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SERVICE DATE - LATE RELEASE DECEMBER 10, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-550 (Sub-No. 2X)

R.J. CORMAN RAILROAD COMPANY/ALLENTOWN LINES, INC.–
ABANDONMENT EXEMPTION–IN ERIE COUNTY, NY

Decided: December 10, 2002

R.J. Corman Railroad Company/Allentown Lines, Inc. (RJCN) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon: (1) the Walden Running Track between approximately milepost 413.90 and approximately milepost 418.50; and (2) the JD Industrial Track between approximately milepost 0.00 and approximately milepost 0.60, a total distance of approximately 5.20 miles in Erie County, NY. Notice of the exemption was served and published in the Federal Register on November 8, 2002 (67 FR 68226-27). The exemption is scheduled to become effective on December 11, 2002.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 15, 2002. In the EA, SEA states that the New York State Department of Environmental Conservation Division of Legal Affairs, Region 9 (NYSDEC), has expressed several concerns regarding potential safety hazards, designated wetlands, 100-year floodplains, water quality and storm water management. NYSDEC specifically states that: (1) the Division of Solid and Hazardous Wastes advises that all solid or hazardous materials removed from the site, such as railroad track, ties, contaminated ballast, etc., must be disposed of properly during salvage operations; and (2) salvage operations performed in any regulated activities within the area, or within a 100-foot buffer zone, will require an application for a wetlands permit under Article 24, Title 7 of the Environmental Conservation Law (ECL). NYSDEC goes on to state that a portion of track to be abandoned crosses Ellicott Creek, a Class B Stream, and any disturbance within 50 feet of Ellicott Creek will require an application for a protection of water permit pursuant to Article 15, Title 5 of the ECL; and (3) the rail line corresponds to approximately 6.3 acres and that construction of 5 acres or more requires a storm water permit. If physical disturbance is associated with the removal of track and materials, a SPEDS General Permit for storm water discharges should be obtained pursuant to Article 17, Titles 7 and 8 of the ECL. Therefore, in response to these concerns, SEA recommends that a condition be imposed requiring RJCN to consult with NYSDEC prior to salvage operations to address NYSDEC's concerns.

The recommended conditions will be imposed. 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 abandonment of the line described above is subject to the conditions that RJCN shall consult with NYSDEC: (a) concerning the disposal of solid or hazardous materials removed from the site; (b) to determine whether section 402 permits are required; and (c) to determine whether the salvage activities would require coverage under the general permit for storm water discharges.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary