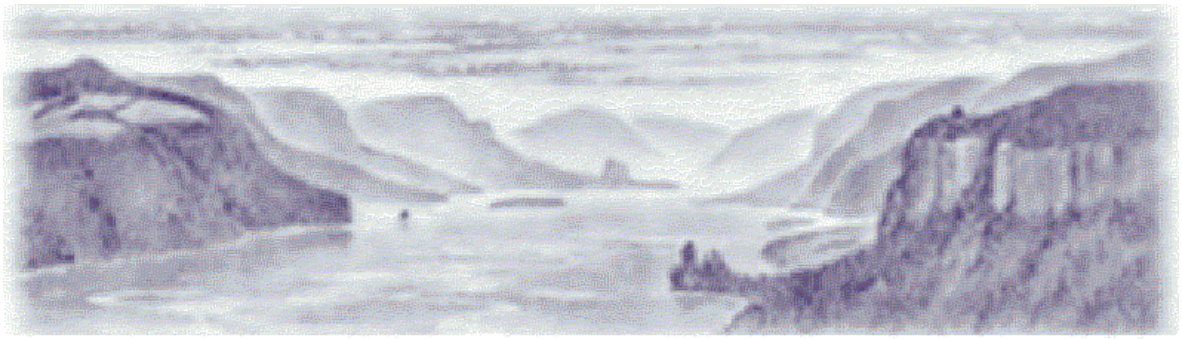

FRIENDS OF THE COLUMBIA GORGE

SUBMITTED VIA E-MAIL AND FIRST-CLASS MAIL

November 18, 2013

MBTL Coal Export Terminal EIS
c/o ICF International
710 Second Ave., Suite 550
Seattle, WA 98104
comments@millenniumbulkeiswa.gov

Ms. Danette L. Guy,
U.S. Army Corps of Engineers, Seattle District
c/o MBTL EIS Co-Lead
Agencies, 710 Second Avenue, Suite
550, Seattle, Washington 98104.

RE: Scope of Review for Environmental Impact Statement for the Millennium Bulk Terminals Longview LLC Coal Export Terminal.

To Whom It May Concern:

Friends of the Columbia Gorge submits the following comments on the scope of review for the environmental impact statement to be prepared for the Millennium Bulk Terminals Longview LLC Coal Export Terminal. 78 Fed. Reg. 49484 (August 14, 2013). Friends has also joined comments prepared by Earth Justice on behalf of a coalition of conservation organizations. The attached comments are intended to supplement the comments submitted by Earth Justice.

Sincerely,

Richard Till
Conservation Legal Advocate

Comments to the Washington Department of Ecology, Cowlitz County, and the U.S. Army Corps of Engineers on the Scope of the Environmental Impact Statement for the Millennium Bulk Terminals Longview LLC Coal Export Terminal

Submitted by
Friends of the Columbia Gorge
November 18, 2013

Cover photo © Coal dust and debris at Washington's Columbia Hills State Park in the Columbia River Gorge. Photo by Julie Coop.
Coal trains would cause significant adverse impacts to sensitive resources while delivering coal to the Millennium Bulk Terminal.

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- Tri City Herald, *Coal Train Derailment* (July 3, 2012)
- Chicago Tribune, *2 bodies inside car found in wreckage from train derailment*, (July 5, 2012)
- The Seattle Times, *26 Hurt When Amtrak Train Derails Along Columbia Gorge Route*, (April 4, 2005)
- U.S. E.P.A., Making Environmental Progress, Improving Local Communities Accomplishments of the EPA Region 10 Superfund Program (Jan. 2004) (Excerpt attached).
- The Globe and Mail, *As Lac-Mégantic death toll reaches 47, safety board calls for immediate rail-safety changes*, (Last updated Friday, Jul. 19 2013).
- Reuters, *Crude oil tank cars ablaze after train derails in Alabama*, (Nov 8, 2013).

INTRODUCTION

Friends of the Columbia Gorge ("Friends") submits these comments to the Washington Department of Ecology ("Ecology"), Cowlitz County, and the U.S. Army Corps of Engineers ("the Corps") regarding the scope of the Environmental Impact Statement ("EIS") for the Millennium Bulk Terminals Longview LLC Coal Export Terminal ("Millennium Bulk Terminals" or "MBL"). Friends is a nonprofit organization with approximately 5,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Friends' membership lives, works, and plays in the Columbia River Gorge and would be adversely affected by the direct, indirect, and cumulative impacts caused by the proposed coal export facility. Friends has also signed onto comments submitted by Earthjustice. The following comments are provided to supplement Earthjustice's submission with additional information regarding potential impacts to the Columbia River Gorge.

The proposed Millennium Bulk Terminals would export 44 million metric tons of coal per year from the Powder River Basin in Wyoming and Montana to markets in Asia. The proposal would require coal to be transported by train to a new export facility in Longview, Washington, with the most likely route being through the Columbia River Gorge. The proposal would cause a significant increase in the number of coal trains passing through the Columbia River Gorge. This would cause significant adverse impacts to the communities and the natural, scenic, cultural, and recreational resources of the Columbia River Gorge. In combination with other similar coal and oil export proposals, the MBT would contribute to significant cumulative adverse impacts to the environment. Because of this causal relationship, the scope of the EIS must include full disclosure of all direct, indirect, and cumulative impacts to the Columbia River Gorge.

BACKGROUND

I. The affected environment

The impacts of the proposed Millennium Bulk Terminals would not be limited to the port site or immediate vicinity. The affected environment includes all communities and resources that would be directly, indirectly, or cumulatively affected by all stages of the coal export process. This includes mining in the Powder River Basin, transportation via open rail cars through Montana, Idaho, and Washington, transferring the coal to ocean-going vessels at the Millennium Bulk Terminals, the combustion and release of air pollutants in China, and the dispersal of air pollutants back to the United States. This comment will focus primarily on the scope of likely impacts from coal transport to communities and resources in the Columbia River Gorge.

The Columbia River Gorge is a national treasure. In 1986 Congress recognized the national significance of the Gorge and created the Columbia River Gorge National Scenic Area to protect and enhance the aesthetic, biological, ecological, historic, and recreational values in the Gorge. *See* Columbia River Gorge National Scenic Area Act ("Scenic Area Act"), 16 U.S.C. §§ 544–544p. The Gorge, under the protection of the Scenic Area Act, offers a stunning array of sensitive resources, including scenic and historic views along the Columbia River, site of the final portion of Lewis and Clark's journey across the West. The Gorge has been occupied by

Native American tribes for more than 10,000 years, and the scenic, natural, and cultural resources of the Gorge remain critical to sovereign Native American governments.

Additionally, the Gorge offers unique recreational opportunities with tributaries, canyons, abundant waterfalls, the Cascade Mountains, and the Columbia River itself. Hiking, bicycling, river rafting, kayaking, skiing, boating, fishing, camping, kiteboarding, windsurfing, birdwatching, and wildflower viewing are all pursued actively by the public throughout the Gorge, including locations along the railroad line that would be used to transport coal for the MBT. The Columbia River itself is a world-renowned windsurfing and kite boarding destination that is contingent on public access across rail lines to high-quality recreation sites on the Columbia River. The Gorge also has a growing agri-tourism industry centered on the local vineyards and wineries that form the Columbia Gorge American Viticultural Area ("AVA" or "appellation"). Numerous vineyards and wineries are located adjacent to the likely coal transport route

The National Scenic Area is also a working landscape, sustained economically by agricultural and forest lands and 13 designated urban areas. The urban areas in the National Scenic Area are generally located along the Columbia River and straddle the highway and railroad transportation corridors than run the length of the Gorge in both Washington and Oregon. Increased rail traffic would adversely affect these economic uses by increasing wait times and railroad crossings, increasing noise, generating demand for additional sidings, and worst of all, releasing plumes of coal debris in windy locations.

In its November/December 2009 issue, *National Geographic Traveler* ranked the Columbia Gorge region sixth internationally, and second in the nation, among "iconic destinations." The Gorge was ranked higher than all of the county's national parks that were surveyed, and higher than Tuscany, Italy; the Serengeti Plains; and Mount Kilimanjaro. A primary reason given by *National Geographic* for the Gorge's high ranking was the Gorge's international reputation for "an incredible job of protecting the views." Another stated reason was the Gorge's "[g]reat potential for 'agritourism and geotourism.'"

The Gorge has long been considered a special area. In 1915, the U.S. Forest Service ("USFS" or "Forest Service") established Eagle Creek as the first Forest Service Recreation Area in the nation. The following year, the Gorge was proposed as a National Park. Continuing development pressures led to the establishment of the National Scenic Area in 1986. Today the Gorge contains hundreds of miles of hiking and bike trails through locales as diverse as misty river canyons and arid grassland plateaus. The Gorge also contains dozens of lakes, parks, campgrounds, and other recreational areas. Some of the most heavily used recreation sites in Washington and Oregon are in the Gorge, often in close proximity to the Columbia River and the likely coal export route.

The proposed Millennium Bulk Terminals would export 44 million tons of coal annually from the Powder River Basin by rail through the Columbia River Gorge to markets in Asia. The Project would likely require 9 round-trip coal trains per day, for a total of 18 trains per day, each about one and one-half miles long, travelling through the Columbia River Gorge. The coal would be transported in uncovered coal cars that would deposit literally thousands of tons of coal dust

and debris in the Gorge's air, lands, and waters during transport. This coal dust and debris would be deposited directly into the Gorge's communities and directly into public recreation sites. The increased rail traffic would likely require the construction of new rail sidings on and near sensitive scenic, natural, recreational, and cultural resource lands. The increased diesel emissions would further degrade already impaired air quality. Combined with other coal export proposals and oil export proposals, the Millennium Bulk Terminals has the potential to cause major environmental impacts in one of the nation's most important heritage landscapes.

II. The National Environmental Policy Act

A major purpose of the National Environmental Policy Act ("NEPA") is to ensure that federal agencies conduct fully informed environmental decision-making. NEPA promotes its sweeping commitment to "prevent or eliminate damage to the environment and biosphere" by focusing the attention of federal decision makers and the public on the environmental and other impacts of proposed agency action. 42 U.S.C. § 4321. By focusing agency attention on the environmental and socioeconomic impacts of a proposed action, NEPA ensures that the agency will not act on incomplete information, only to regret its decision once finalized. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

To that end, "[t]he sweep of NEPA is extraordinarily broad, compelling consideration of any and all types of environmental impacts of federal action." *Calvert Cliffs' Coordinating Comm. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1122 (D.C. Cir. 1971). An agency must "take the initiative of considering environmental values at every distinctive and comprehensive stage of the process." *Id.* at 1111.

III. The State Environmental Policy Act

The Washington State Environmental Policy Act ("SEPA") applies to state and local governmental actions and decisions. SEPA's general purpose is to require consideration of environmental factors at the earliest possible stage in order to allow decisions to be based on a complete disclosure of environmental consequences. *See Stempel v. Dept. of Water Resources v. City of Kirkland*, 82 Wn. 2d. 109, 118 (1973). Agencies are required to engage in an open and public study of environmental impacts at the earliest possible time. RCW § 43.21C.030(b); *see also* WAC § 197-11-300.

Agencies must assess the likely cumulative, direct, indirect, short-term, and long-term impacts to the environment. WAC 197-11-030(2)(b), (2)(g); *see also* State Environmental Policy Act Handbook (SEPA Handbook) at 2 (2003). Agencies must also evaluate alternatives and mitigation measures. WAC 197-11-055(2)(c); *see also* SEPA Handbook at 2. Agencies "shall not limit" consideration only to impacts within the boundaries of the agencies' jurisdiction. WAC 197-11-060(4).

For projects with likely significant impacts, environmental impact statements are required to ensure that government agencies and interested citizens have an opportunity to thoroughly review environmental impacts of proposed actions at the earliest possible stage; the agency must use the EIS in planning actions and making decisions. WAC 197-11-400(4). "The primary

purpose of an environmental impact statement is to ensure that SEPA's policies are an integral part of the ongoing programs and actions of state and local government." WAC 197-11-400(1).

The EIS must be *impartial* and must inform decision makers of alternatives and mitigation measures that avoid or minimize impacts of a proposed action. WAC 197-11-400(2). The EIS must not merely rationalize a predetermined outcome. WAC 197-11-402(10). ("EISs shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made.") Rather, the EIS must include sufficient objective analysis to actually inform the agency's decision-making process.

The EIS must be completed early enough to serve as a practical contribution to the decision-making process. WAC 197-11-406 ("The statement shall be prepared early enough so it can serve practically as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made."); *see also King County v. Boundary Review Board*, 122 Wn. 2d 648, 666, 860 P.2d 1024 (1993); *Barrie v. Kitsap County*, 93 Wn. 2d 843, 854, 613 P.2d 1148 (1980); *Mentor v. Kitsap County*, 22 Wn. App. 285, 291, 588 P.2d 1226 (1978).

For projects with potentially significant or serious impacts, SEPA requires the same hard look that NEPA does. "The level of detail shall be commensurate with the importance of the impact," and in the face of any scientific uncertainty, the EIS must disclose the uncertainty and analyze the worst case scenario and the likelihood of its occurrence. WAC 197-11-402(2) and 197-11-080(2), (3).

DISCUSSION

I. The EIS must not be unreasonably narrow, and the range of alternatives must provide actual choices for opportunities to avoid or mitigate the environmental impacts of the proposal.

A. The purpose and need for the proposal must be sufficient to ensure the EIS can address a broad range of alternatives.

Ecology, Cowlitz County, and the Corps must first reasonably and objectively define the purpose and need of a proposed action. *See Simmons v. United States Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195–96 (D.C. Cir. 1991)). The statement of purpose and need effectively dictates the range of alternatives evaluate in an EIS. *Id.* NEPA requires federal agencies to "rigorously explore and objectively evaluate all reasonable alternatives" to a proposed action. 40 C.F.R. § 1502.14(a).

"[A]n agency cannot define its objectives in unreasonably narrow terms." *City of Carmel-By-The-Sea v. United States Dep't of Transp.*, 123 F. 3d 1142, 155 (9th Cir. 1997). "An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the goals of the agency's action, and the EIS would become a foreordained formality. *Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1070 (9th Cir. 2010). Moreover, an agency may not allow the economic needs and goals of

a private applicant to define the purpose and need, and hence the inevitable outcome, of an EIS. *Id.*

Similarly, SEPA requires that an EIS describe the "proposal's objectives" and specify "the purpose and need to which the proposal is responding, the major conclusions, significant areas of controversy and uncertainty, if any, and the issues to be resolved, including the environmental choices to be made among alternative courses of action and the effectiveness of mitigation measures." WAC 197.11.440(4).

The scoping notice issued by Cowlitz County does not describe the purpose and need for the proposal. Instead, the scoping notice describes MBT's specific proposal and states that "[r]easonable alternatives will include actions that could feasibly attain or approximate the proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation." Scoping Notice at 2. While the notice references the proposal's "objectives," those objectives are not defined. Without properly defining objectives or the purpose and need for of the proposal, Ecology and Cowlitz County will not be able to identify a reasonable range of alternatives.

The Corps does not explain the purpose or need for the proposed facility. The Corps of describes the proposal as "[t]he decision to issue, issue with conditions, or to deny a permit for various activities within the Corps' jurisdiction associated with the proposed construction and operation of a shipping facility by Millennium Bulk Terminals—Longview (MBTL). Currently, MBTL intends to ship coal from the facility." 78 Fed. Reg. 49485 (August 14, 2013). The Corp then explains that it will limit the scope of review to activities within its "control and responsibility" and then limits the scope of review to the 190-acre footprint of the MBT's export facility, but excluding all direct, indirect, and cumulative impacts that may occur off-site .

The Corps of Engineers scoping notice preemptively and improperly limit the likely scope of review to the impacts of activities directly within the Corps' permitting authority. This artificial narrowing of the scope of review would violate NEPA. The Corps scoping notice states:

> In determining the scope of analysis for this EIS, the Corps must identify the scope of the activities under consideration and decide, for the purposes of NEPA, whether the agency has ''control and responsibility'' for activities outside of waters of the U.S. As a general rule, the Corps extends its scope of analysis beyond waters of the U.S. where the environmental consequences of upland elements of the project may be considered products of either the Corps permit action or the permit action in conjunction with other federal involvement (33 CFR Part 325 Appendix B, Para. 7(b)(2)).
>
> For this EIS, the Corps' scope of analysis will include the entire MBTL project area and any offsite area that might be used for compensatory mitigation. The project area consists of the approximately 190-acre shipping terminal project site, the area to be dredged, the dredged material disposal site(s), and any other area in or adjacent to the Columbia River that would be affected by, and integral to, the proposed project.

78 Fed. Reg. 49485 (August 14, 2013).

The Corps appears to be preemptively and illegally narrowing the scope of its environmental analysis to exclude consideration of impacts beyond the 190-acre port site, areas that would be dredged or filled, and spoil sites. The "project area" should include rail transport facilities that are a necessary component for the project. By the Corps' own terms, the extended rail network that would supply coal to the site is "integral" to the proposed project. Moreover, the larger project context may trigger "other federal involvement," such as related air and water quality permits. As a result, the use and expansion of related railroad lines should be considered part of the project area.

The Corps issuance of a 404 permit for dredging and filling wetlands must include consideration of whether issuance of the permit would be in the public interest. 33 C.F.R. § 325 & 40 C.F.R. § 230. The Corps must balance such public-interest factors as conservation, economics, aesthetics, wetland protection, cultural values, navigation, fish and wildlife values, water supply and water quality. The fully understand the balance between the public-interest factors and the impacts that would be cause if a 404 permit are issues, the Corps must fully disclose the full extent of all reasonably foreseeable direct, indirect, and cumulative impacts. This must include disclosure of impacts beyond the Corps direct regulatory control to ensure there is full accounting of the cost-benefit analysis. This necessarily includes the indirect and cumulative impacts from rail transport that could not occur **but for** the issuance of the Corps 404 permit. In addition, the U.S. Environmental Protection Agency ("EPA") has authority to review and comment on permit applications that are evaluated by the Corps. The EPA may deny 404 permits that would have unacceptable adverse impacts on resources such as fish and wildlife habitat.

To ensure an adequate scope of review, the agencies should adopt a purpose and need statement that allows for broad consideration of alternative uses for the proposed export facility as well as alternative transportation routes. The purpose and need should **not** be defined around the applicant's economic goals and needs are to export Powder River Basin coal to markets in Asia for significant profit. To accomplish this goal, the applicant would need a new export facility for transferring coal from trains to ocean-going vessels. The applicant would also need to increase coal-train traffic between the Powder River Basin and the Millennium Bulk Terminals.

The purpose and need statement should also consider the economic development, employment, and environmental needs of Cowlitz County and the need to address global energy demand while responding to the critical need to protect the global climate.

Ultimately, Ecology, Cowlitz County, and the Corps need to adopt a broad purpose and need statement and a sufficiently wide range of alternatives to provide meaningful choices, as well as opportunities to avoid the likely significant direct, indirect, and cumulative impacts of a coal export facility.

B. The scope of review must consider a broad range of alternatives to address the purpose and need for the project, including alternatives that would avoid coal export.

Both NEPA and SEPA require the EIS to include a sufficient range of alternatives to give meaningful choices that would avoid significant adverse impacts to the environment. The alternatives analysis must also provide an opportunity to identify mitigation measures that reduce environmental impacts.

"The purpose of NEPA is to require disclosure of relevant environmental considerations that were given a 'hard look' by the agency, and thereby to permit informed public comment on proposed action and *any choices or alternatives that might be pursued with less environmental harm.*" *Te-Moak Tribe of Western Shoshone of Nevada v. United States Dep't of the Interior*, 608 F.3d 592, 601 (9th Cir. 2010) (quoting *Lands Council v. Powell*, 395 F.3d 1019, 1027 (9th Cir. 2005) (emphasis added)); *see also* 42 U.S.C. § 4332(E) (requiring agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources"). Agencies are required to consider alternatives in an EIS and must give full and meaningful consideration to all reasonable alternatives. *Id.; see also* 40 C.F.R. § 1508.9(b). "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate." *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir.1985).

Likewise, SEPA requires an EIS to evaluate alternatives. RCW 43.21C.030(2)(c)(i). The applicable guidelines are found at WAC 197-11-440(5). An alternative considered for purposes of an EIS need not be certain or uncontested, it must only be reasonable. *King County v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 184–85, 979 P.2d 374, 385 (1999). A reasonable alternative is one that could feasibly attain or approximate a proposal's objectives at a lower cost to the environment. *Id.; see also* WAC 197-11-440(5)(b).

According to the applicable federal regulations, an EIS "shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1. CEQ clarified the meaning of this requirement in its "Forty Most Asked Questions" policy guidance by defining "reasonable alternatives" as including "those that are *practical or feasible* from the technical and economic standpoint and using common sense, rather than simply *desirable* from the standpoint of the applicant." Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026 (Mar. 23, 1981) (emphasis in original).

When selecting alternatives, an agency may *consider* an applicant's desires, but is not by any means bound or limited by them. It is not appropriate for an agency to rely on the "self-serving statements of the project applicants." *Southern Utah Wilderness Alliance v. Norton*, 237 F. Supp. 2d 48, 53 (D.D.C. 2002). Instead, the action agency must "to the fullest extent possible . . . study, develop and describe appropriate alternatives to recommended courses of action in any proposal [that involves] unresolved conflicts concerning alternative uses of available resources." *Id*. at 54 (citing 42 U.S.C. § 4332(2)(E)). Moreover, "[o]ther factors [other than the applicant's desires] to be developed during the scoping process—comments received from the public, other

government agencies and institutions, and development of the agency's own environmental data—should certainly be incorporated into the decision of which alternatives to seriously evaluate in the EIS." CEQ, Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34,263, 34,267 (July 28, 1983).

Indeed, under NEPA, the EIS may even have to look at alternatives over which the applicant has no control. *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 835 (D.C. Cir. 1972); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serrv.*, 235 F. Supp.2d 1143 (W.D. Wash. 2002). Further, it is irrelevant whether an applicant already owns alternative sites for the purposes of NEPA review: "The fact that this applicant does not now own an alternative site is only marginally relevant (if it is relevant at all) to whether feasible alternatives exist to the applicant's proposal." *Van Abbema v. Fornell*, 807 F.2d 633, 638 (7th Cir. 1986).

Similarly, SEPA also requires a discussion of alternate development sites for a proposed project in order to have an adequate discussion of reasonable alternatives. *See Barrie v. Kitsap County*, 93 Wn.2d 843, 855, 613 P.2d 11481155 (1980) (EIS was *inadequate* because it looked only at the use of the applicant's private property for siting a shopping center, and failed to discuss alternative development sites).

Here, Cowlitz County's scoping notice states the alternatives analysis will explore options that "attain or approximate the proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation." Scoping Notice at 2. By tying the scope of review to undefined objectives, Cowlitz County and Ecology may improperly limit the range of alternatives under consideration.

Similarly, the Corps's scoping notice would improperly exclude a range of reasonable alternatives from consideration. The Corps' scoping notices states:

> The EIS will address an array of alternatives for a facility to receive material by rail and load ships for ocean transport. Alternatives may include, but will not be limited to, no action, alternative sites, alternative methods for on-site handling, and alternative facility designs. Mitigation measures could include, but would not be limited to, avoidance of sensitive areas, creation or enhancement of riverine nearshore habitats, and creation, restoration, or enhancement of wetlands.

78 Fed. Reg. 49485 (August 14, 2013). It appears that the Corps intends to limit its analysis to alternative options for exporting coal. Instead, the Corps' range of alternatives should include alternatives to any new coal export facilities.

Assuming the Corps's alternatives are reasonable, the Corps cannot consider alternative sites without considering the full scope of impacts from coal export. For example, by excluding consideration of transportation impacts beyond the narrow project area, the Corps misses the opportunity to actually compare the relative impacts of "alternative sites." Alternative sites may have dramatically different indirect and cumulative impacts to the Columbia River Gorge. Similarly, by failing to conduct an area-wide EIS that evaluates the cumulative effects of all projects, the Corps fails to provide a basis for comparing "alternative sites." The Corps scope of

review and range of alternatives are internally inconsistent and fail to satisfy the Corps' impermissibly narrow standards.

The Corps and Ecology, Cowlitz County, and the Corps County must explore alternatives that would avoid or minimize all reasonably foreseeable impacts.

As explained above, the primary driver for the proposed export facility is the applicant's desire to export Powder River Basin coal to Asian markets. Despite the applicant's economic goals, Ecology, Cowlitz County, and the Corps must define a broader purpose and need and consider a broader range of alternatives for consideration. The range of alternatives considered in the EIS should include:

- Alternatives that better address the economic and environmental needs of the local area and region and do not expand global reliance on fossil fuels responsible for causing catastrophic climate change. For example, the EIS should consider a facility that handles bulk dry goods such as grains while prohibiting the export of coal and avoiding the direct, indirect, and cumulative impacts of coal export.
- Alternative transportation routes that do not pass through federally protected areas like the Columbia River Gorge.

A sufficient range of alternatives would give Ecology, Cowlitz County, and the Corps the ability to identify options that avoid or minimize unnecessary adverse impacts to the environment. This broad analysis is required by both NEPA and SEPA.

II. The EIS must analyze all direct, indirect, and cumulative impacts of the proposal.

A. NEPA and SEPA require analysis of direct, indirect, and cumulative impacts of a project.

Under NEPA, an EIS must considered direct effects, indirect effects, and cumulative effects. "Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8. The direct effects of an action are those effects "which are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a).

The indirect effects of an action are those effects "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(b). For example, "[i]ndirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." *Id.* These types of growth-inducing impacts must be analyzed, even when they are characterized as "secondary." *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975) (requiring EIS to address growth-inducing impacts of freeway interchange planned in agricultural area on the edge of urban development); *see also Swain v. Brinegar*, 542 F.2d 364, at 370 (7th Cir. 1976) (Federal Highway Administration was required to consider the effects of possible future highway

construction that would be made possible by a proposed highway project, particularly when the proposed segment would have "no utility" absent related development.) In fact, "[f]or many projects, these secondary or induced effects may be more significant than the project's primary effects . . . . While the analysis of secondary effects is often more difficult than defining the first-order physical effects, it is also indispensable." Fifth Annual Report of the Council on Environmental Quality, 410-11 (December 1974).[1]

A cumulative impact is the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7. NEPA requires that an EIS assess cumulative impacts in sufficient detail to be "useful to a decision maker in deciding whether, or how, to alter the program to lessen cumulative impacts." *City of Carmel-By-The-Sea v. United States Dep't. of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997). The cumulative impacts analysis for a proposed project must examine past, present, and proposed/reasonably foreseeable actions in the same area. 40 C.F.R. §§ 1508.7, 1508.25, 1508.27(b)(7); *Tomac v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006).

Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7. "To consider cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing [an action agency's] decisions, can be assured that the [agency] provided the hard look that it is required to provide." *Neighbors of Cuddy Mountain v. United States Forest Serv.*, 137 F.3d 1372, 1379 (9th Cir. 1998). The cumulative effects of the proposed action, combined with the cumulative effects of other proposed actions, must be described in detail. *Muckleshoot Indian Tribe v. United States. Forest Serv.*, 177 F.3d 800, 810 (9th Cir. 1999). Broad and general statements "devoid of specific, reasoned conclusions" are not sufficient; neither are one-sided cumulative impact statements. *Id*. at 811.

All phases and portions of a project must be evaluated at the outset during environmental review of the first phase. *See Merkel v. Port of Brownsville*, 8 Wn. App. 844, 850–51, 509 P. 2d 390, 395 (1973); *Indian Trail Property Owner's Ass'n v. City of Spokane*, 76 Wn. App. 430, 443, 886 P.2d 209 (Wn. App. 1994).

SEPA requires the scope of environmental review to include direct, indirect, and cumulative impacts to elements of the environment. WAC 197-11-792(2)(c) (scope of review), 197-11-752 (impacts), 197-11-444 (elements of the environment). "Impacts include those effects resulting from growth caused by a proposal." WAC 197-11-060(4)(c). The EIS "shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries." WAC 197-11-060(4)(b). If the project would be "dependent on subsequent proposed development," it must analyze the cumulative impacts of that development. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 720, 47 P.3d 137 (2002). Lead agencies must consider impacts to sensitive areas that would be adversely impacted by development. *See Swift v. Island County*, 87 Wn. 2d 348, 552 P.2d 175 (1976) (requiring an EIS for private development

[1] Available at http://www.slideshare.net/whitehouse/august-1974-the-fifth-annual-report-of-the-council-on-environmental-quality.

that would cause adverse impacts (traffic, visual impacts, and wildlife impacts) in sensitive areas, including a state-designated scenic and recreational highway, an Audubon Society-designated Important Bird Area, a state park, and a historic district).

B. The Millennium Bulk Terminals would cause indirect and cumulative adverse impacts to the Columbia River Gorge.

The proposed Millennium Bulk Terminals would export 48 million tons of coal annually from the Powder River Basin by rail through the Columbia River Gorge to markets in Asia. The construction of this terminal would create a clear, certain, and substantiated causal chain of events that would result in adverse impacts to the Columbia River Gorge. Indeed, the Millennium Bulk Terminals would have no independent utility of, and would be completely dependent on, trains delivering coal from the Powder River Basin. The likely impacts of increased coal train traffic are neither remote nor speculative; rather, they are proximate and certain.

The transport of 44 million tons of coal would require approximately 18 train trips per day with 9 trains per day loaded with coal. Each train would be about one and one-half miles long. At that rate, the Millennium Bulk Terminals alone would require more than 3,000 trains loaded with coal and 6,500 total train trips per year.

The impacts of the Millennium Bulk Terminals project must also be considered in conjunction with other reasonably foreseeable coal export proposals, including proposals that would utilize barges to transport coal through the Gorge. In conjunction with other coal export proposals, the total number of train trips carrying coal would increase to 20 trains loaded with coal and 40 total train trips through the Gorge. On an annual basis, the collective number of trains loaded with coal would exceed 7,000 trains and the total number of train trips per year would exceed 14,000.

The EIS must also consider the collective impacts of coal expert proposals in addition to reasonably foreseeable impacts from proposals to ship oil by rail. The Tesoro/Savage oil export proposal would export 360,000 barrels of oil per day through the Gorge and would add four loaded trains per day and a total of 8 trains per day.[2] In conjunction with other oil export proposals, approximately 800,000 barrels of oil per day could be exported through the Gorge. This could result in 8 loaded oil trains moving through the Gorge and 16 total additional train trips.

The reasonable foreseeable coal and oil export proposals, if approved, would generate an increase in 28 loaded trips and 56 total trips through the Gorge. 28 additional coal and oil trains per day would lead to significant impacts from coal dust and debris, increased risk of derailment, increased risk of catastrophic accidents from derailments, and significant impacts to recreation, local economies, and local quality of life.

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[2] Washington Energy Facility Siting Council, Application No. 2013-01: Docket No. EF-131590. Information available at http://www.efsec.wa.gov/Tesoro-Savage.shtml.

1. Coal trains release coal dust and debris causing adverse impacts to the resources in the Columbia River Gorge.

Open coal trains lose huge volumes of coal dust and debris during transportation. According to Burlington Northern Santa Fe ("BNSF") studies, between 500 lbs. to 2000 lbs. of coal can be lost in the form of dust for each rail car.[3] In other studies, as much as three percent of the coal in each car (around 3600 pounds per car) can be lost in the form of dust. A study of a West Virginia rail line found that one pound of coal per car per mile is lost from coal trains.[4] At this rate, one coal train with 120 cars traveling 85 miles through the Columbia River Gorge National Scenic Area could lose just over 10,000 pounds of coal in the Gorge. One coal train per day for 365 days is 3,650,000 lbs. per year deposited on Gorge lands and in Gorge waterways. Nine loaded coal trains per day would deposit over 32 million lbs. of coal in the Gorge every year. In conjunction with all other coal export proposals, 72 million lbs. of coal would be deposited in the Gorge every year. Converted to short tons this is 36,500 tons per year of coal pollution.

MBT's proposal to transport over 3,000 fully loaded coal trains per year through the Columbia River Gorge would cause a huge volume of coal to escape into the air, land, water, and communities of the Columbia River Gorge. The impacts from coal dust and debris from coal trains is already a significant impact to the Gorge. In 2008 32 trains per day pass through the BNSF rail line in the Gorge.[5] The number of trains carrying coal is uncertain, but anecdotal evidence supports and estimate of a few trains per day. Even with the relatively low number of coal trains currently passing through the Gorge, coal trains have been documented (as described below) releasing coal dust and debris. This included eye-witness account of coal dust and debris incidents and documented accumulations of coal dust and debris along the BNSF rail line. The proposal would create a significant, likely exponential increase to rail traffic and coal dust and debris in the Gorge.

The proposal is one of three pending coal export proposals involving a combined 100 million tons of coal that would be transported through the Columbia River Gorge to export facilities in Washington.[6] The scope of the EIS and its cumulative effects analysis must include the cumulative effects of transporting 100 million ton of coal annually with nearly 40 additional trains trips per day (14,000 additional trains per year) passing through the Columbia River Gorge. The Millennium Bulk Terminals EIS must also account for existing and proposed coal transport through the Gorge.

The EIS must also account for how the unique geographic features of the Gorge would exacerbate the impacts of wind-blown coal dust and debris. The Columbia River Gorge is the

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[3] *See* Hearing, July 29, 2010, Arkansas Electric Cooperative Association—Petition for Declaratory Order, Surface Transportation Board, Docket No. FD 35305, at 42: 5-13.

[4] Simpson Weather Associates 1993. Norfolk southern rail emission study: consulting report prepared for Norfolk Southern Corporation. Charlottesville, VA.

[5] Washington State 2010-2030 Freight Rail Plan, page 3-28.

[6] 8 million tons for Morrow Pacific barge proposal, 48 million tons for the Gateway Pacific proposal, and 44 for Millennium Bulk Terminals.

only sea-level passage through the Cascade Mountains between the temperate coast and the dry interior. This geography and seasonal temperature variance between the coast and the interior create a veritable wind tunnel in the Gorge throughout much of the year. The reliable high winds of the Gorge make it an international destination for windsurfing and kiteboarding. These same high winds would also create an obvious problem for transporting coal via train through the Gorge. High winds would cause coal trains to release substantial plumes of coal dust and debris that would be distributed throughout the Gorge.

Such occurrences have already been documented by numerous people in the Gorge. For example, people have literally been bombarded by windblown coal dust and debris while driving in the Gorge. Attached as evidence of such events are declarations from Jeremy Bechtel and Matt Ryan explaining encounters with windblown coal dust and debris in the Columbia River Gorge. In addition, included below are photographs demonstrating the dramatic impacts of windblown coal dust and debris in the Gorge. Finally, Friends' staff has visited railroad crossings and the banks of the Columbia River along railway lines in the Gorge and gathered and photographed coal debris that was released by coal trains. Included below are photos of coal debris deposited in the Gorge by coal trains.

Photo of plumes of coal dust and debris at Columbia Hills State Park. Photo by Julie Coop.

Photo of plumes of coal dust and debris at Columbia Hills State Park. Photo by Julie Coop.

Coal debris along BNSF rail line near Columbia Hills State Park is easily gathered by the bucket-full. Photo by Peter Cornelison.

Coal dust and debris settles in the soil throughout the Gorge. Photo by Peter Cornelison.

2. Coal trains increase the risk of train derailment.

The EIS must also address the risk of derailment from increased train traffic carrying coal in the Columbia River Gorge. Increased train transportation, particularly coal trains, poses a real threat of derailments, spills, and impacts to sensitive areas. Coal dust has been documented as a rail ballast contaminant and BNSF has attributed derailments to the ballast contaminated with coal dust.[7] A cursory review of the recent history of accidents illustrates the risks of derailment:

- In July 2012 a coal train transporting Powder River Basin coal derailed near Pasco, Washington, dumping and undetermined amount of coal.[8] (Photo at right).
- In July 2012 a coal train derailed in Chicago because a bridge was not designed to carry the weight of coal cars.[9]

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[7] *See* Decision, March 3, 2011, Arkansas Electric Cooperative Association—Petition for Declaratory Order, Surface Transportation Board, Docket No. FD 35305, at 7.

[8] The Seattle Times, *Coal train derails in Columbia River Gorge*, (July 2, 2012) (Attached). Available at http://seattletimes.com/html/localnews/2018585778_apwacoaltrainderailment.html (last visited Jan. 14, 2013). Tri City Herald, *Coal Train Derailment* (July 3, 2012) (downloaded Jan. 14, 2013). Available at http://www.tri-cityherald.com/2012/07/03/2009115/coal-train derailment.html#wgt=rcntmulti#storylink=cpy (last checked Jan. 14, 2013).

[9] Chicago Tribune, *2 bodies inside car found in wreckage from train derailment*, (July 5, 2012) (Attached). Available at http://articles.chicagotribune.com/2012-07-05/news/ct-met-train-derailment-overpass-20120705_1_train-derailment-coal-cars-bridge-collapse. (last visited Jan. 14, 2013).

- On April 24, 2005, an Amtrak train traveling on the Washington side of the Columbia River derailed within the National Scenic Area.[10]
- In January 2003, a train containing hazardous waste derailed near The Dalles on the Oregon side of the Columbia River. That derailment occurred in a culturally significant area within the Columbia Gorge National Scenic Area, and threatened tribal cultural resources.[11]

In combination with proposals to export oil by rail, the increased risk of derailment has the potential to cause catastrophic impacts to the Gorge, local communities, and the natural environment. For example, an oil train recently derailed and exploded in the small tourist town of Lac-Mégantic in Quebec Canada, destroying over 30 buildings and killing 47 people.[12] In Alabama another oil train derailed and exploded "sending flames hundreds of feet high that could be seen from over 10 miles away."[13] The oil that did not catch on fire poured into nearby wetlands.''

The Millennium Bulk Terminals project, in conjunction with other coal export proposals and oil-by-train transport proposals would contribute to a very real risk of catastrophic accidents that would not be present with nearly any other type of bulk goods transportation proposal that would use rail lines in the Gorge. The EIS must address this risk and evaluate alternative uses for the regional rail network.

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[10] The Seattle Times, *26 Hurt When Amtrak Train Derails Along Columbia Gorge Route*, (April 4, 2005) (Attached). Available at http://seattletimes.nwsource.com/html/localnews/2002230033_derail04.html (last visited January 14, 2013).

[11] U.S. E.P.A., Making Environmental Progress, Improving Local Communities Accomplishments of the EPA Region 10 Superfund Program (Jan. 2004) (Excerpt attached).

[12] The Globe and Mail, *As Lac-Mégantic death toll reaches 47, safety board calls for immediate rail-safety changes*, (Last updated Friday, Jul. 19 2013). Available at http://fw.to/IoAQ1xQ. (last visited on Nov. 18, 2013).

[13] Reuters, *Crude oil tank cars ablaze after train derails in Alabama*, (Nov 8, 2013). Available at http://www.reuters.com/article/email/idUSBRE9A70Q920131109 (last visited on Nov. 18, 2013).

3. Coal trains increase rail traffic causing adverse impacts to communities, the environment, and the economy.

In addition to the impacts from coal dust and debris and derailment the Millennium Bulk Terminals EIS must also address the impacts of increased rail traffic in the Gorge.[14] An increase in rail and barge traffic, regardless of whether trains are carrying coal, would result in a number of consequences that must be fully evaluated in the EIS.

The BNSF rail line in the Columbia Gorge is "the primary route for export grain trains inbound to the Columbia River ports but due to heavy traffic through Stevens Pass, this has become a reliever route for intermodal traffic moving from Seattle and Tacoma to Vancouver, Washington, and then east along the river."[15] The relationship between rail lines and export facilities is closely connected.[16] In 2006 Washington Department of Transportation ("WSDOT") found that the carriers were redirecting traffic from the over-burdened Everett-Spokane line to the Gorge, which "has added considerable volume to the Vancouver-Pasco line along the Columbia River Gorge, and made the scheduling of train moves through the Gorge and along the I-5 rail corridor more complex. . . ." and causing delays in the Portland-Vancouver area.[17] In 2008 the BNSF rail line in the Gorge was utilized by 32 per day and was operating at 80% of its 40-train capacity.[18] It was estimated that by 2028 capacity would increase to 48 cars per day, but would be 100% utilized.[19] The Gorge has been identified as a possible major traffic congestion area.[20]

The 18 additional coal trains per day that would be generated by Millennium Bulk Terminals would either place the rail line in the Gorge above its capacity and likely displace other customers, such as Washington agricultural sectors. Overall, coal train export is likely to cause an expansion in rail infrastructure and cause adverse environmental and economic impacts.[21]

In addition to the direct and indirect impacts to rail capacity, the MBT would also contribute to direct, indirect, and cumulative impacts to air quality and the climate. The MBT EIS must also consider the cumulative impacts of rail and barge traffic because the Morrow Pacific coal export proposal would rely on barging coal through the Gorge. It is reasonably foreseeable that the project would cause the following changes that must be addressed:

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[14] *See e.g.*, *Heavy Traffic Ahead: Rail Impacts of Powder River Basin Coal to Asia by way of Pacific Northwest Terminals*, Report Prepared For Western Organization of Resource Councils (July 2012)("Heavy Traffic Ahead").

[15] *See* WSDOT, *Statewide Rail Capacity and System Needs Study, Final Report*, at 14 (Dec. 2006).

[16] *See id*. at 18–19.

[17] *Id*. at 23–24.

[18] Washington State 2010-2030 Freight Rail Plan, page 3-28.

[19] *Id*.

[20] *Heavy Traffic Ahead* at 29, 36.

[21] *Id*. at 47–51.

- Increased air pollution from diesel railroad engines and increased barge traffic.
- Additional greenhouse gas ("GHG") emissions from trains and barges.
- Increased conflicts with other modes of transportation, such as at-grade road crossings, and the likely need to construct grade-separation features to reduce conflict.
- The aesthetic, noise, and recreational impacts of an increase in the number of trains and barges within a federally protected national scenic area, including the obstruction of scenic views, the interference with use of recreational sites along the Columbia River, impacts on fish and wildlife, and impacts to tourism.
- The need to construct additional railroad sidings.
- The need to expand to use Oregon rail lines.
- Additional impacts and conflicts with residents of and visitors to the Gorge, as well as economic activities within the Gorge.
- The impacts to property values near rail lines.[22]
- The economic and environmental impacts of causing other rail customers, like the agricultural sector that primarily relies on the Gorge to export grains, to shift to other modes of shipping, pay higher prices for services, or be denied service in favor of coal transport.[23] "3 percent of the gross state product and accounting for 6 percent of the employment. Washington State ranked 11th among states in agricultural production in 2002, producing crops and livestock valued at over $5.3 billion. Agriculture is the major source of employment in many of the State's rural counties."[24] The proposal would cause adverse impacts to small grain elevator operators and local growers that would be squeezed out of rail transport options in favor of coal and grains from the Midwest.[25]

Under NEPA and SEPA, Ecology, Cowlitz County, and the Corps must analyze the reasonably foreseeable direct, indirect, and cumulative adverse impacts of the proposed Millennium Bulk Terminals. The proposal would cause an increase in coal trains in the Gorge and an increase in overall rail traffic in the Gorge that would cause adverse impacts to the environment. The scope of those impacts is more fully explained below.

4. Impacts to local, state, and federally designated sensitive areas in the Gorge.

The Columbia River Gorge has a remarkable concentration of significant scenic, natural, cultural, and recreational resources. This is evidenced by the numerous local, state, and federally designated parks, recreation areas, wild and scenic rivers, and historic trails found in the Gorge.

At the highest level, Congress created the Columbia River Gorge National Scenic Area to protect the scenic, natural, cultural, and recreational resources of the Columbia River Gorge. *See*

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22 Simons & El Jaouhari, *The effect of freight railroad tracks and train activity on residential property values*. The Entrepreneur (Summer, 2004).

23 *See* WSDOT, *Statewide Rail Capacity and System Needs Study, Final Report*, at 17–19, 26, 28 (Dec. 2006).

24 *Id*. at 19–20.

25 *Id*. at 19, *see also Heavy Traffic Ahead* at 42–44.

Columbia River Gorge National Scenic Area Act ("Scenic Area Act"), 16 U.S.C. §§ 544–544p. The Columbia River Gorge National Scenic Area extends approximately 85 miles along the Columbia River Gorge. The following state and federally designated areas are located within or near the Scenic Area:

- the Lewis and Clark National Historic Trail
- the Oregon Pioneer National Historic Trail
- the Historic Columbia River Highway (designated as a National Historic District on the National Register of Historic Places, as well as a National Historic Landmark)
- the Ice Age Floods National Geological Trail
- The White Salmon and Klickitat Wild and Scenic Rivers in Washington
- The Deschutes, Hood, and Sandy Rivers in Oregon
- Numerous "in lieu" and treaty fishing access sites
- Numerous state and local parks
- Hundreds of miles of hiking trails on federal, state, local, and private lands

The dispersal of coal dust and debris and an increase in rail traffic would cause reasonably foreseeable impacts to these sensitive areas, including the aesthetic impacts of coal dust and debris, increased noise from rail traffic, reduced access at at-grade crossings, and the construction of new sidings and possible grade separation.`

5. Impacts to air quality in the Gorge.

The Millennium Bulk Terminals would cause an increase in air pollution in the Gorge, including coal dust and debris released during transport and emissions of railroad engines. Ecology, Cowlitz County, and the Corps must analyze both the indirect and cumulative impacts of the proposal on Gorge air quality. This must include cumulative impacts analysis of all coal export proposals, including the Morrow Pacific proposal to barge coal through the Gorge.

The Columbia River Gorge National Scenic Area is already severely impaired by air pollution, especially nitrogen oxides (NOx) and particulate pollution. The Gorge now stands among the most polluted places in the country, including Pittsburgh and Los Angeles. A 2005 joint study by the U.S. Forest Service and National Park Service studied twelve federally managed areas around the West and found that the Columbia River Gorge National Scenic Area and Sequoia National Park had by far the worst "annual standard visual range[s]" of the twelve areas.[26] Similarly, a 2000 Forest Service study of air quality monitoring data from 39 federally managed "visibility protected" areas in the West found that the Scenic Area has "the highest levels of haze" and "the sixth worst visibility pollution of these areas."[27] Gorge air quality has

[26] Mark Fenn, USDA Forest Service et al., *Why federal land managers in the Northwest are concerned about nitrogen emissions*, at 10 (Dec. 2004).

[27] Arthur Carroll, USDA Forest Service, Letter to Columbia River Gorge Commission, at 3 & attach. 3 (Feb. 7, 2000).

been monitored for the last twenty years. The Forest Service has documented that visibility impairment occurs on at least 95% of the days that have been monitored.[28]

Deposition of pollutants also has profound negative impacts on ecosystems. Studies demonstrate that in the Western United States, some aquatic and terrestrial plant and microbial communities are significantly altered by nitrogen deposition.[29] Metals, sulfur and nitrogen concentrations in lichen tissue found in the Gorge are comparable to that found in lichen tissue sampled in urban areas. Nitrogen deposition rates in the Gorge are comparable to the most polluted areas in the United States. The Gorge does not deserve this bombardment on its ecological resources.

Particulate matter pollution also threatens human health and welfare. In fact, when reviewing the National Ambient Air Quality Standards for PM2.5, EPA found that there is no level of particulate matter pollution at which there are no human health effects. According to EPA, fine particulate matter pollution causes a variety of adverse health effects, including premature death, heart attacks, strokes, birth defects, and asthma attacks.[30] Even low levels of PM can cause low birth weights, damage lung function, and increase risks of heart attack and premature death. Studies reviewed by EPA revealed a linear or almost linear relationship between diseases like cancer and the amount of fine particulate matter in the ambient air.[31] Consequently, any particulate matter contamination has adverse health effects.

The Management Plan for the National Scenic Area requires that "air quality shall be protected and enhanced, consistent with the purposes of the Scenic Area Act." NSA Management Plan at I-3-32–33. The identification of air quality in the Scenic Area Management provides further support for the need to evaluate in the EIS the project's impacts to air quality.

Ecology, Cowlitz County, and the Corps must analyze the extent that new coal transportation would contribute to ongoing adverse impacts to Gorge air quality and the related impacts to human health, the environment, and sensitive cultural resources.

6. Impacts to water quality in the Gorge.

The proposed facility would cause the release of thousands of tons of coal dust and debris in the Columbia River Gorge. A portion of that dust and debris would settle in waterways, either at river crossings or where railway lines run sufficiently close to the Columbia River. The Columbia River and many of its tributaries are already impaired by water pollution. The proposal would compound those impacts, releasing pollutants directly into these waters. Recent research has shown that coal storage facilities release arsenic and polycyclic aromatic hydrocarbons

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[28] Robert Bachman, USDA Forest Service, *A summary of recent information from several sources indicating significant increases in nitrogen in the form of ammonia and ammonium nitrate in the Eastern Columbia River Gorge and the Columbia Basin*, at 2 (June 24, 2005).

[29] *See* Mark E. Fenn, et al, Ecological Effects of Nitrogen Deposition in the Western United States, BioScience Vol. 53:4, Apr. 2003, available at http://www.bioone.org/doi/abs/

[30] 71 Fed. Reg. 2620, 2627–36 (Jan. 17, 2006).

[31] *Id*.

("PAHs") into soils and waterways. Coal also contains lead and mercury. It is likely that windblown coal dust and debris would also leach these same poisons into waterways. Finally, the burning of exported coal in Asian markets has been documented as a significant source of mercury pollution in the Columbia River watershed. The proposed project would exacerbate these effects.

The causal relationship between Millennium Bulk Terminals and adverse impacts to water quality in the Gorge is proximate and certain. Ecology, Cowlitz County, and the Corps must address these impacts in the scope of the EIS.

7. Impacts to cultural and historic resources.

The Columbia River Gorge has been inhabited since time immemorial by Native Americans. Carbon dating has documented human settlements dating back over 10,000 years. This continuous human presence has left countless cultural resources sites throughout the Gorge. Native American governments' treaties with the Unites States retained rights protecting cultural resources and hunting, fishing, and gathering sites. Ecology, Cowlitz County, and the Corps must ensure that they undertake all required intergovernmental consultation as part of preparing the EIS in order to ensure that Native American cultural resources are protected.

The Corps has an obligation under Section 106 of the National Historic Preservation Act ("NHPA"), 16 USC 470 et seq., to consult with tribal governments about the likely impacts of the proposal. NEPA regulations require the Corp to prepare the Draft EIS "concurrently with and integrated with" the required consultation under the NHPA. 40 C.F.R. § 1502.25(a).

SEPA requires EFSEC to consult with the tribal governments as well. "Cultural preservation" is an element of the environment that must be addressed through the SEPA process. WAC 197-11-444. In addition, the environmental checklist, which must be prepared for proposed actions, requires consideration of impacts to cultural resources. WAC 197-11-315; WAC 197-11-960. SEPA also requires that the County consult with agencies with expertise in the impacted environment. RCW 43.21C.030(2)(d); WAC 197-11-408(2)(a). Finally, the 1989 Centennial Accord between the State of Washington and federally recognized tribes mandates that state agencies undertake government-to-government consultation with representatives of tribal sovereigns regarding the measures necessary for adequate environmental review and appropriate mitigation measures.

In addition to its tribal cultural resources, the Columbia Gorge contains numerous other significant cultural and historic resources and sites. The Gorge is the final portion of Lewis and Clark's journey across the West. This seminal event in the history of the United States and the cultural landscape of the Gorge has been recognized via the designation of the Lewis and Clark National Historic Trail.

The Lewis and Clark National Historic Trail was created to "stimulate Federal, State, and local agencies and individuals to identify, mark, and preserve for public inspiration and enjoyment the routes traveled by the Lewis and Clark Expedition." Lewis and Clark Trail Management Plan at 1. The Management Plan for the trail recognizes that many of the historic

and cultural resources have been altered or lost and the Expedition left scant traces of their passing. However, "[i]n a very real sense, many of the historic resources are the landmarks, vistas, flora, and fauna that make up the Trail's natural resources. It is virtually impossible to find either historic or natural resources along the Expedition route, which have not been altered in some way by man or nature." Lewis and Clark Trail Management Plan at 4 & 13. Thus, the scenery and natural resources of the Expedition's route are critical to appreciating the trail. Locations where those vistas and natural resources are intact are exceedingly rare, and warrant the greatest attention during SEPA and NEPA review. The Columbia River Gorge provides an exceedingly rare opportunity to view and experience landscapes that retain continuity with the landscape experience by the Lewis and Clark Expedition. Impacts to this landscape must be addressed in the EIS.

The Columbia River segment of the Lewis and Clark Trail was designated for three types of trail development: a water trail, a land trail, and a motor route. The Columbia River, Interstate 84, and Washington State Route 14 are all designated routes. The Management Plan notes that there is a "nearly continuous string of recreation sites along this segment." Lewis and Clark Trail Management Plan at 70. The National Park Service identified the following sites in the Gorge as providing interpretive opportunities:

- Maryhill State Park
- Celilo Park
- Horsethief Lake State Park
- Spearfish Lake Recreation Area
- The Dalles Dam
- Seufert Visitor Center
- Mayer State Park
- Bingen Boat Basin
- Viento State Park
- Starvation Creek State Park
- Lyndsey State Park
- Cascade Locks Marine Park
- Pacific Crest National Scenic Trail and Trailhead
- Bonneville Dam
- Beacon Rock State Park
- Rooster Rock State Park
- Lewis and Clark State Park

Lewis and Clark Trail Management Plan at 72–75. Many of these locations are historic sites where the Lewis and Clark Expedition camped on their way through the Gorge.

The designated Lewis and Clark Trail routes, State Route 14, the Columbia River, and Interstate 84, all travel parallel and adjacent to the likely transportation route for the proposed coal export facility. A significant increase in rail traffic, coal dust and debris, and new rail sidings has the potential to cause significant adverse impacts to these resources. These impacts must be included within the scope of review for the EIS.

8. Impacts to natural resources, including fish, wildlife, plants, and priority habitats.

The Columbia River Gorge is habitat for numerous threatened and endangered fish, wildlife, and plant species. This includes both state and federally listed species. The Management Plan for the National Scenic Area provides protection for additional sensitive species.[32] Protected sensitive species that may be impacted by coal transportation include the following:

- Resident and anadromous fish (Columbia and Snake River salmon and steelhead, Pacific lamprey, river lamprey, eulachon, and bull trout);
- Several species of herpetiles (California mountain king snake, sharptail snake, striped whipsnake);
- Several species of birds (peregrine falcon, golden eagle, bald eagle, numerous waterfowl, and numerous migratory birds);
- Several mammal species (pika, western gray squirrel);
- Numerous rare and endemic plant species.

The EIS must address the impacts of coal trains, increased rail traffic, climate change, and mercury pollution on these species.

The EIS must also address compliance with the Endangered Species Act ("ESA"). Under the ESA, "take" is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." 16 U.S.C. § 1532(19). Section 9 of the ESA prohibits both acts that would "take" a species, as well as acts that would cause an act that constitutes a "taking." The Ninth Circuit has held that "a habitat modification which significantly impairs the breeding and sheltering of a protected species amounts to 'harm' under the ESA." *Marbled Murrelet v. Babbit*, 83 F.3d 1060, 1067 (9th Cir. 1996). The Corps will also need to consult with the federal fish and wildlife agencies pursuant to section 7 of the ESA regarding the likely impacts of the project on federally listed species and their habitat. 16 U.S.C. § 1536; 50 C.F.R. pt. 402.

9. Impacts to local residents, recreation, tourism, and public health.

The Columbia River Gorge is home to numerous communities. The railroad line in Washington passes through or near the communities of Wishram, Lyle, Bingen, White Salmon, Home Valley, Carson, Stevenson, North Bonneville, Camas, and Washougal. Railroad lines in Oregon pass through the communities of Celilo Village, The Dalles, Mosier, Hood River, Cascade Locks, and Troutdale. In addition, numerous rural residences are dispersed along the Columbia River near the railroad lines.

There are also multiple recreation and tourism sites along the Columbia River throughout the Gorge. Railroad lines pass through Columbia Hills State Park, Beacon Rock State Park, Doug's Beach State Park, numerous windsurfing and kite boarding access sites, and numerous boat launches.

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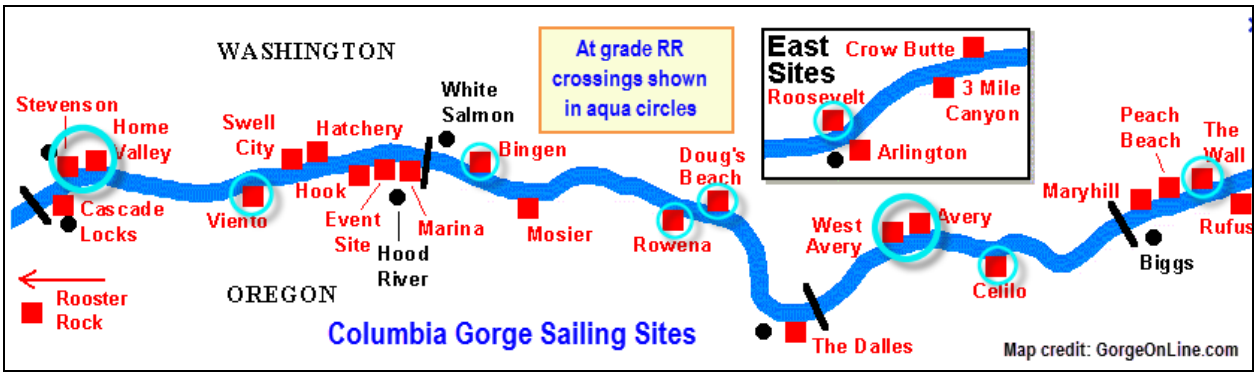
[32] A full list of sensitive, threatened, and endangered species that occur in the Columbia River Gorge is available at: http://www.gorgecommission.org/NRSpeciesList.cfm. (last checked on Jan. 13, 2013).

The Gorge is also home to a growing agri-tourism industry. The Columbia Gorge American Viticulture Area is home to dozens of vineyards and wineries, many in close proximity to railroad lines.

The proposal would result in significant impacts to residents, recreation, and tourism. This includes impacts from coal dust and debris, increased air pollution from rail traffic, increased noise from trains, increased delays at railroad crossings, increased delays for emergency vehicles and railroad crossings, construction of new sidings near recreation sites, and potential limitations to recreational access. The proposal would also pose a public health risk for residents and visitors by increasing exposure to dangerous chemicals such as mercury, arsenic, lead, and PHPs. Coal dust is a health problem for people with allergies, asthma, chronic bronchitis, emphysema and heart disease.



Residents and visitors would also be at an increased risk from impacts of derailments and fire. Coal dust has been documented as the cause of derailments in the Powder River Basin. The release of flammable coal may increase the risk of fires. Increase rail traffic may also require an increase in rail maintenance and grinding, which caused the recent Broughton Fire on Underwood Bluff in Skamania County. The proposal would increase the existing risks of fire from railroad operations.

10. Impacts to aesthetic resources.

The Columbia River Gorge is world-renowned for its remarkable scenery. The national significance of the aesthetic resources in the Gorge was the primary driver for the creation of the Columbia River Gorge National Scenic Area. Railroads, railroad-related development, and their impacts, such as warning signs and electric lines, railroad traffic, windblown coal dust and debris, new railroad sidings, and obstructions of scenic views all pose a threat to the aesthetic resources of the Columbia River Gorge. The scope of the EIS must include analysis of these impacts.

11. Impacts of climate change on the Columbia River Gorge.

The proposed Pacific Gateway Terminal would not be constructed but for the opportunity to sell low-cost Powder River Basin coal to coal-fired power plants in Asia. Using Powder River Basin coal at these facilities would cause a major increase in greenhouse gas emissions. The

impacts of climate change are already being felt in the Gorge. In addition, the proposal would contribute to increased emission from rail transport, including cumulative impacts of the MBT proposal, other coal export proposals, and oil by rail transport proposals. The proposal would contribute to that ongoing adverse environmental impact.

Climate change's impacts in the Gorge include a change in conditions that has allowed a drastic expansion of the range of the California Fivespined Ips (*Ips paraconfusus*), a bark beetle that is killing ponderosa pine trees in the eastern Gorge. Climate change may also imperil low-elevation American pika (*Ochotona princeps*) populations that rely on cooler temperatures. Climate change will also imperil endangered fish species in the Gorge as annual hydrographs shift and water temperatures increase.

The Corps and Ecology, Cowlitz County, and the Corps County must include analysis of these impacts in the EIS's scope of review.

III. The EIS must address consistency with local, state and federal laws protecting the affected environment.

The applicant's proposal to export coal from the Powder River Basin would cause an unprecedented increase in the number of coal trains passing through the Columbia River Gorge. SEPA requires analysis of potential conflicts with other environmental laws: "A proposal may to a significant degree . . . [c]onflict with local, state, or federal laws or requirements for the protection of the environment." WAC 197-11-330(3)(e)(iii).

The Columbia River Gorge National Scenic Area Act establishes land use development standards for all land within the National Scenic Area, excluding certain designated Urban Areas. Independent of the Scenic Area Act's mandates, SEPA requires that the EIS must include analysis of the likely increase in rail traffic and any accompanying expansions of railroad facilities within the National Scenic Area. The EIS must address the extent that any new development in the Scenic Area would be consistent with the Scenic Area Act and its implementing regulations. *See e.g.* WAC 197-11-330(3)(e)(iii).

Development that could occur as a direct result of a coal export facility includes new railroad sidings, new railroad markers, new railroad crossings, and new underpasses and overpasses. Each of these categories of development would require local land use approval under Scenic Area Act implementation regulations to ensure that development does not cause any adverse impacts to the scenic, natural, cultural, and recreational resources of the Columbia River Gorge. The EIS must consider the extent project-related impacts would conflict with these resource protection standards.

IV. The lead agencies must consult with agencies with expertise in the resources that would be affected by the project.

SEPA requires the County to consult with agencies with expertise in the resources that may be impacted by the proposed development. RCW 43.21C.030(2)(d); WAC 197-11-

408(2)(a). SEPA requires that the agency "utilize a systematic, interdisciplinary approach" to environmental review. RCW 43.21C030(2)(A).

NEPA requires that the Corps request comments from federal agencies with special expertise in the resources that would be affected by the proposed development. 40 C.F.R. § 1503.1(a)(1). NEPA requires the Corps to seek comments from state agencies and tribal governments. 40 C.F.R. §1503.1(a)(2). The NEPA regulations also requires federal agencies to respond to requests for comments: "Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority." 40 C.F.R. § 1503.2. NEPA regulations also require the Corps to prepare the DEIS "concurrently with and integrated with" required consultations. 40 C.F.R. § 1502.25(a).

Swift v. Island County established the importance of taking expert agency comments into consideration during SEPA review. *Swift v. Island County*, 87 Wn. 2d 348, 552 P.2d 175 (1976). In *Swift* the court ruled that a county's determination of non-significance violated SEPA because its findings conflicted with the comments of other agencies and experts. The agencies and experts included the United States Department of the Interior, Fish and Wildlife Service; State Parks and Recreation Commission; State Department of Game; State Department of Ecology; the Central Whidbey Island Historic Preservation Advisory Committee, and an authority on birds. *Id.* at 355.

Here, Ecology, Cowlitz County, and the Corps must consult with agencies with jurisdiction over, or expertise with, resources in the Columbia River Gorge. Such agencies include the following:

- USDA Forest Service, Columbia River Gorge National Scenic Area office;
- The Columbia River Gorge Commission;
- Washington State Parks and Recreation Commission offices overseeing Beacon Rock State Park and Columbia Hills State Park;
- National Park Service, which administers the Lewis and Clark National Historic Trail;
- Columbia River Intertribal Fish Commission, Confederated Tribes of the Yakama Nation, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation, the Nez Perce, Confederated Tribes of the Grand Ronde, and Celilo Village;
- Affected cities and communities in the Columbia River Gorge, including Wishram, Dallesport, Lyle, Bingen, Underwood, Home Valley, Carson, Stevenson, North Bonneville, Camas, Washougal, The Dalles, Hood River, and Cascade Locks.

SEPA and NEPA respectively require Ecology, Cowlitz County, and the Corps to consult with these agencies in order to fully disclose the likely impacts of the proposal.

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CONCLUSION

Under both NEPA and SEPA the lead agencies are required to look at the direct, indirect, and cumulative impacts of the proposal. Indirect and cumulative impacts analysis is generally required when related actions are dependent upon or would not have any utility unless the project is constructed. The Millennium Bulk Terminals is part of a larger proposal to export coal from the Powder River Basin in Montana and Wyoming to coal markets in Asia. A necessary step in the process is transporting the coal by train through the Columbia River Gorge, to the proposed terminal in Bellingham, Washington. Because of this close causal relationship, Ecology, Cowlitz County, and the Corps must undertake a thorough analysis of the impacts of coal transportation and increased rail traffic in the Columbia River Gorge.

August 22, 2012

Compiled by: Friends of the Columbia Gorge (FoCG)

As told by: Jeremy Bechtel, husband of a FoCG staff member (Full Disclosure)

[A COAL TRAIN INCIDENT ON WA HIGHWAY 14]

While driving in a line of traffic on WA Highway 14 in the Columbia Gorge, Jeremy Bechtel was pelted with chunks of coal and coal dust from a coal train traveling close to the highway. This almost resulted in a multi-car accident. Click on the aerial photo below to open a Google Map showing where this incident took place.

STATE OF WASHINGTON

COUNTY OF SKAMANIA

DECLARATION OF JEREMY BECHTEL

I, JEREMY BECHTEL, make this declaration based upon my personal knowledge and belief and declare as follows:

1. I am a resident of Skamania County, Washington.

2. I am currently a member and supporter of Friends of the Columbia Gorge. I support Friends of the Columbia Gorge because it advocates for my interest in protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge and surrounding landscapes.

3. I live at 2001 Salmon Falls Road, Washougal, WA 98671 which is located approximately 20 miles west of where the coal train incident I describe below took place. I have lived at this address for 9.5 years.

4. I work as a sales representative for Stein Distributing, a distributor of beer, wine and natural beverages located in Vancouver, Washington. My job involves daily travel on highways in the Columbia Gorge.

5. In addition to driving through the Columbia Gorge for work, my family and I drive through the Columbia Gorge for daily household trips, such as shopping for groceries. We also recreate in the Gorge and use Highway 14 to access numerous recreation sites.

6. A large increase in the number of coal trains traveling along the Burlington Northern Santa Fe (BNSF) railroad, which closely parallels Washington State Highway 14 in the Columbia Gorge, would increase the likelihood of dangerous incidents resulting from coal dust

blow-offs, such as an incident I recently experienced that nearly resulted in a multi-vehicle accident, as described below.

7. I am regularly exposed to coal dust from trains on the BNSF railroad when I travel Highway 14 in the Columbia Gorge.

8. On August 22, 2012 at approximately 4:00 p.m., I was driving back from a sales call, headed west on Highway 14 near milepost 51 in a line of traffic. In front of me was a semi-truck followed by one car. Behind me was another car that was tailgating (following too close to) my vehicle. On the train tracks paralleling the highway, approximately 15 feet from our vehicles, a coal train was keeping pace with us as we traveled westward. The train suddenly rounded a sharp bend in the tracks, which exposed the railcars to a strong westerly wind (I estimate it at 30 mph). Coal from at least four of the railcars blew in a northeast direction off the top of the cars and bombarded the line of vehicles I was in. Coal chunks as big as baseballs collided with my vehicle's windshield, and it was only because the coal was soft and broke up upon impact that the coal did not puncture or break my windshield.. The coal chunks left tar marks on my vehicle.

9. The semi-truck, being the first vehicle in the line-up, was hit by the most coal dust and coal chunks. The semi-truck driver suddenly slammed on his brakes causing a chain reaction. The car ahead of me had to slam on its brakes to avoid an accident. In turn, I also had to brake, but I was concerned about being hit by the car tailgating me, so I steered to the right into the road gravel in order to create space for the car behind me to slow down. . I was very concerned about getting rear-ended by the car behind me, but fortunately the semi-truck passed through the worst of the coal bombardment and started accelerating again, which allowed all of us to put more space between our vehicles.

10. I was shaken by this incident and consider it the closest near-accident I have had in all my years of driving in the Columbia Gorge, including winter-time driving. For the sake of my family and my business driving, I do not want to see an increase of coal trains traveling through the Columbia Gorge.

11. The cover page of this declaration shows photographs of the location of the August 22, 2012 coal train incident and an aerial photo from Google Maps identifying where this took place.

12. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, and belief.

Executed in Washougal, Washington this 31st day of October, 2012.

Jeremy Bechtel

STATE OF WASHINGTON

COUNTY OF SKAMANIA

DECLARATION OF MATTHEW J RYAN

I, MATTHEW J RYAN, make this declaration based upon my personal knowledge and belief and declare as follows:

1. I am resident of Skamania County, Washington, which includes the rail line which parallels Wash Hwy 14 on the north side of the Columbia River, and which sees significant coal train traffic.

2. I am currently a member and supporter of Friends of the Columbia Gorge. I support Friends of the Columbia Gorge because it advocates for my interest in protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge and surrounding landscapes. They have been instrumental in protecting the quality of the Columbia River Gorge with regards to scenic impacts from timber harvesting and clear cuts, poorly sited wind turbines, water quality issues, and many other issues concerning quality of life in this unique area.

3. I live at 9372 Cook-Underwood Rd., Underwood, WA 98651

4. I am currently a Registered Nurse, semi retired. My wife and I spend most of the winter living in Utah. I have recently worked at the Alta Medical Clinic in Alta, Utah and am currently employed as an instructor with the Wasatch Adaptive Sports Program in Snowbird,

Utah, teaching mentally and physically handicapped individuals to ski, snowboard and other winter activities as ongoing recreation therapy for said individuals.

5 I currently drive, hike, bike, windsurf, kiteboard, paddleboard, boat, maintain trails, and otherwise recreate on both sides (Washington and Oregon) of the Columbia River through out the Mid-Columbia Area.

6. I have specifically been affected by coal dust and fragments while accessing the Columbia River to kiteboard, windsurf, paddleboard, and canoe from several locations that are near or require crossing the tracks where coal trains run.

7. Locales where I have experienced flying coal dust and fragments are bicycling along Hwy 14, and accessing the river at Doug's Beach State Park, WA and the White Salmon Sand Bar at the confluence of the White Salmon and Columbia Rivers

8. While just outside the chain link fences adjacent to the rail line at Doug's Beach State Park and at the mouth of the White Salmon River I have personally experienced coal dust and pea-sized and larger pieces of coal debris raining down, visibly and audibly, on the hood of my car. I have had significant quantities land on my person as I prepare my gear along the legal right of way, soiling my clothes and getting in my hair to the point that I can comb out chunks of coal debris when I get home before I shower. This, after the trains have travel many hundreds of miles from their point of origin (Powder River Country, WY). and are near the end of their journey. A reasonable

person can only assume that coal is flying out of every coal car every mile of the journey. Why can't these cars be covered, if not eliminated altogether?

I think it is important to note that since the rail lines are typically on private property which is most often to inaccessable to the public, and that many members of the public are not aware of this problem because they are simply not in a position to experience the flying coal debris coming off of these trains firsthand.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, and belief.

Executed in Alta, Utah, this 9th day of December, 2012.

Matthew J Ryan

The Seattle Times
Winner of Nine Pulitzer Prizes

Local News

Originally published Monday, July 2, 2012 at 9:02 PM

Coal train derails in Columbia River Gorge

A railroad spokesman says about 30 cars of a 125-car coal train bound from Wyoming's Powder River Basin to British Columbia have derailed along a Columbia River Gorge route east of Pasco, Wash., blocking a main rail line.

The Associated Press

PASCO, Wash. —

A railroad spokesman says about 30 cars of a 125-car coal train bound from Wyoming's Powder River Basin to British Columbia have derailed along a Columbia River Gorge route east of Pasco, Wash., blocking a main rail line.

Burlington Northern Santa Fe spokesman Gus Melonas said no injuries were reported in the Monday evening derailment.

He says the majority of the derailed cars ended up on their sides and an undetermined amount of coal spilled. Melonas says no environmental threat was reported.

Railroad officials are on site and the cause of the derailment is under investigation.

Melonas says more than 30 trains use that track daily. Heavy equipment was being dispatched from Pasco to shove the rail cars off the line so crews can replaced the damaged tracks. BNSF hopes to reopen the rail line as soon as Tuesday.

Melonas says some rail traffic is being rerouted via Wenatchee, Wash., as well as the Seattle to Vancouver, Wash., route.

Tri-CityHerald.com

Coal train derailment

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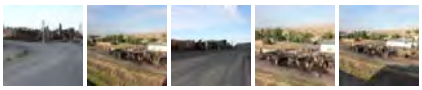
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Photo 1 of 5

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A loaded coal train passing through Mesa derailed Monday evening, knocking about 30 cars off the track and sparking a major cleanup effort well into today. Mesa resident Tony Eveland took this photo from the hill near his home. The two-person crew was not hurt but the wreck sent a cloud of black coal dust into the sky. The accident happened at 6:30 p.m. and within two hours, 40 personnel were dispatched to the small town in north Franklin County to work on the site through the night, according to BNSF Railway Co. TONY EVELAND — Special to the Herald

Tri-CityHerald.com

Coal train derailment

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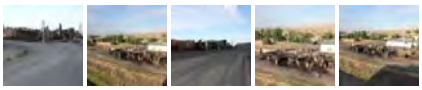
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Photo 2 of 5

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Tri-CityHerald.com

Coal train derailment

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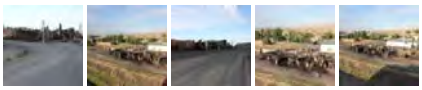
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Tri-CityHerald.com

Coal train derailment

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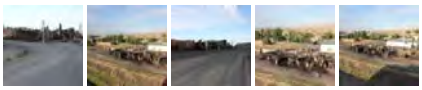
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Photo 4 of 5

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Tri-CityHerald.com

Coal train derailment

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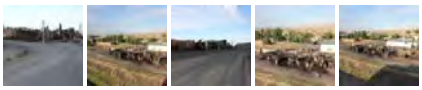
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Photo 5 of 5

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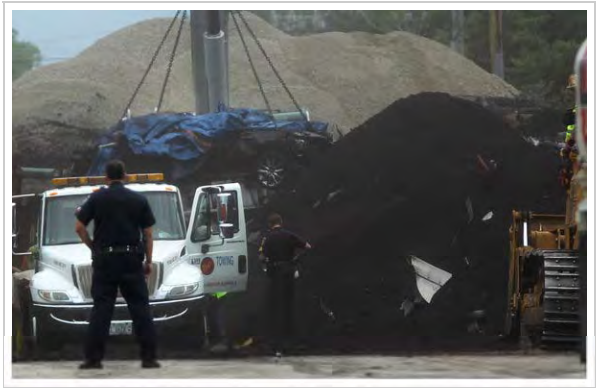
NEWS

2 bodies inside car found in wreckage from train derailment

July 05, 2012 | By Jonathan Bullington and Jon Hilkevitch | Tribune reporters



A second body has been found in a car that was buried by debris and wreckage from a train derailment and bridge collapse near Northbrook, officials said.

Officials initially said no one was injured when the train hauling coal derailed on Union Pacific tracks near Willow Road and Shermer Avenue around 1:45 p.m. Wednesday. But this morning, crews spotted the bumper of a car and dug around it with shovels, officials said.

Shortly before 1 p.m., workers could be seen clearing off what appeared to be the windshield, then covering the area with a blue tarp.

Officials on the scene initially said one body was inside but were checking for other victims. Later, officials said a second body had been found in the car. Their identities have not been released, but officials said one of them is a man.

The car, with the bodies inside, was loaded onto a flatbed truck and taken to the Cook County medical examiner's office.

The car was discovered at about 10 a.m., Globerger said. The crews had been working through the night since 5 p.m. Wednesday. "With 27 rail cars, full of coal, there was no way to get in to discover the car until this morning," Glenview Fire Chief Wayne Globerger said. "Keep in mind, we're talking tons (of debris), here."

He said crews would continue looking for any other victims.

While the investigation of the derailment continues, extreme heat causing steel rails to expand is a possible cause of the derailment and subsequent bridge collapse, a Union Pacific Railroad spokesman said Thursday.

The investigation is likely to take months, but the sequence of events is now clear, according to the UP.

The preliminary investigation has ruled out the failure of the bridge as the trigger to the accident, said UP spokesman Mark Davis. The bridge was not designed to carry the load of 28 coal cars that derailed, each weighing 75 tons to 85 tons, on the 86-foot bridge, Davis said.

Davis confirmed that UP inspectors were on the tracks checking for possible abnormalities in track gauge or shifting before the accident. Such inspections are routinely conducted twice a day during extreme heat or cold, he said.

Because of the "heat order," a 40 mph slow zone order, down from 50 mph normally on that segment of track, was in effect at the time of the accident, Davis said. An event recorder in the locomotive showed that the train was traveling at 37 mph when it derailed, he said.

"We ruled out the bridge failing and then the train derailing, based on the discussion with the train crew'' as well as viewing the images from a camera on the train, Davis said. "The derailment occurred and then what happened was that 28 cars piled onto the bridge structure. Under all that weight, the bridge went down.''

Davis said workers plan to use stone fill to close up the gap where the bridge was and install temporary tracks to get the trains moving again through the area. The railroad will have to design and build a new

bridge, which will take some time, he said. The bridge was just rebuilt last summer.

A train derailed in the same area in November of 2009. A train headed southwest on the track derailed, hitting a train that was traveling northeast.

Eighteen cars were derailed: 14 on the southbound train, four on the other. Two rail cars fell under the viaduct at Shermer Road.

In Wednesday's derailment, Tony Nielsen said he was working in a nearby office building when he heard the train and then "the whole building shook."

He said that although they often feel the rumble of the trains going past, he and his co-workers ran outside when they felt the building shake.

"The train was already derailed; the bridge had collapsed," he said.

Tribune reporter Carlos Sadovi and WGN-TV contributed

csadovi@tribune.com

jdanna@tribune.com

Steps can be taken to relieve or prevent night leg cramps

Homeland Security urges computer users to disable Java

U.S. warns on Java software as security concerns escalate

Oracle Corp to fix Java security flaw "shortly"

Website gives Illinois customers power to compare electricity rates

Reddit co-creator Aaron Swartz dies from suicide

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Amtrak: Boat Pilot's Warning Late
October 13, 1993

Originally published April 4, 2005 at 12:00 AM | Page modified April 4, 2005 at 12:46 PM

26 hurt when Amtrak derails along Columbia Gorge route

An Amtrak passenger-train locomotive with four cars derailed on the Washington side of the Columbia River Gorge, injuring 26 people.

By The Associated Press

HOME VALLEY, Wash. — An Amtrak passenger-train locomotive with four cars derailed on the Washington side of the Columbia River Gorge, injuring 26 people.

One person was airlifted to Legacy Emanuel Hospital and Medical Center in nearby Portland, Ore., said Legacy spokesman Will Morton, but he could not reveal the person's condition. Twenty-four people were treated and released at other hospitals; one person was admitted to a hospital in Hood River, Ore.

The train's four cars remained partially upright, leaning at a 45-degree angle against an embankment alongside the track, after the engine's wheels left the track Sunday morning, Amtrak spokeswoman Marcie Golgoski said.

The accident occurred about 40 miles east of Vancouver with 107 passengers and a crew of eight aboard.

"We heard a big bang, bang, bang, and all hell broke loose," said Darrell Halseth, 66, of Kalama, a passenger on the train. "(The train car) just laid over on its side and slid, so it was a pretty wild ride."

Burlington Northern Santa Fe Railway Co., which owns and operates the track used by Amtrak, rushed equipment and about three dozen workers to the site but did not expect to reopen the line until today, said spokesman Gus Melonas.

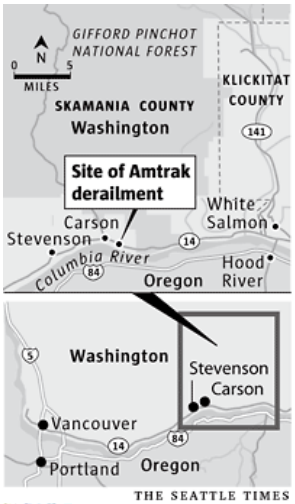
Amtrak hoped to resume service on the line by Tuesday, Amtrak spokeswoman Sarah Swain said Sunday night. Buses were being used to take passengers between Portland and Spokane in the meantime, she said.

After the accident, those who could travel were loaded onto school buses and taken to Vancouver, and to Portland, which was the destination of the train that had left Spokane earlier in the day.

Two people were taken across the river to Hood River (Ore.) Memorial Hospital, said spokeswoman Barbara Young. One was treated and released and the other — a pregnant woman in her second trimester with abdominal pains — was admitted for observation.

Ten people were treated and released at Skyline Hospital in White Salmon, said Administrator Mike Madden. Twelve people were treated and released for facial injuries and bruises at Southwest Washington Medical Center in Vancouver. One person was treated and released from Oregon Health and Science University Hospital in Portland.

Medics treated an unknown number of other people for minor injuries at the scene, said Erik Anderson, director of Skamania County Emergency Medical Services.



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The National Transportation Safety Board and BNSF were investigating the cause of the accident.

About 115 passengers and crew members were on board when the locomotive and four cars derailed about 9:30 a.m. PDT, an Amtrak statement said.

The derailment occurred on the main Columbia Gorge rail line. About 40 trains use that track daily — two passenger trains, one in each direction, and dozens of freight trains. As of late Sunday night nine freight trains had been rerouted, Melonas said.

EPA 910-R-04-001

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington

Office of Environmental Cleanup

January 2004

Making Environmental Progress, Improving Local Communities

Accomplishments of the EPA Region 10 Superfund Program

Bottom left cover photo contributed by Dan Rone.

A Snapshot of Region 10 Accomplishments

The Superfund Program in EPA Region 10 continues its strong record of addressing serious contamination problems throughout the Northwest and Alaska. I am proud of the progress we are achieving at our largest and most challenging sites, including Bunker Hill, the Lower Duwamish Waterway, Commencement Bay, and Portland Harbor. At the same time, we have completed rapid cleanup actions at many smaller sites and are preparing for final cleanup at others. I am pleased to offer this report summarizing our Superfund Program's major work to protect human health and the environment in Region 10.

Here is a brief summary of notable accomplishments in 2003:

Actions Completed in Fiscal Year 2003

- 100 site assessments
- 19 cleanup decision documents *(Records of Decision and Action Memos)*
- 5 cleanup negotiations
- 6 remedial designs
- 13 remedial actions
- 2 construction completions
- 27 five-year reviews
- 7 cost recovery actions totaling almost $24 million
- 5,300-plus responses to spill notification calls
- 31 emergency response actions
- 14 time-critical removals

At most sites, EPA Region 10 became involved due to a request from a local, state, or federal agency, or a federally recognized Indian tribe. This year we also received seven citizen petitions requesting investigation of sites where hazardous waste contamination might be present. Through our Removal Program, we received over 5,300 notifications to our 24-hour duty officer, and responded to 31 emergencies and spills that posed an imminent threat to people or the environment.

Since the inception of the Superfund Program in 1980, EPA Region 10 has removed a total of 1,731 sites from the Region 10 Superfund inventory. About 500 sites remain in the inventory to be studied. Of the sites studied to date, Region 10 has listed 95 on the National Priorities List (NPL). Final cleanup construction has been completed at 60 of these sites, and it is under way at another 23 sites. In our Region, 25 sites have been deleted from the NPL.

This year the Superfund budget was under intense public scrutiny. While our overall Superfund budget in Region10 has held steady for the past few years, we continue to experience significant demand for Superfund Program services. I'm pleased that this year EPA was able to provide $12 million in new funding for McCormick and Baxter and $10 million for the Coeur d'Alene Basin. To stretch cleanup dollars and to ensure that responsible parties shoulder their cleanup obligations, Region 10 maintains a strong Superfund enforcement program dedicated to fast and effective cleanup.

Region 10 is strongly committed to attaining cleanup progress at all important sites. I attribute the lion's share of our success to the strong relationships we have built with our state, federal, tribal, and community partners. Working together, we have used cleanup dollars effectively to deliver tangible results.

L. John Iani, Regional Administrator
EPA Region 10

Contents

Making a Neighborhood Safe

North Ridge Estates Site, Klamath Falls, Oregon
Congressional District 2

EPA takes fast action to remove asbestos from the North Ridge Estates neighborhood.

In summer 2003, EPA took action to remove asbestos contamination from 22 residences in the North Ridge Estates neighborhood near Klamath Falls. The Oregon Department of Environmental Quality asked EPA to get involved when it learned that asbestos-laden debris throughout the subdivision could threaten the health of residents. EPA's work included removing more than 14,000 pounds of asbestos-containing materials from residential properties, and sampling air and soil to see if people were at risk.

More than two dozen homes at North Ridge Estates were built during the last decade on plots where military barracks once stood. The asbestos contamination originated from siding, roofing, and steam pipes from about 80 buildings constructed in the 1940's. Many of the buildings were demolished in place, leaving a dangerous asbestos problem for future residents.

Unified Command Tackles Train Derailment

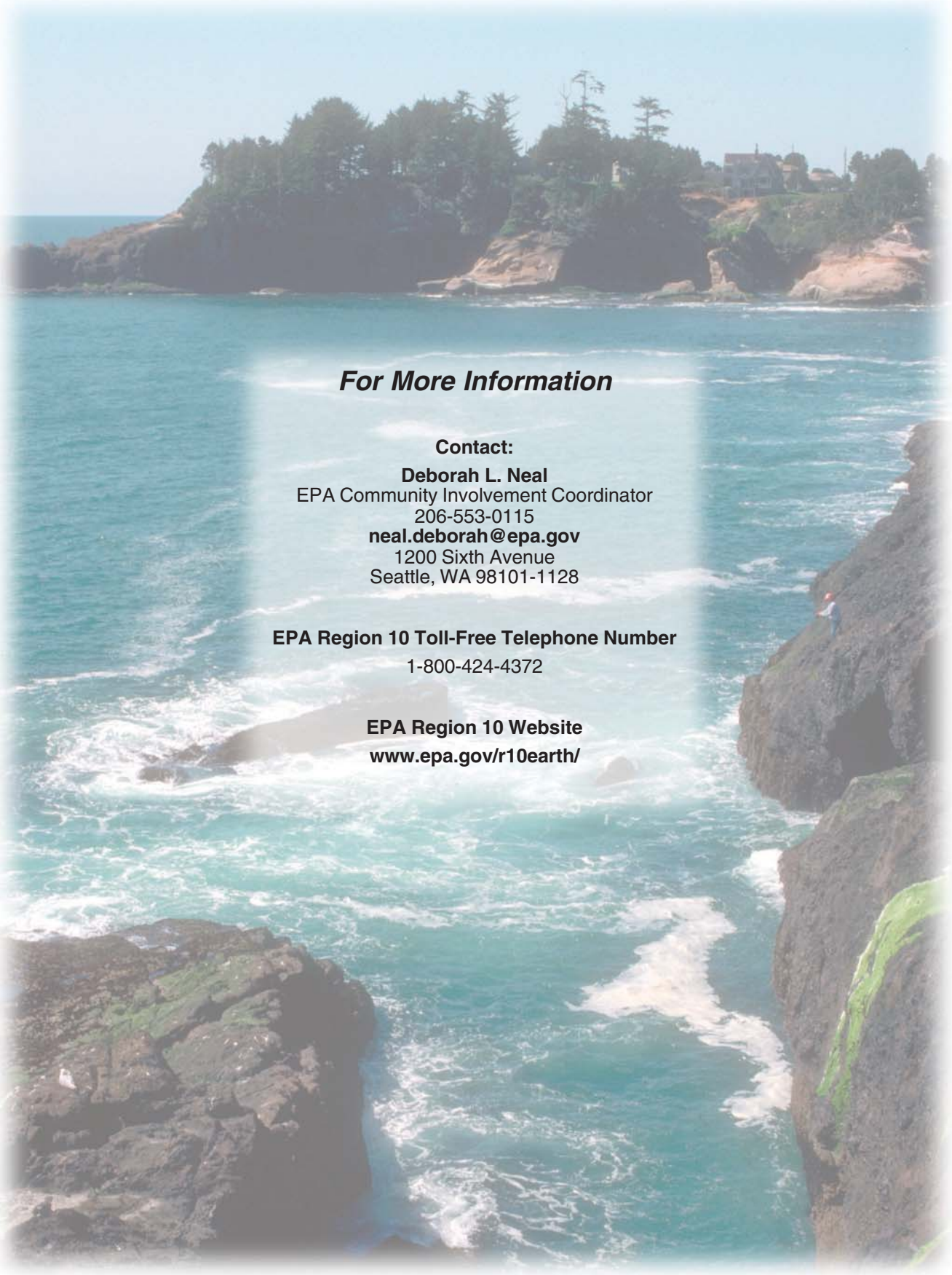
Union Pacific Railroad Derailment, The Dalles, Oregon
Congressional District 2

In January 2003, when 53 train cars were derailed just outside The Dalles and adjacent to Interstate 84, EPA took swift action. Within the hour, EPA arrived at the site to find five derailed cars containing hazardous materials, including phenol, anhydrous ammonia, arsenic acid, and vinyl chloride. EPA also responded to 14 cars containing oils, four of which were breached and leaking within about 100 yards of the Columbia River.

EPA, tribal representatives, the State, Wasco County, and Union Pacific quickly formed a Unified Command to address the situation. Working together, the Command safely removed four cars containing hazardous materials and pumped the contents of the fifth car into a tanker for removal. With EPA oversight, Union Pacific also cleaned up the soils contaminated with oil.

The derailment occurred in a culturally significant area within the Columbia Gorge National Scenic Area. The Yakima, Warm Springs, and Umatilla Indian tribes have cultural and historic connections to the area. During the cleanup, the Unified Command made sure that culturally and historically significant items weren't disturbed. At the tribes' request, EPA also made sure that soils removed from the site were returned after they were treated.

EPA responds at a train derailment where freight cars containing oils and hazardous materials jumped the track.



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THE GLOBE AND MAIL

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As Lac-Mégantic death toll reaches 47, safety board calls for immediate rail-safety changes

By JUSTIN GIOVANNETTI, GRANT ROBERTSON and JACQUIE McNISH

The federal Transportation Safety Board has requested two immediate regulatory changes for train travel: dangerous goods should not be left unattended on a main track and rail equipment be properly secured

Transportation safety officials have told Ottawa to rewrite train safety rules in the wake of the tragedy at Lac-Mégantic, Que., suggesting that Canada's current regulations are too vague and open to interpretation by railway workers that can lead to disaster.

In a pair of letters sent to Transport Canada, the federal body that oversees the rail industry, the Transportation Safety Board said more detailed rules must be created to govern the number of brakes that must be set when parking freight trains, and whether those trains can be left unattended when carrying dangerous cargo.

The letters come in the wake of the deadly accident involving a freight train operated by Montreal, Maine & Atlantic Railway loaded with crude oil. The train, which had been parked for the night, caught fire and rolled down a hill into Lac-Mégantic, where its cargo exploded, killing 47 people and demolishing more than 40 buildings. In the letters, investigators said the number of handbrakes activated on the train was "insufficient" to stop the train from careening down the hill.

When a train is stopped, a handbrake can be activated individually on each car to hold it in place. Estimates on the number of handbrakes required to immobilize the 72-car train vary from nine to 30, but MM&A's assessment is that only five handbrakes were activated by the operator the night of the derailment, MM&A chairman Ed Burkhardt has said.

The TSB said the rules governing the setting of brakes need to be more prescriptive, so that the decision on how many brakes to set isn't left up the interpretation of a rail operator, which could lead to miscalculations or human error. "The rule currently states that a sufficient number of brakes needs to be set; that's the problem with the rule," TSB manager Ed Belkaloul said during a news conference in Lac-Mégantic Friday.

In a report issued by the TSB in 2011, investigators warned that a similar runaway train incident in Sept-Îles, Que., was also caused by ineffective handbrakes. On Friday, Mr. Belkaloul said that the similarity between the accidents in Lac-Mégantic and Sept-Îles moved the federal investigators to issue the urgent warnings.

The TSB letter also called on Transport Canada to "review all railway operating procedures to ensure that trains

carrying dangerous goods are not left unattended on a main track."

The call for new regulations comes as both the TSB and Transport Canada are conducting separate investigations of the crash site. Officials are collecting samples of oil from the rail cars to determine the exact composition of the crude inside. Sources close to the investigation say investigators are puzzled as to why the train erupted so quickly, causing several large explosions almost immediately after the crash.

The train cars were carrying the standard placards denoting their cargo was crude oil, which is considered flammable, but not necessarily explosive. Officials are probing whether the crude may have contained other substances that would have made it more volatile, since it is unusual for crude to explode so quickly after impact. However, the investigation is being slowed somewhat by large amounts of contamination around the site and in the air.

Police and fire crews have spoken of large pools of greenish benzene in the area. Two petroleum experts told The Globe and Mail it is unlikely the substance is benzene, which is clear in colour, but is likely large pools of crude, which could contain a host of potentially flammable chemicals including benzene. The existence of these pools, and the vapour around the site, have forced crews to work slowly to unsure further explosions don't occur.

Although explosions involving crude are rare, there are circumstances where a large fire outside rail cars can cause the liquid inside to boil and vaporize, increasing the pressure inside and forcing them to burst once the steel walls are weakened. It is unusual for these types of explosions to happen so quickly after a derailment as in the Lac-Mégantic accident, though it is not impossible. "Usually it takes a little bit of time before it happens," said Jean-Paul Lacoursiere, associate professor of chemical engineering at the University of Sherbrooke. If the composition of the crude oil inside is more volatile – containing agents that are more susceptible to explode – it could speed the process.

The accident has forced railways to review their operations. Canadian Pacific issued an internal bulletin last week announcing changes to its procedures to comply with a "pending order" on rail safety from Transport Canada. The bulletin, obtained by The Globe, lists four specific changes the company expected Transport Canada to introduce, including a prohibition against parking dangerous goods on a main track and a requirement for all rail companies to use handbrakes on trains that are left unsupervised for more than an hour.

A spokeswoman from Transport Minister Lisa Raitt's office said Friday that the department has been directed to review the TSB recommendations "on an expedited basis."

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Crude oil tank cars ablaze after train derails in Alabama

Fri, Nov 8 2013

By Verna Gates and Edward McAllister

ALICEVILLE, Alabama (Reuters) - Several oil tank cars that burst into flames after a train derailed in rural Alabama were expected to keep burning into Saturday, potentially reigniting the push for tougher regulation of the boom in moving oil by rail.

Twenty-five of the train's 90 cars derailed near a 60-foot-long wooden trestle in the early hours of Friday morning, and a number were still on fire 18 hours later, operator Genesee & Wyoming Inc said. They were sending flames hundreds of feet high that could be seen from over 10 miles away.

No injuries were reported, but an unknown amount of crude oil spilled into an adjacent marshland, Genesee said. State officials said the oil had been contained, partly thanks to a nearby beaver dam that had already slowed the flow of water. The cause of the incident is under investigation.

A local official said the crude oil had originated in North Dakota, home of the booming Bakken shale patch. If so, it may have been carrying the same type of light crude oil that was on a Canadian train that derailed in the Quebec town of Lac-Megantic this summer, killing 47 people.

That incident, which the operator Montreal Maine & Atlantic blamed on a train engineer for not braking sufficiently on an incline, fueled a drive for tougher standards for oil rail shipments. Proposed measures included better testing of potentially explosive ultra-light shale crude and improved rail tank car standards. Tank cars made before 2011 have been cited by regulators as dangerously prone to puncture.

Genesee said the train was hauling 90 DOT-108 tank cars, a different model than the DOT-111s that have been cited before.

Each carried 30,000 gallons (114,000 liters) of crude, or 64,000 barrels in all, Genesee said.

It was not clear what caused Friday's accident in Pickens County, Alabama, or how old the tank cars were. The train was being driven by two engineers, both unharmed, officials said.

Nearly 18 hours after the derailment, officials had not yet been able to investigate the scene, leaving few guesses as to what may have caused one of the most dramatic oil-train incidents in the United States since shipments of crude by rail began to surge with the rise of shale oil three years ago.

"All the evidence we need to figure out what happened is underneath the wreckage," said Bill Jasper, president of the Alabama & Gulf Coast Railway. Repairs to the line are expected to take about a week, the railway said.

Genesee said data recorders showed the train was going slower than the 40 mile-per-hour (64 km-per-hour) limit, and the track had just been inspected on Monday.

Traders said they feared that tougher regulations could drive up costs for shipping U.S. crude by rail, reducing its competitiveness. Such speculation weakened U.S. crude oil futures relative to London's benchmark Brent, which already trades at a premium to the price in New York.

"It will provide very clear evidence of the potential risks for environmental groups and others opposed to the growth of crude by rail, and will likely increase pressure to tighten regulations," said Elena McGovern, Global Energy and Natural Resources analyst at Eurasia Group in Washington.

BOUND FOR FLORIDA

The train was carrying crude from Amory, Mississippi, to a terminal in Walnut Hill, Florida, that is owned by Genesis Energy, the company's chief financial officer Bob Deere said. It was to be pumped into a regional pipeline and delivered to an 80,000 barrel-per-day Shell Chemicals plant near Mobile, Alabama, according to a source familiar with the matter.

Deere said Genesis was still able to receive rail shipments, and deliveries were being rerouted around the affected area.

The accident happened in a wetlands area that eventually feeds into the Tombigbee River, according to the Alabama Department of Environmental Management. Booms were placed in the wetlands to contain the spilled oil.

Don Hartley, regional coordinator for the Alabama Emergency Management Agency, said the tank cars originated in North Dakota. Three cars had a "'bleve' - where pressure builds up and blows a hole." That started the fire, he said.

Alabama Emergency Management Agency spokeswoman Yasamie August said that one family was evacuated due to the incident but had already been able to return home.

"We don't have a cause yet, that will be determined with the investigation," said a Genesee & Wyoming spokesman.

The company said it had notified the National Transportation Safety Board, Federal Railroad Administration and National Crisis

Response Center as is standard procedure.

FOCUS ON TANK CARS

Rapid proliferation of oil-by-train shipments started more than three years ago to get oil to markets as pipeline infrastructure lagged booming production in remote places such as North Dakota, as well as Canada's oil sands.

The East and West coasts in particular turned to rail to draw cheaper U.S. and Canadian crude. With no major oil pipelines in operation, or even planned, rail allowed them to tap into the burgeoning shale plays in North Dakota and Texas.

In the third quarter, crude-by-rail shipments rose 44 percent from the previous year to 93,312 carloads, equivalent to about 740,000 barrels per day (bpd) or almost one-tenth of U.S. production. That was down 14 percent from the second quarter due to narrower oil spreads that made costlier rail shipments less economic.

The U.S. National Transportation Safety Board has issued safety guidelines on the widely used, cylindrical tank cars known as DOT-111s, including a recommendation that all tank cars used to carry ethanol and crude oil be reinforced to make them more resistant to punctures if trains derail.

The new guidelines, put forward in March 2012 but which have not yet been adopted by the Department of Transportation agency that oversees the sector, stem from a deadly ethanol train derailment and explosion in Illinois in 2009.

DOT-111 railcars ordered after October 2011 have been manufactured to the new code, but the industry has resisted spending an estimated $1 billion to retrofit nearly 300,000 existing tank cars.

In Demopolis, Alabama, some 40 miles south of the site of the accident, where the rail line runs 300 meters away from the U.S. Jones Elementary School, Mayor Michael Grayson said there hadn't been an accident in the area in a century of train traffic.

But since last summer, when the oil trains first began humming past, officials discussed what might happen if a bridge just outside of town collapsed, dumping crude into the river.

"Sadly, with this thing, the only thing you can do is try to be prepared," he said by phone.

(Reporting by Edward McAllister and Verna Gates in Alabama; Additional reporting by Robert Gibbons, Anna Louie Sussman, Jeanine Prezioso and Nicolas Medina Mora in New York and David Sheppard in London; Editing by Gerald E. McCormick, Jonathan Leff, Alden Bentley and Lisa Shumaker)