

Delaware Community Benefits Agreement Coalition (DCBAC)

Public Comments to Docket #Docket #2020-P-Multi-0024)

The Delaware Community Benefits Agreement Coalition (DCBAC) is comprised of members and allies representing a diverse cross-section of the Delaware community. Current members include local residents, activists, civil rights organizations, environmental organizations and other allies.

We have several concerns about the planned expansion of the Port of Wilmington as it was outlined in three technical presentations on September 29, 2020 (Docket #Docket #2020-P-Multi-0024). Before outlining specific comments of the Port plans, we want to state, at the outset that we are not against development. In fact, as many of our members come from communities that have experienced years of under and disinvestment, we are extremely interested in development, as long as it does not cause harm to the health and wellbeing of the citizens or environment, is conducted in a transparent manner and deeply engages local residents as partners in the development process.

A general description of the project, as described in the Wilmington Harbor Edgemoor Expansion, Environmental Assessment Technical Document (Revised June 2020), has been included below:

The proposed project supports the redevelopment of the Edgemoor Site into a multiuser containerized cargo port. The primary harbor access channel will provide access to an approximately 2,600 foot long wharf structure. The berth and access channel will be excavated to the 45-foot mean lower low water (MLLW) project depth. At the riverward edge of the wharf the future river bottom will be shaped to slope upward to a quay wall along the landside of the wharf. The quay wall will support the elevation transition from the river bottom to the grade of land within the new port. The 45-foot MLLW project depth matches the maintained depth of the Federal navigation channel. Proposed project activities producing direct impacts are considered to result from the proposed deepening of an area approximately 4,000 feet in length and a width 2 | Wilmington Harbor - Edgemoor Expansion Environmental Assessment Technical Document extending from the boundary of the federal navigation channel to approximately 300 feet offshore of the Site at MLLW (Figure 1-1). This area encompasses approximately 1.5 million square feet (approximately 87 acres). The direct impacts are also considered to be associated with the construction of the approximately 2,600-foot wharf structure to accommodate ships and other incidental structures located waterward of MHW.

The initial dredging for the berth and primary harbor access is anticipated to require removal of an approximate volume of 3.3 million cubic yards of river sediments and the underlying soils. Project planning anticipates that this material will be placed in 3 | Wilmington Harbor - Edgemoor Expansion Environmental Assessment Technical Document existing USACE Confined Disposal Facilities (CDFs) along the Delaware River proximate to the Edgemoor Site. The Applicant is anticipating completing a WRDA Section 217b approval to allow the use of the facilities and determine the compensation to mitigate adverse impacts to USACE regarding their mission to maintain navigation in the Delaware River. A portion of the dredged material is anticipated to be placed onsite for use during the port development.

One of our primary concerns is the potential for severe impacts the expansion will have on the health of neighborhoods that ring the port. (AIR) Several of the communities like Southbridge and Edgemoor already experience significantly higher concentrations of air, and other

environmental contaminants and or proximity to Superfund sites, set. These conditions are linked to health consequences like asthma and cancer risks. Many of these risks are dangerously close to houses, schools and have for decades, unfortunately, with seemingly little intervention from regulatory bodies, essentially dumped unhealthy and unsafe levels of toxins on largely African-American and low-income communities. These disparities are documented and recorded by various data sets, including those of the Environmental Protection Agency.

The process of deepening the port will release toxic materials into the water and likely the air before they are deposited in the various containment facilities listed in the report. Some of toxic substances that will be released include Dioxin, PCB, Arsenic and Thallium. These legacy pollutants will be stirred by dredging and potentially released at new levels. They pose a danger to Human and aquatic life and local waterways. The port expansion and the resultant increase in cargo from larger ships will dramatically increase the level of related truck traffic and diesel emissions into the air. Some residents are concerned about the current level of truck traffic through their communities, even now. A natural (and, per the plan, desired) outcome of the port expansion is the location of other supporting businesses to the areas around the port. However, without a community engaged planning process, these growth in off-port development is likely to put pressure on surrounding community properties and without community engaged planning, could lead to displacement of some residents in addition to reducing life quality. Remedies to the potential significant impact on the surrounding water ways, some species of fish and other wildlife and the river itself are not clearly defined in the report, though the impact on communities surrounding the port will be profound.

We are concerned that the port expansion, if implemented without a transparent and robust community engagement process, will create risks and consequences that will last for years. Several of the communities that ring the port already experience high rates of cancer, and other ailments from the disproportionate location of other polluting facilities that are dangerously close to houses, schools and have for decades, unfortunately, with little intervention from regulatory bodies, essentially dumped unhealthy and unsafe levels of toxins on largely African-American and low-income communities. These disparities are documented and recorded by various data sets, including some housed at the US Environmental Protection Agency.

The September 29 Public Hearing was conducted with few attendees and the public has been given until November 1 to make comments. This one month public comment period is far too short for a proper assessment of the enormous impact that will result from the port expansion. Three detailed reports were presented on September 29 and each of the reports has a specific set of implications for local community and environmental health and safety.

We are therefore requesting the following:

PROCESS COMMENTS

Extend the Public Comment Period

We are requesting that the Public Comment period for responses to each of the permits required to advance the port project be extended by 60 days in order to allow the public a reasonable amount of time to digest information on one of the largest projects in the state. Our health communities and the health of the environment warrant more time.

Seriously Engage Communities

Provide a more detailed and interactive process for communities to engage in discussions about how the planned expansion impacts community health and life. The current community meeting process and format is insufficient and seems to be structured for a speedy approval of plans with as little public input as possible to technically “check a box,” that the public was heard. Our hope is that the current process which, intentionally or unintentionally, suppresses real discussion, exchange and joint planning with community residents will be eliminated. We need more interactive discussion on the port and we want to be in the planning process and not just told what the plans are after they are completed. We are seeking a binding Community Benefits Agreement (CBA) that ensures that the interests of communities, and the health, environmental and environmental justice demands that we have submitted are addressed in concrete binding terms in advance of permit approvals for the port in Wilmington. We are seeking a collaborative process and are more than willing to work with the port in Wilmington and the appropriate decision makers to achieve this end. Our lives and the lives of our families and children and our long-term health demand this level of engagement.

Cumulative Impact

As mentioned, several of the communities that ring the port have for years been assaulted by industrial, chemical, diesel and other toxins that have resulted in high rates of cancer and respiratory ailments. Many of these communities have significant African-American populations. The current plans do not address the Environmental Justice concerns that are at the heart of our work at DCBAC. The pattern of permit approvals that fell to take into consideration of the cumulative impact of developments on People of Color and low-income communities in and around the Port are at the heart of the racial and economic justice movements that are sweeping through our nation. We must have a fair and robust analysis and citizen-engaged process to center cumulative impact and Environmental Justice as real parts of the port plan before the consideration of any permits for the project.

Comment: The federal and state permitting efforts should be coordinated in order to facilitate public review, understanding, and input. The technical information and analysis have overlapping purposes thus there are multiple references to the Environmental Assessment Technical Document which appears to be the most comprehensive document.

Comment: Case studies from other urban Port expansion projects, such as Los Angeles and the Port of Virginia (Hampton Roads/Norfolk), should be reviewed for successful outcomes and lessons learned via community engagement. A successful project will require more than meeting the basic permit requirements and the Port should be a partner in addressing environmental, economic, and social challenges in the short and long term as a new member of the community.

Comments in the Environmental Assessment Technical Document are made specifically to the DNREC permits and Federal Consistency certification where there are clear connections in the report in following sections of this review.

Comment: Upon review of the information the following conclusions are reached:

- **Environmental Justice is inadequately assessed with the potential for significant additional impacts in a major EJ community of the state**
- **Impacts to fisheries and supporting habitats are significantly underestimated**
- **Impacts to shorelines are not adequately assessed**
- **The value of shallow water habitats and adjacent shorelines are underestimated**
- **The recreational value of the River to the community including Fox Point State Park are inadequately characterized and underestimated**
- **The economic analysis is incomplete and does not include the negative impacts from environmental justice issues and/or lost resource values**
- **Impacts on traffic during construction are likely and the traffic analysis for port operation has not been conducted yet which makes the analysis of EJ incomplete**

In regards to these conclusions it is recommended that the Agencies and the Applicant work collaboratively and with the community to develop offsets for environmental justice impacts, natural resource impacts, and impacts to the community. The economic benefits to the state and potentially to the community are recognized and the project provides an opportunity through focused efforts for local job and economic uplift.

COMMENTS ON THE PRIMARY PERMITS

Coastal Zone Management Act Federal Consistency Form

Federal agencies are required to follow state coastal management policies when conducting projects or issuing permits for activities that have reasonably foreseeable effects on coastal uses and resources. The Delaware Coastal Management Program is reviewing this project for Federal Consistency as it requires a U.S. Army Corps of Engineers permit for dredging, disposal and bulkheading.

Comment: Federal agencies via Executive Order are required to evaluate environmental justice impacts as part of federal actions. It is unclear how or if the state evaluates environmental justice. It is not specifically identified on the Coastal Zone Consistency Form. EJ is discussed in the Environmental Assessment Technical Document in Section 4.3.1.3. As shown on the following figures the project impacts an EJ community which already has a disproportionate impact on environmental quality from the cumulative effects of, not limited to, the Cherry Island Landfill, the wastewater treatment plant, energy production, waste disposal sites, and active asphalt shingle production (air quality). In addition the area is impacted by the environmental impacts from interstate highway traffic and rail transportation which cause air and traffic impacts and restrict access to the Delaware River over almost the complete stretch of shoreline from the

Christina River up to the project site. The adjacent Fox Point State Park is the only local community access point to the Delaware River. This State Park is a state hazardous site and to date has restricted direct water access for fishing or recreational activities. DNREC is supporting restoration planning and actions at Fox Point for living shoreline, wetland restoration and recreational access including fishing, wetland restoration and recreational access including fishing.

Detailed Analysis of Consistency with DCMP Enforceable Policies

(A summary of the specific findings should be presented for each policy on the form without just referring to the Environmental Assessment Technical Report). Several comments on this report made in this elsewhere in this document are also applicable to the coastal zone review (ex. living resources and impacts on associated recreation and tourism).

For many of the policies the Consistency Form refers to the site only and not the off-site and cumulative impacts in the area. Cumulative and additive effects on the coastal zone in this area should be presented. There is strong natural resource and recreational interest in this area of the coastal zone, especially to local communities, in addition to its transportation and industrial functions. The River's multi use objectives should not be dismissed nor should the current status of natural resources, which are significant and in recovery for many species and habitats, be considered the desired "baseline". The current level of recreational use, community value, and natural resource status should not be used a "baseline" when evaluating impacts. Since this area has experienced EJ related impacts, has a high degree of conservation and restoration interest, and is in an active phase of coastal redevelopment, higher levels of recreational use and natural resource recovery are anticipated. An example is the reduced fish consumption guidelines in the Delaware River over the last few years.

5.1 Wetlands management. It is asserted that direct wetland impacts (loss of jurisdictional wetlands) will not occur. Intertidal wetlands in this area have been significantly impacted by dredging and shoreline filling/hardening and pocket wetlands have been naturally restoring in some areas where shorelines haven't been maintained and there are efforts to restore intertidal wetland fringes for resilience and habitat benefits. Additional ship wakes and shoreline hardening will have a negative cumulative effect on wetland restoration efforts in the area.

Section 5.3 Coastal Waters Management. The project has been described as it will be having a state of the art storm water management plan. This needs further clarification as infiltration at the site will be limited do to remedial constraints. Green storm water measures should be identified.

Section 5.17 Recreation and Tourism. The project will have an added cumulative impact in this area of the coastal zone on recreation and tourism impacts, including lost recreational fishing and shoreline access opportunities if there are not appropriate offsets.

Section 5.21 Surface Water withdrawals. The sediment fans are stated to require surface water withdrawals.

Section 5.24 Pollution Prevention should identify the potential for vessel oil and other spills. There have been several over the years at the Port of Wilmington.

Wetlands and Subaqueous Lands Permit

Impacts to aquatic resources are described in the letter dated Sept 28, 2020 from the National Marine Fisheries Service to the Army Corps of Engineers (attached). These impacts are of concern to the DCBAC and include alteration and degradation of important aquatic habitats in the Delaware River used by striped bass, American shad, blueback herring, and other migratory fish species. These species are prized and economically valuable recreational fishing targets

and impacts have occurred in this location and area disproportionately for several decades based on contamination levels in fish and lack of waterfront access and fishing opportunities along this biologically important stretch of the River.

In addition the impacts of shoreline hardening (3200 feet) and deepening may impact adjacent areas, habitats, and shorelines via lateral transfer of wave energy and cause an edge effect. Wave attenuation and mitigation measures need further evaluation.

The characterization of the benthic habitat, fish community, and other natural resource components (shorelines) are inadequate and underestimate the ecosystem value.

If filling is approved no off site fill should be used but the sediments beneficially reused.

Division of Waste and Hazardous Substances Corrective Action Permit

The DuPont Edgemoor facility was a well-documented source of contaminants, including PCBs and dioxins, through several release pathways. More specifically the DuPont Edgemoor facility was identified as a significant source of PCBs in sediments and fish tissue and had an identifiable fingerprint to distinguish from other PCB sources in the River. This was summarized in environmental sampling supporting the PCB TMDL efforts for the Delaware River lead by the Delaware River Basin Commission. Despite this DuPont was not required to do a remedial investigation of Delaware River sediments with the appropriate level of sampling and analysis under a remedial program. The current level of sediment characterization for a dredging project in a contaminated sediment area is inadequate. The benefits from removal as claimed in the Environmental Assessment Technical Report nor the impacts from dredging and resulting resuspension and exposure can be adequately assessed. Generally dredging of contaminated sediments requires better site characterization and remedial controls. Hydraulic dredging is generally not used for contaminated sediments; a hybrid approach may be necessary.

Comment: A comprehensive contaminated sediment assessment and feasibility study should be conducted to adequately characterize potential benefits and impacts from the proposed project.

Comment: Potential impacts on the adjacent Fox Point Park HSCA site shoreline should be conducted.

Submitted by Delaware Community Benefits Agreement Coalition (DCBAC) 10/30/2020

Executive Committee Members

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