

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-CONTROL AND OPERATING LEASES/AGREEMENTS-
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 211

Decided: September 22, 2003

In CSX Corp. et al.-Control-Conrail Inc. et al., 3 S.T.B. 196 (1998) (Merger Dec. No. 89),¹ Environmental Condition No. 11 of Appendix Q² requires Applicants, with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that the specific requirements of this condition “shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities’ environmental concerns.” Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Merger Dec. No. 89, or by August 22, 2000.³

By letter received at the Board on September 17, 2003, NS has requested a further extension of 6 months until March 22, 2004, to complete compliance with Environmental Condition No. 11 for rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111

¹ In Merger Dec. No. 89, the Board approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail), and the division of their assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to collectively as Applicants.

² 3 S.T.B. at 588-90.

³ The Board granted, at the request of NS, several extensions of the compliance date, and the most recent extension was handled in Decision No. 210, served May 15, 2003, granting NS’ request for a further extension of the compliance date to September 22, 2003, for rail line segments N-100 and N-111.

(Fola Mine to Deepwater, WV). However, on September 22, 2003, the Board received another letter from NS advising that, since submitting the September 17 letter, NS has completed its obligations under Environmental Condition No. 11 for rail line segment N-111 in West Virginia, and no longer needs an extension of the September 22, 2003 compliance date for this rail segment.

NS advises that, in addition to obtaining Negotiated Agreements with eight local governments in Virginia and two local governments in West Virginia, NS has entered into settlement agreements with the owners of the eligible receptors earlier identified along N-100 and recently has undertaken additional field verification surveys along those portions of N-100 that are not subject to the Negotiated Agreements and other settlement agreements. NS further states that, as a result of the recent field verification surveys, it is now, with the assistance of local government representatives from each relevant jurisdiction, verifying ownership and eligibility criteria under Environmental Condition No. 11 for over 40 additional receptors. NS advises that it has entered into settlement agreements with the owners of a number of those receptors and is working diligently to contact the owners of the remaining receptors to provide settlement offers.

According to NS, the process of completing the field surveys and verifying ownership and other eligibility criteria under Environmental Condition No. 11 have required more time than anticipated. NS states that it is requesting an extension of 6 months to complete the settlement process and, if necessary, implement the noise mitigation protocol developed by NS and CSX and approved by the Board's Section of Environmental Analysis for any owners of eligible receptors along rail line segment N-100.

The request for a 6-month extension to March 22, 2004, is reasonable and will be granted. However, the Board expects the parties to complete their negotiations and for NS to conclude the Environmental Condition No. 11 compliance process within the 6-month period so that no further extensions will be necessary.

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

It is ordered:

1. The compliance deadline for NS in Environmental Condition No. 11 of Appendix Q of Merger Dec. No. 89 is extended 6 months until March 22, 2004, with respect to rail line segment N-100 (Riverton Junction to Roanoke, VA).

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary