To: Dwyer, Stacey[Dwyer.Stacey@epa.gov]; Shaikh, Taimur[Shaikh.Taimur@epa.gov]; Alvarado, Tina[Alvarado.Tina@epa.gov]; Jones, Bruced[Jones.Bruced@epa.gov]; Magee, Melanie[Magee.Melanie@epa.gov]; Robinson, Jeffrey[Robinson.Jeffrey@epa.gov]; R6-ConfRm-BatonRouge-07B02/R6---07th-Floor[R6-ConfRm-BatonRouge-07B02@epa.gov]
From: Lawrence, Rob
Sent: Tue 2/6/2018 9:25:03 PM
Subject: FW: LOOP - Q&A (view in HTML) - 12/12 document
Response to Coast Guard Counsel Questions re Clean Air Act (5).docx

Rob Lawrence

Region 6

Policy Advisor - Energy Issues

214.665.6580

From: Borland, Curtis [mailto:Curtis.E.Borland@uscg.mil]
Sent: Wednesday, January 03, 2018 12:36 PM
To: Lawrence, Rob <Lawrence.Rob@epa.gov>; Jarvis Abbott <Jarvis.Abbott@bsee.gov>; t.j.broussard@bsee.gov; terri.thomas@boem.gov; michael.tucker@noaa.gov; laura.engleby@noaa.gov; Massimi, Elizabeth L CDR <Elizabeth.L.Massimi@uscg.mil>
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Subject: LOOP - Q&A (view in HTML)

View in HTML

Good afternoon and Happy New Year,

LOOP's counsel, Mr. Gordon Arbuckle, and I engaged in a Q&A before Christmas (see below email).

Q.1 relates to the Clean Air Act and the requirement for LOOP to have a Title V permit. The attached is Mr. Arbuckle's response to my question in which he argues EPA's air permitting jurisdiction DOES NOT extend to deepwater ports. The crux of his argument is LOOP's loading operations are "OCS production activities" and "[e]missions of pollutants from such facilities are subject to regulation under the OCS Lands Act."

I do not agree with his analysis or conclusion, but, rather than get into an exchange of legal opinions, I defer to EPA and BOEM/BSEE for final resolution on the scope of their jurisdictional authority over LOOP's operations as it relates to air permitting. If EPA and BOEM/BSEE agree with me that EPA is the proper permitting authority, how would that information be transmitted to LOOP (joint letter?), and what are the options for acceptable resolution to ensure air emissions from LOOP's marine terminal are properly accounted for and permitted?

Q.2 regards compliance with the Marine Mammal Protection Act and whether LOOP has ever applied for and received either an Incidental Harassment Authorization or Letter of Authorization from NMFS. Mr. Arbuckle responds "there are no activities associated with LOOP's ongoing operations that should result in the incidental taking of marine mammals; therefore, no permits have been requested from NMFS." I am not aware of any data that supports this conclusion, and it certainly departs from the historic practice of NMFS regional offices and other deepwater ports that have been licensed in both the Gulf of Mexico and the Atlantic.

Q.3 regards the extent to which LOOP has already undertaken pipeline modifications. Mr. Arbuckle responds the pipeline modifications are in fact underway, and consultation/coordination with both the Coast Guard Captain of the Port and PHMSA has been continuous.

Q.4 asks when LOOP plans to commence vessel loading operations. Mr. Arbuckle says "LOOP's schedule is to commence vessel loading operations early in 2018."

It is my understanding the Maritime Administration will be transmitting a request for a conference call to discuss the above and other issues which require resolution.

All the best,

Curtis

Curtis E. Borland

Attorney/Advisor

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From: Gordon Arbuckle [mailto:gordona123@earthlink.net]
Sent: Thursday, December 21, 2017 12:51 PM
To: Borland, Curtis
Cc: Cooper-Gates, CaSandra J.
Subject: [Non-DoD Source] Response to USCG Questions of 14 DEC 2017 [I-AMS.FID2107614] -- Information only not an official submission

Dear Mr. Borland:

LOOP's responses to the USCG's request for additional information on the Bi-Directional Main Oil Line Project, as set out in your email of December 14, 2017, are provided below.

1) During our conversation earlier this week, I noted it is my opinion that LOOP is required to have a Title V Clean Air Act (CAA) Operating Permit issued by EPA to cover air emissions from the marine terminal (see definition of deepwater port: 33 USC 1502(9) - deepwater ports "shall be considered a 'new source' for purposes of the Clean Air Act"). My conclusion is based on, among other things, the fact that LOOP is not an "Outer Continental Shelf source" as defined in CAA Section 328 (42 USC 7627(a)(4)(C)) (the "equipment, activity, or facility" is "regulated or authorized under the Outer Continental Shelf Lands Act [OCSLA]"). OCSLA applies to the administration of the exploration, development, and production of minerals of the OCS, defined as all submerged lands lying seaward of state coastal waters under U.S. jurisdiction. See 43 USC 1332 (Congressional Purpose) and 1331(a) ("Outer Continental Shelf" defined).

My interpretation of the CAA and OCSLA is consistent with the past and current practice of EPA Region 6 exercising its jurisdictional Title V permitting authority over deepwater ports in the western Gulf of Mexico (e.g., Gulf Gateway - decommissioned, and Delfin LNG - MARAD License in draft and a Title V permit application in process). However, in the event my opinion is in error, as you believe, and LOOP is in fact subject to DOI/BOEM OCS air pollution regulations, please provide any historical or current records of filings which LOOP has made pursuant to the requirements of 30 CFR Part 550, Subpart C (Pollution Prevention and Control), and any findings or determinations from the Regional Supervisor in response to LOOP's required filings. Also, please provide LOOP's POC at the BOEM regional office in New Orleans and any correspondence which may have occurred between LOOP and BOEM regarding the bi-directional project.

See attachment titled "Response to Coast Guard Counsel re Clean Air Act"

2) The Marine Mammal Protection Act (16 USC 1361 et seq.) imposes a moratorium on the taking of marine mammals without a permit (16 USC 1371(a)). Marine mammals

(e.g., bottlenose dolphins, Atlantic spotted dolphins) are likely to occur in the area where LOOP's marine terminal and transfer buoys are located. Sections 1371(a)(5)(A) and (D) direct the Secretary of Commerce to allow, upon request, the incidental but not intentional taking of marine mammals. The National Marine Fisheries Service (NMFS) has promulgated regulations on how to apply for and receive a marine mammal take authorization (see generally 50 CFR Part 216 - Regulations Governing the Taking and Importing of Marine Mammals). For deepwater ports, regardless of location, common practice has been for the deepwater port applicant/operator to consult with NMFS, and, when necessary, apply for and receive from the appropriate regional office (in LOOP's case, NMFS SE Region located in St. Petersburg, FL) either an Incidental Harassment Authorization (IHA) or Letter of Authorization (LOA) that allows for the incidental, but not intentional, take of marine mammals. Please provide any record of correspondence between LOOP and NMFS SE Region with regard to the potential risk of incidental take of marine mammals as a result of LOOP's operations and advise whether LOOP has ever applied for and received either an IHA or LOA from NMFS.

The NMFS would have been involved in the development /review of LOOP's Environmental Impact Statement (EIS) and the applications for permits to construct the pipeline/facilities. Any requirements for permits relative to construction or operations should have been addressed at that time. There are no activities associated with LOOP's ongoing operations that should result in the incidental taking of marine mammals; therefore, no permits have been requested from NMFS. As there is no construction activities associated with the LOOP Bi-Directional Project in the Gulf of Mexico that should result in the incidental taking of marine mammals, no permits were requested from NMFS. In a review of the Environmental Impact Analysis with the LOOP Program Review Committee and the Environmental Monitoring Program contractor, the only agencies suggested for follow-up was U. S. Fish and Wildlife and Service, LA State Historic Preservation Office and LA Natural Heritage Program. This and several other questions which have recently been raised suggests to us that the potential effects of the minor equipment and operational changes contemplated here are somehow being equated with those of construction and operaton of an entirely new facility such as Delfin or Northeast Gateway. The operations under consideration here are authorized by the existing license and are not significantly different than those which have been conduted over the past several decades. Common sense suggests that this experience should be taken into account and that the questions presented should be addressed to the existing facility rather than to facilities which have not commenced construction.

3) Please advise on the extent, if any, LOOP has already undertaken pipeline and marine terminal/pipeline end manifold modification activities to enable bi-directional MOL flow.

The valve work at SPM 104 has been completed. This work was completed with the approval of ABS and the Captain of the Port.

All work on the pipeline/facility piping is being performed in accordance with the requirements set forth in 49 CFR 195 Subparts C, D, E and G. Check valve CK – 4020 at the Clovelly Dome Storage Terminal Injection Station has been removed and replaced with a spool piece. The documentation for this work has been forwarded to PHMSA per their request. The remainder of the work required for bi-directional flow is in progress. Consistent with the requirements of 33 CFR Parts 149 and 150, and in accordance with our understanding that the Captain of the Port's office (COTP) is the designated Coast Guard point of contact for this project, LOOP has continuously consulted with the COTP throughout this process. Once work is completed all documentation will be compiled and maintained in accordance with the requirements of 33 CFR Part 149, 49 CFR 195.266, 49 CFR 195.310, 49 CFR 195.402, and 49 CFR 195.507. The documentation will be available for review by PHMSA upon request, as required by 49 CFR 195. All completed modifications are locked and tagged out and will not be commissioned until LOOP receives all required authorizations and approvals from the Captain of the Port.

The Guidance for Pipeline Flow Reversals, Product Changes, and Conversion to Service, US DOT PHMSA, September 2014 was reviewed for applicability to this project. It was determined that the notification requirements in the Guidance were not applicable as the modifications required to effect the change cost less than $10,000,000.00 to construct. However, LOOP has nevertheless been in continuous consultation with PHMSA in accordance with the Coast Guard's guidance and the requirements of 33 CFR 149.15 (b) and (e) to consult with Federal agencies possessing relevant technical expertise. As has been discussed with PHMSA, while notification in accordance with the Guidance was not required, LOOP followed the intent of the Guidance throughout project.

4) Please advise on the anticipated schedule for first transfer of crude oil intended for export.

Crude Oil currently in storage at LOOP may eventually be exported, dependent upon market conditions and shipper demand for such service, and contingent upon final government approval of the modifications. As previously discussed, LOOP's schedule is to commence vessel loading operations early in 2018. Meeting this schedule is dependent on receiving the required approval from the Captain of the Port as commissioning of facility modifications cannot proceed until that approval is received.

Please let us know if you require any additional information regarding these issues.
Sincerely,

Gordon Arbuckle.

Counsel to LOOP LLC

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