed project does not inhibit or otherwise conflict with reasonably foreseeable future restoration efforts in this area. Special attention should be afforded to the alternative plans currently being analyzed as part of the Texas Coastal Restoration and Protection Feasibility Study (U.S. Army Corps of Engineers) and to those found in the Texas Coastal Resiliency Master Plan (Texas General Land Office). Any proposed projects under the Deepwater Horizon Natural Resource Damage Assessment and RESTORE Act programs that might be located in areas potentially impacted by this proposal should be evaluated. Coastal natural resource and sensitive species impact mitigation should be coordinated with the Coastal Bend Bays and Estuaries Program.

The impacts from construction and operation of the deepwater port and 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). We would look for a thorough evaluation in the draft EIS that demonstrates planning efforts to avoid, minimize, and compensate for wetland and special aquatic site losses associated with any proposed dredged material disposal, construction work, and operation and maintenance activities. All unavoidable direct and indirect impacts would need to be fully compensated. In summary, the planning for this project must ensure that adverse impacts to natural marine resources, coastal wetlands, and special aquatic sites (including seagrass beds) have been avoided to the maximum extent practicable, taking advantage of every opportunity for beneficial use of any dredged material produced.

We recommend that an aquatic resource and wetland mitigation plan be included within the draft EIS, along with the Clean Water Act Section 404 (b)(1) analysis. The mitigation plan should be included in the draft EIS along with the alternatives analyses and any additional information relevant to potential impacts to wetlands and other special aquatic resources. This would ensure that the draft EIS has sufficient information to demonstrate whether potential adverse impacts have been adequately addressed. Providing this material after public review of the draft EIS does not allow optimum analysis of the entire range of significant potential environmental impacts. Impacts to aquatic resources and wetlands should include direct and indirect effects, which might include deepwater port service and maintenance functions such as harboring of supply boats and other support vessels. Provisions for ensuring adequate post-implementation project monitoring should be included. In addition, means of assuring mitigation success should also be incorporated into the proposed plan.

Over the years, human uses and natural events have combined to cause a critical habitat loss in this ecologically sensitive area that is important to the long-term protection of resident and

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migratory shorebirds and sea turtles. Construction and maintenance operations should include plans for avoiding impacts to nesting avian and sea turtle species, particularly those that utilize the shoreline, wetland, and shallow water habitats of North Padre Island and Laguna Madre for any portion of their life cycle.

The environmental analyses should explain whether the SPM location will negate the need for ballast water exchange and the concomitant potential for invasive species introduction. The potential for introduction of these species via other pathways associated with the vessels should also be evaluated.

The draft EIS should include an analysis of marine pollution issues that might arise from the potential increase in foreign vessel traffic in the area.

In addition, the EIS should address any projected marine and coastal natural resource impacts to be expected as a result of hurricanes or tropical storms. As we understand it, the Single Point Mooring system includes anchors attached to the seabed and anchor chains and chain stoppers that allow the buoyed facility to move freely within a defined area. The environmental analysis should explain whether these features would cause bottom scour and impacts to benthic communities. The analysis of alternatives to reduce environmental impacts should also include a comparison of various types of Single Point Mooring systems, including Catenary Anchor Leg Mooring and Single Anchor Leg Mooring.

NATIONAL ENVIRONMENTAL POLICY ACT. EPA Region 6 desires to be a cooperating agency in the development of the EIS by MARAD and USCG. Additionally, Section 309 of the Clean Air Act requires EPA to review EISs prepared by other agencies and refer projects it finds "environmentally unacceptable" to the President's Council on Environmental Quality (CEQ).

MARAD/USCG should submit the EIS to EPA through the e-NEPA electronic filing system. Filing instructions are available on 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 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 TGTI project. Correspondence should be directed to me as follows:

Robert D. Lawrence
Senior Policy Advisor - Energy Issues
EPA Region 6
1445 Ross Avenue (6MM-A)
Dallas TX 75202
(214) 665-6580

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

Sincerely yours,

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Robert D. Lawrence
Senior Policy Advisor - Energy Issues

cc: Mr. Matt Kimmel
Corps of Engineers, Corpus Christi, 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. Pat Clements
Fish & Wildlife Service, Corpus Christi, TX

Ms. Yvette Fields
Maritime Administration, Washington, DC

Ms. Denise Rogers
Texas Gulf Terminals, Inc., Houston, TX

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