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SERVICE DATE - MARCH 10, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-859 (Sub-No. 1X)

PENNSYLVANIA LINES LLC—ABANDONMENT EXEMPTION—
IN NORTHAMPTON COUNTY, PA

Decided: March 8, 2004

Pennsylvania Lines LLC (PRR) and Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for PRR to abandon, and NSR to discontinue service over, a 3.7-mile line of railroad between milepost EK-53.0 at Hellertown and milepost EK-56.7 at Bethlehem, in Northampton County, PA. Notice of the exemption was served and published in the Federal Register on February 10, 2004 (68 FR 6373). The exemption is scheduled to become effective on March 11, 2004.¹

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on February 13, 2004. In the EA, SEA states that the State of Pennsylvania had not submitted comments at the time the EA was prepared, but that salvage activities for the proposed abandonment should be done in compliance with state air quality rules, especially 25 Pa. Code 123.1, regarding fugitive dust emissions. Therefore, SEA recommends imposition of a condition requiring that, during salvage activities, PRR comply with the Pennsylvania state air quality rule 25 Pa. Code 123.1, regarding fugitive dust emissions.

SEA states that the City of Bethlehem (City) has regulations that establish thresholds for noise levels within its boundaries and that, while noise levels associated with rail removal or salvage operations would be temporary and should not have a significant impact on the area surrounding the proposed abandonment, PRR should comply with the City's noise regulations. Therefore, SEA recommends that a condition be imposed requiring that PRR comply with the City's noise regulations, which establish thresholds for noise levels.

¹ While the notice embraced the proposed discontinuance in STB Docket No. AB-290 (Sub-No. 245X), Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Northampton County, PA, the environmental conditions discussed in this decision are imposed on the proposed abandonment.

SEA states that, based on an undocumented response from the U.S. Fish and Wildlife (USFWS), NSR reports that the rail line is located within the range of the bog turtle (*Clemmys muhlenbergii*), a species that is Federally listed as threatened. SEA states that, at the time the EA was prepared, the USFWS had not yet commented on the proposed abandonment's potential impacts to the bog turtle. Therefore, SEA recommends imposition of a condition requiring that, prior to conducting any abandonment or salvaging activities, PRR shall consult with the USFWS Pennsylvania Field Office (State College, PA) to assess potential impacts to the bog turtle or other Federally threatened or endangered species, and identify any appropriate mitigation measures that may be warranted, and report the results of the USFWS consultations to SEA.

SEA states that the Pennsylvania Natural Diversity Inventory (PNDI) has indicated that the proposed abandonment has the potential to impact several species. The following state endangered or threatened plant species may occur in the project vicinity: (1) the Northern Water-Milfoil (*Myriophyllum sibiricum*), which typically grows in still water of rivers, lakes, ponds, and marshes; (2) the Western hairy rock-cress (*Arabis hirsute*), which typically grows in woods, on banks, or rock ledges and is usually found on limestone; (3) the Sedge (*Carex tetanica*), which typically grows in fens, marshes, boggy swales, moist and calcareous meadows; and (4) the Prairie Sedge (*Carex prairea*), which typically grows in marshes, fens, and moist and calcareous meadows. Considering the habitat requirements of the above species and the urbanized character of the subject rail line, it is unlikely that any of the above species would be adversely affected by the proposed abandonment. However, if any of the above habitats exist in the right-of-way, PNDI recommends that a site survey be conducted by a qualified botanist before the onset of any earth disturbance associated with the project, in order to confirm or deny the presence of these species in the project area. PNDI requests that, after the survey is conducted, PRR contact its office with the results in order to discuss the measures necessary to protect these species. Therefore, SEA recommends that PRR consult with the PNDI prior to salvage activities.

SEA states that, according to PRR, there are no known hazardous waste or hazardous material spill sites on the right-of-way. Nevertheless, PRR provided a list of 26 potential sites for potential hazardous materials or waste sites near the area of the proposed project. The City commented that one of these sites, the old Champion Battery Company in Hellertown, is a Superfund Site that is under remediation. Because the Pennsylvania Department of Environmental Protection (PADEP) has not yet responded, SEA recommends that PRR contact the PADEP, Hazardous Sites Cleanup Program, at (717) 783-7509, prior to abandonment activities.

SEA further states that the U.S. Department of Commerce's National Geodetic Survey (NGS) has identified 12 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring PRR to notify NGS 90 days prior to salvage activities in order to plan for their potential removal or relocation.

Finally, SEA states that the Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation (SHPO), had not completed its assessment of the proposed abandonment at the time the EA was prepared. The SHPO has requested additional information from PRR, including a more detailed map of the project area. Pending completion of the SHPO's review, SEA recommends that a condition be imposed requiring that PRR shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

Accordingly, the proceeding will be reopened and the recommended conditions will be imposed.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the conditions that PRR shall: (1) comply with the Pennsylvania state air quality rule 25 Pa. Code 123.1, regarding fugitive dust emissions, during salvage activities; (2) comply with the City's noise regulations, which establish thresholds for noise levels; (3) consult with the USFWS (Pennsylvania Field Office) (State College, PA) prior to conducting any abandonment or salvaging activities, to assess potential impacts to the bog turtle or other Federally threatened or endangered species, and identify any appropriate mitigation measures that may be warranted, and report the results of the USFWS consultations to SEA; (4) consult with the PNDI prior to salvage activities regarding the endangered plant species, the Northern Water-Milfoil, the Western hairy rock-cress, the Sedge, and the Prairie Sedge; (5) contact the PADEP, Hazardous Sites Cleanup Program, at (717) 783-7509, prior to any abandonment activities; (6) notify the NGS 90 days prior to salvage activities in order to plan for the potential removal or relocation of the 12 geodetic station markers; and (7) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the NHPA.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary