

SERVICE DATE – JULY 1, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1190X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON
COUNTY, N.J.

Decided: June 30, 2010

On May 17, 2010, the Board served a decision in the above titled docket that had the effect, *inter alia*, of granting authority to the applicant—Consolidated Rail Corporation (Conrail)—to abandon the line at issue in this proceeding.¹ In that decision, however, the Board inadvertently omitted imposing environmental conditions recommended by the Board’s Section of Environmental Analysis (SEA).

On December 12, 2008, SEA served an Environmental Assessment (EA) for public review and comment in this proceeding. In the EA, SEA recommended three environmental conditions,² as follows:

1. Because a portion of the rail line proposed for abandonment is part of a New Jersey Department of Environmental Protection (NJDEP) investigation of chromium contamination, Conrail shall consult with NJDEP and the U.S. Environmental Protection Agency’s Region 2 Office to ensure that any concerns regarding potential contamination of the right-of-way are addressed prior to consummation of the abandonment. Conrail shall report the results of those consultations in writing to the Board’s Section of Environmental Analysis prior to filing a consummation notice.
2. Prior to filing a consummation notice, Conrail shall consult with the New Jersey State Division of Coastal Resources regarding the portions of the rail line that the railroad still owns to determine whether state coastal management consistency certification is required. If consistency certification is required, Conrail shall be prohibited from filing a consummation notice until it obtains consistency certification and then notifies the Board’s Section of Environmental Analysis in writing, pursuant to the

¹ The line is a portion of the Lehigh Valley Main Line located between railroad milepost 2.90± and railroad milepost 5.17±, in Jersey City, Hudson County, N.J.

² No comments on the EA were received during the comment period. Therefore, SEA prepared a “Post-EA,” an internal document affirming its conclusions and recommendations in the EA.

Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and the Board's environmental regulations at 49 CFR 1105.9.

3. Conrail shall retain its interest in and shall take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. Conrail shall report back to the Board's Section of Environmental Analysis regarding any consultations with the New Jersey State Historic Preservation Office and the public. Conrail may not file its consummation notice until the Section 106 process has been completed and the Board has removed this condition.

By letter dated June 9, 2010, Conrail reported that it had completed all the consultations contemplated by SEA's first two conditions. Conrail attached a letter from NJDEP stating that NJDEP's Site Remediation Program's review had concluded that Conrail was not responsible for the chromium-contaminated sites in the area and that the fact that contamination is present should not have any bearing on the abandonment process. Conrail also attached another letter from NJDEP stating that NJDEP's Office of Coastal Management's review had concluded that the areas proposed for abandonment are located outside of the coastal zone and do not have any reasonably foreseeable effects on the uses or resources of the coastal zone of New Jersey.

This proceeding will be reopened because of ministerial error for consideration of the three environmental conditions recommended by SEA. The Board agrees with the conclusions and recommendations made by SEA in its EA and post EA and will adopt them. Conrail's consultations demonstrate that Conrail has complied with recommended conditions 1 and 2. The Board therefore will only impose condition 3.

As conditioned, this action 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 and the following condition is imposed on the abandonment authority: Conrail shall retain its interest in and shall take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, has been completed. Conrail shall report back to the Board's Section of Environmental Analysis regarding any consultations with the New Jersey State Historic Preservation Office and the public. Conrail may not file its consummation notice until the Section 106 process has been completed and the Board has removed this condition.

2. This decision will be effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.