

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-303 (Sub-No. 28X)

WISCONSIN CENTRAL LTD.—ABANDONMENT EXEMPTION—IN ASHLAND
COUNTY, WI

Decided: May 28, 2008

Wisconsin Central Ltd. (WCL) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its line of railroad in Ashland, Ashland County, WI, referred to herein as the “Ore Dock Line” or “the Line.” The Line starts at a point of switch off WCL’s main line in Ashland at milepost 434.49 and continues 5,160 feet to the end of WCL’s Ashland Ore Dock, a large structure extending out over Lake Superior. Notice of the exemption was served and published in the Federal Register on February 23, 2006 (71 FR 9422-23). The exemption was scheduled to become effective on March 25, 2006.

By decision served April 28, 2006, the proceeding was reopened at the request of the Board’s Section of Environmental Analysis (SEA) and the exemption was made subject to six environmental conditions. One of the conditions (condition no. 5), required WCL to retain its interest in and take no steps to alter the historic integrity of the Ashland Ore Dock, which has been determined eligible for listing in the National Register of Historic Places, until the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), has been completed. WCL was also directed to report back to SEA regarding any consultations with the Wisconsin Historical Society and any other section 106 consulting parties, and to refrain from consummating the abandonment of the Ashland Ore Dock or initiating any salvage activities related thereto until the Board removes this condition.¹

By decision served on February 12, 2008, the Board again reopened the proceeding and modified condition no. 5 based on new information presented by SEA in a Post Environmental Assessment. The modification, allowing WCL to salvage and/or secure those portions of the Dock that were in a severely deteriorated condition, read as follows:

WCL shall retain its interest in the Ashland Ore Dock, which has been determined eligible for listing in the National Register of Historic Places, until the section 106

¹ Environmental condition no. 6 has been satisfied. The other four environmental conditions imposed in the April 28 decision remain in effect, but are self-executing and are not a barrier to consummation by WCL of this abandonment.

process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. Based on the feasibility study prepared for the Wisconsin Department of Administration by Westbrook Associated Engineers, Inc., WCL shall take such steps as are necessary to protect the public health and safety by removing and/or stabilizing as necessary those portions of the Dock identified as being in a severely deteriorated condition. WCL shall not consummate the abandonment of the Dock or initiate any salvage activities related thereto until the Board removes this condition.

By decision served on May 2, 2008, and consistent with the discussion in an April 23, 2008 policy statement,² the Board granted WCL's request to withdraw a request for an extension of time to file its notice of consummation in this proceeding.

In a subsequent Post Environmental Assessment, SEA states that, on or about February 1, 2008, it learned that the U. S. Army Corps of Engineers (Corps) was conducting a parallel section 106 review to satisfy its requirements before issuing a permit to WCL that would allow removal of the Ashland Ore Dock. At the suggestion of the Advisory Council on Historic Preservation, SEA worked closely with the Corps to develop a joint Memorandum of Agreement (MOA) that addressed the needs of all parties. SEA states that this joint MOA was signed by SEA, Corps, the Wisconsin State Historic Preservation Officer (SHPO), and WCL, with an effective date of April 11, 2008. SEA further states that it consulted with the Corps, SHPO, and WCL pursuant to 36 CFR 800.6 regarding ways to avoid, minimize, or mitigate effects to the historic resources as a result of the abandonment and disposition of WCL's assets and all have determined that no such measures are necessary. As such, SEA now recommends that the section 106 condition be removed.

Accordingly, based on SEA's recommendation, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the modified section 106 historic preservation condition imposed in the February 12, 2008 decision is removed.

² Consummation of Rail Line Abandonments That Are Subject to Historic Preservation and Other Environmental Conditions, STB Ex Parte No. 678 (STB served Apr. 23, 2008). The policy statement also discussed the effect of salvage conditions under the National Environmental Policy Act, 42 U.S.C. 4321 et seq. (NEPA), on consummation of abandonments and notices of consummation.

3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary