



UNITED FOR A HEALTHY GULF

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February 23, 2015

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RE: RAM Terminals, LLC - Coastal Use Permit Number: P20120190 (Amended)

As you are aware, on December 23, 2014, the 25th Judicial District Court rendered judgment that led to the suspension of RAM Terminals, LLC's ("RAM Terminals") Coastal Use Permit (CUP) P20120190. The court concluded that the Louisiana Department of Natural Resources' action in granting the CUP to RAM Terminals was not supported by a preponderance of the evidence, and remanded the case for further proceedings in accordance with La. R.S. 49:964.

The Louisiana Department of Natural Resources currently lists CUP P20120190 on its "Public Notices for the Office of Coastal Management" [website](#), with a public notice date of January 29, 2015. The public notice states that comments must be received within 25 days of the date of publication of the notice. Accordingly, these comments are timely submitted.

These comments are submitted on behalf of the Gulf Restoration Network (GRN).

We submit these comments in response to the Department of Natural Resources ("DNR") public notice for CUP 20120190 (Amended), and request that this permit be denied. We incorporate by reference our previous comment letters regarding this permit, as well as the Water Institute / ARCADIS CFD report on the conflicts between this RAM terminal project and the Mid-Barataria sediment diversion. Since the submission of those previous comments, there have been no changes to the project that have materially altered the project's scope and significant impacts. We also incorporate by reference the comment letters submitted by the Tulane Environmental Law Clinic on behalf of the Christian Ministers Missionary Baptist Association of Plaquemines, Inc., Ms. Joyce Cornin, and Ms. Velma Davis. We reserve the right to rely on all public comments submitted in response to any public notice regarding CUP Number P20120190 and/or CUP Number P20120190 (Amended). We request a written response to our comments, and request written notification when any action is taken on this Permit (issuance, denial, remand, etc.).

In addition to items I-VI of our previous comment, which DNR has an affirmative duty to address, we explicitly repeat these particular comments in regard to the conflicts between the RAM Terminal project and the Mid-Barataria Sediment Diversion ("restoration project"). To date, these conflicts have been tepidly addressed and mostly ignored by DNR, CPRA, and LDEQ, despite the fact that each of these agencies have affirmative duties to address these environmental and safety concerns.



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In an October 2012 report ("CFD report"), The Water Institute and ARCADIS outlined seven (7) kinds of conflict between the restoration project and the proposed RAM project. The existence of the conflicts emphasizes a dire need for a thorough examination of alternative sites for the RAM project outside of the parish. The seven kinds of conflict are as follows:

1. "...the RAM facility [is] near the intake of the proposed sediment diversion. **Navigation concerns should be fully investigated** to assess the potential impact on vessel traffic generated by the RAM facility with the presence of the cross-flow generated by the proposed Myrtle Grove sediment diversion"
2. "...barges would pass in front of the proposed diversion intake...**Safety concerns for these vessels should be fully investigated** due to the cross-flow"
3. "Figures 5 through 16 show the impact of the **presence of the facility, barges, and ship on the flow field...These changes...affect the sediment-water ratio.**"
4. [For Run #1 and Run #3] The Sediment-Water ratio was reduced by nearly 17%. A reduction in the sediment-water ration [sic] results in a loss of sand load diverted through the outfall channel. **For an assumed pulse of 30 days per year, such a loss of sand load diverted through the outfall is summarized in Table 2. Nearly 500,000 tons of Sand will be lost in a decade due to the presence of the RAM facility.**"
5. "The streamlines shown in Figures 5 through 10 indicate that debris and dust generated during the loading process would be captured in the outfall channel and transported into the marsh areas potentially causing environmental issues. **The investigation of water quality ... should be investigated to assess such environmental impact.**
6. "**There is limited number of lateral bars in the Lower Mississippi River** (downstream of River Mile 90 Above Head of Passes) and **they are targeted as a resource to restore coastal Louisiana. Some of these bars are designated as a resource for the earthen sill needed during drought conditions.** That further reduces the number of lateral bars available for coastal restoration. **The existence of the RAM loading facility on top a lateral bar would severely limit the ability to harness the available sand** directly through dredging or using other agitating techniques to increase the amount of sediment diverted toward the outfall channel.
7. The existence of the RAM loading facility upstream of the diversion intake may pose hazard to the foundation and pilings of the loading facility.



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In response to these issues, CPRA initiated an unusual Memorandum of Agreement (“MOA”) process that sought to resolve items #1 and #2, and one portion of item #4, rather than address all of the conflicts. DNR has an affirmative duty to address these substantial conflicts, particularly in light of the recent court decision. We request a public hearing to describe the CFD report, including an explanation of conflicts not addressed in the CPRA MOA.

Our comments in response to the CFD report are as follows:

1. **Navigation concerns should be fully investigated before any permit is issued.** DNR must analyze and explicitly address the impact to vessel traffic generated by the RAM facility.
2. **Safety concerns for tugs and barges should be fully investigated.** DNR must analyze and explicitly address how a barge strike into the diversion would impact the project. DNR must outline the costs to the public, both to the public works structure –the diversion—as well as the wetland infrastructure-- the loss of protective and productive ecosystem services over time due to delay in ecological restoration from a vessel strike to the restoration project.
3. These changes to river power underscore the dire need for an alternatives analysis that includes areas (at least) away from sandbars targeted for restoration—practically, outside of the parish.
4. **The mere existence of pilings of the RAM terminal sabotages the restoration project. These costs to the public trust must be fully evaluated before issuance of any permit.** Table 2 puts a minimum impact on sediment water ratio at 3%, and a minimum loss of sand at 79,688 tons per decade. Sand is merely the coarsest sediment, the fraction of sediment that is most difficult to move, and, in actuality, the impacts to the restoration project are greater. The CFD report also describes the worst case scenario of a 17% loss of ratio, a loss of 440 thousand tons of sand. But the MOA process has ignored the implications of the mere existence of pilings, so we emphasize that impact here. The fact that the mere existence of pilings causes loss of sediment to restore coastal Louisiana makes critical the need for a full alternatives analysis of terminal sites away from sandbars crucial to coastal restoration efforts and outside of Plaquemines Parish.

The area to be restored by the restoration project requires 6,000 -7,000 cubic yards per acre of fill¹. DNR must calculate the total loss of sediment (not only the sand fraction) due to the loss of river power and the lowering of the sediment / water ratio, and how this ratio lowers the amount of fill, and thus the amount of acres. DNR must calculate

¹ Area “B3 A” and “B3 B”, Phase II Reconnaissance-Level Evaluation of the Third Delta Project, CH2MHILL report to DNR, 2006



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the loss of acres of land, over time, due to the mere existence of the pilings of the RAM terminal, pilings with barges, pilings with barges and ships, etc, as the CFD report did.

We request a public hearing to describe the implications of the loss of fill and loss of protective and productive land to DNR.

DNR must outline the cost to the public of the loss of the wetland infrastructure and the loss of productive and protective ecosystem services over time due to coal and petroleum coke contamination as well as the mere existence of the pilings of RAM terminal project.

5. DNR has an affirmative duty to investigate the impact of coal and petroleum coke contamination effects on wetlands built for the entire life of the restoration project. Coal and Petroleum Coke in restored wetlands are immediate and long term concerns of the restoration program in Plaquemines Parish, because existing terminals (United Bulk and Kinder-Morgan) have already contaminated the Pointe Celeste sandbar in the River, and thus the Lake Hermitage marsh restoration project.

GRN has documented years of discharges at both the United Bulk and Kinder-Morgan Coal and Petroleum Coke export terminals. We request a hearing to display this documentation. Although the terminal projects differ in their compliance practices, the sandbars and riverbanks beneath both terminals are thoroughly contaminated with coal and petroleum coke. RAM terminal is unlikely to differ in this regard.

Reports from multiple observers in the field have described “chunks” of coal and petroleum coke (a byproduct of the crude oil refining process) spread throughout the 600-acre site, in multiple cells. CPRA is conducting an ongoing investigation of the extent of the contamination. GRN staff members have examined the contamination at four sites throughout the Lake Hermitage restoration site. It is not known whether the materials, which are less dense than the sand and sediment that comprise the restoration fill, have risen to the surface due to the action of water, or if the materials are well-mixed into the subsurface layers of the sediment fill. The results of the CPRA investigation should reveal the extent of the contamination, and, if it does not, DNR has an affirmative duty to investigate this impact.

DNR must determine how these contaminants will be spread in the restored area –DNR must describe the likely extent and depth of the contamination, based on the current CPRA investigation of the contaminated Lake Hermitage site.

Coal and Petroleum Coke contain heavy metals that are more likely to become mobilized in acidic soil conditions that do not initially exist in the restored site, but do develop in the wetland site as wetland soils develop from the fill placed by the restoration effort. Thus, contaminants like Arsenic, Mercury, and Lead that do not appear to be mobilized



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in the initial years of the restoration can be mobilized as the soil layer becomes more active ten years into the restoration.

DEQ is currently conducting an investigation of the effects of coal and petroleum coke on wetlands and fish and wildlife of the area. USGS is conducting a study of the impact of coal and petroleum coke on Oregon wetlands subject to similar contamination spilled from rail cars into wetlands. Both studies are likely to have preliminary results by the end of the year. **DNR must incorporate the results of these studies into its assessment of the cost of RAM terminal to the public. RAM terminal must mitigate for the ecological functions lost due to the contamination.**

- 6. RAM terminal must avoid placing pilings on or otherwise obstructing lateral bars in the Lower Mississippi River.** These bars are well-described in a report to CPRA², and the conflict with the South Alliance sandbar described by the CFD report. The polygons in the technical report are a starting point for conflicts incurred by shipping projects in proximity to the borrow areas.

Because these sandbars are also used to protect the drinking water in Belle Chasse and New Orleans from saltwater, there are public safety implications beyond those of merely sabotaging the coastal restoration program. DNR cannot ignore the impacts to the drinking water of New Orleans and Belle Chasse, and must address these concerns in any permit.

These public safety concerns again underscore the dire need for an alternatives analysis that includes areas away from sandbars targeted for restoration, and practically outside of the Parish.

- 7. RAM terminal must describe the additional measures taken to insure the integrity of its pilings and dock.** If RAM terminal chooses to be reckless as to select a site that impacts public safety, sabotages the restoration program, foreseeably contaminates the land, and impedes the safety of river navigation, we merely require that DNR show how it is requiring RAM to secure its own facility against the likely scouring caused by the essential restoration project.

Due to time, we have not included a thorough analysis of the impacts of expanding rail through the west bank of Jefferson and Plaquemines parishes. We request public hearings in Jefferson and Plaquemines Parish to describe to DNR the likely impact of increasing coal train traffic and coal pollution on Westwego, Gretna, Belle Chasse, Jesuit Bend, Oakville, Wood Park, and Myrtle Grove and Ironton.

² Investigation of Potential Mississippi River Borrow Areas FINAL REPORT, July 24th, 2012.
<http://lacoast.gov/reports/project/4940405~1.pdf>



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We also request the right to review and comment on any formal application or supplemental materials submitted by RAM Terminals following the court's December 23, 2014 order. On February 2, 2015, the Office of Coastal Management sent a letter to Lanier & Associates Engineers requesting "thorough documentation that identifies alternative sites that have been considered and the criteria by which each site has been evaluated," as well as "additional information regarding the specific commodities and quantities thereof that may be transported to the facility by rail and the anticipated frequency of such shipments." The letter states that the information requested must be submitted within 30 days of the date of the letter, and that the department will resume processing the application when the information is received. It appears that no such supplemental information has yet been submitted.

We also formally request that a public hearing be held to consider this application. In addition to the December 23, 2014 court judgment, recent local government resolutions (attached as Exhibits 2-3) calling for public hearings regarding the environmental impacts of the proposed RAM terminal, as well as a comprehensive environmental impact study, demonstrate the need for public hearings on this application.

Thank you for the opportunity to comment on RAM Terminals' CUP application.

Sincerely,

Scott Eustis [via email]
Coastal Wetland Specialist, Gulf Restoration Network

Cc: Karl Morgan, Administrator, Permits and Mitigation Division
Chip Kline, Chair, Coastal Protection and Restoration Authority
Kyle Graham, Executive Director, Coastal Protection and Restoration Authority