



October 19, 2016

Cowlitz County Building & Planning Department
Elaine Placido, Director
207 Fourth Avenue North
Kelso, WA 98626

Sent via overnight mail and email

**RE: Precautionary Appeal to the Cowlitz County Hearing Examiner of the EIS
for the Kalama Methanol Refinery and Export Terminal.**

Dear Ms. Placido,

Columbia Riverkeeper, the Center for Biological Diversity, and the Sierra Club (collectively, "Appellants") hereby file a precautionary appeal of the legal sufficiency of the environmental information and analysis contained in the Final Environmental Impact Statement ("EIS") for the Kalama Methanol Refinery and Export Terminal. Appellants believe that an appeal of the sufficiency of the EIS to the Hearing Examiner ("HE") is inappropriate and inconsistent with the requirements of the Cowlitz County code, the State Environmental Policy Act ("SEPA"), and the Shorelines Management Act. However, Appellants submit this document out of an abundance of caution, to preclude arguments regarding Appellants' failure to exhaust administrative remedies. No action should be taken on this appeal; indeed, as Appellants explain below, this appeal should be dismissed for lack of jurisdiction.

Appellants represent tens of thousands of members and supporters working to protect and restore Washington's environment and the Columbia River. Appellants' members and supporters work, live, and recreate in and along the Columbia River and the surrounding landscape near Kalama, the location of Northwest Innovation Works LLC's ("NWIW") proposed methanol refinery and export terminal. Appellants and their members are deeply concerned by plans to construct a 100-acre methanol refinery, export terminal, pipeline, and associated facilities in and along the lower Columbia River, and by the EIS for this project that ignores or obscures significant environmental risks and costs. The project would undermine local and regional efforts to protect water quality, recover endangered and threatened species, and support vibrant fishing communities. NWIW's proposed methanol refinery is the latest in a disturbing trend of fossil fuel export terminals that would industrialize and pollute the lower Columbia River. For the reasons explained below, the EIS is legally insufficient under SEPA and its implementing regulations. *See RCW Chapter 43.21C; see also WAC Chapter 197-11.*

I. The Hearing Examiner Lacks Jurisdiction over this Procedural SEPA Appeal.

The HE should dismiss this appeal for lack of jurisdiction and conclude that the County's code does not provide for appeals of SEPA actions other than 'substantive' SEPA decisions authorized by RCW 43.21C.060. The County's Notice of Availability ("NOA") for the EIS claims that appeals of the "sufficiency" of the EIS should be heard by the HE. The NOA is wrong, and the HE lacks jurisdiction to hear any SEPA appeals except challenges to the County's exercise of its substantive SEPA authority to condition or deny projects based on environmental concerns.

As Riverkeeper explained to the County in an October 4, 2016, email, CCC 19.11.120—the County Code provision referenced in the NOA—only allows appeals of County decisions "conditioning or denying a proposal under authority of SEPA," "as set forth in RCW 43.21C.060," and makes no mention of procedural SEPA appeals or RCW 43.21C.075 (describing the general rules applicable to procedural SEPA appeals). Because the County has not used its substantive SEPA authority to condition or deny NWIW's proposal, there is no SEPA decision that can be appealed to the HE. Appellants are not required to appeal the sufficiency of the EIS, standing alone without a substantive permit decision, to the HE pursuant to CCC 19.11.120.

RCW 43.21C.075 makes clear that appeals of SEPA decisions must be linked to appeals of the underlying permit at issue, and appeals may not go forward in a context vacuum. *See* RCW 43.21C.075(1) ("Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. . . . The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action."); *see also* RCW 43.21C.075(2)(a) (unless otherwise provided, appeals "shall be of the governmental action together with its accompanying environmental determinations."); *see also* RCW 43.21C.075(2)(b) (appeals shall be commenced within time required to appeal underlying governmental action); *see also* RCW 43.21C.075(5) (same for judicial appeals).

SEPA also requires that, in cases where a jurisdiction has a procedure for appeals of environmental determinations, there can only be "one agency appeal proceeding on . . . the adequacy of a determination of significance/nonsignificance," RCW 43.21C.075(3)(a), and that agency appeal must combine procedural and substantive determinations. *Id.* at (3)(b).

Finally, RCW 43.21C.075(6)(c) explicitly states that "[j]udicial review under this chapter shall **without exception** be of the governmental action together with its accompanying environmental determinations." (emphasis added).

While the County has not meaningfully responded to Riverkeeper's October 4, 2016, email, the County apparently interprets its code to require that procedural SEPA appeals be decided by the HE. This interpretation is wrong and contradicts the strong SEPA statutory language discussed above. Moreover, WAC 197-11-680(3)(a)(i) only allows municipalities, like the County, to require that procedural SEPA appeals be heard at the local level when the municipality has promulgated rules governing procedural SEPA appeals. Neither CCC 19.11.120

nor CCC 18.10.370—referenced in the NOA—contain any provisions that expressly or implicitly relate to the disposition of procedural SEPA appeals. Accordingly, the County may not require Appellants to appeal procedural deficiencies with the EIS to the HE.

Appellants therefore ask the HE to dismiss this appeal for lack of jurisdiction without considering the sufficiency of the EIS and—in light of the County’s refusal to engage in meaningful discussions about the proper scope of appeals under CCC 19.11.120—to order Cowlitz County to refund Appellants’ appeal fees and waive any HE costs. As noted above, appellants file this precautionary appeal in response to the County’s position, as stated in the NOA, that an appeal must be filed under CCC 19.11.120. If the County or the HE conclude that the county erred in its interpretation of the code, Appellants request that the county reimburse appellants \$2,092 filing fee (enclosed) and any costs the HE incurs in disposing of this appeal.

If the HE takes jurisdiction, Appellants ask the HE to immediately stay this appeal until the final shoreline permits are issued and the time for appeal of those permits has passed. Under CCC 19.11.120(B)(3), the HE must consider a request by an appellant to consolidate multiple appeals of the same decision. In the event that Appellants or others appeal the shoreline permits, consolidation would be necessary to avoid duplicative proceedings. Accordingly, this appeal should be stayed until any and all appeals of the shoreline permits have been filed so that the appeals may be consolidated before the Shorelines Hearings Board.

II. Legal Claims

The following legal claims are set out to preserve issues in case the HE disagrees with Appellants that there is no jurisdiction for this appeal. These issues are identified as placeholders only and will be more thoroughly fleshed out in an appropriate challenge before the Shorelines Hearings Board.

a. Cowlitz County cannot be a SEPA Co-Lead Agency.

The HE should conclude that Cowlitz County may not serve as a co-lead SEPA agency in the preparation of the EIS for the Kalama methanol refinery and export terminal and was without authority to issue the EIS as a co-lead agency. As Appellants explained in comments submitted to the County on August 31, 2016, regarding the Port of Kalama’s (“Port”) land use application No. SL 16-0975, the methanol refinery is an energy facility within the meaning of the Energy Facility Site Location Act, RCW 80.50 *et seq.* The only permissible lead SEPA agencies for an EIS on a proposed energy facility are the Energy Facility Site Evaluation Council or, for a public project, the agency initiating the project. WAC 197-11-938(1). Accordingly, the HE should conclude and order that Cowlitz County does not have authority to act as a SEPA co-lead agency for the EIS.

b. The EIS Fails to Analyze a Reasonable Range of Alternatives.

SEPA requires that an EIS contain a detailed discussion of alternatives to the proposed action. RCW 43.21C.030(c)(iii). SEPA’s regulations provide that an EIS must consider as alternatives those “actions that could feasibly attain or approximate a proposal’s objectives, but

at a lower environmental cost or decreased level of environmental degradation.” WAC 197-11-440(5)(b). The EIS must also present sufficient information for a reasoned choice among alternatives. *Toandos Peninsula Ass’n v. Jefferson Cty.*, 32 Wash. App. 473, 483 (1982).

The EIS did not evaluate the reasonable alternative of using the existing deepwater berth and dock (hereinafter, the “Steelscape dock”) next to the project site and never explained why such an alternative could not feasibly approximate the project’s objectives. The EIS should have analyzed the alternative of using the Steelscape dock in its current configuration—or with above-the-waterline modifications—for the project. There is no obvious reason why NWIW’s operations could not use the existing dock with minimal modifications. Tacitly acknowledging this, the Port attempts to expand the purpose of the proposed dock to encompass as-yet-unidentified vessel lay berthing and cargo handling.¹ Assuming this vague secondary purpose for the proposed dock is valid, the EIS contains no information explaining why the Steelscape dock could not *also* support this use. The EIS contains no analysis of why the current level of vessel use at the Steelscape Dock precludes *either* of the project’s purported purposes. In sum, the EIS does not explain why the existing dock could not approximate the proposals’ objectives while reducing or eliminating environmentally harmful in-water work and reducing the need for additional over-water structure. The EIS’s failure to consider this reasonable alternative renders the EIS insufficient.

The EIS also did not evaluate the reasonable alternative of purchasing power exclusively from clean, renewable sources—instead of buying conventional power from the grid or generating power using an on-site 100-megawatt gas-fired turbine. The EIS also did not explain why such an alternative could not feasibly approximate the project’s objectives.

c. The EIS Fails to Analyze Reasonably Foreseeable Indirect Impacts.

The EIS should have fully and transparently addressed all of the reasonably foreseeable indirect impacts of NWIW’s proposal. SEPA regulations require an EIS to describe a proposal’s indirect impacts, WAC 197-11-792, including “those effects resulting from growth caused by a proposal” WAC 197-11-060(4)(d). The Washington Supreme Court has explained that this requirement commands all agencies preparing EISs to “evaluat[e] the *reasonably foreseeable* environmental consequences of proposed projects.” *PT Air Watchers v. Dep’t of Ecology*, 179 Wash. 2d 919, 926 (2014) (emphasis added). It is implicit in SEPA that an “agency cannot close its eyes to the ultimate probable environmental consequences of its current action.” *Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 344 (1976).

SEPA regulations specifically direct that an “agency shall not limit its consideration of a proposal’s impacts only to those aspects within its jurisdiction, including local or state boundaries.” WAC 197-11-060(4)(b). Indeed, SEPA constitutes a ringing affirmation of the connectedness of Washington with the rest of the planet. It speaks of “humankind” and “human beings” rather than just citizens of this state. RCW 43.21C.010. SEPA explicitly calls on responsible agencies to “recognize the world-wide and long-range character of environmental problems” and take steps to cooperate in “anticipating and preventing a decline in the quality of

¹ See EIS, pp.1-2, 2-6, 17-12.

the world environment.” RCW 43.21C.030(f); *see also Eastlake Comm. Coun. v. Roanoke Assoc.*, 82 Wn.2d 475, 487 (1973) (observing “unusually vigorous statement of legislature purpose...to consider the total environmental and ecological factors to their fullest in deciding major matters”). Those regulations also recognize that environmental impacts do not end at the state’s borders and explicitly require consideration of the impacts of projects outside of the state’s jurisdiction. WAC 197-11-060(c); *see also Cathcart-Maltby-Clearview Comm. Council v. Snohomish Cty.*, 96 Wn.2d 201, 209 (1981) (SEPA “also mandates that extra-jurisdictional effects be addressed and mitigated, when possible.”).

The EIS violated SEPA’s mandate to analyze indirect impacts by willfully ignoring the reasonably foreseeable impacts of methanol tanker vessel emissions that would occur beyond Washington’s territorial sea. The EIS estimates the greenhouse gas (“GHG”) emissions from methanol tanker vessels within Washington’s territorial sea but fails to quantify the GHG emissions that would result from tanker traffic between Washington’s territorial sea and the purported destination port of Dalian, China.² Because GHG emissions from tanker vessels traversing the Pacific between two discrete ports is a “reasonably foreseeable,” *PT Air Watchers*, 179 Wash. 2d at 926, and readily quantifiable³ indirect impact of NWIW’s proposal, the EIS is deficient for failing to estimate and describe that impact.

The EIS also violated SEPA’s mandate to analyze indirect impacts of the methanol refinery by failing to disclose the induced growth in new major gas pipeline infrastructure in Washington. As explained in Columbia Riverkeeper’s supplemental comments on the Draft EIS,⁴ NWIW’s gas usage would induce construction of a new major gas supply pipeline into Washington. Indeed, even Northwest Natural and the Northwest Gas Association predict that an increase in gas consumption on the magnitude of NWIW’s proposal would cause the construction of new regional gas pipeline infrastructure.⁵ Such pipeline development is therefore a “reasonably foreseeable” consequence of NWIW’s proposal. *PT Air Watchers*, 179 Wash. 2d at 926. The EIS elides this point by reciting the upstream capacity of Williams’ pipeline.⁶ But Northwest Natural’s disclosure that NWIW will need to lease capacity in the existing pipeline while a new pipeline is being built⁷ provides proof that NWIW’s gas use will drive the construction of a new regional gas pipeline in Washington. The EIS must therefore disclose the indirect impacts of the pipeline construction that will foreseeably result from NWIW’s proposal.

The EIS also violated SEPA’s mandate to analyze indirect impacts of the methanol refinery by failing to disclose the induced development of new gas wells and increased gas

² *See* Associated Press, *China, BP venture plans Columbia chemical plants* (January 22, 2014) (“The plants would . . . ship methanol to Dalian, China for processing into olefins, which are building blocks for consumer products ranging from laptops to water bottles, said Greg Peden, a partner at Gallatin Public Affairs, a Portland firm representing the venture.”); *see also* FN 3, *infra*.

³ For instance, the Port of Kalama represented to the U.S. Department of Transportation that the distance between the two ports is 5,196 nautical miles. *See* Port of Kalama, *Kalama Marine Export Facility – TIGER 2016 Application*, p.14.

⁴ Columbia Riverkeeper, *Supplemental Comments on the Scope of the EIS for the Kalama Methanol Refinery* (September 12, 2016).

⁵ *Id.*

⁶ EIS, p.1-18.

⁷ Columbia Riverkeeper, *Supplemental Comments on the Scope of the EIS for the Kalama Methanol Refinery* (September 12, 2016).

production that would result from the significant demand for natural gas created by NWIW's proposal. The EIS fails to give any serious consideration to the environmental effects of the gas extraction that the project will necessitate, despite significant research confirming that new significant demand for gas does indeed drive new extraction. NWIW will dramatically increase demand for natural gas in the region and the EIS arbitrarily fails to analyze the "reasonably foreseeable" impacts of the additional extraction this demand will cause.

d. The EIS Fails to Fully Disclose and Discuss Environmental Impacts.

In order to satisfy SEPA, an EIS must fully disclose and thoroughly discuss the environmental impacts of a proposal. First, SEPA mandates "the *full disclosure* of environmental information so that environmental matters can be given proper consideration during decision making" *Norway Hill Pres. & Prot. Assn. v. King Cty. Council*, 87 Wash. 2d 267, 273 (1976) (emphasis added); *see also King Cnty. v. Washington State Boundary Review Bd. for King Cnty.*, 122 Wn.2d 648, 663 (1993) (explaining that SEPA documents must provide "complete disclosure of environmental consequences"). Second, SEPA mandates that an EIS contain a "reasonably thorough discussion of the significant aspects of a [proposal's] environmental impacts" *Toward Responsible Dev. v. City of Black Diamond*, No. 69418-9-I, 2014 Wash. App. LEXIS 197, at *1 (Ct. App. Jan. 27, 2014). In general, an EIS must take a "hard look" at the proposal and its impacts on the environment and human health. *See Pub. Util. Dist. No. 1 of Clark Cnty. v. Pollution Control Hearings Bd.*, 137 Wash. App. 150, 158 (2007).

i. The EIS does not take a hard look at earthquake impacts.

The EIS is invalid because it does not disclose, or contain a reasonably thorough discussion of, the environmental impacts of an earthquake on the facility. Specifically, the EIS fails the "hard look" test because it does not disclose the construction techniques by which NWIW would mitigate earthquake risk or discuss the effectiveness of those techniques at preventing damage to the refinery, its workers, and the surrounding environment in the event of an earthquake. The proposed methanol refinery would be built over dredge spoils, sand, and silt at least 100 feet deep, in an area with medium to high liquefaction risk, when western Washington has a 42% likelihood of experiencing a severe seismic event within the next 50 years.⁸ Nevertheless, NWIW and the Port of Kalama failed to disclose any details about plans for ground improvements and seismic protections at the refinery site.⁹ The EIS repeatedly states that seismic protections and ground improvements would be 'built to code,' but the applicable building code section "require[s] a site-specific response analysis to determine" how to accomplish safe construction.¹⁰ In other words, **there is no plan in the EIS or the applicable code that prescribes or describes how NWIW would safely build a methanol refinery on liquefaction-prone soil.** This omission prevents the public and decision-makers from understanding the proposal and how the refinery facility would respond in the likely event of a severe earthquake. In *Quinault Indian Nation v. Hoquiam*, the Washington Shorelines Hearings

⁸ Columbia Riverkeeper *et al.*, *Comments on the Draft EIS*, pp.46-47 (April 18, 2016).

⁹ *See* EIS, p.3-14 ("Foundation design for the various structures and facilities has not been completed, but . . . [v]arious ground improvements would be considered and selected following future detailed geotechnical analysis of site conditions.").

¹⁰ EIS, Appx. C2, p.3.

Board held that waiting until after SEPA and Shorelines permitting to develop important information about a project's potentially significant impacts does not comply with SEPA's mandate to provide "complete disclosure of environmental consequences." *King Cnty.*, 122 Wn.2d at 663. Failing to disclose information about how, or if, NWIW would mitigate the significant risk of an earthquake on the refinery does not satisfy the "hard look" test.

ii. The EIS obscures the destination and use of the methanol.

The EIS vacillates between assuming that the methanol will be delivered to Dalian, China, and asserting that the destination of the methanol is unknown—depending on which casts NWIW's proposal in a more favorable light. Such deliberate dissembling does not constitute full disclosure and violates the "hard look" standard. The EIS is invalid for not fully disclosing the destination and use of the methanol that would be manufactured in Kalama.

For years, NWIW and the Port have asserted that methanol from the Kalama refinery would be shipped to a petrochemical park in Dalian, China, for manufacturing olefins.¹¹ Indeed, Port staff and NWIW representatives even traveled to China to tour this location. If the destination and use of the methanol is known or reasonably certain, the "hard look" standard requires such information to be disclosed in the EIS. Moreover, project proponents have used the idea that this methanol is bound for Dalian, China, to make the—albeit unsupported—claim that the project would reduce global GHG emissions by replacing methanol manufactured from coal in China. Project proponents have also used claims that the methanol is bound for the Dalian, China, petrochemical park to argue that the methanol would be used to make olefins—rather than being burned as a gasoline substitute, with concomitant increases in GHG emissions.

If the long-understood assumptions about the destination and end use of the Kalama methanol have changed, the EIS must disclose these facts and stop using them to support the proposal's supposed benefits. Directly contradicting long-standing assertions by NWIW and the Port, the EIS states that "**the destination ports for the methanol are not yet known**,"¹² and that "methanol is a global commodity and market-driven factors can result in product delivery to ports worldwide."¹³ These statements are either affirmatively misleading or they point to a recent major shift in the proposal that should have been fully disclosed in the EIS.

NWIW and the Port can't have it both ways. The methanol will either go to the Dalian petrochemical park to make olefins, or it will go to the highest bidder anywhere in the world for any end use. If the methanol's destination and end use are truly unknown and not constrained by any contractual agreements, the EIS must fully disclose this fact and stop relying on olefin manufacture in Dalian as a basis for assessing the project's GHG impacts. Obfuscation about the destination and end use of the methanol renders the EIS invalid.

¹¹ See FN 2 and 3, *supra*; see also Pan-Pacific Energy Corp, *Port of Kalama Methanol Project Business Plan*, pp.4, 18, 27 (December 2013).

¹² EIS, p.4-20.

¹³ EIS, p.17-5.

iii. The EIS does not take a hard look at GHG emissions.

The EIS fails to adequately consider and disclose the greenhouse gas emissions attributable to the project. As discussed above, the EIS fails to meaningfully discuss or disclose emissions associated with new gas extraction and new pipeline development, both of which will be induced by the project, as well as emissions associated with transit to China. In addition, the EIS fails to adequately disclose the greenhouse gas emissions associated with the facility's use of electricity from the grid by using average Northwest grid emissions for this estimate, despite the fact that the facility is not eligible to receive BPA preferred hydropower (which comprises a significant portion of the power available in the Northwest energy grid). The EIS fails to substantiate the claim that the facility will reduce greenhouse gas emissions by displacing more energy-intensive methanol production in China. The cumulative impacts analysis fails to adequately analyze the climate impact of this project in conjunction with other projects, including the Port Westward methanol refinery also proposed by NWIW. The EIS incorrectly concludes that the facility will have "no significant adverse impact" due to its greenhouse gas emissions and inappropriately fails to even consider mitigation for the significant direct and indirect greenhouse gas emissions attributable to the project. In short, the EIS presents an internally inconsistent and woefully incomplete picture of the greenhouse gas emissions the facility will directly and indirectly cause.

iv. The EIS does not take a hard look at economic benefit.

The EIS' predictions about economic benefits during the operation of NWIW's methanol refinery do not acknowledge the possibility that prevailing market conditions could prevent the methanol refinery from operating profitably.¹⁴ The economic analysis contained in Appendix M simply assumes the refinery will be profitable enough to operate at close to full capacity and therefore pay the costs and salaries associated with operation.¹⁵ However, significant evidence undermines this assumption. The project was proposed in December 2013, when methanol prices were twice current levels.¹⁶ Additionally, the price of crude oil—a competing feed-stock for olefin production—is drastically cheaper than NWIW's parent predicted when it proposed this project.¹⁷ Accordingly, the economics that made the project appear profitable in late 2013¹⁸ no longer exist. In order to substantiate claims about economic benefit to the region during operation of the refinery, the EIS must re-assess the economic viability of the project under prevailing market conditions. Until the EIS explains why, and to what extent, NWIW's proposal remains profitable under current market conditions, the EIS' predictions about the economic benefits during refinery operation are not supported by substantial evidence and do not constitute a "reasonably thorough discussion" of the proposal. *Toward Responsible Dev.*, 2014 Wash. App. LEXIS 197, at *1.

¹⁴ See EIS p.1-26; see also EIS, Appx. M, p.12.

¹⁵ EIS, Appx. M, p.12.

¹⁶ Methanex, *Monthly Average Regional Posted Contract Price History from January 2001 to September 2016* (https://www.methanex.com/sites/default/files/methanol-price/MxAvgPrice_Aug%2030%2C%202016.pdf).

¹⁷ Pan-Pacific Energy Corp, *Port of Kalama Methanol Project Business Plan*, p.16 (December 2013); see also Shanghai Bi Ke Clean Energy Technology Company, Ltd. (d.b.a. "Clean Energy Commercialization Company"), *[Methanol-to-olefins] industry shall face challenge under low-oil price environment* (November 8, 2015) (citing China Chemical Reporter, Vol. 1276 (September 3, 2015)).

¹⁸ See Pan-Pacific Energy Corp, *Port of Kalama Methanol Project Business Plan*, p.16 (December 2013).

e. Failure to Analyze Cumulative Impacts.

SEPA requires a hard look at cumulative effects. WAC 197-110060(4)(e); *see also* WAC 197-11-330(3)(c) (“Several marginal impacts when considered together may result in a significant adverse impact.”); *see also White v. Kitsap Cnty.*, SHB No. 09-019 at 17 (2009) (cumulative impacts of a proposed action together with the impacts of pending and future actions should be considered under SEPA). In *Quinault Indian Nation v. Hoquiam*, the Shorelines Hearing Board overturned SEPA documents for two crude-by-rail facilities because those SEPA documents failed to consider the cumulative effects of increased rail and marine vessel traffic.¹⁹

To satisfy SEPA’s “hard look” test, and to assist a decision-maker or the public, the cumulative impacts analysis must explain—in a meaningful, tangible way—how the Columbia River and the human environment in the study area would look and function if NWIW’s proposal and other proposed fossil fuel export projects all come to pass. The Washington Energy Facility Site Evaluation Council explained that:

“cumulative effects analys[e]s should be conducted within the context of resource, ecosystem, and human community thresholds—levels of stress beyond which the desired condition degrades.”²⁰

The cumulative impact assessment in the EIS does not even attempt to meet this standard. It does not provide readers with any sense of whether impacts will cumulatively cross acceptable “resource, ecosystem, and human community thresholds.”²¹ Nor does it disclose whether the “desired condition[s]” in Kalama, the Columbia River and estuary, or the Pacific Northwest will survive the cumulative effect of all the proposed fossil fuel export projects. These failures mean that the EIS does not contain the “reasonably thorough discussion” of environmental impacts that SEPA requires. *PT Air Watchers*, 179 Wash. 2d at 927.

The EIS’ cumulative impacts analysis does not meaningfully address diesel particulate matter (“DPM”) and small particulate matter (“PM 2.5”) air pollution near the project site. While the EIS acknowledges that mobile sources—like Millennium’s un-covered coal trains and Tesoro’s oil tanker vessels—will emit DPM and PM 2.5 near the project site, the EIS makes no attempt to model or quantify the resulting ambient air pollution levels near the refinery and terminal. Moreover, the EIS contains no information about whether the cumulative particulate air pollution level would cross a threshold resulting in perceptible, or unacceptable, health outcomes for people working and living in the project vicinity. This lack of a detailed, meaningful discussion about the cumulative impacts of PM 2.5 and DPM levels renders the EIS invalid.

¹⁹ *Quinault Indian Nation v. Hoquiam*, SHB No. 13-012c, Order on Summary Judgment, p.18 (Dec. 9, 2013) (“agencies are required to consider the effects of a proposal’s probable impacts combined with the cumulative impacts from other proposals”).

²⁰ Washington Energy Facility Site Evaluation Council, *DEIS for the Vancouver Energy Distribution Terminal*, p.5-1 (quoting guidance written by the Council on Environmental Quality, the federal agency responsible for interpreting NEPA).

²¹ *Id.*

Similar analytical failings permeate the entire cumulative impacts section of the EIS. The EIS should have analyzed whether the cumulative impacts of this and other projects would cross the following “resource, ecosystem, and community thresholds:”

- The threshold at which estuary habitat degradation caused by dredging, dock building, and vessel wake stranding causes perceptible, or unacceptable, impacts to salmon populations and to the tribal, commercial, and recreational fisheries that depend on them;
- The threshold at which background noise levels caused by vessel traffic in the near-shore ocean will compromise cetacean survival and communication;
- The threshold at which GHG emissions and atmospheric GHG levels will cause unacceptable impacts to local and regional climate and natural resources.

Conclusion

For the foregoing reasons, the HE should dismiss this precautionary appeal for lack of jurisdiction and order Cowlitz County to refund Appellants’ appeal fees and waive any HE costs. If the HE does take jurisdiction over this appeal, Appellants request the HE stay the appeal until after the deadline for appealing the EIS and applicable permits for this proposal to the Shorelines Hearings Board, to facilitate consolidated appeals as contemplated in CCC 19.11.120(B)(3). Alternatively, Appellants ask the HE to rule that the EIS for the Kalama methanol refinery is illegal and does not satisfy the requirements of SEPA and its implementing regulations.

Respectfully submitted,

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On behalf of Appellants:

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Enclosure: check for appeal fee in amount of \$2,092