



Hannes Zacharias, Deputy County Manager

Public Service ... Public Value ... Public Leadership

Johnson County, Kansas

August 5, 2009

Mr. Joshua Marx
Regulatory Project Manager
U.S. Army Corps of Engineers
Kansas City Regulatory Office
402 Federal Building
601 East 12th Street
Kansas City, MO 64106-2896

Dear Mr. Marx:

Attached hereto are comments submitted on behalf of the staff of Johnson County, Kansas Government, regarding Permit No. 2006-1014 – the proposed BNSF Intermodal Facility near Gardner, Kansas. Please note that the comments are those of County staff and do not reflect the opinion or decisions of the Board of County Commissioners.

The attached comments parallel our original staff comments submitted to the U.S. Army Corps of Engineers dated September 28, 2007. We are pleased that many of those issues have been addressed and will be mitigated through the 404 Permit process. However, there are remaining issues that have not been addressed in the draft document upon which we have commented. We believe all of these issues can be mitigated or resolved, and would be happy to meet and work through these with the Corps and BNSF prior to issuance of the permit.

Should you have any questions or need clarification on this material, please do not hesitate to contact Bernice Duletski, Assistant County Manager, (913)715-0730 or Paul Greeley, Deputy Director of Planning, (913)715-2205.

Sincerely,

Hannes Zacharias
Deputy County Manager

Attachment

Cc: Bernice Duletski, Assistant County Manager
Paul Greeley, Deputy Director of Planning

**Staff Comments on draft EA - 404 Permit No. 2006-1014
Johnson County Kansas Government
Formatted by Dean Palos and Paul Greeley
July 31, 2009**

COMMENTS

On September 27, 2007, comments were submitted to the U.S. Army Corps of Engineers on behalf of the staff of Johnson County, Kansas Government, regarding Permit No. 2006-1014 – the proposed BNSF Intermodal Facility (IMF) near Gardner, Kansas. Please note that those findings and the comments in this follow-up report are those of County staff and do not reflect the opinion or decisions of the Johnson County, Kansas Board of County Commissioners.

While some of the issues identified in the prior report have been resolved or will be mitigated, there are still significant issues that need to be addressed in the Corps' Draft Environmental Assessment (EA).

Many of these issues are the impacts the proposed IMF will have on the public infrastructure systems, e.g., roadways and traffic and recreational resources/parks. Other issues will affect the environment, e.g., visual, noise and air quality. We anticipate that we can work together with the Corps and BNSF to find ways for this project to go forward without causing undue adverse impacts on the citizens of Johnson County.

The County departments that contributed to this report are: Environmental, Planning, Public Works (roads and stormwater), Wastewater, Sheriff, and Park and Recreation District.

REMAINING ISSUES

The following is a listing of issues to be addressed and is in addition to the list of concerns in County staff's September 27, 2007 report to the Corps of Engineers.

General Comments

Jurisdiction: The Intermodal Facility (IMF) and Logistics Park (LP) proposed by the Allen Group are currently within the City of Gardner – not within the unincorporated area as stated in several sections of the EA.

Solid Waste (Littering): The draft EA should be revised to describe how BNSF would adequately control and discourage the illegal disposal of solid waste and sewage by truck drivers using the IMF/LP.

Public Safety: The primary concern of the Johnson County Sheriff is the projected increase in calls for service, both in the IMF and in the surrounding industrial area that is anticipated to develop as a result of the new IMF. There will be a need to provide a more focused emphasis on enforcement in, near, and around the facility, including within the city limits of Edgerton, Gardner, and the surrounding rural areas.

Information gathered from similar IMF facilities comparable in size and structure in other locales provides a reasonable basis of experience from which to estimate future needs for the IMF. It is anticipated therefore, that there will be a need for an increase in Sheriff staffing assigned to patrol the immediate area. Until the new IMF is operational, however, it is difficult to accurately

forecast the changes in crime trends as well as the extent of need for other or additional emergency services.

An increase in semi-truck traffic will have a significant impact on the provisions of service necessary to maintain a safe and efficient passage for all motorists. Reducing speed limits and placing weight restrictions on semi-trucks moving into and out of the facility will present a challenge to provide Sheriff staffing dedicated to enforcing and inspecting those truck weight limits. **The concern may best be addressed by gathering information and statistics from BNSF Police and/or the other local law enforcement agencies providing similar services in other regions of the country.**

At this time it is not certain what type of security will be in place and provided by BNSF. It is not known if the IMF will have its own private or BNSF police. At this time, it is also not known what authority such a private security staff will have for enforcement actions on the IMF property. Also, it is uncertain at this time what a large concentration of IMF staff will have on the area's traffic flow.

Land Use

The EA understates the land use impacts of the IMF on the character and future development pattern of the unincorporated area of the county that is now planned for continued low-density residential and agricultural uses. The Direct Effects resulting from the IMF will be particularly significant on the IMF site that up until now has been predominately agriculture. The Indirect Effects will be equally significant with the anticipation of additional warehouse and related businesses that would have otherwise not located in this vicinity. Based upon reviews of the introduction of similar IMF operations in other communities, it is anticipated the installation of new infrastructure (paved roads, sanitary sewers, power, etc.) along with the IMF/LP will attract and generate a significant amount of intensive new non-residential development nearby. **The full extent of change should be studied and any negative impacts mitigated.**

Air Quality

Both the draft EA and the Air Quality Technical Report (Appendix A to the EA) should be revised to contain information about the current ozone status of the Kansas City air quality planning area which includes Johnson County. Neither document mentions that:

- a. The area is subject to a new, stricter National Ambient Air Quality Standard (NAAQS) for ozone (75 ppb);
- b. The area violates the new standard;
- c. KDHE has recommended to EPA that Johnson County be designated "nonattainment" under the new ozone standard;
- d. Additional air pollution control requirements including regulatory restrictions on heavy duty diesel vehicle idling in Johnson County have already been proposed by KDHE and will be soon adopted; and
- e. Further control requirements on VOC and NOx emission sources in Johnson County will be needed in the next few years to meet the new federal ozone standard.

The draft EA describes the air quality impacts of the Proposed Action as "minor" except for re-suspension of fugitive dust from road traffic. **This characterization is not consistent with BNSF's modeling results which show localized formaldehyde levels exceeding EPA's concentration dosage for 1/million cancer risk and localized diesel particulates very close to**

EPA's reference concentration for toxic risk. Further, the Air Quality Technical Report (Appendix A to the EA) fails to model the cancer risk associated with localized exposure to diesel particulates, so it is not possible to fully assess whether there are potential health impacts associated with these emissions. Diesel particulate emissions are classified by EPA as a "suspected" carcinogen and at least one state (California) regulates them as a "known" carcinogen.

The draft EA proposes to require BNSF to install and operate a monitoring station near the IMF in order to determine whether actual particulate levels approach the National Ambient Air Quality Standard (NAAQS) for PM10 and PM2.5 (fine particulates). The EA justifies this monitoring station as necessary to address modeled PM10 and PM2.5 concentrations from re-suspension of fugitive dust that exceed the NAAQS. According to the EA, BNSF is to develop a particulate monitoring agreement in consultation with KDHE and EPA. The EA stipulates that this agreement will include particulate mitigation measures that BNSF must implement in the event that the monitored particulate levels from re-suspension of fugitive dust exceed the NAAQS.

Diesel particulate emissions are components of total PM10 and PM2.5 (fine particulates) along with other components such as re-suspended dust. Given the potential for localized air quality impacts in addition to NAAQS exceedances from re-suspended dust, we request that the final EA include the following requirements:

- a. The particulate monitor required under the EA should be sited and operated by KDHE or a third party under contract with KDHE to insure data accuracy and objectivity.
- b. The particulate monitoring agreement between BNSF and KDHE must be negotiated and executed prior to the issuance of a Finding of No Significant Impact and the federal 404 permit for the Proposed Action.
- c. Mitigation measures to be stipulated in the particulate monitoring agreement should be triggered when particulate concentrations approach the NAAQS and before the standard is exceeded. Additional mitigation measures should be triggered if the NAAQS is actually exceeded. The purpose of mitigation measures should be to avoid exceeding the standard. Once the standard has been exceeded, the County could be at risk of a "nonattainment" designation for particulates, with significant adverse economic impacts.
- d. To the extent that the particulate monitoring and any resulting mitigation measures require public sector investment, BNSF should provide financial resources to the public sector to offset their costs.
- e. The particulate monitoring agreement should require speciation of the data if actual particulate levels approach the NAAQS at the monitoring station, so that the source of the emissions (re-entrained dust, diesel emissions, etc.) can be properly identified. Understanding the emission source contributions is vital to effective mitigation. Should speciation of the data indicate that diesel emissions are significantly contributing to particulate levels that threaten the standard, mitigation measures targeted at reducing diesel emissions must be required and should be specified in the monitoring agreement.

Other Environmental Impacts

The draft EA should be revised to describe how BNSF will adequately control vectors such as rats, mice, snakes and mosquitoes that may use open shipping containers stored on site as harborage areas.

Noise and Vibration

There will be increased railroad noise (engine idling, horns, wheels) and vibration directly effecting Mildale Park as a result of the new tracks to be installed adjacent to the barn/events center. **The full extent of these impacts should be studied and any negative impacts mitigated.**

Community and Recreational Resources

The assessment in Table 3-1 in Chapter 3, Page 3-3, Summary of Effects before Mitigation, that there will be “minor” impacts on the categories of Park & Recreation (Mildale Park) and crossing delays understates the extent of the adverse impact from the new railroad tracks and additional rail activity (e.g., idling trains) that will occur.

Although proposed to be separated by a berm and landscaping, the barn/events center (less than 300 ft. from the new tracks and berm), two locally-significant residences, and the overall natural park amenities in the northern portion of Mildale Park in close proximity to the new tracks will be adversely affected. There will be noise, vibration, dust, odors, etc. from the trains passing or idling and waiting to enter or depart the IMF.

Because of the length of some of the trains (over one-mile) and the nature of the BNSF rail unloading and switching operations, access to Mildale Farm, may be blocked at 199th and U.S. Highway 56, the primary and currently only entrance to the facility. These crossing delays will also restrict mobility in the area and possibly jeopardize emergency service. There will also be similar crossing delays in Edgerton. The impact on Mildale Park will not be minor as note above.

There also is significant concern about the quality and quantity of the stormwater runoff from the entire intermodal facility. When the IMF onsite detention basin is full the runoff from it will have direct negative impacts on both Mildale Park and Big Bull Creek Park.

The relocation of the stream will affect stream morphology downstream, possibly causing changes to the streams within the park site. The stream conditions that currently exist are almost pristine in nature and a development of this magnitude will undoubtedly have a negative impact on the streams in the region.

The EA does not include an identification or discussion of the relative location of both the historic Santa Fe Trail and Oregon Trail. There also is no reference to the new, approximately 1.5-acre park located across from the IMF at U.S. Highway 56 and 183rd Street, that commemorates where these two trails divided. **The full extent of impacts should be studied and any negative impacts mitigated.**

Roadway and Traffic

Road Closings:

With the closure of the roadways required for the facility, traffic volumes on 199th Street and Waverly Road are expected to increase in comparison to the No Action scenario. These potential shifts in traffic flow and circulation, while considerable, are not anticipated in the EA to have a significant negative effect on traffic circulation and connectivity of the area. It is stated in the EA that the Proposed Action street network appears sufficient to accommodate these shifts with minor impacts.

Johnson County requests that as condition of the approval of the 404 permit that the rights-of-way for both Four Corners Road and 191st Street not be vacated and be expanded to accommodate a future overpass structure.

In the third paragraph of page 3-20, Indirect Effects, the EA states that Johnson County along with other agencies is anticipating improving the intersection of Waverly Road and US 56 Highway. **This needs to be corrected as Johnson County does not have plans to improve this intersection.**

Road Maintenance:

The EA did not address maintenance issues for the road infrastructure. Overweight vehicles are the main source for damage to roads. As a condition of the approval of the 404 permit, **Johnson County requests that the applicant develop a truck weight monitoring program.**

Water Resources

Stormwater:

BNSF has proposed best management practices (BMP) to mitigate impacts to both stormwater quantity and quality. Neither the City of Gardner nor the City of Edgerton has been required to implement regulations to comply with NPDES Phase II requirements. Johnson County, however, has recently adopted regulations to comply with NPDES Phase II within the unincorporated area.

Johnson County would request that as a condition of the 404 permit the applicant be required to meet Johnson County's requirements for stormwater quantity and quality including the recently adopted NPDES Phase II requirements for post construction water quality BMP's.

Floodplain:

The EA relied on June 2002 FEMA floodplain mapping instead of Johnson County's more recent up-to-date maps.

Water Quality:

Page 4-18 of the NEPA review indicates closure of the Gardner WWTP (it was closed in 2007 and flows pumped to the Gardner Kill Creek plant) will greatly reduce phosphorous loadings to Hillsdale. Specifically, the EA states: "With the closure of the Big Bull Creek Wastewater Treatment Facility, it is expected that phosphorous loading will be greatly reduced, thereby helping Hillsdale Lake to meet the point source total maximum daily load (TMDL) calculated for the lake by the Kansas Department of Health and Environment (KDHE, 2001)." A similar statement is in Appendix F, Water Quality Technical Report, page 33, which states: "The closing of the WWTP on Big Bull Creek will contribute significantly to the point source reduction goal." The emphasis of the sentences is on "point source discharges" only. While these statements are correct, they may be misleading in that they give the impression this plant abandonment will have a significant impact on phosphorous loadings to Hillsdale Lake. Such an impression would be inconsistent with various studies and KDHE's own TMDL for phosphorus loadings to Hillsdale. Specifically:

- a. Johnson County Environmental Department report entitled "Estimation of 1994 Point Source and Non Point Source Phosphorus Loading to Hillsdale Lake", January, 1996. This report estimated point source contributions of phosphorous at 7.2%, with 92.8% from nonpoint sources.

- b. The USGS study entitled “Analysis of Bottom Sediment to Estimate Nonpoint-Source Phosphorus Loads 1981-1996 in Hillsdale Lake, Northeast Kansas”, 1997. This report estimated point source contributions of phosphorous at “about” 7%, with “about” 93% from nonpoint sources.
- c. Finally, the 2001 TMDL for phosphorous published by KDHE estimates point source contributions at 11.0% and nonpoint source contributions at 89.0%.

Consequently, the impression that phosphorous loadings to Hillsdale Lake will be greatly reduced is not well-supported by these above documents. While the closing of the Gardner plant had a significant impact on point source contributions (KDHE estimated it to contribute 69.6% of point sources), even using the high KDHE estimate of 11% for point sources, the Gardner plant closure reduces overall phosphorous loadings to Hillsdale less than 8%.

Appendix F, Water Quality Technical Report, on pages 34-44 on direct and indirect effects of the IMF, does not indicate the new or expanded wastewater treatment capacity required to serve the IMF/LP. Additionally, now that it is likely the IMF/LP may be served by Edgerton, these additional flows will very likely be treated and discharged (along with the additional phosphorous) to Hillsdale Lake. Under the scenario where Gardner was to provide this capacity, the flows would have been pumped to the Gardner Kill Creek Plant, where the effluent would be discharged to Kill Creek, which flows to the Kansas River. This will have significant implications for Edgerton, Johnson County Wastewater (JCW), and any future proposed discharges in this watershed. Specifically:

- a. The KDHE TMDL calls for a 46% reduction in phosphorous point and non-point source loadings. For point sources, this means a reduction from the permitted, design capacity loadings of 20,884 pounds per year to 10,148 pounds per year (46% reduction with a 10% margin of safety).
- b. The removal of the Gardner facility noted in comment 1 above, combined with the removal of a temporary Gardner plant and the Conestoga Mobile Home Park facility (total contribution, 16,026 pounds per year) has already achieved this goal by reducing phosphorous contributions to an estimated 4,858 per year, or about 5,290 pounds per year below the allocation in the TMDL for point sources.
- c. The October 8, 2007 report by Carter Burgess for The Allen Group entitled “Engineering Report Logistics Park Wastewater System” projects the wastewater flows from the Initial Development for both the IMF and LP will be between 0.136 MGD and 0.278 MGD, and ultimate development flow will be between 0.257 MGD and 0.455 MGD.
- d. At textbook (Metcalf & Eddy) levels of phosphorous in untreated wastewater at 8 mg/l, even the 0.278 MGD initial development flow would contribute 6,770 pounds of phosphorous per year, which exceeds the 5,290 pounds per year below the allocated level cited earlier in this paragraph. At ultimate development (0.455 MGD), the untreated phosphorous load from the IMF/LP would be 10,960 pounds per year, or over twice the available loading.

Consequently, any treatment capacity in new or expanded treatment facilities provided for the IMF/LP will almost certainly result in KDHE requiring phosphorous removal treatment. Further, the consumption of allowable phosphorous loadings by new or expanded capacity for the IMF/LP will almost certainly reduce future allowable phosphorous loadings from the remaining two wastewater treatment facilities in the Hillsdale watershed, the Edgerton wastewater treatment

facility and the JCW treatment facility at New Century Air Center. This concern will mostly adversely affect future proposals to expand these wastewater treatment facilities. Both of these facilities will very likely need expansion, regardless of development of the IMF/LP.

Also relevant but are not directly related to the findings in the EA, in past reviews, there has been concern by JCW regarding how areas adjacent to the IMF/LP will be served with sewers. Of particular concern are the nearby areas most likely to develop in the short term. The consensus seems to be that this area is the area south of 191st street, north of I-35 and east of Big Bull Creek Park. This several square-mile area is close to both I-35 and the IMF/LP. This area drains to the southwest in such a manner that the pump station proposed for the IMF/LP cannot serve this area. In our past conversations with Gardner and Edgerton, both cities indicated they did not plan to serve this area. JCW is in an even less advantageous position to serve this area, since our nearest wastewater treatment facility, or any sewer for that matter, is about 9 miles from the downstream end of this area, following section line roads. By contrast, the Gardner treatment facility is about 6 miles away, and the Edgerton treatment facility is about 1 mile away.

Visual and Aesthetic Conditions

It is known from comments in public meetings, newspaper articles, etc., that neighboring residents, especially north of U.S. 56 Highway and east of Waverly Road do not anticipate a favorable visual and aesthetic impact of the IMF as indicated in the EA. To a significant extent, much of the criticism leveled at the proposed IMF is the result of nearby residents' concern that the aesthetic as well as environmental quality (lights, noise, traffic, air quality) of the area will be significantly diminished when the facility begins operation. The EA does not address the measures that should be taken to address the neighbor's concerns.

Reasonably Foreseeable Future Actions

The finalized land use scenario does not appear to include land use forecasts for the City of Edgerton, potentially the new jurisdiction in which the IMF and logistics park will be located.

The discussion of development of the Sunflower Army Ammunition Plant (SFAAP) is confusing. It appears there may be a typo or the SFAAP was not included in the Proposed Action Forecast. This needs to be clarified and future traffic from SFAAP, anticipated to have a residential population of approximately 25,000 along with related commercial and business development, will logically utilize routes connecting to the south (e.g., I-35 and U.S. Highway 56). **The full extent of impacts should be studied and any negative impacts mitigated.**