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May 3, 2012

**VIA OVERNIGHT DELIVERY AND ELECTRONIC MAIL to
steven.k.gagnon@usace.army.mil**

U.S. Army Corp of Engineers
Mr. Steve Gagnon
PO Box 2946
Portland, OR 97208-2946

**Re: Application of Coyote Island Terminals, LLC, Mr. John Thomas,
Ambre Energy North America, 170 S. Main Street Suite 700, Salt
Lake City, Utah 84101
US Army Corps of Engineers No: NWP-2012-56**

Dear Mr. Gagnon:

Thank you for providing the public an opportunity to review and comment on the application of Coyote Island Terminals, LLC and Mr. John Thomas, Ambre Energy North America (“Ambre”), U.S. Army Corps of Engineers No. NWP-2012-56 (“the Application”), for a permit under Section 10 of the Rivers and Harbors Act 1899 (33 U.S.C. § 403 *et seq.*) for work affecting navigable waters of the United States. These comments are submitted on behalf the Columbia Riverkeeper, Sierra Club, Oregon Environmental Council, the National Wildlife Federation, Oregon Physicians for Social Responsibility, Greenpeace, Friends of the Columbia Gorge, Climate Solutions, the Center for Biological Diversity, and the Washington Environmental Council. These non-profit organizations represent tens of thousands of members in Oregon and Washington

who are dedicated to protecting the environment and our shared natural resources and to seeking positive solutions to the challenge of global climate instability caused by combustion of fossil fuels. We appreciate the opportunity to provide public comment on the application materials and the cooperation of Army Corps of Engineers (“Corps”) in providing information regarding this proposed project.

These comments were prepared on behalf of the conservation and public health organizations by the Crag Law Center. Please direct correspondence or questions to Chris Winter at chris@crag.org or 503-525-2725.

INTRODUCTION

Ambre proposes to construct a coal export facility – the Morrow Pacific Project – that would have the capacity to export **8.8 million tons of coal per year** mined in the Powder River Basin and bound for China and other Asian countries. This proposal, along with numerous other coal export proposals along the Columbia River and the West Coast, have generated significant controversy and concern among the public, policy makers, other federal agencies, state and local government officials and the scientific community. The science is overwhelming that coal dust and diesel emissions, the pollution associated with burning coal, and global climate instability caused by carbon emissions resulting from coal combustion all present serious threats to the public interest, the welfare of the people and communities who will be impacted by this proposal, and the broader global community struggling with the accelerating impacts of climate change. Moreover, this proposal, which would convert the Columbia River into a major coal export highway, also threatens great harm to the Columbia River ecosystem, numerous species of threatened or endangered salmon and steelhead, important recreational and navigational values, and the people who depend upon these resources for their livelihood.

We strongly urge the Corps to deny the application because the agency cannot possibly conclude, based on the available information, that the public benefit from this coal export proposal outweighs the negative impacts. As you know, the Corps, in reviewing the Application, is required to conduct a detailed and thorough public interest review.¹ That analysis must include an evaluation of the cumulative impacts of the proposal as well as “a careful weighing of *all those factors which become relevant in each particular case.*”² A permit is not to be granted if the “district engineer determines that it would be contrary to the public interest.”³ “The benefits which may reasonably be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments.”⁴

¹ 33 C.F.R. § 320.4.

² *Id.* at § 320.4(a)(1) (emphasis added).

³ *Id.*

⁴ *Id.* at § 320.4(a)(1).

As will be discussed in greater detail in our comments, we are gravely concerned that the public was asked for input on the Corps' public interest review *before* the applicant had provided its Environmental Review Document ("ERD") and Biological Assessment ("BA") and before the Corps had prepared an analysis of environmental impacts pursuant to National Environmental Policy Act ("NEPA"). By preparing and disclosing information on the potentially adverse impacts of the project *after* the public comment period on the Corps' public interest review, the applicant and agency are effectively preventing the public from providing meaningful input into that important review process. Commenters learned of the draft Biological Assessment, apparently submitted by Ambre to the Corps in late April, a week before the close of the public comment period.⁵ The public cannot be expected to assess and provide meaningful input on a 163-page scientific and technical review document in this timeframe. Given Ambre's piecemeal submission of critical environmental documents, the permit application should be rejected by the Corps until such time as Ambre has provided all relevant information regarding the potential environmental impacts and benefits to the public interest that would result from the proposed project, at which time the Corps should reopen the public comment period.

Despite these procedural infirmities, extensive information exists regarding the negative impacts of coal dust, coal combustion, diesel emissions, and the proposed construction activities and use of the Columbia River for a coal export facility. In the absence of the applicant's and the agency's environmental review documents, we have endeavored to provide the Corps with a selection of the available information regarding the potential negative impacts to the public interest of the proposed coal export facility. Those include adverse impacts to human health caused by fugitive emissions of coal dust and diesel emissions, and there are significant unanswered questions about Ambre's claims that the transfer of coal would be "nearly fully enclosed."⁶ We have grave concerns about the potential impacts to threatened and endangered salmon and steelhead resulting from the proposed construction activities and discharge of stormwater and process wastewater associated with a coal export facility, and the proposal also threatens to interfere with recreation, navigation, and other uses of the Columbia River. The negative impacts also include pollution from the burning of coal in Asia, which would cause increases in mercury and ground level ozone pollution in the Pacific Northwest and other places. And we have serious concerns about the burning of coal and emissions of carbon dioxide, which will contribute to accelerating climate change and ocean acidification and resulting adverse impacts to human health and the environment. We detail those concerns in this comment letter and also provide additional documents and information as set forth in the accompanying index of exhibits. We have submitted the

⁵ Commenters contacted the Corps frequently via phone and email during the public comment period to learn if the applicant had submitted the Biological Assessment and Environmental Review Document referenced in Ambre's application.

⁶ Application at 3.

exhibits to this comment letter in electronic form on a disk to the Corps, and we request that the Corps include those exhibits in the record for this decision.

Equally as troubling is the fact that the benefits that would derive from this proposal are speculative at best and poorly documented. Ambre relies summarily on increasing Asian demand for coal exports, but the Application does not present any detailed information on the benefit to the local communities or even the American public. Instead, Ambre simply assumes that a rising Asian demand for American coal justifies any proposed project to meet that demand. The Corps' regulation clearly require better information on whether this specific project would benefit the local community and the American public, and not simply whether a coal export facility benefits Asian coal demand and an Australia based export company. The Corps therefore simply does not have reliable, detailed information on the benefits to the local and American publics that is necessary to conduct the balancing required by the regulations.

In addition, we strongly encourage the Corps to prepare a programmatic environmental impact statement ("PEIS") as we requested in our letter dated April 12, 2012, which is attached to these comments.⁷ The Morrow Pacific proposal is one of at least six current proposals, four of which are currently pending before the Corps, which would involve the export of **up to 150 million tons of coal per year**. It is absolutely critical that the Corps not analyze each individual proposal as a silo without considering the larger, overall context of the combined impacts that will have shared effects throughout our region. This analysis is critical for the Corps' public interest review as well as its review under NEPA, both of which require a fully informed consideration of the potential cumulative impacts associated with coal export.

In addition to a PEIS, the Corps should then prepare a site-specific EIS for this individual proposal. The site-specific EIS can be informed by the analysis in the PEIS, but the direct, indirect and cumulative effects of this specific project, as discussed in a recent letter from the Environmental Protection Agency ("EPA"),⁸ may have a significant impact on the environment necessitating that the Corps comply with NEPA's procedural

⁷ Letter from Jan Hasselman, Earthjustice, to Brig. Gen. Jon McMahon, Commander and Division Engineer, U.S. Army Corps of Engineers Northwestern Division, Col. John Eisenhauer, Commander, Portland District, U.S. Army Corps of Engineers, Col. Bruce Estok, Commander, Seattle District, U.S. Army Corps of Engineers, Re: Request for Environmental Impact Statement on Cumulative Impacts of New Coal Terminals in Washington and Oregon (Mar. 12, 2012). Ex. 39.

⁸ Letter from Kate Kelly, Director, Office of Ecosystems, Tribal and Public Affairs, U.S. Environmental Protection Agency, to Mr. Steve Gagnon, U.S. Army Corps of Engineers, Re: Comments on Public Notice for Permit Application under Section 10 of the Rivers and Harbors Act for a Coal Transloading Facility, Port of Morrow, Oregon (Apr. 5, 2012).

requirements and take a “hard look” at those impacts, with full public involvement, through preparation of an EIS.

We cannot emphasize enough that this proposal, and coal export more broadly, are unprecedented in this region and threaten to impose a broad range of negative impacts on the people and communities of the Pacific Northwest, which include coal dust emissions, diesel emissions, pollution from combustion of coal in Asia, impacts to listed species, and impacts to climate change and resulting damage to communities and natural resources. The Corps must assess these impacts in an Environmental Impact Statement to comply with the important action-forcing procedures designed by Congress to ensure that these types of decisions are made only after a careful analysis of the potential impacts and transparent public involvement.

Finally, in conducting its public interest review and determining how to process with its environmental review pursuant to NEPA, we urge the Corps to give serious consideration to the outpouring of concern from federal and state agencies, Tribes, and local governments that would be impacted by coal export in the Pacific Northwest. Those statements include:

- The April 12, 2012 letter from EPA request that the Corps prepare a project-specific EIS for the Port of Morrow Project;
- The April 25, 2012 letter from Governor John A. Kitzhaber, MD, requesting that a federal agency prepare a programmatic and comprehensive environmental impact statement to look at west coast coal export proposals;
- The March 30, 2012 letter from the Washington State Department of Natural Resources requesting a project-specific EIS for the Port of Morrow Project;
- Resolution 2012-15 from the City of Hood River declaring that the City of Hood River opposes coal export projects that entail transporting coal through the Columbia River Gorge either by rail or by barge;
- The April 18, 2012 resolution from the City of Sandpoint, Idaho which urges the Corps to prepare a programmatic Environmental Impact Statement that includes Bonner County, Idaho and to host a scoping hearing in Sandpoint, and recognizes various threats to human and environmental health and safety; and
- The April 2012 letter from the City of Mosier strongly opposing the proposed new coal export terminals because of concerns about the impacts of coal dust and diesel pollution, and urging the Corps to prepare a programmatic Environmental Impact Statement.

These statements of concern or opposition from all levels of government - the Corps’ sister agency, Oregon’s Governor, Tribes, state agencies, and local municipalities - all speak to the potentially significant impacts of coal export on human health, the public welfare, our communities and the natural resources of the Pacific Northwest. In addition, a number of public bodies and legislators in Washington State have expressed concern and/or opposition to coal export, including: the cities of Seattle, Camas, Washougal,

Mount Vernon, Burlington, Bellingham, Seattle, Edmonds, and Bainbridge Island; Skagit and King counties; the Port of Skagit; the Community Council of Dallesport; and thirteen Washington State Senators.⁹

In carrying out its duties under the River and Harbors Act and the National Environmental Policy Act, we ask that the Corps acknowledge and respond to these concerns expressed by a wide array of government stakeholders. Our organizations, which represent tens of thousands of citizens in the affected areas, share similar concerns as express herein.¹⁰

A. Ambre’s Morrow Pacific Coal Export Project

Ambre proposes to build Oregon’s first coal export operation using two Columbia River port sites. The Corps’ Public Notice for the project explains Ambre’s proposal:

The proposed project involves construction of a new transloading facility for bringing coal in from Montana and Wyoming by rail and transferring it to barges on the Columbia River at the Port of Morrow. The transloading facility would include nine dolphins, walkways, a fixed dock, and a conveyor system for loading coal along with enclosed warehouses in the uplands for storing coal prior to loading onto the barges. Approximately 140 permanent piles ranging from 14 to 25 inches in diameter and 110 temporary 16-inch diameter piles would be installed to complete the project. Over 15,000 square feet of new overwater structure would be constructed.¹¹

The proposed activities will also involve substantial fill in waters below the ordinary high water elevation (“OHWE”), including 572 cubic yards of permanent fill and 256.5 yards of temporary fill.

Ambre then proposes to ship coal over 200 miles down the Columbia River to the Port of St. Helens’ Port Westward property. At Port Westward, Ambre would load coal onto ocean-going “Panamax” vessels to be shipped to Asia. According to the Corps’ Public Notice, Ambre proposes to ship 3.85 millions tons of coal per year “initially.” The Corps notice states:

⁹ Ex. 40. Relevant letters and resolutions from Washington municipalities and legislators are included in the packet of information that was presented to The Dalles City Council on April 16, 2012.

¹⁰ On March 30, 2012, many of our organizations also submitted public comments on the Morrow Pacific Project to the Oregon Department of State Lands. We incorporate those comments by this reference. Ex. 37.

¹¹ Corps No. NWP-2012-56 Public Notice (Mar. 6, 2012) (“Corps Public Notice”).

At maximum capacity, the facility would be able to handle 8.8 million tons. That would translate to approximately 5 trains to Port of Morrow, 5.5 loaded barge tows from Port of Morrow to Port Westward, and 1 Panamax ship to Asia per week initially, increasing to 11 trains, 12 loaded barge tows, and 3 Panamax ships per week at full build out.¹²

We note that Ambre's Permit Application does not include any information related to the volume of coal handled or the number of trains, barges, and Panamax ships required to export coal. We therefore request clarification from the Corps on how it determined the level of activity that would result from export of 8.8 million tons per year of coal, and furthermore whether the Corps independently verified this information if it was provided by Ambre. Furthermore, we note that in the recent New York Times article regarding this project that Mr. Gary Neal, general manager of the Port of Morrow, stated that project could one day be much larger because Ambre has rights to a much larger parcel of land along the same rail line.¹³

We raise these issues because Ambre has unfortunately demonstrated a credibility problem that requires particular attention from the federal government as the permitting authority. In particular, with regards to the Morrow Pacific Project, Ambre executed a lease with the Port of St. Helens that expressly contemplates in- and over-water activities at Port Westward, including barge mooring and dock improvement.¹⁴ Yet Ambre filed its permit application with the Oregon Department of State Lands ("DSL") and the Corps a short time later and stated that "[n]o in- or over-water work is required at Port Westward."¹⁵

Moreover, Ambre failed to disclose materially to state and federal authorities the true extent of its plans for the Millennium coal export facility in Longview, Washington. As has been well documented by now, Ambre originally sought approval from Cowlitz County for an export facility capable of handling 5.7 million tons of coal per year. Ambre, however, had actually been planning for an export facility capable of handling 60 million tons per year. Ambre was subsequently forced to withdraw and then resubmit its permit application, which was submitted in February of this year, this time for a 44 million ton per year facility.¹⁶

¹² *Id.* at 2.

¹³ William Yardley, *Oregon Town Weighs a Future with an Old Energy Source: Coal*, New York Times (Apr. 18, 2012) (available at <http://www.nytimes.com/2012/04/19/us/boardman-ore-considers-a-future-in-coal.html?pagewanted=all>). Ex. 41.

¹⁴ Port of St. Helens – Option and Terminal Services Contract. Ex. 31.

¹⁵ Application at 3.

¹⁶ Barbara LaBoe and Tony Lystra, *Groups Claim Millenium Misrepresented Scope of Coal Project*, Longview Daily News (Feb. 15, 2011) (Ex. 20); Erik Olson, *Millenium to*

Because of these credibility problems, we strongly encourage the Corps to disclose to the public the basis for its assumptions about the amount of activity associated with an 8.8 million ton per year coal export facility at the Port of Morrow. The public needs to know the source for and reliability of this information in order to participate adequately in the public interest review process required of the Corps. Any information provided by Ambre should be independently verified by the Corps and documented in the project file.

B. The Rivers and Harbors Act Permitting Regulations Require the Corps to Conduct a Detailed and Thorough Public Interest Review of the Proposed Project and its Impacts on the Environment, Human Health and Safety and Public Welfare.

Pursuant to the Corps' implementing regulations, the "decision whether to issue a permit will be based upon an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest."¹⁷ This "public interest" review lies at the heart of the Corps' analysis and must guide the agency's important oversight of Ambre's proposed coal export project. The public interest review is intended to be broad, capturing all relevant issues that could impact the environment, human health and natural resources.

Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of this general balancing process. That decision should reflect the national concern for both protection and utilization of important resources.¹⁸

The Corps' regulations include a non-exhaustive list of factors that may be relevant for each individual project.

All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic

Restart Coal Terminal Permit Process, Longview Daily News (Mar. 15, 2011) (Ex. 22); Erik Olson, *Millennium Bulk Terminals files paperwork with county for \$600 million coal terminal*, Longview Daily News (Feb. 23, 2012) (Ex. 33).

¹⁷ 30 C.F.R. § 320.4(a)(1).

¹⁸ *Id.*

properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.¹⁹

Consistent with the mandate that the Corps consider “all those factors that become relevant,” this non-exhaustive list of factors includes issues beyond those directly related to the impacts of in-water work. By requiring an analysis of “cumulative impacts” and by including a non-exhaustive but far reaching list of factors, the Corps’ regulations clearly require a broad, all encompassing analysis of the public interests that captures all impacts associated with the project and not just those that result directly from the permitted activities.

C. The Proposed Coal Export Project Threatens to Impose a Wide Range of Adverse Impacts on the People, Communities, and Natural Resources of the Columbia River and the Pacific Northwest.

In conducting the requisite public interest review, we request that the Corps consider and analyze the following potential impacts. As discussed above, without the environmental review documents, neither the Corps nor the public has adequate information available at this point in time to complete or comment on this analysis. We therefore identify issues for the Corps to consider, along with specific information gaps, and request the opportunity to provide additional public comment related to the public interest finding once all relevant information has been made available to the public.

1. The Adverse Impacts of Coal Dust and Diesel Emissions on Human Health and the Environment

In considering Ambre’s proposal and conducting its public interest review, the Corps must consider the impacts of fugitive coal dust and diesel emissions from trains on human health and the environment. While Ambre asserts in its application that the transfer/transloading facility is “nearly fully enclosed,”²⁰ many significant questions remain about how Ambre will reduce fugitive emissions, whether those efforts will be successful and potential pathways for fugitive coal dust emissions that Ambre’s proposal does not address. Furthermore, Ambre has not addressed at all the air quality and human health impacts of coal dust and diesel emissions associated with transporting coal to the Port of Morrow by rail or down the Columbia River by barge.

Coal is most commonly transported via open top rail cars. According to Burlington Northern Santa Fe and coal dust proceedings before the Surface

¹⁹ *Id.*

²⁰ Application at 3.

Transportation Board (“STB”), these cars lose huge volumes of coal dust during transportation, an average of 500 pounds of coal per rail car. Each train is composed of 120 cars or more.²¹ In a dense rail corridor, such as the Powder River Basin where there are at least 70 trains per day containing 120 cars or more, **2000 tons of coal dust is being deposited each day.** If all of the Northwest coal barging and export facilities are built, approximately 60 new trains would travel through the region daily so similar coal dust problems would be expected. While surfactants and loading practices, if utilized and correctly applied, might reduce some dust, many companies are not employing these practices because there is no legally binding obligation for them to do so.²² Coal shippers, coal companies and rail companies are currently arguing over a BNSF voluntary coal dust mitigation requirement before the Surface Transportation Board.²³ Additionally, surfactants contain a myriad of unknown chemicals that have not yet been adequately studied. Surfactants could cause a number of potential harms, including: danger to human health during and after application; surface, groundwater and soil contamination; air pollution; changes in hydrologic characteristics of the soils; and impacts on native flora and fauna populations.²⁴

Coal dust causes a number of well known respiratory diseases, including pneumoconiosis (commonly known as Black Lung Disease), bronchitis and emphysema, and transportation of coal is identified by the Occupations Health and Safety Administration as one of the methods for human exposure to coal dust.²⁵ Airborne coal dust can also exacerbate asthma and chronic obstructive pulmonary disease (COPD), and respirable coal dust is responsible for the deaths of as many as 700 miners and ex-miners

²¹ According to Burlington Northern Santa Fe (“BNSF”) studies, an average of 500 lbs of coal can be lost in the form of dust for each rail car. See Surface Transportation Board Hearing Transcript, *Re: Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (July 29, 2010) (available at [http://www.stb.dot.gov/TransAndStatements.nsf/8740c718e33d774e85256dd500572ae5/9e49ebf2fea431f1852578460066c5cb/\\$FILE/0729stb-exh.pdf](http://www.stb.dot.gov/TransAndStatements.nsf/8740c718e33d774e85256dd500572ae5/9e49ebf2fea431f1852578460066c5cb/$FILE/0729stb-exh.pdf)).

²² Sayeh Tavangar, *Some Shippers Not Complying with BNSF Coal Dust Tariff*, WUSA9.com (Nov. 3, 2011) (“AECC, as with many coal shippers, is not applying anything to the coal being shipped to us by the railroads,” Steve Sharp, AECC principal engineer, wrote in an email. “There is currently no requirement that we do so.”) (available at <http://www.wusa9.com/news/local/story.aspx?storyid=173329>). Ex. 29.

²³ The STB has conducted two proceedings related to coal dust, referenced at Docket numbers 35557 and 35305. See <http://www.stb.dot.gov/newsrels.nsf/219d1aee5889780b85256e59005edefe/72355569b86fcf0485257950006d6966?OpenDocument>.

²⁴ Dr. Thomas Piechota, Eds., et al., *Potential Environmental Impacts of Dust Suppressants: “Avoid Another Times Beach,” An Expert Panel Summary*, Las Vegas, Nevada (May 30-31, 2002) at Section 3. Ex. 5.

²⁵ <http://www.osha.gov/SLTC/healthguidelines/coaldust-less5percentsio2/recognition.html>.

in the United States each year.²⁶ Although much of available information relates to health threats for underground coal miners, there may also be severe risks of exposure to lower levels of coal dust based on what is known about how coal dust impacts the human respiratory system.²⁷ Coal dust in all size fractions, particularly that from the Powder River Basin (“PRB”), also contains varying amounts of heavy metals, including lead, mercury, chromium and uranium.²⁸ Fugitive emissions of coal dust from transportation can also cause increases in levels of fine particulate matter (PM₁₀),²⁹ which also present significant threats to human health.³⁰

Even apart from the direct health threats, fugitive coal dust along rail lines and near terminals has caused nuisance conditions for neighboring businesses and residences, resulting in economic losses due to the need for frequent cleaning.³¹ Mayors, businesses, and residents located in communities where coal barging, handling and export facilities currently exist such as Seward, Alaska³²; Newport News and Roda, Virginia³³; Mobile, Alabama³⁴; and Floyd County, Kentucky³⁵, are all impacted by coal dust from coal

²⁶ Brenda Wilson, *The Quiet Deaths Outside the Coal Mines*, National Public Radio (Apr. 16, 2010) (available at <http://www.npr.org/templates/story/story.php?storyId=126021059>). Ex. 16.

²⁷ Letter from Whatcom Docs to Jack Louws, Whatcom County Executive, and Ted Sturdevant, Director, Washington State Department of Ecology (Mar. 12, 2012); Appendix B: Health Impacts of Coal. Ex. 36.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Environmental Protection Agency, *Integrated Science Assessment for Particulate Matter* (EPA/600/R-08/139F) (Dec. 15, 2009) (74 Fed. Reg. 66,353) (available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=216546#Download>). Ex. 13.

³¹ Cope D, Wituschek W, Poon De et al, *Report on the emissions of control of fugitive coal dust from train*, Regional Program Report 86-11, Environmental Protection Section, Pacific Region British Columbia Canada (1994).

³² For Seward, Alaska coal dust air and water problems, see

<http://www.alaskacoal.org/seward-coal-dust/>;
<http://www.groundtruthtrekking.org/Issues/AlaskaCoal/SewardCoalPort.html>;
<http://daily.sightline.org/2012/01/25/what-coal-dust-looks-like-in-alaska/>

³³ For Roda and Newport News, Virginia, see *Pollution Board take action on coal dust complaints*, [Tricitis.com](http://www2.tricitis.com), http://www2.tricitis.com/news/2010/mar/31/pollution_board_takes_action_on_coal_dust_complain-ar-235582/); *Newport News looking into wind fence*, Daily Press, August 1, 2011, http://articles.dailypress.com/2011-08-01/news/dp-nws-coal-dust-folo-20110801_1_weathersolve-coal-dust-wind-fence..

³⁴ For Mobile, Alabama, see *ADEM to Inspect McDuffie Terminal after Coal Dust Plume spotted*, Conservation Alabama, March 14, 1009, http://www.conservationalabama.org/index.asp?Type=B_PR&SEC={B8BDE2CD-75C7-49F3-B613-2ABEBFB938E1}&DE={7DE5A4C3-40E5-4C26-B650-E03586EFE1D0}

transportation, loading, processing, and shipping facilities. Even communities like Metropolis, Illinois, where there is no coal export or barging facility, suffer coal dust problems from passing coal barges. The Corps' analysis must also include dust impacts in the communities along the Columbia River where barges would pass.³⁶

PRB coal is also known to be particularly susceptible to the formation of coal dust, because of its friable nature and the fact that PBR coal degrades rapidly once removed from the mine.³⁷ As the report from Mr. Hossfeld states, the "most dramatic result (of coal degradation) can be found by observing the top surface of an open railcar delivering PBR coal to the plant from the mine."³⁸ The fundamental cause of degradation is the drying and resulting cracking of the coal particles, which can be exacerbated by the loading and handling of coal during the transportation process. The threat from emissions of fugitive coal dust is even more important to consider here because of recent reports that shippers have been failing to comply with tariffs requiring them to reduce coal dust on railways.³⁹

Coal dust also threatens to cause adverse impacts to salmon and steelhead. A study published in 1997 noted how coal dust can enter the aquatic environment as a result of "storm water discharge, coal pile drainage run-off, and when coal dust from storage piles, transfer conveyor belts and rail cars becomes airborne and is deposited in the surrounding environment (i.e. fugitive coal dust) (Xuan and Robins, 1994)."⁴⁰ The authors also noted that the "practice of using additives, such as surfactants, in the water being used for surface wetting of coal piles can increase the solubility of hydrophobic compounds and thus their mobility in the aquatic environment (Enzminger and Ahlert, 1987)."⁴¹ The authors further noted the risks of polycyclic aromatic hydrocarbons ("PAHs") "since chironomid larvae, a significance food source for juvenile salmon, have

³⁵ For Floyd County, Kentucky, see *Goble-Roberts Residents Sue Over Coal Dust*, Floyd County Times, http://www.floydcountytimes.com/view/full_story/1415092/article-Goble-Roberts-residents-sue-over-coal-dust.

³⁶ *City wants say in coal terminal across state border*, <http://www.wpsdlocal6.com/news/local/City-wants-say-in-coal-terminal-across-state-border-148338585.html>; *City speaks out against coal terminal*, <http://www.wpsdlocal6.com/home/ticker/City-speaks-out-against-coal-terminal-146924765.html>.

³⁷ Roderick J. Hossfeld, *PBR Coal Degradation – Causes and Concerns*. Ex. 43.

³⁸ *Id.* at 5.

³⁹ Sayeh Tavangar, *Some Shippers Not Complying with BNSF Coal Dust Tariff*, WUSA9.com (Nov. 3, 2011) (available at <http://www.wusa9.com/news/local/story.aspx?storyid=173329>). Ex. 29.

⁴⁰ P.M. Campbell, R.H. Devlin, *Increased CYP1A1 and ribosomal protein L5 gene expression in a teleost: The response of juvenile Chinook salmon to coal dust exposure*, *Aquatic Toxicology* 38 (1997) 1-15. Ex. 1.

⁴¹ *Id.*

been shown to bioaccumulate PAHs in estuaries contaminated with coal byproducts (dickman et al., 1992).”⁴² In their study, the authors exposed juvenile salmon to coal dust and concluded that their results “directly demonstrate that juvenile Chinook salmon exposed to coal dust exhibit increased hepatic expression of both L5 and CYP1A1 genes which encode proteins which play crucial roles in cellular metabolism.”⁴³

In addition to impacts to salmon and steelhead, the Corps must assess impacts to water quality.⁴⁴ Storm water and waste water releases from coal storage facilities are typically acidic, and coal runoff may contain high concentrations of copper, iron, aluminum, nickel, and other constituents present in coal.⁴⁵ The Corps must consider both point and non-point pollution, and it must also assess compliance with applicable effluent limitations and water quality standards in both Oregon and Washington. We emphasize the importance of the Corps considering impacts to the narrative water quality criteria issued by the Oregon Department of Environmental Quality and the Washington Department of Ecology as well as the anti-degradation requirements of both states.⁴⁶ We also emphasize the importance of the Corps seeking and obtaining a certification of compliance with water quality standards from the Oregon Department of Environmental Quality and Washington Department of Ecology pursuant to Section 401 of the Clean Water Act.

Given the potential adverse impacts of coal dust on human health and the environment, several critical areas of uncertainty exist regarding Ambre’s proposal, which the Corps must resolve in order to reach a rational conclusion on its public interest review. Those areas of uncertainty include the following.

- *How will Ambre handle 8.8 million tons of coal per year in a “nearly fully enclosed” terminal?* The application fails to disclose any narrative or engineering drawings that explain how this “near fully enclosed” facility will operate. The Corps therefore has no way of independently evaluating if Ambre can deliver on its promise of handling nearly 9 million tons of coal per year in a “near fully enclosed” environment, including an “enclosed” over-water coal conveyor system. To the best of our knowledge, there is no other enclosed coal handling facility on this scale or even close anywhere in the world. In 2010, Ambre proposed an uncovered, 5 million ton per year coal export terminal in Longview, Washington. It is unclear why the project applicant now believes that a covered terminal, handling nearly double the quantity of coal each year, can operate in a

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 30 C.F.R. § 320.4(d).

⁴⁵ Environmental Protection Agency, *Steam Electric Power Generating Point Source Category: Final Detailed Study Report*, EPA 821-R-09-008 (October 2009) at 3-22-23 (noting that coal pile runoff contains a number of contaminants). Ex. 12.

⁴⁶ Oregon Administrative Rules Chapter 340, Division 41.

fully enclosed environment. Moreover, by asking for public comment on its public interest review before releasing information on how Ambre proposes to achieve a “near fully enclosed” process, the Corps has foreclosed meaningful public comment on Ambre’s proposal. Ambre also fails to disclose how it will handle and dispose of coal dust that accumulates inside the “nearly enclosed” coal transfer and loading infrastructure. How will that coal dust be handled, where will it be disposed of, and what risks are involved?

- *How long will Ambre stage uncovered trains at its Port of Morrow coal export facility?* Trains delivering coal from the Powder River Basin are typically 1.5 miles long.⁴⁷ To date, Ambre has made no claim that its coal trains will be covered, which is consistent with the industry practice of saving money by transporting coal in uncovered trains.⁴⁸ In attempting to control coal dust from trains, the coal industry has used surfactants and coal loading techniques to varying degrees of success. It is unclear if coal trains delivering coal to the Ambre terminal will use any techniques to reduce coal dust emissions and, in turn, discharge coal-laden process wastewater and stormwater. Moreover, even if such techniques are employed, fugitive coal dust remains an ongoing problem for the coal industry.⁴⁹
- *How will Ambre dispose of wastewater contaminated with coal dust and chemical dust suppressants?* Coal handling facilities generate large amounts of coal dust.⁵⁰ This is true for both coal storage facilities that are located outdoors, as well as enclosed facilities.⁵¹ One of the most common industry practices for attempting to suppress coal dust is spraying coal piles with water and/or chemicals.⁵² In turn, coal handling facilities typically generates large amounts of coal-contaminated

⁴⁷ Floyd McKay, *Everett-Vancouver: A Railroad Bottleneck if Coal Trains Increase*, Crosscut.com (Jul. 27, 2011) (available at <http://crosscut.com/2011/07/27/coal-ports/21154/Everett-Vancouver:-a-railroad-bottleneck-if-coal-trains-increase-/?pagejump=1>). Ex. 26.

⁴⁸ Eric de Place, *Northwest Coal Exports – Some Common Questions About Economics, Health, and Pollution*, Sightline Institute (Sept. 2011) (available at www.sightline.org/research/energy/coal/coal-FAQ.pdf). Ex. 28.

⁴⁹ *Id.*; see also Kieran Moran, *Coal Dust Returns to Gladstone*, The Observer (Jan. 28, 2011); *Government Pledges Millions to Combat Coal Dust in Our Port*, The Observer (June 4, 2008); Shaun Thomas, *Port Edward Raises Concerns After Large Coal Cloud Spotted Over Ridley Terminals*, TheNorthernView.com (June 16, 2011). Exs. 27; 9; 24.

⁵⁰ Ex. 28.

⁵¹ Daniel Mahr, PE et al., *Coping with Coal Dust*, Power – Business and Technology for the Global Generation Industry (Mar. 1, 2012). Ex. 34.

⁵² *Id.*; Douglas L. Cope and Kamal K. Bhattacharyya, *A Study of Fugitive Coal Dust Emissions in Canada*, Prepared for the Canadian Council of Ministers of the Environment (CCME) (Nov. 2001). Ex. 4.

wastewater, and the scientific community has documented concerns about the risks posed by chemicals used in dust suppression products.⁵³ Ambre's application contains no discussion of how it intends to handle coal-contaminated wastewater generated during the storage and handling of 8.8 million tons of coal.

- *How will Ambre discharge coal-contaminated stormwater?* Ambre's application fails to acknowledge, let alone address, handling and treatment of contaminated stormwater. Like process wastewater generated from coal dust suppression, coal terminals are also notorious for generating large quantities of contaminated stormwater.⁵⁴ Even if Ambre can operate a "near fully enclosed" coal export terminal, the facility will generate coal contaminated stormwater when: (1) coal is delivered to the facility in uncovered trains; (2) empty coal trains containing coal residue leave the facility (and will presumably spend some amount of time exposed to the elements at the facility); and (3) fugitive coal dust from the terminal's operations will contaminate stormwater.
- *How will Ambre ensure that coal does not enter the Columbia River when it loads coal barges?* Other coal export facilities in the U.S. and abroad face serious challenges controlling coal spillage and coal dust during the conveyor-to-ship and/or conveyor-to-barge loading process. Ambre's application states that "[t]he completed conveyor will be enclosed and will have a retractable chute to eliminate potential fugitive dust."⁵⁵ At other coal terminals, operators continue to discharge coal via spillage and dust even with the use of "enclosed" conveyors and retractable chutes. For example, at the AES coal export terminal in Seward, Alaska, which handles roughly 1 million tons of coal per year, the company continues to face serious challenges controlling coal spillage and dust even after enclosing the conveyor system and employing retractable chutes.
- *How does Ambre plan to prevent pollution from coal dust along the rail corridor during transportation?* Ambre's application does not in any way address the potential for communities along the rail corridor to suffer from the effects of coal dust pollution caused by daily traffic from open rail cars containing PRB coal

⁵³ Piechota et al., Ex. 5.

⁵⁴ Eric de Place, *Northwest Coal Exports – Some Common Questions About Economics, Health, and Pollution*, Sightline Institute (Sept. 2011) (available at www.sightline.org/research/energy/coal/coal-FAQ.pdf) (Ex. 28); Andrew Jensen, *Judge Allows Lawsuit: Seward Coal Facility Faces Clean Water Act Suite*, Peninsula Clarion (Jan. 24, 2011) (available at http://peninsulaclarion.com/stories/012411/new_775559217.shtml) (Ex. 19); Joe Lawlor, *Coal Dust, Piles an Issue for Southeast Newport News*, Daily Press (Jul. 16, 2011) (available at http://articles.dailypress.com/2011-07-16/news/dp-nws-cp-nn-coal-dust-20110716_1_coal-dust-coal-piles-coal-terminals) (Ex. 25).

⁵⁵ Application at 4.

exposed to the elements. Similarly, Ambre also neglects to discuss impacts to aquatic species or the environment near or adjacent to the rail corridor used to the transport coal to the Port of Morrow facility.

- *How does Ambre plan to limit pollution from coal dust at the Port Westward facility?* Ambre’s application similarly fails to address in any way the limitation of coal dust pollution from fugitive dust, process wastewater or stormwater at the Port of Westward facility near St. Helens. Without this information, the Corps cannot analyze the potential cumulative impacts of the proposed activity and cannot reach a rational and lawful public interest determination. Similarly, without this information, the public cannot participate meaningfully in the public interest review.

As EPA stated in its recent letter requesting an EIS, diesel emissions also threaten to degrade air quality on impact human health. Fine particular matters associated with diesel emissions “can cause lung damage, aggravate respiratory disease such as asthma and are thought to be a human carcinogen. Diesel emissions have a high potential to impact people who are sensitive to the health effects of fine particles (e.g. children, elderly, and those with existing heart or lung disease, asthma or other respiratory problems).”⁵⁶

2. The Adverse Impacts of Coal Combustion, Mining and Transportation on Climate Change and Ocean Acidification.

In conducting its public interest review, the Corps must give serious consideration to the greenhouse gas emissions associated with coal combustion, mining and transportation and the resulting impacts on climate change and ocean acidification, which threaten to impose a host of adverse impacts on human health and the natural resources of the Pacific Northwest and the Columbia River ecosystem. Ambre’s proposal to export **8.8 million tons of coal** is nearly twice the amount of coal burned by Oregon’s only coal-fired power plant, PGE Boardman, which burns up to 5 million tons of coal per year. Combustion of 8.8 million metric tons of coal will generate at least **16 million metric tons of CO₂ annually**⁵⁷ – roughly equivalent to the annual emissions of **3.6 million U.S. cars**, or about **24% of Oregon’s annual carbon emissions**.

Moreover, to consider properly the cumulative impacts⁵⁸ of Ambre’s proposal, the Corps must consider the carbon dioxide emissions associated with the numerous other

⁵⁶ See *infra* n 8.

⁵⁷ EPA estimates that that burning one rail car containing 90.89 metric tons of coal results in the emissions of 183.65 metric tons of carbon dioxide. See <http://www.epa.gov/cleanenergy/energy-resources/refs.html>.

⁵⁸ In the context of performing its analysis under NEPA, the Ninth Circuit has stated that the “impact of greenhouse gas emissions on climate change is precisely the kind of

coal export facilities proposed for the West Coast, many of which are pending before the Corps in the form of permit applications under the Rivers and Harbors Act and/or the Clean Water Act.⁵⁹ There are currently at least six proposed coal export facilities in Washington and Oregon, which, combined, would export at least 150 million tons of coal/year.⁶⁰ Those combined impacts are discussed at great length in a paper attached to these comments.⁶¹

In conducting its public interest analysis, the Corps must use the most up-to-date information available on the causes and implications of global warming. In 2007, the United Nations' Intergovernmental Panel on Climate Change ("IPCC") released its frequently cited report reflecting the scientific consensus that unrestrained GHG emissions are causing global warming. As summarized by the UN in a press release:

The IPCC, which brings together the world's leading climate scientists and experts, concluded that major advances in climate modeling and the collection and analysis of data now give scientists "very high confidence" – at least a nine out of ten chance of being correct – in their understanding of how human activities are causing harm the world to warm. This level of confidence is much greater than the IPCC indicated in their last report in 2001. The report confirmed that it is "very likely" that greenhouse gas emissions have caused most of the global temperature rise observed since the mid-twentieth century. Ice cores, going back 10,000 years, show a dramatic rise in greenhouse gases from the onset of the industrial age. The co-chair of the IPCC working group stated, "There can be no question that the increase in these greenhouse gases are dominated by human activity."

The United Nations went on to summarize the key findings of the report:

The report describes an accelerating transition to a warmer world – an increase of three degrees Celsius is expected this century – marked by more extreme temperatures including heat waves, new wind patterns,

cumulative impacts analysis that NEPA requires agencies to conduct." *See Center for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1217 (9th Cir. 2008).

⁵⁹ The White House Counsel on Environmental Quality has released a draft guidance document that can assist the Corps in determining how to assess the impacts of the greenhouse gas emissions associated with the proposed coal export facility. Nancy H. Sutley, Chair, *Memorandum for Heads of Federal Departments and Agencies, Re: Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions* (Feb. 18, 2010). Ex. 17.

⁶⁰ Washington proposals include Cherry Point (Bellingham), Longview and Grays Harbor; Oregon facilities include St. Helens, Coos Bay and Port of Morrow.

⁶¹ Dr. Thomas M. Power, *The Greenhouse Gas Impact of Exporting Coal from the West Coast – An Economic Analysis*. Ex. 47.

worsening drought in some regions, heavier precipitation in others, melting glaciers and arctic ice, and rising global sea levels.

Scientific analysis since then has demonstrated that the urgency to act on climate impacts is even greater than it was in 2007. The recent Copenhagen Climate Science Congress, attended by 2,000 scientists, concluded with this “Key Message 1:”

Recent observations confirm that, given high rates of observed emissions, the worst-case IPCC scenario trajectories (or even worse) are being realized. For many key parameters, the climate system is already moving beyond the patterns of natural variability within which our society and economy have developed and thrived. These parameters include global mean surface temperatures, sea-level rise, ocean and ice sheet dynamics, ocean acidification, and extreme climactic events. There is a significant risk that many of the trends will accelerate, leading to an increased risk of abrupt or irreversible climate shifts.⁶²

Numerous studies predict the severe impact from climate change in Oregon, including dramatic reductions in snowpack, declining river flows, increased deaths from temperatures and air pollution, increased risk of wildfires and resulting conversions in vegetation type, loss of salmon and shellfish habitat, lost hydropower generation, and flooding. The Oregon Department of Energy summarizes these impacts, including impacts specific to “the water resources of the state”:

Rain and Snow Patterns

Rainstorms and snowstorms could increase in severity, but less snow would build up in the mountains. Snow packs might melt faster, increasing flooding. Less water would be available for recreation, irrigation, drinking and fish habitat. The concentration of pollutants in the water could increase during summer and fall.

Sea Level Rise

A rise in sea level could threaten beaches, sandy bluffs and coastal wetlands. Coast town could experience more flooding, causing increased damage to roads, buildings, bridges, and water and sewer systems.

Diminished Water Supply and Crop Productivity

Oregon’s crop and livestock could be affected by warmer temperatures, less water availability and drier soils. Some crops, such as wheat, might

⁶² University of Copenhagen, Climate Office, Press Release, *International Scientific Congress Climate Change: Global Risks, Challenges, and Decisions – Key Messages from the Congress* (Mar. 12, 2009) (available at http://climatecongress.ku.dk/newsroom/congress_key_messages/). Ex. 11.

thrive in warmer temperatures, while others, such as potatoes, could be harmed. Less water available for irrigation would harm agriculture.

Ecosystems

Native species adapted to Oregon's climate could suffer if temperatures rise. Warmer streams and rivers would harm salmon and other native species and non-native species could replace them. The cultural practices of Oregon's tribes could be affected, as could the businesses and recreation practices of those who rely on the state's native species.⁶³

Closely associated with climate change is the threat of ocean acidification, which also results from anthropogenic emissions of greenhouse gasses. In 2010, the National Research Council released a report entitled *Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean*.⁶⁴ The authors of the report reached the following conclusion:

The chemistry of the ocean is changing at an unprecedented rate and magnitude due to anthropogenic carbon dioxide emissions; the rate of change exceeds any known to have occurred for at least the past hundreds of thousands of years. Unless anthropogenic CO₂ emissions are substantially curbed, or atmospheric CO₂ is controlled by some other means, the average pH of the ocean will continue to fall. Ocean acidification has demonstrated impacts on many marine organisms. While the ultimate consequences are still unknown, there is a risk of ecosystem changes that threaten coral reefs, fisheries, protected species, and other natural resources of value to society.⁶⁵

More recent research has definitively linked "the collapse of oyster seed production at a commercial oyster hatchery in Oregon to an increase in ocean acidification."⁶⁶ The study concluded that "increased seawater carbon dioxide (CO₂) levels, resulting in more corrosive ocean water, inhibited the larval oysters from developing their shells and growing at a pace that would make commercial production

⁶³ Oregon Department of Energy, *Climate Change in Oregon* (available at <http://www.oregon.gov/ENERGY/GBLWRM/climhme.shtml>). Ex. 45.

⁶⁴ Committee on the Development of an Integrated Science Strategy for Ocean Acidification Monitoring, Research, and Impacts Assessment, National Research Council, *Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean* (2010). Ex. 14.

⁶⁵ *Id.* at 3.

⁶⁶ National Science Foundation, Press Release 12-070, *Ocean Acidification Linked With Larval Oyster Failure in Hatcheries* (Apr. 11, 2012) (available at http://www.nsf.gov/news/news_summ.jsp?cntn_id=123822&org=OCE&from=news).

Ex. 38.

cost-effective.”⁶⁷ This study demonstrates that the emissions associated with the proposed coal export facility at the Port of Morrow, and more generally across the West Coast, threaten to impose dramatic economic consequences in the Pacific Northwest to existing water-dependent uses, including shellfish production, recreational and subsistence harvesting of shellfish, and fishing.

The Corps must also address the impacts of coal mining, which causes a broad array of environmental harms through contamination of air, surface and groundwater in addition to the release of greenhouse gases that will contribute to the problems of climate change and ocean acidification. The coal proposed to be shipped through Morrow is “from Montana and Wyoming.”⁶⁸ More specific information is needed about the mines that plan to ship coal through this proposed barging port to fully assess the impacts associated with the mining. Still, Montana and Wyoming are the two states that compose the Powder River Basin and there are several known environmental issues associated with mining there that must be analyzed. For instance, many underground coal mines in the West cannot be mined unless significant amounts of explosive methane are removed from the mine. In many cases, the methane is then simply vented to the atmosphere untreated, where it has over 20 times the heat trapping ability of CO₂.⁶⁹ The Corps needs to analyze methane problems, in addition to other air impacts including ozone and PM-10. Any additional mining that would occur due to plan to export coal—such as leasing new tracts of land to facilitate coal export—must also be included in this analysis.

The impacts of mining on water quality and water quantity must also be analyzed. The coalbed in the Powder River Basin is itself an aquifer. As mentioned in the DEIS for the South Gillette Area mines, the water near the mine “serves as a regional aquifer... coal water is used throughout the region as a source of stock water and occasionally for domestic use.”⁷⁰ Mining and nearby coalbed methane development has significantly impacted these water resources, creating a “continuous cone of depression” near the South Gillette coal tracts.⁷¹ “Roughly 30 years of surface mining and the more recent CBNG development has resulted in complete dewatering of the coal aquifer in localized areas...”⁷² Water drawdown and restoration methods and timetables, and ensuring compliance with SMCRA, including contemporaneous reclamation requirements, must all be analyzed. Additionally, the air impacts of mining must be analyzed.

⁶⁷ *Id.*

⁶⁸ *See* Public Notice at 1.

⁶⁹ EPA, methane, <http://www.epa.gov/methane/>

⁷⁰ U.S. Bureau of Land Management, *Draft Environmental Impact Statement for South Gillette Area Coal Lease Applications* at 3-13 (October 2008) (available at <http://www.blm.gov/pgdata/content/wy/en/info/NEPA/documents/hpd/SouthGillette.html>

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⁷¹ *Id.* at 3-82

⁷² *Id.*

To summarize, the Corps must assess the direct, indirect and cumulative impacts resulting from the emissions of greenhouse gasses that would result from the proposed combustion, mining and transportation of coal that would be handled by the proposed coal export facility at the Port of Morrow. In doing so, the Corps must assess the totality of greenhouse gas emissions associated with all of the coal export facilities that are currently proposed for the West Coast, and the Corps must not only consider the total emissions but also the resulting impacts to climate change and the associated impacts on human health and natural resources resulting from rising temperatures, changing climatic patterns, rising sea levels, and increasing ocean acidification.

3. The Adverse Impacts on Public Safety and Welfare

The Corps must also consider closely the potential adverse impact to human health and safety resulting from the transportation and handling of large amounts of PRB coal by trains, which will pass through numerous local communities between the mine and Port Morrow. Each fully loaded train is over a mile long, and this proposal would significantly increase the daily number of trains along the rail route. These trains will bisect multiple communities along the route, leading to significant traffic delays and potential safety issues at grade-crossings. The delay of only a few minutes for an emergency response vehicle can mean the difference between life and death for citizens in these rural communities. In addition, increased rail traffic will lead to increased collisions between passenger vehicles, pedestrians, and trains; there are approximately 3,000 vehicle collisions with coal trains each year already, and 900 pedestrian accidents.⁷³

Coal dust is a ballast safety issue and has been linked to train derailments, as discussed in a recent proceeding before the Surface Transportation Board (STB), which found coal dust to be “a pernicious ballast foulant.”⁷⁴ “Coal dust, even in small amounts, poses a real threat to the integrity of the ballast section and track stability.”⁷⁵ Coal dust has been shown to be a cause of rail bed instability and derailments, which can pose a

⁷³ Daniel A. Lashof et al., Natural Resources Defense Council, *Coal in a Changing Climate* (Feb. 2007). Ex. 8.

⁷⁴ See Surface Transportation Board Decision, *Re: Ark Arkansas Electric Cooperative Corporation - Petition for Declaratory Order*, Docket No. FD 35305 (Mar. 3, 2011) (available at <http://www.stb.dot.gov/decisions/readingroom.nsf/WebDecisionID/40436?OpenDocument>).

⁷⁵ See Surface Transportation Board Hearing Transcript, *Re: Arkansas Electric Cooperative Corporation – Petition for Declaratory Order*, Docket No. FD 35305 (July 29, 2010) (available at [http://www.stb.dot.gov/TransAndStatements.nsf/8740c718e33d774e85256dd500572ae5/9e49ebf2fea431f1852578460066c5cb/\\$FILE/0729stb-exh.pdf](http://www.stb.dot.gov/TransAndStatements.nsf/8740c718e33d774e85256dd500572ae5/9e49ebf2fea431f1852578460066c5cb/$FILE/0729stb-exh.pdf)).

significant public safety hazard.⁷⁶ This is particularly true with coal trains, as coal from the Powder River Basin is highly flammable.⁷⁷ Right of way fires on the land of property owners along the rail line are also a risk.⁷⁸ Finally, the storage of this highly flammable coal at the proposed facility poses a public safety hazard, as coal stored in piles has been known to spontaneously combust.⁷⁹

The Morrow Pacific Project’s significant increase in barge traffic from the Port of Morrow to Port Westward will also adversely impact public safety and welfare. According to Ambre’s recently submitted Biological Assessment, the project will increase the number of barges on the Columbia River by 94%. Table 3-5 from the draft Biological Assessment aims to capture the drastic increase in barge traffic:

Table 3-5. Summary of Barge and Tow Traffic per Year at Bonneville Dam for Project Full Capacity

Additional Traffic from the Project (Per Year)	Total Traffic	Bonneville Dam		Effect Relative to:		
		Current Level (2010)	Historic High (1995)	Current Levels (2010)	Historic High Levels (1995)	
Total Barges	5,029	10,382	5,353	8,037	94% increase	29% increase
Total Tows	1,258	3,972	2,714	4,040	46% increase	98% of historic high

In fact, Table 3-5 and Ambre’s draft Biological Assessment underestimates the true impact of the project on the Columbia River upstream of Bonneville Dam. Specifically, using Bonneville data ignores the fact that these barges are now going all the way to Boardman, through two more locks and 100 more miles of river. There are almost 1000 less barges going through John Day Dam than going through Bonneville Dam.⁸⁰ In turn, without accounting for barge traffic through the John Day and The Dalles dams, the true increase of barge traffic from the Port of Morrow to Bonneville Dam is not captured.

The significant increase in barge traffic also increases the risk of barge groundings and spills in the Columbia River. These risks are not theoretical. For example, in 2009 a barge carrying a million gallons of gasoline ran aground in the

⁷⁶ David Gambrel, *Coal Dust Control – Arkansas Electric Petition for Declaratory Order*, *Coal Age* (Jan. 6, 2012) (available at <http://www.coalage.com/index.php/departments/transportation-tips/1594-coal-dust-control-arkansas-electric-petition-for-declaratory-order.html>). Ex. 30.

⁷⁷ Ex. 43.

⁷⁸ See STB Hearing Transcript at 69: 7-10.

⁷⁹ *Id.*

⁸⁰ Ex. 44. Lockage information is taken from the web site of the U.S. Army Corps of Engineers.

Columbia River near the City of Hood River. An investigative report by the *Oregonian* uncovered U.S. Coast Guard documents describing a “great deal of confusion” over who was in charge, with agencies responsible for containing a fuel spill left out of the loop for hours after the accident.⁸¹ The Corps must consider the potential adverse impacts of significantly increasing barge traffic on the dynamic Columbia River, and the increased potential for groundings and spills associated with the increased volume of barge traffic.

Similarly, the Corps must evaluate the increased risk of direct conflicts with existing barge traffic on the Columbia, including the increased risk of catastrophic accidents. For example, on the Mississippi River, which experiences a higher volume of barge traffic than the Columbia, accidents involving barge collisions demonstrate the increased risk to human life and the environment posed by increasing barge traffic. For example, on May 20, 2010, three grain barges sank on the Mississippi River near Baton Rouge following a collision between a barge transporting food products and a barge transporting sulfuric acid.⁸² The accident prompted the U.S. Coast Guard to close the shipping channel. In mid-2008, a barge split open in a collision with a tanker, resulting in an oil spill and prompting federal agencies to close 85 miles of the Mississippi River to traffic for almost a week. According to reports, the accident was the result of human error.⁸³ On February 17, 2012 a tanker barge traveling downriver on the Mississippi rammed a crane barge being pushed upriver about 50 miles from New Orleans. The collision tore a 10-foot by 5-foot gash above the waterline of the double-hulled tanker barge and oil spewed less than 10,000 gallons of Louisiana sweet crude oil into the water.⁸⁴ These are just several examples of accidents involving barge traffic. Given the significant increase in river traffic from Ambre’s project, the Corps must assess the increased risk of barge accidents and potential threats associated with these accidents, including coal spillage, barges sinking, and oil spills, as part of the public interest review for the Morrow Pacific Project.

4. The Adverse Impacts of the Proposed Construction and Shipping Activities on Habitat for Salmon and Steelhead

⁸¹ Scott Learn, *New Dawn Fuel Barge Ran Aground in the Columbia River, Response Was Confusion, Report Says*, *Oregonian* (June 20, 2010) (available at http://www.oregonlive.com/environment/index.ssf/2010/06/new_dawn_fuel_barge_ran_around_1.html). Ex. 15.

⁸² Susan Buchanan, *River Traffic Resumes After Barge Accident But Threats Remain*, *The Louisiana Weekly* (June 4, 2011) (available at <http://www.louisianaweekly.com/river-traffic-resumes-after-barge-accident-but-threats-remain/>). Ex. 23.

⁸³ *Id.*

⁸⁴ *New York Daily News, Barge Collision in Mississippi River Causes Oil Spill* (Feb. 12, 2012) (available at http://articles.nydailynews.com/2012-02-18/news/31073328_1_barge-collision-tanker-barge-oil-spill). Ex. 32.

The Corps must also include in its public interest analysis a consideration of the impacts of in-water work and above-water structures on endangered and threatened salmon and steelhead, as well as the project's impacts on water quality and Tribal and recreational fishing. The proposed dock and associated structures include: 1) 572 cubic yards of permanent fill below the ordinary high water elevation ("OHWE"); 2) 153 cubic yards of permanent fill below the OHWE; 3) 256.5 cubic yards of temporary fill below the OHWE; 4) 43 cubic yards of temporary fill above the OHWE; 5) above-surface water area of impact of 15,151 square feet; 6) 140 permanent piles ranging from 14 to 25 inches in diameter; and 7) 110 temporary 16-inch diameter piles. The construction activities and infrastructure would be located within designated critical habitat for no less than thirteen (13) separate threatened or endangered aquatic species.

Because of the substantial amount of fill, the placement of permanent in-water infrastructure, and the associated construction activities, Ambre's proposal will result in the direct loss of critical habitat. At this point, however, the material provided to the Corps, and to the public, is inadequate to allow the Corps to conduct a reasonable analysis of the potential impacts to habitat for listed aquatic species. As an example, Ambre states that the project will involve a total of 828.5 cubic yards of fill below OHWE.⁸⁵ The materials made available to the public, however, do not include any drawings demonstrating the location of the fill material, the method for removing temporary fill from below the OHWE, or the resulting impacts on listed species.

A plethora of scientific information documents that adverse impacts of riparian and aquatic development and fill activities on Pacific Northwest salmon and steelhead. The National Marine Fisheries service concluded in 1998 that "[w]atershed development" and "dredged and filled estuarine rearing areas" have led to the decline of salmon and steelhead in Puget Sound.⁸⁶ Similarly, in the Lower Columbia River, NMFS concludes that "dredge and fill activities associated with development and navigation, and water quality degradation are significant sources of reduced habitat quantity and quality."⁸⁷

The proposed dock will also cause more favorable conditions for predators of salmon and steelhead. The Residential Dock Guidelines from the Oregon Department of Fish and Wildlife explain:

Docks and ramps leading to docks create very dark shadows which in turn create conditions more favorable to predation. Over-water structures create a light/dark interface which allows ambush predators to hold in the

⁸⁵ Application at 2.

⁸⁶ National Marine Fisheries Service, Protected Resources Division, *Factors Contributing to the Decline of Chinook Salmon: An Addendum to the 1996 West Coast Steelhead Factors For Decline Report* (June, 1998). Ex. 3.

⁸⁷ *Id.* at 14-15.

darkened areas and watch for prey against a bright background. Prey cannot see into the dark shadow and therefore are less successful at avoiding predators. Shadows caused by docks also have a negative effect on aquatic macrophytes, epibenthic algae and pelagic phytoplankton. Aquatic plants are the foundation for most aquatic food webs. Reducing plant diversity and productivity can have adverse effects to higher organisms (invertebrates, fishes, amphibians, birds and various terrestrial animals).⁸⁸

Although ODFW has not published industrial dock guidelines, the dock shading impacts described in the Residential Dock Guidelines should inform the Corps' decisions on Ambre's proposed industrial dock infrastructure. Ambre's application suggests that the proposed height of the dock will address predation impacts by reducing shading, but the Corps should independently verify this information.

In addition, as discussed above, fugitive emissions of coal dust, discharge of stormwater and discharge of wastewater all pose threats to water quality, habitat for salmon and steelhead and bioaccumulation of toxics and heavy metals in prey for salmon and steelhead. The Corps must also consider these issues in conducting its public interests analysis.

5. The Adverse Impacts of Air Pollution from Combustion of Coal in Asia

The ultimate burning of coal exported from the would be facility at the Port of Morrow would inevitably result in toxic and carcinogenic air pollution that would be transported back to the Pacific Northwest and other regions of the United States. In determining whether to authorize a coal export facility at the Port of Morrow, and more broadly across the Pacific Northwest, the Corps must consider the direct, indirect and cumulative impacts of the air pollution generated by the consumption of coal exported to Asia markets.

The impacts of coal burning in Asia and the associated air pollution in the United States have been addressed in numerous studies, and the Corps will have readily available information to draw upon in conducting its analysis. In particular, several studies have looked at mercury emissions and transport of air pollutants from Asia to North America. Mercury is a powerful neurotoxin and bioaccumulates in the food chain, which can particularly impact important aquatic species, such as fish, resulting in fish consumption advisories, which have been issued in 48 states.⁸⁹ Mercury emissions in the United States

⁸⁸ Oregon Department of Fish and Wildlife Residential Dock Guidelines. Ex. 46.

⁸⁹ Jaffe, Daniel et al., *Export of Atmospheric Mercury from Asia*, Atmospheric Environment 39 (2005) 3029-3038. Ex. 6. See also *China's Mercury Flushes into Oregon's River*, Oregonian (Nov. 24, 2006). Ex. 7.

have been the subject of extensive regulatory efforts, leading to some reductions in domestic emissions, but mercury emissions are rising, in some cases dramatically, in developing countries in Asia that depend heavily on coal fired power plants.⁹⁰ In the 2002-03 time frame, the emissions of mercury from Asia were estimated to be 56% of the total global anthropogenic emissions, and “*Asian emissions are estimated to contribute about 56% of the global anthropogenic emissions.*”⁹¹

There is also ample evidence suggesting that emissions in Asia contribute to additional types of air pollution. In March of this year, for instance, a new study by scientists from the National Oceanic Atmospheric Administration (“NOAA”) concluded that springtime air pollution from Asia can contribute to high surface ozone pollution in the western United States.⁹² The scientists developed a high-resolution model that is able to differentiate the effects of local emissions from Asian emissions, thereby quantifying the contribution of those emissions to pollution problems in the United States.⁹³

The export of coal from the Powder River basin threatens to impose a myriad of negative impacts on the natural resources of the Pacific Northwest. The Corps has a legal obligation to consider all of these impacts in determining whether the proposed coal export activities are in the public interest. The science has developed to the point where we now know that we cannot simply export coal to Asia and then close our eyes to the potential impacts of the ultimate combustion of that coal to power the foreign economies of developing countries. The exportation of Powder River Basin coal will inevitably subject the American public to toxic air pollution associated with well-known and harmful by-products of coal combustion, and the Corps must assume the responsibility of assessing these impacts on behalf of the American public. The information existing in the record at this time is simply inadequate for the Corps to carry out this important responsibility. The best way to do so would be to prepare a programmatic Environmental Impact Statement in cooperation with other federal agencies, including EPA, so that the resources of the federal government can be brought to bear on these complex and important issues of public welfare and the protection of the environment.

6. The Adverse Impacts on Existing Navigation, Fishing, and Recreational Uses of the Columbia River

As noted above, Ambre’s project calls for building a new, 1,160 foot long dock with an above-surface water area of 15,151 feet. The project also calls for significantly

⁹⁰ *Id.*

⁹¹ *Id.* at 3030 (emphasis added).

⁹² NOAA Press Release, *Asian Emissions Can Increase Ground-Level Ozone Pollution in U.S. West* (Mar. 5, 2012) (available at <http://researchmatters.noaa.gov/news/Pages/ozonestudy.aspx>). Ex. 35.

⁹³ More information on this topic is available at <http://daily.sightline.org/2012/04/03/do-asian-coal-plants-pollute-north-america/>.

increasing the amount of barge and ship traffic on the Columbia River. At the Port of Morrow, the proposed coal dock is located within two (2) miles of a recreational dock. User-conflicts already exist between barge traffic and fishing and public recreation. Ambre's barge and ship traffic will contribute to the existing conflicts. For example, Ambre's route will directly impact sections of the Columbia River, including Arlington, The Dalles, Rowena, Hood River, Cascade Locks, Portland, and estuary communities downstream of the Bonneville Dam, which are currently used for fishing and public recreation, including without limitation, boating, kayaking, canoeing, windsurfing, and kiteboarding.

The project will also increase Panamax ship traffic in the Columbia River Estuary (*i.e.*, between Port Westward and the mouth of the Columbia River) and through and over the Columbia River Bar. At coal export terminals on the east coast, delay in coal transport recently resulted in major traffic jams caused by ocean-going vessels awaiting coal transfers.⁹⁴ At Port Westward, Ambre's coal operations are located within close proximity to private and public fishing and recreational docks. The Corps must therefore carefully assess whether the project's barge and ship traffic will interfere with existing navigational, fishing and recreational uses of the Columbia River. We again emphasize the importance of considering the cumulative impacts of all barge and shipping traffic proposed by coal export facilities in the Columbia River system and the potential interference with existing uses of the River.

D. The Corps Does Not have Adequate Information on the Speculative and Poorly Documented Needs and Benefits Supposedly Associated with the Proposed Coal Export Facility.

In contrast to the numerous concerns about the potential adverse impacts of exporting Powder River Basin coal through the Columbia River at Port Morrow, there is virtually nothing in Ambre's application regarding the public need for and the benefit of the proposed project. The absence of such information suggests strongly that the Corps should deny the permit application.

Based on the information contained in Ambre's application, there is no "public need" for the project. Ambre relies primarily on increasing global energy use, and a conclusory statement about the increasing use of coal more particularly.⁹⁵ More specifically, Ambre cites to the increasing demand for coal from Asian countries, including Taiwan, South Korea, and Japan. The "public need" for the project supposedly derives from the fact that "[t]hese countries, which lack sufficient resources of coal, require stable consistent imports of low sulfur coal to meet energy needs."⁹⁶ At bottom,

⁹⁴ Robert McCabe, *Coal Ships Create a Traffic Jam on Hampton Roads Waters*, The Virginian Pilot (Feb. 21, 2011). Ex. 21.

⁹⁵ Application at 2.

⁹⁶ *Id.*

Ambre posits that the project is supposedly needed as a “means of shipping low-sulfur coal to US trade allies in Asia.”⁹⁷

The supposed demand from Asian countries does not meet the requirements of a public need pursuant to the applicable regulations. Those regulations certainly recognize that energy development plays a role in the public interest determination.⁹⁸ The regulations, however, clarify that energy development is relevant because of its importance as a “major *national* objective.”⁹⁹ Here, however, Ambre is proposing to export energy resources from the United States to developing countries in Asia, which will cause pollution, exacerbate climate change, and interfere in ecosystem health, recreation and navigation in our local communities. Ambre has not established any *national* need on behalf of the *American* public to export Powder River Basin coal to Asian companies, and this policy decision is certainly not for Ambre or the Corps to make in the context of a single, project-specific decision. Here too, the Corps should prepare a programmatic EIS to assess, with full public involvement, the needs of the American public to export outdated and dirty sources of energy to developing countries when the American public will suffer the adverse consequences of doing so.

Furthermore, by exporting cheap sources of dirty energy to Asian countries, this proposed project could actually undermine the ability of American companies doing business on American soil to compete in the international marketplace. Coal export could very well work against our national interest in innovating clean sources of renewable energy for our American manufacturers and industry.

In terms of the national interest, we refer the Corps to the recent letter from Rep. Edward Markey, who wrote the Government Accountability Office (“GAO”) seeking an investigation into whether the Bureau of Land Management (“BLM”) is receiving from private industry fair market value for coal mined from public lands in Wyoming and Montana.¹⁰⁰ Rep. Markey, noting the dramatic increase in coal exports, specifically questioned whether the American taxpayers are receiving “full value for energy resources held in the public trust, especially when mining companies are seeking to export hundreds of millions of tons of coal for premium prices.”¹⁰¹ Rep. Markey identified Ambre Energy, an Australian firm that has bought coal in Montana and Wyoming, as a company that says it is “on track to becoming a major supplier of US thermal coal to international markets.”¹⁰² Rep. Markey expressed concern that the government lacks “information about how the rapid growth of coal mining on federal land combined with

⁹⁷ *Id.*

⁹⁸ 30 C.F.R. § 320.4(n).

⁹⁹ *Id.* (emphasis added).

¹⁰⁰ Letter from Rep. Markey to Mr. Gene Dorado, Comptroller General, U.S. Government Accountability Office (Apr. 24, 2012). Ex. 42.

¹⁰¹ *Id.* at 1.

¹⁰² *Id.*

shrinking reserves and increasing exports produced from federal leases affect the value of U.S. coal.”¹⁰³

Based on all of this information, Ambre’s application is clearly inadequate to support the public interest determination required of the Corps prior to issuing the requested permit under the Rivers and Harbors Act. Ambre fails to explain why it is in the interests of the American public to allow an Australian company to export coal mined from our public lands, at highly suspect prices, to Asian countries that will then burn the coal, export their pollution to our communities, and exacerbate the effects of climate change and ocean acidification. We implore the Corps to slow this process down and make a deliberate and well-informed decision with the participation of the American public as to whether this is truly in our national interests. Ambre’s bare bones application does not provide any basis for determining that the interests of the American public are served by this coal export proposal.

Furthermore, Ambre has also provided virtually no information documenting benefits to the local economy or family-wage jobs. On this point, its application, in full, states as follows:

At the Port of Morrow through to the Port of Westward, the Morrow Pacific project creates local, family-wage jobs in Oregon, supports mining-related jobs nationally, and provides low-sulfur coal to Asian countries to generate electricity.¹⁰⁴

In order to balance adequately the significant environmental risks and risk to human health, safety and public welfare, the Corps requires much more detailed and specific information on the economic benefits to be derived from the proposed coal export project. This single sentence in Ambre’s application fails to provide any information that would allow the Corps to conduct the requisite analysis, and for this reason alone the Corps should reject Ambre’s proposal. Furthermore, we question whether a proposed coal export facility is the best way to create family wage jobs with valuable river-front industrial land in a Columbia River port. Coal transportation projects, in general, create far fewer jobs per acre of land occupied than other types of industrial uses appropriate for ports.¹⁰⁵ Furthermore, the potential harm to existing businesses from a coal export facility—such as from rail traffic, coal dust, noise, aesthetic and nuisance concerns—has not been analyzed. Given this information, the Corps must demand a far better analysis of the proposed benefits of this project prior to issuing the requested permit.

Additionally, it is unclear whether such a facility is even necessary. Coal exports are a risky commodity where the market functions in boom and bust cycles. Earlier coal

¹⁰³ *Id.* at 3.

¹⁰⁴ Application at 3.

¹⁰⁵ Ex. 28.

export facilities at the Port of Portland and in Los Angeles in the 1990s failed. The Port of Los Angeles closed six years after it opened following at least two fires and the accumulation of large amounts of coal dust.¹⁰⁶

To serve the national interests of the American public, we request and strongly urge the District Engineer to exercise his authority under 33 C.F.R. § 320.4(q) to “take an independent review of the need for the project from the perspective of the overall public interest.” This is particularly important in this case where the environmental costs are potentially significant, the project involves threats to public health, safety and welfare, and where previous coal export facilities proposed on the West Coast have failed.

E. The Corps Should Consider Alternative Locations and Methods to Accomplish the Objective of the Proposed Project.

As discussed above, the proposed export of Powder River Basin coal through West Coast ports is a highly suspect policy decision that jeopardizes a wide range of public interests and values. The federal government, in conducting a programmatic EIS, should make a deliberate and well-informed decision on whether coal export is in the best interests of the American public. Industry’s approach of addressing this larger question on a piecemeal basis in the context of individual project applications is bound to result in critical impacts being overlooked in a comprehensive manner.

But, even in the context of this site-specific decision, the Corps must still address the overall picture of West Coast coal export more broadly. In conducting the requisite public interest review, the Corps is to consider in its evaluation “[w]hether there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the object of the proposed structure or work.”¹⁰⁷ Here, Ambre frames the purpose of the project as developing “an environmentally responsible coal transfer facility in the Pacific Northwest for export of low-sulfur Montana/Wyoming coal to United States (US) trade allies in Asia.”¹⁰⁸ Despite the fact that no fewer than six total coal export proposals are currently pending on the West Coast, Ambre, in its Application, only discusses alternative means of exporting coal from the Port of Morrow.¹⁰⁹ The information provided by Ambre does not allow the Corps to conduct the analysis required by the regulations, and the application should therefore be denied.

In fact, Ambre itself is already pursuing an alternative to the project on the lower Columbia River: the “Millennium Bulk Terminals, LLC” coal export project. Unlike the Morrow Pacific Project, Ambre’s Millennium project calls for shipping coal (44 million

¹⁰⁶ *Id.*

¹⁰⁷ 33 C.F.R. § 320.4(a)(2)(i).

¹⁰⁸ Application at 2.

¹⁰⁹ *Id.* at 9-10.

tons per year) via rail to docks below the Columbia River dams capable of handling ocean-going vessels. Other coal companies are also pursuing alternatives to a rail-to-barge-to-ship coal export terminal. Kinder Morgan recently leased property at Port Westward to operate a 30 million ton per year coal export terminal using the rail-to-ship model. SSA Marine is seeking local, state, and federal permits to operate a 50 million ton per year coal export terminal at Cherry Point on Puget Sound. The Port of Coos Bay has also entered confidentiality agreements with coal export companies exploring rail-to-ship coal export terminals for up to 10 millions tons per year on the Oregon coast. Finally, the Port of Grays Harbor is considering rail-to-ship coal export terminal proposals on the Washington coast for 5 million tons per year or more. Although coal companies, including Ambre, are considering and proposing rail-to-ship coal export terminals across the Northwest, Ambre fails to consider this alternative in its application. While we certainly do not support any of these project, their existence demonstrates that Ambre's application fails to include information necessary for the Corps to carry out its public interest review.

The need for the Corps to conduct an adequate analysis of alternatives for moving coal, should the federal government decide that doing so is in the public interest, weighs heavily in favor of the Corps preparing a programmatic EIS to address this issue, as we requested in our letter dated April 12, 2012. The Corps should first determine in a programmatic EIS the purpose of and need for West Coast coal export more broadly before making decisions on any particular coal export proposal. This Application demonstrates the importance of doing so. Ambre simply ignores the fact that coal export proposals are also pending from Longview, Cherry Point, Coos Bay and other locations around the West Coast. There are at least ten coal export proposals pending in the Gulf region in Texas and Louisiana, many of which are to export Powder River Basin coal. In order to comply with its duty to consider "alternative locations . . . to accomplish the object of the proposed structure or work," the Corps must determine the appropriate level of U.S. coal export more broadly and then where those export facilities should be located. Here, Ambre asks that the Corps make its decision in a vacuum, irrespective of other pending proposals, without taking a big picture look at the need for and means of accomplishing the export of Powder River Basin coal to Asian countries.

In addition, Ambre's application is also inadequate because it excludes other possible alternatives, including: (1) transloading grain, cement, or another bulk commodity; (2) transporting coal via rail directly to ports capable of handling ocean-going vessels; (3) exporting Powder River Basin coal at an established coal export terminal; (4) exporting Powder River Basin coal via proposed Gulf coast ports; and (5) not exporting coal (*i.e.*, no action alternative).

F. The Corps Should Prepare a Programmatic and Then a Project-Specific Environmental Impact Statement Pursuant to the National Environmental Policy Act.

As has now been requested by a broad cross section of stakeholders from EPA to local municipalities and Governor Kitzhaber to the Washington Department of Natural Resources, the Corps must prepare an EIS to address the potential adverse impacts to the human environment resulting from coal export proposals. We again reiterate our request that the Corps first prepare a programmatic EIS to consider the issue of West Coast coal export more broadly, and, once that document is complete, a site-specific EIS for this individual project. The information and analysis prepared in the programmatic document will inform the project-specific analysis, which will take place later in time.

We are gravely concerned that the Corps appears, at this point, to be operating under the assumption that it will first prepare a project-specific environmental assessment and not a more rigorous EIS at both the programmatic and project-specific level.¹¹⁰ By way of this comment letter we strongly urge the Corps to forego preparation of an EA and to prepare an EIS. By doing so, the Corps will conserve limited agency resources by avoiding preparation of an EA that will in all likelihood result in a finding of significant impacts, thereby requiring preparation of an EIS. An EIS process will also provide a more thorough opportunity for public input and participation regarding an issue that has already generated significant controversy regarding the potential adverse impacts of coal export. Given the number of coal export proposals, the volume of coal, the adverse impacts associated with coal, the public controversy about this proposal and west coast coal export more broadly and the uncertainties involved with Ambre's proposal, the Corps will not be able to justify authorizing this project pursuant to an Environmental Assessment.

Section 101 of NEPA "declares a broad national commitment to protecting and promoting environmental quality."¹¹¹ Congress established important action-forcing procedures designed to ensure that the federal government consider the environmental impacts of Federal activities before they occur. These procedural requirements serve two important purposes. First, they ensure "that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts . . ."¹¹² Second, those procedures "also guarantee[] that the relevant information will be made available to the larger audience that may also play a role in both decisionmaking process and the implementation of that decision."¹¹³ "Simply 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

¹¹⁰ March 6, 2012 Public Notice.

¹¹¹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989).

¹¹² *Id.* at 349.

¹¹³ *Id.*

otherwise cast.”¹¹⁴ Publication of an EIS is designed to ensure “that the agency has indeed considered environmental concerns in its decisionmaking process”¹¹⁵

In certain circumstances, a government agency may prepare an EA to determine whether an action may have a significant effect on the human environment.¹¹⁶ An EIS is designed to “[b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or a finding of no significant impact” and is intended to include only “brief discussions . . . of the environmental impacts of the propose action and alternatives”¹¹⁷ An EIS must be prepared “if substantial questions are raised as to whether a project . . . *may* cause significant degradation of some human environmental factor.”¹¹⁸

The Council on Environmental Quality has issued regulations that govern criteria that an agency “must consider” in determining whether a proposed project may cause a significant impact on the environment.¹¹⁹ The definition of “significantly” at 40 C.F.R. § 1508.27 includes two overarching components: context and intensity. Context refers to the setting in which the proposed project would take place.¹²⁰ Intensity refers to the degree or severity of the impact.¹²¹ The CEQ regulations outline ten factors for an agency to consider in assessing the intensity of the proposed action. Of those ten, at least nine are particularly relevant here, including:

- (1) The degree to which the proposed action affects public health and safety;
- (2) Unique characteristics of the geographic area;
- (3) The degree to which the effects on the quality of the human environment are likely to be highly controversial;
- (4) The degree to which the possible effects on the human environmental are highly uncertain or involve unique or unknown risks;
- (5) The degree to which the action may establish a precedent for future actions or represents a decision in principle about a future consideration;
- (6) Whether the action is related to other actions with individually insignificant but cumulatively significant actions;
- (7) The degree to which the action may adversely affect significant scientific, cultural, or historical resources;

¹¹⁴ *Id.*

¹¹⁵ *Id.* (internal quotations omitted).

¹¹⁶ *See, e.g., Kern v. Bureau of Land Management*, 284 F.3d 1062, 1067 (9th Cir. 2002).

¹¹⁷ 40 C.F.R. § 1508.9(b).

¹¹⁸ *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 361 F.3d 1108, 1124 (9th Cir. 2004) (emphasis in original) (quoting *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998)).

¹¹⁹ *Ocean Advocates*, 361 F.3d at 1124.

¹²⁰ 40 C.F.R. § 1508.27(a).

¹²¹ *Id.* § 1508.27(b).

- (8) The degree to which the action may adversely affect an endangered or threatened species or critical habitat; and
- (9) Whether an action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The courts have clarified that any one of these factors may be sufficient to require preparation of an EIS.¹²²

With respect to the “significance” criteria, we concur with the comments submitted by EPA in its letter dated April 12, 2012, which note the potential impacts to public health, controversy, uncertainty and unique setting, effects on listed species, critical habitat and aquatic resources, effects on cultural resources, and contribution to cumulatively significant impacts. Those considerations alone should convince the Corps to proceed directly with preparation of an EIS as opposed to an EA.

Moreover, there are additional reasons to move forward with preparation of an EIS. In particular, Ambre’s so-called “nearly enclosed” transfer and loading facility would be a first of its kind, and Ambre’s plans fail to detail how it intends to accomplish these goals. The proposed impacts of the project are therefore unknown and involve unique risks. We have been unable to locate any other coal handling facilities in the U.S. or abroad that handle coal in a “nearly enclosed” environment at a quantity even approaching the amount of coal Ambre intends to handle through the Morrow Pacific project. In Australasia, the largest coal export region in the world the Port of Tauranga in New Zealand operates a 1 million ton per year coal import terminal using indoor storage.¹²³ According to the Port of Tauranga, this is the only coal handling facility of its type in Australasia.¹²⁴ On the east coast of Australia, the coal industry is proposing a “first of its type” coal export terminal – the Fitzroy Terminal Project – using a covered barge to ocean-going vessel model. The Fitzroy Terminal Project, which is in the initial environmental review stages, has not been permitted and does not propose storing coal indoors.¹²⁵

In general, the vast majority of coal export terminals, as well as barges used to ship coal, are not enclosed. It is also worth noting that every other coal export proposal in the Pacific Northwest, including Ambre’s Longview proposal, is not enclosed. Because Ambre proposes such a novel approach, and because the environmental impacts of the proposal will be determined by this unique and unknown design, the Corps must prepare an EIS to take a “hard look” at Ambre’s highly uncertain project.

¹²² *Ocean Advocates*, 361 F.3d at 1125 (citing *Nat’l Park & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001)).

¹²³ Port of Tauranga, <http://www.port-tauranga.co.nz/images.php?oid=1185>

¹²⁴ Port of Tauranga, <http://www.port-tauranga.co.nz/images.php?oid=1187>.

¹²⁵ Fitzroy Terminal, <http://www.mitchellgroup.net/main-menu/ports/fitzroy-terminal->

In addition, the Corps should prepare a comprehensive EIS based on the reasonably foreseeable future impacts of Ambre's project. While Ambre's application states that it will operate an 8.8 million ton per year coal export terminal, the company fails to address the design capacity of the Morrow Pacific Project. This issue is particularly troubling because Ambre's lease option with the Port of Morrow leaves open the possibility for significant expansion of the upland coal storage operations.¹²⁶ For example, the application fails to address whether expanding the Morrow coal terminal to 10, 20, or 40 million tons of coal per year would require any additional in-water work and permitting by the Corps. Based on Ambre's lack of material disclosure to federal and state officials for the Millennium project, the Corps should carefully assess the likelihood of future expansion and whether expansion must be analyzed in an EIS.

The proposed export of Powder River Basin coal through West Coast ports is simply not the type of project that warrants a brief review through an Environmental Assessment. These projects involve important questions of national policy on the export of coal to developing countries when we, as a nation, are trying to chart a path to a lower carbon future. The projects threaten the health of Columbia River salmon and steelhead populations, which American taxpayers have spent billions of dollars trying to protect and recover. Communities throughout the West - from the mines in the Rocky Mountain states to the rural communities along the rail lines and in the Columbia River Gorge, and urban communities in Portland, Seattle, and Eugene - are threatened by coal dust, diesel emissions, traffic and safety issues, and the adverse economic consequences of pollution and conflicts with other commercial and residential activities. The impacts of this project are far greater and more complex than a typical permit application, and we strongly encourage the Corps to prepare an EIS because of the unique, far reaching consequences related to this particular issue. The American public has demanded an opportunity to participate in the decision through the preparation of an EIS, and this is precisely the process envisioned by Congress and required by law.

G. As Part of Preparing an EIS, the Corps Should Prepare a Health Impact Assessment ("HIA") Assessing the Threats Posed to Human Health by Coal Export.

In conjunction with preparing an EIS, the Corps should also prepare a Health Impact Assessment ("HIA") that looks specifically at the potential ramifications for human health presented by the proposed export of Powder River Basin coal through West

¹²⁶ William Yardley, *Oregon Town Weighs a Future with an Old Energy Source: Coal*, New York Times (Apr. 18, 2012) (available at <http://www.nytimes.com/2012/04/19/us/boardman-ore-considers-a-future-in-coal.html?pagewanted=all>) (stating "Mr. Neal [the general manager of the Port of Morrow] said the project one day could be even bigger than the current plans. Ambre has the rights to a much larger piece of land that is next to the same rail spur, though it has no plans now to develop it."). Ex. 41.

Coast ports to Asian countries. The HIA, when completed by the Corps, should look at the full range of health threats posed by the life cycle of coal, including mining, transportation, fugitive emissions, chemicals surfactants, stormwater and waste water discharge, air pollution from combustion of coal and the impacts to human health from climate change and ocean acidification. That information will then inform the Corps' decision-making process under both the National Environmental Policy Act and the Rivers and Harbors Act permitting regulations and public interest determination.

As discussed by the attached fact sheet published by the Center for Disease Control ("CDC"), a Health Impact Assessment is a "combination of procedures, methods, and tools by which a policy, program, or project may be judged as to its potential effects on the health of a population, and the distribution of those effects within the population."¹²⁷ By conducting an HIA, an agency can "evaluate objectively the potential health effects of a project before it is built or implemented."¹²⁸ The attached fact sheet from the CDC provides additional information on HIAs and links to prior examples that can inform the Corps' work on this project, and we encourage the Corps to review this additional information. We have also included a copy of an HIA that address the impacts of coal and clean energy options in Kentucky to serve as an example of work that has been done on similar issues.¹²⁹ We ask that the Corps prepare a Health Impact Assessment as part of the NEPA process – both at the programmatic and the site-specific level.

Preparation of an HIA is particularly appropriate in this case because of the well-known threats to human health posed by coal dust and transportation of coal. In addition to the information set forth above, we ask that the Corps also consider the March 12, 2012 letter from Whatcom Docs, a group of more than 180 physicians in Whatcom County, sent to Jack Louws, Whatcom County Executive, and Ted Sturdevant, Director of the Washington Department of Ecology.¹³⁰ In that letter, Whatcom Docs call for a cumulative and comprehensive Health Impact Assessment and raise a number of significant concerns based on up-to-date research regarding the potential adverse impacts to human health resulting from coal transportation and human exposure to particulate matter of the type generated by fugitive coal dust and diesel emissions.

¹²⁷ Center for Disease Control, *Health Impact Assessments – Healthy Community Design Fact Sheet Series* (July 2010); see also <http://www.cdc.gov/healthyplaces/hia.htm>. Ex. 18.

¹²⁸ *Id.*

¹²⁹ Dr. Elizabeth Walker, PhD and Deborah Payne, *Health Impact Assessment of Coal and Clean Energy Options in Kentucky – A Report of the Kentucky Environmental Foundation*. Ex. 48.

¹³⁰ Letter from Whatcom Docs to Jack Louws, Whatcom County Executive, and Ted Sturdevant, Director, Washington State Department of Ecology (Mar. 12, 2012). Ex. 36 and Appendices.

In their letter, Whatcom Docs provided citations to recent research published in major medical journals documenting the following:

- A 15-27% increase in lung cancer deaths, in people that have never smoked, for each increase of 10 $\mu\text{g}/\text{m}^3$ for particulate matter ($\text{PM}_{2.5}$);
- From the impact of transportation-related particulate matter ($\text{PM}_{2.5}$), risk of ischemic stroke was 34% higher with moderate exposures;
- Short-term exposures to air pollution is a trigger of myocardial infraction (heart attack);
- Exposure to particulate pollution was found to be a strong predictor of cognitive decline;
- Exposure to diesel particulate matter is associated with a 2-3 fold risk of wheezing in infants (an early measure of asthma);
- Pollution needs to be measures adjacent to the source, where people work, live, and play.

In preparing an HIA for the Morrow Pacific project, the Corps should include modeling information that can help predict the likely exposure to numerous air pollutants for individuals who live near the rail line, along the transportation corridor and for those individual who work in or near the mine, who transport the coal and un/load the coal. The HIA must carefully examine the effects of air and water pollution on the most vulnerable populations, i.e. prenatal, early childhood, elderly and those with pre-existing pulmonary conditions, including asthma, chronic obstructive lung disease, and heart disease. The HIA must also identify and examine the airsheds likely to be affected and those which are most vulnerable due to geographic and/or seasonal conditions (e.g. stangnation, inversions, etc). Where, when, at what level and why will the effects of air pollution from coal export activities be experienced? The HIA should also address the potential adverse impacts of noise pollution, including where, when and how individuals will be exposed to levels of noise associated with coal export activities, including transportation along rail corridors.

Based on the published research and the number of people potentially impacted along the transportation corridors, as well as the high cost of health care, Whatcom Docs conclude by stating that it would “socially and economically irresponsible to not consider these impacts when evaluating the Gateway Pacific Terminal.”¹³¹ This statement is equally true in the case of the Pacific Morrow project, which would result in transportation of coal past many communities from the mines in Wyoming and Montana

¹³¹ *Id.*

to Port Westward located in St. Helens, Oregon, a stones-throw from Portland. In between, coal would be transported in open-air rail cars over long distances past communities like Sandpoint, Idaho, Hood River, Oregon and Mosier, Oregon, which have all expressed grave concerns about impacts to the health of their citizens and their communities. The decision before the Corps at this time could cause a wide range of adverse health impacts for people across the West, and those impacts should be fully disclosed and considered through development of a Health Impact Assessment.

H. The Coyote Islands Terminal Requires a Section 404 Permit under the Clean Water Act

The public notice for the Coyote Islands Terminal does not address any of the requirements of section 404 of the Clean Water Act, and proposes to grant the applicant the authority to construct the proposed terminal under Section 10 of the Rivers and Harbors Act. The Corps has indicated that, since this project does not involve any dredging or wetland fill, a section 404 permit is not required. However, given the scale of this project, we believe that this project includes the discharge of fill material into navigable waters, and thus requires a section 404 permit.

Under the Clean Water Act, the Corps has a duty to require applicants to obtain a section 404 permit for any activity that involves the “the discharge of dredged or fill material into the navigable waters.”¹³² The Corps has implemented regulations that define the term “fill,” and specifically address when the construction of pilings and overland structures constitute the “discharge of ... fill material.”

(2) In addition, placement of pilings in waters of the United States constitutes a discharge of fill material and requires a Section 404 permit when such placement has or would have the effect of a discharge of fill material. Examples of such activities that have the effect of a discharge of fill material include, but are not limited to, the following: Projects where the pilings are so closely spaced that sedimentation rates would be increased; projects in which the pilings themselves effectively would replace the bottom of a waterbody; projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States; and projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions.¹³³

The proposed terminal involves “[a]pproximately 140 permanent piles ranging from 14 to 24 inches in diameter and 110 temporary 16-inch diameter piles” and the construction of over “15,000 square feet of new overwater structure would be

¹³² 33 U.S.C. § 1344(a).

¹³³ 40 C.F.R. section 232.2 (*see also* Regulatory Guidance Letter 90-08 (available at <http://www.nap.usace.army.mil/cenap-op/regulatory/rgls/rgl90-08.pdf>)).

constructed.”¹³⁴ The placement of over 250 new pilings into the river at this location would likely have the effect of increasing sedimentation rates, impairing the flow or circulation of the waters, and adversely impact aquatic functions in this section of river. Additionally, the construction of more than 15,000 square feet of new overwater structures, together with the closely spaced pilings, could have the effect of replacing the bottom of the river. The Corps should require a section 404 Clean Water Act for this project, or demonstrate that the placement of these pilings and over water structures will not increase sedimentation rates, impair the flow or circulation of the river, or adversely impact the aquatic functions of this sensitive waterway.

I. The Corps Must Comply with the Endangered Species Act Prior to Issuing a Permit for the Morrow Pacific Project Pursuant to the Rivers and Harbors Act.

The ESA requires federal agencies, through consultation with the National Marine Fisheries Service (“NMFS”) or the U.S. Fish and Wildlife Service (“FWS”), to ensure that any action authorized, funded or carried out by an agency is not likely to jeopardize the continued existence of listed species.¹³⁵ The consultation obligations under Section 7 of the ESA apply “to all actions in which there is discretionary Federal involvement or control.”¹³⁶ Federal agencies must “review [their] actions at the earliest possible time to determine whether any action may affect listed species or critical habitat.”¹³⁷ A federal agency that determines its action may affect listed species or critical habitat is required to engage in formal consultation with NMFS.¹³⁸

Here, there can be no question that formal consultation is required, as Ambre concedes in the draft BA, the project is likely to adversely affect no fewer than fourteen (14) different evolutionarily significant units or distinct population segments of salmonids, including: (1) Upper Columbia River Steelhead; (2) Middle Columbia River Steelhead; (3) Lower Columbia River Steelhead; (4) Upper Willamette River Steelhead; (5) Snake Rive Basin Steelhead; (6) Upper Columbia River Spring-run Chinook; (7) Lower Columbia River Chinook; (8) Snake River Fall-run Chinook; (9) Snake River Spring/summer run Chinook; (10) Upper Willamette River Chinook; (11) Columbia River Chum; (12) Lower Columbia River Coho; (13) Snake River Sockeye; and (14) Columbia River Bull Trout.¹³⁹ Moreover, the draft BA concludes that the project is likely to adversely modify critical habitat for thirteen of these ESUs/DPSs.¹⁴⁰ The proposed activities, including in-water work and the placement of at least 250 temporary and

¹³⁴ See Public Notice at 2.

¹³⁵ 16 U.S.C. § 1536(a)(2).

¹³⁶ 50 C.F.R. § 402.03.

¹³⁷ 50 C.F.R. § 402.14(a).

¹³⁸ *Id.*

¹³⁹ Draft BA at ES-2.

¹⁴⁰ *Id.*

permanent pilings is almost certain to adversely affect listed species and critical habitat, and therefore the Corps will be required to consult with NMFS and FWS (for the bull trout).

As we stated above, we are concerned that the Corps appears to be closing the public comment process before the public has had an adequate opportunity to review and provide comment on the draft BA and associated materials. We again request that the Corps provide another opportunity for public comment on the public interest analysis after Ambre has submitted all relevant documents. We also believe that a complete public comment process now that the draft BA has been made available would assist the Corps in evaluating the contents and conclusions of the BA prior to submitting a formal request for consultation to NMFS and FWS.

We also remind the Corps that the “effects of the action” are defined to include “the direct and indirect effects . . . on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline.”¹⁴¹ The regulations further define indirect effects as “those that are caused by the proposed action and are later in time, but still reasonably certain to occur.”¹⁴² “Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.”¹⁴³

Here, the Corps must consider the direct and indirect effects of the coal export proposal in developing the Biological Assessment, including the effects of the in-water work and construction activities, stormwater and process water discharges, the impacts of fugitive dust from coal transport along rail line, impacts from deposition of mercury resulting from the combustion of coal in China, and the impacts from climate change and ocean acidification on habitat for threatened and endangered species. Moreover, we also remind the Corps that in requesting formal consultation it is required to provide to NMFS and FWS “the best scientific and commercial data available or which can be obtained during the consultation . . .”¹⁴⁴

From a brief, initial review of the draft BA, it appears that Ambre has ignored many potential direct and indirect effects and that many of its conclusions with respect to the effects it did consider are conclusory and without adequate scientific support. For instance, nowhere does Ambre discuss the possible discharge of process wastewater or stormwater, contamination of the Columbia River with coal dust and PAHs and the possible bioaccumulation of PAH in prey for salmon and steelhead, all of which has been recognized in the available science as potential threats to salmon and steelhead, which

¹⁴¹ 50 C.F.R. § 402.02.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ 50 C.F.R. § 402.14(d).

could potentially impact as many of fourteen different species of listed fish. Moreover, Ambre does not consider any of the potential impacts from fugitive dust during transport to the Pacific Morrow facility, any impacts of climate change or ocean acidification resulting from the combustion of coal, or any impacts from deposition of mercury in the Pacific Northwest caused by pollution associated with combustion of coal in Asian countries.

In sum, the public has not an adequate opportunity to review the draft BA for purposes of participating in the public interest review process required of the Corps. Even in the short time that was available to review the document, several glaring problems exist with the conclusions reached by Ambre and its contractor. We therefore urge the Corps to accept public comment on the draft BA as part of a renewed comment opportunity on the permit as a whole, which will assist the Corps in its independent review of Ambre's submissions, ultimately conserve the agency's resources and ensure that the public has an effective and fair opportunity to weigh in on the potential impacts to listed species.

CONCLUSION

The Corps, and indeed the federal government as a whole, face a critical decision that will have lasting impacts on the American public and the human environment for many years and generations to come. The fundamental question presented to the Corps for the first time by this permit decision is whether the large-scale export of Powder River Basin coal to Asian countries serves the interests of the American public. Given the fact that numerous, large-scale coal export proposals are currently pending on the West Coast, we cannot emphasize enough that the process used to reach a decision and the decision itself will set important precedent that will establish federal policy with respect to West Coast coal export more broadly. As a nation, we are investing billions of dollars in moving to a lower carbon economy, recovering runs of native Pacific Northwest salmon, cleaning up our air and watersheds, and planning and building sustainable and livable communities. The export of coal to Asian countries would undercut these billions of dollars that we are investing to create a better future for our children and grandchildren – future generations.

Based on the public values at stake, and the lack of information available regarding Ambre's proposal and West Coast coal export more broadly, the Corps has no choice but to reject the application materials as currently submitted. Those materials do not provide an adequate basis for the Corps to conduct the requisite public interest review, and they certainly do not provide a basis for the Corps to determine that the proposed project benefits the public interest.

Instead of approving a narrow, site-specific decision that will put America on a path as a major exporter of dirty and outdated coal resources, the Corps should take the time to make a deliberate, well-informed decision on whether West Coast coal export is

in the interests of the American public. The Corps should first prepare a programmatic EIS that looks at the need for and adverse impacts of coal export more broadly before approving any site-specific proposals. Only after the federal government has looked at this issue more broadly, with the full input of the American public, should the Corps then entertain site-specific proposals.

We again thank you and your staff for being responsive to our concerns and providing information in a timely and responsive manner. We recognize the tremendous responsibilities and burdens placed on the shoulders of your agency and are committed to working cooperatively to ensure that the federal government has the benefit of the best available science and the input of the all of the stakeholders prior to making these important decisions. Please do not hesitate to contact us if you have questions regarding our comments or if we can provide additional information.

Sincerely,

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**PUBLIC COMMENTS FROM COLUMBIA RIVERKEEPER ET AL.
APPLICATION OF COYOTE ISLAND TERMINALS, LLC
US ARMY CORPS OF ENGINEERS NO: NWP-2012-56
MAY 4, 2012
INDEX OF EXHIBITS**

Exhibit #	Title	Date
1	P.M. Campbell, R.H. Devlin, <i>Increased CYP1A1 and ribosomal protein L5 gene expression in a teleost: The response of juvenile Chinook salmon to coal dust exposure</i> , Aquatic Toxicology 38 (1997)	1997
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3	National Marine Fisheries Service, <i>Factors Contributing to the Decline of Chinook Salmon: An Addendum to the 1996 West Coast Steelhead Factors For Decline Report</i>	June, 1998
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11	University of Copenhagen, Climate Office, Press Release, <i>International Scientific Congress Climate Change: Global Risks, Challenges, and Decisions – Key Messages from the</i>	March 12, 2009

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16	Brenda Wilson, <i>The Quiet Deaths Outside the Coal Mines</i> , National Public Radio	April 16, 2010
17	Nancy H. Sutley, Chair, <i>Memorandum for Heads of Federal Departments and Agencies, Re: Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions</i>	February 18, 2010
18	Center for Disease Control, <i>Health Impact Assessments – Healthy Community Design Fact Sheet Series</i>	July, 2010
19	Andrew Jensen, <i>Judge Allows Lawsuit: Seward Coal Facility Faces Clean Water Act Suit</i> , Peninsula Clarion	January 24, 2011
20	Barbara LaBoe and Tony Lystra, <i>Groups Claim Millenium Misrepresented Scope of Coal Project</i> , Longview Daily News	February 15, 2011
21	Robert McCabe, <i>Coal Ships Create a Traffic Jam on Hampton Roads Waters</i> , The Virginian Pilot	February 21, 2011
22	Erik Olson, <i>Millenium to Restart Coal Terminal Permit Process</i> , Longview Daily News	March 15, 2011
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34	Daniel Mahr, PE et al., <i>Coping with Coal Dust</i> , Power – Business and Technology for the Global Generation Industry	March 1, 2012
35	NOAA Press Release, <i>Asian Emissions Can Increase Ground-Level Ozone Pollution in U.S. West</i>	March 5, 2012
36	Letter from Whatcom Docs to Jack Louws, Whatcom County Executive, and Ted Sturdevant, Director, Washington State Department of Ecology with Appendices	March 12, 2012
37	Columbia Riverkeeper et al., Public Comments on Removal-Fill Application No. APP0049123	March 30, 2012
38	National Science Foundation, Press Release 12-070, <i>Ocean Acidification Linked With Larval Oyster Failure in Hatcheries</i>	April 11, 2012
39	Letter from Jan Hasselman, Earthjustice, to Brig. Gen. Jon McMahan, Commander and Division Engineer, U.S. Army Corps of Engineers Northwestern Division, Col. John	April 12, 2012

39	Letter from Jan Hasselman, Earthjustice, to Brig. Gen. Jon McMahon, Commander and Division Engineer, U.S. Army Corps of Engineers Northwestern Division, Col. John Eisenhower, Commander, Portland District, U.S. Army Corps of Engineers, Col. Bruce Estok, Commander, Seattle District, U.S. Army Corps of Engineers, Re: Request for Environmental Impact Statement on Cumulative Impacts of New Coal Terminals in Washington and Oregon	April 12, 2012
40	The Dalles City Council Coal Export Packet, Presentation to The Dalles City Council.	April 16, 2012
41	William Yardley, <i>Oregon Town Weighs a Future with an Old Energy Source: Coal</i> , New York Times	April 18, 2012
42	Letter from Rep. Markey to Mr. Gene Dorado, Comptroller General, U.S. Government Accountability Office	April 24, 2012
43	Roderick J. Hossfeld, <i>PBR Coal Degradation – Causes and Concerns</i>	Undated
44	Lockage Data from U.S. Army Corps of Engineers	Undated
45	Oregon Department of Energy, <i>Climate Change in Oregon</i>	Undated
46	Oregon Department of Fish and Wildlife Residential Dock Guidelines	Undated
47	Dr. Tomas M. Power, <i>The Greenhouse Gas Impact of Exporting Coal from the West Coast – An Economic Analysis</i>	Undated
48	Dr. Elizabeth Walker, PhD and Deborah Payne, <i>Health Impact Assessment of Coal and Clean Energy Options in Kentucky – A Report of the Kentucky Environmental Foundation</i>	Undated