



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

April 5, 2004

Steve R. Meheen
Project Manager
BHP Billiton LNG International Inc.
300 Esplanade Drive, Suite 1800
Oxnard, California 93036

Re: Air Permit Application for bhpbilliton Deepwater Port Project
Off Shore Ventura, California

Dear Mr. Meheen:

This letter supplements our January 30, 2004 letter about the air permit application for the construction and operation of a Floating Storage and Re-gasification (FSRU) facility off the coast of Ventura County in California.

As stated in that letter, we have been evaluating the impact of the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 *et seq.*) ("DPA"), the Clean Air Act (42 U.S.C. 7401 *et seq.*) ("CAA"), and the Ventura County Air Pollution Control District's ("Ventura District") rules, including the Ventura District new source review ("NSR") rule 26, on this proposed source. Based on this evaluation, we have reached the following preliminary conclusions. The first preliminary conclusion is that the applicable onshore area is Ventura District. The second preliminary conclusion is that the offset requirements of the Ventura District NSR rule apply.

Background

BHP Billiton LNG International Inc. ("BHP") is proposing to construct the FSRU facility in an area situated in the Pacific Ocean, approximately 14 miles offshore of Ventura County, California, between the cities of Oxnard and Port Hueneme. The FSRU facility would be able to receive liquefied natural gas ("LNG") from carriers, store the LNG, re-gasify the LNG, and deliver the natural gas via pipeline to the existing onshore natural gas distribution system of Southern California Gas. The pipeline would be 21 miles in length and connect onshore at Ormond Beach, near the city of Oxnard, and within the county of Ventura, California. This proposed FSRU facility is a deepwater port, regulated under the DPA.

Authority & Guidance

The DPA states that a deepwater port shall be considered a “new source” for purposes of the CAA, and conformity with all applicable provisions of the CAA is a condition of issuance of a deepwater port license. See 33 U.S.C. §§ 1502(9) and 1503(6). EPA regards section 1518 of the DPA as the primary source of its authority for determining which provisions of the CAA and associated local air pollution control laws are applicable to activities associated with deepwater ports. 33 U.S.C. § 1518. Section 1518(a) extends the Constitution and laws of the United States “to deepwater ports . . . and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State.” Section 1518(b) states that the “law of the nearest adjacent coastal State . . . is declared to be the law of the United States, and shall apply to any deepwater port . . . to the extent applicable and not inconsistent with any provision or regulation” under the DPA or other Federal laws and regulations. Section 1518(b) “federalizes” these state laws by providing that all such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States.

While sections 1502(9) and 1503(6) make it clear that Congress intended deepwater ports to be subject to CAA requirements, aside from section 1518(b) the DPA is silent concerning the extent to which the air pollution control laws of the nearest adjacent coastal State should apply. Because the DPA is silent, we considered the legislative history regarding treatment of adjacent coastal states under the DPA, and we also considered, as relevant guidance, the treatment of air districts under our Outer Continental Shelf (“OCS”) Air Regulations. See 40 C.F.R. Part 55.

First, the legislative history indicates that, as a general matter, application of “local law or regulation”, including environmental laws, to deepwater ports is appropriate.¹ Specifically, Section 19(b) of Senate Report 93-1217 (Oct. 2, 1974) states that subsection 1518(b):

..prevents the Deepwater Port Act from relieving, exempting or immunizing any person from requirements imposed by State or local law or regulation. In addition, States are not precluded from imposing more stringent environmental or safety regulations.

Second, the same portion of legislative history makes clear that treatment of DPA sources in a manner similar to how OCS sources are treated is appropriate but not compelled:

The effect of this subsection is to establish a system of deepwater port regulation similar to that governing the

¹For the reasons discussed herein we need not address a the situation where the local rules would require imposition of controls more stringent than a similar source would receive under the CAA.

operation of structures erected on the Outer Continental Shelf in accordance with the Outer Continental Shelf Lands Act.”

Id. Based upon the forgoing, consideration of how state and local air pollution laws would apply to a DPA source if it were an OCS source may be appropriate, but is not binding.

Relevant District Regulations

In order to make a preliminary determination of which provisions of the CAA and associated local air pollution control laws are applicable to activities associated with the proposed FSRU facility, we have first considered the need to determine the applicable law of the nearest adjacent coastal State. Section 1518(b) states that “the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the deepwater port.” 33 U.S.C. § 1518(b). California is clearly the relevant adjacent coastal State.

The state of California has created local air pollution districts. Pursuant to California Health & Safety Code, Division 26, Part 3, each district establishes and enforces air pollution regulations in order to attain and maintain all state and federal ambient air quality standards. The districts permit and control emissions from stationary sources of air pollution. To apply the law of California therefore requires determining the appropriate air pollution control district. The applicable air district for Ventura County is the Ventura County Air Pollution Control District. To the south, south-east of the Ventura District is the South Coast Air Pollution Control District. To the north, north-west of the Ventura District is the Santa Barbara Air Pollution Control District.

For air pollution control, we have made the preliminary determination that (in addition to any other applicable state laws) the Ventura District regulations are the relevant laws of the nearest adjacent coastal state. While the DPA is silent concerning local air districts, we have reached this conclusion by applying an analysis parallel to how we determine which state is the adjacent coastal states under the DPA. See 33 U.S.C. 1502(1). Application of the Ventura District local rules is appropriate because the Ventura District is the District whose seaward boundaries, if extended beyond 3 miles, would encompass the proposed deepwater port. In addition, the pipeline from the facility would connect onshore within Ventura District. In making this preliminary determination, we also considered whether a different result would be reached under the procedures set out in the OCS regulations for designating a corresponding onshore area. While the OCS regulations do not apply to deepwater ports, we believe that the same result would likely have been reached under the OCS regulations. This result supports our determination given Congress’s intent to establish a system of regulation for DPA sources similar to that for OCS sources.

Offset requirements

We have also reached the preliminary conclusion that the offset requirements of the

Ventura District NSR rule 26 apply. Section 26.2.B requires offsets for certain pollutants (ROC, NOx, PM10, and SOx) under the conditions specified at section 26.2.B. Ventura District Rule 26 is applicable on a pollutant-by-pollutant and emissions unit-by-emissions unit basis. A pollutant by pollutant analysis is therefore required to determine the extent that the offset requirements of Ventura District Rule 26 are applicable to the proposed FSRU facility.

In making this preliminary determination, we have considered whether imposing the offset requirements of Ventura District Rule 26 would be inconsistent with any provision or regulation under the DPA or other Federal laws and regulations and have found none. Indeed, in this case, requiring offsets of a deepwater port located less than 15 miles from shore is supported by the CAA. This conclusion is supported in part by the OCS sources offset requirements found in our regulations promulgated at 40 C.F.R. Part 55. Part 55 applies to all OCS sources off the coast of California, and establishes requirements for these OCS sources consistent with the requirements of Section 328(a)(1) of the CAA. Section 328(a)(1) of the CAA was added in 1990, and it states that for OCS sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the OCS sources were located in the corresponding onshore area. Section 328(a)(1) of the CAA specifies that OCS sources located within 25 miles of the seaward boundary are required to obtain offsets because Congress recognized that offshore sources can contribute to onshore non-attainment problems. The non-attainment areas of coastal California were specifically mentioned in the Congressional arguments in favor of adding Section 328(a)(1) to the CAA. As a result, the offset requirements of Ventura District Rule 26, Section 26.2, apply to OCS sources located within 25 miles of California's seaward boundary. See Appendix A to 40 C.F.R. Part 55.

We realize that the proposed project is not an OCS source and that neither the CAA nor the DPA require that we treat DPA sources and OCS sources identically. However, the facility will be located within 25 miles from the shoreline, and thus its potential air impacts are similar to an OCS source. Accordingly, in these circumstances treatment of the proposed FSRU facility in a manner similar to OCS sources is appropriate and supportive of our conclusion that it would be "not inconsistent" with any provision or regulation under DPA or other Federal laws and regulations to require the proposed FSRU facility to obtain such offsets as are required under Ventura District Rule 26.

Request to Supplement Application to Address Offsets

We are requesting that you supplement your December 2003 application and provides us with additional information required under Ventura District's permitting rules. In particular, the additional informational must satisfy the requirements of Ventura District Rule 26 for offsetting emissions from this proposed facility. We would like to get this additional information by May 7, 2004.

We appreciate your patience and cooperation in this matter. This letter addresses issues of first impression for Region 9 with respect to treatment of a deepwater port located offshore

from a nonattainment area. We shall be continuing to consult with Ventura District concerning application of their regulations to your proposed facility, and we encourage you to work with Ventura District in preparing your offset analysis. Please note that the views and preliminary determinations expressed in this letter, if and when applied in a permit, would be subject to administrative review by EPA's Environmental Appeals Board. This letter, therefore, does not constitute "final agency action" for purposes of obtaining judicial review. Final agency action occurs upon completion of the permit appeal processes.

After we review your entire submittal (including the additional information requested above), and conclude that the application is administratively and technically complete, we will publish a public notice of our intent to issue the permit. The comment period specified in the notice shall be at least 30 days.

If you have any questions concerning this letter, or the review of your application, please call Nahid Zoueshtiagh at (415) 972-3978.

Sincerely,

Gerardo C. Rios
Chief, Permits Office
Air Division

cc: David Reese, US Coast Guard
Mark Prescott, US Coast Guard

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