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SERVICE DATE – JANUARY 30, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 692X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN NIAGARA COUNTY, NY

Decided: January 29, 2009

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.06-mile line of railroad, known as the Wurlitzer Industrial Track, on CSXT's Northern Region, Albany Division, Niagara Subdivision, extending from milepost QDJ 0.94 to the end of track at milepost QDJ 2.0, in North Tonawanda, Niagara County, NY. Notice of the exemption was served and published in the Federal Register on December 31, 2008 (73 FR 80510-11). The exemption is scheduled to become effective on January 31, 2009.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on January 6, 2009. In the EA, SEA notes that the City of North Tonawanda (the City), in a letter dated December 4, 2008 (December letter), states that the line runs directly through a known inactive, contaminated, industrial site where the potential for onsite contamination from the site or contamination in the track ballast from leaking tank cars may exist. Therefore, SEA recommends that CSXT consult with the City regarding the City's concerns about contamination at the site described in the December letter.

Comments to the EA were due by January 20, 2009. Three comments were received after the issuance of the EA: (1) the National Geodetic Survey stated that there are no survey marks located in the area of the rail line to be abandoned; (2) the U.S. Environmental Protection Agency (EPA) initially wanted CSXT to contact the New York Department of Environmental Conservation regarding the section 402 permit program in New York State. CSXT did include that agency in its initial October 27, 2008 inquiry. Subsequently, however, the EPA Region 2 office responded to CSXT, stating that it has no comments on the proposed abandonment; and (3) the Buffalo District of the Army Corps of Engineers requests that proper erosion control measures be taken to prevent unintentional discharges from entering the waterway. However, CSXT stated in its Environmental Report that, during track removal, appropriate measures would be implemented to prevent or control spill from fuels, lubricants or any other pollutant materials from entering any waterway.

Accordingly, SEA does not recommend any additional conditions; the environmental condition recommended by SEA in the EA will be imposed.

Based on SEA's recommendation, the proposed abandonment, if implemented as conditioned, 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 exemption of the abandonment of the line described above is subject to the condition that CSXT shall consult with the City of North Tonawanda regarding the City's concerns about contamination at the site described in the City's December 4, 2008 letter.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary