How to Submit a Scoping Comment

by Terry Wechsler

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Editor's Note: The Guide below should not intimidate anyone. It is there for those who want to write more about an impact of particular concern or about which they have specific knowledge. But when I say below, "You can stop here," I mean it. Saying, "I am concerned about X and I want it scoped," is a comment, and we hope each of those will be counted. There could be thousands of postcard comments, so no letter or email is too short. Participants should try to limit each comment to a single impact to ensure that each is counted separately.

As an example, some may want to merely endorse another comment. For instance, a perfectly fine comment could say, "My 62-year-old husband is in poor health and suffers from emphysema, and we live 20 yards from the Custer Spur. For all the reasons stated by the Whatcom Doctors in their comment of _____, I want the EIS to include a Health Impact Assessment which is consistent with their request."

Guide to Writing a Scoping Comment

First, know what a comment is not. Letters to the editor or a statement of opinion are not scoping comments. The agencies say, "Comments about the merits (pro or con) of the proposal, or whether an EIS should be prepared at all will not be considered in determining the scope of the EIS." This statement, while blunt, should not be taken lightly. For purposes of NEPA and SEPA, a comment is a request or a recommendation, not a statement of opinion.

According to the State Environmental Policy Act (SEPA), comments from environmental and other agencies, the tribes and the public serve to assist the EIS lead agencies to "narrow the scope of [the] EIS to the probable significant adverse impacts and reasonable alternatives, including mitigation measures." Therefore, to be considered, comments should address, according to the agencies:
• Significant unavoidable adverse impacts;
• Potentially affected resources and the extent of analysis for those resources;
• A reasonable range of alternatives (discussed at the beginning of the insert in this edition); and
• Measures to avoid, minimize and mitigate effects of the proposals.
This Guide addresses the first two bullets. The third and fourth bullets are addressed in the insert (pages 13-20) in this edition.

Impacts

A comment should identify the impact one wishes scoped, which will usually relate to an activity occurring at the terminal, or because of its operation ("due to"). Examples include:
> • Traffic delays at at-grade rail crossings due to increased rail traffic.
> • Increased acidification of coastal waters due to fugitive coal dust from the coal pile at Cherry Point and ship loading.
> • Collisions and spills in the Salish Sea due to increased vessel traffic.
> • Environmental and health impacts due to diesel particulates from trains and ships.

Comments may address any impacts that would not occur but for the construction of the terminal. SEPA says (and this is really important) that agencies should not limit consideration of impacts to their jurisdiction, or even to the state. It is important to remember that these comments will be part of the EIS record the Corps of Engineers will use in determining whether to grant federal permits under the National Environmental Policy Act (NEPA).

Mining the coal is fair game if one wants to address impacts on mining communities and the environment in the Powder River Basin. The burning of the coal in China may be scoped if comments link the shipping of this coal through a west coast terminal to a contribution to climate change that would not occur but for the construction of this terminal.

You can stop here. Asking that the EIS scope (or measure) the impact of a particular activity is a comment. But knowing the agencies' criteria — they will only scope significant impacts, and they will use this information to weigh alternatives — you may want to say more.

Significance

Briefly tell who you are. Introduce yourself. Did you move here for a job, to raise your children or to retire, or are you a long-term or lifetime resident? Does the activity you want scoped impact you directly? If so, describe how:
> • "My grandchildren attend a school situated less than 50 yards from the coastal rail route in _____ and I am concerned about the impact on their health of the increased diesel particulates from the rail traffic."
> • "I have commercially fished the waters at _____ for _____ years and am concerned about salmon stocks if we drive Cherry Point herring to extinction."
> Aggregate the impact if you can.
> How many other people would be similarly impacted? For an environmental impact, what is the geographic region you can imagine being similarly impacted (and don't stop at the U.S. border).
> Discuss cumulative impacts. It is not merely the proposed terminal and related activities that would impact in most cases, but those activities in combination with other activities, and SEPA and NEPA expressly direct agencies to consider cumulative impacts. This includes past, present, and reasonably foreseeable future activities and their impacts. Activities are "reasonably foreseeable" if they are not merely speculative. So, for instance:
> • In a comment about a rail impact, discuss other rail traffic (e.g., Amtrak, other freight, coal trains bound for other terminals).
> • In a comment about an impact of ship calls to the GPT pier, you can discuss, among other things, the past decline of the Cherry Point herring, species in the region already on the endangered species list, other vessel traffic in the region and proposed activities here and in Canada that would further increase that traffic.

Don't get hung up on what is or is not "merely speculative," but be cognizant that saying "may" or "could" probably means you've strayed into the Land of Mere Speculation for the purposes of SEPA and NEPA. Example: "In the future, GPT may seek to revise their permit to ship 100 million metric tons of coal per year." However, do discuss projects that have been proposed of which you are aware– whether they are in some phase of permitting, or are merely being discussed — including, if relevant, the four other coal terminals in Oregon and Washington, terminal expansions or construction in Canada, and anything else (e.g., tar sands) that would add to the activities proposed here and related impacts, for instance:

Spokane, Billings, and dozens (hundreds?) of other communities could experience 40-60 trains per day or more if other terminals were permitted on the west coast of the U.S. and Canada; or

Vessel traffic could increase by as many as 2,000 passages per year or more due to construction of GPT and expansion of existing activities in Canada or implementation of proposed activities there.

Cite existing studies of which you are aware. You need not do research! But do share what you know, and if you refer to a study, make it a part of the record: give a full bibliographical citation and provide a link if the document is online. If you can, discuss how that study relates to the proposed activity addressed in your comment, how the information could be extrapolated, and/or what else should be measured.

Make important documents part of the record. If you've located a report, agency letter, or even a well-researched article, submit as described above for studies. Feel free to incorporate information from the document by reference in your letter either by paraphrasing or quoting with attribution.

Coaltrainfacts.org has compiled studies, reports, and articles, sorted by type of impact, for those who wish to learn more or who wish to cite existing information.

Ask for scoping of aggregate future impacts. Most impacts, whether to health, the environment, or to economies, will aggregate over time. Ask the agencies to measure what the cumulative impact would be at full build-out of the terminal, as well as in five years, ten years, twenty years, fifty years….

Discuss the potential for permanent and irreparable harm, if applicable. Discuss why an impact cannot be mitigated, or why an economic remedy would be prohibitive. In some cases, you may want to argue it would be unconscionable — actually against public policy — to even discuss mitigation of the impact. Harms that could be impossible, cost-prohibitive, or unconscionable to mitigate include:

- Lost productivity and/or classroom time.
- Lost livelihoods.
- Extinct species.
- Lost standing as a geographic destination for businesses, tourists, and/or new residents.
- Decreased life expectancy or lost lives.
- Contribution to global warming.

Alternatives and Mitigations

Most comments won't reach this topic, but it is the "heart" of the EIS according to NEPA. Ultimately, the agencies must determine whether to permit the proposed activities with or without conditions, deny the permits, or propose a "reasonable alternative" to the proponents. The article at the end of the insert includes a discussion of alternatives and mitigations for those who would further pursue action.