

# APPENDIX A

## SCOPING PROCESS

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this intended exclusive patent license at the above address. Written comments or objections must be filed within fifteen (15) days from the date of the publication of this notice in the **Federal Register**.

**George B. Tereschuk,**

*Patent Attorney, Intellectual Property Law Division.*

[FR Doc. 02-32817 Filed 12-27-02; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent number 6,387,665 issued May 14, 2002 entitled "Method of Making a Vaccine for Anthrax," and U.S. patent number 6,316,006 issued November 13, 2001 entitled "Asporogenic B. Anthracis Expression System" to VaxGen, Inc. with its principal place of business at 1000 Marina Blvd., Suite 200, Brisbane, Ca 94005. The exclusive field of use will be in field of preventive vaccines against anthrax infection.

**DATES:** File written objections by January 14, 2003.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702-5012.

**FOR FURTHER INFORMATION CONTACT:** For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619-7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619-6664, both at telefax (301) 619-5034.

**SUPPLEMENTARY INFORMATION:** Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 02-32812 Filed 12-27-02; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Intent To Prepare a Supplemental Draft Environmental Impact Statement for the Port of the Americas Port Complex

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Port of the Americas (the applicant) is proposing the development of a transshipment port facility. The proposal included the development of hubs at one or more sites on the south coast of Puerto Rico, in the Municipalities of Ponce, Peñuelas, and Guayanilla. The proposed terminals would need section 10 of the Rivers and Harbors Act, section 404 of the Clean Water Act permits and section 103 of the Marine Protection, Research and Sanctuaries Act at one or more of the sites.

**FOR FURTHER INFORMATION CONTACT:** Edwin E. Muñiz, (787) 729-6905/6944, Chief, Antilles Regulatory Section, U.S. Army Corps of Engineers, 400 Fernandez Juncos Avenue, San Juan, Puerto Rico 00901.

**SUPPLEMENTARY INFORMATION:** On August 28, 2001, the Corps of Engineers published a Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) for the Las Americas Transshipment Port Complex being proposed by the Puerto Rico Infrastructure Financing Authority (AFI) acronym in Spanish, the original applicant. On September 20, 2002, the Corps issued the Notice of Availability of the DEIS for the Proposed Port of the Americas. In the DEIS, the applicant's preferred alternative consisted in the development of terminals at the Guayanilla and Ponce harbors to accommodate Post-Panamax vessels. In the Guayanilla-Peñuelas area, this alternative would include the following:

- Construction of a new pier with a maximum length of 6,000 feet, with support facilities capable of handling as many as four Post-Panamax vessels;
- Discharge of fill material in approximately 110 acres of shallow navigable waters, including approximately 12 acres of mangrove coastal wetlands in the Punta Gotay area, for the development of loading-unloading storage areas and other support facilities;
- Development for value-added activities of as much as 300 acres of a parcel owned by Union Carbide in Peñuelas adjoining Punta Guayanilla;

- Development and/or improvements to other infrastructure within the Guayanilla-Peñuelas area to operate the terminal efficiently, including water, sewers, power, highways and communication services.

In Ponce, the Applicant's Preferred Alternative would include:

- Expansion of the existing transshipment pier to a maximum length of about 3,610 feet to allow simultaneous handling of as many as two Post-Panamax vessels;
- Immediate dredging of the navigation channel and berthing areas to a minimum depth of 45 feet and a maximum of 53 feet to allow the navigation of Post-Panamax vessels;
- Disposal of part of the dredged material at the EPA designated offshore disposal site south of Ponce, while reclaiming for beneficial use for either the fill at the Guayanilla Harbor or fill at uplands in the vicinity;
- Development of approximately 132 acres of upland adjacent to the port for value-added activities.

The applicant (Port of the Americas) notified the Corps of Engineers of their decision to modify their preferred alternative as follows:

- a. The elimination of the proposed fill in the Guayanilla Harbor;
- b. The reduction in length of the proposed pier in the Guayanilla Harbor to a maximum length of 3,000 feet to service Panamax vessels; and
- c. The proposal to fill approximately 70 acres of waters of the U.S. at the Ponce harbor adjacent to the proposed expansion of pier number 8.

Because the proposed changes are significant changes to what was previously proposed, a Supplemental Draft Environmental Impact Statement (S-DEIS) for the Port of the Americas Port Complex will be prepared.

Pursuant to section 10 of the Rivers and Harbors Act structures the Corps of Engineers has regulatory authority over structures and/or work in or affecting navigable waters of the United States. Under section 404 of the Clean Water Act, the Corps of Engineers has regulatory authority to permit the discharge of dredged or fill material into wetlands and other waters of the United States. Also, under section 103 of the Marine Protection, Research and Sanctuaries Act, the Corps of Engineers has regulatory authority over the transportation of dredged material for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR part 228. The guidelines pursuant to section 404(b) of the act require that impacts to the aquatic environment be avoided and minimized to the extent practicable. Permit

applications for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, amenities, or the marine environment, ecological systems or economic potentialities.

In determining whether to issue a permit, the Corps must also comply with other requirements including, but not limited to, the Endangered Species Act, the National Environmental Policy Act, the Coastal Zone Management Act, the Magnuson-Stevens Fishery Conservation and Management Act Section 401 of the Clean Water Act, and other applicable Federal laws. Modifying land for new uses also involves zoning, land use planning, water management, and other regulatory/planning requirements at the local, Commonwealth, and Federal level.

*Issues:* During the scoping process for the preparation of the DEIS, several issues of relevance associated with the development of the PTA were identified. These issues were evaluated in detail in the DEIS for each of the alternatives considered, including the no-action alternative. Each issue was evaluated in terms of a list of measurement indicators to complete a thorough evaluation of the environmental impacts associated with each issue. The following issues were evaluated in detail as part of this DEIS: Fish and Wildlife Resources; Marine Resources/Special Aquatic Sites; Essential Fish Habitat; Threatened or Endangered Species; Ecologically Sensitive Areas; Wetlands, Coastal Zone; Flooding, Water and Sediment Quality; Air Quality; Cultural Resources; Socio-Economic Impacts; Hazardous, Toxic, and Radioactive Wastes; Dredging and Disposal of Dredged Material; Navigation; Infrastructure; Marine Currents; and Noise. The DEIS evaluated the potential direct, indirect, and cumulative environmental consequences. As a result of the comments provided by the resource agencies in reviewing the DEIS, the new applicant's preferred alternative is being developed. The same issues identified in the scoping process for the DEIS will be considered in the S-DEIS. However, the Corps of Engineers will consider any additional scoping issues provided to us.

*Scoping:* On October 31, 2002, the Corps of Engineers and the applicant met with Federal and Commonwealth resources agencies to discuss the alternative to discharge fill in Ponce. As result of the comments provided by the resource agencies in reviewing the DEIS,

the new applicant's preferred alternative is being developed. The Corps of Engineers may hold additional scoping meeting(s) with Federal and State Agencies. At this time, there are no plans for a public scoping meeting. If a public scoping meeting is held by the Corps of Engineers, it will be announced. In addition Federal, State and local agencies, as well as interested private organizations and individuals are encouraged to suggest additional issues not listed above for consideration to submit comments.

*Public Involvement:* We invite the participation of affected Federal, State, and local agencies, and other interested private organizations and individuals that have additional issues not listed above to submit written comments to the information contact provided in this notice no later than 30 days from the date of this notice.

*Coordination:* The proposed action is being coordinated with a number of Federal, Commonwealth, and local agencies including but not limited to the following: U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency, U.S. Coast Guard, Puerto Rico Department of Natural and Environmental Resources, Puerto Rico Environmental Quality Board, Puerto Rico Planning Board, Puerto Rico State Historic Preservation Officer, and other agencies as previously identified in scoping, public involvement, and agency coordination.

*Other Environmental Review and Consultation:* The proposed action would involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act, public interest review, application for Water Quality Certification pursuant to section 401 of the Clean Water Act, and determination of Coastal Zone Management Act consistency.

*S-DEIS Preparation:* We estimate that the S-DEIS will be available to the public on or about March 14, 2003.

Dated: December 17, 2002.

**John R. Hall,**

*Chief, Regulatory Division.*

[FR Doc. 02-32816 Filed 12-27-02; 8:45 am]

**BILLING CODE 3710-AJ-M**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Grant of Exclusive or Partially Exclusive Licenses

**AGENCY:** Department of the Army, U.S. Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses for the pending patents listed under **SUPPLEMENTARY INFORMATION.** Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

**ADDRESSES:** Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, VA 22315-3860.

**DATES:** Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until March 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Patricia L. Howland, (703) 428-6672.

#### SUPPLEMENTARY INFORMATION:

1. *Title:* System and Method for Remotely Monitoring an Interface Between Dissimilar Materials. A system for efficiently and cost effectively monitoring the status of the interface between two dissimilar media is provided. In a preferred embodiment, the system uses principles applied from the theory of time domain reflectometry (TDR), together with novel circuitry and low cost narrow band telemetry, to provide real time monitoring on a continuous basis, as needed. The circuitry involved permits operation of the system without relying on relative values of signal amplitude while employing a novel feedback function that sets the pulse repetition frequency instantaneously to permit an optimum data collection rate as well as a separate measure of the status based on the system operating parameters. It has particular application to real time monitoring and alerting to the effect of scour events in waterways.

*Serial No.:* 09/879,001.

*Date:* 6/13/2001.

2. *Title:* Natural Cue Surface Bypass Collector. A method that employs natural hydraulic cues to guide migrating fish, in particular juvenile fish, to bypass channels to circumvent barriers to their downstream migration, such as booms, weirs, dams, hydroelectric powerhouses, and sluice gates. The flow entering into the turbines of the powerhouse are slightly modified to create a hydraulic gradient in the strain rate hydraulic variables that guides fish to the entrance of a surface bypass collector.

*Serial No.:* 10/045,381.

*Date:* 1/15/2002.

3. *Title:* Mycoherbicidal Compositions and Methods of Preparing and Using the



DEPARTMENT OF THE ARMY  
JACKSONVILLE DISTRICT CORPS OF ENGINEERS, ANTILLES OFFICE  
400 FERNANDEZ JUNCOS AVENUE  
SAN JUAN, PUERTO RICO 00901-3299

REPLY TO  
ATTENTION OF

Antilles Regulatory Section

JAN 17 2003

**PUBLIC NOTICE**  
Supplemental Draft Environmental Impact Statement

**TO WHOM IT MAY CONCERN:** The purpose of this notice is to inform interested parties that on December 30, 2002, a notice of intent to prepare a Supplemental Draft Environmental Impact Statement (S-DEIS) for the proposed Port of the Americas port complex was published in the Federal Register.

**PROJECT NAME:** Port of the Americas.

**LOCATION:** Puerto Rico

**BACKGROUND:**

Pursuant to Section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers (Corps) has regulatory authority over structures and/or work in or affecting navigable waters of the United States. Under Section 404 of the Clean Water Act, the Corps has regulatory authority to permit the discharge of dredged or fill material into wetlands and other waters of the United States. Also, under Section 103 of the Marine Protection, Research and Sanctuaries Act, the Corps has regulatory authority over the transportation of dredged material for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR Part 228. The guidelines pursuant to Section 404(b) of the act require that impacts to the aquatic environment be avoided and minimized to the extent practicable. Permit applications for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, amenities, or the marine environment, ecological systems or economic potentialities.

In determining whether to issue a permit, the Corps must also comply with other requirements including, but not limited to, the Endangered Species Act, the National Environmental Policy Act, the Coastal Zone Management Act, the Magnuson-Stevens Fishery Conservation and Management Act Section 401 of the Clean Water Act, and other applicable Federal laws.

On August 28, 2001, the Corps published a Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) for the Las Americas Transshipment Port Complex being proposed by the Puerto Rico Infrastructure Financing Authority (AFI, acronym in Spanish), the original applicant. On September 20, 2002, the Corps issued

the Notice of Availability of the DEIS for the Proposed Port of the Americas. In the DEIS, the applicant's preferred alternative consisted in the development of terminals at the Guayanilla and Ponce harbors to accommodate Post-Panamax vessels. In the Guayanilla-Peñuelas area, this alternative would include the following:

a. Construction of a new pier with a maximum length of 6,000 feet, with support facilities capable of handling as many as four Post-Panamax vessels;

b. Discharge of fill material in approximately 110 acres of shallow navigable waters, including approximately 12 acres of mangrove coastal wetlands in the Punta Gotay area, for the development of loading-unloading storage areas and other support facilities;

c. Development for value-added activities of as much as 300 acres of a parcel owned by Union Carbide in Peñuelas adjoining Punta Guayanilla;

d. Development and/or improvements to other infrastructure within the Guayanilla-Peñuelas area to operate the terminal efficiently, including water, sewers, power, highways and communication services.

In Ponce, the Applicant's Preferred Alternative would include:

a. Expansion of the existing transshipment pier to a maximum length of about 3,610 feet to allow simultaneous handling of as many as two Post-Panamax vessels;

b. Immediate dredging of the navigation channel and berthing areas to a minimum depth of 45 feet and a maximum of 53 feet to allow the navigation of Post-Panamax vessels;

c. Disposal of part of the dredged material at the EPA designated offshore disposal site south of Ponce, while reclaiming for beneficial use for either the fill at the Guayanilla Harbor or fill at uplands in the vicinity;

d. Development of approximately 132 acres of upland adjacent to the port for value-added activities.

**PROPOSED PROJECT CHANGES:** The applicant (Port of the Americas) notified the Corps of Engineers of their decision to modify their preferred alternative as follows:

a. The elimination of the proposed fill in the Guayanilla Harbor;

b. The reduction in length of the proposed pier in the Guayanilla harbor to a maximum length of 3,000 feet to service Panamax vessels; and

c. The proposal to fill approximately 70 acres of waters of the U.S. at the Ponce harbor adjacent to the proposed expansion of pier number 8.

Because the proposed changes are significant changes to what was previously proposed, a Supplemental Draft Environmental Impact Statement (S-DEIS) for the Port of the Americas Port Complex will be prepared.

#### **SCOPING AND ISSUES:**

During the scoping process for the preparation of the DEIS, several issues of relevance associated with the development of the PTA were identified. These issues were evaluated in detail in the DEIS for each of the alternatives considered, including the no-action alternative. Each issue was evaluated in terms of a list of measurement indicators to complete a thorough evaluation of the environmental impacts associated with each issue. The following issues were evaluated in detail as part of this DEIS: Fish and Wildlife Resources; Marine Resources/ Special Aquatic Sites; Essential Fish Habitat; Threatened or Endangered Species; Ecologically Sensitive Areas; Wetlands, Coastal Zone; Flooding, Water and Sediment Quality; Air Quality; Cultural Resources; Socio-Economic Impacts; Hazardous, Toxic, and Radioactive Wastes; Dredging and Disposal of Dredged Material; Navigation; Infrastructure; Marine Currents; and Noise. The DEIS evaluated the potential direct, indirect, and cumulative environmental consequences. As result of the comments provided by the resource agencies in reviewing the DEIS, the new applicant's preferred alternative is being developed. The same issues identified in the scoping process for the DEIS will be considered in the S-DEIS. However, the Corps will consider any additional scoping issues provided to us.

On October 31, 2002, the Corps and the applicant met with Federal and Commonwealth resources agencies to discuss the alternative to discharge fill in Ponce. As result of the comments provided by the resource agencies in reviewing the DEIS, the new applicant's preferred alternative is being developed. The Corps may hold additional scoping meeting(s) with Federal and State Agencies. At this time, there are no plans for a public scoping meeting. If the Corps holds a public scoping meeting, it will be announced. In addition, Federal, State and local agencies, as well as interested private organizations and individuals are encouraged to suggest additional issues not listed above for consideration.

**COORDINATION:** The proposed action is being coordinated with a number of Federal, Commonwealth, and local agencies including but not limited to the following: U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection



**DEPARTMENT OF THE ARMY**  
JACKSONVILLE DISTRICT CORPS OF ENGINEERS, ANTILLES OFFICE  
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SAN JUAN, PUERTO RICO 00901-3299

REPLY TO  
ATTENTION OF

Antilles Regulatory Section

**FEB 20 2003**

**PUBLIC NOTICE**  
Supplemental Draft Environmental Impact Statement

On December 30, 2002, a Notice of Intent (NOI) to prepare a Supplemental Draft Environmental Impact Statement (S-DEIS) for the proposed Port of the Americas complex was published in the Federal Register. Additionally, a Public Notice was issued on January 17, 2003, notifying the public of this action. Copies of the NOI and Public Notice are located at the following Internet address:  
[http://www.saj.usace.army.mil/permit/hot\\_topics/POAEIS/content.htm](http://www.saj.usace.army.mil/permit/hot_topics/POAEIS/content.htm)

We want to inform the interested parties and public in general that the period to submit comments have been extended until February 28, 2003.

Comments should be submitted in writing to the following address:

Chief, Antilles Regulatory Section  
ATTN: Port of the Americas  
U.S. Army Corps of Engineers  
400 Fernández Juncos Avenue  
San Juan, Puerto Rico 00901

*Marie Stevens*  
for John R. Hall  
Chief, Regulatory Division

## Issues Submitted to the COE by mail or email

Issue (Describe the Issue)	Source	Will be considered?
<p><b>Preferred Alternative</b></p> <ul style="list-style-type: none"> <li>• Ponce only appears to be an environmentally superior choice because the impacts are actually not known, whereas those at Guayanilla are well known given the more thorough environmental baseline assessment.</li> <li>• The Peñuelas-Guayanilla corridor is a classic Brownfields site, and there are many parcels, suitable for redevelopment. If this were not so, why would AFI have applied for and the Environmental Protection Agency (EPA) have awarded it two Brownfields grants under CERCLA and RCRA authorities for just such a purpose?</li> <li>• Such impacts were not adequately addressed in the Draft Environmental Impact Statement (DEIS) prepared for the original project. The development of value-added areas in both Guayanilla-Peñuelas and Ponce, as well as potential development along the corridor between the two sites should be detailed in the SDEIS.</li> <li>• The concerns related to the preferred alternative of developing port facilities at two locations rather than one; environmental.</li> </ul>	<p>2,3,4</p>	<p>The Ponce site is now the only area of the Project, and therefore none of the issues related to the Guayanilla-Peñuelas area apply.</p>
<p><b>Cummulative Impacts</b></p> <ul style="list-style-type: none"> <li>• Potential Impacts were not thoroughly addressed in the original EIS. We recommend that these issues be addressed again in the Supplement and that development at the Ponce Port, alone, should continue to be addressed as a possible alternative. <ul style="list-style-type: none"> <li>• The Project would still require a substantial dock in Guayanilla Bay. The direct and indirect impacts of this dock on adjacent seagrass beds should be addressed.</li> <li>• If all portions of the pier would involve solid fill, the potential impacts to water circulation should be addressed.</li> <li>• The Ponce development would require additional fill and dredging.</li> <li>• We recommend that the project footprints for both Guayanilla Bay and Ponce Bay be superimposed on the existing benthic surveys done for</li> </ul> </li> </ul>	<p>1,2,3,4</p>	<p>Most of these issues relate to the prior alternative of two terminals. Since now the Project includes only one terminal and one site at the Ponce Harbor and Port, none of these issues are relevant.</p> <p>Also, since the design of the Port at Ponce now does not include any fill at the Ponce Harbor, none of the</p>

Issue (Describe the Issue)	Source	Will be considered?
<p>these areas to determine if any additional areas would be impacted. The project footprint should include all piers, berthing areas, navigational channels, turning basins and fill areas.</p> <ul style="list-style-type: none"> <li>• Any areas not covered in the previous benthic study should be surveyed and included in the SEIS.</li> <li>• Baseline environment at Ponce is lacking while the environment at Guayanilla has been exceedingly well characterized. This lack of knowledge fosters an inability to thoroughly identify and quantify impacts to the Ponce environment.</li> <li>• Fill area in Ponce is generally regarded as less ecologically important, 70 acres of fill is still a significant impact.</li> <li>• The potential direct, indirect and cumulative effects of the development of the Project should be analyzed.</li> <li>• Environmental changes caused by the placement of a significant amount of fill in submerged lands, water quality, changes due to increased vessel traffic, need for dredging in Guayanilla and lack of sediment sampling in areas of both bays where re-suspension from vessel traffic is likely.</li> <li>• It is imperative that the draft SEIS carefully examine the ecological value of the areas in Ponce Bay that could be impacted.</li> <li>• Is not clear that the Appendix I include the new 70-acre fill area for Ponce.</li> <li>• The SEIS should identify which elements of the port operations are “water dependent” and the criteria used to determine the elements “water dependency”.</li> <li>• EPA believes that by including detailed project drawings and other relevant information, it will be easier to determine whether there are opportunities for the further minimization of unavoidable impacts.</li> <li>• We recommend that the draft SEIS examine whether some of the Ponce Port components could be placed on adjacent, mostly upland sites.</li> </ul>		<p>issues on Essential Fish Habitat or marine life related to fill activities are applicable.</p> <p>On the issues raised by USEPA, the current SDEIS includes as detailed drawings as needed for the environmental analyses under NEPA. The application for the COE Permits under Sections 10, 103 and 404, a copy of which will be provided to USEPA, includes detailed drawings.</p>

Issue (Describe the Issue)	Source	Will be considered?
<p><b>Endangered Species</b></p> <ul style="list-style-type: none"> <li>• Antillean manatee (<i>Thrichechus manatus manatus</i>), brown pelican (<i>Pelecanus occidentalis</i>), roseate tern (<i>Sterna dougalli dougalli</i>), and the Puerto Rico nightjars (<i>Caprimulgus noctitherus</i>) may occur within the modified action area, we recommend that a supplemental to the Biological Assessment addressing proposed modifications to the project be submitted.</li> </ul>	2	An amended Biological Assessment was prepared and submitted to USFWS. On December 3, 2002, USFWS submitted a letter to USACE endorsing the findings of the Amended Biological Assessment.
<p><b>Essential Fish Habitat</b></p> <ul style="list-style-type: none"> <li>• The benthic studies and EFH Assessment prepared for the project as originally proposed do not include the 70-acres portion of Ponce Bay where fill placement is now proposed.</li> <li>• These sections of the SDEIS should be expanded based on information from additional studies of the benthic flora and fauna in the area of proposed fill.</li> <li>• Similar evaluations of marine biota and EFH resources in Guayanilla Bay should be conducted based on the design of the proposed 3,000 foot long dock and related facilities.</li> <li>• Accurate quantification of acreage of EFH to be affected by construction, including piers, and a demonstration of appropriate avoidance, minimization and mitigation of impacts to EFH and associated fishery resources.</li> <li>• It is important that the entire area potentially impacted by the proposed action be properly characterized in the draft SEIS. We recommend the document include an overlay of the project footprint over benthic habitat maps of the area.</li> </ul>	3,4	The amended EFH Assessment in this SDEIS includes the Ponce Harbor and the area previously proposed for fill. Since this fill is not proposed now, the issue is not relevant. Similarly, since no activity will occur at the Guayanilla Bay, there will be no issues at this area related to EFH. A benthic map of the Ponce Harbor is included in the SDEIS.
<p><b>Mitigation</b></p> <ul style="list-style-type: none"> <li>• During the review of the draft EIS and the October 10, 2002 Public Notice, we noted an apparent discrepancy between the documents regarding the extent of jurisdictional wetlands potentially impacted by the proposed project. Is very important clarify the issue in the SDEIS.</li> <li>○ As specific example of an apparent discrepancy, at the Ponce site, there is</li> </ul>	4	The JD was revised in the SDEIS and reflects the current evaluation of wetlands. The maps in the JD are more accurate than the National Wetlands

Issue (Describe the Issue)	Source	Will be considered?
<p>a 132 acre parcel directly south and contiguous of Route 52 proposed for the construction of “value-added” activities. The National Wetlands Inventory map shows large areas of wetlands on the parcel, while the applicant’s delineation does not show any wetlands.</p> <ul style="list-style-type: none"> <li>○ We are concerned that potential jurisdictional wetlands may be impacted on this site under the current proposal.</li> <li>○ At the Guayanilla Bay portion of the project, there appears to be another discrepancy in the acreage of wetland fill between the draft EIS and the October 10, 2002 Public Notice. <ul style="list-style-type: none"> <li>▪ Appendix P of the draft EIS indicates that there are wetlands delineated on two parcels that will be impacted. The first parcel is directly east of the new port complex and fronts Tallaboa Bay. The other is roughly triangular area northeast of the new complex and directly west of Route 337.</li> <li>▪ The Public Notice indicates that the only wetland fill would be the 12 acres of mangrove that were included as part of the original 122 acre fill, even though the two parcels described above are included in the fill footprint as depicted in the map included in the Public Notice.</li> <li>▪ Is important clarify this issue in the draft SEIS regarding the parcels mentioned.</li> <li>▪ Is important detailed information on the measures that would be used to mitigate for the approximately 70 acres of shallow water fill be included in the SEIS.</li> </ul> </li> </ul>		<p>Maps referred in this issue, since they are at a 1:20,000 scale, instead of 1:200,000.</p> <p>None of the issues related to Guayanilla Bay are now applicable with the elimination of that site.</p> <p>Since no fill of marine lands is planned, no mitigation on this issue is required. The Applicant will provide adequate mitigation as defined by USACE for the 59 acres of wetlands to be filled near the Port of Ponce.</p>
<p><b>SDEIS</b></p> <ul style="list-style-type: none"> <li>● The inadequacies of the DEIS identified by NMFS in the letter dated November 20, 2002, should be addressed in the SEDIS.</li> <li>● This issue are based on the information contained in the draft EIS.</li> <li>○ <b>RCRA/Brownfields</b> - Figure 3-59 of the draft EIS is a good overview of the Guayanilla site, it should not be used to definitively indicate the locations and extent of the various solid waste management units</li> </ul>	3,4	<p>Most of the issues raised by NMFS pertain to the Guayanilla Harbor and the proposed fill at the Ponce Harbor. Since both elements were eliminated, these issues are not relevant</p>

Issue (Describe the Issue)	Source	Will be considered?
<p>(SWMU). The map broadly reflects the general distribution of the SWMU's at the Union Carbide site, but has a number of details that are in error.</p> <ul style="list-style-type: none"> <li>Table 3-17 of the draft EIS, should be reflected in future NEPA documents:</li> </ul> <p><b>SWMU Status</b></p> <p>No. 2 Final Decisions regarding further actions still under review by EPA.</p> <p>No. 4 No longer classified as SWMU. Now classified as part of Area of Concern (AOC) #1. Final Decision regarding further actions fro AOC #1 still under review by EPA.</p> <p>No. 12 Excavation, treatment and disposal of contaminated soil required.</p> <p>No. 24 Area cleaned and units removed in 1989/1990. Also, based on 1988 determination, is no longer classified as a hazardous waste management unit.</p> <p>No. 25 (West and East Aeration Basins, a/k/a Surface Impoundments (Sis) #1 #2) East Aeration Basin (SI #2) still active West Aeration Basin (SI #1) is no longer receiving waste, and is required to undergo closure. Closure is not yet completed.</p> <p>No. 27 Undergoing corrective action.</p> <p>No. 29 No further corrective action recommended, but final decision still pending.</p> <p>Additionally, please not that the following SWMU's may be impacted by the proposed construction of a road to access the port facility at Guayanilla: SWMU Nos. 1,5,11,14,17,21,22,23,27,31 and 33.</p>		<p>any more.</p> <p>None of the issues related to the Union Carbide Parcel and the status of the SWMU are now relevant as that area was eliminated from the Project.</p>
<p><b>Dredging</b></p> <p>The draft EIS describes dredging at Ponce as being anywhere between 45 feet to 53 feet. Dredging plans need to be specific in the draft SEIS Ocean disposal of dredged material need to be evaluated as part of the Section 103 Compliance Determination. In addition: Page ES – 5/6 The loss of Ponce Bay bottom due to dredging outside the existing</p>	4	<p>The SDEIS now clearly specifies that dredging will be to a maximum draft of 50 feet.</p> <p>The SDEIS addresses that 238 acres of mud bottoms will be dredged at the</p>

Issue (Describe the Issue)	Source	Will be considered?
<p>channel is not on the list of potential impacts.</p> <p>Environmental consequences of dredging outside the existing channel are dismissed because of the purportedly low ecological value in its present condition without adequate support for this conclusion.</p> <p>Page 2-4 Section 2.3.2.2 – The text states that 55 feet is necessary for safety, but indicates that 45 feet is acceptable.</p> <p>The dredged material does not have to be free of contaminant substances, but rather it must be shown through bioassay testing to meet the trace contaminant provisions of 40 CFR 227.6.</p> <p>Page 3-32 Bullets – The bullets do not indicate whether blasting will be required to remove the rock.</p> <p>Page 3-92 to 94 – Please note that EPA does not have sediment criteria that it recommends, including those used by the applicant</p> <p>Page 4-77 – The arguments regarding the spread of material is irrelevant. EPA anticipates that the direct effects (burial of organism) would be limited to the site, and that the benthic communities would eventually reestablish/decolonize following the cessation of disposal.</p>		<p>navigation channel and turning basin of the Ponce Bay to 50 feet bmsl. The direct, indirect and cumulative impacts of the dredging are included in the SDEIS. The bottom is soft, composed of sand and mud, and there are no rocks to be dredged, and blasting is not necessary.</p> <p>Test results included in the DEIS conducted by PPB Labs demonstrate that there are no contaminants of concern in the sediments to be dredged. On November 2, 2003, USEPA and the USACE signed the Monitoring and Management Plan for the ODMDS designated for the Ponce Harbor.</p>

- 1 United States Fish and Wildlife Service – letter of January 23, 2003
- 2 Dr. Kit R. Krickenberger – letter of January 29, 2003
- 3 National Marine Fisheries – letter February 3, 2003
- 4 Environmental Protection Agency – letter of February 4, 2003, February 5, 2003



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Boqueron Field Office  
Carr. 301, KM 5.1, Bo. Corozo  
P.O. Box 491  
Boqueron, PR 00622

January 23, 2003

Mr. Edwin Muñiz  
Chief, Antilles Regulatory Section  
Department of the Army  
Jacksonville District Corps of Engineers, Antilles Office  
400 Fernandez Juncos Avenue  
San Juan, Puerto Rico 00901-3299

Re: NOI Supplemental EIS, Port of the Americas  
Ponce and Guayanilla, Puerto Rico

Dear Mr. Muñiz:

We are responding to the above referenced Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS) for the Port of the Americas project. The NOI specifically requests additional scoping comments on the revised preferred alternative. Our comments are issued in accordance with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*), and the Endangered Species Act of 1973, as amended (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

The applicant has modified the preferred alternative to include a transshipment pier in Guayanilla with a maximum length of 3,000 feet. All fill activities in Guayanilla Harbor would be eliminated. Ponce harbor would require a fill of approximately 70 acres of sub-tidal lands in the vicinity of the Pier 8 expansion, and the immediate dredging of the navigation channel and berthing areas in Ponce to a maximum depth of 53 feet. About 132 acres of uplands will be developed for value added activities.

While the newly modified preferred alternative would greatly reduce the impacts of the project from the original plan, we remain concerned about the indirect, secondary, and cumulative impacts of the port development at two sites. These potential impacts were not thoroughly addressed in the original EIS. For that reason, we recommend that these issues be addressed again in the Supplement and that development at the Ponce port, alone, should continue to be addressed as a possible alternative.

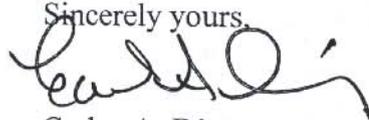
09 JAN 28 PM 3:51  
U.S. Fish & Wildlife Service  
Boqueron Field Office

Regarding additional scoping needs, we understand that the project would still require a substantial dock in Guayanilla Bay. The direct and indirect impacts of this dock on adjacent seagrass beds should be addressed. Based on studies conducted for the EcoElectrica pier, the entire footprint of the pier should be considered for impacts to seagrass beds from shading. If all or portions of the pier would involve solid fill, the potential impacts to water circulation should be addressed. The Ponce development would require additional fill and dredging. We recommend that the project footprints for both Guayanilla Bay and Ponce Bay be superimposed on the existing benthic surveys done for these areas to determine if any additional areas would be impacted. The project footprint should include all piers, berthing areas, navigational channels, turning basins and fill areas. Any areas not covered in the previous benthic study should be surveyed and included in the SEIS.

Because the endangered Antillean manatee (*Trichechus manatus manatus*), brown pelican (*Pelecanus occidentalis*), roseate tern (*Sterna dougalli dougalli*), and the Puerto Rican nightjar (*Caprimulgus noctitherus*) may occur within the modified action area, we recommend that a supplement to the Biological Assessment addressing proposed modifications to the project be submitted to the Service.

We concur that the proposed changes in the preferred alternative for the port development are substantial and will require re-evaluation of the project. We look forward to reviewing the revised document. Thank you for the opportunity to comment on this action.

Sincerely yours,



Carlos A. Díaz  
Assistant Field Supervisor

bby/mtr

cc:

DNER, San Juan

COE, Jacksonville

EPA, New York

EPA, San Juan

EQB, San Juan

NMFS, Lajas

PRPB, San Juan

DOI, Regional Environmental Officer, Atlanta (ER 03/02)

DOI, OEPC, Washington DC (ER 03/02)

January 29, 2003

Mr. Edwin E. Muniz  
Chief, Antilles Regulatory Section  
400 Fernandez Junco Avenue  
San Juan, Puerto Rico 00901

VIA FACSIMILE AND E-MAIL

Dear Mr. Muniz:

On December 30, 2002, the Army Corps of Engineers published a Notice of Intent to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the Port of the Americas Port Complex I in the *Federal Register*. On January 14, 2002, you notified me via e-mail as to the Corps' decision. While my work requires that I review the *Federal Register* daily and I became aware of the Notice upon its publication, the same cannot be said of the public at large. Providing those who have demonstrated a past interest in the Port project with only two weeks to provide comments (i.e., your e-mail notice of January 14, 2002 versus the FR Notice of December 30, 2002) on such a significant proposed change in the scope of the project does not seem to meet either the spirit or the letter of the law requiring such notification. Unless you singled me out for late notification, you should extend the period for public comment at least another two weeks so as to provide the public with ample opportunity for review. Because you communicated via e-mail, you certainly could have provided the public with notice much closer in time to the actual publication of the Federal Register notice.

The scoping comments that I provided in correspondence dated October 4, 2001 are equally applicable to the "new" preferred action. Because the Notice explicitly states that "[t]he same issues identified in the scoping process for the DEIS will be considered in the SDEIS", I will not re-state my prior scoping comments of October 4, 2001 in this correspondence. However, if I have misinterpreted the above assertion and it is the Corps intention to discard the first round of scoping comments, please consider my prior scoping comments of October 4, 2001 to be incorporated herein by reference and thereby re-submitted with this letter.

While I do not have any new scoping comments to add, I would observe that a concern articulated in the original round of scoping comments seems to have materialized. Others and I observed that knowledge of the baseline environment at Ponce is lacking, while the environment at Guayanilla has been exceedingly well characterized. This lack of knowledge fosters an inability to thoroughly identify and quantify impacts to the Ponce environment, which in turn has resulted in the functional equivalent of a "false positive" with respect to the favorable impact assessment that results for the Ponce site. When compared to Guayanilla, Ponce only appears to be an environmentally superior choice because the impacts at Ponce are actually not known, whereas those at Guayanilla are well known given the more thorough environmental baseline assessment.

This phenomenon would seem to be borne out by the statements made by Mr. Hector Jimenez Juarbe as reported in the Caribbean Business on December 19, 2002 (Enclosure). Mr. Juarbe is quoted as saying "The 70 acres that need to be filled in Ponce don't present any environmental concerns. In Guayanilla, the area was regularly frequented by eight manatees that mated and fed on the under sea grasses." However, the same is true of Ponce. Manatee have frequently been seen near the Ponce harbor in-water structures, and the brown pelican, which was

also cited in the article as a reason for abandoning Guayanilla, are found throughout Puerto Rico's coastal environments, including Ponce. Puerto Rico DNER survey data prove this point.

The statement attributed to Mr. Juarbe about the unavailability of land in Guayanilla to use for container parking is also disturbing. Nothing could be further from the truth. The Penuelas-Guayanilla corridor is a classic Brownfields site, and there are many, many parcels suitable for re-development. If this were not so, why would AFI have applied for and the Environmental Protection Agency (EPA) have awarded it two Brownfields grants under CERCLA and RCRA authorities for just such a purpose?

If AFI has re-defined the proposed alternative, it must also have re-submitted the appropriate permit applications. Please consider this correspondence a request to receive a copy of these re-submitted applications. I would like to also renew my request to receive the following: (1) copies of the originally-submitted permit applications, (2) copies of the appendices to the DEIS; and (3) a copy of the original scoping meeting in English. To date, you have not even acknowledged that these requests have been made – let alone responded to them. By not providing this information, you are severely handicapping those who wish to participate in the public comment process.

Sincerely,

Kit R. Krickenberg, Ph.D.

Enclosure



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southeast Regional Office  
9721 Executive Center Drive N.  
St. Petersburg, Florida 33702  
(727) 570-5317, FAX 570-5300

February 3, 2003 F/SER4:LC

Edwin E. Muñiz  
Chief, Antilles Regulatory Section  
Department of the Army, Corps of Engineers  
400 Fernandez Juncos Avenue  
San Juan, Puerto Rico 00901-3299

03 FEB -5 01 25

Dear Mr. Muñiz:

The National Marine Fisheries Service (NMFS) has reviewed the public notice dated January 17, 2003, inviting additional comments regarding the proposed modification of the preferred alternative for the Port of the Americas transshipment port complex. The U.S. Army Corps of Engineers has requested written comments regarding issues that should be addressed in a Supplemental Draft Environmental Impact Statement (SDEIS) being prepared to evaluate significant modifications of the Port of the Americas project. The project is located in Guayanilla Bay, Guayanilla/Peñuelas, and Ponce Bay, Ponce, Puerto Rico.

The applicant has modified the preferred alternative to eliminate the proposed placement of fill in Guayanilla Bay; reduce the length of the proposed pier in Guayanilla from 6,000 to 3,000 feet to service Panamax vessels; fill a 70-acre area of submerged land in Ponce Harbor adjacent to pier number 8; and expand pier 8 to a length of 3,610 feet to accommodate up to two Post-Panamax vessels. The immediate dredging of the navigation channel and berthing areas in the Ponce Harbor to a maximum depth of 53 feet, disposal of the dredged material offshore, and the development of approximately 132 upland acres adjacent to the Port of Ponce for value-added activities remain as project components. It is unclear from the public notice whether the development of up to 300 acres of land in the Guayanilla/Peñuelas area for value-added activities is still contemplated as part of port complex development.

While the proposed modifications to the preferred alternative would reduce the direct project impacts on Essential Fish Habitat (EFH) in Guayanilla Bay, the NMFS remains concerned about the project's direct, indirect, and cumulative effects on EFH and associated fishery resources from development of a port complex at two locations. Such impacts were not adequately addressed in the Draft Environmental Impact Statement (DEIS) prepared for the original project. The development of value-added areas in both Guayanilla/Peñuelas and Ponce, as well as potential development along

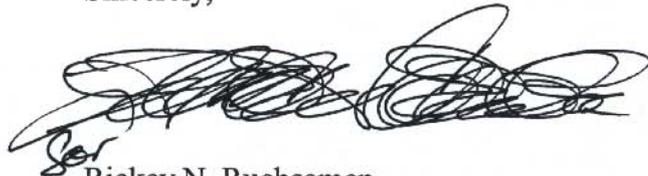


the corridor between the two sites should be detailed in the SDEIS and the potential direct, indirect, and cumulative effects of this development should be analyzed. In addition, the benthic studies and EFH Assessment prepared for the project as originally proposed do not include the 70-acre portion of Ponce Bay where fill placement is now proposed. Therefore, these sections of the SDEIS should be expanded based on information from additional studies of the benthic flora and fauna in the area of proposed fill. Similar evaluations of marine biota and EFH resources in Guayanilla Bay should be conducted based on the design of the proposed 3,000 foot long dock and related facilities.

In addition to the issues identified above, the inadequacies of the DEIS identified by the NMFS in our letter of November 20, 2002, should be addressed in the SDEIS. These concerns relate to the preferred alternative of developing port facilities at two locations rather than one; environmental changes caused by the placement of a significant amount of fill in submerged lands; water quality changes due to increased vessel traffic; need for dredging in Guayanilla; and lack of sediment sampling in areas of both bays where resuspension from vessel traffic is likely. We also requested accurate quantification of acreage of EFH to be affected by construction, including piers; and a demonstration of appropriate avoidance, minimization, and mitigation of impacts to EFH and associated fishery resources.

Thank you for the opportunity to identify issues to be addressed during the preparation of a SDEIS for the proposed Port of the Americas transshipment port complex. Questions related to our comments on the proposed project and marine fishery resource issues should be directed to Dr. Lisamarie Carrubba in our Cabo Rojo, Puerto Rico, office at 787/851-3700.

Sincerely,

A handwritten signature in black ink, appearing to read "Rickey N. Ruebsamen", written over a horizontal line.

Rickey N. Ruebsamen  
Acting Assistant Regional Administrator  
Habitat Conservation Division

cc:  
NMFS-PR  
CFMC  
FWS-PR  
EPA-NY  
EPA-PR



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

FEB 04 2003

Edwin Muniz, Chief  
Antilles Regulatory Section  
U.S. Army Corps of Engineers  
400 Fernandez Juncos Avenue  
San Juan, Puerto Rico 00901

Dear Mr. Muniz:

The Environmental Protection Agency (EPA) has reviewed the U.S. Army Corps of Engineers' (USACE) Public Scoping Notice for the draft supplemental environmental impact statement (SEIS) being prepared for the proposed Port of the Americas Project, located in Ponce and Guayanilla, Puerto Rico.

The proposed Port of the Americas is one of several strategic initiatives proposed by the Commonwealth of Puerto Rico to promote economic development of the southern region of the Island. Specifically, the project is designed to provide world-class, deep-draft, port facilities for Post-Panamax containerships in Puerto Rico, and for transshipment of cargo containers to international and local markets. The stated goal of the project is to capture 2.3 million twenty-foot equivalent units (TEUs) per year of cargo.

EPA provided scoping comments on the proposed project on July 10, 2001 and October 30, 2001. In these letters, EPA strongly recommended reducing the proposed 122 acres of fill at Guayanilla because it is unlikely that EPA would be able to support such an action. Moreover, EPA participated in several interagency meetings on the proposed project at which we stated our continued concern with the extensive amount of fill proposed at Guayanilla. Additionally, EPA commented on the preliminary draft EIS on May 23, 2002, and reiterated our concern about the extensive amount of shallow water fill and the impacts to mangroves. Further, EPA stressed that the preliminary draft EIS did not contain adequate information to determine compliance with Section 404 of the Clean Water Act and that the specific information outlined in our letter should be included in the draft EIS. The USACE issued a Notice of Availability for the draft EIS on September 20, 2002. However, prior to the issuance of EPA's comment letter on the draft EIS, the project applicant notified the USACE of their decision to modify their preferred alternative. As a result of the significant changes to the preferred alternative, a decision to prepare a supplemental EIS was made and another Public Scoping Notice was issued.

In the October 2002 draft EIS, the applicant's preferred alternative called for the development of port facilities in Ponce and Guayanilla. The draft EIS described the Guayanilla component of the preferred alternative as consisting of the construction of a berthing pier approximately 6,000 feet long, and capable of mooring as many as four Post-Panamax ships at the same time. Additionally, this alternative called for 110 acres of fill in Guayanilla Bay, and impacts to 12 acres of mangrove wetlands adjacent to the new pier and Gotay Bay, and the construction of parking and container storage and staging areas as well as administrative and operation facilities.

This component of the project also called for the development of approximately 300 acres of the former Union Carbide properties in Penuelas, for the development of value-added industries. EPA is pleased to note, that according to the Public Scoping Notice, the new preferred alternative being evaluated in the draft SEIS would eliminate the proposed 110 acres of fill at Guayanilla, and reduce the proposed pier length to 3,000 feet. It is EPA's understanding that the upland components of the project would be similar to those outlined in the draft EIS.

The October 2002 draft EIS stated that the Ponce component of the preferred alternative entailed extending Pier No. 8 to about 3,600 feet to allow for simultaneous berthing of as many as two Post-Panamax ships. Additionally, this component entailed dredging the navigation channel and berthing areas to a minimum of 45 feet to allow entry of Post-Panamax ships. Further, the Ponce component called for the development of approximately 132 acres of land adjoining the Port for the construction of value-added industries and infrastructure needed for efficient port operations. The Public Scoping Notice indicates that the new preferred alternative to be evaluated in the draft SEIS is very similar to the original Ponce proposal, however, approximately 70 acres of fill in Ponce Harbor is now proposed as part of the applicant's preferred alternative.

### **Wetland and Shallow Water Fill**

EPA is pleased that the applicant has decided to remove the 122 acres of aquatic/wetlands fill from the ecologically-important Guayanilla Bay site as part of its new preferred alternative. However, while the Ponce Bay site is generally considered to be of lower ecological value than the Guayanilla Bay site, a proposed aquatic fill of 70 acres is still a significant impact. Therefore, it is imperative that the draft SEIS carefully examine the ecological value of the areas in Ponce Bay that could be impacted. Please note, while Appendix I of the draft EIS contained a benthic habitat assessment of the Ponce Bay site, it is not clear if the areas evaluated in Appendix I include the "new" 70-acre fill area, which we presume to be north of the existing Pier 8 (south of the Pier is the navigation channel.) Additionally, communities of soft coral and seagrasses ("special aquatic sites" afforded special protection under the Section 404 regulations) are known to exist in the general vicinity of the proposed site at Ponce, therefore, it is important that the entire area potentially impacted by the proposed action be properly characterized in the draft SEIS. Toward this end, we recommend the document include an overlay of the project footprint over benthic habitat maps of the area.

Furthermore, we recommend that additional information be provided in the SEIS regarding the specific layout of both proposed port operations. Moreover, the SEIS should identify which elements of the port operations are "water dependent" and the criteria used to determine the elements "water dependency". EPA believes that by including detailed project drawings and other relevant information, it will be easier to determine whether there are opportunities for the further minimization of unavoidable impacts. Toward this end, we also recommend that the draft SEIS examine whether some of the Ponce port components could be placed on adjacent, mostly upland sites.

### **Wetlands Delineation/Impacts/Mitigation for Aquatic Impacts**

During the course of our review of the draft EIS, and the October 10, 2002 Public Notice, we noted an apparent discrepancy between the documents regarding the extent of jurisdictional wetlands potentially impacted by the proposed project. As such, EPA believes it is very important to clarify

this issue in the draft SEIS. Additionally, in our review of the October 10, 2002 Public Notice, we noted that the USACE issued a wetland "preliminary jurisdictional determination" for the two proposed project areas. Given the usual practice of issuing a "final" jurisdictional determination, it is unclear if the extent of wetlands on the sites will be greater or less than now stated, or if the USACE has actually completed its field-verification of the wetland delineation. Clarifying this point is important since there appear to be a number of discrepancies regarding the extent of wetlands on both sites, particularly the Ponce site, based on our review of the information provided in the draft EIS and October 10, 2002 Public Notice.

As a specific example of an apparent discrepancy, at the Ponce site, there is a 132 acre parcel directly south and contiguous of Route 52 proposed for the construction of "value-added" activities. The National Wetlands Inventory map shows large areas of wetlands on the parcel, while the applicant's delineation does not show any wetlands. Until the USACE field verifies and certifies the final jurisdictional determination, we are concerned that potential jurisdictional wetlands may be impacted on this site under the current proposal. Therefore, we strongly recommend that this issue be clarified in the draft SEIS.

At the Guayanilla Bay portion of the project, there appears to be another discrepancy in the acreage of wetland fill between the draft EIS and the October 10, 2002 Public Notice. Appendix P of the draft EIS indicates that there are wetlands delineated on two parcels that will be impacted. The first parcel is directly east of the new port complex and fronts Tallaboa Bay. The other is a roughly triangular area northeast of the new port complex and directly west of Route 337. However, the Public Notice indicates that the only wetland fill would be the 12 acres of mangrove that were included as part of the original 122 acre fill, even though the two parcels described above are included in the fill footprint as depicted in the map included in the Public Notice. Since these two sites may still be impacted under the revised project plan, it appears that additional acres of wetlands may be affected beyond what was indicated. As such, EPA requests clarification in the draft SEIS regarding the parcels mentioned above, and any impacts to these wetlands from the proposed project.

Futhermore, EPA requests that detailed information on the measures that would be used to mitigate for the approximately 70 acres of shallow water fill be included in the SEIS.

### **RCRA/Brownfields Issues**

In order to provide input on this issue, the following comments are based on the information contained in the draft EIS. Please note that while the map at Figure 3-59 of the draft EIS is a good overview of the Guayanilla site, it should not be used to definitively indicate the locations and extent of the various solid waste management units (SWMU). The map broadly reflects the general distribution of the SWMU's at the Union Carbide Caribe [subsidiary of Dow Chemical Company] site, but has a number of details that are in error, so it should not be used for definitive determinations.

The following are updates to table 3-17 of the draft EIS, and should be reflected in future NEPA documents:

**SWMU**

No. 2

**Status**

Final Decisions regarding further actions still under review by EPA.

No. 4

No longer classified as SWMU. Now classified as part of Area of Concern (AOC) #1. Final Decision regarding further actions for AOC #1 still under review by EPA.

No. 12

Excavation, treatment and disposal of contaminated soil required.

No. 24

Area cleaned and units removed in 1989/1990. Also, based on 1988 determination, is no longer classified as a hazardous waste management unit.

No. 25 [West and East Aeration Basins, a/k/a Surface Impoundments (SIs) # 1 &amp; #2]

East Aeration Basin [SI #2] still active. West Aeration Basin [SI #1] is no longer receiving waste, and is required to undergo closure. Closure is not yet completed.

No. 27

Undergoing corrective action.

No. 29

No further corrective action recommended, but final decision still pending.

“Additionally, please note that the following SWMU’s may be impacted by the proposed construction of a road to access the port facility at Guayanilla: SWMU Nos. 1, 5, 11, 14, 17, 21, 22, 23, 27, 31, and 33.”

**Cumulative Impacts**

The following comments are based on the cumulative impacts analysis contained in the draft EIS. While the document contains an analysis, EPA believes the analysis is incomplete in that it does not fully examine the impacts from the value-added aspects of the project and the project’s likelihood to induce growth in the project area. Currently, the draft EIS discusses, in a general manner, the likely impacts from the infrastructure required to support the port facilities and the value-added areas. For example, the document states that there are adequate supplies of water for the project through various sources, but does not disclose the likely impacts of building the infrastructure to bring the water to the project site. Additionally, the draft EIS does not disclose the acreage of likely impacts to wetlands from the road required to access the proposed port facility from the value-added property at Guayanilla. From the maps provided in the draft EIS, it appears the impacts to wetlands from this road could be significant. Moreover, the draft EIS fails to disclose whether impacts are likely to wetlands as more of the project area is developed after the port facilities are operational. In particular, the draft EIS does not identify or assess the secondary development which could occur to service the thousands of workers at the project locations. While the cumulative impacts analysis in the draft EIS is a good starting point, the analysis should contain more detail regarding impacts from the actual construction and operation of the port and value-added facilities.

## Dredging Issues

The following dredging related comments are based on our review of the draft EIS. The draft EIS describes dredging at Ponce as being anywhere between -45 feet to -53 feet (or is otherwise not specific). The sampling and testing required for the dredging will be to the proposed project depth, currently -55 feet plus 2 feet of allowable over depth. Please note that unless otherwise agreed to by EPA, any material that is not sampled and tested cannot go to the ocean. Therefore, the dredging plans need to be specific in the draft SEIS and all other documentation, and should not use the inconsistent depth ranges identified in the draft EIS.

Please note that alternatives to ocean disposal of dredged material need to be evaluated as part of the Section 103 Compliance Determination in the draft SEIS. The draft EIS used different language throughout the document to describe alternatives to ocean disposal. It should not be presumed that only a fraction of the dredged material would be non-ocean disposed. Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) states a preference for the disposal of all material using non-ocean alternatives, if feasible.

In addition, EPA offers the following specific comments regarding the proposed dredging for the project:

Page ES-5/6- The loss of Ponce bay bottom due to dredging outside the existing channel is not on the list of potential impacts. Later in the draft EIS the environmental consequences of dredging outside the existing channel are dismissed because of the purportedly low ecological value in its present condition, without adequate support for this conclusion. EPA believes that the draft SEIS should include better supporting documentation to conclude that the loss of bay bottom habitat is of no consequence.

Page 1-6, Section 1.3- Please note that the USACE has regulatory authority, but material suitability for aquatic determinations are subject to EPA review and concurrence.

Page 2-4, Section 2.3.2.2- The text states that -55 feet is necessary for safety, but indicates that -45 feet is acceptable. As stated above, the draft SEIS should be consistent throughout the document when referring to dredging depths.

Page 2-6, Section 2.3.3.3- Please note that dredged material does not have to be free of contaminant substances, but rather it must be shown through bioassay testing to meet the trace contaminant provisions of 40 CFR 227.6.

Pages 2-14/15- Please note that Yabucoa is not an interim site and is not OD0242, but is called the Yabucoa Harbor, Puerto Rico ODMDS.

Page 3-32, Bullets- The bullets do not indicate whether blasting will be required to remove the rock.

Page 3-92 to 94- Please note that EPA does not have sediment criteria that it recommends, including those used by the applicant. Moreover, EPA did not publish the TEL or ERL benchmarks, and the benchmarks are not maximum recommended values. In fact, they should be referred to as benchmarks, and not criteria, and certainly not as EPA criteria.

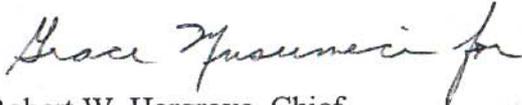
Page 4-77- The arguments regarding the spread of material is irrelevant. EPA anticipates that the direct effects (burial of organisms) would be limited to the site, and that the benthic communities would eventually reestablish/decolonize following the cessation of disposal.

### Summary

By using information provided in the draft EIS, EPA was able to provide detailed scoping comments for the SEIS. These scoping comments should be given every consideration when preparing the SEIS in order to avoid the likelihood of an adverse rating. EPA was disappointed during our review of the draft EIS that our original scoping comments and concerns were not addressed in that document. Once again, we offer our assistance to the USACE and the project sponsor to produce a project that would meet the requirements of the various regulatory processes. You will be receiving an invitation to meet with us shortly.

Thank you for the opportunity to comment. Should you have any questions concerning this letter, please contact Mark Westrate of my staff, at (212) 637-3789.

Sincerely yours,



Robert W. Hargrove, Chief  
Strategic Planning and Multi-Media Programs Branch

cc: AFI  
OFA  
E. Muniz, USACE-San Juan



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

FEB - 5 2003

Edwin Muniz, Chief  
Antilles Regulatory Section  
U.S. Army Corps of Engineers  
400 Fernandez Junco Avenue  
San Juan, Puerto Rico 00901

Dear Mr. Muniz:

This letter is in reference to the Port of Americas (POA) project, located in Guayanilla and Ponce, Puerto Rico and the Public Scoping Notice recently released for the supplemental draft environmental impact statement currently being prepared.

As you are aware, there were many concerns expressed throughout the National Environmental Policy Act (NEPA) scoping process concerning the original POA proposal which included 120 acres of shallow water fill in the ecologically important area of Guayanilla Bay. EPA is pleased to note that the 120 acres of fill is no longer part of the preferred alternative for the project. However, 70 acres of fill is now proposed at Ponce in order to meet the stated goals of the project. While the proposed fill area in Ponce is generally regarded as less ecologically important, 70 acres of fill is still a significant impact and a concern to EPA. With this in mind, EPA believes it is important that we meet in order to discuss the specifics of the new proposal and to discuss the information outlined in our scoping letter which describes the information we believe should be included in the SEIS. As such, we would like to invite you to a meeting at our New York office to discuss the current proposal. Moreover, we believe it would be beneficial to have representatives from the Puerto Rico Infrastructure Authority (AFI) participate as well. Currently, EPA is unsure of the appropriate individual to contact at AFI for the proposed meeting. Therefore, it would be greatly appreciated if you could provide us with the proper contact.

Please contact Grace Musumeci, Chief of the Environmental Review Section at (212) 637-3789 to schedule the meeting. We look forward to meeting with you discuss the current Port of Americas Project.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Walter E. Mugdan".

Walter E. Mugdan, Director  
Division of Environmental Planning and Protection