

**U.S. ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
REGULATORY DIVISION**

Public Hearing Need Determination

1. Applicant: DCP Midstream Partners, LP
Application Number: NAE-2010-02347

2. Authority: This determination of the need for a public hearing is being taken under authority delegated to the District Engineer from the Secretary of the Army and the Chief of Engineers by 33 CFR 327, as published in the 13 November 1986 Federal Register pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344; and Section 10 of the Rivers and Harbors Act, 33 U.S.C. §403. _

3. Description, Location and Purpose of Work: The applicant proposes to place permanent fill below the ordinary high water line of an unnamed stream and in adjacent freshwater wetlands on Mack Point at Searsport, Maine in order to develop a liquid propane off loading and storage facility. The project will also require the installation of an above ground pipeline extending out onto an existing cargo terminal pier. Approximately 1.97 acres of wetland and 1,035 linear feet of intermittent stream will be impacted by the project.

4. Comments: Prior to and in response to our Public Notice, the Corps received 211 letters or emails in opposition to the project, 22 of which contained public hearing requests, and 135 letters or emails in support of the project. The Corps notes that 33 of the comments received in opposition and 115 of those received in favor to the project were form letters. It should also be noted that the total comments received in opposition to the project include repeat comments from several of the same individuals (pre and during Public Notice) and multiple comments from the several of the same individuals (during Public Notice). The Corps did not attempt to differentiate duplicative or multiple comments.

a. Those in favor expressed the following comments:

1.) Jobs. The development will create much needed construction and operations jobs. Operation of the facility will also result in secondary economic benefit to the community and the region.

2.) Gas supply. The project will result in a more reliable and stable propane supply for Maine consumers.

3.) Fuel source. Propane constitutes a cleaner alternative to traditional heating oil and is an important element of Maine's energy mix.

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4.) Mack Point. It is appropriate to site such a facility at Mack Point, already an Industrialized site.

5.) Traffic. The increase in traffic from the project will be inconsequential.

6.) Water. The applicant will facilitate improvements to the municipal water

system that will benefit the entire community (The Searsport Water District).

7.) Natural Areas. There are no rare botanical features that will be disturbed by the project (Maine Dept. of Conservation, Natural Areas Program).

b. Those opposed raised issues & concerns that were broadly captured as follows:

1.) Wetlands. The project will permanently impact aquatic resources on site including wetlands that serve important functions and values. The proposed compensatory mitigation is insufficient to address the project's wetland impact. There was also some question whether the scope of wetland impact was accurately described.

2.) Wildlife. There is important wildlife habitat that will be adversely affected by clearing and development of the site.

3.) Tidal resources. The project could adversely affect intertidal and sub-tidal resources within Long Cove including lobsters, shellfish beds, and eelgrass. The project could have further reaching effects to marine resources and fishing in Penobscot Bay.

4.) Historic properties. There could be archeological or historic sites on site that will be adversely affected by the development. There are historic properties within the community that are threatened by increased truck traffic or a catastrophe

5.) Safety. The presence of a tank of this size, just off Route 1 poses a safety risk, particularly in the event of a catastrophic fire or explosion. Increased truck traffic in the area could threaten public safety. Local emergency responders are ill equipped to handle an emergency of any magnitude.

6.) Pollution. The operation of the facility will result in air, water, noise, and light pollution. This is particularly relevant to the proposed emergency flare.

7.) Aesthetics. The size and height of the tank and appurtenant facilities will adversely affect the views from Route 1, Sears Island, and nearby communities. There will be insufficient buffers to the site. Is there a long-term plan for decommissioning and removal of the tank? '

8.) Economics. The limited number of jobs created by the facility will not mitigate for the anticipated loss of tourist dollars and economic impact to the community

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and surrounding region. Increased truck traffic could adversely affect local businesses. A request was made for an economic study of the impact of the project.

9.) Geotechnical. There is a geologic fault in the area that could present a safety hazard to the proposed tank.

10.) Sears Island. The passive recreational use of Sears Island could be adversely affected by further industrialization of Mack Point. There were multiple references to the construction of the Sears Island Causeway by the Corps and its impact to marine resources.

11.) Traffic. The project could result in an excessive increase in truck traffic in the region with associated degradation of existing roads and quality of life. Rail traffic could also increase.

12.) Security. The presence of the proposed tank could attract terrorists. An attack on the tank could cause catastrophic fire or explosion. This factor, plus exacerbating our dependency on foreign supplies of fossil fuels, may adversely affect National Security. There was an objection to imports of propane from countries like Afghanistan.

13.) Navigation/Recreation. Recreational and commercial boaters currently using Searsport Harbor and surrounding waters could be adversely affected by LPG vessels at anchor and their associated security zones.

14.) Property values. The presence of the tank and associated operations in the community could result in a lowering of property values.

15.) Need. There is insufficient demand for propane in Maine and ample supply such that the project is not necessary.

16.) Industrialization. The tank facility adds to the overall industrialization of Mack Point and could lead to future industrialization in the area.

17.) General Environmental Impact. An Environmental Impact Statement and full NEPA review should be performed by the Corps.

18.) Scope of Environmental Review. The Corps should consider the entire facility, not just the fill of wetlands, in its NEPA review.

19.) Compliance. There was some reference to the environmental and safety compliance track record of the applicant and the industry in general elsewhere in the country.

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5. Requests for a public hearing shall be granted, pursuant to 33 CFR 327.4 (b), "unless the district engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing". Courts reviewing the regulations governing public hearings have observed that hearings are conducted on an "as needed" basis by the Corps. To the extent that the Corps determines that it has the information necessary to reach a decision and that there is "no valid interest to be served by a hearing," the Corps has the discretion not to hold one.

Courts have also observed that an important factor in determining the necessity for a public hearing is the extent to which there have already been opportunities and other forums for the public to participate and raise their concerns.

Issues raised regarding the proposed activity were clearly stated in response to the Corps Public Notice, and these issues are **1)** readily addressed through existing or obtainable information; **2)** have been or will be more appropriately addressed by other federal agencies; and! **or 3)** have been or will be more appropriately addressed at the state and municipal level.

In addition, the public has had ample opportunity to express their interest in the project. The Corps administrative record contains not only the public's response to our January 31, 2012 Public Notice, but also extensive comments made during the period when the Corps was considering the project's eligibility under the Maine General Permit. It is unlikely that heretofore unknown issues will be identified in a public hearing. To date, the applicant has held two local public information meetings, one of which was required by the Maine DEP; **he** has attended local Planning Board meetings to provide project updates and these were open to the

public and available on line; he has participated in three public meetings/hearings required by the Town of Searsport concerning tank height; he has provided information through the media including news articles and interviews and a full page informational ad in the paper; he has gone door to door in the community to distribute information and answer questions; he has met with local officials, business owners, concerned citizens, and state officials; he has opened a local office that is open to public inquiries; and finally, he conducted yet another public information meeting on January 26, 2012. The Corps attended the January 26, 2012 meeting and has on file any available records of the previous meetings. The format of the most recent meeting, like many of those in the past, provided for a description of the project elements, responses to public questions, and public testimony. Far more information has been conveyed to the public through these various forums than would ever be presented in a Corps public hearing, and the issues raised by members of the public in these forums reflect the same concerns and issues raised in the written comments received in response to the Corps Public Notice.

6. I therefore determine that it is not necessary to conduct a public hearing because through the Corps public comment process, we have sufficient information to adequately evaluate the issues relating to the proposed activity. I acknowledge and appreciate the viewpoints that accompanied

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the requests for a public hearing, and will assure that this information becomes part of the administrative record to be fully considered before a final decision is made. The Corps will consider relevant new information or circumstances that may arise prior to a Final decision on the permit application.

Steven M. Howell
Lieutenant Colonel, Corps of Engineers
Deputy District Engineer

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