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February 26, 2015

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Sent via email to: Jon.wagner@cityofvancouver.us

Re: Environmental Impact Statement Required for NuStar's Crude Oil Terminal
(Applications LUP-40862 and PRJ-145874)

Dear Mr. Wagner,

The purpose of this letter is to provide the City of Vancouver with significant new information to inform the City's pending decision and SEPA threshold determination about NuStar Terminal Services Inc.'s (NuStar) applications LUP-40862 and PRJ-145874. This letter is submitted on behalf of Columbia Riverkeeper, Arnada Neighborhood Association, Oregon Physicians for Social Responsibility, Clark County Natural Resources Council, The Lands Council, Washington Environmental Council, Friends of the Columbia Gorge, Center for Biodiversity, and Northwest Environmental Defense Center (hereafter collectively "Riverkeeper"). Since Riverkeeper's January 6, 2015, public comment on NuStar's applications, new information and events have underscored the environmental and human health risks of crude-by-rail and the City of Vancouver's legal duty to address those risks in an Environmental Impact Statement (EIS).

1. A Skagit County hearing examiner recently concluded that a crude-by-rail proposal requires an EIS.

The City of Vancouver should take careful note of a recent hearing examiner's decision requiring an EIS for a crude-by-rail proposal in Skagit County.¹ In that proceeding, the Skagit County hearings examiner considered evidence about the direct and cumulative impacts of a proposed crude-by-rail project. The hearings examiner concluded that a crude-by-rail terminal:

“present[s] the potential for spills and explosions resulting in significant environmental

¹ See Exhibit 1, *RE Sources for Sustainable Communities, et al., v. Equilon Enterprises LLC and Skagit Co.*, No.s PL13-0468 and PL14-0396 (Feb. 23, 2015).

impacts. These impacts could occur in environmentally sensitive areas and could result in harm to public health and safety.”²

That legal conclusion is directly applicable to NuStar’s proposed operation and the City of Vancouver’s SEPA threshold determination.

First, and most importantly, the hearing examiner concluded that the danger to human and environmental health posed by oil train accidents was ‘significant’ for SEPA purposes.³ Specifically, the hearings examiner noted that the “record provides no examination of the risks involved,” “there is no convincing evidence that the safety efforts are really effective,” and “local spill response plans and capabilities for potential spills along the route of the oil trains are neither adequate, nor likely to result in rapid and effective clean-up.”⁴ Faced with evidence of severe risk and no assessment of the likely environmental and human injuries resulting from an accident, the hearings examiner found that the project’s individual and cumulative impacts would be significant because, under SEPA, “[a]n impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.”⁵ (emphasis in original). NuStar’s proposal presents the same safety risks—explosions, fires, and spills—described in the Skagit decision. And NuStar’s woefully inadequate applications provide no better explanation of the risks, or the impacts, of an oil train accident.⁶ The City of Vancouver should heed the Skagit County hearings examiner’s well-reasoned legal conclusion.

Second, the hearings examiner faulted Skagit County for providing no information about the potential environmental impacts of an oil spill into nearby Padilla Bay or the Skagit River and estuary, “the most productive producer of wild salmon in the Puget Sound area.”⁷ Similarly, NuStar’s application provides no mention of the potential impacts to the Columbia River and estuary, one of the most important rivers in the world from a salmon recovery standpoint. NuStar blithely asserts that “the proposed project is not anticipated to result in any impacts to Columbia River species or habitat,” and “[n]o threatened or endangered species are anticipated to

² *Id.* at p.14.

³ *Id.*

⁴ *Id.* at p. 8.

⁵ *Id.* at pp. 13–14 (citing WAC 197-11-794(2)).

⁶ See Washington Department of Ecology, *Comment Letter to City of Vancouver Regarding NuStar’s Applications LUP-40862 and PRJ-145874*, p.1 (Jan. 6, 2015) (hereinafter referred to as “Ecology Comment Letter”) (noting the lack of adequate information about the project’s risks and stating that “the risk of spills or other releases [to] the environment may constitute a significant impact”).

⁷ Exhibit 1, pp. 11–13 (“The conduct of this analysis of risk and consequences is particularly important in light of the location of the refinery and rail route next to Padilla Bay, a nationally recognized natural resource for estuarine preservation and study.”).

be impacted by the proposed project.”⁸ In response to a similar lack of information, the Skagit County hearings examiner required an EIS containing a “[d]iscussion of the environmental impacts of oil-train-connected spills to sensitive environments within Skagit County, with particular attention to Padilla Bay.”⁹ Similarly, SEPA review for NuStar’s terminal must address the issue of spills to sensitive habitats and species in the Columbia River and estuary.

Riverkeeper requests that the City of Vancouver consider the Skagit County hearing examiner’s well-reasoned legal decision before making any threshold determination under SEPA regarding NuStar’s applications. For crude-by-rail projects in Vancouver, as in Skagit County, the “need for [an EIS] is compelled by the law and basic prudence.”¹⁰

2. Trains carrying Bakken crude will continue to explode in our communities and spill into our waterways.

The events of the last two weeks demonstrate that the threat of catastrophic accidents involving oil train derailments, explosions, and spills is not theoretical. Along the Kanawha River in West Virginia, a train carrying Bakken crude oil derailed and exploded.¹¹ The resulting fire destroyed at least one home near the track, and drinking water supplies for thousands of people were disrupted.¹² Even more concerning, the train that derailed in West Virginia was composed of the ‘safer’ CPC-1232 tank cars, not the DOT-111 tank cars that NuStar would receive and that are widely acknowledged as inadequate.¹³ In Northern Ontario, a train carrying tar sands oil also derailed, ruptured, and burned for several days.¹⁴ The incidents in Ontario and West Virginia demonstrate that tar sands oil (a very heavy type of crude oil) and Bakken shale oil (a lighter, more explosive form of crude) both pose serious spill and fire risks.¹⁵

⁸ See NuStar’s SEPA Checklist Submitted to the Southwest Clean Air Agency, pp. 11, 13 (May 28, 2013) (incorporated by reference in NuStar’s Supplemental SEPA Checklist Submitted to the City of Vancouver for Application LUP-40862, pp. 9–10).

⁹ Exhibit 1, p. 14.

¹⁰ *Id.* at p. 13.

¹¹ The Charleston Gazette, *Governor declares State of Emergency after oil train derails, sets house ablaze* (Feb. 16, 2015) (<http://www.wvgazette.com/article/20150216/GZ01/150219451>).

¹² *Id.*

¹³ Reuters, *Derailed CSX train in West Virginia hauled newer-model tank cars* (Feb. 17, 2015) (<http://www.reuters.com/article/2015/02/17/us-usa-train-derailment-csx-idUSKBN0LK1ST20150217>).

¹⁴ The Globe and Mail, *Fire still burning, but cleanup under way after Ontario derailment* (Feb. 16, 2015) (<http://www.theglobeandmail.com/news/national/fire-still-burning-but-cleanup-under-way-after-northern-ontario-derailment/article23011758/>).

¹⁵ NuStar intends to handle both types of crude, though its application materials do not address the important differences between these two substances. See Ecology Comment Letter, p.2.

These risks are not going away. In a recently released study by the Pipeline and Hazardous Materials Safety Administration (PHMSA),¹⁶ the federal government estimated that over the next 15 years, roughly 200 rail accidents involving crude oil or ethanol will occur in the United States.¹⁷ Moreover, PHMSA estimated that the average crude oil train derailment “results in \$25 million in total costs (including property damages, cleanup, remediation, emergency response, socioeconomic and lasting environmental damages),” but not accounting for the value of human life and injury.¹⁸ Permitting NuStar’s project would undeniably and significantly increase the likelihood that one of those costly accidents will occur in the City of Vancouver, and in cities all along the rail route, including Spokane, Sand Point, Bingen, Washougal, and others. Conducting a thorough EIS and using the City’s substantive SEPA authority to deny NuStar’s application will help keep dangerous crude oil trains out of Vancouver.

Conclusion

Thank you for your attention to this new information about the threat of crude-by-rail and the City of Vancouver’s SEPA responsibilities. Riverkeeper requests that the City consider the information contained in this letter and exhibits and act to protect the citizens of Vancouver and the Columbia River.

Sincerely,



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On behalf of:

Columbia Riverkeeper
Arnada Neighborhood Association
Oregon Physicians for Social Responsibility
Clark County Natural Resources Council
The Lands Council

¹⁶ Associated Press, *Fuel-hauling trains could derail at 10 a year* (Feb. 22, 2015) (http://hosted.ap.org/dynamic/stories/U/US_OIL_TRAINS_SAFETY?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT).

¹⁷ See Exhibit 2, PHMSA, *Draft Regulatory Impact Analysis, Docket No. PHMSA-2012-0082*, p. 24 (July, 2014).

¹⁸ *Id.* at p. 31.

**Washington Environmental Council
Friends of the Columbia Gorge
Center for Biodiversity
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cc'd via email:

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Exhibits:

1. *RE Sources for Sustainable Communities, et al., v. Equilon Enterprises LLC and Skagit Co.*, No.s PL13-0468 and PL14-0396 (Feb. 23, 2015).
2. PHMSA, *Draft Regulatory Impact Analysis, Docket No. PHMSA-2012-0082* (July, 2014).