

July 14, 2015

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

The Harbor Department respectfully requests that the City Council: (1) receive the supporting documentation into the record and conduct a public hearing on two appeals of the Board of Harbor Commissioners' certification of the Final Environmental Impact Report (EIR) for the MCC Cement Facility Modification Project filed pursuant to Long Beach Municipal Code Section 21.21.507 by the Coalition for a Safe Environment, et al. and Earthjustice on behalf of East Yard Communities for Environmental Justice and the Coalition for a Safe Environment; and (2) adopt a resolution denying the appeals and upholding the Board of Harbor Commissioners' certification of the Final EIR for the Project.

DISCUSSION

As set forth below and in the attached documents, the Harbor Department believes that the Board of Harbor Commissioners fully complied with the California Environmental Quality Act (CEQA) when it certified the Final Environmental Impact Report (Final EIR) for the MCC Cement Facility Modification Project (Project). However, it will be up to the City Council to consider the appeals and determine whether the certification of the Final EIR was proper.

If the City Council determines that the Final EIR fully complies with CEQA, it must reject the appeals (see Attachment 1 for proposed resolution). Alternatively, if the City Council finds that the Harbor Commission did not comply with CEQA, then it must uphold the appeals and direct the Harbor Commission to set aside the Project approval and conduct appropriate CEQA analysis before reconsidering the Project.

A. The Board of Harbor Commissioners Action Being Appealed.

On May 11, 2015, the Harbor Commission unanimously adopted Resolution No. HD-2807 (Attachment 3), wherein it certified the Final EIR as fully compliant with CEQA. The Harbor Commission took that action at the conclusion of a public hearing during which the Harbor Department staff gave an extensive presentation on the Project and the Final EIR (Attachment 4), and then answered a variety of questions regarding the Advanced Maritime Emissions Control System (AMECS), the Greenhouse Gas (GHG) Emissions Reduction Grant Program contribution, and Project mitigation

measures, including the required periodic technology review. Following the staff presentation, a total of 25 public speakers presented testimony during the public input portion of the hearing: 19 spoke in favor of the Project, four spoke in opposition to at least some aspect of the Project or asked that the matter be tabled and continued to a later date, one did not object to the Project, but encouraged the Harbor Department and the Project applicant MCC Terminal, Inc. (MCC) to coordinate with the building trades on future work, and one clarified statements made by previous commenters. During the hearing, the Commissioners asked numerous questions and discussed key issues. A copy of the full transcript of the public hearing is included in this report (Attachment 5). The Commissioners' questions and their deliberations are set forth on pages 43-72 of the transcript.

B. Summary of the MCC Cement Facility Modification Project.

MCC has been an established tenant in the Port of Long Beach (Port) since 2002 and operates the cement import facility at 1150 Pier F Avenue which has been in operation since the 1990s. MCC's existing facility receives bulk cement and cement-like materials (including Portland cement, blast furnace slag, pozzolans, and fly ash) at Berth F208 via bulk cargo vessels. MCC stores the product in a warehouse and loading silos, and loads the product into customer trucks via three truck loading racks. A variety of trucking companies transport the product from the truck loading racks to local and regional concrete batch plants. The MCC facility temporarily stopped operating in 2010 due to the economic slowdown and regional decline in demand for cement. Although operations have not yet resumed at the terminal, it is a fully permitted facility that can open for operations at any time.

The facility has a South Coast Air Quality Management District (SCAQMD) permit that requires all ships unloading at the facility to use shore power. Because MCC charters and does not own the vessels that deliver cement to the facility, it does not have control over whether arriving vessels are equipped to connect to shore power. Nevertheless, MCC has worked with various charter companies and has been successful at negotiating commitments that require certain vessels to use shore power for at least part of the time they are at berth.

However, even ships that are able to utilize shore power sometimes cannot unload the entirety of their cargo using shore power due to the high electrical load needed to operate the ship's cranes which are needed to lift equipment into the vessel's hold to remove the last portion of cement. In addition, the existing MCC facility has experienced inefficiencies associated with limited storage capacity and fluctuations in cement demand. Since cement deliveries to the MCC facility are ordered months in advance, changes in the demand for cement can occur after the order has been placed.

There have been periods where the warehouse was full and ships calling at the facility

could not unload upon arrival. The vessels had to wait at berth or at anchor until sufficient warehouse capacity was available for the ship to fully offload its entire load.

In 2006 MCC submitted an Application for a Harbor Development Permit (HDP) to modify its existing cement import facility. The Project consists of (1) installing a Dockside Catalytic Control System (DoCCS) to capture and reduce NOx emissions from ship auxiliary generators at berth; (2) constructing four 10,000 metric ton storage and truck loading silos; and (3) upgrading existing facilities and ship unloading equipment. MCC would construct the additional cement storage silos and truck loading equipment in an adjacent vacant area located at 1120 Pier F Avenue that was formerly used as the warehouse for Pacific Banana operations. The MCC site would increase in size from 4.21 acres to 5.92 acres. Additionally, as part of the Project MCC has applied to the SCAQMD to modify its SCAQMD permit to allow vessels that call at the MCC facility to use either shore power or the proposed DoCCS to control at-berth emissions when unloading cement. The SCAQMD permit modification is pending and will be considered by the SCAQMD upon completion of the CEQA review process.

C. Overview of the EIR and Public Input Process.

The EIR for this Project was prepared in accordance with CEQA Guidelines, which included two opportunities for the public to review and provide comments. The Harbor Department issued a Notice of Preparation (NOP) and Initial Study (IS) for the proposed Project on August 26, 2011. The NOP/IS described the Project, solicited public input on environmental issues to be addressed in the EIR, and announced a public scoping meeting. The Harbor Department conducted one public scoping meeting on September 14, 2011, at the Long Beach City Hall Council Chambers. Eight written and two oral comments were received during the scoping period. The comments covered a variety of topics including ground transportation/traffic, air quality, health risk, and hazards and hazardous materials.

Subsequently, the Harbor Department released the Draft EIR on October 2, 2014, and conducted one public comment meeting on the Draft EIR on October 22, 2014, at the Long Beach City Hall Council Chambers. The public comment period ended November 18, 2014. A total of seven people spoke at the public comment meeting. In addition, a total of 21 agencies/individuals provided written comments on the Draft EIR during the public review period, including two state government agencies, one regional government agency, two community groups, eleven industry and business groups, and five individuals. Harbor Department staff and environmental consultants responded in writing to all comments received on the Draft EIR, and the responses were circulated more than 10 days prior to the public hearing on the Final EIR as required by CEQA [Public Resources Code § 21092.5(a)]. The individual comments are included and fully addressed in the Final EIR Response to Comments Section of Chapter 10.

At the hearing before the Board of Harbor Commissioners on May 11, 2015, a total of 25 members of the public spoke on the item.

D. Summary of EIR Analysis and Conclusions Regarding the Project Impacts.

1. Description of the Project.

The Project consists of the three elements described above. When modified, the terminal could have a maximum throughput of 4.16 million metric tons each year, delivered to the site by up to 99 bulk vessels and transported to local and regional concrete batch plants via an estimated 166,400 round-trip truck trips per year. Construction of the proposed Project would last approximately 2 to 3 years. The addition of 40,000 metric tons of storage capacity would help to alleviate unloading delays during periods when the existing warehouse capacity is insufficient to accommodate cement from an arriving ship, as ships would be able to fully offload the entire cargo load (equal to about 40,000 metric tons). Accordingly, ships would spend less time at berth and move more efficiently through the Port. Although the Project modifications would accommodate this throughput, the existing SCAQMD operating permits for the facility limit the ship unloading throughput to 8.76 million metric tons per year and truck loading throughput to 3.45 million metric tons per year. MCC has not asked the SCAQMD to modify these limits in the pending applications for the Project.

In Section 4.0 of its CEQA findings, the Harbor Commission made extensive factual findings regarding various alternatives that had been considered in the EIR. (Attachment 3, Exhibit A, pages 18-23.) That analysis explains in detail why the proposed Project (Alternative 1) was selected as the only feasible alternative.

2. Summary of Potential Unavoidable Environmental Impacts

Although most potentially significant environmental impacts of the Project will be reduced to a level of insignificance through project design features and the imposition of mitigation measures, some Project impacts are considered significant and unavoidable under CEQA even after they have been lessened to the extent feasible through such measures. The unavoidable impacts were fully set forth in the Final EIR, and are as follows:

- a) Air Quality. Operational activities would produce levels of NO_x (average daily emissions) and ambient 1-hour NO₂, PM₁₀, and PM_{2.5} emissions that exceed SCAQMD emission thresholds. The main sources of the emissions would occur from vessels and trucks used during proposed Project operational activities.

- b) Global Climate Change. Construction and operation of the Project would produce greenhouse gas emissions that would exceed the SCAQMD's interim threshold of significance for industrial projects.
- c) Cumulative Biological Impacts. The increase in ocean going vessel traffic could cause disruption to local biological communities (i.e., increased offshore whale strikes and introduction of invasive species) on a cumulative impact level.
- d) Cumulative Air Quality and Global Climate Change. Construction and operation of the proposed Project would also result in significant and unavoidable air and greenhouse gas impacts on a cumulative impact level.

These impacts are described in more detail in the Final EIR and in the Harbor Commission's Findings of Fact for the Project (Attachment 3 Exhibit A, pages 11-18).

3. Mitigation

Environmental control measures and mitigation measures were developed for the Project to reduce significant impacts to the extent feasible. These measures, which are set forth in the Mitigation Monitoring and Reporting Program adopted for the Project by the Harbor Commission (see Attachment 3, Exhibit B), were made conditions of project approval. Mitigation measures and environmental controls include the following:

- Use of EPA Tier 4 construction equipment and Tier 4 payloaders during the cement unloading process.
- Additional fugitive dust controls during construction.
- Modernization of the cement delivery truck fleet so that 90% of the trucks that call at the facility will have an engine that is no more than 5 years old. The remaining 10% of trucks will meet or exceed the Harbor Department's Clean Trucks program requirements.
- Participation in a demonstration project for integrating an active diesel particulate filter (DPF) system into the DoCCS.
- Participation in the AMECS emission testing demonstration project at the Port, to the extent possible.
- A periodic technology review every 5 years of new emissions reduction technologies that may reduce emissions at the MCC facility, including an investigation of the feasibility of zero emissions and near-zero emissions technologies for cement delivery trucks and cement handling equipment.
- Installation of solar panels and low-energy demand lighting.
- An energy audit every 5 years.

- Contribution of \$333,720 to the Harbor Department Greenhouse Gas Emissions Reduction Program (GHG Program). Funds collected through the GHG Program are used for projects and programs such as solar panels, urban forests, native gardens, electric vehicles, LED lights, etc., that achieve continuous and ongoing GHG emission reductions every year that they remain in place.
- Compliance with the Harbor Department's Vessel Speed Reduction Program of 12 knots from 40 nautical miles to provide air emission benefits as well as reduction in potential for accidental whale strikes.
- Use of shore-to-ship power no less than 66% of the time at berth.
- Noise reduction measures for construction equipment.

E. Summary of Appeal and the Harbor Department's Response to the Appeal.

Following the Harbor Commission certification of the Final EIR, two appeals were filed. The appeal of Earthjustice, on behalf of East Yard Communities for Environmental Justice and the Coalition for a Safe Environment, is included as Attachment 6 hereto. The Harbor Department's response to that appeal is included as Attachment 7. The appeal jointly filed by the Coalition for a Safe Environment, California Kids IAQ, Community Dreams, California Safe Schools, Society for Positive Action, Del Amo Action Committee, Action Now, Apostolic Faith Center, and California Communities Against Toxics is included as Attachment 8. The Harbor Department's response to that appeal is included as Attachment 9.

Several of the issues raised in the two appeal letters are beyond the scope of the City Council's review in this appeal hearing. Those issues are identified in the attached detailed responses. For the issues that relate to the Harbor Department's compliance with CEQA, a summary of the key issues is set forth below.

1. The Final EIR used the correct baseline to determine environmental impacts.

Some of the appellants have argued that the Harbor Department used the wrong baseline for determining environmental impacts in the Final EIR. As explained in detail in Attachment 7, pages 1-7, the position taken by appellants is incorrect and would have the effect of treating a fully permitted facility that already has undergone CEQA review as if it did not exist. Instead, the Harbor Department correctly applied CEQA and the applicable case law when it used the actual activity levels at the MCC facility from the last full year of operations prior to the economic slowdown that halted construction projects throughout the nation. The impacts from the proposed modification of the facility were then compared to that baseline to determine whether any of the environmental impacts of the Project would be significant.

Appellants argue for use of 2011 activity levels because they know that there was no cement import activity at the terminal that year. That approach would result in a

misleading baseline of zero activity, ignoring the fact that a fully permitted cement import facility already exists. Appellants' approach, moreover, is inconsistent with CEQA which allows lead agencies to recognize that there will be fluctuations in operation levels over time, and therefore to set an appropriate baseline that takes these fluctuations into account. (See Attachment 7, pages 1-7, for more detailed information on this point.)

Because the existing MCC facility has valid operating permits and already has undergone comprehensive environmental review under CEQA, MCC, without prior approvals of any kind, could immediately operate the existing facility at its maximum capacity. In fact, CEQA would allow the Harbor Department to use that maximum capacity as the baseline for subsequent environmental review. However, because MCC has never operated the facility at that level, the Harbor Department declined to use the CEQA-reviewed capacity as the baseline and instead determined that the most appropriate way to provide meaningful information to the public and decision makers was to use *actual* activity levels from the facility.

This baseline based on actual activity levels fully complies with CEQA. It recognizes that the MCC facility has valid permits and approvals to operate and can do so at any moment. At the same time, the Final EIR baseline does not use a hypothetical level of activity, such as the maximum capacity of the facility, which was never achieved in actual operations. The Harbor Department thoroughly explained and supported its decision to use that baseline, and appellants' arguments to the effect that the Harbor Department should have treated the MCC facility as nonexistent should be rejected.

2. The Final EIR Imposed All Feasible Mitigation Measures on the Project.

Appellants make various arguments that the Final EIR fails to include all feasible mitigation measures for the Project. The two concepts that receive the most attention from appellants are the AMECS and zero and near-zero emission trucks. As explained in detail in Attachments 7 and 9, these technologies, while promising, remain in the development and testing phase and thus are not feasible for the Project at this time. Should they become available at some point in the future, they will be evaluated in the context of the mitigation measure that requires a periodic technology review every 5 years during the term of the MCC lease of the facility.

- a) The AMECS is neither a feasible mitigation measure nor an alternative to the DoCCS proposed by MCC.

The AMECS is a barge-based technology for controlling at-berth air emissions from ocean going vessels. The Harbor Department has worked closely with ACTI, the developer of the AMECS, to support its testing and development. However, at this point in time the AMECS is not a feasible technology for use in connection with the Project. There currently exists only one AMECS unit—a prototype—that is undergoing demonstration and emissions testing. It is not commercially available for use at the

MCC facility, or anywhere else for that matter, and it is unclear when or if it will become available. Therefore, it remains infeasible as a mitigation measure or alternative at this point in time. However, in accordance with the periodic technology review mitigation measure imposed on the Project, the future feasibility of the AMECS as well as other technologies that could reduce emissions from the MCC facility, will be evaluated every 5 years to determine whether its feasibility status has changed.

The DoCCS, in contrast, is a technology that already exists at the MCC facility. Coordinating with the SCAQMD, MCC acquired the DoCCS and proposed it as an essential element of the Project. The Harbor Department as lead agency under CEQA then was required to determine whether the proposed Project with the DoCCS would result in any significant environmental effects. The Final EIR details that evaluation. Using the Final EIR, the SCAQMD as a responsible agency under CEQA will be required to evaluate and decide whether to issue a permit to construct for the DoCCS. If for any reason the SCAQMD does not issue a permit to construct the DoCCS, then the Project will not proceed unless MCC receives approval from the Harbor Department for a modification to the Project, which would require an additional evaluation under CEQA. In short, the DoCCS is at the core of the Project and must be permitted by the SCAQMD in order for MCC to implement the Project.

- b) Zero or near-zero trucks are not feasible at this point in time.

Notwithstanding appellants' arguments to the contrary, zero or near-zero trucks are not yet available and therefore are not feasible mitigation measures. As explained in Attachments 7 and 9, zero and near-zero emission trucks remain in the testing phase and are not currently feasible for cement delivery in connection with the MCC terminal. The Harbor Department continues to support the development of these promising technologies through programs such as the Technology Advancement Program and will evaluate their feasibility in the future through the periodic technology review that will be included in the MCC lease.

Even though zero or near-zero trucks are not available for the Project, the Harbor Department went beyond the requirements of the Clean Trucks Program to require that 90% of the trucks that call at the Project have engines no older than 5 years (or the equivalent). The remaining 10% must at least meet the standards of the Clean Trucks Program. As a consequence of this mitigation measure, the trucks calling at the Project will have newer and cleaner engines than most other trucks serving the port complex.

- 3. The scope of analysis in the Final EIR fully complied with CEQA.

Appellants raise several issues regarding the specific scope of the review in the Final EIR. For most of these issues, the type of review that appellants seek is not required by CEQA. For others, appellants mistakenly allege that the Final EIR's scope of review prevented a full environmental review of the Project.

- a) The traffic and air quality analyses evaluated all of the potential impacts of the Project.

To the extent appellants argue that the traffic and air analyses only considered the impacts within 3 miles of the Project, they are incorrect. As explained in more detail in Attachments 7 and 9, the scope of the traffic analysis (and hence the air analysis, which uses data from the traffic study) was designed to evaluate all intersections and roads that could be significantly impacted by traffic from the Project. The Project-related traffic distribution is supported by a review of previous MCC customers, the location of known ready mix plants in the region, the potential market area for cement, and probable travel routes of these customer trucks to/from the MCC facility. Although in this particular instance that point may be approximately 3 miles from the Project site, that scope was not selected arbitrarily. The traffic study methodology included examining locations near the Project site and continued outward from there, finding no significant impacts at any intersection or on any road or freeway segments, including the I-710. Because the number of traffic trips at any particular location decreases with distance from the Project site as traffic disperses through the regional network, impacts at locations more distant from the ones studied in detail for the Project would show even less of an impact from Project-related trips. These analytical methods are consistent with City of Long Beach traffic study policies and Metro's 2010 Congestion Management Program.

- b) CEQA does not require a separate environmental justice analysis.

For the reasons set forth in Attachment 7 at page 16 and Attachment 9 at page 14, unlike the National Environmental Policy Act, CEQA does not require a separate environmental justice section in an EIR. Even though that section is not required, the Final EIR includes all of the environmental impact analyses that normally are part of an environmental justice section. More importantly, because the Project already includes all feasible mitigation measures, there are no additional mitigation measures that could have been added to the Project through a separate environmental justice section.

- c) CEQA does not require the "life cycle" or type of induced demand analyses requested by appellants.

Appellants cite no authority for their position that the Final EIR should have included a "life cycle" analysis of cement. The impacts of cement manufacturing at facilities unrelated to the Project are entirely separate from the terminal modifications proposed by MCC. CEQA does not require the far-reaching analysis urged by appellants here. Instead, the CEQA Guidelines and recent California Supreme Court decisions make clear that the environmental analysis in an EIR should be focused on impacts within a relatively localized project area and need not include the "life cycle" of a product. (See Attachment 7 at pages 16-19 for a more detailed explanation.)

Similarly, the modifications included in the Project which are intended to improve the operational efficiency and storage capacity of the facility without changing the existing

throughput limits, will not cause an increase in construction or induce the type of cement demand or growth that appellants allege. The Final EIR included a thoughtful discussion of the growth inducement potential of the Project and concluded that there is none. This analysis is fully compliant with CEQA.

Because none of the grounds for appeal have merit, the Harbor Department respectfully requests that the City Council deny the appeal and affirm the Harbor Commission's certification of the Final EIR by approving the attached resolution (Attachment 1).

TIMING CONSIDERATIONS

City Council action on this matter is requested on July 14, 2015, to respond to this appeal in a timely manner.

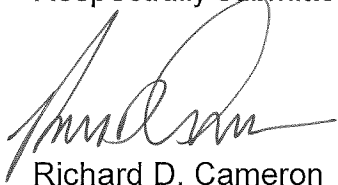
FISCAL IMPACT

If the appeal is rejected, there would be no fiscal impact. Should the City Council sustain the appeal, the Project will be jeopardized, and the region would lose the job opportunities that construction and operation of this Project would create.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



Richard D. Cameron
Managing Director
Planning and Environmental Affairs
Harbor Department



Jon W. Slangerup *for*
Chief Executive
Harbor Department

Attachments:

1. Proposed Resolution for City Council
2. Staff Report to Board of Harbor Commissioners, with Attachments
3. Harbor Commission Resolution HD-2807
4. PowerPoint from May 11, 2015 Harbor Commission Hearing
5. Transcript of May 11, 2015 Harbor Commission Hearing
6. Appeal dated May 22, 2015 by Earthjustice, with Attachments

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7. Detailed Response of Harbor Department to State Ground for Appeal by Earthjustice
8. Appeal dated May 25, 2015 by Coalition for a Safe Environment, et al.
9. Detailed Response of Harbor Department to State Ground for Appeal by Coalition for a Safe Environment, et al.

Previously delivered:

Final Environmental Impact Report for the MCC Cement Facility Modification Project
(SCH No. 2011081098) (also available on Legistar)