

The following is being provided in response to Norfolk Southern's request for comments after viewing their video presentation related to the Merchant Street Bridge. The time stamps below correspond to the time statements were made in their video narrative. <http://www.nscorp.com/content/nscorp/en/in-your-community/the-pittsburgh-vertical-clearance-projects/merchant-street-bridge-video.html>

The following comments solely represent RP3's opinions and beliefs.

Executive Summary

Understanding that you have much else on your minds, it is submitted that Rail Pollution Protection Pittsburgh's (RP3) requested comments below amply demonstrate that Norfolk Southern appears to be:

- effectively and purposefully excluding individual and neighborhood community voices;
- misleading city and state representatives. After being repeatedly promised a "robust Public Involvement Process," in the last 26 months a very small percentage of impacted residents have seen only a room full of placards, and an impersonal video presentation;
- entirely disregarding determinations of both Judge Pellegrini and the Pennsylvania State Historic Preservation Office relating to the interconnected nature of the project, the applicability of the Pennsylvania Environmental Rights Amendment, and the expanded area of potential effects;
- unwilling to acknowledge and to mitigate increased pollution that will result for 128,000 people who live in Environmental Justice Areas adjacent to their proposed modified route- thereby increasing their vulnerability to the virus especially in black and brown communities.

As described in more detail below, it is suggested that cause exists to freeze taxpayer funding for the Pittsburgh Vertical Clearance Project.

Let Senator Fontana know if you agree:

fontana@pasenate.com

(412) 344-2551

All of the documents cited in the detailed comments are available by request to info@railpollutionprotectionpittsburgh.org.

Comment Details

Rail Pollution Protection Pittsburgh objects to a video presentation format (especially without a live Zoom town hall Q & A format.)

Since, according to this video presentation at 11:01, additional structural support for stabilization of the Merchant St Bridge has already occurred, there is time to include the Merchant St Bridge with the rest of the PVCP, as part of an in person true town hall format public outreach meeting held in each of the impacted communities —as PennDOT had previously contracted to have done by Justice and Sustainability Associates.

There are 27 neighborhoods and 175,000 residents impacted by the PVCP who are living in the high-risk pollution and blast zones (72% of whom reside in Environmental Justice Areas.)

Norfolk Southern has not been in any hurry to hold mandatory Section 106 public outreach meetings. The one and only meeting was held on 6/26/18.

That same evening at 9:44pm the Mayor's Chief of Staff Dan Gillman sent an email stating, in part:

“... Just a moment ago, I clicked send on another email to Norfolk Southern expressing the Mayor's sincere frustration with the process and tonight's meeting.

- 1) Numerous issues continue to exist including noise, environmental safety, lack of an environmental impact study, bike/pedestrian safety, disruption to the historic park and more.
- 2) The Mayor's Office had numerous representatives at the meeting tonight and all reported back that it was too crowded, Norfolk Southern employees were not properly identified to answer questions and that generally residents left feeling more confused and more disenfranchised.

We have told Norfolk Southern they need to go back and meet with all the impacted communities in a more intimate setting to dig into details and work through a community based plan. This will take numerous meetings, completing a proper SWOT analysis, and working to address the critical concerns of the community.”

By letter dated 8/16/18 Senator Fontana provided notice that funding (\$20M) would be frozen until a true community process takes place—because what occurred at the first meeting was “insulting” and “reeked of the railroad simply checking off a to-do list...”

PennDOT Deputy Secretary of Multimodal Transportation Jennie Granger's 9/6/18 response promised a “robust Public Involvement Plan” in order to keep funds flowing.

In December 2018, RP3 talked by phone with Norfolk Southern VP Rudy Husband and we were promised 3 community town hall format meetings would be scheduled in February or March, 2019.

On February 7, 2019 we met with Rudy at our home and he promised 3 meetings would be scheduled for April or May, 2019.

Around that time, RP3 publicly disclosed the existence of the sinkhole on the Merchant St Bridge and called for an investigation into whether Norfolk Southern was either not inspecting properly, or perhaps disregarding the results of their inspections. (Actually this was the conclusion made by the Federal Railroad Administration investigators in their Report on the August 2018 South Side Derailment—“serious oversights” in Norfolk Southern operations/inspections) This was done most publicly at the Edgewood Community meeting on 2/24/19 attended by two TV, one radio station and Post Gazette reporter Kevin Flowers. Mr. Flowers called Rudy Husband that same night and Kevin reported in his 2/25/19 PG article that Rudy said Norfolk Southern would now not deal with any community organizations, had no plans for public meetings and would not communicate with anyone other than the City and PennDOT.

RP3's continued grassroots campaign resulted in PennDOT agreeing to hire Justice and Sustainability Associates (JSA) in December 2019 to conduct 27 community meetings between December 2019 and February 2020. This was in keeping with Norfolk Southern's Atlanta Corporate PR spokesperson's promise of an “open and transparent process” which he made on radio and TV at times when RP3 was interviewed. Notwithstanding that promise, the JSA contract was terminated one month later this past January based in part on Norfolk Southern's objection.

In Norfolk Southern's absence, RP3 held 27 community meetings of its own.

During this same period, Norfolk Southern has paid outside counsel to fight to exclude Rail Pollution Protection Pittsburgh, Manchester Citizens Corp., and the North Side Leadership Conference from participating in PUC proceedings pertaining to the Merchant Street Bridge and other Bridges in the project. RP3 alone has filed 17 separate petitions and appeals as a result of Norfolk Southern's opposition. The other two neighborhood organizations have done equally as much, or more.

A video presentation is not the robust community outreach that we were promised after waiting 26 months.

It is submitted that our city and state representatives have been both misled and disregarded. If our city and state elected officials truly represent their neighborhoods, they would agree that we deserve to have public outreach done right considering that residents will have to live next to this modified route running more trains forever. Given that the Merchant Street Bridge has already been stabilized to safely run the current train capacity, after more than 2 years of procrastination, Norfolk Southern is now using the pandemic as an excuse to again shortcut public outreach and to again claim that they checked the proverbial box.

As a result, funding should again be frozen as Senator Fontana had previously recommended.

Additional Comments/Questions

- how much has Norfolk Southern paid in legal fees to oppose community group intervention in PUC proceedings?

- how many people were notified by email about the Merchant Street Bridge video presentation?

-How many more were notified by letter?

-and which area codes were included?

-how many people viewed the presentation at least once?

- how many people submitted questions or comments?

- at 2.41 minutes into the video, Norfolk Southern maintains that the Merchant Street Bridge is "separate and distinct" from the PVCP and that comments related to the PVCP are not appropriate and will not be addressed but held for a later date (reiterated at 27.26).

This is yet another attempt to cut short community input.

Moreover, the Merchant Street Bridge project cannot plausibly divorce itself from the PVCP because Norfolk Southern sat on its hands for 26 months refusing to engage in community outreach.

This is also another attempt to isolate and segregate components of a project that are interrelated, complicated, combined- not separate and discreet.

Norfolk Southern's applied for and received RTAP funding for the Merchant St Bridge as part of the Pittsburgh Vertical Clearance Project. Norfolk Southern's May 29,2018 letter announcing a public open house invitation to be held June 26 2018 lists Merchant St. Bridge as one of the 9 individual project locations which comprise the PVCP.

A Merchant St Bridge placard was included in the PVCP Public Open House on that date.

Similarly, Norfolk Southern's Comment Form related to the June 26, 2018 meeting specifically lists Merchant Street Bridge as a PVCP project location and a component of the PVCP.

Rail Pollution Protection Pittsburgh (RP3) objects to public outreach relating to only the Merchant Street Bridge - which is only one of a number of bridges within Norfolk Southern's PVCP. The bridges are inextricably intertwined.

According to Norfolk Southern's application, the stated purpose of the PVCP is to increase capacity for freight and to accommodate double-stack traffic throughout the North side, through the city, and to East Braddock.

Segmenting or splitting the project bridge by bridge has precluded taking into account the full range of the total impact of the PVCP, and improperly restricted the area of potential effects.

The area of potential effects is viewed broadly to go beyond the project limits or permit area at each bridge. The area of potential effects may include public or private property. On the Northside, predictive modeling and a survey canvassing 100% of the impact area (Ridge Ave Bridge, West Ohio, West North Ave Bridge, Allegheny Commons, and surrounding neighborhoods) is warranted.

Because of the isolated objective and segmentation, the process has failed to take into account the cumulative impact on the park and community, failed to consider alternatives, and to date, an inadequate analysis of mitigation measures.

A review of the 4/30/20 correspondence from the Pennsylvania State Historic Preservation Office makes it clear that their Chief of the Division of Environmental Review agrees given the following determination:

"At the April 20, 2020 meeting, it was acknowledged that decisions related to the proposed design of the Merchant Street Bridge are constrained by design decisions at other obstruction points along the corridor where the vertical clearance project is proposed. Specific concerns expressed by the consulting parties include the need to finalize decision making for the height of the North Street Bridge (currently part of a PUC initiated mediation) and how that will affect the elevation of the Merchant Street Bridge, the selection of preferred alternatives, and potential project effects on historic properties. In addition, should lowering be pursued at Merchant Street, the cost of relocating utilities under the roadway at the bridge has not been presented. The undetermined height requirement and other factors at Merchant Street have the potential to affect the design of the new structure and adjacent features. This includes the stone-faced retaining wall that runs along Merchant Street, associated with the early twentieth-century grade-separation project.

Determination of Effect Report and Mitigation Measures

In our opinion it would be prudent to wait to advance the project design and assessment of project effects on historic properties at Merchant Street until the height requirement of other bridges along the vertical clearance corridor is known. At the April 2020 consulting party meeting the local consulting parties expressed an interest in measures to minimize visual effects to the community through an increase in the height of the retaining wall that runs along the railroad and the addition of landscaping along the railroad corridor. The retaining wall and the decorative fencing atop it are contributing features to both the railroad corridor district and the Allegheny Commons Historic District. If elevation of the retaining wall is introduced into the project design, then it will be necessary to reassess the potential effect of the project on both historic properties."

Douglas McLearen, Chief
Division of Environmental Review

A prime example of how Norfolk Southern has used isolating individual bridge projects against communities occurred in connection with the West Ohio Street Bridge.

In 2011, I made the same argument that the W Ohio St Bridge should not be viewed in isolation and must at least take into account the West North Ave Bridge. The neighborhoods were told that the West North Ave bridge had more than a 25 year remaining useful life and that double stacked trains would not be coming through the park for at least a quarter century. (The useful life of a repaired W North Ave Bridge was confirmed in a 6/13/2011 Post Gazette article as 30 years.)

Based on this misrepresentation, Norfolk Southern secured the neighborhood's agreement to raise the West Ohio St Bridge's height to 22'. Although that agreement was obtained based on a misrepresentation and under false pretenses, now that height agreement is being used by Norfolk Southern as a reason the West North Ave Bridge should be raised to the same height.

5:11- Norfolk Southern maintains that the current daily traffic is 34 freight trains. Public and private conversations with NS VP Rudy Husband indicated that traffic was seasonal and averaged 20-25 trains per day.

Norfolk Southern indicates the tracks (without modification) have an existing capacity of 70 trains/day.

According to PennDOT emails obtained under Right to Know Requests, the correct number is 70-80 trains/day. Norfolk Southern has indicated that this figure could be higher with track modification.

Norfolk Southern maintains in its presentation that replacing the Merchant Street Bridge will "not result in any increased throughput capacity."

It is submitted that adding double stack trains to the Fort Wayne and Pittsburgh lines will result in two to four times the number of trains/day because of a three-hour time saving/train over running those trains around the city on the Mon line. Also, according to Norfolk Southern stockholder literature, those trains are now in the process of being doubled in length. Because the scheduling computers will funnel trains onto the quickest routes, the city can expect all four tracks to be filled to maximum capacity without waiting to take into account projected freight traffic increases through 2045. Of even more concern is that once traffic increases, lower priority trains will be idled in sidetracks all along the 17 mile route (for example Manchester tracks spread from 4 to 11 tracks). Carnegie Mellon University analysts have determined that for every hour of train idling there is one additional pollution related death per year. We have already had examples of Norfolk Southern trains idling for 4 days and nights in Allegheny Commons, and 2 days and nights in Manchester. The PVCP impact is greatest on the Manchester neighborhood.

5:50-7:09-

RP3 does not dispute that replacing the Merchant Street Bridge will minimize future maintenance costs over the long term. However, given the stabilization and other maintenance and repairs that have already occurred to make that bridge safe for current daily travel, what maintenance would be needed in the next year so that the type of in person public outreach contemplated by Section 106 could occur along with the rest of the PVCP bridges?

8:53/11:40/17:32

Norfolk Southern indicates that emergency vehicles and buses will be traveling for the first time under the Merchant Street Bridge once the roadway is lowered, and that the “multi column bent” which now protects pedestrians is being removed. In addition, “advisory bike lanes”— utilized in the Netherlands, will be placed on either side of the one single lane of traffic.

The new multi modal traffic arrangement raises safety concerns considering the addition, for the first time, of emergency vehicles and trucks and buses into the mix — especially if a bike is traveling at speed downhill towards the Clark Building.

Additional community meetings need to be held to discuss these issues because in the Netherlands- unlike the North side, bikes have legal priority and are respected.

23.13/23.42

Norfolk Southern maintains that no impact analysis is required since there is no significant effect on noise, air quality or vibration because there is no change in intensity, source, or location— relying on the Federal Transit Administration Impact Assessment Manual.

First, that manual, while adopted by the FRA, relates to roads, cars and trucks.

The appropriate standard and analysis to be followed by Norfolk Southern and PennDOT is laid out in the decision by Judge Pellegrini as follows:

Just because the PUC under its own regulations is required to impose an overhead clearance of 22 feet unless the railroad seeks an exemption does not necessarily mean that the Bridges have to be reconstructed to achieve that height clearance because that goal could also be achieved by lowering the tracks. There is no dispute that the site is historical in nature in that it was created at the time of the Revolutionary War. If the Bridges are raised, that will have a severe impact on the park due to longer and higher street approaches to the Bridges and that could impact its historic nature. It is also undisputed that the park is an important recreational asset that could also be undermined by the increased height of the Bridges. One or both of those concerns seemed to have been taken into consideration by placing the railroad line in a cut so as not to visually impact the park when the line was constructed. Also, the PUC is constitutionally required to take those concerns into consideration under Article I, Section 27 of the Pennsylvania Constitution which declares the people's right to the preservation of the natural, scenic, historical and esthetic values of the environment and further provides that the public natural resources are the common property of all the people.

While the PUC took away from itself the ability to exempt reconstruction of bridges at less than 22 foot overhead clearance requirements unless the carrier sought an exemption, it must take into consideration the historic and esthetic nature of the park and the recreational activities in fashioning a remedy. Based on the outcome of those considerations, the PUC could order that the Bridge be raised, that the tracks be lowered or a combination to preserve the park's historic and esthetic nature as well as its recreational use. Accordingly, that portion of its order is vacated and the case is remanded to the PUC for the purpose of determining how the 22 foot clearance will be achieved in accordance with this opinion.

RP3 submits that, to date, neither PennDot nor Norfolk Southern have followed the analysis, balancing or process ordered by Judge Pellegrini. The Constitutional Environmental Rights Act Amendment quoted by Judge Pellegrini is being totally disregarded since there is a direct and an indirect taking of protected Allegheny Commons park land as a result of the PCVP as a whole. The Merchant Street Bridge is being replaced to accommodate the increased rail traffic.

A violation of Section 27 exists based on the fact that Allegheny Commons is a natural resource and common property that is held in public trust. Diminution of access use, recreation and enjoyment- are all recognized violations of a public trust.

25.27 Norfolk Southern maintains that the project will not adversely affect Allegheny Commons Historic District.

According to the Pennsylvania State Historic Preservation Office, it reviews projects in accordance with the following state and federal laws:

Section 106 of the National Historic Preservation Act and its implementing regulations;
The Environmental Rights Amendment, Article 1, Section 27 of the Pennsylvania Constitution;
- and the Pennsylvania History Code.

The guidelines for Section 106, which are incorporated for Pennsylvania state money projects by Section 2002, states as follows:

“Full consideration of historic properties includes consideration of all kinds of effects on those properties: direct effects, indirect or secondary effects, and cumulative effects. Effects may be visual, audible, or atmospheric. Beyond the effects from physical alteration of the resource itself, effects on historic properties may result from changes in such things as local or regional traffic patterns, land use, and living patterns.”

RP3 presented the above during the Merchant Street Bridge Consulting Party Meeting # 2.

In response, by letter dated 4/30/20, the Pennsylvania State Historic Preservation Office agreed with our position and determined as follows:

“ Area Of Potential Effect

“The proposed project includes planned increases in the number of trains, thereby resulting in increases in noise and emissions. However, the May 2018 report does not provide a discussion of changes in noise or air quality associated with increased freight traffic. Please provide documentation of consideration of the potential increases of noise and emissions associated with the Pittsburgh Vertical Clearance Project and the associated indirect effects on historic properties along the corridor, and if necessary, revise the APE (Area of Potential Effect.)”

Douglas McLearen, Chief
Division of Environmental Review

This letter is directly contrary to conclusion at 25.29 that there is no adverse effect on the Allegheny Commons Historic District Park.

The reality is that there will be more longer trains once all of the interrelated projects necessary to carry the increased traffic are completed. That surge in rail traffic will occur in the near future - rather than in 2045 as projected. The result will be more noise, vibration and pollution.

The latest study from Harvard <https://www.hsph.harvard.edu/news/hsph-in-the-news/air-pollution-linked-with-higher-covid-19-death-rates/> determined that higher levels of pollution result in more serious outcomes for those afflicted with the virus. Given that the mortality rate of black and brown residents is twice that of

whites, this impact must be acknowledged and mitigated given the 128,000 Environmental Justice Area (EJA) residents living along the high-risk pollution fallout zones on Norfolk Southern's proposed modified route. Those lives must be made to matter to Norfolk Southern. Residents of EJA are required to receive extra consideration in policy decisions to ensure that we do not disproportionately shoulder the burden of environmental hazards.

26.34- The Environmental Document (ED) for Merchant Street Bridge alone will be completed fall/winter 2020.

The March 19, 2018 Scoping Meeting Minutes for the PVCP (which specifically included the Merchant Street Bridge on P 4 along with all of the other bridges) states as follows:

"All nine crossings being advanced by Norfolk Southern could be addressed in the Environmental Document [ED] as a single project. PennDot agreed with this approach..." (P5)

[while] design could be advanced as Norfolk Southern wishes, the ED would ultimately require consideration of all bridges for approval (together). P 6.

It was agreed that a qualitative noise and air quality analysis would be performed along with an asbestos survey (P 6) and that Historic Review Commission approval was required. (P 7)

It is submitted that all of those steps must occur before public outreach occurs.

It appears that Norfolk Southern is now disregarding all of the above agreements, studies and steps.

Consequently, it is requested that taxpayer funding be frozen until the appropriate processes are followed and the taxpayers living in each impacted community have a voice in the process.

Please let Senator Fontana know if you agree:

fontana@pasenate.com

(412) 344-2551