

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

WILLIAM L. KOVACS  
SENIOR VICE PRESIDENT  
ENVIRONMENT, TECHNOLOGY &  
REGULATORY AFFAIRS

1615 H STREET, NW  
WASHINGTON, DC 20062  
(202) 463-5457

November 18, 2013

VIA ELECTRONIC FILING

Ms. Danette L. Guy  
U.S. Army Corps of Engineers  
Seattle District  
Care of: MBTL EIS  
710 Second Avenue, Suite 550  
Seattle, WA 98104

RE: Notice of Intent to Prepare an Environmental Impact Statement  
(EIS) for the Millennium Bulk Terminals-Longview Shipping Facility  
Project; Scope of Environmental Review

Dear Ms. Guy:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, strongly urges the U.S. Army Corps of Engineers (Corps) to deny the pending request by the Environmental Protection Agency and environmental advocates to prepare a "cumulative, programmatic" environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) for the proposed Millennium Bulk Terminals-Longview Shipping Facility Project (MBTL). A programmatic EIS of the kind requested would include a far-reaching analysis of coal exports from the Pacific Northwest to other parts of the world, and the attendant impacts on the United States of generating electricity abroad with that coal. There is no precedent for conducting a programmatic EIS with such a vast scope, and there is certainly no compelling reason to set such a precedent. Many of the Chamber's member companies would be negatively impacted by expanding the scope of environmental review to evaluate the foreign use of products sold by the United States to other countries.

The Chamber has spent the past three years studying the paralyzing effect that excessive environmental reviews have had on major infrastructure and energy projects, including port dredging, road building, and construction of power plants. Thousands of projects are delayed or killed outright each year because of endless environmental reviews and the legal challenges that accompany them. The Chamber's 2010 study *Project No Project* demonstrates that for energy projects alone, some 351 projects were stopped or significantly delayed by these reviews, at a cost of 1.9 million jobs each year that otherwise could have been made available to people who desperately needed them.

Subjecting the MBTL project to a programmatic EIS is both unnecessary and inconsistent with the requirements of NEPA. A programmatic EIS is unnecessary because the major elements of the project are already operating and have previously been scrutinized (mining operations and rail transport to Washington). Nothing about the MBTL project suggests that a programmatic EIS is in any way warranted: the project is not complex and the project does not contemplate numerous separate activities occurring in the same area over time or any extensive spatial activity such as a lengthy new transmission corridor. The project does not involve a multitude of actors or an interrelated series of actions. In short, the project involves the ordinary export of a product overseas from a port facility in a very typical way. Recent guidance issued by the Council on Environmental Quality clarifies that "NEPA encourages straightforward and concise reviews and documentation that are proportionate to potential impacts and effectively convey the relevant considerations to the public and decision makers in a timely manner while rigorously addressing the issues presented."<sup>1</sup>

A programmatic EIS for an export terminal that considers specifically how a fuel product is used outside of the United States also is clearly beyond the intended scope of NEPA. Courts that have considered whether NEPA should apply to U.S. products (including energy projects) sold or transported overseas have found that NEPA does not apply to those activities.<sup>2</sup> Similarly, Executive Order 12114 clarifies that NEPA does not apply to the effects of federal projects overseas.<sup>3</sup> While NEPA certainly applies to operations of the Millennium Bulk Terminals-Longview Shipping

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<sup>1</sup> Council on Environmental Quality, "Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act" (March 6, 2012).

<sup>2</sup> See *NRDC v. NRC*, 647 F.2d 1345 (D.C.Cir. 1981) (export license for nuclear reactor sold to Philippines not subject to NEPA review); *Greenpeace v. Stone*, 748 F.Supp 749 (D. Haw. 1990) (transportation of chemical weapons through West Germany by U.S. not subject to NEPA review).

<sup>3</sup> 44 Fed. Reg. 1957 (1979).

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Facility Project *within the United States*, it should not apply to activities by companies that purchase exported coal in foreign countries.

NEPA certainly was never intended by Congress to apply to actions within other countries undertaken by foreign citizens. If this were not true, every transaction of every kind with all other countries would be subject to review under NEPA, including activities that occur after the transaction is complete. This would give NEPA a virtually unlimited scope, which clearly was not the intention of Congress when NEPA was enacted in 1969. NEPA was enacted to ensure that federal agencies include environmental considerations in their project reviews. Unfortunately, never-ending NEPA reviews have been used to delay projects so long that project sponsors are ultimately compelled to give up. In short, these endless reviews are *destroying* economic activity and preventing the creation of millions of jobs needed by our citizens.

If the Corps imposes a programmatic review upon export projects such as the MBTL project that transports products or people to foreign countries, agencies would be obliged to conduct NEPA reviews of all aspects of U.S. trade with other nations. Agencies would also have to evaluate how every product ultimately will be used by customers who purchase American products. In effect, agencies like the Corps would be put in the position of regulating international trade under NEPA. Congress did not intend the NEPA review process to be used to regulate international trade.

Therefore, the Corps should decline to expand the scope of the NEPA review of the MBTL project to include overseas activities.

Thank you for the opportunity to share our perspectives on this important issue. Please do not hesitate to contact me to address any questions you may have regarding the Chamber's views on this matter. I may be reached at (202) 463-5457 or by e-mail: [wkovacs@uschamber.com](mailto:wkovacs@uschamber.com).

Sincerely,



William L. Kovacs

Cc: The Honorable Jo-Ellen Darcy, United States Assistant Secretary of the Army  
(Civil Works)