

September 24, 2004
Substantive Comments of the City of Fall River, Massachusetts
Concerning Weaver's Cove Energy LNG Import Terminal
EOEA Number 13061

INTRODUCTION

The City of Fall River's comments are organized as follows:

Deficiencies of the Draft Environmental Impact Statement/Draft Environmental Impact Report

Massachusetts State Agency Comments and Recommendations for a Supplemental Draft Environmental Impact Report

Process for Developing and Submitting a Supplemental Draft Environmental Impact Report

Deficiencies of the Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR)

The DEIS/DEIR Fails to Address the Requirements of the August 28, 2003 MEPA Certificate

The DEIS/DEIR issued by the Federal Energy Regulatory Commission (FERC) on July 30, 2004 is significantly deficient and does not respond to the requirements of the August 28, 2003 MEPA Certificate issued by the Secretary of the Executive Office of Environmental Affairs (MEPA Scope). Consequently, the City of Fall River believes that a Supplemental DEIR must be prepared for this project.

At the outset of this proceeding, the Secretary determined MEPA jurisdiction to be equivalent to full scope jurisdiction, given the complexity of the proposed project, the large number of state permits required, and the comprehensive subject matter of the required state permits. By this determination, the Secretary communicated the need for a complete, current, and accurate DEIS/DEIR.

The MEPA Scope required comprehensive information concerning Alternatives, Permitting, Regional Planning, Cumulative Impacts, Wetlands, Waterways, Water Quality, Dredging, Sediment Management, Coastal Zone Impacts, Safety, Noise, Site Remediation, and Construction Impacts. The

DEIS/DEIR either fails to provide that information at all, or provides it in an incomplete and untimely manner by postponing receipt until after the project receives a Certificate of Public Benefit from the FERC and after the MEPA review is concluded.

The MEPA Scope for the DEIR required comprehensive and complete information at the beginning of the process, not after a finding of Public Necessity, the approach taken in the DEIS/DEIR. Massachusetts environmental policy mandates that the Secretary have enough information to support a finding of public benefit before a Certificate is issued, which cannot be done here, given the deficiencies of the DEIS/DEIR.

The MEPA Scope for the DEIR required information complete and comprehensive enough for state agencies to engage in permitting activities. That is impossible, given the deficiencies of the DEIS/DEIR.

The MEPA Scope requirements, had they been addressed, would have resulted in a DEIR that contained sufficient information to develop Section 61 Findings:

To determine whether the Project is likely, directly or indirectly, to cause any Damage to the Environment and make a finding describing the Damage to the Environment and confirming that all feasible measures have been taken to avoid or minimize the Damage to the Environment; 301 CMR 11.12(5).

Section 61 Findings cannot be developed, given the deficiencies in the DEIS/DEIR.

The City contends that the DEIS/DEIR prepared and issued by the FERC fails to comply with the requirements of either Section 102 of the National Environmental Policy Act; 42 U.S.C. § 4332; or the requirements of the Massachusetts Environmental Policy Act (MEPA) codified at M.G.L. c. 30, §§ 61 – 62H. Even if the FERC should determine this document to be adequate for federal purposes, it is NOT adequate for state purposes. The Secretary has the authority and the specific agreement of Weaver's Cove Energy, LLC, through the Special Review Procedure, to determine that a Supplemental DEIR should be prepared by the FERC, in order to satisfy the requirements of MEPA.

The DEIS/DEIR fails to adequately describe or articulate:

- (1) the environmental impact of the proposed action,
- (2) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (3) alternatives to the proposed action,
- (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

The MEPA Scope has been ignored as to the following, express requirements. This list is not exhaustive, but illustrative as to what the DEIS/DEIR fails to include:

- Evaluation of no-build alternative to establish baseline conditions;
- Inclusion of all alternatives necessary for the state permitting processes, including the Chapter 91 License and the Water Quality Certification, offshore alternatives and alternatives north of Massachusetts;
- Evaluation of alternative site lay-outs to arrive at a lay-out that minimizes overall impacts;
- Evaluation of a site lay-out without disposal of dredged sediment on the site;
- Demonstration of compliance with any applicable state regulatory or statutory performance standard;¹
- Demonstration of alternatives that will meet CZM program policies;
- Methodology for reducing impacts to 1700 sq. ft of salt marshes;
- Inclusion of analysis of impacts to wetland resources and fisheries from dredging operations, including a detailed analysis of the physical and chemical characteristics of the dredged material. As set forth in the U.S. Army Corps of Engineers' (USACE) comments, Tier III sediment sampling has not yet begun; and
- Inclusion of a feasibility analysis concerning the upland placement of dredged material in light of the comments received from DEP and others.

¹ In fact, the DEIS/DEIR establishes that the project cannot demonstrate compliance with the requirements of the Massachusetts Contingency Plan and that it will not meet state water quality standards or Chapter 91 requirements.

The DEIS/DEIR also ignores fundamental state permitting requirements, such as:

- A Water Management Act Permit and a NPDES permit for the estimated 32 million gallons of water the project intends to take from the Taunton River for hydrostatic testing of the LNG tank, the 760,000 gallons of water the project intends to take from the Taunton River for hydrostatic testing of the pipelines, and the regular withdrawals from the Taunton River for ballast water;
- A Solid Waste Site Assignment, or a Beneficial Use Determination from DEP for the 3.1 million cubic yards of contaminated dredged sediment the project intends to dispose of on the terminal site;
- A Remedial Implementation Plan Modification from DEP in order to comply with the requirements of the Massachusetts Contingency Plan; and
- A demonstration of financial assurance for the disposal of solid waste and/or ensuring that any release of oil or hazardous materials resulting from construction activities at the terminal site, which is an active c. 21E disposal site, will be addressed in order to avoid creating a Condition of Significant Risk.

The DEIS/DEIR Fails to Include Basic Information and Defers Receipt of Threshold Information

The DEIS/DEIR does not include some of the most basic information required by the MEPA Scope in one of two ways: it either postpones the gathering and submission of such information until construction is imminent, following the issuance of a FERC Certificate, or it recommends the submission of such information following the close of MEPA review.

The following examples, taken from the DEIS/DEIR at **Section 5.0: Conclusions and Recommendations**; illustrate the inadequacies of this document as a MEPA DEIR:

Recommendation 19. (DEIS/DEIR at 5-17) provides that the project file documentation with the FERC prior to construction and following FERC authorization, that placement of the dredged material is consistent with the Massachusetts Contingency Plan. This determination is NOT a construction detail or a remediation waste management issue. It is a threshold question concerning project and site suitability; see Massachusetts Department of Environmental Protection (DEP) Comments, infra.

If the 3.1 million cubic yards of contaminated sediments that the project insists MUST be dredged and disposed of on the terminal site violates the Massachusetts Contingency Plan, that fact should be sufficient to require the project to:

- find an alternative site,
- find an alternative mode of LNG transport,
- submit alternative disposal plans and a demonstration of compliance with Massachusetts Solid Waste Site Assignment requirements, and/or
- demonstrate that the material will qualify for a Beneficial Use Determination.

Once that information is provided, it should be offered, in a supplementary DEIS/DEIR, for public review and comment. Postponing this as a fundamental determination does NOT fulfill any rational project purpose and makes it impossible for DEP to consider the permitting implications or develop Section 61 Findings until after the Project is authorized by the FERC.

Recommendation 20. (DEIS/DEIR at 5-18) states that the project shall provide, in its comments on the draft EIS or in a separate document submitted at the same time, a revised site plan for the northern parcel of the site that avoids permanent wetland impacts or demonstrates that an alternative layout is not practicable or feasible. This information is an express requirement of the MEPA Scope. It is ignored.

Recommendation 21. (DEIS/DEIR at 5-18) states that the project shall provide, in its comments on the draft EIS or in a separate document, a conceptual compensatory wetland mitigation plan. This is an express requirements of the MEPA Scope. It is ignored.

Recommendation 22. (DEIS/DEIR at 5-18) provides that, prior to construction and following FERC authorization, the project shall confer with NOAA Fisheries and state natural resource agencies to develop a dredging program that avoids the devastating impacts endorsed in the DEIS/DEIR. This is NOT a construction implementation detail. It is a threshold consideration concerning the public interest served by the project, the evaluation of need, and the assessment of alternatives. It is a question that must be answered first, not following authorization. It will be impossible for the Massachusetts Office of Coastal Zone Management (CZM) to conduct a consistency determination, and it will be impossible for DEP and the Massachusetts Division of Marine Fisheries (DMF) to engage in permitting or develop Section 61 Findings.

Recommendation 23. (DEIS/DEIR at 5-18) provides that, prior to construction and following FERC authorization, the project shall file a

demonstration of consistency with CZM and a concurrence from CZM. This determination flies in the face of MEPA and discounts fundamental Massachusetts state actions. NO authorization should even be considered until CZM has the information it needs to determine consistency.

Therefore, the City of Fall River requests, in accordance with the Special Review Procedure established by the Secretary on August 28, 2004, that the Secretary determine a Supplemental DEIR to be necessary and issue a Certificate specifying the requirements for a Supplemental DEIR to be prepared and submitted by the FERC.

Massachusetts State Agency Comments and Recommendations for a Supplemental Draft Environmental Impact Report

The City of Fall River is not alone in this request for a Supplemental DEIR. The Massachusetts Department of Environmental Protection (DEP), the Massachusetts Office of Coastal Zone Management (CZM), the Massachusetts Division of Marine Fisheries (DMF), and the Massachusetts Riverways Program in the Department of Fish and Game (DFG) all submitted comments to the FERC articulating the deficiencies and omissions in the DEIS/DEIR. Each of these agencies, along with the United States Environmental Protection Agency, have requested that a Supplemental DEIS/DEIR be prepared and presented for review and comment.

The following comments track the requirements of the MEPA Scope and set forth the comments of CZM, DEP, and DMF identifying the deficiencies in the DEIS/DEIR and requesting specific requirements to be included in a Supplemental DEIR. The comments provided are excerpts from each agency's full comment letters to the FERC, with applicable page references. The specific requests for information to be included in the Supplemental DEIR are underlined for emphasis.

State Agency Requests for Supplemental DEIR Requirements

Alternatives Analysis

CZM:

The disposition of the material to be dredged is a threshold issue that should be resolved in the DEIS. The proposed upland reuse of dredged material is a speculative alternative on which all assessments of potential impacts are based. (CZM at 1)

The alternatives analysis [in the DEIS] is incomplete and should be supplemented to include additional detail regarding environmental and safety issues associated with alternative site locations. (CZM at 1)

CZM's Energy Policy #1 states:

[f]or coastally dependent energy facilities, assess siting in alternative coastal locations... Weigh the environmental and safety impacts of locating proposed energy facilities at alternative sites.

The DEIS does not adequately characterize the environmental and safety impacts of potential alternatives to the Fall River site. At a minimum, supplemental information should quantify the potential impact to environmental resources and human safety associated with an alternative coastal location as the baseline for a detailed comparative analysis with the preferred alternative. Note that this will require that additional information be provided to characterize the preferred alternative, as described in #5 [Dredging Management] below. (CZM at 2)

CZM also recommends that the supplemental information include an expanded analysis of the LNG terminal alternatives for several of the potential onshore alternative sites. These sites include the Boston Harbor site, the Providence Harbor site, Quonset Point site, Coddington/Melville site, the New London Harbor site, and the Prudence Island site. (CZM at 2)

CZM recommends that a comparative analysis of [these] alternative facilities be provided in the SDEIS. (CZM at 2 – 3)

Instead of the proposed 'all or nothing' upland reuse, an analysis of the dredged material under the federal suitability determination procedures for open water disposal would provide CZM and other agencies with the means to evaluate whether impacts of the project proposed have, in fact, been avoided and minimized to greatest extent possible. That comparison is currently impossible, given the absence of such information. CZM requests that the SDEIS characterize the dredged materials for their suitability for open water disposal, and develop and alternative that incorporates both upland and open water reuse/disposal. In the event that both disposal options are deemed feasible from a regulatory perspective, the SDEIS should present a comparative analysis of the environmental impacts of the two disposal options. (CZM at 3 - 4)

DEP:

The DEIS/DEIR recommends that the project proponent provide a revised sediment placement plan if it is unable to verify the consistency of the proposed plan with the MCP. Since consistency of the proposed reuse plan with the MCP has not been established and the volume of permissible sediment reuse has not been demonstrated, additional information on the alternatives to on-site upland management should be fully evaluated. Because of the significant potential environmental and project impacts of the alternative scenarios to manage this large a volume of contaminated sediment, future FERC/MEPA filings should include a more detailed evaluation of the alternatives. (DEP at 12)

DMF:

The supplemental DEIS should contain a more contemporary and comprehensive analysis of the potential for siting an offshore LNG terminal. Efforts in the Gulf of Mexico are considerably more advanced than as portrayed, and the proposal for an offshore terminal off the coast of Gloucester, Massachusetts, is in the pre-application meeting phase. (DMF at 3)

Postponed Action Alternative Analysis

CZM:

CZM recommends that a full discussion of the impacts of the recently modified completion date for the new Brightman Street Bridge be included in the SDEIS. This should include discussion of how this later completion date affects the proposed project, regional gas supply, and how any delay in completion of the bridge may provide the opportunity for additional study and analysis. (CZM at 3)

System Alternative Analysis

CZM:

CZM recommends that supplemental information be submitted regarding the enhanced *system alternative analysis* and that this information investigate potential options that eliminate or reduce the need for significant LNG truck loading capacity at any new LNG terminal. The potential decoupling of the need for an LNG trucking facility at any new LNG facility may expand the potential universe of sites for consideration of an LNG import terminal. (CZM at 3)

Environmental/Habitat Impacts

DMF:

Estimates of the range and magnitude of potential negative impacts to finfish and shellfish very likely underestimate these effects as they are based on inadequate models that cannot accurately portray conditions within the river system due to inadequate data. The models do not include any inputs for turbidity/suspended solids during high flushing and/or low water flow periods because no such data were collected. Further, we continue to question the accuracy of a model that was only tested against the one month's data upon which the model was based. As this modeling is linked to a proposal to perform year-round dredging for three plus years, it seems reasonable to require the collection of multiple years' worth of data upon which to base the model. (DMF at 2)

The failure of the DEIS to adequately consider appropriate time-of-year (TOY) work restrictions for all species at risk for the proposed activity should be addressed in a supplemental DEIS. (DMF at 2)

It is not possible to conduct continuous dredging for a period of three years in this system without causing substantial negative impacts to marine fisheries resources and habitat. A failure to address these avoidable impacts constitutes a violation of the regulations governing NEPA, MEPA, and CZM Federal Consistency. (DMF at 2)

The DEIS contains virtually no discussion of the potential impacts from the withdrawal of millions of gallons of river water for ballast and hydrostatic testing other than a brief accounting of potential impingement/entrainment mortality. The regular withdrawal of such volumes of water needs to be discussed within the context of other similar activities within the embayment and with due consideration of the greater impact such activity may have during periods of drought or seasonal low water. (DMF at 2)

Dredged Material Reuse, Disposal, Characterization, and Management

CZM:

The design and operational management of the proposed dredging require additional characterization to determine the extent of potential impacts. (CZM at 1)

The design and operational management of the proposed dredging require additional characterization to determine the extent of potential impacts.

The DEIS materials provide only general information regarding measures to avoid and/or minimize impacts to aquatic resources and water quality, leaving detailed management measures to be developed "prior to construction." Given the potentially significant impacts to shellfish and sensitive life stages of aquatic organisms, CZM requests that these materials be provided to a greater level of specificity in the SDEIS. Absent this more detailed information, it is not clear to CZM that the project as proposed is permissible. (CZM at 4)

DEP:

Based on 47 composite core samples collected by CZM and WCE, the sediment has been determined to be impacted by oil and/or hazardous materials, such as, but not limited to, metals, polycyclic aromatic hydrocarbons (PAH) and polychlorinated biphenyls (PCB). The proposed placement of this contaminated sediment on the site must comply with the Massachusetts Contingency Plan (310 CMR 40.0000) including without limitation the provisions of 310 CMR 40.0030, Management Procedures for Remediation Waste. Before approving the sediments reuse, the provision at 310 CMR 40.0032 requires, in part, that the Department evaluate the types and extent of contamination within the sediment in comparison with the site's contaminant profile in order to prevent the occurrence of a release condition at the site that would require remediation or significantly increase contamination at the site. There is currently insufficient information to determine compliance with these provisions of the MCP. This should be addressed in future FERC/MEPA filings for this project. (DEP at 10)

The Department is concerned that the amount of samples collected may not provide sufficient data to adequately characterize the nature and source of contaminants in the sediment.

The Department does not concur with the conclusions in the DEIS/DEIR that the sediment was comprehensively sampled or its evaluation of the significance of the concentrations of PAHs and metals in relation to MCP compliance for reuse of contaminated media. The project proponent should prepare a Conceptual Site Model demonstrating that a sufficient understanding of sediment deposition and potential sources of contamination exists to justify the sediment sampling conducted to date. If the Conceptual Site Model cannot be used to justify the sampling, a sampling plan should be prepared to fill data gaps identified by the Conceptual Site Model. The Conceptual, and if necessary, the sampling plan, should be included in future FERC/MEPA filings for this project. (DEP at 11)

The proponent must demonstrate that the leaching characteristics are not altered by the addition of the Portland cement by conducting Toxicity Characteristic Leachability Procedures (TCLP) testing on a sufficient number of

test samples. The results of the TCLE [sic] testing should be included in future FERC/MEPA filings for this project. (DEP at 11)

The soil sampling conducted at the project site as part of its MCP assessment did not include a number of contaminants identified in the sediment through the sampling. Prior to the Department making a final determination on the reuse proposal, the project proponent will be required to submit additional data to establish the extent and level of contaminants at site corresponding with the sediment's contaminants. This data should be included in future FERC/MEPA filings for this project. (DEP at 11)

Cumulative Impacts

DMF:

Marine Fisheries recommends that the supplemental DEIS include a more comprehensive discussion of the contribution that dredging and vessel operations associated with the Weaver's Cove project will make to overall cumulative impacts visited upon the marine fisheries resources and habitats found in the Mount Hope Bay/Taunton River system. (DMF at 2)

Avoidance and Mitigation

DEP:

It is noted in the DEIS/DEIR that open buckets will generally be used for the dredging operation. However, due to the fine sediments and the potential for re-suspension of dredged material in many areas, the use of an environmental bucket and/or other mitigation measures should be considered. A detailed discussion of this issue, as well as a general discussion of an environmental monitor and testing plan for the dredging operation, should be included in future FERC/MEPA filings for this project. (DEP at 8)

DMF:

In a similar vein, the supplemental DEIS should contain discussion of actions to minimize and/or mitigate for the impacts likely to result by the regular passage of the LNG tanker and support vessels through the embayment. The recommendation to essentially ignore these impacts implicit in the DEIS is unacceptable. (DMF at 2)

Proposals to perform one-time shellfish seeding and remove quahogs from the dredge footprint do not address the direct loss of habitat caused by dredging

or the continuing impacts that are likely to result from vessel passage through the river.

A more comprehensive discussion of the use of horizontal directional drilling (HDD) is warranted in the Supplemental DEIS. The seeming rejection of this technique for use in the Taunton River is based on speculation and does not appear to reflect the state-of-the-art. Considerably more flexibility and range in the use of this technique were recently demonstrated during construction of the Hublines gas pipeline through Massachusetts Bay. The Supplemental DEIS should reflect these and other recent advances. (DMF at 2)

Regional Planning

CZM:

In addition, we note that the Governors of the northeast states are currently preparing a comprehensive assessment of the role of natural gas and LNG in the region. This assessment of the region's future energy needs, and the role LNG may play in addressing those needs, will inform decisions regarding the development of major energy infrastructure. We strongly encourage FERC to incorporate these materials in the ongoing EIS process. (3)

Public Safety

CZM:

CZM recommends reformatting the DEIS to allow review of the public safety impacts both separately and in conjunction with the environmental impacts for the various alternatives. This would allow reviewers to more easily determine if a site was eliminated from consideration primarily for public safety reasons, environmental reasons, or some combination of the two. (CZM at 3)

Further, the proposed "Safety Exclusion Zone" is 2 miles ahead and 1 mile astern while a fully loaded vessel is in route to the facility, yet the proposal does not include a "Safety Zone" while the vessel is off-loading. Future FERC/MEPA filings should discuss anticipated safe distances for vessels, either commercial or recreational, while the LNG [sic] is off-loading product. Also, future FERC/MEPA filings for this project should describe whether there would be an "exclusion zone" proposed around the facility itself and, if so, the anticipated dimensions of that zone. (DEP at 7)

Use Conflicts

CZM:

FERC has suggested that consideration be given to scheduling bridge closures to avoid peak traffic periods. As an effort to avoid use conflicts, CZM suggests consideration be given to avoid LNG vessel movement on days expected to have high volumes of recreational boating traffic, or large crowds on the waterfront. CZM requests additional detail on how the safety exclusion zone will be implemented, including proposed methods of notification for other large vessels and smaller recreational and commercial boats and the amount of time between the notification and the execution of the safety exclusion zone. CZM also requests additional information on whether the safety exclusion zone will impact public access along the shoreline. (CZM at 4)

The discussion [in future FERC/MEPA filings] should also address whether in the course of off-loading, the active channel will be closed to any and all vessels, and if so, what would be the duration of the closure. (DEP at 7)

State Permitting and Section 61 Information and Requirements

DEP - General Conformity Determination:

The preliminary conformity determination for the WCE project does not meet the requirements of the EPA's General Conformity regulations for ozone nonattainment areas because the criteria for determining conformity have not been met. First, the project's emissions are not included in the SIP. Second, the direct and indirect emissions are not offset. Finally, DEP has neither made a determination that the emission budget will not be exceeded nor made a commitment to a SIP revision. The reliance on a "regionally significance" test and modeling analysis is incorrect and only appropriate for carbon monoxide and PM-10 nonattainment areas.

To meet the requirements of the General Conformity regulations, the preliminary determination must be revised. Because the emissions from the project are not included in the SIP for eastern Massachusetts, the analysis should explore mitigation measures to offset the NOx emissions from the project. Future FERC/MEPA filings for this project should include a detailed discussion of ways to mitigate the impact of this project since the SIP cannot accommodate increases in NOx emissions and expect to demonstrate attainment of the public health standard. (DEP at 4)

DEP - Air Quality Permits:

In consideration that air quality modeling was “refined modeling” and the predictive nature of modeling, alternative water/glycol heater designs should be evaluated in future FERC/MEPA filings to reduce the PM₁₀ ground level impacts. (DEP at 5)

Neither the DEIS/DEIR nor NMCPA [non-major comprehensive plan approval] provides information concerning how odorant storage, pipeline odorant injection, spent odorant storage containers, etc., will be designed and managed to prevent the occurrence of a condition of air pollution due to the release of odorant to the ambient air. Future FERC/MEPA filings should include a detailed discussion of these issues. (DEP at 5)

DEP - Wetlands:

The DEIS/DEIR provides only cursory information about the project's impact on the coastal dune. The report also provides information that concludes the salt marshes in the DPA are functioning in a manner to contribute to the protection of marine fisheries, storm damage prevention and flood control, as well as ground water supply, prevention of pollution and protection of wildlife habitat... The wetland regulations provide a very high degree of protection to salt marshes and coastal dunes against any alteration or adverse impacts from construction related activities. The regulations also give different regulatory status to activities in resource areas within DPAs... However, the information provided in the DEIS/DEIR is insufficient for the Department to evaluate the nature and extent of the potential impact of the current proposal on these resources and their respective contribution to protected interests. This information should be provided in supplemental FERC/MEPA submissions as well as additional information evaluating and comparing the construction alternatives that could avoid or mitigate impacts. (DEP at 6)

DEP – Water Management Act:

The proposed hydrostatic testing activities will likely require the need for a Water Management Act Withdrawal Permit (310 CMR 36.00) from DEP, as well as a filing for a NPDES Permit from EPA and DEP. Future FERC/MEPA filings should discuss further details of this activity, including the location of possible withdrawal and discharge points being considered by the project proponent. (DEP at 7)

DEP - Waterways:

[I]t was noted the DEIS/DEIR does not incorporate any of the detailed plans showing the dredge footprint or profiles of the cut and final depths. Similarly, detailed plans of the LNF facility, pier, revetment, boat ramp, fill and shore side structures as well as the pipeline have not been included in the document [and should be included in future FERC/MEPA filings]... (DEP at 7)

In addition, the DEIS/DEIR shows that the pipelines from the proposed LNG terminal would cross ten streams. Future FERC/MEPA filings should discuss whether any of the streams are navigable. And, if so, by what types of vessels and what would be the expected navigational impacts during construction and post-construction. (DEP at 7)

The alternatives to cut and cover (open trenching) for the proposed pipeline under the Taunton River only explore horizontal directional drilling (HDD). There are other technologies that should be considered in future FERC/MEPA filings for this project including plowing, jetting, and water-to-water or water-to-land HDD. (DEP at 8)

DEP - Potential Impact on Current Remediation and Site Conditions [Chapter 21E and MCP Requirements]:

[Therefore], a detailed plan should be included in future FERC/MEPA filings that identifies the procedures to ensure that the project does not interfere with the existing recovery system or that identifies alternative remedial approaches designed to achieve a Response Action Outcome pursuant to 310 CMR 40.0000. (DEP at 9)

If any activity conducted during the replacement of the bulkhead results in a release of NAPL to the river, or any other release, the person conducting that activity may be liable for response actions and other damages pursuant to M.G.L. c. 21E, § 5. The proponent should include a detailed plan in future FERC/MEPA filings for this project that identifies the procedures that will be established to prevent the discharge of NAPL to the river during the replacement of the bulkhead. (DEP at 9)

The proponent must demonstrate that the deeper bulkhead and low-permeable material will not alter the groundwater flow and the elevation of the water table in such a way as to alter the migration or the recovery of the NAPL, or develop a plan for an alternative remedial approach designed to achieve a Response Action Outcome pursuant to 310 CMR 40.0000. A groundwater flow model should be included in future FERC/MEPA filings that depicts current

conditions and changes resulting from the replacement of the bulkhead and placement of Portland cement/sediment mixture. (DEP at 9)

If the replacement of the bulkhead or placement of the Portland cement/sediment mixture results in a change of groundwater elevation or flow, the person responsible for the resulting changes to site conditions may be liable for response actions and other damages pursuant to M.G.L. c. 21E, § 5. the DEP requests FERC also include this in their Findings. The project proponent should also discuss in future FERC/MEPA filings the financial assurance measures that will be in place to ensure the performance of the response actions in the event implementation of the project results in a release or disruption of on-going remedial actions. (DEP at 9 – 10)

A groundwater flow model should be included in future FERC/MEPA filings that depicts current conditions and changes resulting from the replacement of the bulkhead and placement of the Portland cement/sediment mixture. (DEP at 9)

The project proponent should also discuss in future FERC/MEPA filings the financial assurance measures that will be in place to ensure the performance of the response actions in the event implementation of the project results in a release or disruption of on-going remedial actions. (DEP at 10)

On page 4-30 of the DEIS/DEIR the applicant states the placement and reuse of the dredge at the site could improve the current site conditions by effectively isolating any soil with high lead concentrations and LNAPL. Future FERC/MEPA filings should identify the volume of dredge material necessary, with calculations, to isolate the soil hotspots. (DEP at 10)

DEP – Solid Waste and Demonstration of Reuse Need:

In order to be considered a valid reuse proposal, the proponent must demonstrate that the purposes for which the material is being reused are reasonable and consistent with the project's design, construction and operation, and that the volume of material proposed to be reused is the minimum amount necessary to accomplish those purposes. Sediment volume that exceeds those criteria will be considered solid waste, if proposed to be disposed upland, and will be subject to management pursuant to M.G.L. c. 111, § 150A and 150A1/2 and 310 CMR 16.00 and 19.000.

Detailed information should be provided in future FERC/MEPA filings that demonstrate that those site grading and landform purposes are reasonable and consistent with the project's design and that the volume of sediment being allocated to each of the proposed reuse purposes is necessary to accomplish its function. (DEP at 11)

The City has also included, as **Attachment 1**, copies of the complete comments submitted by these agencies to the FERC.

Finally, NOAA Fisheries, the USACE, and the United States Environmental Protection Agency (EPA) submitted comments to the FERC detailing the inadequacies of the DEIS/DEIR. EPA went so far as to determine the DEIS/DEIR to be “Environmentally Unsatisfactory.” NOAA Fisheries stated that, “At this time, NOAA Fisheries believes that the proposed project will result in substantial and unacceptable impacts on aquatic resources of national importance (ARNI). Within the ACOE review process, NOAA Fisheries is invoking the 404(q) process pursuant to the Clean Water Act and our mutually agreed upon Memorandum of Agreement.” (at 1). Because these federal agencies share coordination and permitting roles with CZM, DEP, and DMF, the City has also provided full copies of those comment letters, as **Attachment 2** of these comments.

Process for Developing and Submitting a Supplemental Draft Environmental Impact Report

The Special Review Procedure specifically contemplates the preparation and submission of a Supplemental DEIR to address state concerns and reserved all rights granted to the Secretary under Section 11.08(8) of the MEPA regulations. However, there is no expression discussion of the distinctly different procedures and process used by the FERC for implementing its NEPA requirements and the manner in which MEPA requirements are implemented.

The FERC is the lead agency for conducting NEPA review and employs the federal scheme that requires the lead agency, with participation of cooperating agencies, to prepare the DEIS and the EIS. The FERC has the authority to extend schedules for public review and comment without the concurrence of Weaver's Cove Energy, LLC or Fall River Pipeline, LLC.

The state requirements are distinctly different. The project proponent, employing the requirements for structure, content, and organization set forth in the MEPA regulations; 301 CMR 11.07; prepares and submits the DEIR to the Secretary and the public for review and comment. Once submitted, unless the project proponent agrees, the Secretary has no authority to modify schedules for public review and comment.

In this case, the procedures are further complicated by the fact that the requirements for the structure, content, and organization of an EIR promulgated at 301 CMR 11.07(6) are straightforward, unless an alternative has been authorized by a Special Review Procedure.

In order to acknowledge these differences and continue to maintain the goals for coordination and collaboration set forth in the August 28, 2003 MEPA Certificate Establishing a Special Review Procedure, the City offers the following suggestions.

A Supplemental DEIR should be prepared and submitted by the FERC, as the project proponent. The FERC has its own requirements for additional information for the EIS and will be gathering that information and considering the comments submitted to it concerning the DEIS. Some of that information will be required to prepare a Supplemental DEIR. The additional, significant information required to address the MEPA Scope could be prepared by the FERC in conjunction with its other information-gathering activities and its consideration and response to the comments submitted on the DEIS. Once gathered in one coordinated effort, the FERC could then submit a Supplemental DEIR to the Secretary.

One other point should be considered as a part of this process. The Special Review Procedure allowed the preparation of the DEIS/DEIR in federal format, not employing MEPA requirements under 301 CMR 11.07. This attempt to employ structure, content, and organization requirements distinctly at variance with MEPA requirements may have, unintentionally, contributed to some of the deficiencies in the DEIS/DEIR. In order to avoid such a result here, the City suggests that the Secretary consider using the MEPA requirements concerning structure, content, and organization in the Supplemental DEIR and include that as a specific component of a Certificate requiring a Supplemental DEIR.

CONCLUSION

The City of Fall River is grateful for this opportunity to provide these comments and specifically requests that the Secretary:

1. Determine that the preparation and submission by the FERC of a Supplemental Draft Environmental Impact Report is necessary in order to comply with the Massachusetts Environmental Policy Act; M.G.L. c. 30, §§ 601 – 62H; and the MEPA implementing regulations; 301 CMR 1101;
2. Issue a Certificate Requiring the Preparation of a Supplemental Draft Environmental Impact Report that incorporates the specific comments and requests of the Massachusetts Office of Coastal Zone Management, the Massachusetts Department of Environmental Protection, and the Massachusetts Division of Marine Fisheries, and acknowledges the concerns identified and the

recommendations included in the comments of the United States Environmental Protection Agency and NOAA Fisheries in FERC Docket Numbers CP04-36-000 and CP04-41-000; and

3. Issue a Certificate Establishing the Requirements of the MEPA Regulations To Be Implemented in the preparation and submission of the Supplemental Draft Environmental Impact Report by the FERC.