

**CLEAN AIR ACT
DRAFT STATEMENT OF CONFORMITY
DELAWARE RIVER MAIN CHANNEL DEEPENING PROJECT
NOVEMBER 2009**

Introduction

The Delaware River Main Channel Deepening Project (Project) will deepen the main shipping channel from -40 feet to -45 feet mean low water (MLW). The Project extends from the Ports of Camden, New Jersey, and Philadelphia, Pennsylvania, to the mouth of the Delaware Bay, and follows the alignment of the existing federally-authorized channel. In addition to the channel deepening, several berths at the various oil refineries and port facilities along the Delaware River will also be deepened. A majority of the berths are located in the upstream reaches of the river near the Philadelphia and Camden area. The Project is scheduled to be constructed over a period of five years for the channel deepening and an additional year for the completion of the adjacent berth deepening.

Federal Clean Air Act

Section 176 (c) (42 U.S.C. 7506) of the Clean Air Act (CAA) requires federal agencies to ensure that their actions conform to the applicable State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (NAAQS). The U.S. Environmental Protection Agency (EPA) published two sets of regulations to implement Section 176 (c) because certain provisions apply only to highway and mass transit funding and approval actions. The transportation conformity regulations address federal actions related to highway and mass transit funding and approval actions. The General Conformity regulations, codified at 40 CFR Part 93, Subpart B, cover all other federal actions. The Project is subject to the General Conformity regulations.

The EPA has established *de minimis* emission levels for criteria pollutants based on the type and severity of the non-attainment problem in an area. Before any action can be taken, federal agencies must perform an applicability analysis to determine whether the total direct and indirect emissions from their action would be below or above the *de minimis* levels. If the action is determined to create emissions at or above the *de minimis* level for any of the criteria pollutants, federal agencies must conduct a conformity determination for the pollutant. If the emissions are below all of the *de minimis* levels, the agency does not have to conduct a conformity determination. When the applicability analysis shows that the action must undergo a conformity determination, federal agencies must first show that the action will meet all SIP control requirements and then must demonstrate conformity by meeting one or more of the methods specified in the regulations.

General Conformity Analyses and Mitigation Studies

In 2004, the U.S. Army Corps of Engineers, Philadelphia District (Corps) performed an emissions analysis and mitigation study, entitled *Delaware River Main Channel Deepening Project General Conformity Analysis and Mitigation Report, February 2004* (2004 Report), to determine if the Project would exceed air quality thresholds, and, if so, how to mitigate so that the Project could achieve conformity with the CAA requirements.

Because more than five years had elapsed since the preparation of the 2004 Report, and based on changes to the air quality status of the region and a reduction in the estimated amount of material to be dredged, the Corps prepared a new emissions analysis and mitigation study for the Project in August 2009, entitled *Delaware River Main Channel Deepening Project General Conformity Analysis and Mitigation Report, August 7, 2009* (August 2009 Report).

Based on comments received from the EPA, State and local agencies, and the public, and also due to adjustments to the project schedule, the Corps revised the August 2009 Report. The revised report is entitled *Delaware River Main Channel Deepening Project General Conformity Analysis and Mitigation Report, November 2009* (November 2009 Report).

Notification and Public Participation

In August 2009, as required by 40 CFR §93.155, the Corps transmitted copies of the “Draft Conditional Statement of Conformity” and the accompanying August 2009 Report to the appropriate EPA Regional Offices, State agencies, and Metropolitan Planning Organizations (MPOs). The transmittal letters are included in Attachment 1.

Also in August 2009, as required by 40 CFR §93.156, the Corps solicited comments from the public on the “Draft Conditional Statement of Conformity” and the August 2009 Report by placing advertisements in the Philadelphia Inquirer and The News Journal newspapers and by posting a Public Notice on the Corps’ website and sending a notice via e-mail to a mailing list of interested parties. The Proof of Publication from the Philadelphia Inquirer, the Affidavit of Publication from The News Journal, and a copy of the Public Notice are included in Attachment 2. Copies of the comments received and the Corps’ responses are included in Attachment 3.

Emissions

As indicated in the November 2009 Report, the Project will contribute pollutants of concern within ten counties in three states (Delaware, Pennsylvania and New Jersey). All ten counties within the Project limits are in non-attainment status for both nitrogen oxides (NO_x) and volatile organic compounds (VOC), and two counties are in maintenance status for carbon monoxide (CO). Because there is more than one non-attainment area for the Project, discussions with the regulatory agencies resulted in the determination that the Project emissions could be characterized as taking place in a single, combined non-attainment area. This area would take on the most severe classification (annual *de minimis* threshold) for each of the pollutants of concern (e.g. 100 tons for NO_x, 50 tons for VOC, and 100 tons for CO).

The November 2009 Report provides estimated emissions for each year (and each construction contract) over the duration of the Project. Based on these estimates, the Project is expected to exceed the *de minimis* threshold for NOx every year of the Project, whereas the emissions of other criteria pollutants are expected to be less than *de minimis* limits for each year of the Project. As shown in the November 2009 Report and Attachment 4, total NOx emissions for the Project are estimated to be 3,038 tons with an annual peak of 607 tons occurring in Year 5 of the Project.

Conformity Determination

Since the estimated NOx emissions from the Project are expected to exceed the *de minimis* threshold of 100 tons of NOx every year of the Project, a conformity determination is required for NOx and the Project must demonstrate conformity by meeting one or more of the following:

1. Demonstrating that the total direct and indirect emissions are specifically identified and accounted for in the applicable SIP.
2. Obtaining a written statement from the state or local agency responsible for the SIP documenting that the total direct and total indirect emissions from the action along with all other emissions in the area will not exceed the SIP emission budget.
3. Obtaining a written commitment from the state to revise the SIP to include the emissions from the action.
4. Obtaining a statement from the metropolitan planning organization for the area documenting that any on-road motor vehicle emissions are included in the current regional emission analysis for the area's transportation plan or transportation improvement program.
5. Fully offset the total direct and indirect emissions by reducing emissions of the same pollutant or precursor in the same non-attainment or maintenance area.
6. Where appropriate, in accordance with 40 CFR 51.858(4), conduct air quality modeling that can demonstrate that the emissions will not cause or contribute to new violations of the standards, or increase the frequency or severity of any existing violations of the standards.

As explained in the November 2009 Report, Option 5 was the most appropriate means to demonstrate conformity for the Project. Thus, all NOx emissions for the Project will be offset so that there is no net increase in NOx emissions in the non-attainment area.

Mitigation Plan

The November 2009 Report identified several options to achieve Clean Air Act conformity for NOx releases, evaluating the effectiveness and related costs of both on-site and off-site emission reduction strategies. Based on this analysis, all NOx emissions for the project will be offset by purchasing Emission Reduction Credits (ERCs). This plan is implementable and is the least costly and most efficient way to attain conformity for the Project.

ERCs will be purchased from within the nonattainment areas. Presently, there are roughly 2,000 tons of NOx credits available on the open market within the 10-county nonattainment area across the three states in which the project is located. All of the required credits for the project (607 tons) will be acquired after issuance of the Final Statement of Conformity and prior to the commencement of construction. Credits will be obtained from the three states on an equitable basis to the maximum extent practicable; however, the actual allocation of credits will be based on availability and cost.

The non-federal sponsor for the Project, the Philadelphia Regional Port Authority (PRPA), has entered into a brokerage agreement with Cantor CO2e, a firm that specializes in ERC trading. A copy of the brokerage agreement is provided in Appendix G of the November 2009 Report. The PRPA will acquire the credits as part of their cost-sharing obligations on the Project. In the event that some of the credits purchased have expirations, additional credits will be obtained prior to the expiration date so that at no time will there be net NOx emission increases. All required credits will be in place prior to the start of construction on the Project.

Summary

Based on a comparison of the estimated emissions for the Project to the *de minimis* limits for each of the criteria pollutants and precursors, a conformity determination for NOx is required. The Project will demonstrate conformity for NOx by fully offsetting all NOx emissions, which will be accomplished by purchasing Emission Reduction Credits (ERCs). All ERCs will be in place before the start of construction.

As required by 40 CFR §93.157 (c) and 40 CFR §93.160 (e), should the Project change such that there is an increase in the total of direct and indirect emissions, or should there be a change in the mitigation measures due to changed circumstances, the Corps will make a new conformity determination, subject to the reporting and public participation requirements of 40 CFR §93.155 and 40 CFR §93.156.

Date

Thomas J. Tickner
Lieutenant Colonel, Corps of Engineers
District Engineer

Attachment 1

Transmittal Letters to EPA, State Agencies, and MPOs



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

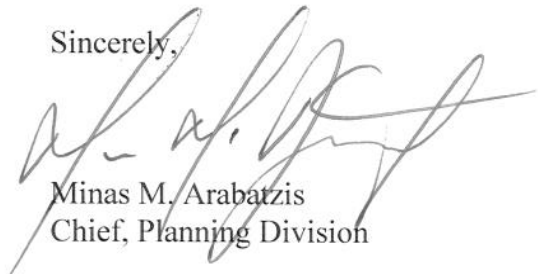
Mr. Chris Salmi
Assistant Director, Air Quality Management
NJDEP
P.O. Box 318
401 E. State Street, 7th Floor
Trenton, New Jersey 08625-0418

Dear Mr. Salmi:

As required by the General Conformity Rule of the Clean Air Act (40 CFR 93, Subpart B, Section 93.155), I am requesting your concurrence with the attached *Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project*. I am enclosing an electronic copy (on CD) of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009. This report presents the analysis and results of the studies that were performed to support the statement of conformity. A hard copy of the report will be sent to you under separate cover.

Please provide your response by September 15, 2009. If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,



Minas M. Arabatzis
Chief, Planning Division

Enclosures

Copy Furnished:

Ms. Angela Skowronek, Bureau of Air Quality Planning, NJDEP



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

Mr. Raymond Werner, Chief
Air Programs Branch
USEA, Region 2
290 Broadway
New York, New York 10007-1866

Dear Mr. Werner:

As required by the General Conformity Rule of the Clean Air Act (40 CFR 93, Subpart B, Section 93.155), I am requesting your concurrence with the attached *Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project*. I am enclosing an electronic copy (on CD) of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009. This report presents the analysis and results of the studies that were performed to support the statement of conformity. A hard copy of the report will be sent to you under separate cover.

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Sincerely,

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Minas M. Arabatzis
Chief, Planning Division

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Copy Furnished:

Ms. Bonnie Weinbach, Division of Environmental Planning & Protection, Air Programs Branch



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PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

Ms. Diana Esher
Acting Director, Air Protection Division
EPA, Region 3 – (3AP00)
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029

Dear Ms. Esher:

As required by the General Conformity Rule of the Clean Air Act (40 CFR 93, Subpart B, Section 93.155), I am requesting your concurrence with the attached *Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project*. I am enclosing an electronic copy (on CD) of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009. This report presents the analysis and results of the studies that were performed to support the statement of conformity. A hard copy of the report will be sent to you under separate cover.

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Copy Furnished:

Mr. Brian Rehn, Air Protection Division, EPA



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PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

Mr. Timothy Chelius, Executive Director
South Jersey Transportation Planning Organization
782 S. Brewster Road, Unit -6
Vineland, New Jersey 08361

Dear Mr. Chelius:

As required by the General Conformity Rule of the Clean Air Act (40 CFR 93, Subpart B, Section 93.155), I am requesting your concurrence with the attached *Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project*. I am enclosing an electronic copy (on CD) of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009. This report presents the analysis and results of the studies that were performed to support the statement of conformity. A hard copy of the report will be sent to you under separate cover.

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WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

REPLY TO
ATTENTION OF

Planning Division

Ms. Mary K. Murphy, Executive Director
NJTPA
One Newark Center – 17th Floor
Newark, New Jersey 07102

Dear Ms. Murphy:

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PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

Mr. Ali Mirzakhali
Program Administrator, Air Quality Management Section
DNREC
156 South State Street
Dover, DE 19901

Dear Mr. Mirzakhali:

As required by the General Conformity Rule of the Clean Air Act (40 CFR 93, Subpart B, Section 93.155), I am requesting your concurrence with the attached *Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project*. I am enclosing an electronic copy (on CD) of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009. This report presents the analysis and results of the studies that were performed to support the statement of conformity. A hard copy of the report will be sent to you under separate cover.

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Mr. Philip Wheeler, Air Quality Management Section, DNREC



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PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

REPLY TO
ATTENTION OF

Planning Division

Ms. Juanita Wieczoreck, Executive Director
Dover/Kent County MPO
P.O. Box 383
Dover, Delaware 19903

Dear Ms. Wieczoreck:

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REPLY TO
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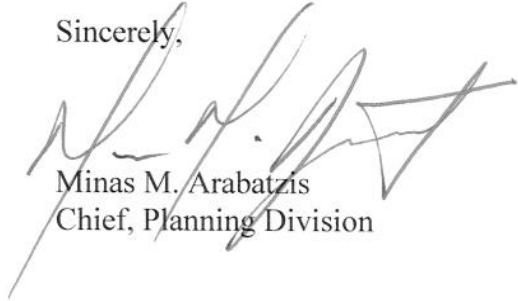
Mr. Tigist Zegeye, Executive Director
WILMAPCO
850 Library Avenue, Suite 100
Newark, Delaware 19711

Dear Mr. Zegeye:

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PHILADELPHIA, PENNSYLVANIA 19107-3390

REPLY TO
ATTENTION OF

Planning Division

Ms. Joyce E. Epps
Director, Bureau of Air Quality
PADEP
P.O. Box 8468
Rachel Carson State Office Building, 12th Floor
Harrisburg, Pennsylvania 17105

Dear Ms. Epps:

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Ms. Kelly Matty, Chief, Mobile Sources Section, PADEP



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PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

Mr. Barry Seymour, Executive Director
Delaware Valley Regional Planning Commission
190 N. Independence Mall West, 8th Floor
Philadelphia, Pennsylvania 19106 - 1520

Dear Mr. Seymour:

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REPLY TO
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Planning Division

Mr. Thomas Huynh, Director
Air Management Services
321 University Avenue, 2nd floor
Philadelphia, Pennsylvania 19104

Dear Mr. Huynh:

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Air Programs Branch
USEA, Region 2
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EPA, Region 3 – (3AP00)
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029

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Planning Division

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P.O. Box 318
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PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

Mr. Ali Mirzakhali
Program Administrator, Air Quality Management Section
DNREC
156 South State Street
Dover, DE 19901

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Planning Division

Ms. Joyce E. Epps
Director, Bureau of Air Quality
PADEP
P.O. Box 8468
Rachel Carson State Office Building, 12th Floor
Harrisburg, Pennsylvania 17105

Dear Ms. Epps:

As required by the General Conformity Rule of the Clean Air Act (40 CFR 93, Subpart B, Section 93.155), I am requesting your concurrence with the attached *Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project*. I am enclosing an electronic copy (on CD) of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009. This report presents the analysis and results of the studies that were performed to support the statement of conformity. A hard copy of the report will be sent to you under separate cover.

Please provide your response by September 15, 2009. If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,

Minas M. Arabatzis
Chief, Planning Division

Enclosures

Copy Furnished:

✓ Ms. Kelly Matty, Chief, Mobile Sources Section, PADEP



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

Raymond Werner, Chief
Air Programs Branch
USEPA Region 2
290 Broadway
New York, New York 10007-1866

Dear Mr. Werner:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,

A handwritten signature in dark ink, appearing to read "Minas M. Arabatzis", is written over a printed name and title.

Minas M. Arabatzis
Chief, Planning Division

Enclosures

Copy Furnished:
Bonnie Weinbach
Division of Environmental Planning & Protection, Air Programs Branch
USEPA Region 2
290 Broadway
New York, New York 10007 - 1866



REPLY TO
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DEPARTMENT OF THE ARMY

PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

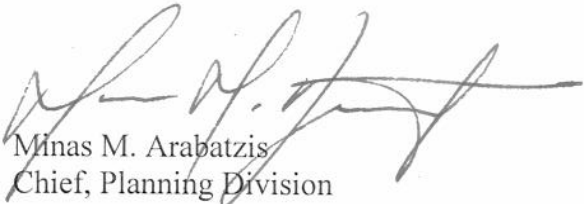
Diana Esher
Acting Director, Air Protection Division
EPA Region 3 – (3AP00)
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029

Dear Ms. Esher:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,



Minas M. Arabatzis
Chief, Planning Division

Enclosures

Copy Furnished:
Brian Rehn
Air Protection Division
EPA Region 3 – (3AP21)
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029



REPLY TO
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PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

Joyce E. Epps
Director, Bureau of Air Quality
PADEP
PO Box 8468
Rachel Carson State Office Building, 12th Floor
Harrisburg, Pennsylvania 17105

Dear Ms. Epps:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,

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Minas M. Arabatzis
Chief, Planning Division

Enclosures

Copy Furnished:
Kelley Matty
Chief, Mobile Sources Section
PADEP
Rachel Carson State Office Building
400 Market Street
Harrisburg, Pennsylvania 17105



REPLY TO
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DEPARTMENT OF THE ARMY

PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

Barry Seymour, Executive Director
Delaware Valley Regional Planning Commission
190 N. Independence Mall West, 8th Floor
Philadelphia, Pennsylvania 19106 – 1520

Dear Mr. Seymour:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,

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Minas M. Arabatzis
Chief, Planning Division

Enclosures



REPLY TO
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PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

Thomas Huynh, Director
Air Management Services
321 University Ave., 2nd Floor
Philadelphia, Pennsylvania 19104

Dear Mr. Huynh:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,

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Minas M. Arabatzis
Chief, Planning Division

Enclosures



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WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

Chris Salmi
Assistant Director, Air Quality Management
NJDEP
PO Box 418
401 E. State Street, 7th Floor
Trenton, New Jersey 08625-0418

Dear Mr. Salmi:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,

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Minas M. Arabatzis
Chief, Planning Division

Enclosures

Copy Furnished:
Angela Skowronek
Bureau of Air Quality Planning
NJDEP
PO Box 418
401 E. State St., 7th Floor
Trenton, New Jersey 08625-0418



REPLY TO
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PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

Timothy Chelius, Executive Director
South Jersey Transportation Planning Organization
782 S. Brewster Road, Unit B-6
Vineland, New Jersey 08361

Dear Mr. Chelius:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,

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Minas M. Arabatzis
Chief, Planning Division

Enclosures



REPLY TO
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PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

Mary K. Murphy, Executive Director
NJTPA
One Newark Center-17th Floor
Newark, New Jersey 07102

Dear Ms. Murphy:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,

A handwritten signature in black ink, appearing to read "Minas M. Arabatzis", is written over a horizontal line.

Minas M. Arabatzis
Chief, Planning Division

Enclosures



REPLY TO
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DEPARTMENT OF THE ARMY

PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

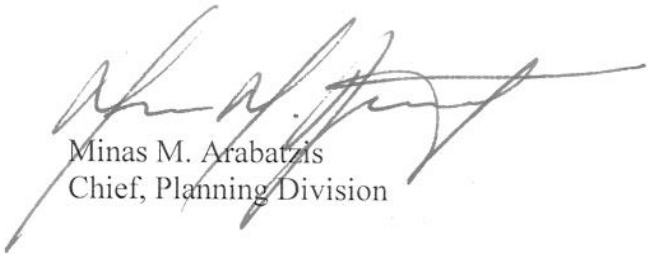
Ali Mirzakhali
Program Administrator, Air Quality Management Section
DNREC
156 South State Street
Dover, Delaware 19901

Dear Mr. Mirzakhali:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,


Minas M. Arabatzis
Chief, Planning Division

Enclosures

Copy Furnished:
Philip Wheeler
Air Quality Management Section
DNREC
156 South State Street
Dover, Delaware 19901



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

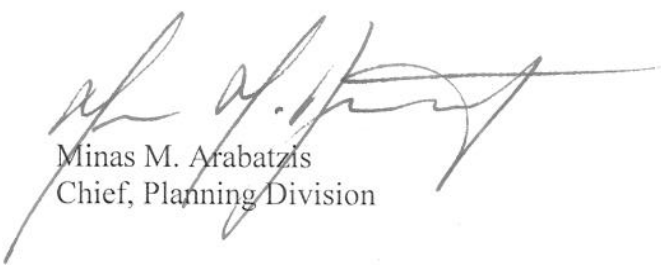
Juanita Wieczoreck, Executive Director
Dover/Kent County MPO
P.O. BOX 383
Dover Delaware 19903

Dear Ms. Wieczoreck:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,


Minas M. Arabatzis
Chief, Planning Division

Enclosures



REPLY TO
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DEPARTMENT OF THE ARMY

PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

Planning Division

AUG 24 2009

Tigist Zegeye, Executive Director
WILMAPCO
850 Library Avenue, Suite 100
Newark, Delaware 19711

Dear Mr. Zegeye:

As per my previous letter concerning the *Draft Conditional Statement of Conformity* for the Delaware River Main Channel Deepening Project, enclosed is a hard copy of the *Delaware River Main Channel Deepening Project, General Conformity Analysis and Mitigation Report*, dated August 7, 2009.

If you have any questions, please contact Jerry Pasquale at (215) 656-6560 or Scott Evans at (215) 656-6680.

Sincerely,

A handwritten signature in black ink, appearing to read "Minas M. Arabatzis", is written over a circular stamp. The signature is fluid and cursive.

Minas M. Arabatzis
Chief, Planning Division

Enclosures

Attachment 2

Public Notices

**Proof of Publication in The Philadelphia Inquirer
Under Act. No 160, P.L. 877, July 9, 1976**

**STATE OF PENNSYLVANIA
COUNTY OF PHILADELPHIA**

Anna Dickerson being duly sworn, deposes and says that **The Philadelphia Inquirer** is a daily newspaper published at Broad and Callowhill Streets, Philadelphia, Pennsylvania, which was established in the year 1829, since which date said daily newspaper has been regularly published and distributed in said County, and that a copy of the printed notice of publication is attached hereto exactly as the same was printed and published in the regular editions and issues of said daily newspaper on the following dates:

August 14, 2009

Affiant further deposes and says that she is an employee of the publisher of said newspaper and has been authorized to verify the foregoing statement and that she is not interested in the subject matter of the aforesaid notice of publication, and that all allegations in the foregoing statement as to time, place and character of publication are true.

Anna Dickerson

Sworn to and subscribed before me this 14th day of August, 2009.

Mary Anne Logan
Notary Public

My Commission Expires:

NOTARIAL SEAL
Mary Anne Logan, Notary Public
City of Philadelphia, Phila. County
My Commission Expires March 30, 2013

Copy of Notice of Publication

**Army Corps solicits public comment on
Clean Air Act compliance plans for
Delaware River Deepening**

The United States Army Corps of Engineers today released for public comment its plans to meet Clean Air Act requirements for the Delaware River Main Channel Deepening Project specifically related to emissions from dredging activities. As required by the General Conformity Rule of the Clean Air Act (40 CFR 93, Subpart B, Section 93.156), the Corps' Philadelphia District has completed the "Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project" for initial construction of the project, which will deepen the existing 102.6-mile ship channel from 40 to 46 feet between Philadelphia and the mouth of the Delaware Bay.

In addition to the channel deepening and separately from the federal project, several berths at oil refineries and port facilities along the Delaware River (mostly upstream near Philadelphia and Camden) will also be deepened. Project construction is estimated to take five years, with an additional year to deepen the adjacent berths.

To determine if the project would exceed air quality standards and, if so, how to bring it back into conformity, the Corps performed an emissions analysis and mitigation study. The results are documented in the "Delaware River Main Channel Deepening Project General Conformity Analysis and Mitigation Report, August 7, 2008."

Detailed modeling of engine emissions during project construction, including the deepening of the berthing areas, predicts that releases of volatile organic compounds (VOCs) and other contaminants would be below the minimum thresholds for each of the states (Delaware, New Jersey and Pennsylvania) and all affected counties. However, the same modeling predicts above-threshold releases of nitrogen oxides (NOx) during all years of construction.

The Corps' analysis identified several viable options to achieve Clean Air Act conformity for NOx releases, evaluating the effectiveness and related costs of both on-site and off-site emission reduction opportunities. The results of this analysis are being coordinated with all appropriate federal, state and local agencies as well as with the public.

This analysis concludes that the Delaware River Main Channel Deepening Project can comply with the Clean Air Act if excessive emission levels due to dredging and dredged material placement are offset through a combination of measures before or during construction.

Electronic copies of the two documents cited above can be downloaded from the Corps' website at www.nap.usace.army.mil. From the homepage, click on "Delaware River Main Channel Deepening Project" under Project Web Pages and then on "News & Updates" under Project Links. To request paper copies, please write or e-mail to the addresses below or call (215) 856-8516.

Comments may be submitted via regular mail to the Environmental Resources Branch, Philadelphia District, U.S. Army Corps of Engineers, Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107. Comments may also be submitted via e-mail to the Public Affairs Office at edward.e.vogel@usace.army.mil. Please submit all comments by September 14, 2009.

Mailing:
The News Journal
PO Box 15505
Wilmington, DE 19850

Street
The News Journal
950 W. Basin Road
New Castle, DE 19720
(302) 324-2500

Sunday News Journal
The News Journal

The News Journal

AFFIDAVIT OF PUBLICATION

STATE OF DELAWARE

COUNTY OF NEW CASTLE

Personally appeared before me this 14th day of August, 2009:

I, Kristin Segner, of the NEWS JOURNAL COMPANY, a daily newspaper printed and published in the County of New Castle County, State of Delaware, who, being duly sworn states that the advertisement of U.S. ARMY CORPS OF ENGINEERS - Army Corps solicits public comment on Clean Air Act compliance plans for Delaware River Deepening was published in THE NEWS JOURNAL on August 14, 2009 and/or THE SUNDAY NEWS JOURNAL on N/A

Kristin Segner
Name

Legal Coordinator
Title

Sworn to before me this 14th day of August, 2009

Wanda James
Notary Public

Wanda James
Notary Public
State of Delaware
Commission expires 11/02/2012

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Detailed modeling of engine emissions during project construction, including the deepening of the berthing areas, predicts that releases of volatile organic compounds (VOCs) and other contaminants would be below the minimum thresholds for each of the states (Delaware, New Jersey and Pennsylvania) and all affected counties. However, the same modeling predicts above-threshold releases of nitrogen oxides (NOx) during all years of construction.

The Corps' analysis identified several viable options to achieve Clean Air Act conformity for NOx releases, evaluating the effectiveness and related costs of both on-site and off-site emission reduction opportunities. The results of this analysis are being coordinated with all appropriate federal, state and local agencies as well as with the public.

This analysis concludes that the Delaware River Main Channel Deepening Project can comply with the Clean Air Act if excessive emission levels due to dredging and dredged material placement are offset through a combination of measures before or during construction.

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Comments may be submitted via regular mail to the Environmental Resources Branch, Philadelphia District, U.S. Army Corps of Engineers, Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107. Comments may also be submitted via e-mail to the Public Affairs Office at edward.c.voigt@usace.army.mil. Please submit all comments by September 14, 2009.
8/14-NJ



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of Engineers®
Philadelphia District**

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Public Notice

CENAP

August 14, 2009

In Reply Refer To:
Environmental Resources Branch

Internet Homepage: <http://www.nap.usace.army.mil>

Army Corps solicits public comment on Clean Air Act compliance plans for Delaware River Deepening

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Comments may be submitted via regular mail to the Environmental Resources Branch, Philadelphia District, U.S. Army Corps of Engineers, Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107. Comments may also be submitted via e-mail to the Public Affairs Office at edward.c.voigt@usace.army.mil. Please submit all comments by September 14, 2009.

A handwritten signature in black ink, appearing to read "Thomas J. Tickner", with a stylized, flowing script.

Thomas J. Tickner, Lieutenant Colonel
District Commander
Philadelphia District
U.S. Army Corps of Engineers

Attachment 3

Comment Letters and Responses

Responses to Comment Letters Received.

Letter 01 - Comments from US Environmental Protection Agency, Region III

Number	Location	Summary of Comment	Final Comment Response
01-01	Para 3	Contains no specific combination of mitigation measures.	The conformity plan is found in Section 8 of the revised General Conformity Analysis and Mitigation Report (Report). The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.
01-02	Para 5	Do not identify the source or state from which credits would come.	The potential source of emission credits within the non-attainment area is discussed in Section 7.15 of the Report.
01-03	Para 6	Total emissions from the action are fully offset within the same nonattainment or maintenance area, not with offsets obtained from sources within a different nonattainment area.	All emission credits will be obtained within the Philadelphia-Wilmington-Atlantic City 8-hour Ozone Area as stated in Section 7.15 of the Report.
01-04	Gen -1	The 2004 report had more detail in project description, as this needs to be a standalone document, incorporate supporting information from 2004 report.	The 2009 Report is a stand-alone report that includes: relevant and applicable data and documentation from the 2004 report; an updated construction schedule; the General Conformity analysis and plan selection; and, the implementation plan.
01-05	Gen-2	The report does not determine whether the project is “regionally significant” (i.e. >10% of a nonattainment area’s emission inventory for that pollutant	A Regional significance test was performed for the project and can be found in Section 3, Table 3-2 of the Report.
01-06	Gen-3	Does not include specific plans for achieving conformity as NY-NJ did	The conformity plan is found in Section 8 of the revised General Conformity Analysis and Mitigation Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.
01-07	Gen-4	Uncertainty regarding implementation schedule ...given the 5-year period	The required emission credits for the project can be purchased in a timely manner prior to the start of the first construction contract.

		that has elapsed since the USACE looked at some of these strategies...and the lack of commitment from 3 rd parties...	The purchased credits will subsequently be applied for each project year so that conformity is met. Therefore, the uncertainty surrounding the mitigation strategy selection/schedules for measures such as electrification and uncertainties on the level of participation by various as-yet selected contractors and off-site private parties and time frame to enact these measures would no longer apply.
01-08	ES-1	Report incorrectly states that the entire project area is in attainment of PM and CO. Two counties in are in maintenance for CO.	Both Camden and Philadelphia counties encompass Reach A or AA of the project and are in maintenance status for carbon monoxide (CO). There is no need for a comparison to de minimis or General Conformity for CO based on the projected emissions for this constituent; however, the Report has been revised where it inaccurately stated that the entire area is in attainment for CO.
01-09	ES-2	Report does not explain why the project scope has changed...why higher horsepower.	The shift to the higher horsepower dredging was done to reflect the current project schedule and available dredging equipment anticipated to complete the various construction contracts.
01-10	ES-3	Vague commitment to offset/mitigate to zero does not meet GC rule (40 CFR 93.158).	The general conformity plan to mitigate project emissions through the purchase of perpetual/multi-year emission credits is found in Section 7.15 of the Report.
01-11	Bkg-4	It was not clear to EPA that berth deepening emissions are included.	All direct and indirect emissions, including non-federal berth dredging emissions, were included as part of the conformity analyses. Please see section 1.7 of the Report.
01-12	Srcs-5	Was not clear where the land-based emissions are included.	Land-based emissions were included as part of the conformity analysis and can be found in Section 1.7 of the Report. In addition, the estimated emissions from equipment operations at the disposal sites and employee commutes have been included under this category.
01-13	Sec5.1-6a	Use of peak emissions as a surrogate for calculation of annual NOx does not meet requirements.	Calculations of annual emission tonnage and mitigation requirements were used in the conformity analysis. These calculations can be found in Table ES-1 of the Report and in Appendix D. All mitigation strategies were compared based on their

			ability to reduce the peak year emissions comparable in dollars/ton to the purchase of emission credits.
01-14	Sec5.1-6b	If USACE specifies a suite of emission reduction measure and then later decides to revise scope or to alter project phasing..... they need to formally revise or issue a new CD consistent with 40 CFR 93.160(e).	Several emission reduction strategies were evaluated and the most appropriate mitigation measure, the purchase of emission reduction credits, was selected. If, in the future, the scope of the project changes, then the issuance of a new conformity determination consistent with appropriate guidance and regulations may be required.
01-15	Sec5.2-7	Figure 2 shows emission by contract. Need to show annual emissions (i.e. spread emissions over calendar years).	Calculations of annual emission tonnage and mitigation requirements were used in the conformity analysis. These calculations can be found in Table ES-1 of the Report. All mitigation strategies were compared based on their ability to reduce the peak year emissions comparable in dollars/ton to the purchase of emission credits.
01-16	Sec6-1	Why have USACE and PRPA not already selected strategies.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.
01-17	Sect6-2	Strategy 1 – Dredge Electrification has been deemed “not viable” but continues to be shown...should be eliminated.	The dredge electrification mitigation strategy is not practical given the given the geographic extent of the project, real estate issues, and related scheduling concerns.
01-18	Sect6-3	Strategy 2 Not clear how contractors would respond to SCR requirement and/or when this could be implemented	The SCR mitigation strategy is no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
01-19	Sect6-4	Strategy 3 Not clear how contractor or private entities would respond to dredge / tug repowers and/or when this could be implemented.	The repower mitigation strategy is no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
01-20	Sec7-1	Similar concerns with long lead times of offsite strategies.	Strategies 1 through 3 are no longer being considered. If in the future some strategies are deemed cost effective, then air quality impacts would be analyzed and

			implementation and enforcement would be defined.
01-21	Sec 7-2	Why use the same factors as 2004 for the Macfarland?	The McFarland mitigation strategies are no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
01-22	Sect7-3	Macfarland- Has any work been done towards this measure since it was presented in 2004? Is 12 month lead time reasonable.	The McFarland mitigation strategies are no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
01-23	Sec7-4	Macfarland repower- question the 18 month minimum lead time...this would include designing, building and installing the new engine around the duties of dredge.	The McFarland mitigation strategies are no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
01-24	Sec7-5	Macfarland Repower and SCR installation has same 18 month lead time...seems ambitious.	The McFarland mitigation strategies are no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
01-25	Sec7-6	Lewes Ferries- These were considered in the 2004 report but it is not apparent that the USACE has selected or commenced work to implement any of these measures. Again, question the 18 month lead time.	The Cape May-Lewes Ferry mitigation strategy is no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
01-26	Sec7-7	Repower Local Tugs- This was considered in 2004 report. Same issues as ferries.	The repower of local tugs mitigation strategy is no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
01-27	Sec 7-8	Cold Ironing- 2 year lead time is optimistic.	The cold ironing mitigation strategy is no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
01-28	Sec7-9	40CFR 93.160 "any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described,	The use of a private party would require a third party agreement; however, this action is not required for the selected emission reduction credit purchase plan.

		including the implementation schedule, containing explicit timelines for implementation”. Further, if the USACE elects to demonstrate conformity using private party...written commitments must be obtained from those parties.	
01-29	Sec7.15-1	Purchase of Emissions Credits- EPA has reservations about the approach for offsets being discussed in this section.... In this case, the emissions offsets must be purchased from inside the Philadelphia-Wilmington-Atlantic City 8-hour ozone non-attainment area. Report should include where ERCs are going to be purchased including source name, location and quantity of offsets applied.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits from inside the Philadelphia-Wilmington-Atlantic City area which will be applied annually for the life of the project, thus attaining conformity.
01-30	Sec9-1	EPA disagrees that a general commitment to obtain NOx credits for the first phase and a general commitment to demonstrate conformity at a later date is acceptable.	A meeting between the USACE and the EPA was held on 6 October 2009 to discuss the emission reduction credit purchase strategy. It was determined that the purchase of perpetual/multi-year credits with a commitment to annual implementation was acceptable, and demonstrates conformity.
01-31	Sec9-2	Selection of measures by an advisory team after the USACE conformity determination is contrary to the rules. Should changes to the identified measures later be required, they would be allowable consistent with the procedures of 40 CFR 93.160(e).	Several emission reduction strategies were evaluated and the most appropriate mitigation measure, the purchase of emission reduction credits, was selected. If, in the future, the scope of the project changes, then the issuance of a new conformity determination consistent with appropriate guidance and regulations may be required.
01-32	Sec9-3	Given the timing, EPA recommends the USACE move immediately to obtain offsets for the first year of	The required emission credits for the project will be purchased in a timely manner prior to the start of the first construction contract.

		the project.	
01-33	Sec9-4	USACE draft conformity determination lacks specifically identified offsets and mitigation measures.	Several emission reduction strategies were evaluated and the most appropriate mitigation measure, the purchase of emission reduction credits, was selected. If, in the future, the scope of the project changes, then the issuance of a new conformity determination consistent with appropriate guidance and regulations may be required.

Letter 02 - Comments from New Jersey Department of Environmental Protection

Number	Location	Summary of Comment	Final Comment Response
02-01	Letter – 1 st pph	Cannot concur with DCDOC	Comment noted. Please note the revised conformity plan found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.
02-02	Letter – 2 nd pph	Direct and indirect emissions need to be identified and mitigated.	All direct and indirect emissions generated by the project, as specified in the regulations governing air conformity, have been calculated, addressed and mitigated by the selected plan of the purchase of emission reduction credits.
02-03	Letter – Deficiency 1	Transport of dredge material emissions not addressed.	All direct and indirect emissions generated by the project, as specified in the regulations governing air conformity, have been calculated, addressed and mitigated by the selected plan of the purchase of emission reduction credits. The federal action is complete when dredge material is placed in existing federal disposal areas. However, if placed material is then removed and transported by a separate entity elsewhere, it is considered a separate and independent action and not a part of the federal project. The responsibility for meeting all appropriate environmental requirements would be on the entity conducting the material removal and transport.
02-04	Letter – Deficiency	Additional indirect emissions.	All direct and indirect emissions generated by the project, as specified in the regulations

	1		governing air conformity, have been calculated, addressed and mitigated by the selected plan of the purchase of emission reduction credits.
02-05	Letter – Deficiency 1	Segmenting the project to avoid conformity requirements.	The federal project has not been segmented. The federal action is complete when dredge material is placed in existing federal disposal areas.
02-06	Letter – Deficiency 1	Additional ship traffic emissions not included.	The economic basis for the federal project was to increase the efficiency of the fleet currently calling area ports. There is no anticipated induced tonnage as a result of the federal project. The future volume of cargo and the fleet is determined by macroeconomic factors that are not affected in any measureable way by channel depth.
02-07	Letter – Deficiency 2	Conformity must include actions to mitigate emissions.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.
02-08	Letter – Deficiency 2	No mitigation measures are ready to implement.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity. The required emission credits for the first contract will be purchased in a timely manner prior to the start of the first construction contract.
02-09	Letter – Deficiency 3	No implementation schedule or written commitments.	All direct and indirect emissions generated by the project, as specified in the regulations governing air conformity, have been calculated, addressed and mitigated by the selected plan of the purchase of emission reduction credits.
02-10	Letter – Deficiency 4	Poor documentation of public participation.	Public participation requirements have been met.
02-11	Letter - Deficiency 5	The DCSOC recommends the comment period to remain open to allow air team to convene.	Several emission reduction strategies were evaluated and the most appropriate mitigation measure, the purchase of emission reduction credits, was selected. The conformity plan is found in Section 8 of the revised Report. The plan includes

			advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity. Accordingly, additional convening of the air team is not needed.
02-12	Letter - Deficiency 6	Issue of a conditional statement of conformity not found in the regulations.	The conformity plan has been selected and a final Statement of Conformity for the project has been prepared.
02-13	Letter - Deficiency 7	Issue of the use of ERCs from another nonattainment area.	A meeting between the USACE and the EPA was held on 6 October 2009 to discuss the emission reduction credit purchase strategy. It was determined that the purchase of perpetual/multi-year credits with a commitment to annual implementation was acceptable, and demonstrates conformity. The required credits will be purchased from the same non-attainment areas encompassing the project.
02-14	Letter - Deficiency 8	De minimis levels used in evaluation were not correct.	The de minimis levels used in the Report are those mandated by air conformity regulations. The 1-hour ozone level does not apply to general conformity. Conformity determinations pursuant to section 176(c) of the Clean Air Act are no longer required for the 1-hour NAAQS. Therefore, the de minimis levels used in the evaluation of project are correct.
02-15	Letter - Deficiency 9	Report does not fully examine technological issues associated with the mitigation measures.	The mitigation strategies discussed in the Report sufficiently highlight the technological issues associated with each strategy. It should be pointed out that the referenced mitigation strategies are not the selected strategy. Conformity will be met through the purchase of emission reduction credits.
02-16	Letter – final pph	DCSOC does not concur.	Comment noted. The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity. This plan satisfies the requirements of the General Conformity Regulations, State of New Jersey Implementation Plan (SIP) and Coastal Zone Determination Management

			rules on air quality.
02-17	Technical comment 1	Define “latest”.	The use of the word “latest” refers to the most current project construction schedule available when the emission analysis was performed.
02-18	Technical comment 2	Must take CO emissions into account for 2013.	Due to availability of federal and non-federal construction funds, the schedule to initiate the first construction contract was moved from late 2009 to early 2010. As a result, the CO no longer exceeds 100 tons in any project year.
02-19	Technical comment 3	Need to use the 1-hour Ozone de minimis levels.	The de minimis levels used in the Report are those mandated by air conformity regulations. The 1-hour ozone level does not apply to general conformity. Conformity determinations pursuant to section 176(c) of the Clean Air Act are no longer required for the 1-hour NAAQS. Therefore, the de minimis levels used in the evaluation of project are correct.
02-20	Technical comment 4	Revise sentence regarding NAAQS for ground-level ozone.	Comment noted; however, the Report information remains correct. Non-attainment status in this area has improved since the 2004 report.
02-21	Technical comment 5	Confirm most recent operational information was used.	The most recent operational information was used to determine the emissions performing the work on this project.
02-22	Technical comment 6	Issue of contract basis versus annual basis.	The annual construction emissions summary for the project is provided in Table ES-1 of the Report and was used as the basis for the conformity analysis.
02-23	Technical comment 7	Project will be above CO de minimis in 2013.	Due to availability of federal and non-federal construction funds, the schedule to initiate the first construction contract was moved from late 2009 to early 2010. As a result, the CO no longer exceeds 100 tons in any project year.
02-24	Technical comment 8	Should have used 1-hour Ozone de minimis.	The de minimis levels used in the Report are those mandated by air conformity regulations. The 1-hour ozone level does not apply to general conformity. Conformity determinations pursuant to section 176(c) of the Clean Air Act are no longer required for the 1-hour NAAQS. Therefore, the de minimis levels used in the evaluation of project are correct.

02-25	Technical comment 9	Explain the reason for change in load factor for clamshell dredge.	The change in the load factor for the clamshell dredge is attributed to the power requirements for the lifting portion of their cycle. The shift to the higher horsepower dredging was done to reflect the current project schedule and available dredging equipment anticipated to complete the various construction contracts.
02-26	Technical comment 10	Using project peak emissions is not the best method.	The metric chosen for comparison of cost was based on reduction of peak annual emissions. This metric provides a value comparative to the market value of emission reduction credits. Total emission reduction would not be comparable to emission reduction credits.
02-27	Technical comment 11	Why is dredge electrification included as a mitigation strategy if not viable?	The dredge electrification mitigation strategy is no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
02-28	Technical comment 12	Application of SCR.	The SCR mitigation strategy is no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
02-29	Technical comment 13	Include reference documentation regarding the success of SCR technology	Comment noted.
02-30	Technical comment 14	Clarify sentence regarding the strategy to repower dredges.	The natural turnover of engines does not ensure the installation of lower emitting engines. The replacement of engines as a mitigation strategy is not a viable strategy.
02-32	Technical comment 15	Time required for SCR installation concerns for dredges, boosters and towing.	Further evaluation deemed the SCR installation mitigation strategy as not cost effective or implementable given the timeframe of the project, and thereby is no longer being considered a viable mitigation strategy.
02-33	Technical comment 16	Time required for SCR installation concerns for Cape May-Lewes Ferries.	Further evaluation deemed the SCR installation mitigation strategy for the Cape May-Lewes Ferries as not cost effective or implementable given the timeframe of the project, and thereby is no longer being considered a viable mitigation strategy.
02-35	Technical comment 18	ERCs generated in New York cannot be used to satisfy conformity	The required credits will be purchased from the same non-attainment areas encompassing the project.

02-36	Technical comment 19	Using peak emissions is not the best method.	The metric chosen for comparison of cost was based on reduction of peak annual emissions. This metric provides a value comparative to the market value of emission reduction credits. Total emission reduction would not be comparable to emission reduction credits.
02-37	Technical comment 20	Recommends that comment period remain open for an unspecified period to allow the air team to convene.	Several emission reduction strategies were evaluated and the most appropriate mitigation measure, the purchase of emission reduction credits, was selected. The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity. Accordingly, additional convening of the air team is not needed.
02-38	Technical comment 21	Spreadsheet does not include emission estimates for equipment used at disposal site.	The annual construction emissions summary for the project which includes emissions estimates for equipment used at the disposal sites is provided in Table ES-1 of the Report.

Letter 03 - Comments from Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management

Number	Location	Summary of Comment	Final Comment Response
03-01	2 nd pph point 1	Analysis does not satisfy broad scope of indirect emissions.	All direct and indirect emissions generated by the project, as specified in the regulations governing air conformity, have been calculated, addressed and mitigated by the selected plan of the purchase of emission reduction credits. The economic basis for the federal project was to increase the efficiency of the fleet currently calling area ports. There is no anticipated induced tonnage as a result of the federal project. The future volume of cargo and the fleet is determined by macroeconomic factors that are not affected in any measureable way by channel depth.
03-02	2 nd pph point 2	Report fails to acknowledge NOx emissions as a PM2.5 precursor.	Comment noted; however, PM2.5 was evaluated and determined to be below de minimis levels. All emissions will be mitigated

			through the purchase of emission reduction credits.
03-03	2 nd pph point 3	No details to the implementation of emission reduction strategies.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.
03-04	3 rd pph	Have not fulfilled Regulation 1135 Section 3.12 regarding the identification and quantification of all emission reductions claimed.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.
03-05	4 th pph	Report does not demonstrate conformity.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.

Letter 04 – Comments from the Pennsylvania Department of Environmental Protection

Number	Location	Summary of Comment	Final Comment Response
04-01	Bullet 1	USACE needs to clearly identify commitments to mitigation.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.
04-02	Bullet 2	Clarify scope of project to include berthing areas.	All direct and indirect emissions generated by the federal project , including the non-federal dredging of the berthing areas, have been calculated, addressed and mitigated by the selected plan of the purchase of emission reduction credits. Please see Appendices A - C.
04-03	Bullet 3	Report should include the effects from increased navigation.	The economic basis for the federal project was to increase the efficiency of the fleet currently calling area ports. There is no anticipated induced tonnage as a result of the federal project. The future volume of cargo and the fleet is determined by macroeconomic factors that are not affected in any measureable way by channel depth.
04-04	Bullet 4	Clarify CO emission	Due to availability of federal and non-federal

		increases.	construction funds, the schedule to initiate the first construction contract was moved from late 2009 to early 2010. As a result, the CO no longer exceeds 100 tons in any project year.
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Letter 05 – Comments from the Delaware Riverkeeper

Number	Location	Summary of Comment	Final Comment Response
05-01	3 rd pph	Compliance document represents and improper process.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity. The selected plan offsets the project emissions yearly as required. A final Statement of Conformity for the project has been prepared.
05-02	4 th pph	Mitigation measures must be identified before the determination of conformity.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity. A final Statement of Conformity for the project has been prepared.
05-03	5 th pph	Revising the 2004 document does not fulfill the requirement of the law.	The 2009 Report is a stand-alone report that includes: relevant and applicable data and documentation from the 2004 report; an updated construction schedule; the General Conformity analysis and plan selection; and, the implementation plan.
05-04	6 th pph first bullet	Report fails to address emissions from increased navigation.	The economic basis for the federal project was to increase the efficiency of the fleet currently calling area ports. There is no anticipated induced tonnage as a result of the federal project. The future volume of cargo and the fleet is determined by macroeconomic factors that are not affected in any measureable way by channel depth.
05-05	6 th pph second bullet	Impacts from construction at existing disposal areas should be included in the analysis.	Dike raising operations are deemed to be an insignificant amount of emissions and would be performed as part of the regular maintenance activities. As such, this maintenance activity is exempt from General Conformity regulation.
05-06	6 th pph third	Discuss the use of dredge material for other purposes.	All direct and indirect emissions generated by the project, as specified in the regulations

	bullet		governing air conformity, have been calculated, addressed and mitigated by the selected plan of the purchase of emission reduction credits. The federal action is complete when dredge material is placed in existing federal disposal areas. However, if placed material is then removed and transported by a separate entity elsewhere, it is considered a separate and independent action and not a part of the federal project. The responsibility for meeting all appropriate environmental requirements would be on the entity conducting the material removal and transport.
05-07	7 th pph	Mitigation options do not fulfill the requirement for an implementation schedule, timelines and enforcement process.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity. A final Statement of Conformity for the project has been prepared.
05-08	8 th pph	It is questionable whether this report used the latest and most accurate emissions estimation techniques.	The most current information was used in the 2009 analysis. The only data used from the 2004 report was information that was either still current or no significantly improved information was available.
05-09	8 th pph first bullet	First example, use the most up to date information for section 7.2.	The McFarland mitigation strategies are no longer being considered. The recommended mitigation plan is for the purchase of emission reduction credits.
05-10	8 th pph second bullet	Second example, use most up to date information for construction costs.	The annual construction emissions summary for the project which includes emissions estimates for equipment used at the disposal sites is provided in Table ES-1 of the Report. All direct and indirect emissions generated by the project, as specified in the regulations governing air conformity, have been calculated, addressed and mitigated by the selected plan of the purchase of emission reduction credits.
05-11	9 th pph first bullet	Questions M&Ns knowledge.	Comment noted.
05-12	9 th pph second bullet	Low threshold of substantiation for email.	Comment noted; however, key reference data collected is sited in footnotes and was deemed to be acceptable to conduct the analysis.
05-13	9 th pph third bullet	Inappropriate used of ship size.	The cold ironing mitigation strategy is no longer being considered. The recommended mitigation plan is for the purchase of emission reduction

			credits.
05-14	10 th pph	Report does not supply the level of detail needed for proper agency review.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.
05-15	11 th pph	Commitments need to be in place prior to conformity.	Several emission reduction strategies were evaluated and the most appropriate mitigation measure, the purchase of emission reduction credits, was selected. If, in the future, the scope of the project changes, then the issuance of a new conformity determination consistent with appropriate guidance and regulations may be required.
05-16	12 th pph	Segmented approach inhibits public monitoring and response.	The federal project has not been segmented. The federal action is complete when dredge material is placed in existing federal disposal areas.
05-17	13 th pph	Construction schedule must be tailored to accommodate regulatory approvals.	The conformity plan is found in Section 8 of the revised Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity. A final Statement of Conformity for the project has been prepared.
05-18	14 th pph first bullet	Issue of higher horsepower dredging.	The shift to the higher horsepower dredging was done to reflect the current project schedule and available dredging equipment anticipated to complete the various construction contracts.
05-19	14 th pph second bullet	Clarification on approach to emission reduction.	The metric chosen for comparison of cost was based on reduction of peak annual emissions. This metric provides a value comparative to the market value of emission reduction credits. Total emission reduction would not be comparable to emission reduction credits.

Letter 06 – Comments from the South Jersey Transportation Planning Organization (SJTPO)

Number	Location	Summary of Comment	Final Comment Response
06-01	Memo item 1	Would like to be apprised of actual NOx emissions.	Any information that is collected regarding actual emissions will be provided to your agency.
06-02	Memo	Would like to have	If, in the future, the scope of the project

	item 2	opportunity to comment on revisions/supplementals/changes for the duration of project.	changes, we will provide your office an opportunity to comment.
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Letter 07 – Comments from the North Jersey Transportation Planning Authority (NJTPA)

Number	Location	Summary of Comment	Final Comment Response
07-01	1 st pph	Project does not affect NJTPA region.	Comment noted.

Letter 08 – Comments from the Wilmington Area Planning Council

Number	Location	Summary of Comment	Final Comment Response
08-01	2 nd pph	WILMAPCO decline to offer official concurrence.	Comment noted.
08-02	3 rd pph	Strongly encourage implementation of mitigation strategies.	The conformity plan is found in Section 8 of the Report. The plan includes advanced purchase of perpetual/multi-year emission credits which will be applied annually for the life of the project, and thus attaining conformity.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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Lieutenant Colonel Thomas J. Tickner
Philadelphia District Commander
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The Wanamaker Building
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Philadelphia, Pennsylvania 19107-3390

SEP 15 2009

RE: Comments on the Main Channel Deepening Project
General Conformity Analysis and Mitigation Report (DRAFT) dated August 7, 2009

Dear Lieutenant Colonel Tickner:

I am writing to provide comments from the U.S. Environmental Protection Agency (EPA) on the "Delaware River Main Channel Deepening Project – General Conformity Analysis and Mitigation Report", dated August 7, 2009, and prepared for the US Army Corps of Engineers (USACE) by Moffatt & Nichol. I am also providing comments on the "Draft Conditional Statement of Conformity", dated August 14, 2009. Both documents were submitted to EPA for review on August 21, 2009.

The August 2009 "General Conformity Analysis and Mitigation Report" (hereafter referred to as the Conformity Analysis and Conformity Determination, or simply the Conformity Determination) supersedes the prior "General Conformity Analysis and Mitigation Report", dated February 2004, and prepared for the USACE by Moffatt & Nichol. As indicated in EPA's letter to the USACE on July 1, 2009, the February 2004, per 40 CFR 93.157(a), the conformity determination has automatically lapsed as more than five years elapsed since the February 2004 determination and the federal action did not commence. Any new conformity demonstration must itself satisfy the requirements of the conformity regulations without relying on the lapsed determination to supply missing context or data.

The USACE 2009 draft Conformity Analysis and Demonstration indicates that a conformity determination is applicable and that a conformity demonstration is required for each year of the project (calendar years 2009-2014), as the direct and indirect annual nitrogen oxide (NOx) emissions for the project exceed the precursor applicability emissions rates specified in federal conformity rules, at 40 CFR 93.153. However, the draft Conformity Determination lacks a demonstration that conformity is met for the project. While there is ample information about the expected direct emissions from the project, the draft Conformity Demonstration contains no description of the specific combination of mitigation measures and offsets that will be used to demonstrate conformity for this action. The General Conformity rule requires that for an applicable federal action (i.e., where criteria or precursor emissions that exceed the *de minimus* annual emissions thresholds listed at 40 CFR 93.153) the USACE, as the lead federal agency, must demonstrate conformity for each project year for the life of the federal action.

01-01

Since the USACE has elected to mitigate or offset annual project emissions to demonstrate conformity, the USACE's demonstration must show that annual project emissions are mitigated or offset to zero over the entire project life cycle. Conformity cannot be demonstrated via a suite of measures, project schedule changes, or offsets to be selected after the conformity determination has been made, as you have indicated in your August 14, 2009 draft Conditional Statement of Conformity.

Neither is it adequate to state that the first project phase/contract will demonstrate conformity via emissions offsets/emission reduction credits, to be identified and later purchased after the final conformity determination, as you indicate in the same draft Conditional Statement of Conformity. Your draft Statement of Conformity also indicates that the USACE and the project sponsor (i.e., Philadelphia Regional Port Authority, or PRPA) will convene an air quality team to evaluate and select conformity strategies for each project contract after the final conformity determination and after project construction has begun. You indicate that NOx emissions from the first construction contract will be offset, although you do not identify the source or even the state from where such offsets will be obtained. You proceed to indicate that the USACE will "not proceed to construction on subsequent portions of the Project until such time that the particular phase or contract of the Project can demonstrate an acceptable level of conformity under the General Conformity Rule." The General Conformity Rule specifies criteria for determining conformity at 40 CFR 93.158 and requires that the relevant analysis be performed prior to determining conformity and further requires that any mitigation measures must be identified, described and be made subject to an implementation schedule with explicit timelines and written commitments, before the determination of conformity is made. 40 CFR 93.160(a), (b).

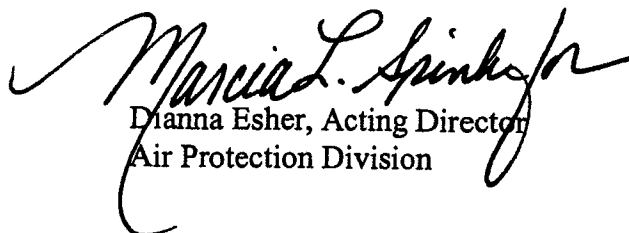
01-02

Finally, the draft Conformity Demonstration indicates that NOx emissions offsets (for use in the first project contract/year) are expected to be available in the Pennsylvania and New Jersey portions of the Philadelphia ozone nonattainment area, although no specific information aside from expected cost and availability is provided. Emissions Reductions Credits from the New York Channel Deepening Project are discussed. The Conformity Rule requires (for ozone or NOx) that the total emissions from the action be fully offset within the same nonattainment or maintenance area, not with offsets obtained from sources within a different nonattainment area. 40 CFR 93.158(a)(2).

01-03

It is EPA's conclusion, based on these comments and those additional comments attached to this letter, that USACE has not sufficiently demonstrated conformity for this project under the requirements of the General Conformity Rule. If you have further questions with regard to these comments, please contact me or Cristina Fernandez, Chief, Air Quality Planning Branch.

Sincerely,


Dianna Esher, Acting Director
Air Protection Division

Enclosure



cc: John H. Estey, Esquire
Chairman, Philadelphia Regional Port Authority

William Baker, Senior Policy Advisor
Environmental Planning & Protection Division, EPA Region II

Joyce Epps, Director
Bureau of Air Quality, Pennsylvania DEP

Ali Mirzakhali, Administrator
Air Quality Management Section, Delaware DNREC

Bill O'Sullivan, Director
Office of Air Quality Management, New Jersey DEP

**Enclosure 1 -
Comments from the Environmental Protection Agency
RE: Delaware River Main Channel Deepening Project
DRAFT General Conformity Analysis and Mitigation Report, dated August 7, 2009**

General Comments:

1. Level of Project Description/Documentation

In general, the level of documentation for the August Draft Conformity determination is of a lesser detail than that of the February 2004 conformity determination. For example, the description of the project itself, as well as the introductory/background discussion of each of the mitigation measures, is less detailed. Some discussion about the measures has been omitted, for example a discussion on why measures to reduce emissions from the US Army Corps of Engineers (USACE) maintenance dredge McFarland is considered "off-site". This descriptive narrative of the 2004 Conformity Demonstration provides a more meaningful explanation of the plan and the measures contained therein to address conformity. The August 2009 Draft Conformity Determination instead contains a great deal of focus on costs and cost-effectiveness, which although important for the USACE to evaluate mitigation and offset alternatives, does not fully describe to the public an understanding of the project with respect to the conformity determination. Per 40 CFR 93.157(a), the February 2004 determination has automatically lapsed, and EPA urges the USACE to incorporate all supporting information about the project from the 2004 demonstration (that is still relevant) into the 2009 determination, so that the 2009 determination stands alone without reference to the 2004 report.

01-04

While the stated purpose for this new report was to recalculate and to update emissions estimates, in light of the revised project scope, the document must also serve as a stand-alone document to demonstrate conformity, format that will allow for meaningful public participation as contemplated by the General Conformity Rule at 40 CFR 93.156.

2. Regional Significance Test

The Conformity Determination does not determine whether the project is "regionally significant". Under the General Conformity Regulations, a federal action is regionally significant if its total direct and indirect emissions for any pollutant exceed 10 percent or more of a nonattainment or maintenance area's emission inventory for that pollutant, per the definition at 40 CFR 93.152. For pollutants and their precursors where the project net emissions fall below the general conformity *de minimus* levels set at 40 CFR 93.153, an action would still be subject to a conformity determination if it was determined to be regionally significant, per 40 CFR 93.154(j).

01-05

3. Reference to the NY/NJ Harbor Project Conformity Demonstration

In past meetings, the USACE and PRPA have expressed an interest in pursuing a flexible approach to achieving conformity, following a precedent set in the NY/NJ Harbor Deepening Project. The USACE and PRPA have indicated that they would model their

01-06

conformity demonstration on that prepared for that project. However, the plan submitted appears to vary in important ways from the NY/NJ example.

In particular, for that project, conformity was demonstrated on an annual basis, for all applicable pollutants, over the life of the project as part of the final conformity demonstration prepared for the project. The Harbor Air Management Plan for the NY and NJ Harbor Deepening Project (HAMP Report) contains a clearly identified mix of strategies to demonstrate conformity. Specifically, the NY District US Army Corps of Engineers (NY District Corps) identified seven mitigation alternatives that would offset the project emissions to zero in each year, with each mitigation alternative containing a combination of mitigation strategies. For example, Alternative 1 included fuel emulsification, dredge electrification, ferry SCR, tug repower and purchase of offset credits. In each year of the project, the NY District Corps estimated the offsets that would be generated by each strategy and compared the annual total with the expected project emissions (for example, see Figure 5.1 and Table 5.2 in the HAMP Report). In this way, the NY District Corps was able to demonstrate that they would offset all project emissions in each year where emissions exceeded the *de minimus* level, for the lifetime of the project.

The Draft Conformity Demonstration for the Delaware River Deepening Project does not specifically list strategies to demonstrate conformity, instead committing to do so at a future date. Also, it does not contain a description of the detailed process outlined in the NY/NJ Project, which was a critical component of the framework of that project.

The General Conformity Rule requires that construction cannot begin on (any portion of) the project until a final conformity determination is issued for the entire project.

4. Uncertainty Surrounding Mitigation Strategy Selection/Schedules

There is a great deal of uncertainty surrounding the selection of mitigation measures for this project in the 2009 Draft Conformity Demonstration. Given that the USACE has set an ambitious project schedule (already slated to have begun), and that the 5-year period that has elapsed since the USACE looked at a number of these strategies, it is unclear why the USACE has not moved to choose which strategies it intends to use. Section 6 of the 2009 Draft Conformity Demonstration evaluates three strategies which have been studied in the past. Dredge electrification is ruled out by Moffatt & Nichol (M&N) as “not viable for this project”, yet emissions estimates and cost-effectiveness for this strategy are scattered throughout and it continues to be listed under mitigation strategies in the Draft Conformity Statement.

01-07

The remaining strategies evaluation in Sections 6 and 7 of the 2009 Conformity Determination are shown to have uncertainty due to a number of factors, the least of which are unknowns about the expected level of participation by various as-yet selected contractors and off-site private parties. No indication is presented that any work has been on-going to negotiate agreements with any off-site vendors, although the same mitigation strategies are being considered on the same vessels that were presented in the 2004

Conformity Determination. Furthermore, 40 CFR 93.160 requires that written commitments in support of the mitigation measures must be obtained prior to determining conformity (including those measures that will be undertaken by third parties). 40 CFR 93.160(b), (c).

Time frames presented in the 2009 Conformity Determination to enact these measures range from 18-24 months, including negotiation with outside parties, design, acquisition, and installation of equipment. Some of these estimates are extremely ambitious, given the limited prior use of the technologies on the application in question (e.g., SCRs/repowers on applications specific to this project, such as ferries not designed for SCR), or the technical difficulties in putting together some of the complex strategies in a short timeframe (e.g., adding shore power to the Packer Avenue Terminal and retrofitting 25 ships in a 24-month period).

Nearly all the evaluated mitigation strategies are estimated to need at least 18-months or more, yet the Draft Conformity Determination and Conditional Statement of Conformity give no indication that any measure has been selected or that work has begun. Yet, the USACE continues to contend that offsets will be needed for the first contract segment/year, and that the remainder of the project emissions reductions will be in the form of mitigation. On an annual basis, this would mean that beginning in 2011 (or even part of 2010), enough of these mitigation measures would need to be in place to offset the substantial annual NOx emissions listed in Table 5 for those years.

EPA Comments on Specific Sections of the Conformity Analysis and Mitigation Report, by Section

Executive Summary

1. The "Emission Estimates Results" section indicates that the entire area is attainment for the national ambient air standards for particulate matter less than 10 microns (PM10) and for carbon monoxide (CO). The introduction to Chapter 3 of the Conformity Determination makes a similar statement that the entire area is in attainment of CO and PM10, and that general conformity does not apply.

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To clarify, the project area was classified nonattainment (in part), and those former nonattainment areas have since met the standard and are now maintenance areas. It should be noted that Table 1 of the report shows that the CO *de minimus* threshold for maintenance areas is exceeded in the year 2013. Philadelphia County, PA and Camden County, NJ are now considered limited CO maintenance areas, and as such are subject to only limited conformity requirements. However, it is inaccurate to characterize these areas as attainment. The introduction to Chapter 3 of the Conformity Determination makes a similar statement that the entire area is in attainment of CO and PM10, and that general conformity does not apply. The NAAQS designations for the project area are defined at 40 CFR Part 81, Subpart C. Further detail on classification and maintenance area information can be referenced at EPA's "Greenbook Nonattainment Areas for Criteria Pollutants," online at: <http://www.epa.gov/air/oaqps/greenbk/index.html>. EPA's

Office of Air Quality Planning and Standards issued guidance on October 6, 1995 outlining its policy for limited maintenance plan options for nonclassifiable CO nonattainment areas in a memorandum from Joseph Paisie, Group Lead, Integrated Policy and Strategies Group, to EPA Regional Air Division Directors.

2. The executive summary does not describe the reason for the change in scope of work, nor does it explain why the revised project shifted work to higher horsepower dredging. EPA suggests the USACE add a discussion explaining in detail why the project scope was revised, and how that changed the number and location of dredge spoil sites, and significant changes in project activities that result in overall changes to project emissions (aside from the revised emission factors and load factors for marine equipment, that are described in clear detail).

01-09

3. The "General Conformity Strategy" indicates that NOx emissions must be offset to zero, but the report does not specify how that goal is achieved in each year of the project. Instead this section indicates that emissions from the first project contract will be offset via emission reduction credits (ERCs), and that subsequent contract emissions in future years can be offset via a mix of the identified mitigation measures. This vague commitment to offset/mitigation emissions at a future date (after the final conformity demonstration) using an unspecified mix of measures on an evolving basis does not meet requirements of the General Conformity Rule at 40 CFR 93.158.

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Section 1.1 - Background

4. EPA recommended, and the USACE agreed, that emissions from the berth deepening, although not directly part of the USACE project, should be included in the conformity analysis as "indirect" emissions. However, there is very little discussion of the berth deepening. There is a notation in another section of the report that marine emissions comprise 2,820 of the 3,038 tons of NOx. Beyond that, there is no further discussion of the berth deepening emissions - with the exception of a list of the facility owners responsible for those reaches (Section 1.6). There is also a single table in Appendix B of total berth deepening emissions, by contractor segment. Since the USACE states that these emissions are not part of the USACE contracts, the presentation of the data in this form without explanation is confusing. For conformity purposes, it would be more useful to list annual berth dredging estimates, by pollutant, by project year. Additionally, a breakout by facility segment, with a more detailed explanation of the emissions from each berth segment, would be useful.

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Section 1.7 - Emission Sources

5. This section indicates that the report includes land based emissions, including highway and off-road equipment, including employee vehicles and on-road trucks. However, the remainder of the report does not address emissions other than marine categories. The report appendices also do not specifically address non-marine project emissions. Although the inventory approach to modeling these emissions using EPA's NONROAD and MOBILE models is described, there is no summary data of the

01-12

emissions inventory, nor is there supporting information about equipment/vehicle types, hours/miles of operation, emissions factors, etc. It is unclear from the report if those emissions are included in the overall direct and indirect net emissions, or what contribution they contributed to total project emissions.

Section 5.1 - Introduction

6. The use of peak annual emissions as a replacement or surrogate for calculation of actual annual net NOx emissions (for each year of the project) does not meet the requirements for determining general conformity at 40 CFR 93.158. Project emissions must be mitigated to zero for each year of the project for which the *de minimus* threshold is exceeded. The combination of mitigation strategies and their implementation dates is critical in determining conformity over the entire project span. For projects that phase-in or ramp-up reductions, their net emissions remaining should be determined for each year of the project and the life of the mitigation measure. The General Conformity Demonstration cannot “float” emissions mitigation or offset measures with indeterminate start and end dates and time span and avoid demonstrating conformity for each year of the project. However, if the USACE specifies a suite of emission reduction measures in the conformity determination, and then later decides to revise the project scope, or to alter the project phasing, or to change the reduction measures or their implementation dates; the USACE could then formally revise or issue a new Conformity Demonstration, in adherence to General Conformity Rule requirements, consistent with 40 CFR 93.160(e).

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Section 5.2 – Unmitigated NOx Emissions

7. Figure 2 of the Draft Conformity Demonstration show the unmitigated marine emissions by contract phase, which then show emissions by marine category. For purposes of conformity, it would be more relevant to show how these contracts and the related annual NOx emissions are to be apportioned across the project years. For contracts that span multiple calendar years, unmitigated (and net mitigated) emissions could be broken down by their expected contribution to each year of the project. While Figure 2 shows the relative size of each project contract, it does not list net annual emissions, which is necessary to demonstrate project conformity. Without this annualized emissions information, it is not possible to show that for each year of the project subject to conformity, NOx emissions are mitigated or offset to zero.

01-15

Section 6 – On-site Strategies

It is difficult to understand how the on-site mitigation strategy analysis for the three strategies analyzed in Section 6 factor into the overall Conformity Determination, or which (if any) are ultimately to be selected as mitigation strategies selection. Given that the project is scheduled to begin immediately and that there are long lead times associated with these strategies, it is difficult to ascertain why the USACE and the PRPA have not already selected and commenced mitigation strategies.

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Specific issues with the three on-site strategies presented include:

- Strategy 1 – Dredge Electrification has been deemed “not viable”, yet continues to be presented as a potential mitigation measure in the Draft Conformity Demonstration and the Conditional Statement of Conformity. This measure should be removed from the mitigation strategy list in the Conformity Demonstration and Statement of Conformity. 01-17
- Strategy 2 – SCR on Dredges, Boosters, and Tow Tugs is dependent on how contractors (not yet selected) can be convinced to add SCR or if any current SCR-equipped vessels can be contracted, or if the application is feasible in practice. This measure has been ruled out for the first segment, but it is unclear whether and how many of these applications (i.e., what portion of the maximum expected reductions) are available in project year 2010 or thereafter. 01-18
- Strategy 3 – Repower Dredges, Boosters, and Tow Tugs is relatively new, and according to M&N has not yet been tried with Tier 2 engines. Again, the schedule is aggressive given the lateness of the date, the need to negotiate with private parties/contractors, and the lead time to obtain and install the equipment. Again, this measure has been ruled out for the first segment, but it is unclear whether and how many of these applications (i.e., what portion of the maximum expected reductions) are available in project year 2 or thereafter. 01-19

Section 7 – Off-Site Strategies

EPA has similar concerns with the off-site strategies. Again, long lead times are associated with each, and although they have been studied in the past, selection of particular strategies has not commenced, with the result being long lead times stretching to at least project year 2010 (and potentially beyond). Comments specific to each include: 01-20

- Strategy 4a – McFarland SCR Install, was listed as a strategy in the prior Conformity Demonstration 5 years ago. The operating data (1999-2003) is dated. The use of the 2004 Conformity Determination’s load and emissions factors is odd, given that other marine load factor information has been updated in this report. Although M&N states that they are “reasonably consistent”, it is not explained why the factors were analyzed in comparison with 2004, but the new factors were not then incorporated in the new analysis. No justification is provided for the use of a 92% reduction from SCR, but given the age of the McFarland and potential difficulties in adding SCR to this application, some further discussion of the assumption may be warranted. Also, is a 12-month lead time reasonable, and has any work been done towards this measure since it was presented in the 2004 Conformity Demonstration? 01-21
 - Strategy 4b - McFarland Repower (no SCR), is listed with an 18-month minimum lead time. However, that would include designing, building, and installing the new engine, and like the other options, installation would need to be scheduled around the maintenance dredge duties for this regional dredge. 01-22
 - Strategy 4c- McFarland Repower and SCR Installation, is listed with the same 18-month lead time as the repower only option, requiring concurrent work on both the repower and SCR design, acquisition, and install. Given the additional complexity, 01-23
- 01-24

the scheduling seems ambitious. Again, these reductions would not be available until project year 2011, even if selected as a mitigation strategy, with work beginning immediately.

- Strategy 5a, b, c – Cape May-Lewes Ferries, SCR, repower, and SCR/repower options, were also considered in the 2004 Conformity Demonstration. It is not apparent that the USACE has selected or commenced work to implement any of these measures. It is also unspecified whether negotiations have begun with the private owners of the ferries to enact the mitigation strategy. Once again, lead times are an issue, with 18-month lead times projected for all three options. Again, reductions would not be available before project year 2011, even if work commenced immediately. 01-25
- Strategy 6 – Repower Local Tugs, again was considered in the 2004 analysis. The same 18-month lead time and private party negotiation issues exist as do for the Cape May Ferries. 01-26
- Strategy 7 – Install Shore Power (Cold Ironing), presents a number of issues with respect to the scale of the project. Projected lead times of two years for each of the terminals evaluated is optimistic, given the need to also retrofit a large number of ships to make use of the shore power (e.g., 25 ships for the Packer Avenue Terminal). These reductions would likely not be available for mitigation until project year 2012. Logistical complexities with retrofitting the large number of vessels involved would seem to make these timeframes unduly optimistic. 01-27

With respect to the mitigation strategies presented in both Sections 6 and 7, the requirements of 40 CFR 93.160 apply, specifically: “any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including the implementation schedule, containing explicit timelines for implementation.” Also, under this provision of the Conformity Rule, the lead federal agency must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures identified as conditions for making a conformity demonstration. Further, persons committing to implement mitigation measures must be bound to comply with the obligations of these commitments. If the USACE elects to demonstrate conformity using private party and contractor-owned equipment retrofits, written commitments must be obtained from those parties. Also, per 40 CFR 93.160(d), approval by the federal agency must be conditioned upon the fulfillment of these commitments. 01-28

Section 7.15 – Strategy 9 – Purchase of Emissions Credits

EPA has reservations about the approach for offsets being discussed in this section of the 2009 Draft Conformity Demonstration and the Draft Conditional Statement of Conformity. Conformity must be demonstrated on an annual basis for each year of the project. The Conformity Rule, at 40 CFR 93.158(a)(2) states that for ozone and NO_x, conformity is met if “the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through the SIP or a similar enforcement measure that effects emissions reductions so that there is no net increase in 01-29

emissions of that pollutant.” In this case, emissions offsets must be purchased from inside the Philadelphia-Wilmington-Atlantic City 8-hour ozone nonattainment area.

The Conformity Rule, at 40 CFR Section 51.858(d), requires that "Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made." With regard to identifying emission reduction credits (ERCs) for NOx, this analysis should include identifying where the required ERCs are going to be purchased (including the source name, location and quantity of offsets applied).

The 2009 Draft General Conformity Demonstration discusses offsets only in general. Detailed location and quantities of NOx offsets are not identified in the report. The report instead states that several hundred credits are expected to be readily available in the Philadelphia area and that specific availability of credits are subject to negotiation. The report should detail more specifically where the offsets will be purchased and the quantity to cover the NOx emission increases described in Table 5. Emissions offsets should be specified for each project calendar year that NOx offsets will be required.

Section 9 – General Conformity Strategy

As indicated elsewhere in these comments, EPA agrees with the USACE’s contention that the Conformity Demonstration must show that NOx emissions are offset to zero in all project years, as each year of the project exceeds the *de minimus* criteria for ozone nonattainment area. However, EPA disagrees that a general commitment to obtain NOx emissions offsets for the first project phase, and a general commitment to demonstrate conformity at a later date for the remainder of the project is acceptable. The conformity demonstration, showing that emissions are mitigated or offset to zero is required as part of the conformity demonstration, prior to commencement of the project, not afterwards.

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The USACE’s Draft Conformity Statement indicates that an advisory team will select measures at a future date to demonstrate conformity – long after the final USACE conformity determination and commencement of construction. This is contrary to the General Conformity Rules, which, as pointed out above, require that mitigation measures be identified prior to conformity being determined. 40 CFR 93.160(a). Should changes to the identified measures later be required, they would be allowable consistent with the procedures of 40 CFR 93.160(e).

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The Conformity Rule at 40 CFR 93.160 requires a written commitment from the source of the offsets as part of the conformity demonstration. Offsets used to demonstrate conformity must be obtained prior to commencement of the federal action (i.e., before commencing the first contract phase). Due to the late timing of the expected final Conformity Determination for this project (in light of Fall 2009 projected construction start dates), EPA recommends the USACE move immediately to obtain offsets for the first year of the project.

01-32

The USACE's 2009 draft Conformity Demonstration contained insufficient data and context to demonstrate conformity for the entire project. The draft conformity Demonstration lacks specifically identified offsets and mitigation measures to show that net NOx emissions increases from the project are reduced to zero for each project year. No information is provided as to which measures have been selected, or whether work has commenced on any of the mitigation measures. Similarly, no specific information with respect to NOx emissions offsets/ERC's is provided.

01-33



02

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Acting Commissioner

September 15, 2009

Mr. Minas M. Arabatzis
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Dear Mr. Arabatzis:

In response to your letter to me dated August 14, 2009, the New Jersey Department of Environmental Protection (Department) reviewed the Draft Conditional Statement of Conformity (DCSOC) and the General Conformity Analysis and Mitigation Report (August 7, 2009) for the Delaware River Main Channel Deepening Project (Project). Based on our review, the Department cannot concur with the DCSOC as the Project does not conform to New Jersey's State Implementation Plan (SIP). Nor does the Project satisfy the Coastal Zone Management rules, N.J.A.C. 7:7E-8.10 (air quality issues).

02-01

The oxides of nitrogen (NO_x) emissions from this Project are some of the highest among the recent Federal projects in New Jersey. Since the entire State of New Jersey is in nonattainment for ozone and Camden and Gloucester counties are in nonattainment for the Fine Particulate (PM 2.5) standard, all the direct and indirect emissions from this Project must be identified and mitigated with contemporaneous emission reductions as required by the Federal Clean Air Act and the United States Environmental Protection Agency's (EPA's) General Conformity regulations, 40 CFR Part 93.

02-02

This letter documents the deficiencies that the Department has identified at this time, as needing correction before the Department can concur with a conformity determination for this Project. In addition, a technical review of the General Conformity

Analysis and Mitigation Report is attached. The deficiencies of the DCSOC are enumerated below.

1. The Conformity Analysis and Mitigation Report (August 7, 2009) is incomplete as it does not include all the emissions for the Project. The General Conformity rule 40 CFR Part 93 requires that all reasonably foreseeable emissions must be included for the project as a whole in determining applicability. The emissions associated with the transport of the dredged materials to their final placement/location in Pennsylvania, as indicated in Governor Rendell's May 15, 2009 letter, must be included as a component of the Project emissions and the report does not discuss the impact of the deepening on future ship and support vessel travel.

02-03

The Conformity Analysis and Mitigation report does not include the emission estimates for transportation of the dredged material to their final placement in Pennsylvania. At the very least, Governor Rendell's May 15, 2009 letter states that the Commonwealth of Pennsylvania would accept all dredged material from the project for beneficial use after they have been dewatered in the existing Federal placement sites located in New Jersey. The transportation of the dredged materials to their final placement is an activity that generates additional indirect emissions for the Project. The Federal General Conformity regulations state that "...a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emission of the criteria pollutant or precursor in a nonattainment or maintenance area caused by the Federal action" exceeds the applicable de minimis threshold. 40 CFR 93.153 ("Applicability"). Indirect emissions as defined by the Federal General Conformity regulation, 40 CFR 93.152, "occur later in time and/or may be further removed in distance ...but are still reasonably foreseeable; and the Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency." If it were not for this Project, the transportation and placement of the dredged materials in Pennsylvania would not be necessary.

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In addition, by not including the emission estimates for the transportation of the dredged materials to the final placement, the Draft conformity analysis could be considered as segmenting the project to avoid the conformity requirements. This is also not allowed. The USEPA's July 13, 1994 General Conformity Guidance: Questions and Answers,¹ indicates that a project cannot be broken down into segments in order for each segment to be below the de minimis levels and that all reasonably foreseeable emissions must be included for the project as a whole in determining applicability.

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The Conformity Analysis and Mitigation Report (August 2007) does not mention the emissions from the additional or different ship traffic that would occur as a result of the deepening of the harbor. The emissions from the additional ship traffic must be addressed in the report.

02-06

2. In 2004 the ACOE and Project Sponsors were aware of the need to address the mitigation of the increased emissions from the deepening of the Delaware River. To our knowledge no actions were taken to identify measures, plan, and implement them in order to mitigate the emission from the project once it begins. The Statement of

¹ http://www.epa.gov/air/genconform/documents/gcgqa_940713.pdf

Conformity must include actions to mitigate the emissions. Five years is more than enough time to be ready to implement measures to meet these requirements. The air quality and citizens breathing it in the region should not suffer because of the lack of action.

02-07

The February 2004 General Conformity Analysis and Mitigation Report indicated that significant emission reductions would be needed in order for the project to proceed. That report states that, "The NO_x emissions from the project exceed the "de minimis" threshold limit in every year of the Project. The NO_x emissions from the Project varied from 102 tons per year (tpy) to 849 (tpy)" The General Conformity Analysis and Mitigation Report (August 7, 2009) states, "Annual NO_x emissions range from a low of roughly 130 tons to a high of roughly 905 tons." To our knowledge, no mitigation measures have been identified, developed, and are ready to be implemented to allow the Project to proceed.

02-08

3. The DCSOC does not define a specific plan to mitigate the emissions for the Project, does not include an implementation schedule with an explicit timeline for implementation and does not include written commitments from the appropriate persons or agencies to implement the mitigation measures for this Project.

02-09

The DCSOC lists potential strategies that can be utilized to mitigate the emissions for this Project. The General Conformity Analysis and Mitigation Report (August 7, 2009) states, "As the project schedule and the development of the mitigation projects evolve, the application of the various mitigation measures can be selected and managed to offset the project emissions on an annual basis." This approach to mitigation, including listing potential mitigation strategies in the DCSOC, does not satisfy the requirements of the Federal General Conformity regulations. In addition, the Department has concerns regarding the feasibility and timing of many of the potential mitigation strategies. Some of the Department's concerns will be raised in the technical attachment.

4. The public participation requirements of the Federal General Conformity regulation, 40 CFR 93.156, were not documented in the cover letter or the DCSOC and may not have been met. Section 93.156(b) requires that "a federal agency must make public its draft conformity determination under Section 93.158 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination."

02-10

5. As begun in 2004 and as suggested in July of this year, the current situation might have been avoided if an Air Quality Team was convened and had an opportunity to address the outstanding issues on this Project. The experience gained from the New York/New Jersey Harbor Deepening project could have provided successful strategies to satisfy the conformity requirements for this Project. The Department recommends, as indicated in Commissioner Mauriello's September 3, 2009 letter, that the comment period remain open for an unspecified period of time to allow the Air Team to convene to further discuss the project's conformity determination with New Jersey and the other states' State Implementation Plans. In fact, my staff received a letter from the Army Corps, dated March 9, 2009, inviting the Department to participate in the Air Quality

02-11

Team, however, this team met only once in April 2009 which was only a beginning attempt to address the conformity issues.

6. The Department is concerned that a *Conditional* Statement of Conformity was issued for this Project. It does not appear that a *Conditional* Statement of Conformity is allowed by the Federal General Conformity regulation, 40 CFR Part 93. If the Air Team had been convened, we may have been able to address this concern before the DCSOC was issued. A Conditional Statement of Conformity was used on the New York/New Jersey Harbor Deepening Project after an agreement was reached between the states and the USEPA. In that case, the DCSOC facilitated the signing of the Record of Decision and the Project Cooperation Agreement, which released the funding for the Project. Subsequently, a Final Statement of Conformity was issued for the project prior to the start of construction. If the Air Team had been convened, this could have been discussed and if appropriate agreed to by all parties. 02-12

7. Using Emission Reduction Credits (ERCs) from another nonattainment area, especially one that is downwind, to satisfy the requirements of the Federal General Conformity regulation, 40 CFR Part 93, is not acceptable. In general, the Department prefers ERCs not to be used to satisfy the requirements of the Federal General Conformity regulation, 40 CFR Part 93 as they are intended to facilitate growth at major stationary sources. Additionally, the use of ERCs is not appropriate given the nonattainment of the ozone and fine particle National Ambient Air Quality Standards (NAAQS) in the region. 02-13

The General Conformity Analysis and Mitigation Report (August 7, 2009) states that, "M&N understands the use of emissions credits as a conformity strategy has been discussed with the EPA and relevant state agencies." However, at a meeting held on July 15, 2009, the Division of Air Quality staff informed the USACE that they would need to discuss the use of ERCs for this Project with the Department's Air Quality Management. To date, the Department's Air Quality Management personnel have not been contacted concerning the use of ERCs for this Project.

The DCSOC indicates that the USACE will utilize ERC to satisfy the requirements of the Federal General Conformity regulation, 40 CFR Part 93, for the first contract which spans two years. The Conformity Analysis and Mitigation Report (August 7, 2009) states that, "as a result of a Memorandum of Understanding between Pennsylvania and New York, it is also possible to use credits generated in New York as offsets in the Philadelphia area." 40 CFR 93.158, which sets forth the criteria for determining conformity of general Federal Actions, requires that "for ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment area or maintenance area ...so that there is no net increase in emissions of that pollutant."

8. Additionally, the de minimis levels used in the evaluation for the project are not correct; again this could have been addressed if the Air Team had been convened. The 1-hour Ozone de minimis levels should have been used. Effectively, this will require additional mitigation of VOC emissions in 2010 and 2013. The use of the 1-hour Ozone de minimis levels is required by the anti-backsliding provisions of the Clean Air Act 42 02-14

U.S.C. 7502(c). The DCSOC indicates the project is above the de minimis levels for NO_x for all years and Carbon Monoxide (CO) in 2013.

9. The General Conformity Analysis and Mitigation Report (August 7, 2009) fails to fully examine the technological issues associated with the mitigation measures listed on the DCSOC. For instance, the report identifies using Selective Catalytic Reduction (SCR) technology for use on the dredges, boosters, towing tugs and ferries as a potential mitigation measure. However, on the New York/New Jersey Harbor Deepening project, using the SCR technology on the Staten Island ferries proved to be not a viable option. 02-15
In addition, the DCSOC lists electrification of dredges as a possible mitigation measure but the General Conformity Analysis and Mitigation Report (August 7, 2009) indicates that this is not a viable option for this Project. These issues need to be resolved to formulate a successful plan to mitigate the emissions from this Project.

Based on the deficiencies in the DCSOC the Department does not concur the project mitigation plan conforms with the SIP and the Coastal Zone Management Plan, N.J.A.C. 7:7E-8.10 (air quality issues) and believes the current analysis does not satisfy 02-16
the requirements of the Federal General Conformity regulations. The Department believes that the Air Quality Team should be convened so that the deficiencies may be discussed and satisfactorily resolved enabling the project to conform with the New Jersey SIP.

Sincerely,



Chris N. Salmi
Assistant Director

c: Raymond Werner, USEPA Region II
Diana Esher, USEPA Region III
Suzanne Dietrick, NJDEP

Attachment - New Jersey Department of Environmental Protection
Technical Review of Delaware River Main Channel Deepening Project
General Conformity Analysis and Mitigation Report August 7, 2009

Executive Summary

The report states, "Detailed emission estimates were developed based on the latest USACE construction estimates."

Comment

Please define what is meant by the "latest" in the above statement.

02-17

The report states that, "Because the entire area is in attainment of the PM10 and CO standards, General Conformity does not apply to those pollutants and there is no need to compare them to a de minimis threshold."

Comment

Camden County, New Jersey and Philadelphia County, Pennsylvania are maintenance areas for carbon monoxide (CO). Section 93.153 (b)(2) (Applicability) of the Federal General Conformity regulation must be applied to this Project. The Project will be above the de minimis level for CO in 2013. The CO emissions must be mitigated to zero for 2013.

02-18

The report states that, "The de minimis levels for ozone precursors, NO_x and VOCs, are 100 and 50 tons per year respectively."

Comment

The de minimis levels used in the evaluation for the project are not correct; this could have been addressed if the Air Team had been convened. The 1-hour Ozone de minimis levels should have been used. The use of the 1-hour Ozone de minimis levels is required by the anti-backsliding provisions of the Clean Air Act 42 U.S.C. 7502(c). Effectively, this will require additional mitigation of Volatile Organic Carbon (VOC) emissions in 2010 and 2013. The Project as analyzed remains above the de minimis levels for NO_x for all years and carbon monoxide (CO) in 2013.

02-19

1.6 Local Setting

The report states, "In 2004, this area was in severe non-attainment of the 8-hour ozone standard. The ozone problem has abated somewhat in the intervening years."

Comment

While ambient levels of ozone have been generally declining, the entire State of New Jersey continues to be in nonattainment of the 8-hour ozone standard. On March 12, 2008, the United States Environmental Protection Agency (USEPA) significantly strengthened its NAAQS for ground-level ozone to a level of 0.075 parts per million.¹ Please revise the above sentence accordingly.

02-20

1.8 Emission Estimate Approach

The report states, "Operational information and estimates for the equipment performing the work was obtained by the Corps of Engineers Dredge Estimating Program (CEDEP) provided by the USACE Philadelphia District." "CEDEP estimated information on the channel deepening was provided by USACE in two emails, dated 2-9-09 and 3-4-09."

Comment

Please confirm if the most recent operational information was used to determine the emissions for the equipment performing the work on this Project.

02-21

The report states that, "M&M developed monthly emissions profiles and total emissions for each calendar year by applying the total daily emission of each project element (as shown in Appendices A & B..."

Comment

It appears that the emission profiles in Appendix A (Construction Emissions Summary) and Appendix B (Berth Deepening Emissions) are provided on a contract basis. The de minimis requirements for General Conformity are on an annual basis. The 2004 General Conformity Analysis and Mitigation Report provided a Summary Emissions Table (3.1-1) on an annual basis. Please provide the Construction Emissions Summary in Appendices A and B on an annual basis.

02-22

3.0 General Conformity Results

The report states, "Because the entire area is in attainment of the PM10 and CO standards, General conformity does not apply to those pollutants and there is no need to compare them to a de minimis threshold."

Comment

Camden County, New Jersey and Philadelphia County, Pennsylvania are maintenance areas for carbon monoxide (CO). Section 93.153 (b)(2) (Applicability) of the Federal General Conformity regulation must be applied to this Project. The Project will be above

02-23

¹ http://www.epa.gov/air/ozonepollution/pdfs/2008_03_factsheet.pdf

the de minimis level for CO in 2013. The CO emissions must be mitigated to zero for 2013.

The report states that, “The area is in non-attainment for ozone, however. The de minimis levels for ozone precursors, NO_x and VOCs, are 10 and 50 tons per year respectively.”

Comment

The de minimis levels used in the evaluation for the project are not correct; again this could have been addressed if the Air Team had been convened. The 1-hour Ozone de minimis levels should have been used. The use of the 1-hour Ozone de minimis levels is required by the anti-backsliding provisions of the Clean Air Act 42 U.S.C. 7502(c). Effectively, this will require additional mitigation of Volatile Organic Carbon (VOC) emissions in 2010 and 2013. The Project as analyzed remains above the de minimis levels for NO_x for all years and carbon monoxide (CO) in 2013.

02-24

4.3 Changes to Emissions Calculation Factors

The report indicates that in Table 9, the load factor for the clamshell dredge is 30% in 2009 compared to 80% in 2004.

Comment

Please explain the reason for the significant change in the load factor for the clamshell dredge.

02-25

5.0 NO_x Mitigation – Introduction

The report states, “However, for on-site measures (#1-3 above), the NO_x emissions and reductions are different from year to year. For these strategies, the annual NO_x reduction used to calculate cost effectiveness was the reduction in project peak emissions.”

Comment

The Department does not believe that using project peak emissions is the best method to determine cost effectiveness for a mitigation measure. A more effective approach would be to use the total tons of pollutant reduced. In the Preliminary Emission Reduction Strategy Report (July 2003) for this project, it states that “the best metric to evaluate comparative technologies is to calculate and compare the cost per ton of pollutant avoided. This is an effective means of not only comparing on-site mitigation reduction technologies, but also comparing off-site emission reduction opportunities and emission credits to each other to ascertain the most cost effective solution to addressing emission impacts.”

02-26

6.2 Strategy 1 – Electrify Dredges

The report states that, “Although this mitigation measure is technically feasible, as evidenced by its application elsewhere, M&N concluded that it is not viable for this project.”

Comment

Please explain why this is included as a mitigation strategy in the Draft Conditional Statement of Conformity (DCSOC) even though M&N concluded that it is not viable for this project.

02-27

6.3 Strategy 2 – Install SCR on Dredges, Boosters and Towing Tugs

The report states that, “The SCR option assumes that all dredges, booster and towing tugs are outfitted with SCR units.”

Comment

The Department is concerned that Selective Catalytic Reduction (SCR) technology may not be a viable mitigation strategy to use on the dredges, booster and towing tugs based on the experience with the New York/New Jersey Harbor Deepening project. The New York/New Jersey Harbor Deepening project installed SCR technology on the Alice Austen ferry (as a demonstration project) with the intention of installing it on the remaining Staten Island ferries if it proved to be successful. However, due to technical issues i.e. cost, engine temperature, electrical load, weight, with the installation on the Alice Austen, the plan to install SCR technology on all the remaining ferries was abandoned. Given the technical difficulties with the SCR technology on the New York/New Jersey Harbor Deepening project, is the USACE planning to install the SCR technology on a dredge, booster, or towing tug as a demonstration project prior to installing it on all the dredges, boosters and tugs?

02-28

The report does not does indicate whether the dredges, boosters, or towing tugs would reach the required operating temperature necessary for the SCR technology to be effective. Please provide information regarding the engine temperature for the dredges, boosters and tugs.

The report states that, “The application of SCR on large dredges is limited to only a 10,000 hp cutter suction dredge on the west coast that has operated a urea injection system since the late 1990’s with reportedly excellent results.”

Comment

The report indicates that the dredge has operated a urea injection system since 1990 with excellent results but no references or documentation to support this statement were included in the report. Please provide the documentation to support the statement that

02-29

the dredge has been operating since 1990 with excellent results. In addition, the report does not provide documentation to support the contention that installation of SCR technology would be a viable strategy. Please provide documentation to support this use of SCR on boosters and towing tugs.

6.4 Strategy 3 – Repower Dredges, Boosters and Towing Tugs

The report states that, “ However, the turnover rate for dredge engines is low, and in some cases they may be replaced with rebuilt older style engines rather than new low emitting engines. Therefore, it cannot be assumed that later phases of the project will be dredged with much lower emitting engines as a result of the normal course of engine replacement.”

Comment

Please clarify how this sentence is consistent with the strategy to repower dredges with cleaner engines as a mitigation strategy. 02-30

7.2 McFarland

The report indicates that, “The McFarland is the USACE dredge for regional operations and maintenance dredging.”

Comment

The Department has concerns that if plans are for the McFarland to be used to mitigate the emissions from this project, that the McFarland will not be available to do so. The Corps website (<http://www.nap.usace.army.mil/sb/mcfar.htm#vital>) states that the McFarland has a twofold mission, 1) Emergency and national defense dredging – as required and on short notice- anywhere in the world. 2) Planned dredging in the Delaware River and Bay. Given the McFarland’s missions, please provide contingency plans if the McFarland becomes unavailable for mitigation purposes for this Project. 02-31

In addition, the Department has concerns regarding the installation of SCR technology on the McFarland. Please see comment under section 6.3 Installing SCR on Dredges, Boosters and Towing Tugs.

7.7 Cape May-Lewes Ferries Strategy 5a – SCR Installation (no repower)

The report indicates that, “ The fifth installation on a ferry is a fair comparison in terms of ship size and no accompanying repower, but that vessel (a Staten Island NY ferry named “Alice Austen”) was the first ever SCR installation on a ferry.” The report also indicates, “However, the details of an SCR installation and the willingness of the ferry operator to participate would need to be worked out in a detailed design and negotiation.”

The report also indicates, “It is expected that a minimum of 18 months would be required to work out the terms of an agreement, design, build and install the SCR systems.”

Comment

Please see comment for 6.3 Strategy 2 – Install SCR on Dredges, Boosters and Towing Tugs 02-32

In addition, the Department is concerned that the length of time (a minimum of 18 months) to implement this strategy may be too conservative. The time required for the installation of the SCR technology may be contingent upon the dry dock schedule for the ferries. Was the dry dock schedule taken into consideration when determining the amount of time need for installation of the SCR technology?

7.9 Strategy 5c – Repower and SCR Installation on Cape May-Lewes Ferries

Comment

Please see the comment for 6.3 Strategy 2 – Install SCR on Dredges, Boosters and Towing Tugs 02-33

7.10 Strategy 6 – Repower Local Harbor Tugs

The report states that, “Ocean-going tugs were not included in this analysis, in favor of tugs that spend the majority of their time in the project area.” In addition, Table 22: Local Harbor Tugs – NOx Emissions, indicates the annual operating hours for each tug from the three local tug companies.

Comment

Please define “majority” in the above sentence. Table 22 indicates the annual operating hours for the tugs. Are the tugs in the nonattainment area for the entire annual operating hours listed in Table 22? What percentage of the time will the tugs be required to operate in the nonattainment area? 02-34

7.15 Strategy 9 – Purchase Emission Credits (ERC’s)

The report states that, “A precedent is the New York Channel Deepening Project which used a conditional statement of conformity along with a menu of mitigation measures including emission offsets for early phases of the work.” The report states, “The Port Authority of New York and New Jersey (PANYNJ) purchased 95.68 tons of NOx shutdown credits in early 2003 for \$113,065 as part of the then existing open market emissions trading program (OMET) in New Jersey. The PANYNJ also owned 200 tons

of NOx reduction credits from a facility on Staten Island.” The report also states, “As a result of a Memorandum of Understanding between Pennsylvania and New York, it is also possible to use credits generated in New York as offsets in the Philadelphia area.”

Comment

A Conditional Statement of Conformity was used on the New York/New Jersey Harbor Deepening Project after an agreement was reached between the states and the USEPA in order to facilitate the signing of the Record of Decision and the Project Cooperation Agreement, which released funding for the project. Subsequently, a Final Statement of Conformity was issued for the project. If the Air Team had been convened, this could have been discussed and if appropriate agreed to by all parties. In addition, ERCs were used as a bridge to real reductions in order to facilitate blasting in an area that would have had an impact on neighborhoods.

02-35

The ERCs that were generated in New York and are part of the MOU between Pennsylvania and New York cannot be used to satisfy conformity. Section 93.158 (Criteria for determining conformity of general Federal Actions) of the Federal General Conformity regulation (40CFR93) requires that “for ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment area or maintenance area ...so that there is no net increase in emissions of that pollutant.”

8. Conclusions

The report states, “The most cost effective strategies involve the installation of SCR units on the dredges and ferries.” In addition, the report states, “M &N understands the use of emission reduction credits as a conformity strategy has been discussed with the EPA and the relevant state agencies.”

Comment

The Department does not believe that using project peak emissions is the best method to determine cost effectiveness for a mitigation measure. A more effective approach would be to use the total tons of pollutant reduced. In the Preliminary Emission Reduction Strategy Report (July 2003) for this project, it states that “the best metric to evaluate comparative technologies is to calculate and compare the cost per ton of pollutant avoided. This is an effective means of not only comparing on-site mitigation reduction technologies, but also comparing off-site emission reduction opportunities and emission credits to each other to ascertain the most cost effective solution to addressing emission impacts.”

02-36

9.0 General Conformity Strategy

The report states, “Given the project schedule, the purchase of the emission reduction credits is the only feasible strategy for the first of the seven expected construction

contracts.” In addition, report states, “As the project schedule and the development of the mitigation projects evolve, the application of the various mitigation measures can be selected and managed to offset the project emissions on an annual basis.”

Comment

The Department recommends that the comment period remain open for an unspecified period of time to allow the air team to convene to further discuss the project’s conformity determination with New Jersey and the other states’ State Implementation Plans. The approach to mitigation mentioned above, does not satisfy the requirements of the Federal General Conformity regulation. (40CFR93) Section 93.160 (Mitigation of air quality impacts) of the Federal General Conformity regulation (40CFR93) states that “any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implantation schedule containing explicit timeline for implementation.”

02-37

Appendix B Berth Deepening Emission Spreadsheet

Comment

The spreadsheet does not include emission estimates for equipment used at the disposal site. The emissions from the equipment at the disposal site must be addressed in the report.

02-38



03

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF AIR & WASTE MANAGEMENT
156 S. STATE STREET
DOVER, DELAWARE 19901

AIR QUALITY MANAGEMENT
SECTION

TELEPHONE: (302) 739 - 9402
FAX NO.: (302) 739 - 3106

September 14, 2009

Mr. Minas M. Arabatzis, Chief
Planning Division
Department of the Army
Philadelphia District, Corps of Engineers
Wanamaker Building, 100 Penn Square East
Philadelphia, PA 19107-3390

Dear Mr. Arabatzis:

Thank you for the Army Corps meeting with my staff and myself on Friday. I believe a sincere attempt was made to answer our questions and address the issues concerning the draft general conformity analysis for the "Main Channel Deepening Project." However, there are several important deficiencies that were not resolved. We understand that the Corps has decided not to grant Delaware's request for the extension of the deadline to submit comments and are disappointed by that decision. The comments below summarize certain unresolved issues and we reserve the right to submit additional comments as we receive the additional information that you promised to supply us at our September 11, 2009 meeting.

Based on our review of the August 7, 2009, General Conformity Analysis and Mitigation Report and our discussions on September 11, 2009, the Delaware Department of Natural Resources and Environmental Control finds your report incomplete and inadequate and accordingly does not concur with the conformity analysis and the Draft Statement of Conformity, for the Main Channel Deepening Project. The report is specifically deficient in the following areas:

1. The analysis does not satisfy the broad scope of the indirect emissions required for consideration under general conformity rule. The stated purpose of the report "to estimate the air emissions generated by the equipment that will be used to **construct** the project" falls short of meeting the purpose of general conformity rules. The calculations should at a minimum include the future emissions associated with the more economically active ports including increased ship traffic, increased employment and associated energy use and traffic.
2. The report fails to acknowledge nitrogen oxide (NOx) emissions as a fine particulate matter (PM_{2.5}) precursor. The project related NOx emissions exceed the 100 tons per year conformity threshold for PM_{2.5}, and therefore this project triggers general conformity for

03-01

03-02

Mr. Minas M. Arabatzis
September 14, 2009
Page Two

PM_{2.5}. Any decreases used to offset the increase in NOx emissions must also conform to the geographic boundaries of the PM_{2.5} non-attainment area.

3. The report does not give any details as to the implementation of the emission reduction strategies with the necessary enforceable commitments (e.g. which emission reduction strategies and the timeframe) to offset the project's emissions as required by Delaware's Regulation 1135.

03-03

Regulation 1135 Section 3.12 states, *Any measures that are intended to reduce air quality impacts for this purpose must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timeliness for implementation.* **This has clearly not been done and is a fatal flaw.**

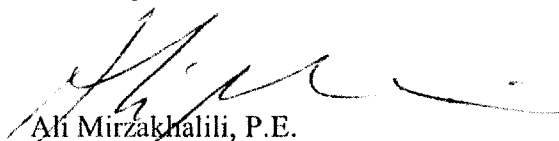
03-04

Prior to a determination of applicability, the Federal agency making the determination must obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making such determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this implementation plan revision is approved by EPA, enforceability through the applicable implementation plan of any measures necessary for a determination of applicability will apply to all persons who agree to reduce direct and indirect emissions associated with a Federal action for a conformity applicability determination. The Corps' conformity report is more like a menu of options without any clearly defined project or commitment.

03-05

Please contact me or my staff member, Phil Wheeler at 302/739-9402, if you need further clarification of our position.

Sincerely,


Ali Mirzakhailili, P.E.
Administrator

cc: Diana Esher, EPA, Region III
David Small, Deputy Secretary, DNREC
Marjorie Crofts, Acting Director, DAWM
Sarah Cooksey
Robert Baldwin

**Pennsylvania Department of Environmental Protection****Rachel Carson State Office Building****P.O. Box 2063****Harrisburg, PA 17105-2063****September 22, 2009****Office of Waste, Air and Radiation Management****717-772-2724**

**Minas M. Arabatzis, Chief
Planning Division
United States Corps of Engineers
Philadelphia District
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390**

Re: Comments on the August 2009 Final General Conformity Analysis and Mitigation Report for the Delaware River Main Channel Deepening Project

Dear Mr. Arabatzis:

The Pennsylvania Department of Environmental Protection (Department) would like to thank the United States Army Corps of Engineers (USACE) for providing an opportunity to comment on the Delaware River Main Channel Deepening Project's *General Conformity Analysis and Mitigation Report* (Report). We realize that this project has important implications for both the economic vitality of the Philadelphia Area as well as our ability to attain and maintain the national ambient air quality standards (NAAQS). We appreciate the USACE's cooperation with the Department in the planning process to address the requirements of the Department's General Conformity regulation codified in 25 *Pa. Code* Ch. 127, Subchapter J (relating to general conformity). The Department's General Conformity regulation adopts and incorporates by reference, in its entirety, the general conformity rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 93, Subpart B (relating to determining conformity of general Federal actions to state or Federal implementation plans).

The Department generally concurs with the comments and recommendations submitted to USACE on September 15, 2009, by Dianna Esher, Acting Director of the EPA's Air Protection Division. In addition to the specific comments and recommendations offered by EPA, the Department believes that clarifying information on a number of the following points would be helpful to fully understand the potential impacts and mitigation plans associated with the project:

- The Philadelphia area is currently designated as a "moderate" nonattainment area for the 1997 eight-hour ozone standard; we would expect the area to be designated as a nonattainment area for the 2008 and subsequent ozone standards as well. Therefore, it is important for public health and economic stability that the USACE identify clear advance

04-01

commitments to mitigation measures that will be put into place to offset to zero the specifically identified project emissions during each project year.

- We request that the USACE clarify in the report that the project described is the entire dredging project including berthing areas and that there will be no need for further dredging activity associated with the project. This would assure to the Department and the public that all potential impacts have been identified and have been appropriately considered for mitigation purposes. 04-02
- We request that the assessment include the effects of the dredging on shipping traffic and add to each affected year's emissions any emissions increases from increased navigation time for commercial marine vessels using the main channel during the deepening project. 04-03
- We request that the report clarify whether carbon monoxide (CO) emission increases will occur in Philadelphia County (and Camden County, NJ) and, if they do increase, how they will be mitigated, since only these areas in the metropolitan area are CO limited maintenance areas and thus subject to general conformity. 04-04

Thank you for considering our comments, requests for clarity and recommendations. We look forward to your final report that satisfies the general conformity requirements so that the project can move forward as quickly as possible. If you have any questions, please contact me via e-mail at kereisinge@state.pa.us or by telephone at 717-772-2724, or Joyce Epps, Director of the Bureau of Air Quality, by e-mail at jcepps@state.pa.us or by telephone at 717-787-9702.

Sincerely,


Kenneth R. Reisinger
Acting Deputy Secretary



September 13, 2009

Environmental Resources Branch
Philadelphia District, US Army Corps of Engineers
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107

& via email to: Public Affairs Office at Edward.c.voigt@usace.army.mil

Re: Clean Air Act Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project, August 14, 2009

Dear Mr. Voigt,

Please accept these comments in response to the Army Corps of Engineers' ("the Corps") "Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project" ("MCD" or "the Project"), and Revised "General Conformity Analysis & Mitigation Report," (collectively "Compliance Documents") purportedly in satisfaction of Clean Air Act ("CAA" or "the Act") Section 176(c) requirements.

Based upon the information provided, the Corps does not appear to be in compliance with Section 176(c) of the CAA and its implementing regulations, and cannot legally proceed with the MCD based upon this Draft or any subsequent Final Conditional Statement of Conformity.

The Compliance Documents Represent an Improper Process

The procedural violations represented in the Corps' Compliance Documents are significant. The Act's implementing regulations are clear that, "no department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan" and that, "A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart, before action is taken."

05-01

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40 C.F.R. § 93.150(a),(b). Nowhere do the applicable CAA regulations provide for a “conditional proposal” to serve as a Clean Air Act Conformity Determination, as is apparently being proposed by the Corps. Nor do applicable regulations provide for the use of an “ongoing conformity determination” to fulfill the requirements of the law. The Army Corps’ assertion -- that it will secure emission reduction credits for the first year of project implementation and then provide supplemental conformity determinations for all future years of the project -- does not comply with the letter, spirit or requirements of the Act.

The applicable regulations are clear that in projects like the MCD, where emission levels of criteria pollutants exceed the *de minimis* threshold, actions taken to mitigate those emissions, “must be identified before the determination of conformity is made,” in order to achieve a finding of conformity, and the mitigation measures selected must be enforceable. 40 C.F.R. § 93.158. Providing a veritable take-out menu of possible options to be worked out on an *ad hoc* basis in the future, as the Army Corps proposes in their draft analysis, violates the Clean Air Act.

05-02

Yet another procedural violation is striking in its bold disregard of the law: The Corps ignores CAA regulations stating, “the conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under [40 C.F.R.] § 93.155, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.” 40 C.F.R. § 93.157. Repackaging information identified in the 2004 General Conformity Analysis and Mitigation report does not fulfill this requirement of the law. The Corps’ attempt to merely “update” conformity documents outside of this 5-year window is a clear violation of law and should be prohibited.

05-03

Missing, Insufficient Data and Analysis in the Compliance Documents

The Compliance Documents reflect an absence of significant data and analyses. 40 CFR § 93.159(d)(1) requires that the analyses undertaken in the conformity determination must be based on total direct and indirect emissions from the action and must reflect emission scenarios that would include emissions projected in the project maintenance plan. In contrast:

✓The Conformity determination only includes the construction phase of the deepening project and associated private channel deepening, it fails to discuss or plan for, to any degree, increased emissions that will result from maintaining an increased depth of 5 feet.

05-04

✓The most recently discussed Army Corps spoil disposal plan includes the use of existing confined disposal facilities to a much greater degree than originally proposed which will necessarily require the berms at those sites to be raised, significantly. According to an April 11, 2008 Army Corps document, in order to accommodate all spoil disposal in existing Army Corps CDFs the dikes on most of the federally owned facilities would need to be raised higher than was originally anticipated or planned for, anywhere from 10 to 44 feet higher than originally anticipated. The air quality impacts of this additional construction directly associated with the project is foreseeable and should be included in the conformity analysis and planning.

05-05

✓There has been much public discussion by the Army Corps and others, including a commitment by the Army Corps to work with a multi-state team resulting from the agreement reached between the governors of New Jersey and Pennsylvania, to transport and use deepening spoils in other locations for other purposes. These have included, by way of one example, the transporting and dumping spoils in the mines of Pennsylvania. The air conformity analysis should include the air quality ramifications of these apparently serious and foreseeable options for deepening spoils disposal.

05-06

Under the Act, 40 C.F.R. § 93.160 specifically mandates that measures intended to mitigate air quality impacts of the project “must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.” The take-out menu of options the Army Corps has put forth for possible use in the future to mitigate identified air quality impacts does not fulfill the requirement for an implementation schedule, explicit timelines, and a process for enforcement of those measures. 05-07

Section 93.159 requires the use of the most up to date information and that analyses required by the regulations be “based on the latest and most accurate emission estimation techniques available”. It is questionable whether this draft conformity determination, which is founded upon merely an “update to the 2004 General Conformity Analysis and Mitigation report,” can be deemed to fulfill these legal requirements. While in some instances the Army Corps discusses the use of updated information in others it specifically references the use of old information despite the availability of new. 05-08

✓For example, under section 7.2 in the draft document the Army Corps states “These emission factors are reasonably consistent with the new emission factors used for the locomotive style engines assumed in the channel dredging estimates, therefore they were left unchanged.” If there are new factors and they are known, available and/or calculable then that most up to date information should be used. 05-09

✓By way of additional example, construction costs continue to be based upon figures provided as part of the 2004 report – this information is highly dated and can no longer be deemed up to date or accurate. 05-10

In addition, we highlight other instances where the Army Corps is clearly using inaccurate or barely substantiated information in its analysis.

✓In the Executive Summary the draft document talks about using “M&N’s understanding of typical engine types in the existing industry fleet.” This does not seem to meet the threshold of accuracy or specificity mandated by the law – the level of M&N’s knowledge is unknown, undocumented and unsubstantiated so this could be a very low threshold of knowledge, information and accuracy and has no place in a document of this importance. 05-11

✓Elsewhere in the draft document there are references to information obtained via email with no indication of independent verification; again, this low threshold of substantiation for information should not be deemed acceptable. 05-12

✓The use of Panamax sized ships in calculating how many days would be required to achieve needed offsets in the “cold ironing analysis” is inappropriate in light of the known reality that “this is bigger than the typical size vessel currently calling frequently at Packer Ave Marine Terminal.” Using a ship of this size would over inflate the benefits of this approach to addressing NOx emissions. 05-13

Role of Involved Agencies

In addition to the straightforward defects of the Corps’ Compliance Documents, the various array of possible options presented – which lack the specificity required by regulation – fail to provide state and federal agencies with the level of detail or information they need to provide informed and accurate input. As a result, while the Army Corps has provided 30 days of comment upon this draft document to agencies at the federal and state level, they have not 05-14

done so with the level of detail and specificity needed to fulfill the spirit or intent of the comment period included in the law.

Under 40 C.F.R. § 93.160, “Prior to determining that a federal action is in conformity, the federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.” The Army Corps has specifically stated that it does not have specific agreements or commitments from appropriate persons for the implementation of the various described mitigation measures – most of the options are specifically subject to future discussions and negotiations. As a result, the Army Corps cannot, based upon this draft document, issue a final conformity determination.

05-15

Impact of Procedural Approach on Public Involvement

Section 93.154 requires, “any Federal department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must consider comments from any interested parties.” The fragmented approach the Corps proposes for their conformity and mitigation plan represents a significant barrier to meaningful public input. The pigeon-holing of CAA compliance by each phase of construction significantly increases the burden on the public to monitor and respond to various and multiple public notices, and greatly reduces the likelihood of informed public comment on this issue.

05-16

Construction Schedules Do Not Trump Environmental Review

The Updated General Conformity Analysis and Mitigation Report states that, “The lead time necessary to implement many of the mitigation strategies is longer than the time available before the start of construction. For the first contract, it is anticipated that emission credits will be used as it is the only strategy that can meet the project schedule.” (Section 8.) This statement highlights the flawed logic that dogs the MCD generally, and specifically the compliance plans. The construction schedule must be tailored to accommodate regulatory approvals, not vice versa. Such a bold statement represents an affront to the purpose and goals of the CAA conformity process.

05-17

Outstanding Issues

In addition to the Army Corps’ failure to fulfill the necessary requirements of the law, there remain a number of significant outstanding questions that need to be addressed as well as providing state and federal regulatory agencies the level of detail they need to properly review and comment:

- ✓ The draft document specifically states that the Army Corps has changed its scope of work on this project to use “higher horsepower dredging” significantly increasing the associated level of air pollution. We question why the Army Corps would deliberately increase its air emissions knowing that it was already impacting air quality in the region with its proposed project. (See pg 2: “...the volume of work to be performed by a cutter suction dredge using two booster pumps increased by nearly 60%. This increased the emissions per volume of dredging because boosters are a significant source of emissions.”) We question the accuracy of the assertion that “NOx emissions for the off-site strategies are simple because they are the same every year.” We ask for discussion and justification of this assumption.

05-18

- ✓ The explanation for the use of reduction in project peak annual emissions to calculate cost effectiveness in annual NOx reductions was highly confusing. In order to assess the validity of this approach we ask for better clarification than was provided.

05-19

These outstanding issues must be addressed prior to moving forward with the project.

The Army Corps' Compliance Documents do not fulfill the requirements of the Clean Air Act or its implementing regulations. The contents of the Clean Air Act Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project dated August 14, 2009 cannot replace a new Clean Air Act General Conformity Determination and Mitigation Plan for the Delaware River Main Channel Deepening Project.

Submitted,

Maya K. van Rossum
the Delaware Riverkeeper

MEMORANDUM

DATE: September 14, 2009

TO: Minas M. Arabatzis, US Army Corps of Engineers

FROM: David Heller, Senior Transportation Planner, South Jersey Transportation Planning Organization (SJTPO)

CC: Jamie DeRose, NJ DOT; John Gorgol, NJ DEP

RE: Concurrence with Clean Air Act Draft Conditional Statement of Conformity, Delaware River Main Channel Deepening Project August 14, 2009

Thank you for giving us the opportunity to review the *Clean Air Act Draft Conditional Statement of Conformity—Delaware River Main Channel Deepening Project-August 14, 2009*. We concur with its findings subject to the following conditions:

- (1) As the project progresses and the contracts let, the SJTPO is apprised of the **actual** NOx emissions mitigation strategies (as described in the accompanying “General Conformity Analysis and Mitigation Report”) implemented during each phase of the project and the ensuing NOx emissions reductions thereby achieved. Although the report provides charts which estimate the NOx emissions reductions attainable for each mitigation strategy, they could differ from the actual reductions, especially when these strategies are actually implemented. This appraisal can be in the form of electronic mail, via a website, or in the form of regular mail. 06-01
- (2) As an interested party, SJTPO receives and has the opportunity to comment on any supplemental conformity determination and is apprised of any changes to this conditional proposal for the duration of this project. 06-02

If you have any further comments and/or questions, please do not hesitate to contact me at: (856)-794-1941, or via email at: dheller@sjtpo.org.



One Newark Center, 17th floor, Newark, NJ 07102
(973) 639-8400; fax (973) 639-1953; www.njtpa.org

Susan M. Zellman, Chairman
Mary K. Murphy, Executive Director

September 10, 2009

Mr. M. Arabatris
Chief, Planning Division
Department of the Army
Philadelphia District, Corps of Engineers
Wanamaker Building, 100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

Dear Mr. Arabatris:

The NJTPA is in receipt of your August 14, 2009 Draft Conditional Statement of Conformity regarding the Delaware River Main Channel Deepening Project. NJTPA staff has reviewed the information provided and determined that this project does not affect any of the thirteen counties in the NJTPA region. Furthermore it addresses the General Conformity Rule, not the Transportation Conformity Rule.

07-01

I would appreciate, however, you keeping us informed as the project advances should any changes occur that may affect our region in the future.

Sincerely,

Mary K. Murphy
Executive Director
NJTPA

850 Library Avenue, Suite 100
Newark, Delaware 19711
302-737-6205; Fax 302-737-9584
From Cecil County: 888-808-7088
e-mail: wilmapco@wilmapco.org
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WILMAPCO Council:

Stephen Kingsberry, Chair
Delaware Transit Corporation
Executive Director

Joseph L. Fisona, Vice-chair
Mayor of Elkton

James M. Baker
Mayor of Wilmington

Cleon L. Cauley
Deputy Legal Council
Delaware Office of the Governor

Christopher A. Coons
New Castle County
County Executive

Vance A. Funk III
Mayor of Newark

Donald A. Halligan
Maryland Dept. of Transportation
Director, Office of Planning and
Capital Programming

Jim Mullin
Cecil County Commissioner

Carolann Wicks
Delaware Dept. of Transportation
Secretary

WILMAPCO Executive Director
Tigist Zegeye

August 31, 2009

Mr. Minas M. Arabatzis
Department of the Army
Wanamaker Building, 100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

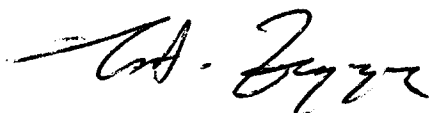
Dear Mr. Arabatzis:

Thank you for providing us with the opportunity to review the Delaware River Main Channel Deepening Project's General Conformity Analysis and Mitigation Report.

After consultation with the Environmental Protection Agency's Region III office, we have determined that WILMAPCO is not required to concur with or take action on this document. We therefore respectfully decline to offer official concurrence. 08-01

Given the obvious environmental consequences of the project, however, we do strongly encourage the implementation of mitigation strategies, such as those outlined in the document. 08-02

Sincerely,



Tigist Zegeye
Executive Director

WILMAPCO

Partners with you in transportation planning

Attachment 4

Estimated NOx Emissions – November 2009

