

August 12, 2009

Via Federal Express

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, Missouri, 64106-2896

Re: Draft EA for the BNSF Intermodal Facility Proposed by BNSF Railway Company Near Gardner, in Johnson County, Kansas (July 2009)

Dear Mr. Marx:

We write on behalf of the Natural Resources Defense Council (“NRDC”) and our over 1.2 million members and online activists nationwide to strongly urge the United States Army Corps of Engineers (“Corps”) to prepare an Environmental Impact Statement (“EIS”) for the BNSF Intermodal Facility near Gardner City in Johnson County, Kansas (“Proposed Project” or “Project”). Further, we request that the Corps conduct a public hearing on the Project and make available online the documents referenced in the Environmental Assessment (“EA”),¹ any comments received on the Project, and any future environmental studies performed by the Corps. Our comments below pertain only to the air quality impacts of the Proposed Project.

Here, the EA was prepared to fulfill the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* As you aware, NEPA has twin aims. “First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.” *Baltimore Gas & Electric Co., v. NRDC*, 462 U.S. 87, 97 (1983); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 349-50 (1989) (an EIS serves an “informational role” and provides a “spring board for public comment”). Simply put, “by focusing the agency’s attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.” *Robertson*, 490 U.S. at 349.

¹ The “EA” refers to the Draft EA for the BNSF Intermodal Facility Proposed by BNSF Railway Company Near Gardner, in Johnson County, Kansas (July 2009).

The Proposed Project includes the construction and operation of a nearly 500-acre intermodal railyard facility (“IMF”), which will be the impetus for a nearby logistics park with warehousing capacity reaching nearly 3 million square feet. EA at 1-4, 1-8. This project is within one-half mile from residential subdivisions and schools, and in close proximity to at least five parks, including being adjacent to Mildale Park. After reviewing the EA, we are deeply concerned that the document fails to accurately assess the environmental impacts from the proposed project and thus, improperly concludes that an EIS is not required.

NRDC has spent over a decade studying the environmental impacts from our nation’s “goods movement system”—the network of ships, trains, trucks and other vehicles and equipment that move cargo through our nation. In particular, we have focused on ports and intermodal facilities in California and trying to reduce the significant air pollution generated by those facilities. All of the environmental documents and health studies associated with these facilities have reported significant impacts. Many of these projects involved intermodal facilities operated by the project applicant in this case, BNSF, and/or environmental documents that were approved by the Corps. Accordingly, given the first hand experience and information BNSF and the Corps have on the environmental and public health impacts of goods movement facilities generally and railyards specifically, we were extremely surprised that the Corps concluded that the Proposed Project did not necessitate an EIS. Indeed, railyards of comparable or even smaller size and operations to the Proposed Project have been known to create significant public health impacts for local communities and contribute to regional air pollution problems.

As you are aware, if an agency action “may” have a significant effect on the environment, an EIS must be prepared. *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2000). As discussed below, we strongly believe that the Proposed Project generates such effects and thereby necessitates a more comprehensive environmental analysis. Our major concerns with the EA are summarized as follows:

1. Comparisons to other railyards indicate that the EA underestimates operational emissions from the Proposed Project.
2. The EA underestimates air quality impacts by failing to quantify cancer risk from diesel particulate matter.
3. The EA underestimates air quality impacts by confining emissions estimates to those produced at the Project site.
4. The EA underestimates air quality impacts by failing to quantify construction emissions.
5. The EA underestimates air quality impacts by failing to quantify greenhouse gas emissions.

6. The EA underestimates air quality impacts by assuming accelerated fleet turnover of trucks, locomotives, and equipment.
7. The EA underestimates air quality impacts by minimizing the average hours yard hostlers will operate at the Proposed Project.
8. The EA's assessment of fugitive dust emissions, by itself, warrants preparation of an EIS.
9. The EA fails to ensure that the existing Argentine Yard will be closed as a condition of issuing the Proposed Permit.

In addition to detailing the flaws within the EA, below, we also provide information to the Corps on mitigation measures that are available for railyards, and urge the Corps to provide additional opportunities for public involvement in this Project.

I. Comparisons Of Emissions At Other Railyard Projects Indicate That The EA Greatly Understates Emissions From The Project

An examination of emissions estimates for other railyards suggest that the Corps greatly underestimated the emissions from the operation of the Project. The EA calculates the tons per year of emissions from the Proposed Project at 16.57 (ROG), 119.29 (NOX), 5.69 (PM10), and 2.54 (SOX) based on 413,000 lifts per year. EA Air Quality Technical Report, Appendix A: ENVIRON Emission Inventories for Existing Argentine and Proposed Gardner IMFs, Gardner Intermodal Facility Emissions Summary Table 2 and Summary Table 3 at 2 (2010 Container lift estimates and 2010 Gardner on-site emissions with growth).

For comparative purposes, utilizing the criteria pollutants per lift reported for the recent ICTF Modernization Project in the Port of Long Beach, California, Attachment 58 at Table ES-1, page ii, the emissions from the Project's proposed 413,000 lifts are estimated at significantly higher levels than those projected in the EA. The chart below compares the EA's estimates to a reasonable approximation of projected emissions for a similar project. These figures reveal that the EA underestimates the criteria pollutants to a staggering degree. Our analysis indicates that the *Corps underestimates the emissions of smog-forming NOx by over 230%, emissions of toxic PM by over 350%, and of acid rain forming SOx by nearly 180%*. Based on the updated emissions calculations, the nearly 400 TPY of NOx are equivalent to adding two 500 megawatt natural gas power plants to the region.

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POLLUTANT	EA ESTIMATE (TPY)	PROJECTED EMISSIONS FROM ICTF (TPY)	INCREASE FROM EA (%)
ROG	16.57	35.62	115%
NOX	119.29	396.66	233%
PM10	5.69	25.78	353%
SOX	2.54	7.08	179%

NRDC is not alone in suggesting that the Proposed Project will result in significant emissions of criteria pollutants. In 2007, the Bureau of Air and Radiation of the Kansas Department of Health and Environment authored a letter to the Corps expressing its concern over the “*significant* direct effects” of the Proposed Project, including emissions of NO_x, PM, VOC and SO_x.² Given the potential health impacts associated with railyard emissions and the fact that the greater Kansas City area is classified as “maintenance area” with respect to the prior 1-hour ozone standard, EA at 3-8, and the State is recommending that Johnson County be designated nonattainment for the 8-hour standard,³ the EA must ensure that emissions from the project are accurately analyzed.

II. The EA Underestimates Air Quality Impacts From the Proposed Project By Failing To Quantify Cancer Risk From Diesel Particulate Matter

Diesel particulate matter (“diesel PM” or “DPM”) is associated with significant health impacts, including cancer risk and premature death. In 1998, following a 10-year scientific assessment process, California identified diesel PM as a toxic air contaminant based on its potential to cause cancer and other adverse health problems, including respiratory illness, and increased risk of heart disease. Attachment 14 at 1 (UP ICTF/Dolores HRA). Further, the California Air Resources Board (“CARB”) has summarized the non-cancer health risks from DPM as follows:

[R]esearch has shown that diesel PM contributes to premature deaths. The diesel PM particles are very small; moreover, by mass approximately 94% of these particles are less than 2.5 microns in diameter (PM_{2.5}). Because

² Letter from Bureau of Air and Radiation of the Kansas Department of Health and Environment to Army Corps (Sept. 10, 2007) (“KS BAR Letter”), at 1 *available at* <http://www.nwk.usace.army.mil/regulatory/BNSF/KDHE.pdf>.

³ Letter from Kathleen Sebelius, Governor of Kansas, to William W. Rice, Acting Regional Administrator for Region VI of EPA, Feb. 6, 2009, *available at* http://www.epa.gov/ozonedesignations/2008standards/rec/letters/07_KS_rec.pdf.

of their tiny size, diesel PM particles are readily respirable and can penetrate deep into the lung and enter the bloodstream, carrying with them an array of toxins. Exposure to diesel PM is a health hazard, particularly to children whose lungs are still developing and the elderly who may have other serious health problems. Population-based studies in hundreds of cities in the U.S. and around the world demonstrate a strong link between elevated PM levels and premature deaths, increased hospitalizations for respiratory and cardiovascular causes, asthma and other lower respiratory symptoms, acute bronchitis, work loss days, and minor restricted activity days.

Id.

The EA fails to calculate cancer risk from DPM. The EA asserts that because US EPA's IRIS database does not estimate cancer risk from DPM, the Corps need not undertake this analysis either. EA Air Quality Technical Report at 27. The EA explains that while US EPA classifies diesel exhaust as a "likely" carcinogen, there are uncertainties as to whether increased diesel exhaust exposure is actually associated with increased cancer risk. *Id.*

However, scientific uncertainties—especially those that can be resolved through obtainable information—can not be used as a basis to avoid environmental analysis or preparation of an EIS. *Nat'l Parks & Conservation Ass'n*, 241 F.2d at 723-33 (agency's repeated statement that effects were "unknown" does not constitute the requisite "hard look" mandated by NEPA if preparation of an EIS is to be avoided). In fact, preparation of an EIS is *mandated* where uncertainty as to environmental effects of proposed agency action may be resolved by further collection of data, or where collection of such data may prevent speculation of potential risks. *Id.*; 40 C.F.R. § 1508.27(b)(5).

Here, the EA acknowledges that California regulates DPM as a toxic air contaminant and that EPA considers DPM a "likely" carcinogen. EA Air Quality Technical Report at 27. Further, the Corps need not look farther than the multiple EIR/EIS's it has *jointly* conducted with the Ports of Los Angeles and Long Beach to locate the methodologies necessary to calculate cancer risk from the Proposed Project's DPM emissions. *See e.g.*, Attachments 55 at Chapter 3.2, 56 at Chapter 3.2 (DEIS/DEIR's for Ports/Corps Projects). Indeed, it is remarkable that the agency would imply that such risks cannot be calculated when it has for years approved and defended environmental documents containing those exact analyses. *Id.* However, to the extent that additional data is needed to properly calculate cancer risk from the Proposed Project's DPM emissions, please see Attachments 2-3, 5-8, 10, 12, 14, 16, 17, 19, 21, 23, 25, 27, 29, 31, 32, 34, 36, 38, 40, 42, 55 at Chapter 3.2, and 56 at Chapter 3.2, which include the state of California's guidelines for conducting Health Risk Assessments

(HRA),⁴ CARB's DPM risk methodology, CARB's emissions inventory methodology, nineteen HRA's California has conducted for railyards in that state, and the Draft EIS/Environmental Impact Reports prepared for the Middle Harbor and Trapac Projects at the Ports of Long Beach and Los Angeles, which include HRAs for those projects.⁵

Additionally, while EPA has not assigned a cancer unit risk to DPM, EPA has concluded in its regulatory documents that the potential carcinogenic risk from locomotive emissions is "real" enough to serve as a basis for federal regulation of locomotive engines. Attachment 51 Chapter 2 at 2-51 ("even though EPA does not have a specific carcinogenic potency with which to accurately estimate the carcinogenic impact of exposure to diesel exhaust, the likely hazard to humans together with the potential for significant environmental risks leads us to conclude that diesel exhaust emissions from locomotive and marine engines present public health issues of concern to this rule.").

EPA also unequivocally concluded in its rulemaking documents that PM-related emissions, such as those from locomotives, are associated with adverse health effects, including premature death and lung cancer. *Id.* at 2-11 – 2-12. In particular, EPA discussed how *short-term* exposure to PM_{2.5} is associated with mortality from cardiopulmonary diseases, hospitalization and emergency department visits for cardiopulmonary diseases, increased respiratory symptoms, decreased lung function and physiological changes or biomarkers for cardiac changes. EPA also described new evidence from epidemiologic studies for potential relationships between short term exposure to PM and health endpoints such as low birth weight, preterm birth, and neonatal and infant mortality. *Id.* At 2-12. EPA further summarized how *long-term* exposure to elevated ambient PM_{2.5} is associated with mortality from cardiopulmonary diseases and lung cancer, and effects on the respiratory system such as decreased lung function or the development of chronic respiratory disease. *Id.* And EPA specifically highlighted how health studies of *railroad workers* have played an important role in

⁴ HRAs are:

An exposure assessment is an analysis of the amount (i.e., concentration in the air) of a pollutant that a person is exposed to in a specific time period. This information is used in a risk assessment to evaluate the potential for an air pollutant to contribute to cancer or other health effects. A health risk assessment uses mathematical models to evaluate the health impacts from exposure to certain chemical or toxic air contaminants released from a facility or found in the air. Health risk assessments provide information to estimate potential long-term cancer and non-cancer health risks. Health risk assessments do not gather information or health data on specific individuals, but are estimates for the potential health impacts on a population at large. A health risk assessment consists of three major components: (1) the air pollution emission inventory, (2) the air dispersion modeling, and (3) an assessment of associated risks.

Attachment 14 at 2-3 (ICTF/Dolores Railyard HRA).

⁵ We also refer the Army Corps to California's Office of Environmental Health Hazard Assessment (OEHHHA) webpage, http://www.oehha.ca.gov/air/hot_spots/hraguidefinal.html, which includes a host of information on HRA methodology.

finding that exposure to diesel exhaust is likely to be carcinogenic to humans. *Id.* at 2-50. One such study of railroad workers found that the risk of lung cancer increased with increasing duration of employment, and that the youngest workers had the highest risk of dying. Another railroad study, found statistically significant excess risks, when adjusted for age, smoking, and race, among railroad workers employed for more than 10 years. *Id.*

EPA's findings regarding the cancer and non-cancer risks associated with exposure to DPM highlights the importance of estimating all health impacts created by the Proposed Project, and rebuts any implication in the EA that EPA would not support an HRA in connection with this Project.

Additionally, HRAs and mitigation plans conducted for 19 different railyards in California indicate that (1) emissions from railyard operations are generally high and (2) cancer risks for communities miles away can be significant. *See* Attachments 8-43. For example, the UP ICTF/Dolores Yard in Long Beach had 626,000 lifts in 2005. Attachment 15 at 5 (Mitigation Plan for UP ICTF/Dolores Yard). This is substantially less than the 1 million lifts that are projected for the Gardner IMF at full build out. EA at 1-4. Nonetheless, at the ICTF/Dolores Yard, CARB estimated the cancer risk from that facility as follows:

- 700 chances per million near the railyard property boundaries
- 100 in a million within a one-mile distance from the railyard
- 25 in a million within another two-mile distance
- 10 in a million or lower at about 5 miles upwind and 8 miles downwind from the railyard boundary.

Attachment 14 at 14. As the EA acknowledges, EPA aims to minimize the number of people exposed to lifetime cancer risk greater than 1 in a million and considers a 100 per million cancer risk as the maximum acceptable individual exposure. EA Air Quality Technical Report at 4. Accordingly, the cancer risk imposed by the ICTF/Dolores Yard is extremely high. The HRAs conducted for other California railyards demonstrate similarly high risks. *See e.g.*, Attachment 17 at 15-16 (UP Commerce Railyard HRA), Attachment 34 at 15 (BNSF Commerce Eastern Railyard HRA), and Attachment 25 at 13 (BNSF San Bernardino Railyard HRA) (all reporting cancer risk of approximately 100 chances per million one-half mile from railyard boundaries).

While we acknowledge that it is difficult to predict the cancer risk from the Proposed Project based on California comparisons alone, the data obtained from California railyards suggests, at the very least, that railyards of similar size and operations (and smaller) to the Proposed Project have been known to create significant health impacts. Such data, by itself, provides a basis for the Corps to take a harder look at the air quality impacts of the Proposed Project in an EIS. Indeed, the Proposed Project appears to be within one-half mile from residential subdivisions and schools, and in close proximity to at least five parks—areas where long-term and frequent exposures of

sensitive populations like children could occur. Further, the EA indicates that 26,000 residential units are anticipated within the Proposed Action land use forecasting area, EA at 4-9, meaning that a growing population in the Gardner area could face toxic exposure.

The failure to assess cancer risk undoubtedly contributed to the EA's faulty conclusion that no significant air quality impacts will result from the Proposed Project. Indeed, if the level of emissions are properly calculated from the Proposed Project (e.g., truck counts, engine model years for locomotives, trucks and equipment serving the railyard and Logistics Park are accurately assumed), it is inconceivable that significant cancer risks would *not* be predicted for the Project. Based on these facts, we urge the Corps to assess the cancer risk from DPM emissions from the Proposed Project in an EIS as part of a full HRA that would analyze the cancer and non-cancer health risks from the Gardner IMF and Logistics Park. The methodologies to assess those risks are readily available, and under *Nat'l Parks*, the Corps has an independent responsibility to assess those risks notwithstanding EPA's position on the matter.

III. The EA Understates Project Emissions By Improperly Confining Emissions Estimates To The Project Site

An EA “[s]hall include brief discussions of the . . . environmental impacts of the proposed action.” 40 C.F.R. §1508.9. Environmental “impacts” include:

- (a) Direct effects, which are caused by the action and occur at the same time and place.
- (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect 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. at § 1508.8. Despite this clear mandate and the undeniable reality that many of the locomotives and trucks that service the Proposed Project will leave the Project site, the EA appears to confine its emissions estimates solely to on-site emissions. As a result, the EA underestimates emissions generated by the Project to an unknown degree.

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A. The EA Fails to Include Any Assessment Of Off-Site Locomotive Emissions

In summarizing the assumptions used to calculate emissions from the Project, the EA states:

Note that locomotive criteria emissions from arriving and departing trains are included in this analysis to the extent such emissions occur within the site. Emissions created by the project outside the site boundaries are not included, but given the presence of the BNSF mainline tracks through and adjacent to the site at this time, the emissions outside the site are generally part of the existing conditions and are not analyzed here.

EA Air Quality Technical Report at 13. It defies logic to conclude that all current *and* projected emissions from the mainline track are “existing conditions” given that the Proposed Project, at build out, will handle nearly three times the number of lifts (1 million) than the existing Argentine Yard. EA at 1-4 (projecting Proposed IMF lifts at 1 million); EA Air Quality Technical Report at 13 (reporting highest lift number for Argentine Yard in 2006 as over 371,000 lifts). Similarly, the stated purpose and need for the Project is that the Argentine Yard has reached capacity, which necessitates the development of the Gardner facility. Thus, the Gardner IMF will result in more cargo hauled on the mainline tracks, and this projected increase must be examined as part of the Project’s emissions.

B. The EA Fails To Include An Assessment Of Off-Site Truck Emissions

The EA states that “off-site trucking movements are not expected because the Gardner intermodal facility is expected to be large enough to store all containers.” EA Air Quality Technical Report, Appendix A: ENVIRON Emission Inventories for Existing Argentine and Proposed Gardner IMFs, Gardner Intermodal Facility Emissions at 15. Based on this statement, the EA excludes off-site trucks from its calculation of on-road diesel truck emissions.

However, the EA calculates emissions for on-road diesel trucks “for three different activity regions which are at the entrance, within the facility and at the exit”– highlighting that trucks do in fact, leave the site. *Id.* at 14. Further, “ready access to interstate/regional highways” was one of nine screening criteria used for analyzing alternative sites for the project. EA at Table 2-1, page 2-9. If on-road diesel trucks servicing the project never left the IMF, the proximity of interstate/regional highways would be irrelevant. Additionally, it defies logic to assume, that none of the 2,750,000 cargo units projected to be shipped through the Gardner area in 2012, EA at 1-2, will be off-loaded and carried by truck to regional markets, or that trucks would not travel to the IMF to off-load cargo to be taken by train. Indeed, the only conceivable reason for building the nearly 3 million square foot Allen Group Logistics Park is to facilitate such

regional movements. As the EA concedes, “the Gardner facility is designed to “facilitate the transfer of containers from trains to trucks and vice-versa,” and that “[t]he Logistics Park . . . would consist of freight distribution and warehousing centers that would provide shippers with an opportunity to use storage facilities at a location in relatively close proximity to an intermodal facility.” EA at 1-8.

Accordingly, the Corps must analyze the emissions associated with off-site truck movements generated by the Proposed IMF’s operations, including those that visit the Logistics Park. By way of example, CARB assesses emissions within a one-mile distance from railyards to capture the highly concentrated emissions generated by railyard operations for the purposes of calculating cancer risk. *See e.g.*, Attachment 14 at 1 (ICTF UP/Dolores HRA). At the very least, the Corps should do the same.

IV. The EA Underestimates Air Quality Impacts From the Proposed Project By Failing to Quantify Construction Emissions

The project area consists of primarily agricultural and undeveloped land. EA at 3-7. As a result, extensive construction will need to occur to develop the project area into a 500-acre intermodal yard and 2.8 million square foot distribution center. Nevertheless, the EA fails entirely to quantify construction emissions from the Project. This glaring error is particularly surprising given that the Bureau of Air and Radiation of the Kansas Department of Health and Environment specifically highlighted the potential construction emissions from the Proposed Project and asked the Corps to quantify the Project’s construction and operational emissions so it could better determine the impact of the Project on ozone levels in the Kansas City metropolitan area.⁶ Indeed, consideration of construction related emissions and the resulting effect on local air quality is necessary to insure the region’s ability to remain in attainment with federal air quality standards.

The following is a summary of the project-related maximum daily construction emissions (in pounds per day) extracted from the construction of the 17.2 acre Puente Hills Intermodal Facility EIR in California:

	CO	NOX	ROG	SO2	PM10	PM2.5	CO2
Months 1 to 12	197	424	65	<1	81	32	37,041
Months 13 to 18	158	333	53	<1	63	25	29,567
Months 19 to 36	71	140	22	<1	27	10	12,847

Attachment 57 (Puente Hills IMF DEIR) at Tables 5.2-15 through Tables 5.2-17, page 5.2-35 *et seq.* The Puente Hills EIR concluded the construction activities from this much

⁶ KS BAR Letter, at 1-2, *available* at <http://www.nwk.usace.army.mil/regulatory/BNSF/KDHE.pdf>.

smaller project would “significantly contribute to the ozone and fine particulate matter (PM_{2.5}) nonattainment designations of the [South Coast Air Basin].”⁷

The Gardner IMF alone (not counting the development of nearly 3 million acres for the Logistics Park) is nearly *30 times* larger in acreage than the Puente Hills IMF, which indicates that construction emissions from the Proposed Project could amount to significant air pollution for the Kansas City metropolitan area. Further, given that construction of the Proposed Project and Logistics Park would occur while the Argentine Yard is operating at full capacity, the Corps should ensure that the cumulative emissions from these activities are disclosed. By failing to assess construction emissions, the EA likely overlooked potentially significant air pollution impacts.

V. The EA Underestimates Air Quality Impacts From the Proposed Project By Failing to Quantify Greenhouse Gas Emissions

The EA also fails to provide any analysis of the greenhouse gas (“GHG”) emissions generated by the Project. Instead, the EA argues that EPA has not determined whether GHGs should be regulated, and thus, quantitative estimates of GHG emissions need not be provided. EA Air Quality Technical Report at 1. The EA also states that the Proposed Project will actually result in a net reduction in GHG emissions from the baseline, and that “[g]iven the potential for such beneficial effects, and the uncertainty on how to quantify them, the issue of GHG emissions impact on global climate is not addressed quantitatively in this report.” *Id.* The Corps’ position on GHG emissions is without merit for several reasons.

First, as discussed above, scientific uncertainties do not provide a basis to ignore the GHG emissions from the Project. *Nat’l Parks & Conservation Ass’n*, 241 F.2d at 733 (agency’s repeated statement that effects were “unknown” does not constitute the requisite “hard look” mandated by NEPA if preparation of an EIS is to be avoided); 40 C.F.R. § 1508.27(b)(5). Moreover, while it is true that no regulations are yet in place and therefore no standard national protocol is set for measuring GHGs, project development proposals throughout the country are now including a GHG analysis and numerous measurement methodologies exist. As a result, guidelines are readily available to assist the Corps in reporting GHG emissions from the Project, *see* Attachments 52 and 53, including documents the Corps jointly prepared with the Ports of Los Angeles and Long Beach that included GHG emissions estimates. Attachment 55 at Chapter 3.2; Attachment 56 at Chapter 3.2 (DEIS/DEIR’s for Ports/Corps Projects).

Second, the EA’s statement that “USEPA has not yet made [the] determination whether GHGs should be regulated” is misleading. EA Air Quality Technical Report at 1. It is widely known that EPA made a long-expected announcement in April of this

⁷ Notably, the Puente Hills EIR detailed five (5) pages of fugitive dust control measures to help mitigate the construction impacts. Attachment 57 at Table 5.2-6, page 5.2-18 *et seq.*

year (2009) as to their intent to regulate GHG emissions by declaring carbon dioxide and five other global warming gases as threats to public health and welfare.⁸ This colossal announcement by the EPA received intense national attention, and has been expected and followed since the Supreme Court ordered the agency to reconsider whether GHGs are pollutants in the *Massachusetts v. EPA* decision made two years ago.

In addition, the regulation of GHG emissions has become a primary talking-point and goal of the Obama administration and this tremendous shift in national policy is being fully debated at all levels of government. Both the House and Senate are also in the process, and have been for quite some time, of passing wide-ranging energy and climate legislation that could alter, combine or even override the actions taken by the EPA. Thus, it is impossible to believe that BNSF is not fully informed as to these regulatory activities, especially given the fact that their business model revolves around the transportation industry, a sector of the economy likely to be heavily affected by the regulation of GHGs.⁹

Third, our early assessments indicate that GHG emissions from the Proposed Project will not be *de minimus*. The Proposed Project, with the 1,000,000 lifts per year anticipated at full build-out, will produce at least 71,276 tonnes of GHG emissions per year. NRDC reached this preliminary estimate by using the projected GHG emission factors from the ICTF Modernization Project in the POLB on a per lift basis.

⁸ As the Washington Post summarized, in April 2009, “[t]he Environmental Protection Agency . . . officially adopted the position that carbon dioxide and other greenhouse gas emissions pose a danger to the public’s health and welfare, a move that could trigger a series of federal regulations affecting polluters from vehicles to coal-fired power plants.”

<http://www.washingtonpost.com/wp-dyn/content/article/2009/04/17/AR2009041701453.html>

⁹ The Corps, BNSF, and BNSF’s consultants, HDR Engineering, are well aware of the importance of quantifying GHG emissions and the methodologies for doing so. For instance, the Corps demonstrated their understanding of executive and legislative direction in relation to climate change, and the technical path by which to reach these environmental mandates in the presentation “U.S. Military – Activities and Responses to Climate Change.” See <http://www.fws.gov/southeast/climate/pdfs/DoD%20Goran%20Final%20CC%20SENRLG%20052708.ppt> BNSF’s website boasts of the responsible care they provide to communities and states that they reported their GHG emissions to the DOE in 2004:

In the fall of 2002, BNSF responded to the President’s Council on Environmental Quality by setting a goal to achieve an 18 percent reduction in the intensity of our greenhouse gas (GHG) emissions by the year 2012 using 2002 as a baseline. In 2004 we reported for the first time our GHG emissions through the Department of Energy’s Voluntary Reporting Program 1605. In 2005, BNSF joined EPA’s Smartway program and is currently developing its goals under this program.

http://www.bnsf.com/communities/responsible_care/pdf/Environmentreport.pdf

Further, HDR Engineering is so competent at quantifying GHG emissions that they are slated to present “Case Study: Using the Carbon Accounting Planning Tool (CAPT) to Assess Local Planning Options” and “Using Emission Credits to Improve Your Landfill’s Bottom Line” at an upcoming Greenhouse Gases: Planning and Management event. <http://wastecon.swana.org/Default.aspx?tabid=739>

Attachment 58 at Table ES-1, page ii. This estimate is the equivalent of adding 13,000 cars to the road per year, and does not even take into consideration the GHG emissions that will be generated from construction of the IMF or construction and operation of the Logistics Park. Further, even if GHG emissions from the project could somehow be portrayed as minimal, this does not excuse the EA from considering such impacts. Tellingly, the EA concludes that the Proposed Project does not create substantial criteria pollutant emissions but still provides a quantitative projection of those emissions.

Fourth, the EA's conclusion that the Proposed Project will actually result in a net reduction in GHG emissions from the baseline is wrong. The EA states that "freight transport by rail is much more fuel efficient than freight transport by truck" and because the Proposed Project will "displace freight movement that would otherwise occur by long-haul trucks, the Proposed Action would tend to minimize GHG emissions." EA Air Quality Technical Report at 1. This conclusion is unsubstantiated for a number of reasons, including:

- BNSF does not disclose an estimate of the true GHG impact of the Project or existing Argentine Yard operations for real comparison purposes;
- Even though the project is a railyard expansion project, the IMF will also be supported by numerous trucks that have emissions impacts. At full build-out, 1,000,000 lifts per year could equate to thousands of more trucks on the road each day. These trucks will also contribute to the GHG footprint of the proposed project and this effect should not be ignored.
- BNSF does not disclose existing trucking activity, information that would provide a baseline to evaluate the impacts of a project expansion;
- The Proposed Project is not replacing existing trucking operations; it is expanding operations in the area, facilitating a net increase in lifts and trucking activity. This will cause a net increase in GHG emissions that need to be calculated and mitigated.
- Similarly, even if the Proposed Project may produce fewer GHG emissions than a long-haul trucking project of similar capacity, a long-haul trucking project is not what's being proposed or even possible for this area;
- BNSF states there is no need for concern over GHG impacts because the rail impact is less than that of long-haul trucking operations. However, this does not mean rail activity is clean.

For these reasons, the EA improperly failed to include an assessment of GHG emissions, and by so doing, underestimated the air quality impacts of the Proposed Project.

VI. The EA Understates Project Emissions By Improperly Assuming Accelerated Fleet Turn-Over Rates

Preliminarily, it is difficult to imagine that a project of this type—one that is capable of handling approximately 3 times the lifts at the Argentine Yard plus the operations envisioned by the Logistics Park would not result in potentially significant air pollution impacts that would necessitate an EIS. Nevertheless, the EA states: “For the three categories of primary emitting activities (on-road trucks, locomotives, and other non-road equipment), the decreases in emission factors between the IMF-opening year and 20 years after opening will far outweigh the projected growth, resulting in decreases in facility emissions over this period.” EA at 3-9. The EA goes on to explain that the declining trend in emissions, despite project growth, is “primarily due to more restrictive regulations regarding cleaner fuels and lower emission diesel engines.” *Id.* Accordingly, the EA’s emissions estimates are based in large part on the assumption that there will be newer and cleaner vehicles and equipment used at the facility based on natural fleet turn-over and federal regulations that will phase in as the Project commences. We are concerned, however, that absent an enforceable commitment by BNSF to use the fleet mix of vehicles and equipment assumed to project emissions, air pollution from the Project will not decline as predicted.

With regards to locomotive emissions, although current regulations require railroads to improve emissions when a regional locomotive is remanufactured, there are no requirements to lower emissions by certain dates. Therefore, railroads could simply push off remanufacturing in order to postpone the costs of emissions upgrades on units with significant longevity, and therefore create adverse emissions impacts. Furthermore, because other states and regions have secured commitments from the railroads to reduce emissions, it is reasonable to assume that BNSF will first focus its remanufacturing, emissions upgrades and new purchases outside of the Kansas City region. Therefore, discussions regarding continued and expanded operations in the Kansas City region must include enforceable provisions that the cleanest available locomotives be utilized at local facilities in order to ensure true reductions in emissions over the next several years.

On-road trucks and off-road equipment likewise have requirements for cleaner engines in *new* vehicles, but there are no local (e.g., Kansas state) requirements to reduce emissions from *existing* trucks and equipment. Further, the extensive diesel emission reduction measures for trucks and equipment in California¹⁰ are likely to cause a dramatic

¹⁰ CARB has adopted regulations that require the modernization of existing truck fleets and cargo handling equipment. See <http://www.arb.ca.gov/msprog/onroad/porttruck/finaldrayagereg.pdf> (CARB in-use on-road drayage truck rule); <http://www.arb.ca.gov/ports/cargo/cargo.htm> (CARB webpage describing cargo handling equipment regulations). The Ports of Los Angeles and Long Beach have also adopted Clean Truck Programs that will require all port drayage trucks to meet 2007 EPA emissions standards by 2012. See generally <http://www.portoflosangeles.org/environment/ctp.asp> (Port of Los Angeles webpage describing Clean Trucks Program and linking to additional program documents).

shift in age distribution of units servicing the goods movement industry elsewhere. As operators scramble to distribute their cleanest units to the west coast, the cost for older trucks is likely to decline elsewhere from the massive influx of older units pushed out of California. The Kansas City region might therefore reasonably expect that less expensive older trucks and equipment will be part of the Proposed Project in lieu of more costly new trucks and equipment. Again, without the backstop measure of enforceable mitigation measures, such as requiring diesel exhaust after treatment devices and/or newer trucks and off-road equipment to be used at the facility, there is no guarantee that the Gardner IMF will be serviced by the cleanest possible trucks and equipment.

Accordingly, if the EA chooses to assume that a certain fleet mix will be used at the Gardner IMF and Logistics Park in order to portray a declining trend in emissions, BNSF should be required to commit to using that fleet mix of vehicles or equipment (or cleaner).

VII. The EA Underestimates Project Emissions By Minimizing The Average Hours Yard Hostlers Will Operate At The Facility

Accurate emissions estimates for the Proposed Project rely, in part, on accurate assumptions about the level of activity that vehicles and equipment at the facility will perform. To that end, we are concerned that the EA underestimates the level of activity performed by, for example, yard hostlers.

The EA's projected activity level for yard hostlers is summarized as follows:

Operating Hours Per Year	3180
Operating Days Per Year	365
Operating Hours Per Day	8.71

See EA Air Quality Technical Report, Appendix A: ENVIRON Emission Inventories for Existing Argentine and Proposed Gardner IMFs, Gardner Intermodal Facility Emissions, at Table A-1. NONROAD Emissions Factors Assessment. Avg Hours Per Year: Hostler: 3180.

This projected activity level is much lower than what would be anticipated for this type of facility. As indicated, the Project anticipates yard hostler annual operating hours of 3,180. In comparison, the projected activity level for the ICTF is 4,680 per year for yard hostlers. Attachment 58 at Table 21, page 35 (AQ Technical Report – ICTF Modernization Project). We therefore request that the Corps ensure that the level of activity assumed for all of the vehicles and equipment used at the Project site is commensurate with the level of operations predicted for the Project.

VIII. The EA’s Assessment Of Fugitive Dust Emissions, By Itself, Warrants Preparation Of An EIS

The EA estimates that fugitive dust emissions from operation of the Project are approximately 65 tons/year of PM10. EA at 3-10.¹¹ The significance of this data was not readily apparent in the main body of the EA or even the Air Quality Appendix. In fact, one would need to examine a chart within Appendix “T” of the EA to learn that while background fugitive dust emissions are currently well below National Ambient Air Quality Standards (NAAQS), the total predicted fugitive emissions exceed NAAQS by *four to ten times*. The highest concentrations in ambient air are predicted to be south of the truck entrance to the IMF facility. EA Appendix I at 1. An excerpt of that data is provided in the chart below. The furthest right hand column indicates the degree to which the total concentration of fugitive dust emissions exceeds federal air quality standards.

	Background (ug/m3)	TOTAL (ug/m3)	NAAQS (ug/m3)	TOTAL CONC
PM 10 2nd Highest 24-Hour	71	632.23	150	4.214867
PM 2.5 Highest 8th 24-hour	25	357.28	35	10.208
PM 2.5 Annual	10.5	112.72	15	7.514667

EA Appendix I at Table 1-5.

The EA acknowledges that EPA estimated that fugitive dust emissions could exceed federal air quality standards, indicating “a potential for localized significant impacts associated with modeled fugitive dust in the area,” and that the levels of fugitive dust exceeding federal air quality standards is predicted to extend out nearly one-half mile from 191st street. EA at 3-10. Thus, given that NEPA requires an EIS “[i]f the EA establishes that the agency’s action *may* have a significant effect upon the . . . environment” *Nat’l Parks*, 241 F.3d at 730 (internal quotation omitted) (emphasis in original), it is unclear why the Corps concluded that an EIS was not required.¹²

¹¹ While the EA reports fugitive dust emissions at 65 TPY within the body of the EA at 3-10, these emissions are not provided in “Summary Table 1: Gardner on-site 2010 emissions” in the Air Quality Technical Report Appendix, which shows the total PM emissions at only 5.11 tons for the year 2010. The absence of this information could easily result in readers overlooking a large and concentrated source of PM10.

¹² http://www.nwk.usace.army.mil/regulatory/BNSF/BNSF_EA_Public_Notice.pdf (“The Corps has made a preliminary determination that the proposed IMF would not have a significant adverse effect on the quality of the human environment; therefore, the filing of an environmental impact statement would not be required.”).

NEPA includes the obligation to “provide” to the decisionmaker and the public -- full and fair discussion of significant environmental impacts and shall inform decisionmakers 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. This obligation includes, at a minimum, a full assessment of whether emissions from the Project will violate the Clean Air Act by causing or contributing to violations of the NAAQS, whether the Project will adversely affect the human environment by contributing to the kinds of adverse health effects associated with exposure to PM concentrations greater than the NAAQS, and whether alternatives are available to avoid or minimize these adverse impacts, or even “enhance” the human environment.

While under some circumstances, an agency may forgo issuing an EIS by the adoption of mitigation measures, such measures must be “developed to a reasonable degree.” *Nat’l Parks*, at 734. “A perfunctory description, or mere listing, without supporting analytical data, is insufficient to support a finding of no significant impact.” *Id.* (internal quotations and citations omitted). In this case, the Corps states that BNSF “has agreed to develop a monitoring and mitigation plan in consultation with EPA and [Kansas Department of Health and Environment] to provide monitoring of particulate matter in the proposed project area to mitigate the potential significant impacts. If the monitoring shows any exceedance of the NAAQS, the Applicant will implement appropriate mitigation measures in accordance with the monitoring plan.” EA at 3-10.

Information about the mitigation monitoring plan is sparse. Chapter 5 of the EA indicates that BNSF may perform some “vegetative plantings along 191st Street” and that the mitigation monitoring program, which does not appear to be developed as of today, will include “a menu of potential IMF mitigation options that would be considered for mitigation, if the need for mitigation is triggered by monitoring results”. *Id.* at 5-6 (stating that mitigation “may” include “increased vegetation and street sweeping”). The mitigation section of the Air Quality Appendix to the EA merely references a 2008 NEPA Mitigation Technical Report, and does not provide any additional specificity on the types of fugitive dust mitigation measures that will actually be adopted and to what extent such mitigation is enforceable.

The EA’s treatment of fugitive dust emissions hardly meets the standard necessary to avoid preparation of an EIS. Not only are emissions of fugitive dust undeniably significant, as indicated by the EA’s own data, but there is a “paucity” of information to support the Corps’ conclusion that BNSF’s mitigation for fugitive dust would be adequate in light of the potential environmental harms. *Nat’l Parks*, 241 F.3d at 734 (“the Parks Service did not conduct a study of the anticipated effects of the mitigation measures nor did it provide criteria for an ongoing examination of them or for taking any needed corrective action (except for the plan to conduct ‘studies’) As

with the rest of the proposal, it planned to act first and study later”). This error provides yet another basis for why an EIS is required.

IX. The Army Corps Must Condition Any Permit Granted To BNSF On The Closure Of The Argentine Yard

The EA states that if the Proposed IMF is constructed, the existing Argentine Yard will close:

The Proposed Action would result in the removal of the intermodal operations from Argentine Yard and would minimize the need for staging trains farther west on the southern transcontinental mainline sidings and decrease congestion at Argentine Yard, all of which adversely affect mainline operations.

EA at 1-4. As a result, the removal of the intermodal operations from the Argentine Yard is calculated in the EA as an emission offset for the proposed Gardner IMF. However, there is no guarantee within the EA that this closure will even take place. In order to protect the region from the operation of two large railyards, decommissioning of Argentine Yard must be an enforceable condition for opening the Gardner IMF.

What is more, closing the Argentine Yard does not offset the emissions from the Proposed IMF. It merely shifts the emissions from one geographic location to another. In addition, any increase in emissions that takes place from an overall projected increase in rail traffic will not be offset by closing the Argentine Yard. Accordingly, we urge the Army Corps to condition any Section 404 permit granted to BNSF on the complete closure of the Argentine Yard. To the extent a commitment to close the Argentine Yard is not obtained, or that both yards will be operating in full or in part at the same time, the EA must account for those additional emissions.

X. Mitigation Measures To Reduce Emissions From The Proposed Project and Logistics Park

Given the level of air pollution that is likely to be generated by the proposed project, including the Logistics Park, we urge the Army Corps to consider requiring BSNF to adopt as a condition of its Section 404 permit, measures that would mitigate those emissions. Currently, the only mitigation adopted by the project applicant is to monitor fugitive dust emissions and “if necessary” to mitigate those emissions with e.g., vegetative plantings and street sweepings. EA at 5-6. No mitigation has been formally adopted to directly reduce emissions from locomotives, trucks, transport refrigeration units, or cargo handling equipment.

While the EA discussed voluntary measures BNSF is undertaking to reduce project emissions, there is no guarantee that those measures will be adopted since they

are not either part of the Project or mitigation adopted as a condition of the Section 404 permit. Moreover, while BNSF states that approximately 60 percent of its total fleet (line haul and switch locomotives) is equipped with anti-idling devices, there is no information on how many of these locomotives will actually visit the project site. *Id.* Further, the Army Corps should consider whether the “efficiency” measures BNSF is voluntarily adopting to reduce truck idling and maximize train and truck movements, could contribute to an increase in throughput at the facility and thus emissions.

Documents submitted in connection with this comment letter, detail mitigation strategies that can be adopted for locomotives, heavy duty trucks, transportation refrigeration units, and cargo handling equipment. Attachments 1, 4, 9, 11, 13, 15, 18, 20, 22, 24, 26, 28, 30, 33, 35, 37, 39, 41, 43, 44-47, 50, 55 at Chapter 3.2, 56 at Chapter 3.2. Such strategies have been proposed or adopted in California, even by BNSF in connection with its rail operations in that state. Moreover, many of these strategies have been fully analyzed in environmental documents jointly prepared by the Corps and the Ports of Los Angeles and Long Beach. As a result, the Corps has first hand experience in evaluating the feasibility of such measures. Attachment 55 at Chapter 3.2; Attachment 56 at Chapter 3.2. We also refer the Corps to the list of mitigation measures submitted by the Kansas Department of Health and Environment Bureau of Air and Radiation.¹³

Locomotives generally have very long lives (30-40 years, with remanufacturing approximately every seven years). As a result, stringent EPA emissions standards for *new* engines are slow to accumulate within locomotive fleets as long as they are dependent on the purchase of new equipment in the normal business cycle. However, to reduce locomotive emissions, BNSF could use locomotives and switch engines that meet the most stringent emissions standards through accelerated fleet turnover in addition to ant-idling devices, retrofit devices, and ultra low sulfur fuel. Line Haul locomotives can spend up to 40 percent of their time idling and switchers as much as 90 percent.¹⁴ This illustrates the importance of using anti-idling devices. At least four EPA-recommended models of idling shut-off devices are already on the market for locomotives,¹⁵ and California signed agreements with UP and BNSF in 2005 ensuring “idling devices limiting idling to 15 minutes” were to be installed on 99 percent of the 450 California-based locomotives by July 1, 2008.¹⁶

Further, the Corps should consider the use of diesel electric hybrids. Specifically, the Green Goat provided by RailPower has been commercially available since 2005, and provides a 40 to 70 percent reduction in GHG emissions and diesel fuel consumption.¹⁷

¹³ KS BAR Letter *available* at <http://www.nwk.usace.army.mil/regulatory/BNSF/KDHE.pdf>

¹⁴ SCAQMD. *Container Movement Technology Forum and Roundtable Discussion*. January 2007. http://www.aqmd.gov/TAO/ConferencesWorkshops/Container_Forum-01-26-07/ContainerForumReport.pdf. pg. 27

¹⁵ <http://www.epa.gov/otaq/smartway/idlingtechnologies.htm#loco-mobile-sdsu>

¹⁶ http://www.arb.ca.gov/railyard/hra/031808hra_stra_fs.pdf

¹⁷ <http://www.dieselforum.org/technology-spotlight/diesel-hybrid-corner/bnsf-green-goat-release/>

Also, the Corps should consider multiple generator sets, which Union Pacific has been testing and operating since 2005. In fact UP currently owns 159 Genset locomotives running in California and Texas. The Genset yard switcher reduces emissions of NO_x by 80 percent and particulate matter by 90 percent while using as much as 30 percent less fuel compared to current older switching locomotives. The fuel savings also translates into a 30 percent reduction in GHG emissions.¹⁸

For heavy duty trucks, the Ports of Los Angeles and Long Beach recently adopted a program that will require only 2007 EPA compliant trucks to perform port drayage service by 2012. This program is expected to reduce port truck emissions by at least 80%.¹⁹ The program has been in effect for nearly one year and has already resulted in significant air pollution reductions. While the Corps should consider how emissions can be reduced from all of the trucks servicing the IMF, the Corps should, at the very least, consider how emissions reductions can be achieved by the trucks that will primarily operate between the IMF and Logistics Park. These trucks presumably represent a discrete fleet of trucks that will contribute to a very large percentage of truck emissions within the project area. Moreover, we suspect that the fleet of trucks that will shuttle cargo between the IMF and Logistics Park will be older (as opposed to newer 2007 compliant trucks) given the short trip distance between the facilities and the fact that newer, more reliable trucks are not needed for such operations. This was the predicament for the truck fleet that served the Ports of Los Angeles and Long Beach, which generally performed trips five miles or less in distance.

With respect to cargo handling equipment, such as yard trucks and forklifts, the Army Corps should consider how newer, cleaner equipment can be used and phased in at the proposed project site. Like locomotives, cargo handling equipment typically lasts 8-24 years before being replaced with new equipment. Such long equipment lives suggests that the benefits of more stringent emissions standards for new engines are slow to accumulate as long as they are dependent on the purchase of new equipment in the normal business cycle. As a result, the Corps should investigate how cargo handling equipment at the IMF and Logistics Park can utilize engines that meet the most stringent emissions standards through the use of new equipment or verified control devices.

Finally, measures are available to reduce GHG emissions from the Project. *See* Attachments 52, 55 at Chapter 3.2, 56 at Chapter 3.2.

XI. The Army Corps Should Allow For More Public Input On The Proposed Project

Given the significant impacts that the Proposed Project will generate, we urge the Corps to provide the public with additional opportunities to comment on the Project

¹⁸ <http://www.uprr.com/newsinfo/chi-genset.shtml>

¹⁹ http://www.portoflosangeles.org/newsroom/2008_releases/news_061708ctp.asp

before it reaches a decision on whether to grant the Proposed Permit. In particular, we urge the Corps to

1. Provide a public hearing on the EA. Given the great concern over the adequacy of the EA, the public should have the opportunity to address their concerns to the Corps directly which would foster a more efficient and useful dialogue on the Proposed Project.

2. Make all comments received on the Proposed Project available online, in addition to reports and studies that substantiate the findings of the EA in order to facilitate public understanding of the Proposed Project. During our review of the EA, it was difficult to obtain a clear picture of the Project's impacts without the EA's underlying documentation. While the Corps agreed to make certain documents available upon request, making the documents available online would enhance public access and reduce the administrative burdens imposed on the Corps every time it has to respond to a document request.

In light of these comments, in addition to those provided by other individuals, organizations, and government entities, we urge the Corps to conclude that potentially significant impacts may arise from the Project that warrant an EIS.

Sincerely,



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Enclosures:

Attachments 1-58 with Table of Contents
CD containing Table of Contents and Attachments 1-58