

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 367X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN ERIE COUNTY, N.Y.

Decided: February 11, 2015

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 1.60 miles of railroad line in Erie County, N.Y. The line extends between milepost VK 3.90 (near Scrivner Drive) and milepost VK 5.50 (near Indian Church Road). Notice of the exemption was served on January 13, 2015, and published in the Federal Register on January 16, 2015 (80 Fed. Reg. 2,481). The exemption is scheduled to become effective on February 12, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on January 16, 2015. OEA notes that, to address the proposed abandonment's impact on water resources,¹ NSR consulted with the U.S. Army Corps of Engineers (Corps), New York District, the New York Department of Environmental Conservation (DEC), and the U.S. Environmental Protection Agency (EPA), Region 2 Office, in New York City, as well as the headquarters in Washington, D.C. NSR believes that neither a National Pollutant Discharge Elimination System permit nor a Section 404 permit, both requirements under the Clean Water Act, are necessary because salvage would not involve ground disturbance in the area of Buffalo Creek. OEA notes that neither the Corps nor EPA has responded regarding the need for permits, but that DEC has responded that any physical alteration of the Buffalo Creek bed or banks within 50 feet of the stream would require a permit. OEA states that, although DEC's comments provide guidance that allows NSR to proceed, the Corps has yet to respond. Accordingly, OEA recommends that a condition be imposed requiring NSR to consult with the Corps and comply with the reasonable requirements of the Corps.

OEA states that concerns relevant to Buffalo Creek were raised by the Town of West Seneca, N.Y. (Town). The Town previously investigated the bridge on the line at Buffalo Creek in furtherance of a pedestrian trail and found evidence of contamination. The Town also notes evidence of potential contamination of the ground surface along the right-of-way. To address the concerns of the Town, OEA recommends that, before beginning any salvage activities, the

¹ The 1.60 miles of rail line proposed for abandonment lies within the Buffalo Creek and Lower Cayuga Creek watersheds, roughly 7 miles east of Lake Erie. The right-of-way crosses Buffalo Creek which flows directly into Lake Erie.

railroad consult with the Town to ensure that any concerns regarding potential contamination of the right-of-way are addressed and report the results of these consultations in writing to OEA.

Furthermore, the Town notes ongoing flooding hazards that might be aggravated by the bridge and requests that the railroad remove the structure. In turn, OEA recommends a condition for NSR to consult with the Town to address concerns about the safety of the bridge and flooding hazards.

OEA further states that NSR consulted with the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) regarding the potential impact of the abandonment on prime farmland. OEA notes that NRCS has not responded to NSR's notification, but that a review of the records from the Town shows a small amount of prime agricultural land in the vicinity of the right-of-way near the bridge. Accordingly, OEA recommends that a condition be imposed requiring NSR to consult with NRCS to identify any prime agricultural farmland in the project area and minimize impacts to any present farmland.

Finally, OEA states that NSR notified the National Geodetic Survey (NGS) to determine whether any geodetic survey markers may be affected by the proposed abandonment. OEA states that NGS has not responded. Accordingly, OEA recommends that a condition be imposed requiring NSR to consult with NGS before beginning any salvage activities to determine whether any markers will be disturbed or destroyed.

Comments to the EA were due by February 2, 2015. On January 21, 2015, the Corps, Buffalo District, commented on the EA. The Corps states that it is unlikely that permits would be required for the abandonment because the proposed salvage includes no work directly in waters. The Corps notes that, if salvage plans change and any discharge of dredged or fill material into waters of the U.S. are anticipated, further consultation with the Corps would be necessary to determine permitting requirements. Based on this comment, OEA recommends in its Final EA the removal of the previously recommended condition pertaining to the Corps.²

OEA did not receive other comments and continues to recommend imposition of all other conditions included in the EA. Accordingly, the conditions recommended by OEA in the EA, other than the condition pertaining to the Corps, will be imposed.

Based on OEA's recommendations, 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 On February 4, 2015, the Town of Cheektowaga commented on the EA. It notes that it has no objection to the proposed abandonment.

2. Upon reconsideration, the notice served on January 13, 2015, and published in the Federal Register on January 16, 2015, exempting the abandonment of the line described above is subject to the conditions that NSR shall:

(a) before beginning any salvage activities: (i) consult with the Town of West Seneca to ensure that any concerns regarding potential contamination of the right-of-way and bridge at Buffalo Creek and safety or flooding hazards associated with the bridge are addressed, and (ii) report the results of the consultations in writing to OEA;

(b) before beginning any salvage activities consult with NRCS to identify any prime agricultural farmland in the project area and minimize impacts to any such farmland; and

(c) consult with and notify the NGS at least 90 days before beginning any salvage activities that will disturb or destroy any geodetic survey markers in order to plan for the possible relocation of the survey markers by NGS.

3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.