



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APR 15 2010

Ms. Meenakshi Varandani
New York City Economic Development Corporation
110 William Street
New York, New York 10038

Dear Ms. Varandani:

The U.S. Environmental Protection Agency (EPA) has reviewed the January 20, 2010 Draft Scope of Work for the New York Container Terminal Expansion Environmental Impact Statement (EIS) CEQR 09SBS004R. The EIS is being prepared under New York City's Environmental Quality Review (CEQR) as the location of the proposed expansion is adjacent to the New York Container Terminal (NYCT) on Staten Island, New York. This letter responds to the New York City Economic Development Corporation's (NYCEDC) Notice of Public Scoping, and request for comments on the proposed project.

The proposed project consists of the construction of a new, 50-foot deep, container ship berth and associated marine container terminal on a portion of the former Port Ivory site adjacent to the existing NYCT. Creation of the proposed berth and associated marine container terminal would include the demapping of a segment of Richmond Terrace and an unimproved segment of Catherine Street, as well as the relocation of a segment of Western Avenue to provide better access to the new terminal, the existing marine terminal, and the adjacent intermodal yard. Approximately 4.33 acres of underwater lands adjacent to the new berth would be directly affected and require dredging.

EPA's Scoping comments are as follows:

As discussed in the Scoping Document, the proposed project will have a significant effect on wetlands and river bottom. The EIS should define all federally regulated waters of the United States within the project area and evaluate all direct and indirect adverse environmental effects that may be caused by the project. Direct impacts are those that happen in direct response to the regulated activity. Indirect impacts are those removed in time and/or distance in relation to the regulated activity.

In evaluating potential project related impacts to waters of the United States, the EIS should demonstrate that the proposed activities comply with EPA's Section 404(b)(1) Guidelines at CFR 40 Part 230.10. While all requirements at CFR 40 Part 230.10 must be met, we emphasize that the Guidelines specify that:

- No discharge of dredged or fill material shall be permitted if there is a practicable alternative which would have less adverse impact on the aquatic ecosystem.

- An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.
- Where the activity associated with a discharge which is proposed for a special aquatic site does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not "water dependent"), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.

Finally, the EIS should describe the method of compensation for any unavoidable adverse impact to waters of the United States due to the proposed activities. Compensatory mitigation must be consistent with the Compensatory Mitigation Rule issued jointly by EPA and the Army Corps of Engineers (ACOE) at 40 CFR Part 230 and 33 CFR Part 332. EPA notes that in the Comprehensive Port Improvement Plan (CPIP) dated September 2005, and jointly developed by the NYCEDC, Empire State Development Corporation, New Jersey Department of Transportation and the Port Authority of New York and New Jersey, the area to be provided in compensation for this expansion option was 45 acres. (CPIP, 2005, Volume 2, Page 1.3)

While the Scoping Document does discuss the area of wetlands that would be lost from fill, the EIS should analyze the loss of ecological function to the Bridge Creek wetlands that remain after the proposed berth is constructed. Bridge Creek has also been the site of restoration efforts by both the New York State Department of Environmental Conservation (NYSDEC) and the National Oceanographic and Atmospheric Administration. The EIS should describe any impacts to those restoration efforts, including loss of ecological function, and should include a hydrodynamic model of the current and tidal regime entering Bridge Creek and the adjacent wetlands to determine whether the creek will still provide adequate flushing for the Goethals Pond wetlands, should the terminal expansion be constructed.

Shooters Island has been identified in the recently released ACOE Comprehensive Restoration Plan as a possible site for restoring nesting waterbird habitat and the creation of wetlands. The EIS should discuss what effect the new berth and container operations would have on future restoration efforts on Shooters Island in terms of noise, activity, erosion from ship movement and loss of foraging habitat at Bridge Creek.

EPA is concerned that the proposed container terminal is to be sited in a New York City Comprehensive Waterfront Plan-designated Special Natural Waterfront Area. This should be discussed in the EIS.

The EIS should include a detailed purpose and need statement, including past and projected container volumes. A copy of the regional container forecast used as a basis for the purpose and

need of the proposed container berth should be attached as an appendix to the document, and include all assumptions used in the projection. This forecast should be compared to the forecasts used in the CPIP.

The EIS should include a discussion about the status of the NYCEDC's Staten Island West Shore Study started in 2008, which includes the NYCT site.

The EIS should include a cumulative effect analysis of all environmental impacts such as air quality, water quality, noise and the increase of runoff/stormwater. In particular, the cumulative impacts to wetlands along the Kill Van Kull on the north and Arthur Kill on the west sides of Staten Island from other projects such as the Goethals Bridge Replacement, fill for the Staten Island Railroad embankment and any wetlands impacts from the proposed Bayonne Bridge replacement should be analyzed.

As there has been concern in the past about rail traffic from Howland Hook going through the neighborhoods of Roselle and Linden in New Jersey, the EIS should analyze the expected increase of rail traffic from the expanded container terminal to those (and other) New Jersey communities. This would include traffic and noise impacts.

The EIS should include a discussion of the "Spectra Energy NYNJ Expansion" plans, as the natural gas pipeline is proposed to be sited in the same area as the proposed terminal.

While not required in the CEQR EIS, the applicant will need to perform a General Conformity Determination for related dredging, berth construction, wetlands fill and wetlands mitigation as part of the ACOE permit. For the purpose of public disclosure, EPA recommends that a General Conformity Determination be an appendix to the EIS.

New York State does have an Environmental Justice Policy. The Commissioner Policy CP-29 Environmental Justice and Permitting was issued on March 19, 2003. CP-29 provides guidance for incorporating environmental justice concerns into the NYSDEC environmental permit review process and the DEC application of the State Environmental Quality Review Act.

The Scoping Document states that the Port Authority has initiated planning studies regarding the feasibility of developing a new I-278 eastbound exit ramp that would provide a direct connection for trucks traveling between the Goethals Bridge and the existing Howland Hook Marine terminal. At a briefing between NYCEDC and EPA staff on March 25, 2010, NYCEDC stated that local road improvements to accommodate trucks from the existing terminal have already been completed. There is no documentation of a planning effort for a new eastbound ramp, the ramp is not in the current Transportation Improvement Program, nor has it been discussed with the Federal Highways Administration. If an eastbound ramp is planned, it must be considered connected to the marine terminal expansion, should be discussed fully within the EIS, and all impacts accrued to the ramp construction should be analyzed.

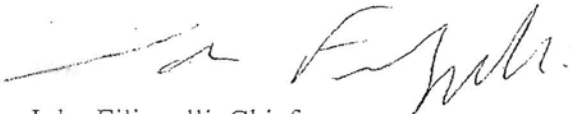
Finally, in the CPIP the Howland Hook Container Terminal Expansion option (C10) was evaluated against a list of criterion. (CP/IP 2005, Volume 2, Page 7.3). This terminal expansion received a poor evaluation under the following criteria:

- Port Planning – P1 Phasing, plan flexibility and relationship to existing land and berth use; P2 Appropriateness of land shape for cargo handling; P3 Ease of navigation to site along the main approach channels
- Environmental Issues – E5 Wildlife Habitat; E6 Waterfront access
- Financial and Economic – F1 Financial analysis – breakeven price

These issues should be discussed in the EIS, explaining what has changed since the preparation of the CPIP and CPIP Environmental Assessment (for which EPA, the Federal Highway Administration and the ACOE were co-leads) to warrant the expansion of this terminal as opposed to other locations in the port.

Thank you for the opportunity to comment on the New York Container Terminal Expansion Draft Scoping Document. If you have any questions, please call Lingard Knutson of my staff at (212) 637-3747.

Sincerely,



John Filippelli, Chief
Strategic Planning and Multi-Media Programs Branch