



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270-2102

February 27, 2023

Danielle Gosselin
Director
U.S. Department of Transportation
Surface Transportation Board
Office of Environmental Analysis
Washington, D.C. 20423

Re: Proposed Merger of the Canadian Pacific Railway and the Kansas City Southern Railway Final Environmental Impact Statement

Dear Ms. Gosselin:

The U.S. Environmental Protection Agency (EPA) Regions 5, 6, and 7 have reviewed the Final Environmental Impact Statement (EIS) (CEQ No. 20230014) for the proposed merger of the Canadian Pacific Railway and the Kansas City Southern Railway pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations (40 CFR Parts 1500 – 1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The Final EIS was prepared by the U.S. Department of Transportation (DOT), Surface Transportation Board (STB). This proposed merger includes the Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company; Central Maine & Quebec Railway U.S. Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc. (collectively, CP) with the Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company (collectively, KCS). The STB is the lead agency under NEPA, and CP and KCS are the project applicants.

The following comments are now offered for consideration to complete the NEPA process.

Vegetative Barriers as Mitigation

Multi-modal facilities, rail yards, main-lines, and sidings pose health concerns from exposure to diesel exhaust, dust, and noise. EPA research has documented that a well-designed vegetative barrier can reduce air pollution exposures by as much as 50%. The type of tree species selected are critical to the effectiveness of a barrier, with evergreen species offering substantially more protection than deciduous trees due to their year-round foliage and ability of needles to better capture particles. Spacing and depth of trees is also critical to ensure that no gaps remain after the barrier has matured, as gaps can funnel pollution and worsen air quality in some areas. EPA contributed to a guidance document that offers science-based recommendations for planting and maintaining effective barriers, available at <https://chicagorti.org/resources/vegetation-barrier-toolkit-for-schools-and-communities/>. While species within the guide are applicable to the Chicago land area, other parameters of designing and maintaining an effective barrier are applicable to the full project area.

Recommendation: The STB should gather public input and assess opportunities to implement mitigation measures in specific locations (i.e., identify where vegetative barriers or walls could be sited to minimize air pollution and noise exposure). They should also include maps documenting potential mitigation locations. In the Record of Decision (ROD), the lead agency should commit to offer residences, schools, and other gathering places located within 500 feet of multi-modal facilities, rail yards, main-lines, and sidings vegetative barriers or other appropriate mitigation if desired by the impacted community. The project proponent should commit to working with all impacted communities, with targeted attention paid to communities with Environmental Justice (EJ) concerns.

Environmental Justice

As discussed in Section 3.13, Environmental Justice, the STB concluded that the proposed acquisition would not result in any environmental impacts that would be high and adverse except for noise impacts associated with the projected increase in rail traffic on certain rail line segments. Although STB determined that noise would affect certain low income and minority populations, noise impacts would not be disproportionately borne by those low income and minority populations.

The STB stated that within the noise study area, 6,307 noise-sensitive receptors, including residences, schools, hospitals, nursing homes, and places of worship, would experience an adverse noise impact under the proposed acquisition. An adverse noise impact occurs when the noise level at a receptor increases by 3 dBA₂ or more and reaches or exceeds a 65 Ldn when combined with the existing background noise. Also as discussed in Section 3.6, Noise and Vibration, noise associated with adding planned capital improvements within the rail right-of-way (ROW) would exceed annoyance thresholds for construction noise at several receptors, but this noise would be temporary and would be minimized by the Applicants' voluntary mitigation measures."

Recommendation: EPA recommends the STB may need to conduct further analysis to determine the disproportionate adverse impact the proposed acquisition will have on each localized EJ community. Also, EPA recommends the STB consider the percentage of the 6,307 noise-sensitive receptors, including residences, schools, hospitals, nursing homes and places of worship identified that will experience an adverse noise impact under the proposed acquisition within EJ communities. Since those receptors are spread out across 27 counties and parishes in 5 different states along the existing CP and KCS mainlines, EPA recommends the STB identify the receptors by county/parish and state. If most of the receptors are within EJ communities, EPA suggest the STB reassess its disproportionately adverse impact (direct, indirect, and cumulative) the proposed acquisition will have on low income and minority populations.

Section 3.6 of the Final EIS regarding Noise and Vibration states that increased activities at rail yards and intermodal facilities caused by the proposed acquisition would not result in adverse noise impacts; therefore, rail yards and intermodal facilities were not included in the EJ study area.

Recommendation: Based on complaints EPA received from low income and minority populations adjacent to rail yards and intermodal facilities regarding incidents and excessive noise, EPA recommends the STB include rail yards and intermodal facilities in the EJ Study area

and in the assessment of the disproportionate adverse impact the proposed acquisition will have on the EJ community.

Under the proposed acquisition, county-level emissions of criteria pollutants, Hazardous Air Pollutants (HAP)s, and greenhouse gas (GHG) emissions would increase due to the projected changes in rail traffic and activity at rail yards and intermodal facilities. NOx is the air pollutant of greatest concern from locomotive emissions. The annual NOx emissions associated with the proposed acquisition would exceed EPA's de minimis thresholds within the Chicago Ozone Nonattainment Area, the Houston-Galveston-Brazoria Ozone Nonattainment Area, and the Beaumont-Port Arthur Ozone Maintenance Area. Emissions of other criteria pollutants would be well below the applicable de minimis thresholds.

Recommendation:

EPA recommends the STB identify the demographic and income of population and/or receptors adjacent to rail yards and intermodal facilities and the totality of impact. EPA asks the STB use existing tools available (e.g., EJScreen, which includes EJ/supplemental indexes), the Environmental Justice Screening and mapping tool to aid in the environmental justice assessment process. <https://www.epa.gov/ejscreen>.

In conclusion, the EIS has identified noise and vibration impacts caused by trains along the track to be high and adverse and that higher usage of the existing lines may increase the risk for accidents at rail crossings. As such, EPA has the following recommendation.

Recommendation: EPA ask that the ROD incorporate any commitments agreed to by the railway companies to limit operating times as to mitigate evening hours noise occurrences to identified EJ communities. It is also recommended that commitments be documented in the ROD addressing higher safety measures to mitigate wrecks at rail crossings leading into and away from the EJ communities.

Rail Crossing Delays

As identified in our previous comment on the Draft EIS, two rail crossings are identified that are expected to result in excessive delays to motorists under both the No Action and Preferred Alternatives. These crossing are:

- Delmar Drive, Victoria, Texas (Level of Service (LOS) – E (No Action Alternative)), and LOSD (Preferred Alternative); and
- Phillips Road, Bloomington, Texas (LOS-F (No Action Alternative)), and LOS-E (Preferred Alternative)

Recommendation: EPA reiterates its recommendation that the STB coordinate with the Texas Department of Transportation (TxDOT) to identify appropriate mitigation measures, such as grade-separation, that would reduce current and anticipated motorist delays at the Delmar Drive and Phillips Road crossings to no lower than LOS-C. EPA ask that the STB document in the ROD commitments made by the railway companies to address this concern.

Water Resources Impacts

The Final EIS cites 40 CFR 263 “Standards applicable to transporters of hazardous waste” as one of the many regulations related to the potential for hazardous spills from railway incidents. [40 CFR 263 Subpart C](#) describes the immediate actions that the transporter would need to take in the event of a hazardous waste spill which includes notification of authorities, containment procedures, and cleanup.

Recommendation: EPA ask the STB provide assurances in the ROD that the railway companies acknowledge responsibilities that potential impacts of hazardous waste release to waterways from accidents, require the applicant to comply with 40 CFR 263 Subpart C.

EPA appreciates the opportunity to review the Final EIS. We ask that a copy of the ROD be provided to our Agency upon completion. If you have any questions, please contact Michael Jansky, the project review lead, at 214-665-7451 or jansky.michael@epa.gov.

Sincerely,

Houston,
Robert

Digitally signed by
Houston, Robert
Date: 2023.02.27 22:29:29
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Robert Houston
Staff Director
Office of Communities, Tribes and
Environmental Assessment

cc:

Jeff Bauknight, Mayor, City of Victoria, Texas
(jbauknight@victoriatx.gov)

Danny Garcia, Commissioner, Victoria County,
Texas (dgarcia@vctx.org)

Jeff Davis, Rail Division Director, Texas
Department of Transportation, Texas
Department of Transportation. Copy/paste the
“Rail Crossing Delays” comment to:
(<https://www.txdot.gov/about/contact-us/ask-a-general-question.html?id=rail-div-email>)

Martin Horst, Yoakum District Engineer, Texas
Department of Transportation. Copy/paste the
“Rail Crossing Delays” comment to:
(<https://www.txdot.gov/about/contact-us/ask-a-general-question.html?id=ykm-email>)