



OFFICE OF THE
HARRIS COUNTY ATTORNEY
CHRISTIAN D. MENEFEE

October 14, 2022

Via STB E-Filing

Joshua Wayland

Office of Environmental Analysis, Surface Transportation Board

Environmental Filing, Docket No. FD 36500

c/o VHB

940 Main Campus Drive, Suite 500

Raleigh, NC 27606

RE: Harris County's Comments on the Canadian Pacific Acquisition of Kansas City Southern Draft Environment Impact Statement; Surface Transportation Board Docket No. FD 36500

Dear Mr. Wayland,

Harris County, Texas (Harris County or the County) appreciates this opportunity to submit comment on the proposed Canadian Pacific acquisition of Kansas City Southern (the Proposed Acquisition) Draft Environmental Impact Statement (D-EIS) prepared by the Surface Transportation Board's Office of Environmental Analysis (OEA). Harris County provides public comment for the purpose of promoting public health and safety, environmental stewardship, and a strong regional economy. Harris County's chief concerns regarding the Proposed Acquisition include environmental justice, air quality, public safety and traffic, and hazardous spills.

Harris County appreciates the Surface Transportation Board's (STB) efforts to provide language access in its public outreach efforts, such as providing Spanish-language interpretation at its public meetings. Harris County is committed to improving public participation in environmental matters, especially regarding language justice. Harris County requests that in the future the agency also include language services for Vietnamese and Chinese, which are the next two most frequently spoken languages in the County after Spanish.

Harris County's interests in the Proposed Acquisition

At a population of over 4.7 million residents, Harris County is the most populous county in Texas and along the Gulf of Mexico and among the most diverse places in the Nation. Kansas City Southern has trackage rights to Union Pacific lines that run through the County. Harris County is the second largest county within the area affected by the Proposed Acquisition.

The County is concerned the D-EIS wholly excludes the County from their Environmental Justice (EJ) analysis and fails to properly consider the County's NAAQS nonattainment status. These omissions are contrary to the goals of the National Environmental Protection Act (NEPA), Executive Order (EO) 12898, and the Council of Environmental Quality's (CEQ) guidance and regulations. Additionally, the mitigation efforts proposed are not adequate to address the unique issues the County faces.

The County asks that these concerns be assessed in a supplemental EIS and addressed in the final EIS.

1) Air Quality

Communities in Harris County unfortunately experience poor air quality. As a result, the Houston-Galveston-Brazoria (HGB) Ozone Nonattainment Area has consistently struggled to meet Clean Air Act (CAA) attainment requirements. Harris County is the largest county within this nonattainment area.

Ozone pollution is of particular concern for the County. The HGB area has never met any of the ozone standards at the time of their initial implementation. Based on the best available science, the four ozone standards, established in 1979, 1997, 2008, and 2015, have set progressively lower permissible ozone levels. The EPA recently reclassified our area as a Moderate nonattainment area for the 2015 ozone national ambient air quality standards (NAAQS)¹ and as a Severe nonattainment area for the 2008 ozone NAAQS.² The EPA notably denied Texas's request for a 1-year extension of the attainment date for the HGB Ozone Nonattainment Area, in part because the EPA's consideration of air quality trends in the area indicated it would fail to timely attain by the extended date.

¹ Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards, 87 Fed. Reg. 60,987 (2022).

² Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards, 87 Fed. Reg. 60,926 (2022).

The OEA should more thoroughly address the adverse effects of the Proposed Acquisition on air quality in Harris County in light of the new nonattainment designations.

The OEA concludes the HGB Ozone Nonattainment Area is one of only three nonattainment areas in the affected regions where the Proposed Acquisition would affect air quality.³ The OEA estimates the increase in NO_x emissions would be less than one percent of the applicable emissions budget for mobile sources in each nonattainment area and “therefore should not adversely affect enforcement of applicable State Implementation Plans (SIP) for the nonattainment areas.”⁴

The information the OEA relied on to make these conclusions is now outdated. The relevant SIP for the HGB Ozone Nonattainment Area will soon need to be revised, and the County will face more stringent CAA requirements to reach attainment.⁵ These new designations represent a material change to the circumstances the OEA relied on when analyzing air quality which the OEA needs to account for in the EIS.

Even if the OEA has concluded the increase in NO_x emissions attributable to the Proposed Acquisition will be minor, any indefinite increase in emissions in Harris County warrants in depth review that takes into consideration the cumulative effect of the Proposed Acquisition and the new designations. CEQ’s NEPA regulations note that cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.⁶ Failing to consider the cumulative effects of the proposed acquisition, the new NAAQ designations, and the multiple environmental hazards and sources of pollution Harris County residents face contradicts the intent of 40 C.F.R. § 1508.1.⁷ The OEA should consider all these factors when addressing the effect of the Proposed Acquisition on air quality

In addition to reevaluating the potential for adverse effects on air quality like SIP enforcement, the new designations indicate the need for further consideration of EJ analysis and mitigation efforts related to air quality, discussed below.

³ OFFICE OF ENVIRONMENTAL ANALYSIS, SURFACE TRANSPORTATION BOARD, Canadian Pacific Acquisition of Kansas City Southern Draft Environmental Impact Statement, 3.7-32. (2022) [hereinafter *D-EIS*].

⁴ *Id.* at S-11.

⁵ Final Determinations of Attainment by the Attainment Date, Extension of the Attainment Date, and Reclassification of Several Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards, ENV’T. PRO. AGENCY 1 (2022) https://www.epa.gov/system/files/documents/2022-09/Fact%20Sheet%20NFRM%202008%20Ozone%20Determinations%20final_1.pdf.

⁶ 40 C.F.R. § 1508.1

⁷ *Id.* (“cumulative effects, defined as effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions, should be addressed in EIS’s”).

2) Environmental Justice

Many environmental justice communities live within Harris County. In addition to containing Houston, the fourth largest city in the U.S, Harris County is also home to a large concentration of industry, oil refineries, and a large port. Heavy commuter traffic, heightened presence of industry, emissions events and chemical disasters, smog produced by the Port of Houston, and other factors all contribute to poor air quality. The County is also prone to hurricanes and flooding, which heightens the health and safety risks of potential discharges of hazardous material.

Houston is also the largest U.S city without zoning laws, and some EJ communities live within very close proximity to upwards of 15 industrial and toxic waste facilities.⁸ Fence line communities thus live with daily chronic exposure to high levels of pollution in their air, water, and soil.⁹

Areas like the Greater Fifth Ward and East End District, predominately Black and Latino communities that face a multitude of environmental justice issues, will be particularly impacted by the Proposed Acquisition. Both contain a high concentration of railyards and crossings. The East End, which is comprised of several neighborhoods, is known to have a high concentration of railroad tracks that disrupt their daily life. One such neighborhood is “surrounded on all sides by rails and the Ship Channel.”¹⁰ Residents have voiced concerns over the delays, specifically for emergency vehicles, and air pollution associated with the high concentration of railroad traffic for years.¹¹ Community members in the Fifth Ward, where a cancer cluster has been identified, have voiced concerns over creosote contamination from a Union Pacific railyard potentially being the cause of the high rates of cancer in the area. This community has engaged in high profile advocacy to push for cleanup efforts and improve their quality of life.¹²

⁸ UNION OF CONCERNED SCIENTISTS & TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICE, Double Jeopardy in Houston: Acute and Chronic Chemical Exposures Pose Disproportionate Risks for Marginalized Communities, 14 (2016) <https://www.ucsusa.org/sites/default/files/attach/2016/10/ucs-double-jeopardy-in-houston-full-report-2016.pdf>.

⁹ *Id.* at 3.

¹⁰ Lori Rodriguez, *Manchester civic leader's dream on track*, HOUS. CHRON., (APR. 20, 2006) <https://www.chron.com/news/houston-texas/article/Manchester-civic-leader-s-dream-on-track-1488216.php>.

¹¹ See generally, *Id.*; Stephanie Thomas, *Trains Block Communities and Create Safety Hazards*, PUBLIC CITIZEN, (Feb. 2, 2022) <https://www.citizen.org/news/trains-block-communities-and-create-safety-hazards/>; David González, *Stopped trains in Houston create more than just delays*, KHOU, (Feb. 4, 2022) <https://www.khou.com/article/news/stopped-trains-houston/285-4a720b6e-87a7-436f-bb14-85b3d0b5e1d8>.

¹² Erica Simon, *Report shows contamination in Fifth Ward cancer cluster worse than anyone thought*, ABC13 <https://abc13.com/cancer-cluster-houstons-fifth-ward-kashmere-gardens-causing-chemical/12132010/>; Brandon Walker, *Fifth Ward residents still pleading for action on cancer cluster found in neighborhood*, KPRC, <https://www.click2houston.com/>.

The County asks the OEA to include Harris County communities in their EJ analysis, as is warranted under applicable law and policy.

In the D-EIS, the OEA determined only noise would have a high and adverse impact on EJ populations.¹³ Effects from other non-noise aspects (ex. Air Quality) were determined too minimal as a whole to potentially result in high and adverse impacts on EJ populations and thus were not analyzed.¹⁴ It is our understanding Harris County's EJ populations were excluded from the EJ section because it was determined our communities would not be disproportionately affected by noise related impacts.

This methodology is counterintuitive to achieving the EJ goals set forth for federal agencies. The Federal Interagency Working Group on Environmental Justice and NEPA Committee note in a report on "promising practices" for EJ analysis in NEPA reviews that "a finding of no significant impacts to the general population is insufficient (on its own) to base a determination that there are not disproportionately high and adverse impacts to minority populations and low-income populations."¹⁵ Such is the case here. Excluding Harris County from EJ analysis because the majority of the effects of the Proposed Acquisition on the entire acquisition area are minor goes against the spirit of NEPA and is insufficient for a project that spans the entirety of the country, border to border. While the adverse effects of aspects like air quality and traffic delay might not be significant when analyzed within the totality of the area, they are very likely to be significant within the Harris County area, especially to EJ communities.

EO 12898 instructs federal agencies to address 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, when preparing EIS's.¹⁶ CEQ guidance gives a list of 6 factors for agencies to consider when determining whether an EJ analysis is warranted.

When addressing health related effects, CEQ guidance directs agencies to consider the following summarized three factors:

- A. Whether the effects are significant under NEPA or above generally acceptable norms; and
- B. Whether the risk or rate of hazard exposure by a minority, low-income, or Indian tribe to an environmental hazard is significant under NEPA and appreciably exceeds or is likely to exceed the risk or rate to the general population; and

¹³ D-EIS, 3.13-11.

¹⁴ D-EIS, 3.3-1.

¹⁵FEDERAL INTERAGENCY WORKING GROUP ON ENVIRONMENTAL JUSTICE & NEPA COMMITTEE, Promising Practices for EJ Methodologies in NEPA Reviews, 38 (2016)

https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

¹⁶ Exec. Order No. 12,898, 59 FR 7629 (1994).

- C. Whether health effects occur in a minority population, low-income population, or Indian tribe affected by cumulative or multiple adverse exposures from environmental hazards.

In determining environmental effects, agencies are to consider the following three summarized factors:

- A. Whether there is or will be an impact on the natural or physical environment that significantly and adversely effects a minority population, including health, economic, and social impacts; and
- B. Whether environmental effects are significant and are or may be having an adverse impact on a minority population that appreciable exceeds those of the general population; and
- C. Whether the environmental effects occur or would occur in a minority, low income, or American Indian population affected by cumulative or multiple adverse exposures from environmental hazards.

The OEA defined potentially high and adverse impacts as impacts that would be significant under NEPA or above generally accepted norms. This definition appears to utilize the language from “Factor A” that the CEQ has put forth for addressing “health effects” in EJ analysis but excludes the other two factors and all three factors under “environmental effects.”

Harris County’s EJ communities will suffer disproportionate and adverse effects from this acquisition and warrant EJ review when taking all six factors into all consideration. “Factor C” is especially applicable, as the greatest health and environmental effects from this acquisition will be borne by populations already affected by “cumulative or multiple adverse exposures from environmental hazards,” detailed above. The County asks the OEA to consider all the relevant factors when making threshold EJ determinations.

However, even under the definition the OEA has currently set as the threshold for EJ analysis, Harris County warrants inclusion in the EJ analysis, as the effect of a notable increase in rail traffic,¹⁷ vehicle delay,¹⁸ and the accompanying increase in emissions on Harris County’s well documented EJ populations is both significant under NEPA and above generally acceptable norms.

Firstly, the new ozone nonattainment class designations for HGB indicate the area is already above the “generally acceptable norms” in terms of ozone emissions, and this agency action will push it further away from those norms.

¹⁷ SURFACE TRANSPORTATION BOARD, OFFICE OF ENVIRONMENTAL ANALYSIS, Canadian Pacific Acquisition of Kansas City Southern Draft Environmental Impact Statement Appendices, Table H.1-1 (2022).

¹⁸ *Id.* at Table H.2-2

There is evidence that our poor air quality disproportionately effects minority and low-income populations in Harris County. One study found that levels of NO₂, linked to higher rates of several health issues, were 32% higher for Houston's Latino residents, 19% higher for Black residents, and 15-28% higher for residents living below the poverty line.¹⁹ Another study found that Black children in Houston were twice as likely to suffer from asthma compared to white children of the same age, and Hispanic children had 22% higher odds of having asthma than white children.²⁰ In denying Texas's request for a 1-year extension of the attainment date for the HGB Ozone Nonattainment Area, the EPA in part based their decision on their "considerations of existing pollution burdens for some communities within the area."²¹ The EPA noted communities residing and working near violating ozone monitors in the Houston area and the Houston Ship Channel are exposed to *a significant and disproportionate burden of ozone pollution* and other sources of pollution (e.g., vehicle traffic and particulate matter emissions) compared to the greater Houston area and the U.S. as a whole.²²

The air quality in Harris County does not currently meet the generally acceptable norms or standards of the EPA, health professionals, or the community.²³ The poor air quality disproportionately effects the health and wellbeing of EJ populations. Thus, if this Proposed Acquisition will adversely affect air quality here in any way, as the OEA has acknowledged, an EJ analysis on air quality is warranted under the OEA's own defined threshold.

Any increase in rail traffic and delays will adversely impact Harris County's EJ communities given the current and historic poor quality of these aspects. An increase in 8 cars per day should warrant EJ review.

EJ communities in Harris County contain a large concentration of the rail infrastructure in the County and already see trains come to a full stop and block the road more than other parts of

¹⁹ Krystal Vasquez, *Measuring Houston's environmental injustice from space*, ENV'T HEALTH NEWS, (July 20, 2021) <https://www.ehn.org/environmental-justice-houston-2653843877.html>.

²⁰ Amy McCaig, *Black Children in Houston at higher risk for asthma*, RICE U., (Mar. 20, 2017) <https://news2.rice.edu/2017/03/20/black-children-in-houston-at-higher-risk-for-asthma/>.

²¹ Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards, 87 Fed. Reg. 60,926 (2022).

²² *Id.* at 60,928.

²³ Texas: Harris, AM. LUNG ASSOC., <https://www.lung.org/research/sota/city-rankings/states/texas/harris> (last visited Oct. 11, 2019) ("If you live in Harris County, the air you breathe may put your health at risk"); Allyn West, *In Houston, the new normal should include more efforts to reduce air pollution*, RICE U. KINDER INST. FOR URB. RSCH., (May 19, 2020) <https://kinder.rice.edu/urbanedge/houston-new-normal-should-include-more-efforts-reduce-air-pollution> ("In 2020, nearly 63% of survey respondents rated the control of air pollution "Fair" or "poor").

the Houston area.²⁴ This concentration effects the safety and quality of life of residents and business owners, who complain that delays cause frequent and notable adverse effects on their businesses. Customers are deterred from coming in, are unable to leave due to train traffic, and employees are unable to get to work.²⁵ Increased traffic and delays will adversely and disproportionally effect the economy and wellbeing of EJ communities.

According to the Houston Fire Chief, trains cause delays to emergency crews about 900 times each year. In 2021, the city had over 1,300 instances in which their emergency crews had to reroute because they were being blocked by a stopped train.²⁶

The effects of stalled traffic due to crossing delays in Harris County EJ communities is already above generally acceptable norms and the impact of on average 8 more trains passing through and an increase in the number of vehicles delayed per day at each crossing in the County due to the Proposed Acquisition will make it worse. Thus, an EJ analysis is warranted under the OEA's definition.

The effects of the Proposed Acquisition on the County's EJ populations are "significant" under both the current and former definition under NEPA and thus warrant analysis.

The CEQ EJ guidance the OEA relied on to make their "potentially high and adverse impacts" definition was published in 1997. The NEPA definition of significance in effect at that time states that "significantly as used in NEPA requires considerations of both context and intensity" and gives several factors to analyze those aspects.²⁷

"Context" indicates the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. "Intensity" refers to the intensity of the impact. Several factors are listed for consideration of "intensity," including the degree to which the proposed action affects public health and safety and the degree to which the effects on the quality of the human environment are likely to be highly controversial.²⁸

Within the context of the locality of Harris County, the effects of this action will be highly controversial due to the growing local advocacy efforts for clean air and solutions to current issues related to traffic and railways. The inherently controversial nature of any action

²⁴ David González, *Stopped trains in Houston create more than just delays*, KHOU, (Feb. 4, 2022)

<https://www.khou.com/article/news/stopped-trains-houston/285-4a720b6e-87a7-436f-bb14-85b3d0b5e1d8>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ 40 C.F.R. § 1508.28 [repealed 2020].

²⁸ *Id.*

increasing emissions, traffic due to crossing delays, and urban blight in this region makes this action “significant” under the former definition. While no longer in effect, this definition is relevant because CEQ relied on it in issuing their EJ guidance.

The 2020 updates to CEQ’s NEPA regulations offer more generalized guidance on considering whether an effect is “significant” and directs agencies to “analyze the potentially affected environment and degree of the effects of the action.” The rule notes that “significance varies with the setting of the proposed action.”²⁹ This language is also present in the old definition.³⁰ The current EJ section in the D-EIS does not address how the effects of the Proposed Acquisition would impact locales with multiple EJ populations facing a variety of environmental problems. The County is concerned that this omission indicates the OEA did not thoroughly analyze the affected environment in Harris County in making their “significance” determinations for threshold EJ analysis. Harris County especially warrants such analysis given its size, the presence of multiple EJ populations, and the combined effects of the hazards they face. The OEA will likely find the effects of the Proposed Acquisition to be significant within the totality of the cumulative effects of these and other factors.

Other federal agencies have undergone EJ analysis when it was in their discretion to do so. Harris County requests that OEA do the same.

There has been a great push from this administration to encourage federal agencies to consider the EJ implications of their actions, and agencies are beginning to increase the level of their analysis.³¹

For example, in a recent Federal Register notice,³² the EPA proposes to disapprove certain planning requirements of the Serious nonattainment area SIP for the 2012 PM2.5 NAAQS for the San Joaquin Valley (SVJ) in California. The EPA goes into a multi-page discussion of environmental justice considerations that explains their requirements under the three EJ related EO’s. The EPA describes their analysis to identify environmental burdens and susceptible populations in underserved communities using EJSCREEN in the SVJ nonattainment area to gain a better understanding of its proposed action. EPA “acknowledges” that it has not issued

²⁹ § 1501.3

³⁰ § 1508.28 [repealed 2020].

³¹ EO 13985 directs Federal Government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and EO 14008 directs Federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities. Exec. Order No. 13,985, 86 FR 7009 (2021); Exec. Order No. 14,008, 86 FR 7619 (1994).

³² Clean Air Plans; 2012 Fine Particulate Matter Serious Nonattainment Area Requirements; San Joaquin Valley, California, 87 Fed. Reg. 60,494 (2022).

any national guidance or rules regarding what might be required for purposes of implementing section 110(a)(2)(E) as it relates to consideration of Title VI and disparate impacts on the basis of race, color, or national origin in the context of the SIP program, but that “[s]uch guidance is forthcoming.”³³ The EPA directed the relevant Californian agencies to existing EPA and DOJ Title VI resources and notes that the EPA’s External Civil Rights Compliance Office is available to provide technical assistance regarding Title VI compliance in their revised SIP for 2012 annual PM_{2.5} NAAQS.³⁴

The OEA predicts the adverse effect on air quality Harris County will experience from the Proposed Acquisition will be accounted for our SIP. The Texas SIP for the HGB Ozone Nonattainment Area will need to be revised because of the new nonattainment designations. The OEA should take into consideration the indication that the EPA might require this new SIP to address environmental justice considerations when assessing whether the adverse impacts of this merger on local air quality will be accounted for. However, the projected inclusion of the merger in a SIP should not be a substitute for OEA assessing the impacts of the air quality by the Proposed Acquisition on Harris County EJ populations.

While the OEA has discretion as to the depth and implementation of EJ analysis contained in the D-EIS, the County asks the OEA to consider the EJ impacts of this merger more deeply as the EPA has elected to do.

The CEQ has recently affirmed the importance of the inclusion of a robust “cumulative effect” analysis in EIS’s that addresses how the incremental impacts of a proposed action contribute to cumulative environmental problems such as air pollution, water pollution, climate change, and environmental injustice.³⁵ In the Federal Register notice regarding revisions to CEQ NEPA regulations that reinstate certain repealed language, including the definition of “cumulative effects” that was taken out in 2020, the CEQ states that it “does not consider these harms to be inconsequential or irrelevant, but rather critical to sound agency decision making.”³⁶ The CEQ further states that restoring the phrase “cumulative effects” will make clear that agencies must fully analyze reasonably foreseeable cumulative effects before Federal decisions are made.³⁷ Thus, the OEA should include an EJ analysis of Harris County that addresses the cumulative effects of the Proposed Action and our current EJ issues to be in compliance with this rule.

³³ *Id.* at 60,530

³⁴ *Id.*

³⁵ National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23,467 (2022).

³⁶ *Id.*

³⁷ *Id.*

3) Hazardous Spills

The OEA has concluded the risk of release on any specific rail segment would be low. Even if this is the case, the County urges the OEA to take into consideration that Harris County is comprised of wetlands and bayous and is prone to major flooding. Thus, any spill has the potential to infiltrate waterways (that feed into the Gulf of Mexico) and travel. In the event of flooding, any spill can potentially interact with residents and their homes and seriously effect human health. The County thus asks that a chemical safety and disaster preparedness plan be put in place for the County as a mitigation effort.

The County is also concerned about the lack of established lines of communications between UP, KC, and Harris County Pollution Control in the event of a hazardous spill or chemical emergency. In 2021, KCS received a violation notice from Harris County Pollution Control Services for violations under the Texas Commission on Environmental Quality Air Regulations and Environmental Quality Municipal Solid Waste Regulations in relation to a corn spill discharge into local waterways. This spill took weeks to clean up, affected local wildlife, and emitted a strong unpleasant odor that distressed residents. Clean-up efforts were delayed in part because of the difficulty the County had in reaching KCS. The County would like to avoid future confusion by establishing a plan regarding which entity, UP or CPKC, is responsible for communication, clean up, and emergency response.

4) Mitigation

The current mitigation efforts in the D-EIS do not sufficiently address the impacts of the Proposed Acquisition on the County.

The County is especially concerned that the current mitigation efforts contained in the D-EIS do not address the EJ concerns of the County and its residents.

Mitigation efforts should address significant and adverse environmental impacts on EJ populations when feasible.³⁸ CEQ guidance indicates agencies should elicit the views of affected EJ populations on mitigation measures and those measures should reflect the needs and preferences of the EJ population to the extent practicable. Harris County is home to multiple EJ populations facing multiple issues, many of which are caused or exacerbated by railroad activity. This reality justifies increased mitigation and communication efforts between the County, its communities, and the STB.

³⁸ Memorandum from the President to the Heads of Departments and Agencies (Comprehensive Presidential Documents No. 279. (Feb. 11, 1994) ("Mitigation measures identified as part of an EIS should, whenever feasible, address significant and adverse environmental effects of proposed federal actions on minority populations, low-income populations, and Indian tribes."))

The County asks the following mitigation efforts to be considered in the final EIS.

I. Safety & Traffic

The County would like to see the facilitation of a direct line of communication between the County/Pollution Control and CPKC to address spills and other issues. A chemical safety and disaster preparedness plan is also warranted. The County would also like funding for emergency response training for our Fire Marshal and Pollution Control to be considered.

In terms of traffic management and the emergency route concerns addressed on page 7, the County asks that a Capital Improvement Project on Lyons Ave is considered to improve emergency access. The County would like the OEA to consider imposing overpass construction at certain crossings to eliminate blockage at heavily trafficked locations as a condition, as it has done in previous mergers.³⁹

II. Air Quality

The change in nonattainment status for the County is a material change in circumstances which the OEA relied on that warrants revision to the current proposed mitigations, per OEA's own recommended mitigation.⁴⁰ The OEA should also take note of the EPA's indication that SIPs will need to include EJ considerations in the future when analyzing the adverse impacts of the Proposed Acquisition our nonattainment area.

The County would like to see good faith communication efforts with the EJ populations and community leaders most adversely affected by the poor air quality in our area to determine what mitigations are appropriate to offset the disproportional burden they carry.

III. Supplemental EIS & Hearing

Harris County's new nonattainment designations and the increasing focus on environmental justice within the CAA scheme are significant new circumstances that have bearing on the impacts of the Proposed Acquisition that warrant the creation of a Supplement EIS for the County.⁴¹

³⁹ CONGRESSIONAL RESEARCH SERVICE, *Locomotive Idling, Air Quality, and Blocked Crossings*, Congressional Research Service, 2 (2022) <https://sgp.fas.org/crs/misc/IF10978.pdf>.

⁴⁰ D-EIS, 4-3

⁴¹ *National Environmental Policy Act Review Process*, ENV'T. PRO. AGENCY, <https://www.epa.gov/nepa/national-environmental-policy-act-review-process> (last updated Oct. 5, 2022) (Stating that a supplement to a draft of final EIS is required when there "are significant new circumstances or information relevant to the environmental concerns that have bearing on the proposed action or its impacts").

Good faith discussions with the County and EJ populations within it regarding mitigation efforts are necessary to comply with the CEQ's guidance. These efforts should include scheduling an in-person hearing in the County. The public hearing should be tied to the Supplemental EIS if one is prepared.

5) Clarifications

The County is asking for clarification on the following points:

I. Appendix K.6: County Level Emissions

It is unclear if the column on page K.16 is meant to represent carbon dioxide equivalent or carbon monoxide equivalent. It is described as carbon monoxide equivalent in the caption on K-12 but listed as CO₂e in the table.

II. Freight Rail Safety Scope

The County would like clarification as to why our rail segment was not included in the Freight Rail Safety scope of analysis. The OEA states they identified 29 rail segments that exceeded the threshold for environmental review, "as shown in Figure 2-1."⁴² Table 2.2-1 in Chapter 2 entitled "Segments that Meet or Exceed Thresholds for Environmental Analysis" includes Segment 149 from Beaumont to Rosenberg, which runs through Harris County. However, this segment is not listed as part of the study area in the paragraphs at the bottom of page 3.1-1 and top of page 3.1-2. Our segment is also not listed in Table 3.1-5 "Incident Rates on CP and KCS Segments." Any clarification the OEA could provide would be appreciated.

Harris County appreciates your consideration of these comments and recommended mitigation measures. Questions can be directed to Elizabeth Hidalgo at elizabeth.hidalgo@harriscountytexas.gov.

Respectfully submitted,

CHRISTIAN D. MENESEE
Harris County Attorney

By: _____
SARAH JANE UTLEY
Division Director, Environmental

⁴² D-EIS, 3-1-1.

