

CLEAN AIR ACT  
FINAL GENERAL CONFORMITY DETERMINATION  
NEW YORK AND NEW JERSEY HARBOR DEEPENING PROJECT

Based on the conformity analysis and review presented in the “*Harbor Air Mitigation Plan*”, (Plan), I have determined that the New York and New Jersey Harbor Deepening Project (Project) will meet the General Conformity requirements as stated in 40CFR§93.150-160 and that the applicable air quality impacts generated as a result of project construction shall be fully offset. These offsets will be contemporaneous with applicable project emissions.

The U.S. Army Corps of Engineers New York District (District) reaffirms its commitments set forth in the conditional Statement of Conformity issued on 3 April 2002 (provided here as attachment 1) and expects that all entities assigned a condition under the conditional Statement of Conformity will honor those conditions as part of this statement of conformity. These conditions and their status and responsible parties are presented in Table 1.1 of the Plan (provided here as Attachment 2).

The Plan was developed using the latest planning assumptions and emission estimate methods. The Plan lays out how the project will conform to the New York and New Jersey State Implementation Plan requirements. The Plan chronicles emission estimates from emission sources that are subject to General Conformity review. The District reviewed emission sources (both project related and non-project related) to avoid minimize and/or offset project emissions over the fully twelve years of construction. Those strategies were combined and presented as the seven “mitigation alternatives” described in detail in the most recent Plan, concurred upon by the Regional Air Team. The Plan has been developed and coordinated through the RAT, which is composed of the following core members: the District, the Port Authority of New York and New Jersey (Port), the U.S. Environmental Protection Agency Region 2 (EPA), the New York State Department of Environmental Conservation (NYSDEC), the New Jersey Department of Environmental Protection (NJDEP), and the New York City Department of Transportation (NYCDOT).

The District’s path to conformity and preferred compliance plan is to implement mitigation alternative #7 and, as needed, the contingencies outlined in the Plan.

The New York New Jersey Long Island Non Attainment area (where the project is located) is classified as a severe nonattainment area for ozone (precursors of oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds) and a maintenance area for carbon monoxide (CO). The District in partnership with the non-Federal project sponsor, the Port, has performed emissions estimates that are summarized in the Plan. The Plan predicts that the NO<sub>x</sub> will significantly exceed the *de minimus* level of 25 tons per year, which is the trigger level for performing a conformity determination in severe ozone nonattainment areas. The project will not exceed the maintenance area 100 tons per year *de minimus* level for CO. It should be noted that the project is adjacent to New York County which is designated as moderate nonattainment for particulate matter less than 10 microns (PM-10); however, since the project’s direct and indirect emissions do not occur in this county, the project is not subject to General Conformity review for this pollutant (40CFR§93.153(b)). Should any change occur in the design or implementation of the project

resulting in an additional 25 tons per year NO<sub>x</sub>, above the emissions presented in the Plan (February 2004), the District would prepare a new conformity determination which would be subject to the same public review process that this SOC is following. Further, should CO emissions increase over 100 tons per year *de minimus* level (in any year of the project) a new conformity determination would be required by NYD for CO.

The District is reaffirming its commitment to not begin or continue construction unless air compliance strategies are in place and working. Mitigation Alternative #7 is contingent on the commitment of the Port and the NYCDOT to retrofit the Staten Island Ferry fleet with selective catalytic reduction (SCR) devices, and the required monitoring to confirm its successful operation. The Port and the NYCDOT signed an agreement to demonstrate, in accordance with the schedule in the Plan, the technology on the Alice Austen ferry (demonstration is in progress) and based on the successful demonstration to retrofit the remaining vessels in the Staten Island Ferry fleet with this technology. Mitigation Alternative #7 is also contingent on a number of tugboats being repowered with newer/cleaner engines. The Port has repowered two tugboats associated with the Kill Van Kull contract 5 (KVK-5) construction element and is currently preparing the request for proposal for additional tugboats to be added as detailed in the Plan. Finally, Alternative #7 calls for the use of emission credits for reduction of emissions associated with KVK-5. These credits have been purchased by the Port and are tied as conditions to the federal and state authorizations (as detailed in the Plan) for the project. The implementation of these mitigation strategies, alternative contingency strategies, quantification, and schedule is detailed in the Plan.

The District is committed to manage and assure that the Project meets the General Conformity requirement of no net increase in emissions as stated in 40CFR§93.153(b)(2). The Project is a multi-year project that will be implemented using sequential contracts for the various construction elements and phases. The District will monitor and evaluate applicable emissions for pollutants generated from the Project and reductions from the various mitigation strategies presented in Mitigation Alternative #7 of the Plan. The emission estimates evaluation details will be coordinated with the Regional Air Team at least 180 days prior to the start of any new construction reach. The Regional Air Team shall determine what inputs would be needed to estimate emissions, quantify offsets, and the format by which the results should be reported. To further support these evaluations, the District in coordination with the Regional Air Team will develop and implement the appropriately detailed monitoring/tracking, recordkeeping, schedules, and reporting protocols such that the evaluations will be conducted and reviewed using the agreed upon methods. These will all be in place before any new reach construction has begun.

Further, the District will perform a Conformity Consistency Review (CCR) prior to the start of construction for each contract; hence the CCR process will start at least a minimum of 180 days prior to the start of construction. The purpose of the CCR is to meet the condition in the conditional Statement of Conformity that states the "USACE will perform supplemental conformity determinations". These CCRs will confirm that General Conformity is met over the life of the project. The details that will be included in the CCR will be coordinated with the Regional Air Team for their review, input, and concurrence. The CCR will include, at a minimum, the following elements:

1. Review of emission estimates associated with the Project
2. Review of emission mitigation strategy
3. Review of contingency plans
4. Review of implementation timelines for construction, mitigation strategies, and contingency strategies.
5. Review for consistency with the Plan
6. Review of net emissions with General Conformity requirements
7. Final CCR report

The District will not proceed to construction of a Project contract without a completed CCR. The District will release a Public Notice should a mitigation strategy that is not referred to in the Plan become necessary to meet the Conformity requirements, or should the current offset/reduction strategies be unable to fully offset project emissions

In summary, the District will achieve conformity for NOx through the offsetting of the project's emissions as detailed in Mitigation Alternative #7 of the Plan. The District will work with the Regional Air Team to ensure consistency with the General Conformity requirements as the project moves forward.



John B. O'Dowd  
Colonel, U.S. Army  
District Engineer

Date: 31 March 2004