



Tulane Environmental Law Clinic

August 15, 2013

Nicole Dandurand
State of Louisiana
Department of Natural Resources
Office of Coastal Management
Post Office Box 44487
Baton Rouge, LA 70804-4487
Monica.dandurand@la.gov

RE: RAM Terminals, LLC Coastal Use Permit Application
MVN Number: 2012-0123-EPP
WQC Number: 120403-01
CUP Number: 201220190

These comments are submitted on behalf of the Christian Ministers Missionary Baptist Association of Plaquemines, Inc.; Ms. Joyce Cornin; and Ms. Velma Davis. These commenters reserve the right to rely on all public comments submitted, request a written response to comments, and request written notification when any action is taken on this Draft Permit (issuance, denial, remand, etc.). In particular, they incorporate by reference the comment letters submitted by the Gulf Restoration Network, the Louisiana Environmental Action Network, the Lower Mississippi Riverkeeper, Public Citizen, and the Delta Chapter of Sierra Club, the EPA and the NOAA.

Introduction

RAM is seeking the approval of a proposed coal terminal export facility located on the Mississippi River within Plaquemines Parish in Myrtle Grove, Louisiana. The RAM coal facility is designed to unload coal and petroleum coke from river barges and rail cars; store and blend products; reclaim and transfer products from open ground storage to ocean going vessels.

The Louisiana Department of Natural Resources (“LDNR”) should deny the permit application for the following reasons:

1. Because RAM has failed to provide alternative sites, projects and mitigation measures for the proposed coal terminal facility, LDNR cannot assess whether there are feasible and practicable alternative locations, methods, and practices for use that are in compliance with the modified standard under the Coastal Use Permit regulations.

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2. Because RAM's proposed coal terminal and export facility will severely impact wetlands and the \$300,000,000 Medium Diversion at Myrtle Grove ("the diversion"), it directly conflicts with Louisiana's Comprehensive Master Plan for a Sustainable Coast ("Master Plan") and an Executive Order issued by Governor Jindal, and will not meet LDNR's balancing test to consider social, environmental, and economic factors required under LSA-R.S. 49:214.30.
3. RAM provides no plans to prevent coal falling into the Mississippi River, as regularly happens at similar coal facilities.
4. The economic benefits of the proposed coal facility will not outweigh the environmental harm it will cause.
5. RAM's proposed coal terminal will contribute to health pollution risks to a community already severely impacted by such health impacts, including particulate matter and soil and water contamination.
6. Because RAM's proposed coal terminal will contain wastes as a by-product of storing coal, including storm-water runoff, it is subject to La. Admin Code. Title 43, Section 715(A) and does not meet the feasible alternatives standard.
7. Because RAM's coal terminal facility will abut the planned diversion and the proposed facility includes ship and barge docks on the Mississippi River, it is subject to the Guidelines for Shoreline Modification.
8. Pursuant to Section 701 Guidelines Applicable to All Uses under La. Admin Code. tit. 43, pt. I, certain factors are used to evaluate whether the proposed use is in compliance with the CUP guidelines. These factors weigh heavily against RAM's proposed coal terminal.
9. Because RAM's proposed coal terminal facility will abut the diversion project, it is in direct conflict with the coastal resources program.
10. Because RAM's proposed coal facility site is in a "Flood Plain" zoning district, it may be prohibited under Plaquemines Parish zoning regulations.
11. RAM's proposed coal terminal site is vulnerable to storm-surge flooding and rain flood risks.
12. RAM must address increased barge traffic and potential vessel strikes.

Analysis

I. Because RAM has failed to provide alternative sites, projects or mitigation measures for the proposed coal facility, the DNR cannot assess whether there are feasible and practicable alternative locations, methods, and practices that are less harmful and in compliance with coastal use laws.

The DNR has the authority to review and issue CUP's for anyone seeking to build a project that will significantly impact coastal waters, pursuant to the State and Local Coastal Resources Management Act. La. R.S. § 49:214.22(1).

As a public trustee deciding whether to grant approval of a proposed action affecting the environment, the LDNR must "determine that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare." *Save Ourselves, Inc. v. LA. Env. Control Comm.*, 452 So.2d 1152, 1157. One way to ensure the fulfillment of the public trustee doctrine is to analyze whether there are alternative sites that would offer more protection to the environment. In the permit application, RAM presents no alternative site analysis either within or outside the boundaries of Plaquemines Parish. LDNR cannot uphold its legal obligation to analyze alternative sites that may offer more environmental protection when the permit applicant presents no alternatives.

The Louisiana First Circuit held in *In re Rubicon, Inc.* that LDEQ, a similar agency with the power of a public trustee, must consider whether "there are alternative projects or alternative sites or mitigating measures that would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable." *Rubicon*, 670 So.2d 475, 483 (La. App. 1 Cir.1996). And in *In re Am. Waste and Pollution Control Co.*, the court held that it would have been difficult or nearly impossible to consider the environmental effects in a cost-benefit analysis where LDEQ examined no information on solid waste facility sites outside the tri-parish area. 633 So.2d 188, 195 (La. App. 1 Cir.1993). The court reasoned that where the applicant limits too narrowly the geographic area it searches for alternative sites, LDEQ cannot conduct "a proper evaluation of alternative sites to determine comparative environmental impact." *Id.* Similarly, in *In re Browning-Ferris Industries*, the Louisiana First Circuit found that the applicant-facility would provide services to others far outside the boundaries of the parish, and therefore it was likely that "an alternative site could be found outside the parish boundaries that would serve the area while providing greater protection to the environment." *Browning-Ferris*, 657 So.2d 633, 638 (La. App. 1 Cir. 1995).

Like the permit applicant in *American Waste*, RAM only considered the proposed location and did not provide an alternative site analysis for the public trustee agency to consider. The alternative analysis is geographically limited, and as a result, LDNR cannot analyze alternative sites that may be less harmful to the environment. In addition, like the permit

applicant in *Browning-Ferris*, RAM will provide services to others far outside the boundaries of Plaquemines Parish by importing coal from other states and shipping internationally. RAM should have conducted a broad, multi-parish analysis, but RAM did not consider any sites other than the existing facility. Consequently, LDNR cannot conduct a proper evaluation of alternative sites and its review will be incomplete and contrary to law.

II. Because RAM’s proposed coal terminal and export facility will have severe impacts on wetlands and directly impact the \$300,000,000 Medium Diversion at Myrtle Grove, this is in direct conflict with Louisiana’s Master Plan and an Executive Order Issued by Governor Jindal.

While evaluating a CUP application, the LDNR “shall ensure that the activity for which the application is being made is consistent with the state’s master plan for integrated coastal protection. *No activity* which is not consistent with the plan shall be granted a coastal use permit.” LA R.S. 49:214.30 (A)(2). Furthermore, the LDNR must also conduct an appropriate balancing of social, environmental and economic factors in deciding whether to grant a CUP. La. R.S. 49:214.30 (C)(3).

The balancing of social, environmental, and economic factors clearly do not weigh in favor of environmental considerations. The proposed coal facility will be located in nearly the same location as the placement for the diversion project. The CPRA considers the diversion project to be a solution to the following problems affecting coastal Louisiana:

1. Decreased fresh water, sediment and nutrient inputs;
2. Hydrologic modifications;
3. Saltwater intrusion;
4. Wetland loss;
5. Bank erosion;
6. Altered circulation and water quality.

Moreover, the diversion’s long-term goals are to restore and enhance nearly 20,000 acres of wetlands that have been eroding over the years. The state’s Comprehensive Plan notes these wetlands are essential to contributing to a sustainable ecosystem and reliable flood protection. In addition, Louisiana Governor Bobby Jindal issued Executive Order No. NJ 2008-7 in conjunction with the state’s approved Master Plan. (*See* <http://www.gov.state.law.us/assets/docs/OfficialDocuments2008E07SustainableCoast.pdf>.) This Executive Order requires that all state agencies:

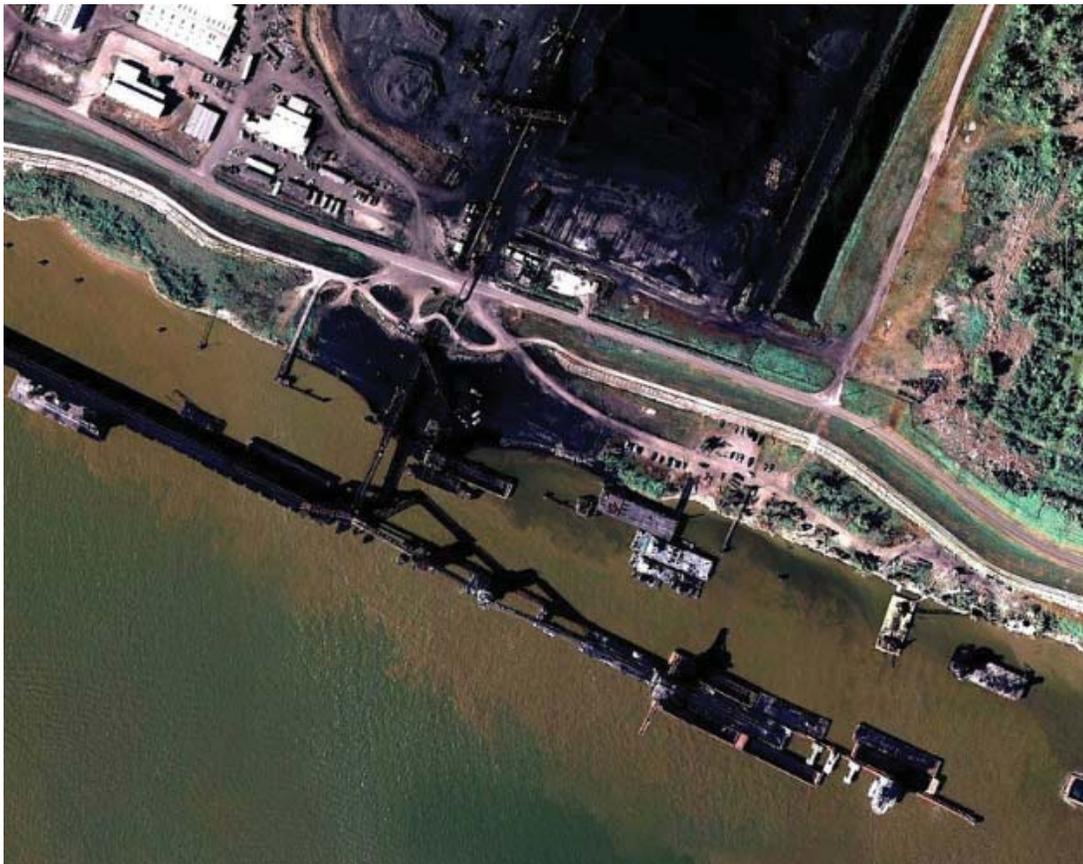
“Administer their regulatory practices, programs, contracts, grants, and all other functions vested in them in a manner consistent with the Master Plan and public interest to the *maximum extent practicable*.”

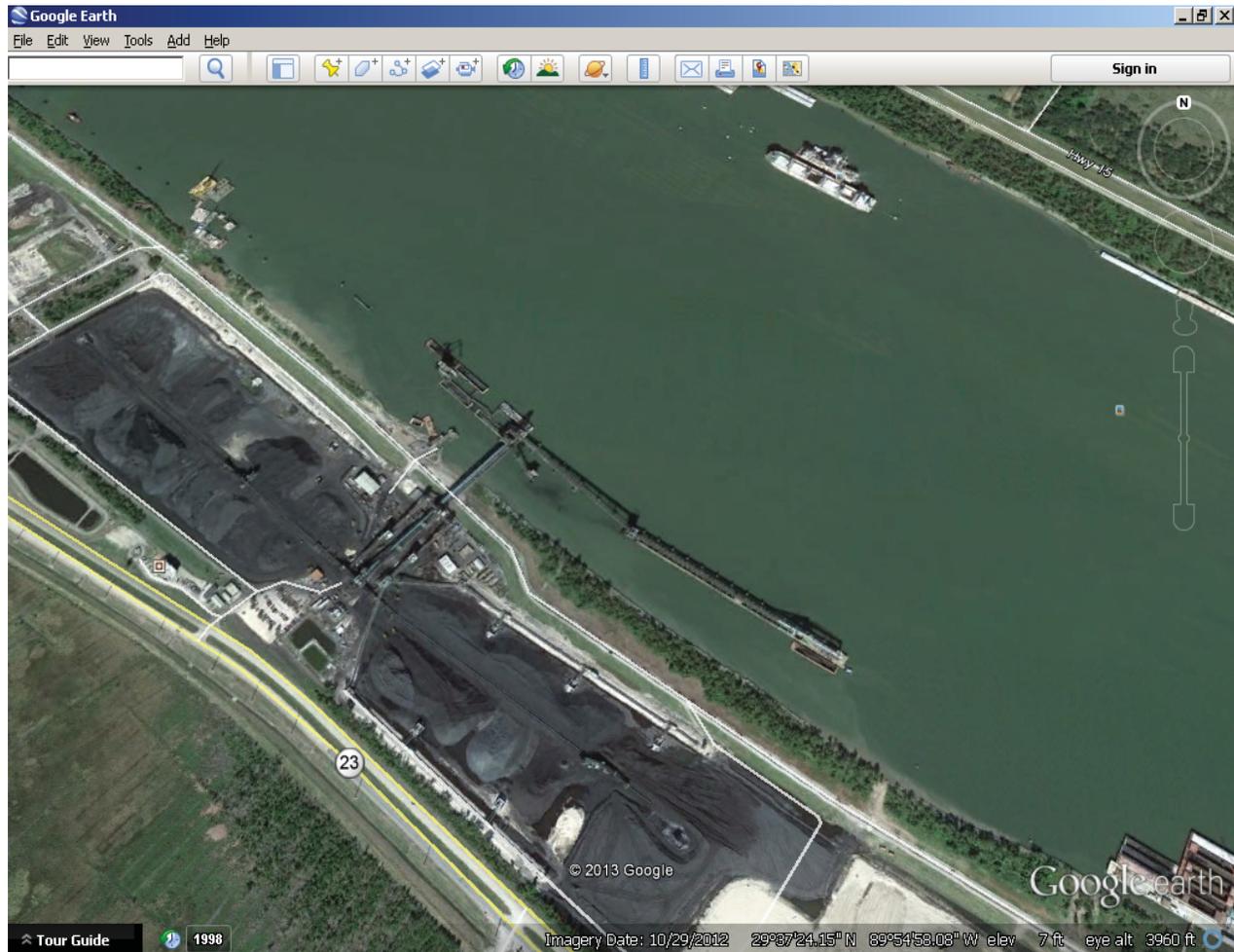
The Master Plan emphasizes the importance of wetlands as a fundamental part of the hurricane protection system and states that wetlands within the hurricane protection system

“need to remain intact and undeveloped.” Further, the Master Plan also requires minimization of impediments to water flow. The construction in the path of this diversion project will result in adverse consequences to the effectiveness of the diversion project. The objects and structures permanent fixture at this point in the river will serve an impediment to the water diversion’s flow and circulation.

III. RAM provides no plans to prevent coal falling into the Mississippi River, as regularly happens at similar coal facilities.

Like other facilities located near the proposed terminal, RAM has provided no indication it intends to use appropriate safeguards against river contamination. Like the other terminals, RAM will transport coal and petroleum coke via a conveyor belt system from barges to giant piles on their property, and then onto ocean-going vessels on the Mississippi River. Coal easily blows and falls into the river at various points of this transfer process. Also, coal barges drain coal into the Mississippi River when they wash. Additionally, coal left on the conveyor as it loops under itself falls into the river. These practices result in extensive coal pollution in the Mississippi River, as shown in these aerial photograph of the United Bulk Coal facility in Davant (courtesy of Gulf Restoration Network) and the IMT facility just south of the proposed RAM Terminal (from Google Earth):





RAM's current plans would allow such contamination, thus the permit must be denied. If LDNR were to grant a permit, **LDNR must require RAM to cover its proposed conveyor system entirely, both above and below**, to prevent coal and petroleum coke from contaminating the River and surrounding wetlands and the diversion, and require **regular monitoring** of coal particulates in the Mississippi River near the operations with **required cleanup when the coal levels increase**. RAM's failure to prevent coal from polluting the Mississippi River will result in illegal discharges under Clean Water Act sections 301(a) and 402(a). *See* 33 U.S.C. §§ 1311(a), 1342(a) which the State of Louisiana must strictly enforce.

Sightline Daily, a service of Sightline Institute, is a website that provides notice and information on the most important current issues concerning environmental, social, and economic news affecting the Northwest. In a recent article published on March 20, 2013, authors Eric de Place and David Kershner discussed the issue of how coal affects water quality. *See* <http://daily.sightline.org/2013/03/20/how-unburnt-coal-affects-water-the-state-of-the-science/>.

Over a prolonged period of time, coal dust may form a film of fine coal particles that float on nearby water. In a University of British Columbia study, films of coal fine particles floating on water were found to disperse anywhere from 2.5 miles to over 56 miles depending on the tidal and storm conditions.

The ability of coal fine particles to develop a film over water near coal terminals and its ability to disperse over long miles will damage the surrounding wetlands, fish, and downstream communities including Ironton. This will be particularly detrimental to the diversion project, which will funnel water in an effort to restore wetlands needed to build land and prevent land loss. Coal fine particles building up in the river at this location will counteract the goal or restoring Barataria Bay.

Furthermore, under La. Admin. Code. tit. 43, pt. I, Section 717, upstream water management programs that affect coastal waters and wetlands “shall be designed and constructed to preserve or enhance existing water quality, volume, and rate of flow to the *maximum extent practicable*.” RAM has not addressed in its permit application how it will operate its proposed coal terminal facility differently from other nearby coal facilities, so that RAM Terminals can prevent coal from entering the Mississippi River and surrounding waters and wetlands.

IV. The economic benefits of the proposed coal facility will not outweigh the environmental harm it will cause.

RAM believes its project will extend benefits to Plaquemines Parish and the State of Louisiana, but does not provide support.

Because of price volatility and unstable demand, coal export facilities are a financial gamble. U.S. coal producers plan to aggressively expand coal export capacity from 157 million to 276 million tons per year by 2016 which will lead to internal competition for export market and financial failure for many port projects. Since December 2011 critical coal market prices have dropped by more than 30%. U.S. coal is only marginally competitive, and financial markets are sending warnings that these projects have gone from high risk to speculative.

According to Armstrong Energy, RAM Terminal’s parent company:

International demand for U.S. coal also affects competition within our industry. The demand for U.S. coal exports depends upon a number of factors outside our control, including the overall demand in foreign markets, currency exchange rates, ocean freight rates, port and shipping capacity, the demand for foreign priced steel both in foreign markets and in the U.S. market, general economic conditions in foreign countries, technological developments and environmental and other governmental regulations in both the U.S. and foreign markets. Foreign demand for U.S. coal has increased in recent periods. If foreign demand for U.S. coal were to decline, this decline could cause competition among coal producers

in the United States to intensify, potentially resulting in significant downward pressure on domestic coal prices.¹

Several of these critical factors undermine the financial strength of RAM's proposed expansion. Most significantly, the Chinese government has announced tighter lending policies and anticipates an increasing number of defaults in their own coal markets.² And the Chinese government has announced plans to reduce coal plant emissions.³ A slowdown in China's use of coal diminishes the chances that more U.S. coal can enter the seaborne coal markets.⁴

Furthermore, whether RAM's project succeeds or fails, there are financial risks for the state. If RAM is successful and can find markets for expanded coal exports, rising exports of U.S. coal are likely to increase costs of Louisiana's electricity. An example from Colorado illustrates the point.⁵ In 2010, Public Service Company of Colorado estimated Colorado coal prices would decline by approximately 20% from 2012 to 2018, due to diminished demand for coal in Colorado. This scenario supported the utility's request that the state's ratepayers underwrite a coal plant retrofit. But Peabody Energy, the owner of the mine that will service the coal plant, took steps to increase exports from the same mine. As a result, the price shot above the 2010 estimate and the actual contract prices negotiated by Public Service of Colorado by 13% in the first year, and will grow to 68% by 2018. The actual market conditions faced by Public Service Company of Colorado demonstrate that prices rise for domestic utilities when coal producers choose export strategies to bolster their share value and competition is limited. Approximately one-fourth of Louisiana's power is currently generated by coal.⁶ With upward electricity price pressure exacerbated by coal exports from Louisiana, the state's competitive advantage as a low cost energy state will likely erode.

¹ Armstrong Energy, Form S-1, 16-17 (March 7, 2012).

² Kalayan Teodoro, *Chinese banks tighten lending to coal traders due to default concerns*, SNL COAL (September 27, 2012).

³ Xin Zhou, *Beijing Acts to Reduce Fireworks as Air Worsens, China News Says*, BLOOMBERG NEWS (February 24, 2013), available at <http://www.bloomberg.com/news/2013-02-24/beijing-acts-to-reduce-fireworks-as-air-worsens-china-news-says.html>.

⁴ See Darren Epps, *U.S. coal exports down 9% in August as India goes nearly silent*, SNL COAL (October 17, 2012). For extended discussion of global coal demand in the context of world energy markets see: International Energy Agency (IEA), *Golden Rules for a Golden Age of Gas*, (May 29, 2012), available at <http://www.worldenergyoutlook.org/goldenrules/>.

⁵ Susan Arigoni, Vice President Fuels, Public Service Company of Colorado, *Direct Testimony and Exhibits on Behalf of Public Service Company of Colorado*, Public Utilities Commission of the State of Colorado, Docket No. 11A-917E (November 2011).

⁶ Energy Information Administration, *Louisiana, State Profile and Energy Estimates*, <http://www.eia.gov/beta/state/analysis.cfm?sid=LA> (last visited Feb 26, 2013).

On the other hand, if RAM's project fails to produce sufficient contract throughput from global coal demand, Plaquemines Parish and the state of Louisiana will not enjoy the projected employment and economic benefits of the project. When the City of Los Angeles and Peabody Energy attempted to develop a coal export facility at the Port of Los Angeles in the 1990's, the project failed. Global coal markets proved too volatile to support the original assumptions accepted by the city and private investors. Los Angeles lost revenue and was ultimately sued and settled out of court for a reported \$4 million.⁷

Furthermore, the economic benefits of this proposed coal facility are even more dubious than a typical coal operation. There is great uncertainty with how effective the operation will be, in particular with the loading and unloading of barge and ocean going vessels, if there is a large diversion project next door, if the two facilities directly downstream expand as planned, and the competing upstream Burnside project expands as planned.

Because RAM does not adequately contend its proposed project will provide financial benefits that will outweigh the environmental risks, LDNR must deny this CUP application.

V. RAM's proposed coal terminal will contribute to pollution risks from air particulate pollution, which will contaminate the surrounding environment and further harm a community already severely impacted by breathing problems, high particulate matter and soil and water contamination.

As part of the settlement agreement to a nuisance suit brought by local residents against the IMT coal export facility just downstream of the proposed RAM facility, the IMT coal facility agreed to install a water spray system and other mitigation measures. *Joseph Chedotall v. Kinder Morgan Energy Partners LP*, No. 56-076, section "B" (25th JDC). But apparently, long after this agreement was reached, IMT has not yet installed these measures. The nearby communities of Ironton and Wood Park have elevated numbers of cases of childhood asthma and adult bronchitis. Susan Buchanan, *Plaquemines residents worry about nearby coal terminals*, THE LOUISIANA WEEKLY (Oct. 1, 2012), available at <http://www.louisianaweekly.com/plaquemines-residents-worry-about-nearby-coal-terminals/>. Coal plumes extend over residential areas in Plaquemines Parish, particularly on days with winds over 20 mph, as shown in this photo of the IMT facility taken from Myrtle Grove on Easter, 2013 (courtesy of Gulf Restoration Network):

⁷ Patrick McGreevy, *LA weighs costly exit from coal terminal*, LA Times, June 14, 2003. See also: Patrick McGreevy, *City Hit with \$4 million over rejected port project*, LA Times, June 11, 2004.



The community health impacts of particulate matter are well known. For example, Whatcom Docs, a group of more than 180 physicians who live in Whatcom County in Washington state, released a research paper that identifies major areas of health impacts from coal terminals. Letter from Whatcom Docs for Executive Louws and Director Sturdevant (March 12, 2012), attached as Exhibit 3. The research paper concludes that pulmonary, cardiac, cancer and safety risks would increase for nearby communities, with children and the elderly at highest risk. Furthermore, the Whatcom Docs found that exposure to coal dust and **the toxic heavy metals coal contains, such as mercury, arsenic and lead**, are linked to cancer, birth defects, heart disease, and increased asthma and lung disease in children. RAM's proposed coal facility will place an increased burden on communities already suffering from elevated respiratory problems.

Furthermore, airborne coal dust will contaminate surrounding wetlands and the diversion, dumping these toxic heavy metals into a fragile and crucial environment. **RAM must use best available technologies to stop airborne pollution in order to protect the surrounding wetlands, the diversion, and nearby residents.** Because RAM's proposed facility lacks such controls, the permit must be denied.

VI. Because RAM's proposed coal terminal will involve storing or transporting solid waste, it is subject to La. Admin Code. Title 43, Section 715(A) and must meet the feasible alternatives standard.

Operations at the RAM facility meet the definition of storing or transporting solid waste. Under La. Admin. Code tit. 43, pt. I, § 715 directs, in pertinent part:

A. The location and operation of waste storage, treatment, and disposal facilities shall be avoided in wetlands to the maximum extent practicable, and best practical techniques shall be used to minimize adverse impacts which may result from such use.

...

C. Waste facilities located in wetlands shall be designed and built to withstand all expectable adverse conditions without releasing pollutants.

...

E. The use of overland flow systems for nontoxic, biodegradable wastes, and the use of sump lagoons and reservoirs utilizing aquatic vegetation to remove pollutants and nutrients shall be encouraged.

...

G. Waste facilities in wetlands with identifiable pollution problems that are not feasible and practical to correct shall be closed and either removed or sealed, and shall be properly revegetated using the best practical techniques.

Furthermore, under site La. Admin. Code tit. 43, pt. I, § 701(H), RAM must demonstrate that:

(1) “no feasible and practical alternative locations, methods, and practices” to the waste disposal facility in coastal wetlands exist, and

(2) the benefits of using these wetlands for disposal “would clearly outweigh the adverse impacts.”

RAM’s application has not met these standards, and must be denied.

VII. Because RAM’s coal terminal facility will abut the planned diversion and the proposed facility includes ship and barge docks on the Mississippi River, it is subject to the Guidelines for Shoreline Modification.

Under La. Admin. Code. tit. 43, pt I Section 709, shoreline modification structures should be designed and built using best practicable techniques to minimize adverse environmental impacts; docks specifically should be designed and built using best practical techniques to avoid obstruction of water circulation; and structures should be designed and constructed to avoid to the *maximum extent practicable* downstream land loss and erosion. The diversion project will result in changes to water circulation and the ship and barge docks will interfere with erosion by blocking sediment transfers to the Barataria Bay estuary.

RAM has not addressed shoreline modifications, thus its permit application must be denied.

VIII. Pursuant to Section 701 Guidelines Applicable to All Uses, certain factors are used to evaluate whether the proposed use in compliance with the CUP guidelines. These factors weigh heavily against RAM's proposed coal terminal facility.

Under La. Admin Code. tit. 43, pt. I § 701 the relevant factors to decide whether RAM is in compliance with the CUP include: availability of feasible alternative sites or methods of implementing the use; extent of impacts on future uses for which the area is suited; the extent to which state interests are served; proximity and extent of impacts on particular areas of concern to the state program; extent of long term benefits or adverse impacts.

Because (1) RAM has not provided any alternative analysis; (2) the project has clear detrimental impacts on the diversion project and surrounding wetlands; and (3) the proposed coal terminal facility is in direct conflict with the state's master plan; the permit application must be denied.

IX. RAM's application does not demonstrate that the proposed coal terminal facility avoids harmful impacts to the diversion or the surrounding environment to the maximum extent practicable.

Section 701 Guidelines Applicable to All Uses under La. Admin. Code tit. 43, pt. I, § 701 specifically requires that all uses and activities shall avoid *to the maximum extent practicable* significant: (1) reductions in the supply of sediment and nutrients to the coastal system by alterations of freshwater flow; (2) destruction or adverse alterations of protective coastal features; (3) reductions or blockage of water flow into an estuarine system or wetland forest; (4) adverse alterations of other areas of public use and concern; and (5) reduction in the long term biological productivity of the coastal ecosystem.

RAM provides no information in the CUP application analyzing the proposed coal terminal facility's impacts on the Mississippi River, the surrounding wetlands, and the proposed Myrtle Grove diversion project, particularly analyzing how its operations will affect the intended sediment transport. RAM must assess the extent to which the facility will impede or disrupt the water flow in the Mississippi River and the diversion project and avoid these impacts to the *maximum extent practicable*.

Further, these commenters share EPA's concern about the effect of the coal terminal on the diversion project. Specifically, the EPA has reviewed RAM's permit application and expressed concern over the potential impacts the location of the coal facility may have on the diversion project. EPA believes the environmental benefits could be substantially reduced from this location by either limiting the size of the diversion; restricting its operational scheme; and or otherwise reducing the amounts of sediment that can be delivered to the Barataria Basin. Specifically, the EPA wants to ensure that RAM's proposed coal terminal facility will not change the diversion alignment to cause lower transferring of sediment loads. In sum, EPA notes that if the diversion project must be changed to another location that would result in reduced

environmental benefits, cost more to build, or result in delay to the project, the permit should altogether be *denied*.

X. Because RAM’s proposed coal facility site is in a “Flood Plain” zoning district, it may be prohibited under Plaquemines Parish zoning regulations.

RAM does not provide information in the permit application on zoning. Plaquemines Parish zoning laws may prohibit RAM’s proposed coal facility site in Myrtle Grove if it is in the flood plain zone. The site of RAM’s proposed coal facility may conflict with wetlands within the Flood Plain Zoning district. For instance, Parish zoning laws provide that “no building or land shall...be used or occupied...unless in conformity with the regulations herein specified for the district in which it is located.” Plaquemines Parish, La., Code of Ordinances, Zoning, app. B § V.1 (2012). That ordinance also limits the Flood Plain zoning district to fourteen uses, none of which includes use as a coal storage facility, unless Plaquemines Parish Council explicitly approves such use. *Id.* § L.2. There is no evidence that the Council has given this approval to RAM. Moreover, Parish zoning ordinances require that “environmental impact uses,” which include activities with “accompanying hazards, such as fire, explosion, noise, vibration, dust or emission of smoke, odors or toxic gases, or other hazards,” require “special review...and comments from the [Parish] building official and the environment review committee.” *Id.* § L.2. RAM offers no evidence that its coal facility proposal site has been submitted to the parish building official and environmental review committee for review and comment. Because the project conflicts with local zoning laws, this application must be denied.

XI. RAM’s proposed coal terminal site is vulnerable to storm-surge flooding and rain flood risks.

RAM’s permit application does not address storm surge flooding from the Gulf of Mexico. This is troubling because both United Bulk and IMT’s nearby coal terminals were inundated during Hurricane Isaac, flooding the surrounding environment with contaminated water, as outlined in greater detail in the attached addendum. The permit does not address any storm-surge barriers or outline adequate storm plans. Storm surge presents high risks for pollution because floodwater can inundate the coal piles, and then flow back into the surrounding environment through the breaches, carrying harmful contaminants including heavy metals such as arsenic, mercury, and lead. Furthermore, RAM should provide a detailed hurricane preparedness and response plan. This plan must address both prevention and response strategies for heavy rain, storm-surge flooding, and possible power outages, including a plan to capture and treat floodwater before it is discharged from the facility.

XII. RAM does not address increased barge traffic and potential vessel strikes.

The significant increase in barge traffic increases the risk of barge groundings and spills in the Mississippi River, which increases the likelihood of collisions and greater potential for release of coal into the water.

Vessel strikes should also be mitigated to the maximum extent practicable by requiring mitigation measures and best available technologies. The likelihood of vessel strikes will increase with the increased barge traffic, and when the diversion channel is open, funneling water at high rates of speed.

XIII. If the LDNR does not reject the CUP application, we urge the following conditions attached to the permit as per the LDNR's draft permit conditions.

In contemplating approval of RAM's pending application, the LDNR has released a draft permit that would require the following conditions: (1) RAM shall provide all necessary rights of entry as well as land rights to build the diversion and conduct dedicated dredging to the state of Louisiana without cost; (2) RAM shall have sole responsibility to alter facility plans or operations as a result of the diversion's impacts on river conditions; (3) RAM shall provide dedicated dredging and marsh creation as they deem appropriate to obtain coastal restoration benefits; (4) RAM shall not take any action, legally or politically, to influence or change the capacity of location of the diversion; and (5) RAM shall conduct a full investigation and disclosure to the state of Louisiana regarding potential impacts of the RAM coal facility and operations on river flow on the diversion structure and potential impacts on the diversion construction and operation. These commenters adopt the comments of the Sierra Club, Gulf Restoration Network, Louisiana Environmental Action Network, Lower Mississippi Riverkeeper and Public Citizen outlining how these conditions are insufficient to discharge the DNR of its public trustee duties.

Further, because this terminal is located in a sensitive area where its operations will have a detrimental effect on the already heavily burdened local residential community and a crucial proposed freshwater diversion, any permit must include additional conditions, including:

1. RAM Terminals must **purchase adequate insurance** to cover hurricane and storm risks to the surrounding community, the risk of contamination and cleanup, the risk of interfering with the proposed diversion, the risk of vessel strikes and barge spills and pollution, and any other observable risks. Because RAM and its parent company, Armstrong, are financially weak, and because the coal export business is so financially speculative, **RAM cannot be allowed to self-insure.**
2. RAM Terminals must employ best available technologies to reduce pollution. RAM has not demonstrated how other coal facilities around the country operate to reduce pollution, and has included little to no best available technologies in its designs.
 - a. RAM must be required to fully cover, both above and below, all of its conveyor belts to prevent blow-off and spills.
 - b. RAM must regularly clean these covers. At other terminals, a failure to regularly clean catch-basins and other control technology has been shown to vastly reduce their effectiveness.
 - c. RAM must include dust-suppression technology throughout the outdoor storage areas.
 - d. RAM must include the best available storm protection technologies in this hurricane- and tropical storm-prone area.

Conclusion

Among the aforementioned issues with RAM's CUP permit application, the application does not analyze alternative sites, projects, or mitigation measures; is in direct conflict with a critical diversion project for the restoration of nearly 20,000 acres of wetlands; and does not provide the LDNR with enough information to conduct the analyses required under the Coastal Use Permit regulations. Because RAM's permit is insufficient on so many levels, is in direct conflict with the Louisiana's Comprehensive Master Plan for a Sustainable Coast, and the LDNR cannot adequately analyze alternative locations, projects and mitigation measures because this information is glaringly absent, the LDNR must deny the application.

Respectfully submitted by:



Machelle Lee Hall, SBN: 31498

Tulane Environmental Law Clinic

6329 Freret Street

New Orleans, LA 70118

Phone: (504) 862-8814

Fax: (504) 862-8721

*Counsel for the Christian Ministers Missionary
Baptist Association of Plaquemines, Inc.; Ms. Joyce
Cornin; and Ms. Velma Davis*