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November 18, 2013

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

**Re: Millennium Bulk Terminals - Longview, LLC Project NEPA/SEPA  
Environmental Impact Statements.**

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than \$1.8 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for two-thirds of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The NAM submits the following comments to the Army Corps of Engineers (Corps), Washington Department of Ecology (Ecology), and Cowlitz County (collectively, the Lead Agencies) on the scope of the environmental impact statement being prepared for the Millennium Bulk Terminals-Longview (MBTL) coal export terminal proposal.

MBTL has proposed to reinvest in an underutilized 416-acre site, upgrade the existing import/export bulk facility and construct a coal receiving, storage and shipping terminal. 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 Panamax ships for exporting. MBTL would clean up the former Reynolds Metals Company aluminum manufacturing site, which ceased operations in 2001, and redevelop it into a modern import-export facility.

The purpose of this process is to determine the scope of the environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), including the range of alternatives to be considered, the extent of analysis required, and proper environmental mitigation measures, if any. The scoping process, as described by the Council on Environmental Quality in recent guidance, "provides a transparent way to identify significant

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environmental issues and to deemphasize insignificant issues.”<sup>1</sup> The NAM 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.

## **Coal Exports and Their Value To Manufacturers**

Exports are vital to the success of domestic manufacturing and job creation. Exports constitute 20 percent of 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 nine percent. The U.S. exported almost \$1.5 trillion in goods in 2011. Unfortunately, the United States is 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.

The United States has been exporting coal for years. Over the past two decades, 4–10 percent of the coal produced annually in the United States has been exported. Coal has been exported through ports in more than 20 states, including Virginia, Louisiana, Maryland, Alabama, Washington, Ohio, New York and California. Virtually every region in the country has exported coal, including the Pacific Northwest.

Jobs in manufacturing support coal exports in the United States. These jobs include mining and support activities for coal mining; construction; railroad transportation; transport by water and truck; port operations and cargo handling; and all the manufacturing supply chain jobs that support these activities. A study performed by Ernst & Young for the National Mining Association<sup>2</sup> concluded that in 2011, there were 39,350 people whose employment was directly tied to coal exports. There were also tens of thousands of indirect and induced jobs from coal exports, ranging from retail to wholesale, and logistics including hotels and restaurants, and the manufacturing supply chain. Overall, the study concluded that coal exports added \$16.5 billion in gross value to the U.S. economy.

## **Manufacturers Support Construction of Millennium Bulk Terminals-Longview**

The NAM strongly supports timely construction of the MBTL project. As manufacturers we rely on terminals like MBTL to export our goods, products and raw materials to customers around 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.

As the manufacturing economy becomes increasingly global, we must modernize our export infrastructure to stay competitive. Just two weeks ago, in a major speech on the

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<sup>1</sup> Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies, “Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act,” March 6, 2012.

<sup>2</sup> “U.S. Coal Exports: National and State Economic Contributions,” May 2013, *available at* <http://www.uscoalexports.org/data/National-and-State-Economic-Contributions-5-22-13.pdf>.

economy and trade, President Obama stressed the need to make improvements just like MBTL to ensure the U.S. can compete in the global marketplace:

Rebuilding our transportation and communications networks is one of the fastest ways to create good jobs. And consider that just a couple of years from now, we're going to have new supertankers that are going to start coming through the Panama Canal, and these tankers can hold three times as much cargo as today's. If a port can't handle those supertankers, they'll go load and unload cargo somewhere else. So there's work that we can start doing in terms of dredging and making the passageways deeper, which means the supertankers can have more stuff on them, which means they can unload and load more stuff, which makes this port more competitive.

So why wouldn't we put people to work upgrading them? Why wouldn't we do that?<sup>3</sup>

Manufacturers fully agree with the President on the need to update our export infrastructure—particularly in a region like the Pacific Northwest, where one in four jobs is related to trade. In 2012, Washington exported more than \$36 billion worth of goods, including but not limited to civilian aircraft, soybeans, wheat, apples, petroleum products, wood, silicon, mink fur skins, petroleum coke, cherries, copper and enriched uranium.<sup>4</sup> Just under half of Washington's exports were to Asia. As the President stated in his speech, there is no legitimate reason why we wouldn't want to put people to work doing the type of dredging to accommodate the type of supertankers (Panamax) that is called for in the MBTL project.

MBTL will generate millions of dollars in economic output in Washington and the Pacific Northwest, creating 2,650 direct and indirect jobs in the region during its construction phase and over 300 long-term jobs in the community. These are badly needed jobs in the region, and is incredible opportunity to strengthen the local economy and improve quality of life. Construction of MBTL would yield economic benefits to the region of \$435 million, plus another \$70 million during operations.

### **Expanding the Environmental Review Beyond a Project-Specific EIS Will Hurt Manufacturers and Exports**

Pursuant to the Memorandum of Understanding (MOU) revised October 1, 2013, the Lead Agencies will conduct two separate but synchronized environmental reviews: the Corps will perform a review pursuant to its obligations under NEPA, and Ecology and Cowlitz County will conduct a review under the State Environmental Policy Act (SEPA).

Judging by the October 1 revised MOU, it appears as though MBTL will receive the same treatment as the Gateway Pacific Terminal: a tailored review under NEPA by the Corps that is limited to project/action specific impacts, and a potentially limitless review under SEPA by Ecology and Cowlitz County. Manufacturers would be disappointed by such a result, which creates several new problems of law and policy. The Lead Agencies are analyzing virtually the same statutory language in NEPA and SEPA, yet have arrived at two radically different results. Moreover, the Washington Court of Appeals has ruled that SEPA's requirements are

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<sup>3</sup> Remarks by the President on the Economy – Port of New Orleans, New Orleans, Louisiana, November 8, 2013, available at <http://www.whitehouse.gov/the-press-office/2013/11/08/remarks-president-economy-port-new-orleans>.

<sup>4</sup> Source: U.S. Census.

“inapplicable” and only NEPA’s requirements apply to a joint NEPA/SEPA EIS; therefore, the expanded review Ecology and Cowlitz County will likely require for MBTL may not even apply.

More troubling, 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 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.

The NAM strongly opposes using the environmental review process to delay, and possibly block, the expansion of MBTL by requiring a review under NEPA or SEPA that includes a broad-ranging lifecycle analysis of proposed coal export projects. Expanding the MBTL 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.

Manufacturers support investments in private infrastructure projects that improve the nation’s transportation and export capacity while also meeting established environmental standards. Under NEPA and 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.

When NEPA was originally enacted in 1969, the intent was to require federal agencies to account for, and document and disseminate to the public the environmental impacts of their actions. The intent was not to curtail or significantly delay federal action, 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 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 only known quantitative analysis of the time required for agencies to complete an EIS, a December 2008 study by Piet and Carole A. deWitt, found that the average time for all federal entities to prepare an EIS was 3.4 years.<sup>5</sup> In fact, during the study period, the average time to complete an EIS increased by 37 days each year.<sup>6</sup> Further expansion of NEPA’s scope to subject projects like MBTL to overly exhaustive and unreasonable environmental reviews will only exacerbate this disturbing trend. Proponents of an unprecedented EIS likely hope to suffocate the project with years of studies until the project’s sponsors become frustrated with continued delays and walk away. To do so would directly violate the regulations implementing NEPA, which clearly state

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<sup>5</sup> Piet deWitt, Carole A. deWitt, “How Long Does It Take to Prepare an Environmental Impact Statement?” *Environmental Practice* 10 (4), December 2008.

<sup>6</sup> *Id.*

that “NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.”<sup>7</sup>

Expanding the focus of the MBTL EIS to include the cradle-to-grave environmental impact of the cargo is not permitted by existing law. NEPA requires a “reasonably close causal relationship” in order for an impact to be relevant.<sup>8</sup> The Fourth Circuit recently held that the scope of an EIS should be limited to “the impacts of the specific activity requiring a [Corps] permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review.”<sup>9</sup> In the case of MBTL, this clearly does not extend to coal mining—which has already been evaluated and subjected to a variety of environmental permits and NEPA reviews through the relevant federal land management agencies—or the consumption of the coal overseas.

The NAM strongly urges the Lead Agencies not to expand their NEPA or 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 manufacturers and exports. It would make the EIS for MBTL legally vulnerable, further stalling an already lengthy regulatory process. NEPA encourages “straightforward and concise reviews and documentation that are proportionate to potential impacts.”<sup>10</sup> The goals of NEPA and SEPA will be met through a project/action-specific EIS, not the type of limitless, boundless environmental review being called for by some commenters.

Sincerely,



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<sup>7</sup> 40 C.F.R. § 1500.1(c).

<sup>8</sup> *U.S. Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004).

<sup>9</sup> *Ohio Valley Environmental Coalition v. Aracoma Coal Co.*, 556 F.3d 177 (4th Cir. 2009).

<sup>10</sup> Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies, “Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act,” March 6, 2012.