

277447



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

APR 18 2004

Commander Mark Prescott  
U.S. Coast Guard  
Commandant (G-MSO-2)  
Vessel and Facilities Operating  
2100 Second Street, S.W.  
Washington DC 20593

USCG-2004-16860-23

Subject: EPA Authority Over Construction and Operation  
Shell's Gulf Landing Deepwater Port Act Project

Dear Commander Prescott:

EPA Region 6 received a copy of the deepwater port license application for Shell's Gulf Landing facility on November 10, 2003, and provides these comments to assist the Coast Guard / Maritime Administration and their contractors as the agencies initiate scoping for the Environmental Impact Statement under the Deepwater Port Act (DPA) and the National Environmental Policy Act (NEPA). The proposed port will consist of a fixed facility in the Gulf of Mexico, which will receive liquidified natural gas from vessels, re-gasify it, and convey it through new natural gas pipelines for transport ashore in Louisiana and then through the national natural gas pipeline network. 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.

Previously, we reviewed the Gulf Landing documents and determined that the applications for EPA permit action 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 following actions.

**CLEAN WATER ACT.** Section 301(a) of the Clean Water Act (CWA) generally forbids discharges of pollutants to the waters of the ocean and contiguous zone from a point source (other than a vessel operating in a transportation capacity) in the absence of a national discharge elimination system (NPDES) permit issued pursuant to CWA § 402. Based on a review of the deepwater port license application, an NPDES permit authorization will be required for the proposed facility's operational discharges, including discharges of non-contact warming water associated with the re-gasification process, hydrostatic test water, deck drainage, and sanitary and domestic wastewater. Because the DPA designates the proposed type of facility a "new source" for CWA purposes, EPA will consider the information in the Coast Guard's environmental impact statement 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 impingement and entrainment of fish, shellfish, and threatened and endangered species, in all life stages, caused by the operation of the intake structure. The Gulf Landing deepwater port license application included an NPDES permit application form containing sufficient information to draft and propose an NPDES permit.

**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 Minerals Management Service is responsible for regulating "OCS sources" in that area. As presented in the application, however, the proposed source is not an "OCS Source," so 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 Louisiana law to the extent applicable. EPA will consider the information in the Coast Guard's environmental impact statement and consultation documents in its CAA permit action, and in particular 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 presented in the application, the facility would be a major source for Title V purposes and a synthetic minor source for construction permit purposes. As such, it would need a Title V operating permit and a minor new source review (NSR) construction permit consistent with Louisiana law.

**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 anyone proposes to transport materials for the purpose of dumping it in connection with the construction or operation of the Gulf Landing Terminal. 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.

**NATIONAL ENVIRONMENTAL POLICY ACT.** Section 309 of the Clean Air Act requires EPA to review environmental impact statements (EISs) prepared by other federal agencies and refer projects it finds "environmentally unacceptable" to the President's Council on

Environmental Quality (CEQ). The Coast Guard should file the Gulf Landing EIS with EPA in accordance with 40 CFR § 1506.9 by sending it to:

EPA  
Office of Federal Activities  
EIS Filing Section  
South Ariel Rios Building (Room 7220)  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Please provide an additional copy of both draft and final EISs to EPA Region 6 for consideration in its NPDES action.

**WETLANDS.** As we currently understand the project, it would involve new pipeline construction only in the Gulf of Mexico, connecting with existing pipelines prior to reaching near shore habitats. However, should the plans call for any pipeline construction, trunkline connections, or associated pipeline facilities or utilities construction in near shore, on shore, or wetland habitats we would look to the EIS to thoroughly evaluate options to avoid, minimize, and compensate for such impacts. Under such a review, a complete analysis in accordance with Section 404 of the Clean Water Act (CWA) should be conducted. Given the critical role wetlands serve in coastal Louisiana, avoiding wetland losses should be a primary focus of the alternatives analysis of any such onshore work.

Beyond compliance with the NEPA and the CWA, there is also a fundamental need to ensure that the proposed project is consistent with Federal and State efforts to restore coastal Louisiana. The rapid deterioration of coastal Louisiana is regarded by many as one of the nation's most critical ecological problems. Since 1990, the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA) has invested hundreds of millions of dollars into a wide range of restoration projects. In addition, the U.S. Army Corps of Engineers, the State, and various stakeholders are currently developing a comprehensive ecosystem restoration plan, referred to as the Louisiana Coastal Area Comprehensive Coastwide Ecosystem Restoration Feasibility Study. All practicable efforts should be taken to be sure that the proposed project does not inhibit or otherwise conflict with reasonably foreseeable future restoration efforts in this area. Activities which might fall into this category could include new pipeline construction, utilities construction, and onshore construction of the terminal facilities.

Since significant environmental impacts could result from construction onshore of the two concrete gravity base structures and any associated channel excavation required to ship them out of the fabrication yard, these direct impacts should also be evaluated in the EIS. The considerations discussed above would apply if the fabrication site is in coastal Louisiana. Although similar issues should be explored if the fabrication site is along the Texas coast, particular attention should be paid to the cumulative impacts analysis should the proposed site be along or near the La Quinta Channel, in Texas. There are currently proposals for three onshore LNG terminals and at least two fabrication sites in that area. In any event, we would expect the EIS to thoroughly address the potential for environmental impacts associated with the onshore

facility construction, specifically with respect to dredging (including discussions of alterations to channel width or depth), dredged material management, beneficial use options, wetland impacts.

**POINT OF CONTACT.** I will be the primary EPA point of contact for communications on the Gulf Landing project. Correspondence should be directed to me as follows:

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

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

Sincerely yours,



Robert D. Lawrence  
Senior Policy Advisor - Energy Issues

Enclosure

cc: Col. Peter J. Rowan  
Corps of Engineers, New Orleans LA

Mr. Chris C. Oynes,  
Minerals Management Service, New Orleans LA

Ms. Doris Bautch  
Maritime Administration, Schaumburg IL

Mr. A. Y. Noojin, III  
Gulf Landing LLC, Houston TX