



Association
of Washington
Business

Washington State's Chamber of Commerce

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President

November 15, 2013

**Millennium Bulk Terminals EIS
c/o ICF INTERNATIONAL
710 Second Avenue, Suite 550
Seattle, WA 98104**

RE: NEPA/SEPA Scoping on Proposed Millennium Bulk Terminal

To whom it may concern:

On behalf of the Association of Washington Business (AWB) and the broader business community, thank you for the opportunity to comment to the Army Corps of Engineers (Corps), Washington Department of Ecology, and Cowlitz County (collectively, the Lead Agencies) on the scoping process to review environmental impacts of the proposed Millennium Bulk Terminals-Longview (Millennium) coal export terminal proposal.

As the state chamber of commerce, as well as the state's manufacturing association, AWB represents more than 8,100 member companies. We are the state's largest and oldest statewide business association, and our members include large well-known employers, as well as many small businesses in the state.

Millennium has proposed to construct a shipping terminal for the purpose of exporting coal. The proposed redevelopment of this facility would include receiving, stockpiling, blending and loading coal by conveyor systems onto ships for export. The proposal includes bringing the coal in by rail, storing the coal at the facility and loading the coal onto ships for exporting.

Millennium is currently working with state and local agencies and Alcoa to clean up the site and redevelop it into a modern import-export facility. At full operation, the Millennium Bulk Terminal will have a significant impact on the economy and will create 2,950 direct and indirect jobs.

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The purpose of this process is to determine the scope of the environmental impact statement (EIS) under both the National Environmental Policy Act (NEPA) and Washington State Environmental Policy Act (SEPA), including the range of alternatives to be considered, the extent of analysis required, and proper environmental mitigation measures, if any.

The scoping process, undertaken by the Lead Agencies, must adhere to the long standing process to review environmental projects through established standards and review. AWB believes that only project/action-specific issues should fall within the Millennium EIS and strongly urges the Lead Agencies not to expand the scope of the EIS beyond the traditional, project-specific environmental review called for by NEPA and SEPA.

The Broader Business Community Supports Millennium Terminal Project and Coal Exports

AWB, and the broader business community, strongly supports timely construction of the Millennium Terminal project. As a business community, we rely on terminals like the Millennium project to export our goods, products and raw materials to customers throughout the world. To compete in a global economy, manufacturers need infrastructure that allows our exports to move efficiently and affordably from their origins to their final destination.

Given that Washington state is the most trade dependent state in the nation, it is important for the Lead Agencies to understand what trade means to our state and nation. Exports are vital to the success of American manufacturing and job creation. Exports constitute 20 percent of the U.S. manufacturing production and have increased at a rapid rate in recent years. In fact, over the past decade, exports grew more than five times as fast as shipments to the domestic market: exports grew by 48 percent while domestic shipments grew by only 9 percent. The U.S. exported almost \$1.5 trillion in goods in 2011.

Unfortunately, the United States is still falling behind. We are still the world's largest manufacturer, but we lack the export orientation of our major competitors. The U.S. exports far less of its manufacturing output than the global average. Increasing U.S. exports contributes directly to jobs for American workers: Global trade flows are recovering, and there are increasing opportunities for sales overseas. Expanding ports and related infrastructure will allow manufacturers to meet global demands for our products while growing our economy and creating jobs.

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Expanding Millennium operations will generate millions of dollars in economic output in Washington and the Pacific Northwest, creating 2,950 direct and indirect jobs in the region during its construction phase and over the long term in the community. These are badly needed jobs in a region with persistent double-digit unemployment.

Since 2008, the jobless rate has ranged from over 10 percent to a high of more than 13 percent. Only in October of this year has the unemployment rate dropped to 9 ½ percent.

It provides an incredible opportunity to energize an area of our state that has faced long-term economic instability, offering more than \$43 million in state and county tax revenues during construction and more than \$5 million a year in ongoing tax revenues.

Expanding the Environmental Review Beyond a Project-Specific EIS Will Hurt Businesses and Exports in Washington

AWB strongly opposes using the environmental review process to delay, and possibly block, the expansion of Millennium by requiring an EIS that includes a broad-ranging lifecycle analysis of proposed coal export projects. Expanding the Millennium environmental review beyond what is called for by the statute would be a devastating policy shift that has the potential to undermine manufacturers' ability to export and to thwart national policies to increase exports.

AWB supports investments in private infrastructure projects that improve the nation's transportation and export capacity while also meeting established environmental standards. Under NEPA/SEPA, these standards are met through an analysis of each project's environmental impact and any mitigation that might be needed to ensure proper economic and environmental harmony.

The purpose of NEPA/SEPA is to require a review of, to account for, and to document and disseminate to the public information on the environmental impacts of proposed projects. The intent was not to curtail or significantly delay projects, nor was it to require a detailed review of the indirect impacts of U.S. commodity exports abroad. Even without expanding the scope of NEPA/SEPA reviews to require projects like this to undergo an unreasonably broad environmental assessment, the EIS process already adds considerable delays and costs to critical infrastructure projects—a trend that seems to be worsening with time. The Lead Agencies should work to expedite review of the potential environmental impacts.

Further expansion of NEPA/SEPA's scope to subject projects like Millennium to overly exhaustive and unreasonable environmental reviews will only exacerbate this disturbing

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trend. This unprecedented EIS is likely to suffocate the project with years of studies until the project's sponsors become frustrated with continued delays and walk away.

It is our belief that expanding the focus of the Millennium EIS to include the cradle-to-grave environmental impact of the cargo is not permitted by existing law.

A cradle-to-grave lifecycle impact analysis that includes the environmental impact of the cargo and all similar cargo transported through the region would create a very dangerous precedent that could be used to block exports. The Lead Agencies could be laying the foundation for similar exercises for virtually every infrastructure project within the United States, and/or Washington, that would transport and export cargo of any kind.

What if the cargo was another fuel or a bulk agriculture product like wheat, corn or soybeans? Would the Lead Agencies need to perform an end-use review to determine the lifecycle environmental impact of that cargo?

In the case of corn, would the EIS have to look at the environmental impact related not only to the transportation of the product but also the planting, cultivating, growing and harvesting of crops? Would agencies be required to take into account the impact of processing these crops and the impact that its workers had on the environment as they traveled to and from work?

What if the cargo was cars, tractors, electronics, toys, steel, chemicals, pumps, air conditioners, elevators or airplanes? How far up and down the supply chain would agencies be required to go to assess the impact? The possibilities are endless and deeply troubling to manufacturers.

AWB strongly urges the Lead Agencies not to expand its NEPA/SEPA analysis beyond the individual, project-specific review required under the statute. Such an analysis would be contrary to law and would create a dangerous new precedent that could harm businesses, manufacturers and exports. It would make the EIS for Millennium legally vulnerable, further stalling an already lengthy regulatory process.

Finally, we are concerned at the different approaches or pathways the Lead Agencies may take in reviewing the same project proposal. Although the Lead Agencies are interpreting and applying essentially identical language in NEPA and SEPA, the Lead Agencies put forward profoundly different scoping decisions on a similar project proposal in northwest Washington.

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Ecology has defined the scope of the joint EIS much more broadly than either the Corps or the County. Before the Lead Agencies move forward on a scoping decision, especially considering the likelihood of differing interpretations, we believe the following questions need to be answered:

Ecology's decision on the scope of the SEPA portions of the joint EIS raises important legal and policy issues that include:

- How can state and federal agencies interpret essentially identical language in NEPA and SEPA to reach such fundamentally different conclusions on the required scope of this EIS?
- Since the Washington Court of Appeals has ruled that SEPA's requirements are "inapplicable" and only NEPA's requirements apply to a joint NEPA/SEPA EIS, how can SEPA require what NEPA does not?
- As a practical matter, is a joint NEPA/SEPA EIS more confusing than useful when the scopes of NEPA and SEPA analysis are so fundamentally different?
- It has taken 20 months for the agencies to issue their scoping notices. The draft EIS is predicted to take approximately two years and preparation of the final EIS will take an unknown additional time. Only then will a multi-year permitting process for the terminal be able to commence, with appeals surely to follow. Are there legal or constitutional limits on the cost and delay that may be imposed upon project proponents by requiring SEPA analysis of global impacts, notably the combustion of coal in Asia, that will occur regardless of whether the proposed terminal is built?
- What are the implications for appeals of such a joint EIS, when NEPA issues are appealable to federal court under a six-year statute of limitation, and when SEPA issues are appealable to state court within the time period for appealing the first state or local permitting decision (either 21 or 30 days)?
- As a result of this unprecedented EIS scoping decision by Ecology, on the proposed Gateway Terminal Project, will SEPA EISs for proposed manufacturing facilities, transportation terminals, distribution centers, shopping centers, "big-box" retail stores and the like be required to analyze not just the local impacts of construction and operation, as has been the case until now, but also the statewide, national and global impacts of the transportation of goods and materials to and from such facilities and the ultimate use of the goods wherever that may occur?

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- To what extent are greenhouse gas emissions from a particular proposal even subject to SEPA review, let alone review on a global scale? Is it possible to do a meaningful analysis of global impacts from a single project? What useful information for local decision-makers can be obtained from such a global analysis?
- If this unprecedented scoping decision by Ecology and the County is an example of state and local agencies' broad discretion to implement SEPA as they see fit, is SEPA really a state law with consistent, reasonably predictable requirements or instead a charter for agencies to impose whatever requirements they wish?

Again, thank you for that opportunity to comment on the scoping process to review the Millennium project. We appreciate the work being done by the Lead Agencies and look forward to receiving answers to the questions/concerns we have raised in our letter. We also strongly encourage that the Lead Agencies send a clear message to businesses doing business in our state that they can rely on a fair review and evaluation of proposed projects.

Please let us know if we can be of any assistance or answer any questions related to our comments, as you continue to move forward in this process.

Respectfully,



Don C Brunell
President