

Reference: NWS-2013-962; Tesoro Savage Vancouver Energy Distribution Terminal, LLC

MEMORANDUM FOR RECORD

SUBJECT: Revised Permit Application Evaluation Procedure

1. On 12 February 2014, the U.S. Army Corps of Engineers, Seattle District (Corps) received an application from Tesoro Savage Vancouver Energy Distribution Terminal, LLC for Department of the Army (DA) authorization under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act (RHA) to construct an export terminal along the Columbia River at the Port of Vancouver, in Clark County, Washington. The proposed terminal would transfer up to 360,000 barrels of crude oil per day from train to ship for transport primarily to West Coast refineries. Proposed activities in the Columbia River requiring DA authorization from the Corps include seismic and safety upgrades, installing concrete anchors in existing steel piles, minor configuration modifications to existing mooring facilities, and installing a transfer pipeline on one of the mooring facility piers. The transportation of crude oil to the terminal by rail is not within the Corps' control and responsibility and, therefore, not part of the permit review.
2. Based on its review of the application, the Corps initially determined the proposed upgrades and other modifications, which include replacing decking, mooring hardware and fender systems, installing concrete anchors in existing steel piles, and also removing portions of some overwater structures, could be evaluated for potential authorization by Nationwide Permit (NWP) 3 (Maintenance). The Corps also determined the proposed transfer pipeline, which would include piping, a jib crane, manifolds and related facilities, could be evaluated for potential authorization under NWP 12 (Utility Line Activities). These determinations were based on the Corps' understanding that the DA authorization for the original construction of Berths 13 and 14 (Permit No. 93-25, issued to the Port of Vancouver by Portland District on 12 September 1993) contemplated future use of the berths for cargo handling.
3. As part of the application evaluation process, the Corps conducted further research on the use of the Berth 13 and 14 piers. During conversations with the Port of Vancouver (POV), the Corps learned the piers have been used for lay berthing and, on a few occasions, the provisioning of vessels, but not for cargo loading or unloading. In April 2015, the Corps examined the original 1993 permit decision documents and preliminarily concluded cargo handling was not a use contemplated by the Corps in that original permit decision. The permit documentation contemplates "short and long term" lay berthing, not cargo handling. The short term berthing refers to Ready Reserve Vessels, while long term berthing refers to cargo handling vessels. Because the currently proposed work would facilitate a use for the structure "differing from those uses specified or contemplated for it in the original permit", the proposed work does not meet the terms and conditions of NWP 3.

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4. On 6 May 2015, Corps staff met with the applicant and POV to further discuss historic and ongoing use of the Berth 13 and 14 piers. The applicant subsequently submitted additional documentation, including provisioning receipts and a copy of Port of Vancouver Resolution 10-92, which discussed anticipated site improvements at Terminal 4. The Corps reviewed the submitted information and determined it does not sufficiently support the applicant's assertion that use of the Berth 13 and 14 piers for cargo handling was contemplated at the time the original permit was issued. Rather, a plain reading of the original permit application and permit form is that the intended use of the Berth 13 and 14 piers was for lay berthing and not cargo handling. After considering all the available information and completing internal coordination, I have determined the proposed work cannot be authorized by NWP and requires evaluation under the Corps' standard individual permit procedures.

5. Proposed activities requiring Section 10 RHA (only) authorization by the Corps are often evaluated under the Corps' Letter of Permission (LOP) procedures. However, use of the LOP procedures is limited to situations when "the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition" (33 CFR 325.2(e)(1)(i)). As with the review under the NWP process, the Corps regulates the proposed in- and over-water work but does not have sufficient control and responsibility over the associated rail transportation to warrant its review under the National Environmental Policy Act. There is appreciable public opposition to this project. The Corps has already received over 17,000 unsolicited email comments, multiple congressional inquiries, and a number of letters of opposition from local governments and Indian tribes. Given this level of opposition, I have determined the proposed project does not qualify for evaluation under LOP procedures.

6. In light of the above, I have directed my staff to continue evaluating this permit application under our standard individual permit procedures, and will notify the applicant accordingly.



Michelle Walker
Chief, Regulatory Branch
U.S. Army Corps of Engineers, Seattle District



Date