



DYKES EHRlichman PS

Land Use, Real Estate, and Environmental Law

Via Electronic Mail

June 13, 2016

Ms. Maia Bellon, Director
Dept. of Ecology
c/o ICF International
710 Second Avenue, Suite 550
Seattle, WA 98104

Re: Millennium Bulk Terminals, Longview, WA
Comment on Draft Environmental Impact Statement

Dear Maia:

Thank you for the opportunity to comment on the Millennium Draft Environmental Impact Statement (DEIS) analyzing a proposed coal terminal on the Columbia River. The proposal will increase oil spill risk in the Salish Sea, both on the form of increasing the probability of a large spill and through the continual smaller spills from anchoring and bunkering at Salish Sea facilities. Please consider the following as part of your preparation of a final EIS under the State Environmental Policy Act, RCW ch. 43.21C.

Under SEPA, just as you have determined it is necessary to study the proposal's impacts on greenhouse gas emissions "from cradle to grave," it is equally necessary to study the proposals' impacts on vessel traffic and oil spill risks from the beginning point of the shipping (the terminals) to any points along the transshipment line, including anchorages and bunkering locations within our U&A in the Salish Sea.¹ The DEIS fails to do this. This is not a minor error. The DEIS acknowledges that the project will generate port calls for 840 vessels per year, which equates to 1,680 transits per year, to and from the facility. DEIS at 5.4-35.

If even a percentage of these ships enter the Salish Sea for bunkering or repairs, the likelihood of a significant shipping accident adversely affecting our treaty

¹ The same principle will apply during preparation of the DEIS under the National Environmental Policy Act, 42 U.S.C. ch. 55. See, e.g., *High Country Conserv. Advocates v. U.S. Forest Service*, 52 F. Supp.3d 1174, 1194 (D.Colo. 2014).

Barbara Dykes
Tom Ehrlichman

P.O. Box 1271, Freeland, WA 98249
barbara@dykesehrlichman.com
tom@dykesehrlichman.com

(360) 224-8664
(425) 268-5553

fishing areas is substantially increased by these increased transits. The number of ships entering the Salish Sea is likely to amount to a significant increase in large vessel traffic. Because bunkering facilities are scarce along the Columbia River, because the proposal states that bunkering will not occur onsite, and because not all bunkering will occur overseas, it is reasonable to study the project's effects on bunkering and anchoring at established sites outside the Columbia River. The closest locations are at Port Angeles and Vendovi Island, near March Point in the vicinity of Anacortes. It is illogical for the DEIS to cut off the geographic scope of its review of impacts to the three-mile coastal zone seaward of the mouth of the Columbia River when it is reasonably foreseeable that bunkering will not occur on the Columbia River. See DEIS at 5.4-3. Ecology's SEPA review must be expanded to include all coastal areas likely to experience vessel traffic increases from the project, including in the Salish Sea, because Ecology has a duty to certify compliance with the federal Coastal Zone Management Act. 16 U.S.C. Ch. 33.

The entry of large bulk coal carriers into the Salish Sea and our U&A for bunkering increases the potential for collisions with tankers, ATB's and other vessels carrying substantial quantities of oil and fuel, thus directly interfering with our treaty fishing areas. Recent analyses of bunkering statistics found that a single coal terminal's bunkering could increase bunkering within the northern Salish Sea by as much as 230% and that 92% of bunkering incidents result in a discharge of oil to the sea. See *Glosten & Associates, Gateway Pacific Terminal Vessel Traffic and Risk Assessment Study* (Nov. 4, 2014). The SEPA DEIS failed to study consequences of increased shipping generated by the project in the Salish Sea and the adverse cumulative effects of bunkering there, and thus failed to analyze the full range of reasonably foreseeable impacts as required by Ecology's SEPA Rules at WAC 197-11-060(4)(b)-(e); -792; -794.

Ecology as well as Cowlitz County must take into account the water quality and coastal zone impacts of this increased vessel traffic and bunkering in the Salish Sea, even if it is occurring outside of Cowlitz County or the three-mile limit off the mouth of the Columbia River. *Cathcart-Maltby-Clearview Comm. Council v. Snohomish Cty.*, 96 Wn.2d 201, 209 (1981); *S.A.V.E. v. City of Bothell*, 89 Wn.2d 862, 872, 576 P.2d 401 (1978) (Under SEPA, City may not disregard the adverse traffic congestion directly generated by a rezone even though it occurs outside of the City's boundaries). These impacts include large oil and fuel spills and their

deprivation of access to fishing and fish in areas most affected by the spills; cumulative effects of smaller, regular spills on water quality, migrating species, plankton, and seafloor species such as valued Dungeness crab fisheries at Saddlebags, Bellingham Bay and Cherry Point; impacts of waves on fry (wake stranding) and gravel substrate spawning habitat; interference with salmon migration patterns; disturbance of the seafloor from anchor chains; deprivation of tribal and commercial fisher access to fishing areas within anchorage zones and surrounding areas; increased vessel conflicts with tugs, ATBs and other supporting vessels; and adverse effects of repeated ship noise on salmon, whales and other species of economic or cultural importance to Swinomish. The Millennium DEIS fails to analyze any of these impacts within the Salish Sea, either as direct, indirect or cumulative impacts, despite acknowledging that bunkering will not occur at the Longview site. Instead, the document attempts to justify this glaring omission in analysis of impacts (“ . . . it is not possible to predict the number of vessels that may bunker or where they would bunker. . .”). DEIS, Vessel Transportation Technical Report at 3-14. It was possible to do just this type of analysis for the now-denied Cherry Point coal terminal (Gateway Pacific Terminal), and it is therefore possible and necessary to do it for this project. Any conclusion in the DEIS that bunkering or vessel impacts in the Salish Sea are either not significant or avoidable (See, e.g., DEIS 4.6-27) is flawed because the Salish Sea impacts were never analyzed.

Adverse impacts of this project within the Salish Sea rise to the level of significance that would trigger denial by Ecology under the Clean Water Act and Coastal Zone Management Act. As you know, your SEPA rules require you to deem impacts to be probable significant adverse environmental impacts even when the probability of occurrence is low, when the consequence of the impact would be severe. WAC 197-11-794. In the case of Salish Sea commercial, recreational and tribal fishing, even a small increase in probability of a large oil or fuel spill due to large vessel traffic collisions rises to that level of significance, because the effect on the ability of these fishers to harvest species of key importance to them would be devastated. Due to the catastrophic nature of this deprivation of access, any finding of probability should be deemed significant enough to trigger denial, under SEPA’s substantive mandate. RCW 43.21C.060.

DEIS Comment Millennium Bulk Terminals

June 13, 2016

Page 4

Thank you for your review of these comments on the DEIS.

Sincerely,



Tom Ehrlichman



Barbara Dykes Ehrlichman

cc: Ms. Debra Lekanof, Office of the Chairman, Swinomish Indian Tribal
Community
Ms. Julie Carter, Columbia Inter Tribal Fisheries Commission