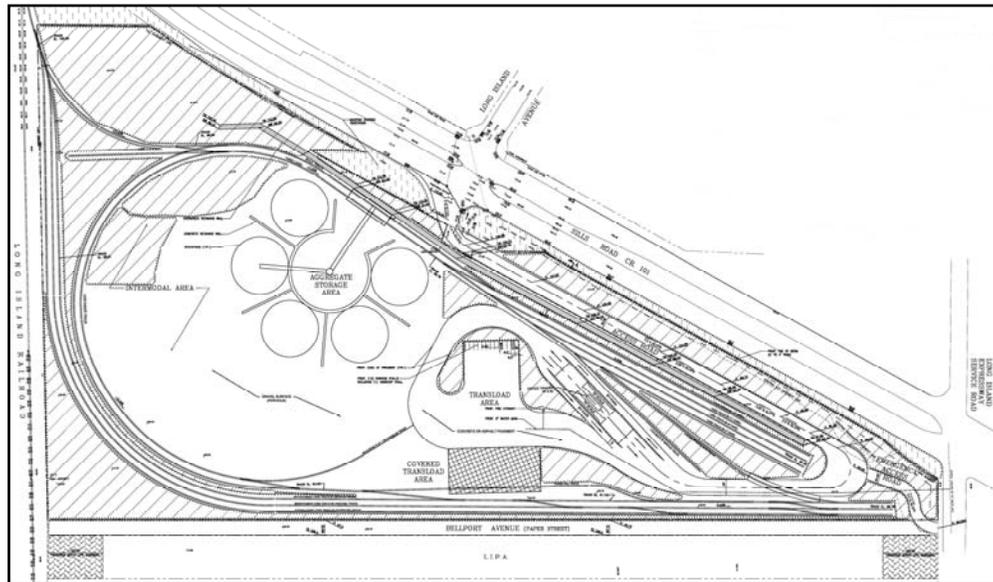


FINAL ENVIRONMENTAL ASSESSMENT

Finance Docket No. 35141

**U S Rail Corporation
-- Construction and Operation Exemption --
Brookhaven Rail Terminal**



Victoria Rutson, Chief
Section of Environmental Analysis

Informational Contact:
Troy Brady
Section of Environmental Analysis
Surface Transportation Board
395 E Street SW, 11th Floor
Washington, DC 20423
(202) 245-0301

SUMMARY

Based on the Section of Environmental Analysis' (SEA) review of all information available to date, SEA concludes that the construction and operation of the proposed rail line would not result in any significant environmental impacts if the mitigation measures recommended in this Final Environmental Assessment (EA) are imposed and implemented. Therefore, SEA recommends that the Board impose on any final decision approving the proposed rail line construction and operation the three mitigation measures recommended in this document. Because the construction and operation of the proposed rail line as mitigated would not have the potential for significant environmental effects, preparation of an EA in this case is appropriate and the full Environmental Impact Statement (EIS) process is unnecessary.

NARRATIVE

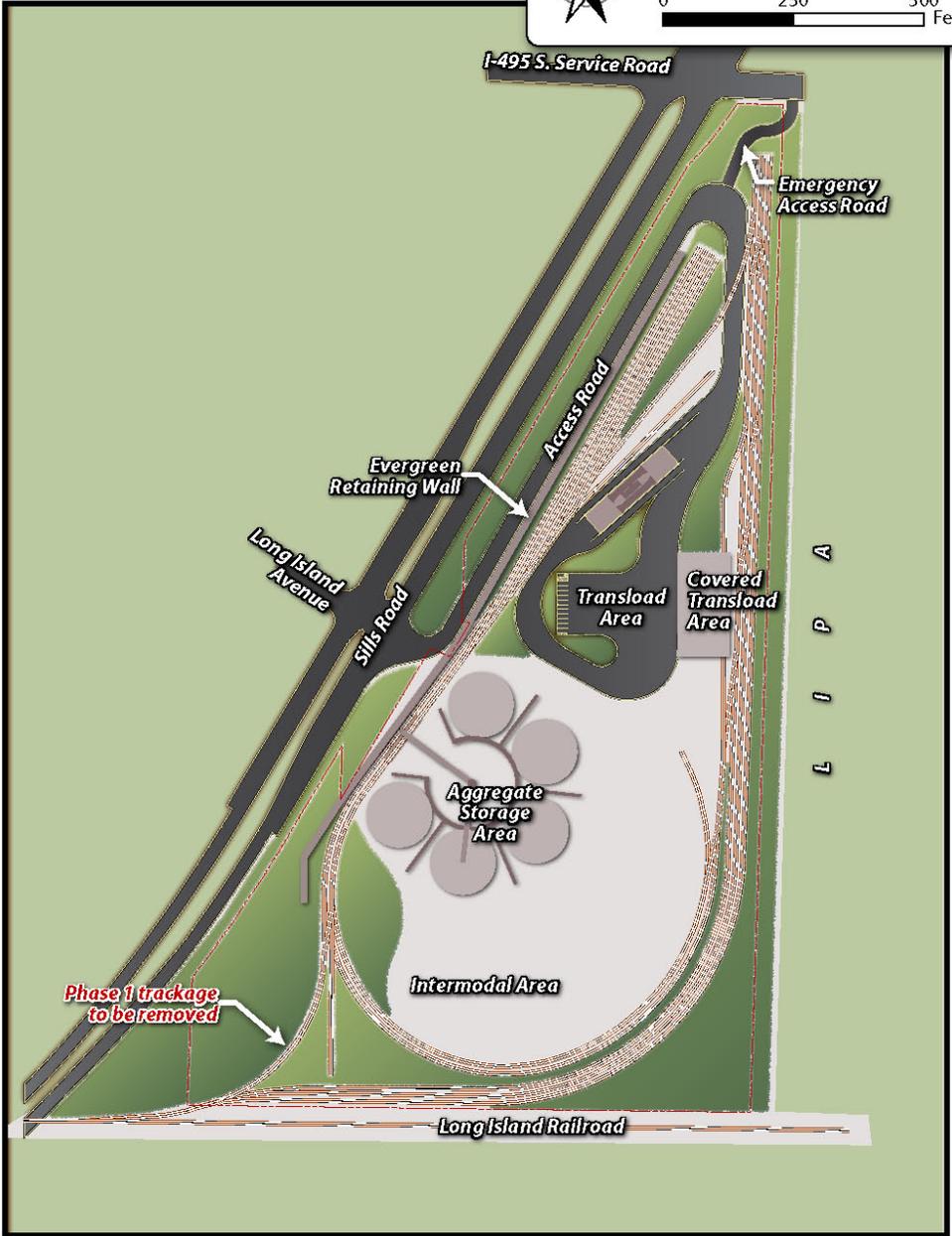
On August 7, 2008, U S Rail Corporation (U S Rail), a Class III common carrier railroad¹ headquartered in Toledo, Ohio, filed a petition under 49 U.S.C. § 10502 with the Surface Transportation Board (Board) for authority to construct and operate about 18,000 feet (approximately 3.4 miles) of rail line.² The rail line would be located on a 28-acre site called the Brookhaven Rail Terminal (BRT), in Brookhaven, Suffolk County, New York. See Figure 1. U S Rail also proposed to construct various facilities at the BRT site, including a rail switch, crushed stone aggregate handling and storage facilities, a freight storage area, and a transload area with truck scales. The BRT site would connect with an existing passenger rail line of the Long Island Rail Road (LIRR). Existing freight service over the LIRR is provided by the New York & Atlantic Railway (NY&A). See Figure 2.

The purpose of the proposed project is to provide an efficient means for delivering commodities via rail to the Long Island market, including aggregate from sources in upper New York State (NYS), thereby reducing truck transport through the New York City (NYC) region. According to U S Rail, the proposed project would allow it to deliver aggregate via rail from sources in upper NYS to its primary customer, Sills Road Realty, LLC (Sills) (which owns the underlying 28-acre parcel on which the proposed BRT would be constructed) and its related

¹ A Class III railroad, as defined by the Board, is a railroad with annual operating revenue of less than \$20 million, adjusted annually for inflation using the base year of 1991. Class III railroads are typically local short line railroads, serving a very small number of customers or industries over a limited distance.

² In a filing dated May 25, 2010, U S Rail supplemented its original petition filed on August 7, 2008. This supplement incorporates revisions to the site plan and proposes an additional 7,000 feet of track totaling approximately 18,000 feet from the original approximately 11,000 feet. This increased trackage is entirely located within the original site footprint and also incorporates a screen wall, additional landscaping, and emergency access to the I-495 service road. The supplement eliminates a previously-proposed grade-separated site entrance.

Figure 1
Site Layout



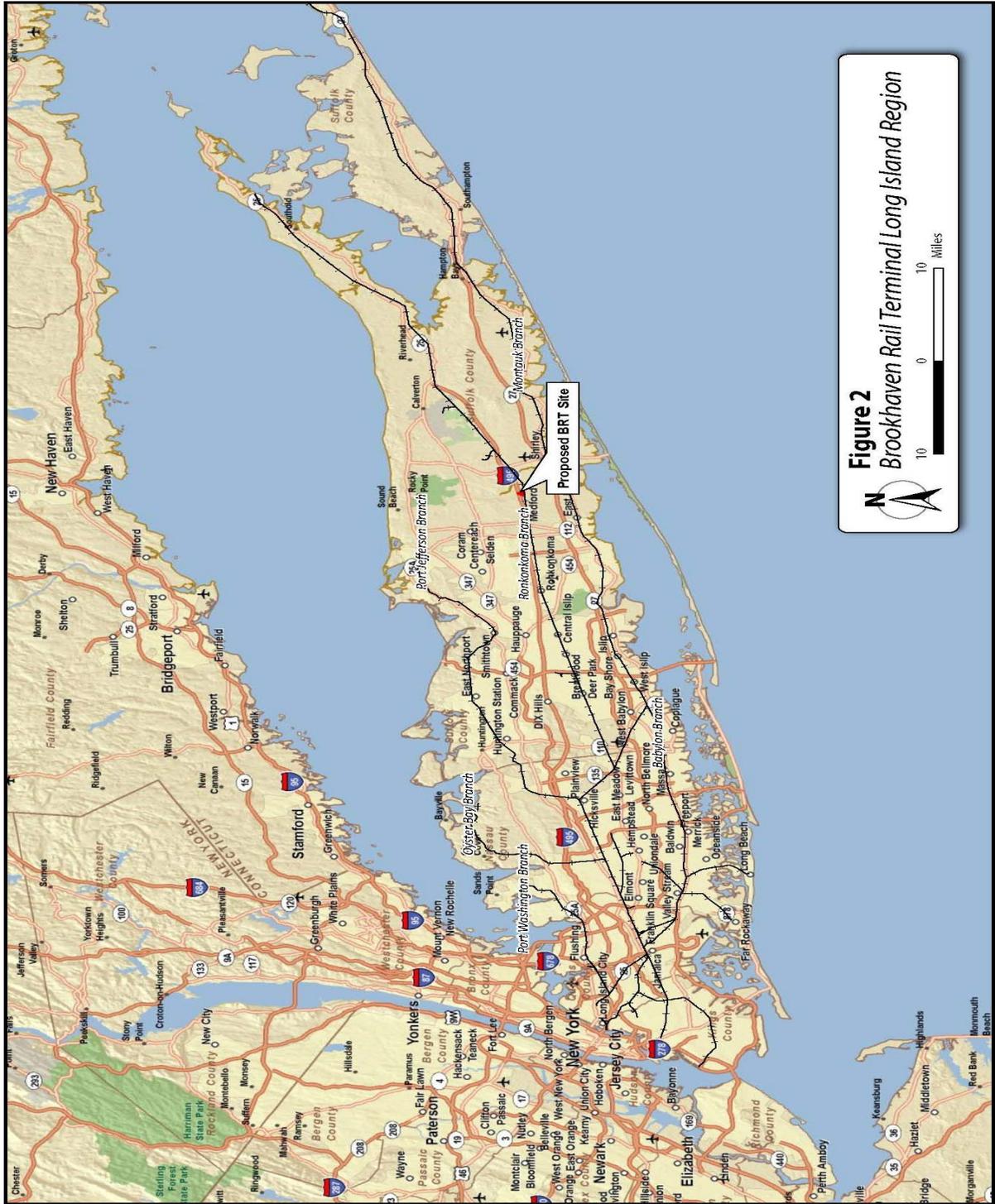


Figure 2
 Brookhaven Rail Terminal Long Island Region

affiliates and related companies, located on Long Island, NY. If approved, the project would reduce Sills' reliance on a complex transportation delivery system that currently relies on a combination of rail, truck, and barge transportation through the NYC region; under the proposal, local truck traffic including truck traffic in the towns of Port Jefferson and Port Washington on Long Island would be reduced.

Trucks currently use local roads to bring aggregate³ to Sills' existing facilities on Long Island—Scatt Materials, located approximately 24 miles from the BRT site, and Empire Asphalt, located approximately 13 miles from the BRT site. The construction and operation of the new rail line would enable U S Rail to serve the BRT as a common carrier and allow for the delivery of up to 500,000 tons of aggregate annually to the BRT for Sills' use in road and building construction on Long Island. Sills expects to deliver 250,000 tons of the aggregate to Scatt Materials and Empire Asphalt and would make the remaining 250,000 tons of aggregate available to currently unidentified, third party customers.

U S Rail expects that the proposed rail line and related rail facilities would initially handle between 5,000 and 6,000 inbound aggregate railcars annually. U S Rail proposes to move an average of six trains per week: three inbound trains, each consisting of approximately 40 to 50 railcars of aggregate delivered to the BRT, and three outbound trains per week consisting of 40 to 50 empty railcars. NY&A would deliver the aggregate to the BRT site over the LIRR line, at which time the rail cars would be handed off to U S Rail. U S Rail would then haul the rail cars into the BRT.

The Board's Section of Environmental Analysis (SEA) is responsible for ensuring the Board's compliance with the National Environmental Policy Act (NEPA), as amended (42 U.S.C. § 4321-4347), the implementing regulations of the Council on Environmental Quality, the Board's environmental regulations at 49 C.F.R. part 1105, and other related environmental laws and their implementing regulations. Under NEPA, the Board must take into account in its decision-making the environmental impacts of its actions, including direct, indirect and cumulative impacts. The Board must consider these impacts before making its final decision in a case.

SEA conducted an environmental review to ensure that the proposed action complies with the statutory requirements of NEPA, the Board's environmental regulations, and other

³ Aggregates are construction materials of crushed stone, sand and gravel. The single largest market for aggregates is road and street construction, including base and asphalt paving for highways, parking lots and other pavements. Other typical uses for aggregate material are concrete for homes and office buildings, and stone and gravel for soil erosion control projects.

applicable rules and regulations. SEA prepared a Draft EA to provide an independent analysis of the potential effects of the proposed rail line construction and operation, as well as those associated with a no-action alternative (which would maintain the status quo). SEA visited the area of the proposed rail line to document existing conditions and further assess the potential effects of the proposed action on the environment.

SEA served the Draft EA containing the results of SEA's environmental analysis on July 26, 2010. As explained in detail in the Draft EA, SEA concluded that the proposed action would have no significant direct, indirect or cumulative impacts if three mitigation measures were imposed and implemented. The Draft EA was served on all parties to the proceeding; appropriate Federal, state and local agencies; and other interested parties, comprising 32 parties in total. In its service of the Draft EA, SEA requested comments on all aspects of the document, including the scope and adequacy of the recommended mitigation measures. The 15-day comment period closed on August 10, 2010. SEA received five comments, including comments from the U.S. Environmental Protection Agency (EPA); LIRR; Assemblywoman Margaret M. Markey of New York's 30th District; Suffolk County Department of Public Works (SCDPW) and Civics United for Railroad Environmental Solutions (CURES) (Copies of the comments are attached to this Final EA.) SEA has summarized and responded to each comment below.

Comment from the EPA: EPA comments that it concurs with SEA's finding of no significant impacts. EPA adds that 1) because Suffolk County is in non-attainment for particulate matter (PM) equal to or less than 2.5 microns in size (PM_{2.5}) and ozone, SEA should complete a General Conformity Applicability Analysis that includes all emissions related to the construction of the new rail line, such as soil excavation, preparation of track bed, and track laying; 2) to safeguard the Nassau-Suffolk Aquifer, any fuel storage in an above-ground, on-site tank should have a secondary containment area; and 3) if U S Rail uses wooden ties in constructing its new rail line, it should avoid toxic compounds that could leach over time into ground water. EPA also encourages U S Rail to use "green practices and techniques" during project design and construction.

SEA's Response to EPA's Comment:

General Conformity Applicability Analysis—PM_{2.5}. In preparing the Draft EA, SEA assessed whether a General Conformity analysis was warranted in this proceeding and determined that the levels of both PM_{2.5} and ozone emitted from construction and operation of the new rail line and planned BRT facilities would fall below the *de minimis* level. In arriving at this conclusion, SEA calculated projected emissions of particulate matter (PM) that would be generated from both the construction of U S Rail's proposed rail line and the planned BRT facilities in accordance with

EPA guidance AP-42, *Compilation of Air Pollutant Emission Factors, Fifth Edition, 1995* for heavy construction operations. Details of this analysis are set forth in the Draft EA at Section 4.1.3. Construction activities evaluated by SEA as part of the emissions analysis included site excavation and grading, paving of haul road and parking areas, extension of rail line from the LIRR to the proposed site, on-site rail tracks and interchanges, retaining wall construction, plantings and landscaping, construction of on-site stormwater retention drywells and ponds, lighting installation and sanitary sewer installation. See id. Results of the analysis indicated that construction of the proposed new rail line and the planned BRT facilities would likely result in PM_{2.5} emissions of no more than 5 tons per month. Assuming a 12-month construction period, the total PM_{2.5} emissions on an annual basis would result in a maximum of 60 tons per year, well below the general conformity threshold of 100 tons per year within EPA designated non-attainment areas (40 C.F.R. § 93.153). Thus, no General Conformity Analysis for PM_{2.5} is warranted in this case.

General Conformity Applicability Analysis—Ozone. To determine ozone conformity, SEA conducted a comparative analysis between the proposed BRT and the proposed New York State Department of Transportation Long Island Truck-Rail Intermodal Facility (LITRIM), which is located within the same airshed. The LITRIM project is a similar rail transfer facility on 105 acres located approximately 20 miles from the planned BRT site. As the Draft EA explains, results from the criteria pollutant analysis for the LITRIM project showed that levels of carbon monoxide and volatile organic compounds (VOC) would be reduced under the build conditions and that approximately 39 tons per year of nitrous oxides (NO_x), which would be generated, therefore would not exceed EPA's General Conformity emission level. Therefore, SEA determined that the emissions of VOCs and NO_x that would be generated by equipment associated with construction of U S Rail's new rail line and planned BRT facilities would be insignificant and well below the EPA General Conformity *de minimis* levels for ozone moderate non-attainment areas of 100 tons per year (40 C.F.R. § 93.153).

Safeguarding the Nassau-Suffolk Aquifer. U S Rail is proposing to have only limited storage of fuels on-site; refueling of yard vehicles would occur primarily via mobile refueling vehicles. Moreover, SEA is recommending a mitigation measure requiring that U S Rail have in place a spill prevention control and countermeasures plan (SPCC). The SPCC Plan would include a requirement for secondary containment of any on-site fuel storage in accordance with the applicable EPA requirements on oil pollution prevention found at 40 C.F.R. § 112. SEA believes that this adequately addresses EPA's concerns regarding the aquifer.

Avoidance of Toxic Compounds and the Use of Green Practices. Based on EPA's comments, SEA encourages U S Rail to avoid using wooden railroad ties that have the potential to leach toxic compounds into the groundwater and to use green practices whenever practicable.

Comment from Long Island Rail Road: LIRR restates its earlier comments from a letter dated November 28, 2008, a copy of which is attached. LIRR indicates its support for private investment to divert heavy vehicular traffic from highways to rail. LIRR also notes that U S Rail would be required to fund the labor and materials necessary for a turnout to allow access to the BRT site.

SEA's Response: Comment noted.

Comment from Assemblywoman Markey: Assemblywoman Markey notes that the Draft EA provides comprehensive documentation of potential environmental issues related to the immediate area surrounding the proposed BRT site. However, Assemblywoman Markey believes that the Draft EA fails to adequately examine the impact of increased rail traffic on the residential communities along the rail line.

SEA's Response: In the Draft EA, SEA assessed potential environmental impacts in the project area, which is industrial, not residential. In any event, the level of anticipated train traffic that would be generated by this proposal would be low, thereby resulting in minimal environmental impact to residential areas along the LIRR line. SEA notes that currently, a total of 58 trains (48 passenger trains and 10 freight trains) per week move on the LIRR within the study area. If approved, U S Rail would only increase freight rail traffic by 6 trains per week (3 inbound trains and 3 outbound trains, each consisting of between 40 to 50 railcars), well below SEA's thresholds warranting analysis.

Comment of Suffolk County Department of Public Works: SCDPW comments that U S Rail's intended uses of the BRT site would require improvements to CR 101 (Sills Road) and notes that any improvements along the county's right-of-way would require a permit from the county.

SEA's Response: Comment noted. SEA adds that, in the "Stipulation of Settlement," U S Rail committed to constructing the proposed BRT "consistent with Suffolk County Department of Public Works standards, if any, with respect to the re-grading of any County rights-of-way adjoining the Property, installation of retaining wall footings within such rights of way, installation and/or modification of the existing traffic signal and the granting of reasonable easements for future traffic signal maintenance." SEA has recommended a mitigation measure

that would require U S Rail’s compliance with the “Stipulation of Settlement” as a condition of its grant of authority from the Board.

Comment from CURES: CURES first notes that increased rail traffic is both cost-saving and environmentally sound, but is concerned that these benefits should not present environmental burdens—such as noise, waste stench, and pollution from uncontained waste cargo—to the communities represented by CURES, a coalition of 14 civic associations in Queens, New York. CURES then raises the following concerns about the Draft EA: 1) the 15-day comment period SEA provided did not allow sufficient time for the public to comment; 2) the Draft EA fails to define what type of freight might be handled and fails to specifically prohibit solid waste transport; 3) the Draft EA does not analyze other potential proposed expansions or new service by NY&A; 4) the Draft EA does not address community impacts along the LIRR rail line on which the NY&A provides freight service, and 5) the Draft EA does not address environmental impacts of current NY&A operations at the Fresh Pond Terminal located in Queens, NY.

SEA’s response to CURES’ Comment:

Sufficiency of 15-day Comment Period. As SEA explained in the Draft EA, a 15-day comment period was appropriate in this case because (1) the Town of Brookhaven Department of Environmental Protection has already conducted an environmental review under SEQRA of the proposed site, (2) the area on which U S Rail proposes to build its new rail line and facilities is industrial and in an area that is already highly disturbed, and (3) the Town of Brookhaven has entered into a “Stipulation of Settlement” with U S Rail regarding this proposal.

Freight to be Handled. As explained in the Draft EA, the purpose of this project is to handle aggregate. U S Rail also has specifically agreed to not handle solid waste at the BRT site. In its “Stipulation of Settlement” with the Town of Brookhaven, U S Rail has agreed that “operations at the Property shall not include the collection, sorting, separation, processing (including but not limited to, baling, crushing, compacting and shredding), incineration, treatment, management, disposal, transport or transfer of solid waste and construction and demolition debris unless required under federal law or regulations.”

Downstream Impacts on the LIRR Rail Line on which NY&A Provides Freight Service and Fresh Pond Terminal. Regarding the scope of the Board’s environmental review and proposed mitigation (comments 3, 4 and 5), the only proposed action before the Board here is a proposal to construct and operate a new 18,000-foot rail line. Thus, the environmental review was properly focused on the area in which the new line would be located, as well as the cumulative effects of

the rail facilities that are planned for the BRT site. Moreover, as the Draft EA explains, the increase in train traffic anticipated by the proposed action neither meets nor exceeds the Board's thresholds for assessing environmental impacts of rail operations. The level of anticipated train traffic that would be generated by this proposal is low, thereby resulting in minimal environmental impacts beyond existing conditions to residential areas in the vicinity of the proposed line and along the LIRR line. SEA notes that currently, a total of 58 trains (48 passenger trains and 10 freight trains) per week move on the LIRR within the study area. If approved, U S Rail would only increase freight rail traffic by 6 trains per week (3 inbound trains and 3 outbound trains, each consisting of between 40 to 50 railcars), well below SEA's thresholds warranting analysis.

Moreover, CURES' comment seems to assume that the additional trains that could result from this proposal would move solid waste, which as explained above, would not be the case. Concerns raised in CURES' comment—trains carrying solid waste in open gondola cars sitting overnight in neighborhoods during 95+ temperatures—describe conditions that apparently occurred this summer at the Fresh Ponds Terminal in Glendale, NY. Such conditions are obviously deplorable. They are not, however, related to this proceeding, which involves a proposal to transport crushed stone aggregate by rail to a planned facility on Long Island. Solid waste, as explained above, is not and will not be (according to the “Stipulation of Settlement”) part of this proposal.

Finally, CURES argues that the Draft EA should have studied other proposals involving the use of NY&A's facilities at the Fresh Pond Terminal in Queens, that it should have mitigated impacts to communities that are currently adversely affected from NY&A's use of polluting older locomotives, and that it should have mitigated noise, dust, diesel exhaust and other impacts occurring at the Fresh Pond Terminal. However, NY&A's activities at and around the Fresh Pond Terminal are not part of the proposal under review here, which the Board has not decided to approve. SEA's environmental review focuses on the potential environmental impacts of proposed actions, not existing conditions, and there is nothing in the available information to suggest that this proposal will not result in minimal environmental impacts. CURES' concerns are clearly rooted in current rail operations at the Fresh Pond Terminal rather than with the proposed action.

CONCLUSION AND RECOMMENDED MITIGATION

SEA has carefully reviewed its analysis and conclusions in the Draft EA and, with one exception, reaffirms here the analysis and discussion contained there. Specifically, in reviewing

the Draft EA, SEA identified an error in its Major Conclusions section of the Draft EA. Major Conclusion Number 11 stated that, “SEA’s recommended conditions would require U S Rail to comply with the terms of both the SEQRA Negative Declaration Finding accepted by the Town of Brookhaven on March 23, 2006 and its “Stipulation of Settlement” agreement with the Town of Brookhaven and Sills Group which was filed with the Board on April 26, 2010.” In examining the SEQRA Negative Declaration Finding and the “Stipulation of Settlement,” SEA found that only the “Stipulation of Settlement” set forth conditions to mitigate potential adverse environmental effects that could result from U S Rail’s proposal. Therefore, SEA is correcting Major Conclusion Number 11 to read, in pertinent part, “SEA’s recommended conditions would require U S Rail to comply with the terms of the “Stipulation of Settlement” agreement with the Town of Brookhaven and Sills Group filed with the Board on April 26, 2010.” No change to the mitigation recommended in the Draft EA is required as that language was not included in the actual mitigation.

Based on SEA’s review of all information available to date, including the Draft EA, the comments submitted on the Draft EA, and this Final EA, SEA concludes that the construction and operation of the proposed rail line would not result in any significant environmental impacts if the mitigation measures recommended in this Final EA are imposed and implemented. Therefore, preparation of an EIS is not necessary.

The issuance of this Final EA concludes the environmental review process in this proceeding. The Board will consider the entire environmental record, including SEA’s Draft EA, the comments submitted on the Draft EA, the Final EA, and SEA’s final recommended mitigation measures, in making its final decision here.

SEA’s final recommended mitigation includes the following conditions:

1. U S Rail shall comply with the terms and obligations applicable to it that are set forth in the “Stipulation of Settlement” with the Town of Brookhaven filed with the Surface Transportation Board on April 26, 2010.
2. U S Rail shall employ best management practices before and during construction to minimize erosion, sedimentation, and instability of soils.
3. U S Rail shall develop and implement a spill prevention, control, and countermeasures plan (SPCC Plan) to ensure protection of the Nassau-Suffolk Sole Source Aquifer in the event of an accidental spill. The SPCC shall be

developed in accordance with Article 12 of the Suffolk County Sanitary Code and EPA regulations at 40 C.F.R. § 112.7.

EJ-15247

TOTAL P.02



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
220 BROADWAY
NEW YORK, NY 10007-1866

AUG 10 2010

Mr. Troy Brady
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

RE: Docket No. FD 35141

Dear Mr. Brady:

The Environmental Protection Agency (EPA) has reviewed the Surface Transportation Board's (STB) Environmental Assessment dated July 26, 2010, for the construction and operation of 18,000 feet (3.4 miles) of a new rail line at a site to be called the Brookhaven Rail Terminal (BRT), located in the Town of Brookhaven, Suffolk County, NY. The applicant, U.S. Rail Corporation, proposes to construct and operate both the new rail line and certain facilities on the 28-acre BRT site. The facilities include a rail switch connecting to the Long Island Rail Road (LIRR), 134 feet of track within the turnout, 200 feet of lead track on LIRR property, 100 feet of lead track on BRT property, and crushed stone aggregate handling and storage facilities consisting of an aggregate storage area, a freight storage area and a transload area with truck scales. The purpose of the facility is to provide a terminal to receive rock and aggregate via rail and transload the material to trucks.

EPA concurs with the STB's Finding of no Significant Impacts for the BRT. However, we offer the following comments:

- While EPA understands that the STB's authority through the Interstate Commerce Act is only to license the new rail line, a General Conformity Applicability Analysis must be completed (40 CFR 93.153) as Suffolk County is in non-attainment for the PM_{2.5} and ozone National Ambient Air Quality Standards. All emissions related to the construction of the new rail line must be included, such as soil excavation, preparation of track beds and tracklaying.
- In order to safeguard the Nassau-Suffolk Aquifer, any fuel storage in an above-ground, on-site tank should have secondary containment of a capacity equal to that of the tank plus possible rainwater that might accumulate in the containment enclosure.

Internet Address (URL) = <http://www.epa.gov>

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- If wooden railroad ties are to be used, the applicant should avoid toxic compounds that could leach over time into ground water. For a discussion of wood preservatives see the EPA site: <http://www.epa.gov/oppad001/reregistration/cca/>

EPA would also like to use this opportunity to encourage U.S. Rail Corporation to implement green practices and techniques during design and construction. Additionally, EPA's Clean Construction USA website at <http://www.epa.gov/cleandiesel/construction/index.htm> provides more information about diesel emission reductions.

Thank you for the opportunity to comment. If you have any questions, please call Lingard Knutson of my staff at (212) 637-3747.

Sincerely,



Grace Musumeci, Chief
Environmental Review Section

Jamaica Station
Jamaica, NY 11435-4380
718 558-8264 Tel
718 558-0658 Fax

Helena E. Williams
President

Catherine A. Rinaldi
Vice President - General Counsel & Secretary

EE-18248
18248



August 4, 2010

Mr. Troy Brady, Environmental Protection Specialist
Surface Transportation Board
Section of Environmental Analysis
Suite 1100
395 E Street, S.W.
Washington, DC 2-423-0001

**RE: US Rail Corporation – Construction and Operation Exemption
Brookhaven Rail Terminal
Docket No. 35141**

Dear Mr. Brady:

MTA Long Island Rail Road ("LIRR") has reviewed the Surface Transportation Board's July 21, 2010 Notice of Availability of the Environmental Assessment and Request for Comments regarding the above-referenced petition for exemption. By letter dated November 28, 2008, the LIRR expressed its support for the efforts of private investment to divert heavy vehicular traffic from highways to rail. The LIRR also noted that the proposed facilities would be located along the LIRR Main Line, and that New York & Atlantic Railway would be required to fund the labor and materials necessary for a turnout to allow access to the facilities. The LIRR also explained the limitations on service along its right of way.

A copy of the November 28, 2008 letter is annexed hereto and should be deemed incorporated into the LIRR's comments.

If you have any questions, please feel free to contact me.

Very truly yours,


Catherine A. Rinaldi
Vice President-General Counsel & Secretary

CAR/lmm
Enclosure

cc: Helena E. Williams

Page 2
November 28, 2008
Mr. William Plumpton

train during the overnight period, when the move can be made continuously without conflict with scheduled passenger trains. As a result of the possibility of nighttime railroad operations, it would be prudent to not only study the noise impact of the area surrounding the yard but also to those areas adjacent to the right-of-way subject to the extra movements.

Please keep us apprised of the scoping process and schedule. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Helena E. Williams". The signature is written in black ink and is positioned above the printed name and title.

Helena E. Williams
President

COUNTY OF SUFFOLK



STEVE LEVY
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PUBLIC WORKS

THOMAS LAGUARDIA, P.E.
CHIEF DEPUTY COMMISSIONER

GILBERT ANDERSON, P.E.
COMMISSIONER

LOUIS CALDERONE
DEPUTY COMMISSIONER

August 4, 2010

Mr. Troy Brady
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423
Att: Docket No.FD 35141

Re: **CR 101, Sills Road**
US Rail Corporation
Brookhaven Rail Terminal Yaphank

Dear Mr. Brady:

Please refer to your July 26, 2010 submission of the Environmental Assessment (EA) for the Brookhaven Rail Terminal in Yaphank.

We have reviewed the EA and due to the proposed construction and increase in truck traffic on CR 101 to/from the site, generic improvements to CR 101 will be required.

Please forward us copies of any future Environmental Impact Statements, Traffic Impact Studies or Site plans for our review so we may gauge the potential impacts on the local County roadway system.

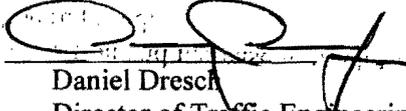
A permit from this Department will be required pursuant to Section 136 of the Highway Law for the proposed access and any improvements this Department deems necessary along the County right-of-way.

Before a permit is issued by this Department for these improvements, documentation pursuant to Section 239F of the New York State General Municipal Law must be forwarded to us from the Town Building Department for our review and comments.

If you have any questions, kindly contact this office at (631) 852-4100.

Very truly yours,

William Hillman, P.E.
Chief Engineer

By: 
Daniel Dresch
Director of Traffic Engineering

DD:RR:ln

SUFFOLK COUNTY IS AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER



THE ASSEMBLY
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CHAIR
House Operations

COMMITTEES
Agriculture
Consumer Affairs & Protection
Governmental Operations
Labor
Racing & Wagering
Tourism, Arts & Sports Development

August 10, 2010

Troy Brady
Surface Transportation Board
395 E Street, S.W.
Suite 1100
Washington, DC 20423-0001
Attn: Docket No. FD 35141

Dear Mr. Brady:

I am writing in connection with Docket No. FD 35141 concerning your review of the proposal by U.S. Rail to locate a new rail yard in the Town of Brookhaven, Suffolk County, New York.

This proposal, like similar proposals for other rail facilities in the New York metropolitan area provides comprehensive documentation about environmental issues related to the immediate area of the proposed rail yard. However, it fails to examine the impact of increased rail traffic on the residential communities along the line.

In my district in Queens, New York City, we have engaged the rail operators who use the Fresh Pond Rail yard in a continuing dialogue about their operating procedures, the equipment they use and their severe and long-term impact on residential neighborhoods located along the tracks east and west of the yard. I believe your Environmental Review is incomplete without addressing the current status of rail facilities this operator already uses as well as the additional environmental concerns of residential communities along the proposed route.

Sincerely,

Margaret M. Markey
Member of Assembly

August 10, 2010

Troy Brady
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423
Attn: Docket No FD 35141

PARTICIPATING ORGANIZATIONS

Citizens For A
Better Ridgewood

COMET

Farmers Oval Civic Assoc.

Forest Hills Cooperatives

Glendale Civic Association

Glendale Clean & Green

Glendale Property
Owners Association

Juniper Park Civic Association

Liberty Park Home Owners

Maspeth/Middle Village
Task Force

Maspeth West End
Civic Association

Middle Village Property Owners
& Residents Association

New Ivanhoe Civic Association

Ridgewood Property Owners
& Civic Association

Dear Mr. Brady:

We appreciate this opportunity to comment. We are submitting comments on behalf of CURES, a coalition of 14 civic associations in Queens, NYC, New York. CURES believes that increased railroad traffic is coming as both a cost-saving and environmentally sound measure. However, our organization is dedicated to ensuring that this increase in railroad traffic does not come at a cost of increased environmental burdens for our communities. Our communities already are suffering from noise, the stench of waste, health-threatening diesel emissions from outdated locomotives, air and water-borne pollution from uncontained rail cargo, and other impacts of current freight rail operations in NYC and L.I.

We have been working with federal, state, and local agencies, our elected officials, and the railroads themselves to lobby for funding to retrofit old diesel locomotives to reduce their polluting emissions and cut back on idling; to ensure that the rail yards are free of hazards and threats to neighborhood health and security; and that the railroads and their customers are proactively utilizing new, cleaner technologies, equipment, and controls in an efficient and responsible manner for the good of their own businesses as well as the health and welfare of our neighborhoods and NYC.

We respectfully submit that the E.A. is deficient for the following reasons:

1. The shortened 15-day comment period did not give the public sufficient notice to obtain and consider the E.A., and to prepare and submit comments by August 10.
2. The proposed facility cannot be approved because the E.A. fails to define what type of freight the proposed facility may put on the rails and send into our communities via NY & Atlantic Railway, and fails to specifically prohibit a change of use involving solid waste. The E.A.'s stated assumptions are that change of use is speculative and even if it does change the impacts will be similar. Although this might be the case for some new uses, it certainly is not the case if the new use involves solid waste. Any expansion involving solid waste must have an E.I.S. As you may know, a large percentage of the freight NY & A hauls from L.I. is solid waste. This summer stinking garbage trains with open gondolas and vented containers of waste have sat overnight and longer in residential areas of Queens on railroad tracks. Residents near the rail corridor have had to deal with the stench of garbage and vermin, in addition to 95+ degree heat and Air Quality Health Advisories. Experience has shown that the time for government to deal with these issues is before facilities are permitted and contracts are signed. As you may know, Railroads of New York lobbied against modest, palliative mitigation that mandated tarping open gondolas and sealing putrescibles under hard lids. *See attached RONY memo.* In effect, the

railroads and their customers are profiting from state environmental laws that have yet to catch up with the development of solid-waste-by-rail, and costs have been shifted to communities. (New standards for equipment that containerizes loads with the potential to emit air and water-borne pollution and odors would go a long way toward mitigating the impacts of expanded rail operations on communities, bring the freight rail industry more in line with contemporary environmental standards, eliminate the railroad industry's safety and liability concerns in this area, and help create a 21st C. rail industry. Has DOT considered this?)

3. The E.A. does not acknowledge, and has not studied or proposed mitigation for this expansion of rail operations within the context of other expansions planned or proposed to utilize NY & A's equipment and operations and the Fresh Pond Terminal. The plan in the E.A. is for an expansion of NY& A's business from L.I. See the attached article regarding NYC Sanitation's plans for NY & A. The infrastructure in the LIRR/MTA's Fresh Pond Depot in Glendale, NY (recently expanded using CSX tracks into a residential area of Middle Village, Queens) is very tightly constrained. With its jurisdiction over expansion of rail facilities and operations, STB has a duty to ensure that environmental impacts and mitigation are comprehensively addressed in the context of the overall rail system. Instead the E.A. typifies piecemeal planning for new freight portals that pile new freight and environmental burdens on top of existing ones. *See the attached letter from Queens Community Board 5.*

4. The E.A. does not acknowledge, and has not studied or proposed mitigation for environmental impacts on communities that will be impacted. The New York and Atlantic Railway as a franchisee of LIRR/MTA is utilizing 1978 vintage locomotives. The oldest, most polluting locomotives are being used in the most densely populated area of NYS where they are doing the most harm. The proposed expansion relies on these locomotives and will increase rail traffic in our communities. *See the attached letter from US EPA Region 2 that discusses the need for repowering the NY&A/LIRR/MTA fleet. See the attached NRDC report, which discusses the effects of such rail systems on human populations.*

5. In the E.A., mitigations are proposed for impacts in and around the new freight portal – for stone dust, noise, etc. However, when rail gondolas get to Fresh Pond Terminal they crash against one another as trains are assembled, clouds of particulates rise in the air, and there is noise, diesel exhaust, and other impacts. The way freight rail and their customers are allowed to operate today rolls environmental impacts of portal facilities – like the one proposed in the E.A. -- into the heart of neighborhoods on railroad tracks. Once again, where is the environmental and public health protection, the mitigation for our communities in this E.A.?

It is no longer enough to say that rail is better than trucks, that rail is green at the macro level. The technology exists to mitigate and avert the environmental burdens and injustices that are draining environmental and public health, quality of life, and use and value of property from our communities. The private sector is making money and is seeking expansion. There can be no more expansion of the rail system that utilizes Fresh Pond Terminal unaccompanied by mitigation.

Sincerely Yours,


Mary Parison, Co-Chair


Laura Zimmer, Co-Chair