



**Ross E. Eisenberg**

*Vice President*

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January 22, 2013

Mr. Randel Perry  
U.S. Army Corps of Engineers, Seattle District  
Care of: GPT/BNSF Custer Spur EIS Co-Lead Agencies  
1100 112<sup>th</sup> Avenue Northeast, Suite 400  
Bellevue, WA 98004

**Re: Notice of Intent to Prepare a Joint Environmental Impact Statement (EIS) for the Gateway Pacific Terminals Bulk Dry Goods Shipping Facility and the Custer Spur Rail Expansion Projects.**

Dear Mr. Perry:

The National Association of Manufacturers (NAM), the largest manufacturing association in the U.S., representing nearly 13,000 small, medium, and large manufacturers in all 50 states, submits the following comments to the Army Corps of Engineers, Washington Department of Ecology, and Whatcom County (collectively, the Lead Agencies) on the Notice of Intent to Prepare a Joint Environmental Impact Statement (EIS) for the Gateway Pacific Terminals Bulk Dry Goods Shipping Facility and the Custer Spur Rail Expansion Projects. The NAM is the leading voice in Washington, D.C. for the manufacturing economy, which provides millions of high-wage jobs in the U.S. and generates more than \$1.7 trillion in GDP.

Pacific International Terminals, Inc., has proposed to construct the Gateway Pacific Terminal, a deepwater multimodal terminal for the import and export of dry bulk commodities in the Cherry Point industrial area of Whatcom County. The total site is roughly 1,500 acres, and development would occur on approximately 334 acres. At full operation, the Gateway Pacific Terminal would have the capacity to export and import approximately 54 million metric tons per year of dry bulk commodities including, but not limited to, coal, grain products, potash, and calcined petroleum coke. In a separate project, BNSF Railway Co. plans to modify existing rail facilities to accommodate increased rail traffic to the expanded port facility.

The Lead Agencies consider the two projects to be interrelated and have decided to review the environmental impacts of both under a single EIS. The purpose of the instant proceeding is to determine the scope of the 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

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significant environmental issues *and* to deemphasize insignificant issues.”<sup>1</sup> The NAM believes that only project/action-specific issues should fall within the Gateway EIS, and strongly urges the Lead Agencies not to expand the scope of the EIS to a “cumulative, programmatic” EIS or anything beyond the traditional, project-specific environmental review called for by NEPA.

### **Manufacturers Support the Gateway Pacific Terminal and Coal Exports**

The NAM strongly supports timely construction of the Gateway Pacific Terminal and Custer Spur projects. As manufacturers we rely on terminals like the Gateway Pacific project to export our goods, products and raw material 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.

Exports are vital to the success of American 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 9 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 as 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.

Expanding the Gateway Pacific Terminal will generate millions of dollars in economic output in Washington and the Pacific Northwest, creating 4,400 jobs in the region during its two year construction phase and over 1,250 long term jobs in the community. These are badly-needed jobs in the region with an incredible opportunity to strengthen its economy and improve quality of life. The long-term economic benefit to the region is estimated to be \$129 million annually.

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

The NAM strongly opposes using the environmental review process to delay and possibly block the expansion of the Gateway Pacific Terminal by requiring a "cumulative, programmatic" EIS that includes a broad-ranging, lifecycle analysis of impacts from all proposed coal export projects not only in Washington but in the Pacific Northwest. Expanding the Gateway Pacific Terminal project’s 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 National Environmental Policy Act (NEPA), these standards are met through an analysis of each project’s environmental impact and any mitigation that might be needed to

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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.

ensure proper economic and environmental harmony. They are not met by performing a “cumulative, programmatic” EIS. Federal courts have held that “[a] programmatic statement is appropriate only where the proposal itself is regional or systemic in scope, or where the proposal is one of a series of interrelated proposals that will produce cumulative system wide effects that can be meaningfully evaluated together.”<sup>2</sup> Neither of those situations exists for the Gateway Pacific Terminal project.

Subjecting the Gateway Pacific Terminal to a cumulative, programmatic environmental review would be a disturbing shift in NEPA interpretation. When NEPA was originally enacted in 1969, the intent was to require federal agencies to account for, 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>3</sup> In fact, during the study period, the average time to complete an EIS increased by 37 days each year.<sup>4</sup> Further expansion of NEPA’s scope to subject projects like the Gateway Pacific Terminal to overly exhaustive and unreasonable environmental reviews will only exacerbate this disturbing trend. Proponents of a “cumulative, programmatic” 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 that “NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.”<sup>5</sup>

Expanding the focus of the Gateway 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>6</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>7</sup> In the case of the Gateway Pacific Terminal, 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.

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 a Programmatic EIS to determine the lifecycle environmental impact

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<sup>2</sup> *Izaak Walton League of America v. Marsh*, 655 F.2d 346, 374 (D.C. Cir. 1981).

<sup>3</sup> Piet deWitt, Carole A. deWitt, “How Long Does It Take to Prepare an Environmental Impact Statement?” *Environmental Practice* 10 (4), December 2008.

<sup>4</sup> *Id.*

<sup>5</sup> 40 C.F.R. § 1500.1(c).

<sup>6</sup> *U.S. Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004).

<sup>7</sup> *Ohio Valley Environmental Coalition v. Aracoma Coal Co.*, 556 F.3d 177 (4th Cir. 2009).

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 of 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 urges the Lead Agencies not to expand its NEPA 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 the Gateway Pacific Terminal legally vulnerable, further stalling an already lengthy regulatory process. NEPA encourages “straightforward and concise reviews and documentation that are proportionate to potential impacts.”<sup>8</sup> The goals of NEPA will be met through a project/action-specific EIS, not the type of limitless, boundless environmental review being called for by some commenters.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Eisenberg", is placed over a light green rectangular background.

Ross Eisenberg  
Vice President  
Energy and Resources Policy

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<sup>8</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.