

Hillsdale Environmental Loss Prevention

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FOR IMMEDIATE RELEASE

HILLSDALE ENVIRONMENTAL LOSS PREVENTION ANNOUNCES LAWSUIT AGAINST BNSF AND THE U.S. ARMY CORPS OF ENGINEERS OVER INSUFFICIENT ENVIRONMENTAL STUDY FOR THE BNSF INTERMODAL RAIL YARD AND LOGISTICS WAREHOUSING PARK SOUTHWEST OF GARDNER, KS

JANUARY 6, 2010: Hillsdale Environmental Loss Prevention, Inc. (HELP), the Kansas Natural Resource Council (KNRC), and five individual plaintiffs are filing a lawsuit in Federal Court to challenge the U.S. Army Corps of Engineers' 404-permit that allows the BNSF Railway Company to move forward with its plans to build an intermodal facility on a 1000-acre site that will also include a logistics park just southwest of Gardner, Kansas.

The lawsuit names as defendants the U.S. Army Corps of Engineers and the BNSF Railway Company. It will be filed Thursday, January 7, 2010 in U.S. District Court, District of Kansas.

Plaintiffs argue that the environmental impact of this project would be significant on local and regional air quality, and on the Hillsdale Lake watershed and area groundwater. This watershed provides drinking water to 30,000-plus households in the three Johnson County cities of Gardner, Edgerton, and Spring Hill, to two-thirds of rural Miami County, and to parts of Franklin County. Plaintiffs contend that the more intensive, independent and objective Environmental Impact Statement (EIS) and a Health Risk Assessment (HRA) are needed to analyze all the environmental impacts of this project.

The lawsuit contends that the U.S. Army Corps of Engineers' Environmental Assessment, and the subsequent issuance of "Finding of No Significant Impact," or "FONSI", relied too heavily on assumptions made with respect to data provided by BNSF. Consequently, the Corps did not sufficiently analyze the human and natural impacts that this project could have on the health of local residents, on the Hillsdale Reservoir, on regional air quality, and on the adjacent Johnson County parks.

"The Corps' finding that the intermodal facility will cause no significant environmental impact is arbitrary and capricious. It's based on unreasonably low growth estimates and unrealistic assumptions about pollution reduction. The facility represents a clear threat to air, water, and human health, not to mention property values and quality of life in the area. We expect the court to require the Corps to undertake further analysis," said Mark Dugan, lead attorney for Plaintiffs.

The American Lung Association has weighed in and has also expressed its concern about the need for a more extensive analysis of the air quality impacts of this project.

"The American Lung Association agrees that the Corps should prepare an Environmental Impact Statement and conduct a Health Risk Assessment because of the project's great potential for diesel pollution which has grave lung health impacts," says Susannah Fuchs, Senior Director of Environmental Health American Lung Association of the Central States.

BNSF's air quality data was based on 2006 Argentine intermodal traffic data which BNSF used to represent the first year of operation for the new IMF, along with an estimate of the fifth year operation of the logistics park. BNSF assumed that air quality would improve immediately after the first year of operation, regardless of the increase in diesel truck traffic that would result over time.

Water quality data was based on comparisons with storm runoff from the BNSF's smaller Birmingham IMF. Their conclusion stated that the IMF in Gardner would result in "minor adverse effects to water quality ... assuming that runoff from the proposed facility would be of similar or better quality." (Pg 36 Water Quality Technical Report) ###

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