



LINA HIDALGO

EI-32534

October 14, 2022

Joshua Wayland
Office of Environmental Analysis, Surface Transportation Board
Environmental Filing, Docket No. FD 36500
940 Main Campus Drive Suite 500
Raleigh, NC 27606

Dear Mr. Wayland,

The Office of Harris County Judge Lina Hidalgo appreciates the opportunity to comment on the Canadian Pacific Acquisition of Kansas City Southern Environmental Impact Statement (EIS) as drafted by the Surface Transportation Board's Office of Environmental Analysis (OEA). As the office of the head of the governing body of Harris County, the third most populous county in the United States, our objective is to ensure health, safety, and opportunity for every Harris County resident. This objective includes addressing decisions, such as the proposed Canadian Pacific and Kansas City Southern railway merger, that would have tremendous and unique impacts on Harris County and the greater Houston area. Thus, our office delivers these comments pursuant to the National Environmental Policy Act (NEPA), which secures our ability to submit input.

Introduction

The Surface Transportation Board hopes to combine Canadian Pacific and Kansas City Southern into a single rail system to be known as Canadian Pacific Kansas City (CPKC). The combined CPKC network would include approximately 20,350 miles of track in total, extending from Canada, through the U.S., and into Mexico. As the largest community in the proposed merger's pathway, Harris County will be affected largely in ways that have not been sufficiently addressed by the OEA's Draft EIS.

Air Quality

The air quality impacts of a CPKC merger on Harris County residents was not adequately addressed in the Draft EIS. CPKC would bring an additional eight trains through Harris County daily, adding 31.5 tons of nitrogen oxides (NOx) emissions to our air annually.¹ Both short- and long-term exposure to NOx is known to cause increased and aggravated respiratory conditions.² In Section 3.7 of the Draft EIS, the OEA determined that the annual NOx emissions associated with

¹Foxhall, E. (2022, October 12). Houston could get 8 more trains a day after rail merger, bringing traffic and pollution concerns. *Houston Chronicle*. Retrieved October 12, 2022, from <https://www.houstonchronicle.com/news/houston-texas/environment/article/more-Houston-trains-rail-merger-traffic-pollution-17492243.php>

²United States Environmental Protection Agency. (n.d.). Basic Information about NO2. EPA. Retrieved October 11, 2022, from <https://www.epa.gov/no2-pollution/basic-information-about-no2>

the Proposed Acquisition would exceed the EPA's de minimis thresholds within the Houston-Galveston-Brazoria Area. And although this increase is identified as "less than 1 percent of the total applicable emissions budget for mobile sources" in Harris County (page 2022 of the Draft EIS), such an increase would still greatly impact the air quality and health of county residents.

The Houston-Galveston-Brazoria area is currently in serious nonattainment for NAAQS clean air standards due to its ozone levels, meaning the region does not meet national air quality standards.³ Our region is on the verge of nonattainment for fine inhalable particles at the PM_{2.5} threshold, a concentration that has been linked to premature mortality, increased hospital admissions for heart or lung causes, acute and chronic bronchitis, and asthma attacks in the short term, and premature death, particularly in people who have chronic heart or lung diseases, and reduced lung function growth in children in the long term.⁴ The interaction of ozone and other fine inhalable particles with increased rail emissions could have devastating impacts on what are already extremely delicate air quality conditions in our region. Although the Draft EIS categorizes this NO_x increase as small, any increase in emissions in a serious nonattainment area, particularly one with numerous EJ populations such as Harris County, merits thorough analysis that takes into consideration the cumulative effect of the Proposed Acquisition and the new designations.

Environmental Justice

Executive Order (EO) 12898 directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law.⁵ Despite being the largest community in the proposed pathway, Harris County was notably left out from the Draft EIS' Section 3.13, *Environmental Justice*. This lack of consideration is especially concerning given the presence of several Environmental Justice communities (low-income and/or minority communities) in our region.

The Draft EIS states that proposed acquisition would result in notable increases in rail traffic, vehicle delay, and emissions. Each of these increases will again impact the presence of air pollutants in the area, which correlates to an increase in risks to public health. In discussion of any actions that will increase emissions, vehicle delay (Draft EIS, *Appendices*, Table H.2-2), rail traffic (Draft EIS, *Appendices*, Table H.1-1), and urban blight, the most vulnerable communities deserve to be the subject of mitigation analysis. This especially includes the communities of Harris County, who are already facing an amount of emissions beyond generally acceptable levels, and also already dealing with other severe health outcomes resulting from rail activity.⁶

Federal regulation assigns the OEA the responsibility to provide full and fair discussion of significant environmental impacts and evidence that the agency has made the necessary

³ United States Environmental Protection Agency. (2022, September 30). Texas Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants. EPA. Retrieved October 12, 2022, from https://www3.epa.gov/airquality/greenbook/anayo_tx.html

⁴ California Environmental Protection Agency. (n.d.). Inhalable Particulate Matter and Health (PM_{2.5} and PM₁₀). California Air Resources Board. Retrieved October 12, 2022, from <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health>

⁵ Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, Exec Order No. 12898, 32 CFR § 651.17(1994). <https://www.govinfo.gov/link/cpd/executiveorder/12898>

⁶ Peters, X. (2021, August 26). 'A lifetime of damage' on a creosote plume in Houston's Fifth Ward. *The Texas Observer*. Retrieved October 9, 2022, from <https://www.texasobserver.org/a-lifetime-of-damage-on-a-creosote-plume-in-houstons-fifth-ward/>

environmental analysis of the potential effects of the merger.⁷ In excluding Harris County's environmental justice populations from discussion in the EIS, the OEA failed to meet these requirements. We would like to see Harris County's history, public health data, and demographics fully considered in a future draft or supplemental EIS published by the OEA. We would also like to see an in-person hearing hosted by the Surface Transportation Board take place within Harris County to ensure that members of environmental justice populations can fully engage with changes that the CPKC network will bring to our region.

Derailments

In terms of transportation safety, the Accident Analysis and Prevention Journal asserts that train derailments can cause damage to infrastructure, rolling stock and lading, disrupt service, and have the potential to cause casualties, and harm the environment.⁸ It should first be noted that in Section 3.1 of the Draft EIS, *Freight and Rail Safety*, Canadian Pacific's history of derailments has gone unaddressed. Canadian Pacific has had four derailments this year alone: one in Victoria, one in Alberta, one in British Columbia, and one in Minnesota.

In Section 2.3 of the Draft EIS, Agency Consultation, the OEA states that "the projected increase in rail traffic that would occur as a result of the Proposed Acquisition would increase the predicted risk of an incident (such as a derailment or other accident) occurring on certain rail lines in the combined CPKC system." CPKC plans to mitigate higher traffic with 25 capital improvements across the entire route of CPKC track, but none of these are in Texas, and CPKC is under no obligation to do so unless the OEA imposes these mitigation measures. The derailment mitigation proposed in the Draft EIS is not sufficient to protect the high-density and EJ populations residing in Harris County. We would like to see some calculation of Harris County's derailment rate (the number of derailments normalized by traffic exposure used to estimate the likelihood of derailment) given the approval of this merger, and given no-action.

Hazardous Materials

Lastly, CPKC trains would carry hazardous materials associated with the extraction of tar sands through our region. According to a Canadian Pacific spokesperson, one railcar would carry up to 27,000 gallons of crude oil extracted from tar sands. Crude oil extracted from tar sands is incredibly difficult, and expensive, to clean up. For example, the cleanup of a 2010 crude oil pipeline spill in Michigan's Kalamazoo River took several years and cost \$1 billion to clean over 1 million gallons.⁹ In 2018, roughly 230,000 gallons of crude oil spilled into floodwaters after a train derailment in northwestern Iowa. Almost half of the 32 derailed tank cars leaked crude oil into the water, despite the fact that the model of tank cars was specifically developed to make oil safer to transport by rail.¹⁰ Train tracks in North America often follow waterways like rivers, so hazardous

⁷National Environmental Policy Act, 40 C.F.R. § 1502.1 (1996). <https://www.govinfo.gov/link/fr/85/43363>.

⁸Liu, X., Rapik Saat, M., & Barkan, C. P. L. (2017). Freight-train derailment rates for railroad safety and risk analysis. *Accident Analysis & Prevention*, 98, 1–9. <https://doi.org/10.1016/j.aap.2016.09.012>

⁹ Kalamazoo River Oil Spill. Sabin Center for Climate Change Law at Columbia University. (2015, May 19). Retrieved October 12, 2022, from <https://climate.law.columbia.edu/content/kalamazoo-river-oil-spill>

¹⁰Press, A. (2019, July 14). Crews scramble to clean up Iowa Oil Spill. *MPR News*. Retrieved October 14, 2022, from <https://www.mprnews.org/story/2018/06/23/crews-scramble-to-clean-up-oil-spill-after-nw-iowa-train-derailment>

materials spills can easily contaminate water and damage vital ecosystems.¹¹ This merger would increase rail traffic and therefore the risk of crude oil spill in Harris County, which is already home to a significant amount of rail-related pollution impacting residents' health.¹² The Draft EIS does not include sufficient analysis or mitigation of hazardous material releases in Harris County specifically.

It should also be noted that in 2021, Kansas City Southern received a violation notice from Harris County Pollution Control Services. A corn spill that discharged into local waterways took a significant amount of time to clean, emitted a strong and unpleasant odor in the area, and affected local wildlife. The spill not only had harmful effects on Harris County's environment, but also violated the TCEQ's Air Regulations and Environmental Quality Municipal Solid Waste Regulations. The Draft EIS does not address this incident, nor does it offer sufficient mitigation strategies to address future hazardous material spills in our region.

Conclusion

The Harris County Judge's Office supports and appreciates the efforts of the Surface Transportation Board's Office of Environmental Analysis to analyze the impacts of this proposed merger. We ask for Harris County to receive appropriate consideration by the OEA in its assessment of the environmental impacts and transportation merits of the proposed merger on Harris County's 4.681 million residents. Some adverse effects may not be significant for the entire proposed acquisition area between Canada and Mexico, but they may very well be significant within the Harris County area. We ask that the OEA publish a supplemental EIS to publicize the unique and significant environmental impacts on Harris County's environmental justice communities, including potential changes in the County's nonattainment status that have not been sufficiently evaluated in the EIS. Should this merger be approved by the federal government, we request proportional and equitable mitigation.

Sincerely,

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¹¹ Margolis, J. (2015, February). Runaway Risks. The Center for Biological Diversity. Retrieved from https://www.biologicaldiversity.org/campaigns/oil_trains/pdfs/runaway_risks_web.pdf

¹² Douglas, E. (2019, December 6). Cancer cluster identified in Houston neighborhood near Union Pacific railyard's creosote contamination. *Houston Chronicle*. Retrieved from <https://www.houstonchronicle.com/business/article/Cancer-cluster-identified-in-Houston-neighborhood-14885972.php>.