CLEAN AIR ACT
CONDITIONAL STATEMENT OF CONFORMITY
NEW YORK AND NEW JERSEY HARBOR NAVIGATION PROJECT

Based on the conformity analysis performed as an amendment to the subject report, I have determined that the New York and New Jersey Harbor Navigation Project (HNP) can meet General Conformity provided that the impacts generated as a result of dredging and dredged material management activities are reduced through a combination of measures outlined in this statement before or during construction of the project. The U.S. Army Corps of Engineers (USACE) in partnership with the non-Federal project sponsor, the Port Authority of New York and New Jersey (PANYNJ), performed an emissions analysis (summarized in Marine and Land Based Mobile Source Emission Estimates for the 50 foot Deepening Project, 10 September 2001, revised 3 January 2002) and determined that due to construction activities of the project, both CO and NOx emissions will be significantly above the de minimus levels for General Conformity in severe ozone and moderate carbon monoxide nonattainment areas (NOx at 25 tpy and CO at 100 tpy). Any significant change in conditions to the Federal action would trigger a new conformity determination for the project.

USACE is committed to pursuing real reductions of emissions generated as a result of construction of the project, as technologies are available. As one means of addressing project related air emissions, USACE will explore and analyze several methods to reduce emissions from the HNP. A preliminary feasibility analysis (Initial Findings Report Emission Reduction Strategies for the New York/New Jersey Harbor Navigation Project, January 2002) has identified potential technologies that may be appropriate for use in the project, and percentage emissions reductions that have been achieved by those technologies elsewhere. Some technologies for possible use in the harbor could include:

1. Electric dredges. Electric dredges have been used in other ports and with shore power, can reduce maritime emissions associated with dredging to almost zero, although emissions from associated tender activities would still exist as would emissions at the land based generating facility. While there are materials (e.g. bedrock) in the HNP that are not amenable to the use of electric dredges, and areas where access to shore-power would be impractical or impossible, it may be possible to use them for some portion of the project.

2. The use of low sulfur diesel fuel in dredges, tugs, and other diesel-powered equipment has achieved 5% to 10% of particulates (PM) and Sulfur (not NOx) emission reductions in other locations. There is a high likelihood of making low-sulfur fuels available to the HNP. While the use of low sulfur diesel fuel in and of itself may not create a substantial reduction in emissions, most emission control technologies require its use.

3. The use of fuel additives to create diesel emulsions may also be a possibility during the later stages of construction, once their use has been approved. These formulated fuels have yielded modest emission reductions in demonstration projects in California.

4. Engine retrofits and filters are also a possibility for the equipment that will be used. Reductions ranging from 20% to 90% may be achievable, for various pollutants.

a. Particulate filters have been used on diesel-powered equipment and have achieved reductions of up to 90%.

b. Oxidation catalyst and diesel particulate filter retrofits have been used at other ports and have resulted in reductions in NOx (up to 75%), CO (from 60-90%), hydrocarbons (HC) (from 60-90%) and PM (from 20-50%).

The analyses to date are preliminary so the commitment to using particular technologies cannot be made at this point, and dredging equipment availability is uncertain at this time. A detailed assessment of alternative technologies and fuels for the construction and dredged material management equipment will be undertaken to identify those reduction measures which are most appropriate for implementation in the HNP. A pilot/demonstration project will be considered, as appropriate, to further evaluate or refine the more promising control technologies. It is recognized that the alternatives that are most appropriate may change over time, given advances in technologies that are expected to occur over the duration of the construction of the project. Furthermore, USACE will revisit the use of alternative technologies and fuels to reduce the emissions from dredges and tugs every year during the construction project. In addition, USACE will solicit ideas to achieve compliance from the dredging industry and port facility operators, and will have the industries implement these measures, where practicable. The PANYNJ will also consider means of achieving emissions reductions for each pollutant of concern for port facility equipment, as may be necessary, to reduce project emissions. The PANYNJ will commit to preparing a report that will include an emissions inventory for port equipment, and existing technologies to potentially reduce those emissions in support of the NYNJ Harbor Navigation Project General Conformity Determination. This inventory will become the basis of a study to investigate a grant program to assist Port tenants to decrease emissions from port equipment. This study will also identify funding sources for such a grant program. USACE will evaluate options on reducing emissions at their facilities as another way of reducing project impacts and will also examine logistical alternatives such as revised schedules and other project constraints that may help reduce overall emissions.

As another means of addressing project related air emissions, the USACE-PANYNJ performed a review of methodologies used by the nonattainment area States in calculating the marine vessel emissions portion of their overall emission inventories (Analysis of Marine Emission Estimates in the New York and New Jersey State Implementation Plans (SIP), September 2001). This review determined that the States' nonattainment area SIP's may be able to accommodate project emissions within the existing emissions inventory. In order to verify this possibility, USACE-PANYNJ will provide an updated marine vessel emissions inventory of the New York/New Jersey Harbor before construction of the 50- foot project. The new inventory will update the emissions in the harbor and, if accepted by the nonattainment area States, may be used for comparison against the existing marine vessel inventories to determine what portion of the project emissions may be accommodated. It is anticipated that the updated inventory and analysis of the results can be completed in sufficient time for the nonattainment area states to include them in the next major scheduled revision (s), (e.g. MOBILE6 and/or Mid Course Correction). An air emissions consultation committee will be formed and chaired by USACE for

the project that will be comprised of representatives from USEPA, PANYNJ and the states of New York and New Jersey. The PANYNJ has committed to providing the affected States with the tools necessary by which they can update their marine vessel emissions inventory during the construction of the project. A new marine vessel inventory will be provided to the States one year after the completion of the project.

Another option for mitigating air quality impacts is pursuing the availability of existing emission credits (a preliminary analysis in New York and New Jersey indicates the availability of approximately 5000 NOx Emission Reduction Credits (ERCs), combined). USACE-PANYNJ will purchase available credits, as necessary, to mitigate all remaining project emissions, including coverage of the de minimus amount, that could not be reduced by other measures, or accommodated by the States in their SIPs.

This Statement of Conformity is conditional, since it is not feasible at this time for USACE to reasonably define either the annual emissions or proposed offset measures' emissions reduction potential. As this is a lengthy project, more accurate data on actual emissions will be collected, existing technologies will be evaluated, and new technologies to reduce emissions will be assessed during the life of this project (i.e. construction duration). USACE will commit to reduce, to the extent possible, to attain conformity, using the best available information, all emissions possible (to be determined by advancements in and approval of technology and credit availability) prior to construction of any project element.

The USACE will not proceed to construction of the 50-foot deepening project until such time that the project can demonstrate conformity under the General Conformity Rule. To continue to update and distribute the information collected as part of this ongoing conformity determination effort, USACE will perform supplemental conformity determinations, with detailed compliance plans as necessary, for each element of construction of the 12 year project and release Public Notices to notify interested parties and regulatory agencies of any changes to this conditional proposal. The tentative schedule for each element of construction will occur on an annual basis, at a minimum, and covers the Rate of Progress Years of 2005 and 2007, until construction is completed in 2016.

In summary, the USACE will achieve conformity for NOx and CO through offsetting of the project's emissions. Compensation will occur through the use of emission reduction technologies, where practical, the purchase of credits, operational modifications to reduce emissions, and through possible accommodation by the States in their SIPs.

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Date

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