



Public Notice

U.S. Army Corps of Engineers, Norfolk District

May 9, 2013

CENAO-WR-R
NAO-2006-5947
VMRC 13-0496

FEDERAL PUBLIC NOTICE

The District Commander has received a joint application for Federal and State permits as described below:

APPLICANT

Kinder Morgan Pier IX Terminal
1900 Harbor Access Road
Newport News, VA 23607

WATERWAY AND LOCATION OF THE PROPOSED WORK: The project is located at the Pier IX Kinder Morgan Terminal, in the James River, at Newport News, Virginia.

PROPOSED WORK AND PURPOSE: The north berth at Pier IX of the Kinder Morgan facility needs to be deepened to -52 feet MLLW in order to accommodate the larger PANAMAX vessels (the current permitted depth is -45 feet MLLW). The deepening will allow for coal loading from the larger vessels on both sides of the pier. An estimated 118,200 cubic yards of maintenance dredging and 83,600 cubic yards of new work dredging is required to achieve the proposed depth of -52 feet MLLW. The footprint of the dredging area is approximately 476,500 square feet (10.94 acres) with varying dimensions. The width ranges from about 200 feet in the berth to about 650 feet at its widest in the approach. The length is about 1,475 feet. The material will be dredged mechanically and then barged in sealed scows to the Rehandling Basin at Craney Island, and discharged at that facility.

In addition to the required Department of the Army permit, the applicant must obtain a Virginia Water Protection Permit from the Virginia Department of Environmental Quality (DEQ) assuring that applicable laws and regulations pertaining to water quality are not violated. Project drawings are attached.

AUTHORITY: Permits are required pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Sections 401 and 404 of the Clean Water Act (Public Law 95-217) and Title 62.1 of the Code of Virginia.

FEDERAL EVALUATION OF APPLICATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. The decision will reflect the national concern for both protection

and utilization of important resources. The benefits which reasonably may be expected from the proposal must be balanced against its reasonably foreseeable detriments. All of the proposal's relevant factors will be considered, including conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The Environmental Protection Agency's "Guidelines for Specification of Disposal Sites for Dredged or Fill Material" will also be applied (Section 404(b)(1) of the Clean Water Act).

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the direct, indirect, and cumulative impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Anyone may request a public hearing to consider this permit application by writing to the District Commander within 30 days of the date of this notice, stating specific reasons for holding the public hearing. The District Commander will then decide if a hearing should be held.

Preliminary review indicates that: (1) no environmental impact statement will be required; (2) Atlantic sturgeon and sea turtles are listed as endangered or threatened under the Endangered Species Act of 1973 (PL 93-205) and may be in the vicinity of the activity but are not likely to be adversely affected; and (3) no known properties eligible for inclusion or included in the National Register of Historic Places are in or near the permit area.

We will conduct informal consultation with the Protected Species Division of the National Marine Fisheries Service regarding our initial determination that the proposed activity is not likely to adversely affect Atlantic sturgeon or sea turtles.

A U.S. Fish and Wildlife Service (USFWS) database review did list Sensitive joint-vetch as a threatened plant in the area. However there is no habitat at this site for that plant and we have determined that the proposed activity will have no effect on Sensitive joint-vetch. Based on our species "no effect" determination, no further coordination with the USFWS is required. Additional information might change any of these findings.

For compliance with the Coastal Zone Management Act of 1972, as amended, the applicant must certify that federally licensed or permitted activities affecting Virginia's coastal zone (Tidewater) will be conducted in a manner consistent with the Virginia Coastal Resources Management Program (VCP) and obtain concurrence from the Department of Environmental Quality, Office of Environmental Impact Review (OEIR). The applicant's consistency certification is attached to this Public Notice and we are requesting review by DEQ-OEIR for concurrence or objection. It is

the applicant's responsibility to submit a certification statement to the Office of Environmental Impact Review for concurrence or objection and proof of concurrence must be submitted to the Corps prior to final permit issuance. A template federal consistency certification statement can be found here:

<http://www.deq.state.va.us/Programs/EnvironmentalImpactReview/FederalConsistencyReviews.aspx#cert>

For more information or to obtain a list of the enforceable programs of the VCP, contact the Department of Environmental Quality, Office of Environmental Impact Review at (804) 698-4330 or e-mail: elirons@deq.virginia.gov.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). The James River contains Essential Fish Habitat (EFH) for the eggs, larvae, juvenile, and adult life stages of various species including windowpane flounder (*Scophthalmus aquosus*), bluefish (*Pomatomus saltatrix*), Atlantic butterflyfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), black sea bass (*Centropristus striata*), king mackerel (*Scomberomorus cavalla*), Spanish mackerel (*Scomberomorus maculatus*), cobia (*Rachycentron canadum*), red drum (*Sciaenops ocellatus*), dusky shark (*Charcharinus obscurus*), and sandbar shark (*Charcharinus plumbeus*). The habitat which this project would affect consists of routinely dredged river bottom in the vicinity of the terminal pier. The proposed project is described in "Proposed Work and Purpose", above. As this area is an industrial waterfront terminal that has been maintenance dredged for many years, we do not expect any more than minimal adverse impact to EFH. There will be temporary siltation associated with the mechanical dredging, but that is expected to affect only that previously disturbed area in close proximity of the terminal pier. Given the short duration and temporary effect of the dredging activity, no mitigation is needed for EFH impact. Our assessment of the project leads us to a preliminary determination that it will not have a substantial adverse effect on EFH and therefore expanded EFH consultation is not required. Our rationale for this preliminary determination is based on the expected short-term nature of the direct impacts and minimal increases in turbidity/changes caused by the proposed work, the absence of vegetated wetlands and submerged aquatic vegetation, and lack of anadromous fish spawning habitat. Based on comments from the National Marine Fisheries Service in response to this public notice, further EFH consultation may be necessary.

We also do not expect any more than minimal, if any, adverse effect to EFH at the Craney Island Rehandling Basin as most sediments and turbidity caused by the discharge of dredged material into the rehandling basin, is confined within the basin by the configuration of the basin.

Tier-I evaluation of the dredge project will be conducted in accordance with the "Inland Test Manual" to determine if the dredged sediments are likely to be a carrier of contaminants. Further, as the applicant has requested that they can discharge the dredged material at the Craney Island dredged materials management facility, that facility will also make a determination regarding the suitability of the dredged material for placement at the facility.

COMMENT PERIOD: Comments on this project should be made in writing or email, addressed to the Norfolk District, Corps of Engineers (ATTN: CENAO-WR-R (Evans)), 803 Front Street, Norfolk, Virginia 23510-1096, should be received by the close of business on June 7, 2013, and include the project number NAO-2006-5947.

PRIVACY & CONFIDENTIALITY: Comments and information, including the identity of the submitter, submitted in response to this Public Notice may be disclosed, reproduced, and distributed at the discretion of the U.S. Army Corps of Engineers. Information that is submitted in connection with this Public Notice cannot be maintained as confidential by the U.S. Army Corps of Engineers. Submissions should not include any information that the submitter seeks to preserve as confidential.

If you have any questions about this project or the permit process, contact John Evans at john.d.evans@usace.army.mil, or 757-201-7794.

FOR THE DISTRICT COMMANDER:

Peter Kube
Chief, Western Virginia Regulatory Section

Attachment: Drawings
Applicant CZM Certification