



Post Environmental Assessment

Finance Docket No. 35147

Norfolk Southern Railway Company, Pan Am Railways, Inc., et al.—Joint Control and Operating/Pooling Agreements—Pan Am Southern, LLC In NY, NH, VT, MA and CT

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CONCLUSION

Based on the Section of Environmental Analysis' (SEA's) review of all information available to date, its independent analysis of the proposed Transaction, comments received on the Environmental Assessment, and the recommended mitigation, SEA concludes that the proposed Transaction would have no significant environmental impacts if the Board imposes, and Applicants (Norfolk Southern Railway Company, Pan Am Railways, Inc., Boston and Maine Corporation, and Springfield Terminal Railway Company) implement, the mitigation measures recommended in this Post Environmental Assessment. Therefore, SEA recommends that the Board impose on any final decision approving the proposed Transaction, conditions requiring Applicants to implement the environmental mitigation measures contained in this document.

SUMMARY

S.1 Introduction

S.1.1 Overview

On May 30, 2008, Norfolk Southern Railway Company (Norfolk Southern), Pan Am Railways, Inc. (PARI), Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (Springfield Terminal), collectively Applicants, submitted an application and related notices of exemption in order to receive prior approval from the Surface Transportation Board (the Board), pursuant to 49 U.S.C. §§11322 and 11323 and 49 C.F.R. Part 1180, for a to-be created rail carrier's proposed acquisition of certain existing rail lines and trackage rights, as well as related rail properties and facilities, in New York, Massachusetts, Vermont, New Hampshire, and Connecticut (the proposed Transaction, which is more completely defined and described below in Section S.3, Proposed Action and Alternatives). The proposed Transaction would establish a new entity, Pan Am Southern, LLC (PAS); enhance existing rail infrastructure; and create two new rail facilities: the proposed Mechanicville Facility, located principally within the Town of Halfmoon, with minor portions of the facility located in the Town of Stillwater and the City of Mechanicville, NY, and the proposed San Vel Automotive Facility, located in Ayer, MA.

Prior to the May 30, 2008 application submission, Guilford Rail Systems ("Guilford," a prior name of PARI railroad operation group) sought to develop, for use as an automotive transload facility, the site of the proposed San Vel Automotive Facility. The Town of Ayer and Guilford, after lengthy litigation both before the Board and the U.S. District Court for the District of Massachusetts, entered into a Consent Decree, lodged in the U.S. District Court on July 24, 2003.¹ By the terms of the Consent Decree, the Town of Ayer agreed not to interfere with railroad development on the site of the proposed San Vel Automotive Facility, and Guilford agreed to comply with the terms agreed to in Exhibit A of the Consent Decree.² A number of the provisions of the Consent Decree address groundwater monitoring and groundwater quality assurance and specifically stipulate the development of a Stormwater Pollution Prevention Plan (SWPPP) for the proposed rail facility consistent with U.S. Environmental Protection Agency (USEPA) stormwater regulations (see CD 1 through CD 5 and CD 16 of mitigation measure 18 in Chapter 3, Final Recommended Mitigation, of this Post EA). Applicants have developed a SWPPP for the San Vel Automotive Facility and, consistent with the terms of the Consent Decree, submitted the SWPPP to the Town of Ayer for informational purposes in August 2008. Chapter 3, Final Recommended Mitigation, of this Post EA provides a full list of the specific conditions of the Consent Decree.

It should be noted that the Consent Decree pertains to only that portion of the proposed Transaction related to the development by Applicants of the San Vel Automotive Facility site. As explained more fully below, SEA addressed the environmental impacts of the entire proposed Transaction in the EA and this Post EA, including the proposed development of the new Mechanicville Facility for intermodal and automotive operations, additional activity at and minor improvements to an existing intermodal facility at Ayer (Ayer Intermodal Facility), and

¹ The terms of the Consent Decree concern only the following entities: Boston and Maine Corporation, Springfield Terminal Railway Co., and Guilford Transportation Industries, Inc. (now known as PARI).

² Applicants acknowledge that, after approval and consummation of the proposed Transaction, PAS would assume all of the obligations of the Consent Decree on behalf of Guilford.

infrastructure and operational changes projected to occur as a result of the proposed Transaction, as well as the proposed development of the San Vel Automotive Facility.

S.1.2 Board's Obligations Under the National Environmental Policy Act (NEPA)

NEPA generally requires federal agencies to consider “to the fullest extent possible” environmental consequences “in every recommendation or report on major federal actions significantly affecting the quality of the human environment.”³ Regulations governing implementation of NEPA have been promulgated by the Council on Environmental Quality (CEQ)⁴ and by the Board.⁵ SEA is responsible for conducting environmental reviews on behalf of the Board, evaluating potential environmental impacts, and recommending environmental mitigation conditions to the Board.⁶

Under the CEQ and Board regulations, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the agency to prepare a full Environmental Impact Statement (EIS).⁷ Actions that may or may not have a significant environmental impact ordinarily require the agency to prepare a more limited Environmental Assessment (EA).⁸ An EA is a document containing environmental analysis sufficient for the Board to determine whether it should prepare an EIS or make a finding that the transaction will have no significant environmental impact.

Finally, actions whose environmental effects are ordinarily insignificant may normally be categorically excluded from NEPA review.⁹ Included in this category are trackage rights, as well as control transactions that would not result in operational changes that exceed certain rail activity thresholds established by the Board. *See* 49 C.F.R. 1105.7(e)(4), (5). Even where the Board's thresholds are met, the Board may reclassify a particular transaction or modify the requirement that an EA or an EIS be prepared, if the railroad demonstrates that the proposed Transaction has no potential for significant environmental effects.¹⁰ Applicants discussed the proposed Transaction with the Board's Section of Environmental Analysis. Pursuant to their discussions with SEA, Applicants prepared an Environmental Appendix describing the reasonably foreseeable environmental impacts of the proposed Transaction. This Environmental Appendix was made available to the public and to various Federal, state, and local agencies on June 6, 2008, in order to provide the public with an opportunity to provide comments to SEA on the proposed Transaction and, in particular, on Applicants' conclusion that the proposed Transaction would have no significant environmental impacts. Comments were received from Federal, state, and local agencies and other interested parties. Based on these comments, the Board decided that preparation of an EA was warranted.

³ 42 U.S.C. §4332(2)(C).

⁴ 40 C.F.R. Parts 1500-1508.

⁵ 49 C.F.R. Part 1105.

⁶ In imposing environmental mitigation conditions, the Board has consistently focused on the potential environmental impacts that would result directly from Transaction-related changes in activity levels on existing rail lines and at rail facilities. The Board typically does not require mitigation for pre-existing environmental conditions, such as the effects of current railroad operations.

⁷ 40 C.F.R. §1501.4(a)(1); 49 C.F.R. §§1105.4(f), 1105.6(a).

⁸ 40 C.F.R. §1501.4(c); 49 C.F.R. §§1105.4(d), 1105.6(b).

⁹ 40 C.F.R. §§1500.4(p), 1501.4(a)(2), 1508.4; 49 C.F.R. §1105.6(c), (d).

¹⁰ 49 C.F.R. §1105.6(d).

SEA subsequently prepared an EA, published on November 14, 2008, that identified and evaluated the environmental impacts of the proposed Transaction. SEA conducted its environmental review in accordance with the requirements of NEPA, the Board's environmental regulations, and other applicable rules and regulations, including the CEQ regulations. SEA's EA provided an independent analysis of the potential effects of the proposed Transaction (including activities related to the construction and operation of the two new rail facilities that are planned), as well as the No Action Alternative. Effects to the local road network, grade crossing delay and safety, land use, socioeconomics, geology and soils, as well as effects to water, biological, energy, and cultural resources were evaluated. The EA also considered potential effects to environmental justice populations, air quality and climate, and effects from noise and vibration and existing hazardous waste sites. The EA also included an evaluation of the potential cumulative effects associated with the proposed Transaction. In addition, SEA visited the area of the proposed rail line improvements and facilities to document existing conditions and to further assess the potential effects of the proposed Transaction on the environment.

SEA concluded in the EA that the proposed Transaction would have no significant environmental impacts with the environmental mitigation that SEA recommended. SEA served the EA on November 14, 2008 to all parties to the proceeding, appropriate Federal, state, and local agencies, and any party requesting copies of the document. In the EA, SEA provided a 30-day period for public comments on all aspects of the document, including the scope and adequacy of the recommended mitigation measures. The 30-day comment period closed on December 15, 2008. The ten comments on the EA that SEA received are attached as Appendix A. SEA has carefully reviewed the comments submitted in preparing its final recommendations to the Board, contained in this Post EA. Chapter 1, Public Comments and Responses, of this Post EA specifically addresses the concerns raised in the comments and provides SEA's responses.

S.1.3 Board Jurisdiction

In 1995, Congress enacted a broad Federal preemption provision, Section 10501(b), that expressly makes the Board's jurisdiction "exclusive" for all transportation by rail carriers, including the facilities and structures that are an integral part of that transportation.¹¹ Section 10501(b) also expressly states that "the remedies provided under this part are exclusive and preempt the remedies provided under Federal and State law." Thus, Section 10501(b) does not permit dual state and Federal regulation of railroads or activities related to rail transportation at railroad facilities. Accordingly, the case law interpreting this provision consistently has found state and local permitting or preclearance requirements (including zoning ordinances and environmental and land use permitting requirements) to be wholly preempted where the railroad facility is an integral part of the railroad's operations.¹² This is because permitting or preclearance requirements could give a local body the ability to deny the carrier the right to

¹¹ 49 U.S.C. §10102(9); §10501(b).

¹² *Green Mountain Railroad v. State of Vermont*, 404 F. 3d 638 (2nd Cir. 2005) (*Green Mountain*); *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998) (*Auburn*); *Friberg v. Kan. City S. Ry.*, 267 F.3d 439 (5th Cir. 2001); *Norfolk S. Ry. v. City of Austell*, 1997 U.S. Dist. LEXIS 17236 (N.D. Ga. Aug. 18, 1997); *Flynn v. Burlington N. Santa Fe Corp.*, 98 F. Supp. 2d 1186 (E.D. Wash. 2000); Joint Pet. for Decl. Order— *Boston & Maine Corp. v. Town of Ayer, MA*, 5 S.T.B. 500 (2001), aff'd, *Boston & Maine Corp. v. Town of Ayer*, 206 F. Supp. 2d 128 (D. Mass. 2002), rev'd solely on attorneys' fee issue, 330 F.3d 12 (1st Cir. 2003) (*Ayer*).

construct, develop, and maintain facilities or conduct operations, which would create an irreconcilable conflict with the Board’s exclusive jurisdiction over those facilities and operations.¹³

While exempt from traditional permitting, zoning, and land use processes for their railroad operations, railroads like those operated by the Applicants are not necessarily exempt from other generally applicable laws. The legislative history makes it clear that “the States retain the police powers reserved by the Constitution.”¹⁴ Thus, States can take appropriate actions to protect public health and safety so long as their actions do not serve to regulate rail operations or unreasonably interfere with interstate commerce.¹⁵

For example, a state or local government could issue citations or seek damages if harmful substances are discharged during a railroad construction or upgrading project. Similarly, nondiscriminatory application of state and local requirements such as building and electrical codes generally would not be preempted.¹⁶ In addition, railroads cannot avoid their obligations under consensual measures worked out between the railroad and the community.¹⁷ Section 10501(b) must also be harmonized to the extent possible with other Federal statutes.¹⁸ Thus, Federal environmental statutes such as the Clean Air Act and the Clean Water Act—statutory schemes that are implemented in part by the states—as well as railway safety regulation under the Federal Railway Safety Act — continue to apply to railroads to the extent that they would not unreasonably interfere with interstate commerce. Finally, state and local entities can raise their environmental concerns before the Board during the environmental review process under NEPA for consideration in cases like this one that require a license from the Board.¹⁹

In cases that trigger a NEPA review, the Board’s mitigation sometimes will include conditions that require a railroad to consult with or seek approvals from other government entities when the Board is reasonably confident that those requirements will not be applied in a discriminatory manner, or in a manner that would interfere with the railroad’s right to conduct its operations. Where the Board imposes a condition that a railroad applicant meet the reasonable requirements of other government entities as a condition to a license from the Board, the Board controls the process and can take steps later, if necessary, to ensure that the laws of those governmental entities are not being applied in such a way as to unduly restrict a railroad’s operations or unreasonably burden or interfere with interstate commerce.

S.2 Purpose and Need for the Proposed Action

The principal purpose of the proposed Transaction is to enhance the existing rail infrastructure on the main line between Mechanicville, New York and Ayer, Massachusetts in order to provide more efficient movement of freight throughout the New England region. As explained in more detail in the EA, rail service in the New England region is currently constrained by the capacity of certain rail lines, the lack of needed yard facilities, and slow orders that have been imposed on some sections of the rail lines. According to Applicants, the proposed Transaction is necessary

¹³ *Auburn*, 154 F.3d at 1029-31.

¹⁴ H.R. Rep. No. 104-311, 104th Cong., 1st Sess. at 95-96 (1995).

¹⁵ *See Ayer*.

¹⁶ *Id.*

¹⁷ *Township of Woodbridge v. Consol. Rail Corp.*, No. 42053 (STB served Dec. 1, 2000).

¹⁸ *Tyrrell v. Norfolk S. Ry.*, 248 F.3d 517 (6th Cir. 2001); *Friends of the Aquifer et al.*, STB Finance Docket No. 33966 (STB served Aug. 15, 2001).

¹⁹ *See Auburn*, 154 F.3d at 1033.

to sustain and improve service for long term growth; enhance competition, safety, and reliability; and strengthen and increase efficiency along the rail line.

S.3 Proposed Action and Alternatives

Applicants propose to establish a new entity, PAS, which would own railroad lines and acquire trackage rights over other rail carriers over a total of approximately 436.8 miles of track. Norfolk Southern would contribute capital to PAS, a portion of which would go into improving infrastructure by (1) creating a new intermodal and automotive facility which would be located principally within the Town of Halfmoon, with minor portions of the facility located in the Town of Stillwater and the City of Mechanicville (the Mechanicville Facility), (2) creating a new automotive facility in Ayer, MA (San Vel Automotive Facility), (3) making minor improvements at an existing intermodal facility at Ayer (Ayer Intermodal), and (4) enhancing other infrastructure along the existing east-west main line between Mechanicville, NY and Ayer, MA. The proposed Transaction would also include acquisition and/or operation by PAS of six other existing rail yards in addition to the three facilities at which some construction would occur. The proposed Transaction does not contemplate any yard improvements or changes in activity at any of these six rail yards, and, therefore, discussion of these facilities was not included in the EA. Under the No Action Alternative, the proposed Transaction would not take place, PAS would not be formed, and the upgrades and facility development on the existing rail infrastructure would not take place.

S.4 Summary of Environmental Consequences of the Proposed Action

An in-depth review of Applicants' proposal and potential environmental impacts was conducted in preparing the EA and this Post EA. As explained in more detail in the EA, potential environmental impacts are primarily associated with the proposed new Mechanicville Facility and the San Vel Automotive Facility. Increased activity is also projected to occur at the existing Ayer Intermodal Facility as a result of the proposed Transaction, and therefore an appropriate analysis of potential environmental impacts at that facility was conducted. The results of SEA's environmental analysis in the EA, as refined in response to comments on the EA, are summarized below.

S.4.1 Transportation

S.4.1.1 Local Road Network

Based on projected vehicular traffic associated with the Mechanicville Facility, analysis of the local key roadway segments and intersections indicates that no roadways or intersections would experience a change in Level of Service (LOS) post-Transaction. Thus, the proposed Transaction would have a negligible effect on overall traffic operations in the vicinity of the Mechanicville Facility.

Given that traffic from the San Vel Automotive Facility and the Ayer Intermodal Facility is anticipated to traverse the same key roadway segments, the EA analyzed the combined effect of these two facilities. Based on projected vehicular traffic associated with these two facilities, LOS analysis for the roadway segments and intersections within the vicinity of the San Vel Automotive and Ayer Intermodal Facilities indicates that no roadways would experience a change in LOS as a result of the proposed Transaction, and only one intersection (the stop-controlled Ayer Road/King Street intersection) is anticipated to experience a change in LOS conditions in the AM peak hour post-Transaction (from LOS D to LOS E). Because post-

Transaction traffic changes are anticipated to be limited to one intersection during the AM peak hours, and the average vehicle delay at that stop-controlled intersection is projected to increase by only three seconds, the proposed Transaction would have only a minimal effect on the local roadways and intersections in the vicinity of the San Vel Automotive Facility and the Ayer Intermodal Facility.

S.4.1.2 Grade Crossing Delay and Safety

An overall improvement in existing conditions for grade crossing delay and safety is anticipated as a result of the proposed Transaction. SEA's analysis shows that the number of vehicles delayed by rail traffic and the average delay experienced by each stopped vehicle would decrease at virtually all at-grade crossings along the rail segments that are part of the proposed Transaction. Delay is predicted to increase slightly at the at-grade crossings along one rail segment and a slight increase in accident frequency at the at-grade crossings along one rail segment is also anticipated as a result of the proposed Transaction. The magnitude of these changes is considered minimal, however. Because at-grade crossings along all other rail segments included in the proposed Transaction are anticipated to have smaller or no increases in train traffic, increased train speeds, and/or lower vehicle traffic, the effect of the proposed Transaction on safety at at-grade crossings would be minimal.

S.4.2 Land Use

The proposed Transaction is not expected to be growth-inducing in terms of converting adjoining land uses in the vicinity of either the Mechanicville Facility or the San Vel Automotive Facility, and is consistent with current zoning and land use at the facilities. The facilities are to be constructed on land previously used for railroad or industrial purposes. In addition, the proposed Transaction is not expected to conflict with land use objectives in adjacent areas. Therefore, no adverse impacts to land use would result from the proposed Transaction.

S.4.3 Hazardous Waste Sites

No active hazardous waste sites were identified on the footprint of either the proposed Mechanicville Facility or the proposed San Vel Automotive Facility. In addition, no known active hazardous waste sites were identified at the various bridge improvement and track clearance project locations along the east-west main line. Only one inactive hazardous waste site (D&H Engine House) was identified within the proposed 81-acre footprint of the Mechanicville Facility. Corrective actions were taken at this site and it is now closed. While other inactive or closed and two active hazardous waste sites were identified within or potentially within 500 feet of the proposed footprint of the Mechanicville Facility, each of these sites is outside the proposed footprint, and construction and operation of the facility would not be expected to disturb the sites. Moreover, SEA's final recommended mitigation provides that should impacted water or soil be encountered during construction of the Mechanicville Facility, Applicants shall comply with all applicable New York State Department of Environmental Conservation (NYSDEC) regulations in the event that any hazardous waste sites subject to NYSDEC oversight are encountered during construction of the Mechanicville Facility (see mitigation measure 3 of this Post EA). One closed hazardous waste site (the "Near Two Rail Lines" site) was identified within the proposed footprint of the San Vel Automotive Facility. Although the "Near Two Rail Lines" site is closed, a Notice of Activity and Use Limitation (AUL) has been implemented in a small area located within a portion of the proposed facility footprint. Because the proposed Transaction may involve removal and/or disturbance of soils within the AUL area, a Soil

Management Plan and Health and Safety Plan would be prepared and implemented prior to commencement of any subsurface construction activities within the AUL area at the San Vel Automotive Facility, as required by the AUL. Therefore, these activities would be conducted in a manner consistent with the AUL and with SEA's final recommended mitigation (see mitigation measure 19 of this Post EA). In addition, no active hazardous waste sites were identified within 500 feet of the footprint of the San Vel Automotive Facility. Because no active hazardous waste sites were identified within the footprints of the proposed Mechanicville Facility or San Vel Automotive Facility, and Applicants would take appropriate precautionary construction measures to address hazardous waste sites within 500 feet of the Mechanicville Facility footprint (see mitigation measure 3 of this Post EA) as well as the closed hazardous waste sites within the footprint of the San Vel Automotive Facility, the proposed Transaction would not have adverse impacts on hazardous waste sites.

S.4.4 Socioeconomics

Applicants expect construction of the Mechanicville Facility to cost about \$40 million, including design, site preparation, building, paving, track work, and other expenses. During operations, it is anticipated that the Mechanicville Facility would employ up to 84 people and that adequate infrastructure exists to accommodate this employment. Applicants expect construction of the San Vel Automotive Facility to cost about \$8.1 million, including design, site preparation, building, paving, track work and other expenses. During operations, it is anticipated that the San Vel Automotive Facility would employ up to 10 people. Improvements at the existing Ayer Intermodal Facility would consist of minor repairs that would cost approximately \$2.5 million. No additional employees are anticipated at the Ayer Intermodal Facility. In these circumstances, no adverse socioeconomic impacts would be expected as a result of the proposed Transaction, and some socioeconomic benefits to the local economies would be likely as a result of Transaction-related expenditures.

S.4.5 Geology and Soils

No prime, unique, or local farmland soils are located within the footprint of the proposed Mechanicville Facility or the proposed San Vel Automotive Facility. Construction of both new facilities would require removal of vegetation and surface grading. The standard erosion control practices that would be implemented by Applicants in accordance with SEA's final recommended mitigation (see mitigation measure 8 of this Post EA) would limit soil erosion and minimize potential impacts. Thus, it is anticipated that implementation of the proposed Transaction would result in only minor changes to topography, geology, or soils in the vicinity of the two facilities.

S.4.6 Water Resources

At the Mechanicville Facility, USEPA has not designated any sole-source aquifers and NYSDEC has not designated any principal or primary aquifers. However, SEA's recommended mitigation requires Applicants to implement a Stormwater Pollution Prevention Plan (SWPPP) to divert stormwater from impervious surfaces and appropriately handle and/or treat stormwater in accordance with applicable stormwater management practices and regulations (see mitigation measures 7 and 18 (CD 5) of this Post EA).

The San Vel Automotive Facility footprint is within Massachusetts Department of Environmental Protection designated Zone II and Zone III wellhead protection areas, which are

associated with the Town of Ayer's and the Town of Littleton's drinking water supply, respectively. As noted previously, Applicants have developed a SWPPP and a Stormwater Management Report for the proposed San Vel Automotive Facility and have submitted them for informational purposes to the Town of Ayer. The SWPPP and Stormwater Management Report will include the details of pre-treatment and infiltration measures, with associated performance standards and long-term operation and maintenance plans in conformance with applicable provisions of USEPA standards.

Construction impacts at both facility sites may include potential short-term and temporary erosion, sedimentation, and surface water quality impacts that result from typical ground disturbance activities during construction. Preliminary wetland delineations for the proposed Mechanicville Facility indicate that the facility development may affect approximately one acre of wetlands and waters. For the San Vel Automotive Facility, two jurisdictional wetlands (0.15 acre and 0.11 acre) were delineated within the area of potential effect and could be affected by short-term, temporary run-off associated with construction. In the event that wetlands would be disturbed by Transaction-related construction activities and operation at the new facilities, however, Applicants would obtain the applicable Clean Water Act Section 404 permits, if necessary, working through the U.S. Army Corps of Engineers (see mitigation measure 4 of this Post EA). With this mitigation, impacts to water resources resulting from the proposed Transaction would be minor.

S.4.7 Biological Resources

The disturbed nature of both the Mechanicville Facility and the San Vel Automotive Facility footprints from past land use are expected to limit wildlife in the project areas to species that are tolerant of human disturbance and urban areas. Additionally, larger species, such as deer and coyotes, may be found in the areas surrounding the Mechanicville Facility. There are no Federally listed or proposed threatened or endangered species or critical habitats in the vicinity of either facility (see Appendix A of the EA, pages A-2 to A-6). Nor are there any state listed or proposed threatened or endangered species or critical habitats in the vicinity of the Mechanicville Facility. A narrow portion of the footprint of the San Vel Automotive Facility overlaps with Priority Habitat for the Blanding's Turtle, as designated by the State of Massachusetts, and SEA is recommending mitigation related to the Blanding Turtle (see mitigation measures 14 and 15 of this Post EA). During site visits, however, Blanding's Turtle habitat was not observed within the facility footprint, and it is likely that the species would, if in the vicinity, be located in the surrounding wetlands. While it is possible that the turtle could be affected indirectly by the proposed Transaction through impacts to water quality, the SWPPP and Stormwater Management Report for the proposed San Vel Automotive Facility (see mitigation measures 7 and 18 (CD 5) of this Post EA) would result in the treatment and containment of stormwater run-off from the facility. Thus, SEA concludes that water quality of wetland surface water or associated groundwater and wetland hydroperiods²⁰ would not be adversely affected by the proposed Transaction. Impacts to biological resources are expected to be limited to the displacement of wildlife to the larger forest, wetland, and/or open field habitats in the immediate vicinity of both the Mechanicville Facility and the San Vel Automotive Facility as a result of the removal of vegetation during Transaction-related construction. As sufficient habitat currently

²⁰ The period of time during which a wetland is covered by water.

exists at both facilities to absorb this displaced wildlife, minimal impacts to biological resources are anticipated to result from the proposed Transaction.

S.4.8 Air Quality and Climate

Air quality and climate can be affected by rail operation activities through the emission of pollutants from locomotive diesel fuel combustion, cargo handling equipment, and associated truck activity. In the Albany-Schenectady-Troy, NY area, in which the Mechanicville Facility is located, and the Boston-Lawrence-Worcester, MA area, in which the San Vel Automotive Facility and Ayer Intermodal Facility are located, the Transaction-related contribution to ambient pollutant concentrations would be *de minimis* (indicating a minimal contribution to ambient pollutant concentrations and therefore a negligible impact). Accordingly, the proposed Transaction would not impede the progress of the states or localities toward reaching attainment under the relevant State Implementation Plans. Additionally, diesel particulate matter emissions increases in the vicinity of the two new planned facilities as a result of the proposed Transaction would be only negligible additions to existing emissions.

Transaction-related changes in rail, yard and truck activity would have a negligible effect on greenhouse gas (GHG) emissions. The proposed Transaction is expected to result in only minor additions in the number of trains per day on a small number of rail line segments and is anticipated to cause an overall diversion of freight traffic from truck to rail transport. Rail transport is on average three or more times more fuel efficient than truck transport, so to the extent that freight is shifted from truck to rail, this modal shift would reduce fuel use and, thus, GHG emissions. Therefore, Transaction-related changes in rail, yard and truck activity would have a negligible effect on GHG emissions.

S.4.9 Noise and Vibration

The areas with an increase of 3 dBA or greater and an overall day-night average noise level (DNL) of 65 dBA or greater that would experience Transaction-related yard activity (including freight handling and other facility operations) or Transaction-related truck and rail line traffic would be limited to the immediate vicinity of the Mechanicville Facility and the San Vel Automotive Facility, in both cases covering an area where there are no noise sensitive receptors. In addition, SEA found that estimated noise and vibration levels due to construction activities related to the proposed Transaction would be below relevant Federal Transit Administration thresholds and criteria for construction noise and vibration, respectively. Thus, no adverse noise or vibration impacts would result from the proposed Transaction.

S.4.10 Energy Resources

Additional diesel fuel would be consumed to power the slight projected increase in Transaction-related rail traffic and the truck traffic projected at the two new facilities and as a result of additional activity projected at the Ayer Intermodal Facility. This increase in fuel consumption would, however, be less than the commensurate decrease in diesel fuel consumption by trucks that would be removed from regional roadways as shippers choose to transport their goods via the more efficient rail service that would be available to them as a result of the proposed Transaction. It is expected, therefore, that the proposed Transaction would result in a decrease in overall energy consumption.

S.4.11 Cultural Resources

No known National Register eligible cultural resources have been identified within the footprint of the Mechanicville Facility. However, the New York State Historic Preservation Officer (NY SHPO) has indicated, based on review of its records, that small portions of the footprint are considered archaeologically sensitive. Accordingly, Applicants have completed a Phase IA literature review and archaeological sensitivity assessment of the proposed Mechanicville Facility. In addition, Phase 1B field investigations and follow-up Phase 2 testing in two previously undisturbed areas were conducted. No National Register-eligible sites were encountered and the results will be submitted to the NY SHPO for review and consultation as part of the Section 106 compliance process prior to construction (see mitigation measure 17 of this Post EA). In its December 22, 2008 letter, the NY SHPO stated: “SHPO also recommends that further consideration be given to the potential for the presence of remains of the late-19th and early-20th century locomotive servicing complex” located on the former rail yard site.

Applicants have advised SEA that they intend to submit to NY SHPO any information regarding further consideration of the potential for the presence of remains of the late-19th and early-20th century locomotive servicing complex as requested by NY SHPO in its December 22, 2008 letter. SEA’s recommended mitigation requires that Applicants shall not initiate construction in areas potentially affected by historical properties within the Mechanicville Facility footprint, or take any steps to alter the historic integrity of historic properties, including sites, buildings, structures, and objects within the project Area of Potential Effect that are eligible for listing or listed in the National Register of Historic Places, until the Board’s responsibilities under the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, have been satisfied (see mitigation measure 17 of this Post EA).

Consultation with the Massachusetts SHPO resulted in a finding that no historic architectural or archaeological resources would be affected by the proposed San Vel Automotive Facility or by repair and improvement work to be conducted at two bridges in Massachusetts. Accordingly, the proposed Transaction would not adversely affect cultural resources at the San Vel Automotive Facility or at the location of the two bridges, and no historic preservation mitigation for that facility is recommended.

S.4.12 Environmental Justice

There are no low income populations or minority populations that exceed 50 percent or are 10 percentage points higher than the County level in the vicinity of the Mechanicville Facility or the San Vel Automotive Facility. Additionally, no high and adverse impacts to any environmental resource areas would occur as a result of the proposed Transaction. Because of both the lack of minority and low income populations and the lack of high and adverse impacts that could affect human health or environmental impacts to human populations, no environmental justice impacts are expected in the vicinity of the Mechanicville Facility or the San Vel Automotive Facility. The vicinity of the Ayer Intermodal Facility does contain minority populations that exceed 50 percent or are 10 percentage points higher than the County level, but because the proposed Transaction entails only minor improvements to the existing facility and because no high and adverse impacts that could affect human health or environmental impacts to human populations have been identified, no environmental justice impacts are expected in the vicinity of this facility. Accordingly, the proposed Transaction would not result in any environmental justice impacts.

S.4.13 Cumulative Effects

Three on-going or proposed projects within the vicinity of the Mechanicville Facility – the Fairway Meadow and Fairway Estates housing developments, the Luther Forest Technology Campus (LFTC) and the proposed Round Lake Bypass – have the potential to contribute to cumulative impacts to water and biological resources when combined with the impacts of the proposed facility. Impacts to the Anthony Kill, however, would be minimized by applicable permitting processes and the respective developers would mitigate wetlands impacts resulting from construction of the LFTC and Round Lake Bypass by the creation of compensatory wetlands in excess of the impacted acreage. No Federally or state listed threatened, endangered, or rare species are located in the vicinity of any of these developments. Any temporary wildlife displacement related to the projects would be absorbed by the larger forested areas connected to these developments. Additionally, there are no other projects in the vicinity of the Mechanicville Facility that, in conjunction with the proposed facility, could result in a cumulative impact on cultural resources.

In the vicinity of the San Vel Automotive Facility, two on-going or proposed housing developments and a proposed bulk transfer facility have the potential to contribute to cumulative effects to water and biological resources when combined with the impacts of the proposed facility. The proposed bulk transfer facility and a portion of one of the housing developments are in the same drainage area as the San Vel Automotive Facility. However, the SWPPP required by SEA's recommended mitigation measures 7 and 18 (CD 5) would minimize potential stormwater impacts from the bulk transfer facility and the San Vel Automotive Facility, and local planning and permitting processes applicable to the housing developments would minimize any adverse water quality impacts. Impacts to biological resources would also be minimal. As previously noted, no Federally or state listed threatened, endangered, or rare species are located in the vicinity of any of these developments, with the exception of a small portion of a Priority Habitat area associated with the state-listed Blanding's Turtle. While it is possible that the turtle could be affected indirectly through impacts to water quality, the SWPPP and Stormwater Management Report for the proposed San Vel Automotive Facility and the bulk transfer facility and appropriate permitting processes applicable to the housing developments would avoid point-source drainage to all abutting wetland areas, which would minimize any impacts to the Blanding's Turtle. SEA's recommended mitigation also includes conditions requiring the Applicants to consult with the applicable state agencies to address concerns about the turtle, and design the proposed San Vel Automotive Facility, to the extent practicable, so as to avoid and minimize impacts to potential habitat for the Blanding's Turtle (see mitigation measures 14 and 15 of this Post EA). Moreover, any temporary wildlife displacement related to development of the facility would be absorbed by the larger forested areas connected to these developments. Additionally, no historic or archeological resources are anticipated to be affected at the San Vel Automotive Facility as a result of the proposed Transaction, and thus, no cumulative impacts to cultural resources are anticipated in conjunction with other projects.

Because the environmental impacts associated with the proposed Transaction and other reasonably foreseeable projects are considered minimal, no adverse cumulative impacts are anticipated.

S.5 Mitigation

SEA recommends that, in any decision by the Board granting final approval of the proposed Transaction, Applicants be required to implement the mitigation measures set forth below. Specifically, SEA recommends that the Board include the following mitigation measures, some of which were added in response to comments on the EA:

Transportation

- 1) Applicants shall consult with New York State Department of Transportation (NYSDOT) to address NYSDOT's concerns about the construction of the proposed highway access to Route 67 at the proposed Mechanicville Facility.

Land Use

- 2) Applicants shall incorporate into the final design for the proposed Mechanicville Facility appropriate measures, including the use of down-lighting, to minimize the impacts of the facility's lighting onto residential areas adjacent to the proposed Mechanicville Facility.

Hazardous Waste Sites

- 3) Applicants shall comply with all applicable New York State Department of Environmental Conservation (NYSDEC) regulations in the event that any hazardous waste sites subject to NYSDEC oversight are encountered during construction of the proposed Mechanicville Facility.

Water Resources

- 4) Applicants shall complete delineation of all wetlands in the area of potential impact associated with the proposed Mechanicville Facility and the proposed San Vel Automotive Facility before final design of the respective facility, and shall negotiate compensatory mitigation to compensate for unavoidable impacts to jurisdictional wetlands, if any, as part of the Clean Water Act Section 404 permit for placement of fill in wetlands, to be issued by the United States Army Corps of Engineers.
- 5) As part of the Section 404 Clean Water Act process, Applicants shall comply with requirements of a Section 401 Water Quality Certification, if such certification is found to be necessary, from the New York State Department of Environmental Conservation (for the Mechanicville Facility) and the Massachusetts Department of Environmental Protection (for the San Vel Automotive Facility).
- 6) Applicants shall design the proposed Mechanicville Facility and the proposed San Vel Automotive Facility to avoid and minimize impacts to wetlands, to the extent practicable.
- 7) Applicants shall implement and comply with the terms and conditions of Stormwater Pollution Prevention Plans (SWPPPs) for the proposed Mechanicville Facility, consistent with applicable State Pollutant Discharge Elimination System requirements, and the proposed San Vel Automotive Facility, consistent with applicable National Pollutant Discharge Elimination System requirements under the Clean Water Act. The final SWPPP and Stormwater Management Report for the San Vel Automotive Facility shall include specific parameters for the monitoring well network including at a minimum: chloride, volatile organic compounds, dissolved metals, and basic field parameters such as pH, conductivity, and temperature.

- 8) Applicants shall use silt fences during construction of the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, to minimize or avoid the potential erosion of exposed soils/stockpiles and the delivery of fine sediments to surface waters and to avoid impacts to waters beyond the respective project footprints.
- 9) During construction of the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, Applicants shall use water as needed to control fugitive dust emissions.
- 10) During construction of the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, Applicants shall conduct land clearing activities only in areas where earthwork is necessary; shall reuse topsoil wherever practicable, and stockpile topsoil for application during reclamation of disturbed areas; and shall restore disturbed areas as soon as practicable after construction ends. Applicants shall also use stabilization fabric on created earthen slopes having a slope steeper than 2:1 to control erosion.
- 11) During construction of the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, Applicants shall preserve existing vegetation where practicable, especially near wetlands and other waters. If weather or season precludes the prompt reestablishment of vegetation, Applicants shall implement temporary erosion control measures.
- 12) During or after construction of the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, Applicants shall revegetate the bottom and sides of drainage ditches using natural recruitment from native seed sources in the stockpiled topsoil or a seed mix free of invasive plant species. Such restoration is for the rapid and permanent reestablishment of native ground cover on disturbed areas, to prevent soil erosion and minimize delivery of fine silt particles to surface waters.
- 13) Applicants shall store any hazardous substances related to construction in a secure location when not in use, and shall dispose of all construction waste at approved disposal facilities.

Biological Resources

- 14) Applicants shall consult with the Massachusetts Natural Heritage and Endangered Species Program to address its concerns about the state-protected threatened Blanding's Turtle, and shall abide by all reasonable terms and conditions, if any, that may result from the Massachusetts Natural Heritage and Endangered Species Program review process for construction activity within a Priority Habitat.
- 15) Applicants shall design the proposed San Vel Automotive Facility to avoid and minimize impacts to potential habitat for the Blanding's Turtle, to the extent practicable.
- 16) During the final design process for the proposed Mechanicville Facility, Applicants shall address relevant provisions of New York State Department of Transportation's Environmental Procedures Manual in connection with issues related to appropriate precautionary measures to avoid the spread of invasive species during construction.

Cultural Resources

- 17) Applicants shall not initiate construction in areas potentially affected by historical properties within the proposed Mechanicville Facility footprint, or take any steps to alter

the historic integrity of historic properties, including sites, buildings, structures, and objects within the project Area of Potential Effect that are eligible for listing or listed in the National Register of Historic Places, until the Board's responsibilities under the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, have been satisfied.

Consent Decree

- 18) Applicants shall abide by the conditions set forth in the Consent Decree between Guilford Rail Systems and the Town of Ayer, dated July 24, 2003, with respect to construction and operation of the proposed San Vel Automotive Facility.

Notice of Activity and Use Limitation

- 19) Applicants shall abide by the conditions set forth in the Notice of Activity and Use Limitation (AUL) filed with the Middlesex County Registry of Deeds on January 27, 1999 and amended on May 24, 2002, regarding the process to be followed if any disturbance of the AUL area is anticipated to occur as part of the development of the proposed San Vel Automotive Facility.

1. PUBLIC COMMENTS AND RESPONSES

Copies of the Environmental Assessment (EA) were sent to approximately 360 agencies, government entities, and other interested parties for review and comment. SEA received ten comments, including comments from:

- Jane Downing, on behalf of the United States Environmental Protection Agency, Region 1
- Carolyn L. McCreary and Shaun A. Suhoski, on behalf of the Town of Ayer
- Jon Hardie, on behalf of the Town of Royalston Massachusetts' Board of Selectmen
- Jane Lendway, State Historic Preservation Officer for the State of Vermont
- Eugene J. Colonese, on behalf of the State of Connecticut Department of Transportation
- Thomas D. Hall, on behalf of the Committee to Improve Rail Service in Maine
- Karen Rae, Deputy Commissioner of the Policy and Planning Division for the New York State Department of Transportation
- Mindy Wormuth, Supervisor of the Town of Halfmoon
- Two members of the general public, Raymond Tylicki and Joseph A. Elliot

Summaries of the comments that SEA received on the EA and SEA's responses to the comments are provided below. SEA prepared the responses to comments in accordance with CEQ guidance. SEA's responses clarify or correct information presented in the EA (see also Chapter 2, Revisions, of this Post EA), refine and expand the mitigation recommended in the EA, explain and communicate agency policy or regulations, direct commenters to information in the EA, or answer technical questions. Copies of the comments received are presented in Appendix A. The comments and responses are organized by commenter, and generally grouped geographically.

Jane Downing, Chief, Drinking Water Branch, United States Environmental Protection Agency, Region 1, December 15, 2008

Comment

Region 1 of the United States Environmental Protection Agency (USEPA) commented on impacts from de-icing practices at the proposed San Vel Automotive Facility and suggested that the EA should include information on the development and implementation of a de-icing plan that minimizes the amount of salt used onsite.

Response

As documented in the Amended and Revised Stormwater Pollution Prevention Plan (SWPPP) and Stormwater Management Report, which have been developed and were submitted to the Town of Ayer for informational purposes in August 2008, Applicants would use sand or similar inert material for creating safe winter operating conditions and would not use road salt or de-icing fluids at the proposed San Vel Automotive Facility. According to Applicants, the use of salt for de-icing purposes is prohibited by the automobile manufacturers whose new vehicles would be distributed at the facility. In

addition, the stormwater management system design provided in the SWPPP, which is part of SEA's recommended mitigation (see Chapter 3, Final Recommended Mitigation, mitigation measures 7 and 18 (CD 5) of this Post EA), and the Stormwater Management Report for the San Vel Automotive Facility include catch basins that would provide for the collection of sand and other solid materials. The operation and maintenance plan included in the SWPPP and the Stormwater Management Report provides for annual spring sweeping of paved areas to collect sand and annual cleaning of the catch basins.

Comment

USEPA requested details on the type of activities planned at the San Vel Automotive Facility, the use or storage of any potentially hazardous materials, and spill prevention, response and control measures, as well as specifications for the geomembrane liner to be used under the locomotive area.

Response

The SWPPP and the Stormwater Management Report for the San Vel Automotive Facility include information on planned activities, use, and storage of hazardous materials. Moreover, Applicants' Hazardous Material and Oil Spill Procedure and Reporting Plan, developed to ensure compliance with the Clean Water Act, Massachusetts Contingency Plan, and the Pan Am Railways Spill Prevention, Control and Countermeasure Plan would be applicable to the proposed San Vel Automotive Facility (see Chapter 3, Final Recommended Mitigation, mitigation measure 18 (CD 4) of this Post EA). Accordingly, any hazardous materials would be stored in a proper manner in a facility with appropriate containment (concrete floor without internal drains to prevent spills from leaving the interior of the building), and provided with adequate labeling and ventilation. In accordance with the Massachusetts Department of Environmental Protection (MADEP) Stormwater Management Guidelines, the stormwater drainage system at the facility would be designed to discharge water from the paved area within the facility to an oil-water separator that would discharge to an upland retention pond (see Chapter 3, Final Recommended Mitigation, mitigation measure 7 and 18 (CD 5) of this Post EA). In addition, the conditions set forth in the Consent Decree between Pan Am Railways Inc. (PARI) (PARI's railroad operating group was formerly referred to as Guilford Rail Systems) and the Town of Ayer, dated July 24, 2003, regarding the construction and operation of the proposed San Vel Automotive Facility (Consent Decree) require that Applicants test the integrity of the geomembrane liner that would be installed beneath the locomotive area to catch any potential spills or leaks, and to provide the information to the Town of Ayer within one week of receipt of test results. SEA's final recommended mitigation would require Applicants to comply with the Consent Decree (see Chapter 3, Final Recommended Mitigation, mitigation measure 18 of this Post EA).

Comment

In addition to complying with all applicable requirements of the Massachusetts Contingency Plan and other Federal, state, and local notification requirements, USEPA commented that the EA should include a provision requiring Applicants to notify the

Town of Ayer and the town's community water system in the event of the release of hazardous materials or fuels to the ground at the San Vel Automotive Facility.

Response

Applicants are required to comply with applicable Federal and state requirements related to releases of hazardous materials. Moreover, the operation and maintenance plan for the proposed San Vel Automotive Facility, which is a component of the SWPPP and the Stormwater Management Report, includes a specific notification protocol for the Town of Ayer and the Town's community water system in the event of a reportable release of hazardous materials or fuels to the ground (see Chapter 3, Final Recommended Mitigation, mitigation measure 7 and 18 (CD 5) of this Post EA). In these circumstances, the environmental mitigation condition requiring the notice to the Town of Ayer that USEPA seeks is not warranted.

Comment

USEPA commented that stormwater infiltration without pre-treatment is not appropriate for the proposed San Vel Automotive Facility, and requests that the EA specify what pre-treatment and infiltration measures would be instituted, with associated performance standards and long term operation and maintenance plans to ensure effective treatment beyond construction. USEPA also requested that the EA specify how stormwater management practices would be consistent with Massachusetts and USEPA stormwater requirements, including stormwater measures that are necessary to protect wellhead protection areas.

Response

The stormwater control system for the proposed San Vel Automotive Facility would include a pre-treatment system. The SWPPP, which is part of SEA's recommended mitigation (see Chapter 3, Final Recommended Mitigation, mitigation measures 7 and 18 (CD 5) of this Post EA) and Stormwater Management Report for the facility have been developed and were submitted to the Town of Ayer for informational purposes in August 2008. The SWPPP and Stormwater Management Report include the details of pre-treatment and infiltration measures, with associated performance standards and long-term operation and maintenance plans, in conformance with applicable provisions of USEPA standards and the Stormwater Management Plan adopted by the Commonwealth of Massachusetts. In particular, the SWPPP and Stormwater Management Report state that all drainage would be pre-treated prior to discharge to upland detention and retention ponds to achieve a total suspended solids removal rate of 99 percent in the following manner: (1) all paved areas would be provided with pre-treatment by using catch basins with gas traps and oil-water separators that remove impurities of sediment, oil, and grease from the stormwater prior to reaching the swales and retention/detention areas; (2) all drainage from the facility would be recharged at four water quality swales, and four retention/detention ponds, all of which would provide pre-treatment in the form of bioretention by directing run-off through and across vegetated areas; (3) substantial vegetative buffers would be incorporated in the plans and no wetland would be modified; (4) a security system would police the area and limit outside degradation of wetland areas and adjoining upland areas subject to erosion by, in part, prohibiting dirt bikes and other

vehicles that currently frequent the region; (5) sweeping of paved areas would be completed annually during the early spring, before sediment from winter sanding operations is washed into the drainage system, and disposal of the accumulated sediment would be in accordance with applicable Federal and state regulations; and (6) deep sump catch basins would be cleaned annually, with disposal of the accumulated sediment and hydrocarbons in accordance with applicable Federal and state regulations.

Comment

USEPA requested that the EA specify the parameters to be measured during groundwater monitoring at the proposed San Vel Automotive Facility and provided recommended parameters. USEPA asked that the results of the sampling be provided to the Town of Ayer water system in addition to town officials.

Response

Groundwater monitoring at the proposed San Vel Automotive Facility would be subject to the conditions set forth in the Consent Decree, which is legally binding upon Applicants and the Town of Ayer. In addition, SEA is recommending that the Board impose a condition on any decision approving the proposed Transaction requiring applicants to comply with the Consent Decree (see Chapter 3, Final Recommended Mitigation, mitigation measure 18 of this Post EA).

As required under the provisions of the Consent Decree, Applicants would measure groundwater quality twice a year and provide the results to the Town of Ayer. Construction of the proposed San Vel Automotive Facility could necessitate relocation of some of the existing groundwater monitoring wells. If necessary, new groundwater monitoring wells would be installed to complete the network of monitoring wells on the site, consistent with the conditions of the Consent Decree. The parameters for monitoring would conform to applicable MADEP standards. As recommended by USEPA, SEA's final recommended mitigation specifies that the parameters measured would include, at a minimum, chloride, volatile organic compounds, dissolved metals, and basic field parameters such as pH, conductivity, and temperature (see Chapter 3, Final Recommended Mitigation, mitigation measure 7 of this Post EA). Applicants would specifically incorporate these parameters into the final SWPPP that reflects the final facility design, which would be submitted for information to the Town of Ayer. As required by the Consent Decree, the sampling results would be provided directly to the Town of Ayer, which may distribute the results as it deems necessary. Thus, the Consent Decree and SEA's final recommended mitigation adequately address USEPA's concerns.

Comment

USEPA requested that the EA address comments related to the proposed San Vel Automotive Facility submitted to PARI on August 16, 2002 by USEPA. The December 15, 2008 USEPA letter summarizes the 2002 comments requesting: installation of a geomembrane liner for the rail spur including a leak detection system; development of specific protocol in the event of a spill; and percolation rate testing for each recharge basin.

Response

It would be inappropriate for SEA to comment on discussions that occurred in 2002 between USEPA and PARI – long before this proceeding began. However, inclusion of a geomembrane liner and compliance with other specific site design and testing requirements are specifically set forth in the Consent Decree (CD 16) and are reflected in the SWPPP and Stormwater Management Report submitted for informational purposes to the Town of Ayer in 2008. Applicants will test the integrity of the liner in accordance with the provisions of the Consent Decree (see Chapter 3, Final Recommended Mitigation, mitigation measure 18 (CD 16) of this Post EA).

Carolyn L. McCreary, Chair of Board of Selectmen and Shaun A. Suhoski, Town Administrator for the Town of Ayer, Massachusetts, December 15, 2008

Comment

The Town of Ayer expressed concern about protection of the Spectacle Pond drinking water wells in light of the proposed San Vel Automotive Facility's location above a MADEP Zone II Recharge Area. The Town provides a list of historical releases in the towns of Ayer and Deerfield, inferring that future spill events may occur at the new facility.

Response

As detailed in the EA, SEA is aware of and has considered the proposed San Vel Automotive Facility's location within MADEP designated Zone II and Zone III wellhead protection areas (WPAs) associated with the Town of Ayer's and Town of Littleton's drinking water supply, respectively. As previously noted, Applicants have developed a SWPPP and Stormwater Management Report for the facility and submitted them to the Town of Ayer for informational purposes. The stormwater system detailed in the SWPPP and Stormwater Management Report is designed to treat and control stormwater run-off in light of the facility's location over Zone II and III WPAs and the potential effects from construction and operations. The stormwater system is designed to provide a 99 percent total suspended solids removal rate and no reduction in groundwater recharge to the water supply aquifer. In addition to the development of a SWPPP and Stormwater Management Report to prevent any potential effects from accidental spills of fuels or lubricants, Applicants' Hazardous Material and Oil Spill Procedure and Reporting Plan and PARI's Spill Prevention, Control and Countermeasure Plan, developed to ensure compliance with the Clean Water Act and the Massachusetts Contingency Plan, would be applicable to the proposed San Vel Automotive Facility. These requirements, along with Applicants' compliance with the measures in the Consent Decree, would be sufficient to address any potential spill events (see Chapter 3, Final Recommended Mitigation, mitigation measure 7 and 18 (CD 4 and 5) of this Post EA).

Comment

The Town of Ayer commented that unloading and loading of automobiles at the proposed San Vel Automotive Facility would not conform to the Town of Ayer Aquifer Protection Bylaw (adopted December 1999), which prohibits trucking facilities within Zone II recharge areas.

Response

Approval to operate an auto loading and unloading facility at the proposed San Vel Automotive Facility was settled by litigation involving the Town of Ayer and PARI (whose railroad operating group was previously referred to as Guilford Rail Systems). The proposed activity at the San Vel Automotive Facility is located in an area zoned for industrial use, and the facility would be surrounded by other industrial facilities and operations. The automobiles that would be loaded and unloaded at the proposed facility would be new, factory vehicles containing only minimal quantities of fuel and oil and are not likely to be an environmental concern. Moreover, it is well settled that localities like the Town of Ayer cannot prevent the construction and operation of railroad facilities used in railroad transportation, although they can raise environmental concerns they may have to the Board during the environmental review process in cases like this one that require a license from the Board.¹

In any event, to resolve disputes involving the proposed San Vel Automotive Facility, the Town of Ayer entered into the Consent Decree with Applicant PARI in which the Town agreed that it has no authority to regulate the construction and operations of a railroad facility, which would include an automobile unloading facility, at the location. The Town of Ayer and Applicants are bound by the terms of that Consent Decree, and SEA is recommending a mitigation condition here that would expressly require Applicants to comply with the Consent Decree (see Chapter 3, Final Recommended Mitigation, mitigation measure 18 of this Post EA). The Town of Ayer has shown no basis for the Board to impose mitigation that goes beyond requiring compliance with the Consent Decree.

Comment

The Town of Ayer requested that the Board require Applicants to redevelop an existing auto-unloading facility located outside of the Zone II aquifer instead of the new facility.

Response

The existing auto-unloading facility in Ayer is under lease to CSX Transportation, Inc. (CSXT) until 2016.² A court ruled that CSXT has the right to use the property in question in accordance with the terms of its lease until that lease expires.³ Thus, the

¹ As previously noted, Congress gave the Board exclusive jurisdiction over rail transportation by rail carriers (49 U.S.C 10501(b)). The Board and the courts have identified two broad categories of state and local regulation that are wholly preempted for facilities used in rail transportation by rail carriers: any permit or preclearance requirement that, by its nature, could be used to deny the railroad the ability to conduct its operations (including zoning), and any attempted regulation of a matter directly regulated by the Board, such as rates or operations. Other state laws are preempted as applied – that is, if they would have the effect of preventing or interfering with interstate commerce. At the same time, the Board and the courts have harmonized section 10501(b) to the extent possible with overlapping Federal statutes, including Federal environmental statutes that are implemented in part by the states. *Ayer*, 5 S.T.B. at 508. The Board has also consistently held that states retain their historic police powers and can take appropriate action to protect public health and safety so long as their actions do not serve to regulate railroad operations or unreasonably interfere with railroad operations. See, e.g., *Green Mountain*, 404 F.3d at 643; *Ayer*.

² The lease will expire in 2011 but has a five year renewal option.

³ See *Boston and Maine Corp. v. CSX Transportation, Inc.*, Civ. Act. No. 06-11197-DPW.

Board could not require Applicants to use the yard under lease to CSXT as an alternative to the planned new facility.

Comment

The Town of Ayer requested that the Board mandate inclusion of SEA's recommended mitigation measures detailed in the EA, and require Applicants to adhere to comments or conditions suggested by the USEPA, MADEP, and the Town of Ayer's Federal and state legislative delegation.

Response

SEA has considered all comments received and recommended mitigation as appropriate. SEA recommends that the Board impose on any final decision approving the proposed Transaction conditions requiring Applicants to implement the mitigation measures contained in this document. As discussed above, in addition to any mitigation the Board might impose, Federal environmental laws generally will continue to apply (including statutes like the Clean Water Act and the Clean Air Act that are implemented in part by the states) and states retain police powers to protect public health and safety so long as their actions do not serve to regulate railroad operations or unreasonably interfere with railroad operations (*see, e.g., Green Mountain; Ayer*).

Comment

The Town of Ayer requested that the Board require Applicants to install and allow the Town of Ayer to operate groundwater monitoring wells at the proposed San Vel Automotive Facility.

Response

Allowing non-railroad personnel unlimited access to operating railroad property would create safety and liability issues for Applicants. Applicants have committed to, and the Consent Decree requires, installation of a monitoring well network around the San Vel Automotive Facility with periodic sampling to demonstrate aquifer protection, and reporting of the sampling results to the Town of Ayer. This is a reasonable and appropriate way to address the Town of Ayer's concerns.

Jon Hardie, Town of Royalston, Massachusetts, Board of Selectmen, et al., December 10, 2008

Comment

The Town of Royalston (Royalston) commented that emissions from idling locomotives in the vicinity of the Village of South Royalston are "intolerable," and that PARI has historically ignored Royalston's concerns. Royalston has requested compensation for fires, which Royalston states were started by rail sparks that occur during normal operations, and has requested notification from PARI of spills and assistance in emergency preparedness planning. Royalston indicated that PARI has failed to pay local taxes. Royalston requested that the Board prohibit the idling of all locomotives within one mile of the Village of South Royalston and require the payment of local taxes as conditions of approval of the proposed Transaction.

Response

The specific incidences of idling locomotives in the vicinity of the Village of South Royalston are not attributable to the proposed Transaction and therefore it would not be appropriate to develop mitigation in this Post EA related to idling trains in South Royalston. However, it is worth noting that Applicants plan to conduct track rehabilitation and improvements to the rail line in the vicinity of the Village of South Royalston as part of the proposed Transaction. The track rehabilitation and improvements would result in removal of slow orders and increased track speeds, thus leading to a decrease in idling time for locomotives in the vicinity and a commensurate decrease in local emissions from the diesel engines. Notification of spills and emergency planning with local communities are required under the Federal Emergency Preparedness and Community Right to Know Act. Applicants have also advised SEA that PARI has recently (prior to receiving Royalston's comments filed in this proceeding) coordinated with the Village of South Royalston, among other nearby communities, specifically to conduct emergency response training exercises. SEA notes that Massachusetts General Law addresses compensation to local districts for reasonable costs incurred in the event a fire is found to be caused by the railroad (M.G.L.A. 160 § 241). Issues involving the payment of local taxes are not related to the potential environmental impacts of the proposed Transaction and are therefore beyond the scope of the EA.

Jane Lendway, State Historic Preservation Officer, Division for Historic Preservation, State of Vermont, December 10, 2008

Comment

The State of Vermont, Division for Historic Preservation (VT SHPO) commented that because it understands that no construction would occur in the state of Vermont as part of the proposed Transaction, it has no formal comments.

Response

SEA thanks the VT SHPO for submitting its comment.

Eugene J. Colonese, Rail Administrator, Bureau of Public Transportation, State of Connecticut Department of Transportation, December 23, 2008

Comment

The Connecticut Department of Transportation (CTDOT) commented that it believes there are significant rail freight opportunities in the region served by PARI and its connecting carriers, and encouraged PARI to establish interconnection agreements with other carriers. The CTDOT states that it supports the creation of Pan Am Southern, LLC (PAS) for the efficiencies it would create in New England and New York, as well as the preservation and expansion of industry in Connecticut.

Response

The comment regarding interconnection agreements does not address a potential environmental issue and is therefore beyond the scope of the EA. SEA acknowledges CTDOT's support for the creation of PAS.

Thomas D. Hall, Committee to Improve Rail Service in Maine, December 15, 2008

Comment

The Committee to Improve Rail Service in Maine (CIRSM) commented that the proposed Transaction would result in improved rail service in the territory of the newly created PAS, and would result in worse rail service elsewhere in the remaining Pan Am Railways system, particularly in Maine, where CIRSM asserts rail service has been declining progressively for years. CIRSM commented that worsening rail service would cause more diversion of traffic to trucks, which have greater adverse environmental impacts than railroads. CIRSM requested that conditions be imposed on Applicants to maintain their existing infrastructure and improve rail service in Maine.

Response

The commenter has not shown that the proposed Transaction would have reasonable and foreseeable impacts on rail service in Maine, where, as the commenter himself states, rail service allegedly began declining long before this proceeding began. Therefore, any analysis of rail service in Maine is beyond the scope of the EA or the mitigation the Board could impose (which is limited to the effects of the proposed Transaction, not to remedying preexisting conditions). SEA notes that CIRSM has recourse to the Board and other regulatory agencies with jurisdiction should PARI fail to adequately maintain the lines that it currently operates, or not fulfill its common carrier obligation to provide rail service upon request on any of its lines.

Karen Rae, Deputy Commissioner, Policy and Planning Division, New York State Department of Transportation, December 15, 2008

Comment

The New York State Department of Transportation (NYSDOT) suggested two edits to the EA Glossary of Terms which would revise the definitions of cultural resources and free product. NYSDOT suggests defining cultural resources as buildings, structures, districts, or objects on or eligible for the National Register of Historic Places. NYSDOT suggests changing the definition of free product to reflect that free product is often found below ground.

Response

The suggested revisions to definitions in the EA Glossary of Terms have been incorporated into Chapter 2, Revisions, of this Post EA.

Comment

NYSDOT recommended the inclusion of a reference to US Fish and Wildlife Service (USFWS) in Appendix A, in the third sentence of Summary Section S.4.7 (Biological Resources).

Response

The reference to the USFWS letter has been incorporated into Chapter 2, Revisions, of this Post EA.

Comment

NYSDOT commented that the Section 106 process for the Mechanicville Facility should be completed in order to assess appropriate mitigation for cultural resources. It commented that mitigation would typically be addressed in a Memorandum of Agreement (MOA) concluding the Section 106 process, and that if no cultural resources are identified and the project results in a “No Historic Properties Affected” or “No Adverse Effect” determination, then there would be no need for mitigation. It commented with respect to the EA’s Summary (S.6, Conclusions and Request for Comments; and S.4.11, Cultural Resources) that it is premature to determine that there would be no significant adverse environmental impacts to cultural resources as a result of the proposed Transaction and that the final results of the Section 106 process should be summarized in the EA.

Response

To address cultural resource issues, SEA recommends a mitigation measure requiring that Applicants not initiate construction in areas potentially affected by historic properties within the Mechanicville Facility footprint, or take any steps to alter the historic integrity of historic properties including sites, buildings, structures, and objects within the project Area of Potential Effect (APE) that are eligible for listing or are listed in the National Register of Historic Places, until the Board’s responsibilities under the Section 106 process have been satisfied (see Chapter 3, Final Recommended Mitigation, mitigation measure 17 of this Post EA). This condition, which is similar to the conditions the Board often imposes in abandonment cases, will assure that the Section 106 process is complete (and appropriate mitigation is developed) before Applicants undertake any construction activities in the Mechanicville Facility footprint that could adversely affect historic properties or alter the historic integrity of any sites, buildings, structures or objects eligible for listing or are listed in the National Register of Historic Places within the project APE. The process suggested by NYSDOT is not necessary or warranted in this case where few, if any, potentially significant impacts have been identified.

The Board’s environmental documentation properly details the historic review that has taken place to date. SEA presented a summary of the Section 106 process for the proposed Mechanicville Facility in the EA, including the New York State Historical Preservation Officer’s (NY SHPO’s) request for additional field investigation. Chapter 2, Revisions, of this Post EA updates the progress of the Section 106 review at the proposed Mechanicville Facility.

Comment

NYSDOT commented that identification of cultural resources under Section 106 should be adequately documented and concluded in the EA for both architectural and archaeological resources (with a single effect opinion including both architectural and archaeological conclusions) and provided to NY SHPO for review. NYSDOT suggested clarifying the reference to the design of a treatment plan in the event National Register eligible sites are discovered. NYSDOT noted that the assessment of effects for cultural resources under Section 106 should be considered in order to assess cumulative impacts to cultural resources at the Mechanicville Facility.

Response

SEA's recommended cultural resources mitigation (see Chapter 3, Final Recommended Mitigation, mitigation measure 17 of this Post EA) addresses completion of the Board's responsibilities under Section 106 for both architectural and archeological resources. An updated summary in Chapter 2, Revisions, of this Post EA provides the status of the Section 106 process at the Mechanicville Facility to date. As part of this ongoing process, Applicants will submit to NY SHPO additional information, as requested in the NY SHPO's December 22, 2008 letter (see Appendix B of this Post EA) to address the potential presence of remains of the late-19th and early-20th century locomotive servicing complex (see Chapter 3, Final Recommended Mitigation, mitigation measure 17 of this Post EA). No historic or archaeological resources listed on or eligible for the National Register have been identified as a result of cultural resources studies undertaken at the site as part of the Section 106 process to date. Cumulative impacts to cultural resources will be addressed during the Section 106 process, as appropriate.

Comment

NYSDOT recommended text edits in three sections of the EA that discuss cultural resources. On page 3.11-1 at the second paragraph from the bottom, first sentence, NYSDOT recommended rewording to National "*Historic*" Preservation Act of 1966. On page 3.11-2, at the fourth paragraph, NYSDOT recommended revising the references to Section 3.10.1 and 3.10.2 since no sections correlate with that numbering. NYSDOT also recommended that the EA clarify what documentation was submitted to the NY SHPO on September 3, 2008, regarding what historic architectural resources remain at the site.

Response

These edits and clarifications have been incorporated into Chapter 2, Revisions, of this Post EA. The first sentence of the second paragraph from the bottom of page 3.11-1 has been modified to refer to the "National Historic Preservation Act" and not the "National Preservation Act." Additionally, references to Sections 3.10.1 and 3.10.2 on page 3.11-2 have been revised to Sections 3.11.1 and 3.11.2 respectively. The revisions presented in Chapter 2 also clarify that the documentation submitted to the NY SHPO indicates that there are not any intact buildings at the Mechanicville Facility property older than 50 years of age.

Comment

NYSDOT recommended text revisions to mitigation measure 4 of the EA to clarify that Applicants would implement and comply with the terms and conditions of a SWPPP for the proposed Mechanicville Facility consistent with State Pollutant Discharge Elimination System requirements under the Clean Water Act. NYSDOT also suggested changing all occurrences of ‘storm water’ to ‘stormwater’ throughout the document.

Response

The revision to mitigation measure 4 has been incorporated into the Summary, Chapter 2, Revisions, and Chapter 3, Final Recommended Mitigation, of this Post EA (see mitigation measure 7 of this Post EA). The use of the single word “stormwater” rather than “storm water” as two words has been applied to this Post EA.

Comment

NYSDOT recommended the text of the tenth bullet on page 3.6-1 of the EA be revised to read: “*Section 401 of CWA – Implemented by NYSDEC under Water Quality Certification Program.*” NYSDOT also requested that a separate additional bullet be added to this section addressing state-specific permit process clarifications.

Response

The text of the tenth bullet on page 3.6-1 of the EA has been revised as suggested in NYSDOT’s comment. In addition, a bullet under the NYSDEC heading of the same page has been added that reads: “*NYSDEC State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity that permit stormwater discharges.*” The revised text and additional text have been incorporated into Chapter 2, Revisions, of this Post EA.

Comment

NYSDOT commented that the EA should discuss Executive Order (EO) 13112 and measures to minimize the spread of invasive species during construction of the Mechanicville Facility. It requested that the EA be amended to include a statement that invasive species impacts would be considered and addressed during final design and construction in conformance with the EO and Chapter 4.8 of NYSDOT’s Environmental Procedures Manual (EPM).

Response

The Mechanicville site is already graded because of its former use as a rail yard. Applicants do not anticipate the need to transport significant quantities of fill, gravel or other material to or from the site. Thus, the spread of invasive species as the result of Applicant’s Transaction-related activities at the Mechanicville Facility appears unlikely. In addition, issues related to any appropriate precautionary measures to avoid the spread of invasive species as a result of construction at the Mechanicville Facility would be addressed during the final design process, if warranted (see Chapter 3, Final Recommended Mitigation, mitigation measure 16 of this Post EA). Relevant provisions of NYSDOT’s EPM would be addressed in connection with construction occurring

within a highway right-of-way. This information is presented in Chapter 2, Revisions, of this Post EA, under “S.5, Mitigation, Biological Resources.”

Comment

NYSDOT commented that Applicants would need to obtain a Highway Work Permit in order to construct or modify a driveway entrance to a state highway where work would be within the highway right-of-way, and requested a mitigation measure to this effect. NYSDOT described information that would need to be submitted to NYSDOT as part of the highway permit approval process, and stated that projects requiring a Highway Work Permit require compliance with the New York State Environmental Quality Review Act (SEQR). Likewise, in a comment on Section 3.8 of the EA, Air Quality and Climate, NYSDOT commented that the air quality analysis would need to conform to SEQR and utilize NYSDOT’s EPM guidelines. While a portion of the project area is located within a Carbon Monoxide (CO) and Particulate Matter (PM) attainment area, NYSDOT indicated that a CO and PM microscale screening and/or quantitative analysis and analysis of construction PM emissions might be warranted for the proposed Mechanicville Facility.

Response

SEQR, including any analyses particular to it such as CO and PM microscale screening and quantitative air quality analysis, is triggered by certain state licensing actions. The proposed Mechanicville Facility likely will present licensing issues that would warrant state review using the SEQR process, if it is applicable. The CEQ regulations, however, require agencies to eliminate duplication with state and local procedures to the extent possible, as discussed above, and in this situation there is no reason for SEA to address potential SEQR issues in this EA, which is being issued in accordance with NEPA. As requested by NYSDOT, however, SEA has developed an additional mitigation measure requiring Applicants to work with NYSDOT to address all reasonable concerns regarding the construction of the proposed highway access to Route 67 (see Chapter 3, Final Recommended Mitigation, mitigation measure 1 of this Post EA). Finally, SEA notes that as discussed above, in addition to any mitigation the Board might impose, Federal environmental laws generally will continue to apply (including environmental laws that are implemented in part by the states). States also retain police powers to protect public health and safety so long as their actions do not serve to regulate railroad operations or unreasonably interfere with railroad operations (*see, e.g., Green Mountain; Ayer*).

Comment

NYSDOT commented that, based on information presented in the 2006 Highway Sufficiency Manual, the proposed Transaction would result in a 150 percent increase in the volume of truck traffic and also would increase the percentage of all traffic represented by trucks. NYSDOT also commented that homeowners, pedestrians, and bicyclists along Route 67 may perceive the added traffic as significant. NYSDOT commented that the EA and the public involvement process for the proposed Transaction should address these impacts in enough detail to make any potential impacts clear to the public, elected leaders in the affected municipalities and adjoining towns and villages.

Response

Rather than relying on forecasts published in 2006, as part of the preparation of the EA traffic counts were conducted along the section of Route 67 at issue to generate accurate, current, traffic volumes. Thus, the traffic analysis did not rely on the projections contained in NYSDOT's 2006 Highway Sufficiency Manual for volume and truck percentages as referenced by NYSDOT in its comments. Level of Service (LOS) was evaluated for the main roadways and intersections within the area of potential effect for the Mechanicville Facility to determine the effect that the proposed Transaction would have on the local road network. Based on these analyses, it was determined that the proposed Transaction would not have an adverse effect on the operating quality of the roadway segments or the intersections in the vicinity of the Mechanicville Facility. SEA served copies of the EA containing this analysis on the towns of Stillwater, Halfmoon, and Clifton Park, as well as a multitude of other entities located near the facility, to disclose the potential environmental impacts and provide an opportunity for public comment. SEA will also serve a copy of the Post EA, responding to all the comments on the EA, on these municipalities, as well as the Town of Malta and the Village of Round Lake. Thus, the Board has provided enough detail about the potential impacts of increased truck traffic related to this Transaction to potentially affected communities and all other interested parties during its environmental review process.

Comment

NYSDOT commented that the intersection of Route 9 and Route 67 is evaluated as a traffic signal when it is planned to be a roundabout by 2012 with the construction of the Round Lake Bypass.

Response

The capacity analysis of the intersection of Route 9 and Route 67 (signalized) for the post-Transaction case in the EA included a leg for the Round Lake Bypass, which would serve as the primary access route to I-87 from the proposed Mechanicville Facility. SEA notes that if NYSDOT replaces the traffic signal with a roundabout at the intersection, such changed traffic pattern would likely facilitate the movement of traffic. As such, SEA notes that while the EA finds that the Transaction would have no adverse effect on LOS with a signal at the intersection, in the event a roundabout replaces the traffic signal at the intersection, the overall LOS at the intersection would likely only be improved.

Comment

NYSDOT commented that Section 3.2.1 of the EA (Land Use) at the Mechanicville Facility seems to infer that the effect of Transaction-related truck traffic along Route 4 would be mitigated by the Town's Traffic Calming Project, as detailed in the Stillwater US Route 4 Corridor Plan (July 2006). NYSDOT commented that SEA should not rely on mitigation from another project to lessen the effect of the proposed Transaction. NYSDOT noted that the Corridor Plan is just a plan that provides design guidelines for pedestrian, vehicular, bicycle, and public transportation improvements.

Response

The EA did not suggest that the effect of increased truck traffic attributed to the proposed Transaction that would use Route 4 within the Town of Stillwater would require STB-

imposed mitigation. Rather, the EA explains that the vast majority of the truck traffic that would be generated at the proposed Mechanicville Facility would be going to and from the interstate highway, and therefore, would not use Route 4. SEA's analysis shows that a small percentage of local deliveries by truck would serve local businesses. These trucks would be subject to current traffic laws and regulations, and their presence on the road is not expected to significantly affect pedestrian, vehicular, or bicycle use in the area. Therefore, SEA does not believe that STB-imposed mitigation of the impact of Transaction-related truck traffic on Route 4 is warranted. At the same time, SEA notes that any traffic calming resulting from the Corridor Plan would further enhance safety for pedestrians, vehicular traffic, and bicyclists along this area of Route 4.

Comment

NYSDOT restated its comments from July 9, 2008, which discussed the elimination of 35,000 truck trips annually from New York's roadways and asked why there is no reference to this statistic in the EA. NYSDOT notes that the EA stated on page 3.8-5 that truck traffic (approximately 19,000 trucks per year by 2012) is expected to decrease. NYSDOT requested clarification if the scope of the project has changed. Further, NYSDOT stated that the project sponsor should coordinate with the local area Metropolitan Planning Organization, the Capital District Transportation Committee (CDTC), to determine how to appropriately account for the proposed Mechanicville Facility in CDTC's planning activities.

Response

The scope of the project has not changed. NYSDOT's letter of July 9, 2008, related to the information in Applicants' June 6, 2008 Environmental Appendix. The Environmental Appendix had projected that the proposed Transaction would result in the removal of over 19,000 trucks per year by 2012, with close to 35,000 trucks per year diverted by 2015. The subsequently-prepared EA uses 2012 as an overall projection year and therefore uses the corresponding 19,000 figure. Further, both the Environmental Appendix and the EA stated that these trucks would be anticipated to be diverted from the interstate system, not only from the roadways of the State of New York. The EA provides a thorough discussion of the effects of the proposed Mechanicville Facility, including projected effects on traffic in the vicinity of the facility, and the CDTC may use this information as appropriate in its planning activities.

Comment

NYSDOT commented that the modeling inputs or emission factors that were used in the air emissions analyses should be included in the EA and suggested that the latest New York State Department of Environmental Conservation (NYSDEC) inputs should be used with the MOBILE6.2 modeling, or that SEA should explain why alternative inputs were used.

Response

Emissions from locomotives were calculated using emission factors from the Regulatory Support Document (Appendix O) to the USEPA 1998 Locomotive and Locomotive Engines Rule (April 16, 1998; 63 FR 18977). Emissions from cargo handling equipment

were analyzed using emission factors from the USEPA National Mobile Inventory Model, based on the Saratoga County, NY equipment population. Emissions from trucks were analyzed with the USEPA MOBILE6.2 model using a set of inputs that was designed by the Federal Highway Administration (FHWA) for air toxics analysis (FHWA, Claggett, Michael, and Jeff Houk, Presentation at FHWA Workshop on Project-Level Mobile Source Air Toxics, Phoenix, AZ, March 7, 2006). The FHWA inputs were used because of previous agency and public comments that expressed concern about emissions of air toxics. The vehicles associated with Transaction-related activities were assumed to consist of 100 percent heavy duty diesel trucks. Many of the MOBILE6.2 inputs apply to gasoline-fueled vehicles only, light-duty diesel-fueled vehicles only, or the proportions of vehicle types (VMT mix) on a roadway, and thus were not needed for this analysis. For these reasons, the FHWA inputs were considered appropriate for the EA.

Comment

NYSDOT commented on the state of the existing grade crossing devices, and stated that the analysis presumed that the existing devices are in a state of good repair when there is a history of unreliable operation. NYSDOT recommended that the Board require investments in the grade crossing warning devices to ensure reliable operation and modifications necessary to accommodate increased train speeds while maintaining safety at the grade crossings.

Response

SEA considered the potential impacts of the proposed Transaction on grade crossing safety by examining the change in predicted accident frequency using a calculation model developed and provided by the Federal Railroad Administration. One of the key inputs for the calculation of the predicted accident frequency at a grade crossing is the accident history at the crossing. If equipment malfunctions or if grade crossing warning devices are the cause of accidents, this information would be included in the calculation and thus, included in the evaluation of the potential impacts of the proposed Transaction. Based on this evaluation, which showed a minimal change in the predicted accident frequency as a result of the proposed Transaction, mitigation to upgrade the grade crossing warning devices would not be warranted as a condition of approval of the proposed Transaction.

Comment

NYSDOT commented that it understands SEA's noise impact criteria to be +3 dBA or 65 DNL⁴ and that applying such impact criteria would result in impacted receptors in areas south of and at the east end of the proposed Mechanicville Facility. NYSDOT requested further clarification of the impact criteria used in the EA.

Response

As discussed in Section 3.9 of the EA, the Board's environmental rules (49 CFR 1105.7(e)) require that the analysis of noise state whether the proposed action would cause an incremental increase in noise levels of 3 dBA or greater, or an increase to a

⁴ DNL is an abbreviation for the term day-night average noise level, which indicates the energy average of A-weighted decibels (dBA) sound level over a 24-hour period.

noise level of 65 DNL or greater. These SEA noise criteria provide thresholds for noise analysis, not impact determinations or thresholds for mitigation. For a proposed action to result in an adverse noise impact, as noted in Section 3.9 of the EA, it must cause a noticeable change in the noise level (3 dBA or greater) and the resulting noise level must be 65 DNL or greater. As the EA explains, in Section 3.9, SEA determined that no adverse noise effects would result from the Transaction. Thus, no noise mitigation is recommended.

Comment

NYSDOT commented that the EA should address security improvements at the Mechanicville Facility and provided examples of such improvements.

Response

Applicants have informed SEA that the proposed Mechanicville Facility would be constructed with perimeter and access point security devices, including video surveillance, which would be incorporated into the final facility design. Applicants' railroad police would actively patrol the PAS rail corridor including the proposed Mechanicville Facility. Thus, NYSDOT's concerns related to adequate security will be appropriately addressed.

Comment

NYSDOT commented that the EA should discuss handling and disposal of non-hazardous construction debris.

Response

Applicants will be required to handle and dispose of non-hazardous construction debris in conformance with applicable Federal laws (including Federal laws implemented in whole or in part by the states) and state and local public health and safety laws. No additional discussion or mitigation imposed by the Board has been shown to be warranted here.

Comment

NYSDOT recommended adding a mitigation measure in Section 4.2, Recommended Mitigation Measures, of the EA that commits Applicants to take appropriate actions to safeguard contractors and the environment from any hazardous materials encountered at the Mechanicville Facility, in accordance with NYSDEC regulations.

Response

In response to NYSDOT's comment, SEA has included an additional mitigation measure requiring that Applicants comply with all applicable NYSDEC regulations in the event that any hazardous waste sites subject to NYSDEC oversight are encountered during construction of the proposed Mechanicville Facility (see Chapter 3, Final Recommended Mitigation, mitigation measure 3 of this Post EA).

Comment

NYSDOT requested clarification on the authority or rationale for the use of 10 percentage points higher to define "meaningfully greater" when referring to

Environmental Justice communities. NYSDOT provided an example of perceived inconsistency in the use of the definition and the results when applied to statistics given in the analysis.

Response

The relevant CEQ guidance, *Environmental Justice: Guidance under the National Environmental Policy Act*, dated December 10, 1997, utilizes but does not define the term “meaningfully greater.” Thus, the responsible agency is left to implement an appropriate definition of the term. SEA used the “10 percentage points higher” definition of “meaningfully greater,” following Board precedent. The term “meaningfully greater” when used to determine environmental justice populations refers to census blocks with proportions of minorities or low-income families that are 10 percentage points higher – not 10 percent higher – than that of the County in which the census block is located. This clarification has been incorporated into Chapter 2, Revisions, of this Post EA.

Mindy Wormuth, Supervisor, Town of Halfmoon, New York, December 10, 2008

Comment

The Town of Halfmoon expressed concerns about possible negative effects on traffic safety, light pollution, noise pollution, and security concerns regarding the type of materials to be transported and the proposed Mechanicville Facility site itself.

Response

SEA notes that the Town’s concerns regarding safety are addressed in the EA in Section 3.1.2, Grade Crossing Safety and Delay, and noise is addressed in Section 3.9, Noise and Vibration. There is no anticipated change in hazardous materials traffic as a result of the proposed Transaction and therefore hazardous materials transport was not analyzed in the EA. Applicants have informed SEA and the Town of Halfmoon that they shall incorporate into the final design for the proposed Mechanicville Facility appropriate measures, including the use of down-lighting, to minimize the impacts of the facility’s lighting onto residential areas adjacent to the proposed Mechanicville Facility. SEA has added a mitigation measure to that effect to Chapter 3 of this Post EA (see Chapter 3, Final Recommended Mitigation, mitigation measure 2).

Comment

The Town of Halfmoon commented that its citizens have not had an adequate opportunity to comment and asked why there have been no public meetings on this matter.

Response

The Town and the general public were provided adequate notice and opportunity to comment on the environmental aspects of the proposed Transaction. Ms. Wormuth was served with a copy of the Environmental Appendix containing information about the proposed Transaction filed by Applicants prior to the EA. SEA published notice of the availability of the EA in the Federal Register on November 14, 2008, and served the EA on the supervisor of the Town of Halfmoon, Melinda Wormuth, among other local towns and cities. Further, SEA made the EA available for public comment for 30 days (service

date: November 14, 2008) and is issuing this Post EA to respond to comments received on the proposed action. Applicants have advised SEA that they have met with representatives of the Town of Halfmoon on multiple occasions to discuss specifics of the proposed Transaction and concerns the Town has with the proposed Mechanicville Facility in particular. Neither NEPA, the CEQ regulations, nor the Board's environmental rules require the Board to hold public meetings, in addition to providing an opportunity to file written comments, in a case such as this.

Comment

The Town of Halfmoon requested a correction in the Summary, S.3 Proposed Action and Alternatives, to reflect that the Mechanicville Facility is located in part in the Town of Halfmoon, NY.

Response

The Mechanicville Facility is principally located in the Town of Halfmoon, with minor portions located in the Town of Stillwater and the City of Mechanicville. This clarification is included in Chapter 2, Revisions, of this Post EA.

Comment

The Town of Halfmoon commented that the transportation section of the EA (Section 3.1.1.3) does not mention the effect of two approved Light Industrial Planned Development Districts (PDD) (totaling 1,150,000 square feet of potential use) on traffic patterns in the vicinity of the proposed site.

Response

According to the Town of Halfmoon, potential future truck traffic that could be generated from these PDDs, which are zoned for light industrial development, would use Route 146 south of the proposed Mechanicville Facility if they were to be developed at some point in the future. Truck traffic from the proposed Mechanicville Facility would primarily use Route 67 headed west to the Northway as the main route in or out of the facility. It is anticipated that both automotive and intermodal truck traffic generally would deliver outside of the local area, although a few local deliveries could occur. The traffic analysis for the proposed Mechanicville Facility, contained in Section 3.1.1.3 of the EA, distributed projected traffic volumes from the proposed Transaction across the network of intersections within the area around the facility. The analysis found that with the local deliveries, LOS would remain acceptable and that overall, the proposed Transaction would have a negligible effect on the local traffic patterns in the vicinity of the proposed Mechanicville Facility.

Comment

The Town of Halfmoon requested a correction in Section 3.2, Land Use, where the project is stated to lie within the Light Industrial and Commercial Zone (LI-C). The Town indicated that the parcel is located within the Manufacturing Zone (M-1) of the Town of Halfmoon.

Response

SEA appreciates the clarification regarding the zoning designation for the proposed Mechanicville Facility. The revised text is included in Chapter 2, Revisions, of this Post EA. The EA conclusion that the use of the Mechanicville Facility is consistent with current industrial zoning remains correct.

Comment

The Town of Halfmoon commented that the Dwaas Kill Creek is a tributary to the Anthony Kill and is a 303(d) listed waterbody. The Town stated that the proximity of Dwaas Kill Creek to the proposed Mechanicville Facility might require pre-treatment prior to recharge into a stormwater pond.

Response

The confluence of the Dwaas Kill and the Anthony Kill is over 2.5 miles upstream of the proposed Mechanicville Facility. Therefore, the proposed Transaction would not affect the Dwaas Kill.

Comment

The Town of Halfmoon cited the New York State Stormwater Design Manual (April 2003) for the use of detention ponds and volume requirements for stream channel protection and commented that there are specific sections of the EA (Water Resources, Sections 3.6.1.1 and 3.6.1.4) where the Town believes these concerns should be addressed.

Response

Facility design plans and corresponding permits would not be finalized until after Board approval of the proposed Transaction, if granted. The details cited by the Town of Halfmoon would be addressed during the design phase for the proposed Mechanicville Facility, when Applicants would submit plan designs, permit applications, and follow-up documentation, as needed, to appropriate agencies during and after the construction phase.

Comment

The Town of Halfmoon asked for clarification on how the increase in toxic emissions and greenhouse gas (GHG) emissions at the site would be mitigated and suggested plantings and landscaping that could filter out such particulates.

Response

As stated in Section 3.8.4 of the EA, Transaction-related changes in rail, yard, and truck activity would have a negligible effect on GHG emissions. Increases in emissions of criteria pollutants associated with Transaction-related activities would be considered *de minimis* according to the USEPA General Conformity Rule. The proposed Transaction's contribution to ambient pollutant concentrations, in both the Albany-Schenectady-Troy, NY and Boston-Lawrence-Worcester, MA non-attainment areas, would not cause or contribute to concentrations that exceed the National Ambient Air Quality Standards. Accordingly, the proposed Transaction would not impede the progress of the state or

locality toward reaching attainment under the relevant State Implementation Plans and would not impact regional air quality. Similarly, as stated in the EA, emissions of air toxics associated with Transaction-related activities would be minor, incremental additions to existing emissions in the local areas of the proposed facilities, and the Transaction-related air toxics impacts are considered to be minimal. For these reasons, mitigation to address the proposed Transaction's effect on air quality is not required.

Comment

The Town of Halfmoon requested clarification on what time of year the noise impacts were evaluated in the EA. It stated that less vegetation during the winter months could increase the noise exposure to the areas around the proposed Mechanicville Facility.

Response

The EA analyzed both facility noise and noise from increased truck traffic on the roadways adjacent to the Mechanicville Facility using CADNA (Computer-Aided Noise Abatement), an environmental noise computer program which produces noise contours. The noise analysis and noise contours in this study were based on annual railroad, truck, and yard operations data, taking into account all seasons. Seasonal variations may occur in how noise travels from the noise source, but seasonal variations due to vegetation or atmospheric (temperature, humidity, etc.) are generally only relevant over relatively long distances. For example, a 100 foot depth of tall thickly vegetated trees would provide approximately 5 dBA of noise attenuation. A 3 dBA change in noise level is barely perceptible to the human ear. Consequently, seasonal variations in propagation of noise associated with the proposed Mechanicville Facility would be minor due to the lack of very large intervening areas of trees between the noise sources and listener locations. Further, the noise analysis in the EA did not include any differentiation due to vegetation, so to the extent that vegetation would result in noise reduction, it would reduce the estimated noise levels presented in the EA.

Raymond Tylicki, Individual Commenter, November 18, 2008

Comment

Mr. Tylicki commented that he supports Applicants' proposed project but believes that the proposed Mechanicville Facility may have a detrimental effect on the hunting of wildlife currently inhabiting the site and suggested expanding the Albany rail yard instead. He expressed concern that truck traffic would have a negative effect on the maintenance and upkeep of local roads and suggested informing residents of train time tables.

Response

As explained in the EA, wildlife that currently may use the former rail yard property likely would relocate to the nearby larger forest, wetland, and open field habitats associated with and connected to the Anthony Kill riparian corridor. The Albany rail yard is not located along the proposed rail line involved in the proposed Transaction, and further is not owned or operated by Applicants. The results of the LOS analysis for the roadway segments and intersections under the 2012 Post-Transaction conditions indicate

that all locations would continue to operate at acceptable LOS. Overall, based on the results of the traffic analysis, the proposed Transaction would have a negligible effect on traffic operations within the vicinity of the Mechanicville Facility. As such, SEA does not anticipate that the proposed Transaction would have an adverse impact on the upkeep and maintenance of local roads. Publicizing train schedules is a security concern for railroads, and SEA therefore does not recommend a condition requiring such posting.

Joseph A. Elliot, Individual Commenter, November 19, 2008

Comment

Mr. Elliot commented that he supports the proposed Transaction, indicating the benefits far outweigh the environmental impacts that may occur. Mr. Elliot suggested that intermodal growth in the rail sector would help to reduce CO₂ and other particulate emissions.

Response

SEA thanks Mr. Elliot for commenting.

2. REVISIONS

This section presents revisions to the Environmental Assessment (EA) made in response to comments and includes discussion of additional topics and information identified since release of the EA. The revisions are organized by the sequence in which the relevant sections appeared in the EA.

Glossary of Terms Revisions

The following revisions are made to the “Glossary of Terms” in the EA:

This Post EA clarifies that the following terms in the EA should be defined as follows:

- **Cultural Resources:** Cultural resources include buildings, structures, districts, objects, or sites determined eligible for, or listed on, the National Register of Historic Places.
- **Free Product:** A non-aqueous (not water-based) liquid, that is found either floating atop groundwater or surface water (light non-aqueous phase liquid, LNAPL) or that has sunk beneath groundwater or surface water (dense non-aqueous phase liquid, DNAPL). Petroleum products like gasoline and diesel fuel are often encountered as floating product (LNAPL). Tetrachloroethylene (also known as perchloroethylene, or “perk”), a chemical used in dry-cleaning, is a common sinking free product (DNAPL).

Summary Revisions

The following revisions are made to the “Summary” (Section S) of the EA:

S.1 – Introduction

This Post EA includes additional information to provide an overview of the proposed Transaction. In addition, this Post EA provides information regarding the Board’s obligations under the National Environmental Policy Act (NEPA) as well as the Board’s jurisdiction. The Summary contained in this Post EA includes this information.

S.3 -- Proposed Action and Alternatives

This Post EA clarifies that the proposed Mechanicville Facility is located principally within the Town of Halfmoon, with minor portions of the facility located in the Town of Stillwater and the City of Mechanicville. The Summary contained in this Post EA includes this clarification.

S.4.3 – Hazardous Waste Sites

This Post EA includes reference to an additional mitigation measure that requires Applicants to comply with all applicable New York State Department of Environmental Conservation (NYSDEC) regulations in the event that any hazardous waste sites subject to NYSDEC oversight are encountered during construction of the proposed Mechanicville Facility.

S.4.6 – Water Resources

This Post EA clarifies information regarding the Stormwater Pollution Prevention Plan (SWPPP) prepared for the proposed San Vel Automotive Facility, and references

appropriate mitigation measures contained in the EA and this Post EA. The Summary contained in this Post EA includes these clarifications.

S.4.7 -- Biological Resources

This Post EA clarifies that the correspondence letter from the U.S. Fish and Wildlife Service found in Appendix A of the EA should be referenced in the third sentence of the Biological Resources section of the Summary (Section S.4.7 of the EA). The Summary contained in this Post EA includes this clarification.

S.5 -- Mitigation

This Post EA includes a new mitigation measure under a new Transportation mitigation section of the EA Summary, a new mitigation measure under a new Land Use mitigation section of the EA Summary, a new mitigation measure under a new Hazardous Waste Sites mitigation section of the EA Summary, and a new mitigation measure under the Biological Resources section of the EA Summary, respectively:

Transportation

- 1) Applicants shall consult with New York State Department of Transportation (NYSDOT) to address NYSDOT's concerns about the construction of the proposed highway access to Route 67 at the proposed Mechanicville Facility.

Land Use

- 2) Applicants shall incorporate into the final design for the proposed Mechanicville Facility appropriate measures, including the use of down-lighting, to minimize the impacts of the facility's lighting onto residential areas adjacent to the proposed Mechanicville Facility.

Hazardous Waste Sites

- 3) Applicants shall comply with all applicable New York State Department of Environmental Conservation (NYSDEC) regulations in the event that any hazardous waste sites subject to NYSDEC oversight are encountered during construction of the proposed Mechanicville Facility.

Biological Resources

- 16) During the final design process for the proposed Mechanicville Facility, Applicants shall address relevant provisions of New York State Department of Transportation's Environmental Procedures Manual in connection with issues related to appropriate precautionary measures to avoid the spread of invasive species during construction.

In addition, this Post EA clarifies that the fourth mitigation measure included under the Water Resources mitigation section of the Summary (now mitigation measure 7) should be revised as follows:

Water Resources

- 7) Applicants shall implement and comply with the terms and conditions of Stormwater Pollution Prevention Plans (SWPPPs) for the proposed Mechanicville Facility, consistent with applicable State Pollutant Discharge Elimination System

requirements, and the proposed San Vel Automotive Facility, consistent with applicable National Pollutant Discharge Elimination System requirements under the Clean Water Act. The final SWPPP and Stormwater Management Report for the San Vel Automotive Facility shall include specific parameters for the monitoring well network including at a minimum: chloride, volatile organic compounds, dissolved metals, and basic field parameters such as pH, conductivity, and temperature.

Finally, this Post EA clarifies that the mitigation measure included under the Notice of Activity and Use Limitation mitigation section of the Summary should be revised as follows:

Notice of Activity and Use Limitation

- 19) Applicants shall abide by the conditions set forth in the Notice of Activity and Use Limitation (AUL) filed with the Middlesex County Registry of Deeds on January 27, 1999 and amended on May 24, 2002, regarding the process to be followed if any disturbance of the AUL area is anticipated to occur as part of the development of the proposed San Vel Automotive Facility.

These additions and changes to the mitigation measures are also reflected in Chapter 3, Final Recommended Mitigation, of this Post EA. Additionally, this Post EA clarifies that SWPPPs should be defined as “Stormwater Pollution Prevention Plans,” not “Storm Water Pollution Prevention Plans,” and that “stormwater” should replace “storm water” in any instance it is used throughout the EA.

Chapter 3 Revisions

The following revisions are made to Chapter 3 of the EA.

3.2 -- Transportation- Local Road Network

This Post EA clarifies that Applicants will work with the New York State Department of Transportation (NYSDOT) to address all reasonable concerns regarding the construction of the proposed highway access to Route 67 at the proposed Mechanicville Facility. In addition, SEA recommends a new mitigation measure (mitigation measure 1) in this regard.

3.2 -- Affected Environment and Environmental Impacts- Land Use

This Post EA clarifies that the majority of the proposed Mechanicville Facility would be located in northern Halfmoon’s “Industrial District (M-1),”¹ with the remainder within the City of Mechanicville’s western “Heavy Industrial District”² and bordered by the

¹ Defined in the Code of the Town of Halfmoon §165-16: “The intent of this district is to allow industrial and manufacturing uses and those commercial uses which will provide support to the companies or employees within this district” (see text of Code for specific uses permitted).

² Defined in the Code of the City of Mechanicville § 200-16: “all uses not otherwise prohibited by law (except any residential use).” Twenty-six specific uses, not including railroad-related uses, are identified as requiring a special use permit.

Town of Stillwater's southern "Industrial District"³ and "Low Density Residential"⁴ zones.

3.6 -- Affected Environment and Environmental Impacts- Water Resources

This Post EA clarifies that the tenth bullet on page 3.6-1 should read:

- Section 401 of the Clean Water Act – Implemented by the New York State Department of Environmental Conservation (NYSDEC) under the Water Quality Certification Program.

This Post EA also adds a bullet under the NYSDEC heading of the same page that reads:

- NYSDEC State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity that permit stormwater discharges.

3.7 -- Affected Environment and Environmental Impacts- Biological Resources

This Post EA clarifies that invasive species impacts would be considered and addressed during project design and construction in accordance with any applicable provisions of Executive Order 13112 and in accordance with any applicable provisions of the NYSDOT Environmental Procedures Manual, Chapter 4.8. In addition, SEA recommends a new mitigation measure in this regard (see Chapter 3 of this Post EA, Final Recommended Mitigation, mitigation measure 16).

3.11 -- Affected Environment and Environmental Impacts- Cultural Resources

On November 21, 2008, the Phase 1A literature review and archaeological sensitivity assessment of the proposed Mechanicville Facility was submitted to the New York State Historic Preservation Office (NY SHPO) for review and comment. To summarize the findings, no National Register-listed or -eligible properties were identified within the Area of Potential Effect (APE) and much of the APE was disturbed extensively by the development of the former rail yards. However, the Phase 1A report concluded with a recommendation that a Phase 1B field investigation be conducted in two previously undisturbed areas. In a letter dated December 22, 2008 (included in Appendix B), the NY SHPO concurred "with the recommendation for further Phase 1B field testing of the two areas." As of January 26, 2009, the archaeologists had completed all the Phase 1B field testing and follow-up Phase 2 testing of a potential 19th century house site. No National Register-eligible sites were encountered, and no additional fieldwork was recommended. Upon completion, the Phase 1B and Phase 2 reports will be submitted to the NY SHPO for review and consultation as part of the Section 106 compliance process.

³ Defined in the Stillwater Comprehensive Plan (Town of Stillwater, 2006) as: "Auto body shops, asphalt plants, bulk storage, freight or trucking terminals, heavy and light industrial manufacturing or processing, research and development, sand/gravel/soil removal and processing, warehousing, bulk fuel storage, adult uses, contractor's yards, and junkyards" (p. 24).

⁴ Defined in the Stillwater Comprehensive Plan (Town of Stillwater, 2006) as: "Single and two-family dwellings, farm worker housing, bed and breakfasts, commercial greenhouses, farms, animal harboring, and home occupations, boarding houses, public and semi-public uses, sand/gravel/soil removal and processing, and small animal hospitals or kennels" (p. 23).

In its letter dated December 22, 2008, the NY SHPO stated: “SHPO also recommends that further consideration be given to the potential for the presence of remains of the late-19th and early-20th century locomotive servicing complex” located on the former rail yard site. In accordance with mitigation measure 17 (see Chapter 3 of this Post EA, Final Recommended Mitigation), Applicants will submit to NY SHPO additional information regarding the potential for the presence of remains of the late-19th and early-20th century locomotive servicing complex as requested by NY SHPO.

This Post EA clarifies that the first sentence of the second paragraph from the bottom of page 3.11-1 of the EA should refer to the “National Historic Preservation Act” and not the “National Preservation Act.” Additionally, references to Sections 3.10.1 and 3.10.2 on page 3.11-2 of the EA should be to Sections 3.11.1 and 3.11.2, respectively.

This Post EA also clarifies that there are not any intact buildings at the proposed Mechanicville Facility property older than 50 years of age. The photos referenced in the EA illustrated the scattered remnants of historic and non-historic architectural resources in previously disturbed portions of the site.

3.12 -- Affected Environment and Environmental Impacts- *Environmental Justice*

This Post EA clarifies that the term “meaningfully greater” used to determine environmental justice populations refers to census blocks with proportions of minorities or low-income families that are 10 percentage points higher than that of the county in which the census block is located.

Chapter 4 Revisions

The following are revisions to Chapter 4 of the EA:

4.1.2 -- Mitigation

This Post EA clarifies that a mitigation measure should be added to the EA under a new Transportation mitigation section as follows:

Transportation

- 1) Applicants shall consult with New York State Department of Transportation (NYSDOT) to address NYSDOT’s concerns about the construction of the proposed highway access to Route 67 at the proposed Mechanicville Facility.

This Post EA clarifies that a mitigation measure should be added to the EA under a new Land Use mitigation section as follows:

Land Use

- 2) Applicants shall incorporate into the final design for the proposed Mechanicville Facility appropriate measures, including the use of down-lighting, to minimize the impacts of the facility’s lighting onto residential areas adjacent to the proposed Mechanicville Facility.

This Post EA clarifies that a mitigation measure should be added to the EA under a new Hazardous Waste Sites mitigation section as follows:

Hazardous Waste Sites

- 3) Applicants shall comply with all applicable New York State Department of Environmental Conservation (NYSDEC) regulations in the event that any hazardous waste sites subject to NYSDEC oversight are encountered during construction of the proposed Mechanicville Facility.

This Post EA clarifies that the fourth mitigation measure included under the Water Resources mitigation section should read as follows:

Water Resources

- 7) Applicants shall implement and comply with the terms and conditions of Stormwater Pollution Prevention Plans (SWPPPs) for the proposed Mechanicville Facility, consistent with applicable State Pollutant Discharge Elimination System requirements, and the proposed San Vel Automotive Facility, consistent with applicable National Pollutant Discharge Elimination System requirements under the Clean Water Act. The final SWPPP and Stormwater Management Report for the San Vel Automotive Facility shall include specific parameters for the monitoring well network including at a minimum: chloride, volatile organic compounds, dissolved metals, and basic field parameters such as pH, conductivity, and temperature.

This Post EA clarifies that a new mitigation measure should be added to the EA under the Biological Resources mitigation section as follows:

Biological Resources

- 16) During the final design process for the proposed Mechanicville Facility, Applicants shall address relevant provisions of New York State Department of Transportation's Environmental Procedures Manual in connection with issues related to appropriate precautionary measures to avoid the spread of invasive species during construction.

This Post EA clarifies that the mitigation measure included under the Notice of Activity and Use Limitation mitigation section of the Summary should be revised as follows:

Notice of Activity and Use Limitation

- 19) Applicants shall abide by the conditions set forth in the Notice of Activity and Use Limitation (AUL) filed with the Middlesex County Registry of Deeds on January 27, 1999 and amended on May 24, 2002, regarding the process to be followed if any disturbance of the AUL area is anticipated to occur as part of the development of the proposed San Vel Automotive Facility.

These revisions to Chapter 4, Mitigation, of the EA also are reflected in Chapter 3, Final Recommended Mitigation, of this Post EA.

3. FINAL RECOMMENDED MITIGATION

Based on the information available to date, the Surface Transportation Board (the Board) Section of Environmental Analysis' (SEA's) independent analysis of the proposed Transaction, all comments received, and mitigation requested by various Federal, state, and local agencies, and the mitigation offered by Applicants, SEA recommends that any final decision by the Board approving the proposed Transaction be subject to the following mitigation measures:

Transportation

- 1) Applicants shall consult with New York State Department of Transportation (NYSDOT) to address NYSDOT's concerns about the construction of the proposed highway access to Route 67 at the proposed Mechanicville Facility.

Land Use

- 2) Applicants shall incorporate into the final design for the proposed Mechanicville Facility appropriate measures, including the use of down-lighting, to minimize the impacts of the facility's lighting onto residential areas adjacent to the proposed Mechanicville Facility.

Hazardous Waste Sites

- 3) Applicants shall comply with all applicable New York State Department of Environmental Conservation (NYSDEC) regulations in the event that any hazardous waste sites subject to NYSDEC oversight are encountered during construction of the proposed Mechanicville Facility.

Water Resources

- 4) Applicants shall complete delineation of all wetlands in the area of potential impact associated with the proposed Mechanicville Facility and the proposed San Vel Automotive Facility before final design of the respective facility, and shall negotiate compensatory mitigation to compensate for unavoidable impacts to jurisdictional wetlands, if any, as part of the Clean Water Act Section 404 permit for placement of fill in wetlands, to be issued by the United States Army Corps of Engineers.
- 5) As part of the Section 404 Clean Water Act process, Applicants shall comply with requirements of a Section 401 Water Quality Certification, if such certification is found to be necessary, from the New York State Department of Environmental Conservation (for the Mechanicville Facility) and the Massachusetts Department of Environmental Protection (for the San Vel Automotive Facility).
- 6) Applicants shall design the proposed Mechanicville Facility and the proposed San Vel Automotive Facility to avoid and minimize impacts to wetlands, to the extent practicable.
- 7) Applicants shall implement and comply with the terms and conditions of Stormwater Pollution Prevention Plans (SWPPPs) for the proposed Mechanicville Facility, consistent with applicable State Pollutant Discharge Elimination System requirements, and the proposed San Vel Automotive Facility, consistent with applicable National Pollutant Discharge Elimination System requirements under the Clean Water Act. The final SWPPP and Stormwater Management Report for the San Vel Automotive Facility shall include specific parameters for the monitoring well network including at a minimum:

chloride, volatile organic compounds, dissolved metals, and basic field parameters such as pH, conductivity, and temperature.

- 8) Applicants shall use silt fences during construction of the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, to minimize or avoid the potential erosion of exposed soils/stockpiles and the delivery of fine sediments to surface waters and to avoid impacts to waters beyond the respective project footprints.
- 9) During construction of the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, Applicants shall use water as needed to control fugitive dust emissions.
- 10) During construction of the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, Applicants shall conduct land clearing activities only in areas where earthwork is necessary; shall reuse topsoil wherever practicable, and stockpile topsoil for application during reclamation of disturbed areas; and shall restore disturbed areas as soon as practicable after construction ends. Applicants shall also use stabilization fabric on created earthen slopes having a slope steeper than 2:1 to control erosion.
- 11) During construction of the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, Applicants shall preserve existing vegetation where practicable, especially near wetlands and other waters. If weather or season precludes the prompt reestablishment of vegetation, Applicants shall implement temporary erosion control measures.
- 12) During or after construction of the proposed Mechanicville Facility and the proposed San Vel Automotive Facility, Applicants shall revegetate the bottom and sides of drainage ditches using natural recruitment from native seed sources in the stockpiled topsoil or a seed mix free of invasive plant species. Such restoration is for the rapid and permanent reestablishment of native ground cover on disturbed areas, to prevent soil erosion and minimize delivery of fine silt particles to surface waters.
- 13) Applicants shall store any hazardous substances related to construction in a secure location when not in use, and shall dispose of all construction waste at approved disposal facilities.

Biological Resources

- 14) Applicants shall consult with the Massachusetts Natural Heritage and Endangered Species Program to address its concerns about the state-protected threatened Blanding's Turtle, and shall abide by all reasonable terms and conditions, if any, that may result from the Massachusetts Natural Heritage and Endangered Species Program review process for construction activity within a Priority Habitat.
- 15) Applicants shall design the proposed San Vel Automotive Facility to avoid and minimize impacts to potential habitat for the Blanding's Turtle, to the extent practicable.
- 16) During the final design process for the proposed Mechanicville Facility, Applicants shall address relevant provisions of New York State Department of Transportation's Environmental Procedures Manual in connection with issues related to appropriate precautionary measures to avoid the spread of invasive species during construction.

Cultural Resources

- 17) Applicants shall not initiate construction in areas potentially affected by historical properties within the proposed Mechanicville Facility footprint, or take any steps to alter the historic integrity of historic properties, including sites, buildings, structures, and objects within the project Area of Potential Effect that are eligible for listing or listed in the National Register of Historic Places, until the Board's responsibilities under the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, have been satisfied.

Consent Decree

- 18) Applicants shall abide by the conditions set forth in the Consent Decree between Guilford Rail Systems and the Town of Ayer, dated July 24, 2003, with respect to construction and operation of the proposed San Vel Automotive Facility.

A negotiated Consent Decree was previously entered into by Guilford Rail Systems ("Guilford," a prior name of Pan Am Railways Inc.'s [PARI] railroad operating group) and the Town of Ayer that resolved litigation to address potential environmental impacts. The proposed Transaction now pending before the Board does not alter any terms of that Consent Decree or otherwise alter the relationship between those entities. PARI is the holding company for the railroad operating group formerly known as Guilford Rail Systems, and Pan Am Southern, LLC (PAS) would be a successor to PARI as to the terms of the Consent Decree. As such, Applicants do not dispute that PAS would be bound by the terms of the Consent Decree. Similarly, the proposed Transaction now pending before the Board does not alter the Consent Decree as it applies to the Town of Ayer.

The Town of Ayer and Guilford, after lengthy litigation both before the Board and the U.S. District Court for the District of Massachusetts, entered into a Consent Decree, lodged in the U.S. District Court on July 24, 2003. By the terms of the Consent Decree, the Town of Ayer agreed not to interfere with railroad development on the site of the proposed San Vel Automotive Facility, and Guilford¹ agreed to comply with the terms agreed to in Exhibit A of the Consent Decree. After approval and consummation of the proposed Transaction, PAS would be a successor to these entities. The conditions imposed on Guilford as set forth in the Consent Decree are as follows:²

- CD1. In constructing an Auto Unloading Facility (hereinafter "the Facility") in Ayer, Massachusetts at what is known as the San Vel site, Guilford Transportation Industries Inc., Boston and Maine Corporation, and Springfield Terminal Railway Company (hereinafter "Guilford") will install catch basins designed for a minimum infiltration rate of 0.5 inches per hour, with oil-gas separator hoods, consistent with design drawing Sheet 6 of 7 dated 1/11/2000, titled Willow Park, Ayer, Massachusetts, Miscellaneous Details.

¹ The terms of the Consent Decree concern only the following entities: Boston and Maine Corporation, Springfield Terminal Railway Co., and Guilford Transportation Industries, Inc. (now known as PARI).

² Once the Transaction is approved and consummated, PAS will assume the obligations noted below on behalf of Guilford.

- CD2. Guilford will conduct test pits in the vicinity of the retention basins to confirm that the soils are consistent with test borings previously submitted to the Town of Ayer (see prior test results). The test pit results will be submitted to the Town of Ayer (hereinafter “Ayer”) within one week of receipt by Guilford.
- CD3. Guilford will install a monitoring well network around the facility and will measure groundwater quality twice a year for as long as the facility is in operation and groundwater quantity twice a year for four years after completion of the facility. These test results will be submitted to Ayer within one week of receipt by Guilford.
- CD4. Guilford will comply with all applicable requirements of the Massachusetts Contingency Plan with regard to any releases of hazardous materials at the site.
- CD5. Guilford will develop a Stormwater Pollution Prevention Plan consistent with EPA stormwater regulations.
- CD6. Guilford agrees to continue to plow that portion of the emergency access road provided to Wagon Road residents that is on Guilford property.
- CD7. Guilford will continue to honor its agreements with Wagon Road residents regarding use of that private crossing and emergency access issues.
- CD8. Guilford will comply with applicable building, electrical, fire, and plumbing codes except to the extent that such codes are applied in a discriminatory manner, unreasonably restrict the railroad from conducting its operations, or unreasonably burdens interstate commerce.
- CD9. In operating the Facility, Guilford will comply with applicable Federal noise control requirements.
- CD10. Guilford will comply with applicable state best management practices during construction of the Facility.
- CD11. Guilford will provide Ayer with informational copies of construction plans and precautions being taken for the construction of the Facility not less than 60 days before initiation of construction of the Facility.
- CD12. Guilford will provide Ayer with informational copies of as-built plans for the Facility not more than 60 days after completion of construction of the Facility.
- CD13. Should Guilford develop the San Vel site for alternative uses, Guilford will provide Ayer with informational copies of construction plans and precautions being taken for any additions, improvements, or changes to the San Vel site. Guilford will provide this information to Ayer no less than 60 days prior to initiation of construction and will comply with those conditions set forth herein that are material to the alternative uses. Ayer may object, however, Guilford does not agree that Ayer has the right to do so.
- CD14. Should Guilford develop the San Vel site for alternative uses, Guilford will provide Ayer with informational copies of as-built plans and precautions being taken for any additions, improvements or changes to the San Vel site. Guilford

will provide this information to Ayer no more than 60 days after completion of construction.

CD15. Guilford will install a septic system at an appropriate location at the site and may connect to the Town sewer system in the future. Any septic system must comply with Title 5 regulations.³

CD16. Guilford will install a geomembrane liner under the locomotive area. Testing of the integrity of the liner will be performed at Guilford's discretion. The test results will be provided to Ayer within one week of Guilford's receipt of the test results.

CD17. Guilford will not remove snow from the site except for emergency situations.

Notice of Activity and Use Limitation

19) Applicants shall abide by the conditions set forth in the Notice of Activity and Use Limitation (AUL) filed with the Middlesex County Registry of Deeds on January 27, 1999 and amended on May 24, 2002, regarding the process to be followed if any disturbance of the Notice of Activity and Use Limitation area is anticipated to occur as part of the development of the proposed San Vel Automotive Facility.

A portion of the proposed San Vel Automotive Facility property is subject to an AUL that was the result of a release of oil and/or hazardous material in January 1998 at the "B&M Property" on the east side of Willow Road (former San Vel Sand and Gravel Quarry), owned by Guilford Transportation, Inc., a prior name of PARI's railroad operating group. The area covered by the AUL is 12,439 square feet (AUL Area) and is located within the footprint of the proposed San Vel Automotive Facility. The Massachusetts Department of Environmental Protection (MADEP) has identified the disposal site as Release Tracking Number 2-12082. Applicants acknowledge that they are obligated to abide by the conditions in the AUL if any disturbance of the AUL area is anticipated to occur as part of the development of the proposed San Vel Automotive Facility.

Permitted Activities and Uses Set Forth in the AUL

The AUL permits the following uses and activities to occur in the AUL Area:

- (i) Retail or commercial uses (including office space, excluding daycare);
- (ii) Industrial uses; and
- (iii) Such other activities or uses which, in the opinion of a Licensed Site Professional (LSP), shall present no greater risk of harm to health, safety, public welfare or the environment than the activities and uses set forth in this paragraph.

Activities and Uses Inconsistent with the AUL

The AUL identifies activities and uses that are inconsistent with the objectives of the AUL, as follows:

³ Under current plans, San Vel Automotive Facility would be connected to the Town of Ayer's sewer system immediately, with no septic system.

- (i) Residential, agricultural, recreational activities, day care or school uses;
- (ii) Activities and/or uses which are likely to involve the removal and/or disturbance of the pavement in the AUL Area and/or the disturbance of the impacted soil in the AUL Area without prior development of a Soil Management Plan and a Health and Safety Plan in accordance with Obligations (i) and (ii) of this Opinion; and
- (iii) Relocation of the impacted soil in the AUL Area, unless such activity is first evaluated by an LSP who renders an Opinion that states that such relocation is consistent with maintaining a condition of No Significant Risk.

Obligations and Conditions Under the AUL

In accordance with the AUL, the following obligations and/or conditions must be maintained within the AUL Area in order to maintain a condition of No Significant Risk:

- (i) A Soil Management Plan must be prepared by an LSP and implemented prior to commencement of any subsurface activity that is likely to disturb impacted soil within the AUL Area. The Soil Management Plan should describe appropriate soil excavation, handling, storage, transport, and disposal procedures and include a description of the engineering controls and air monitoring procedures necessary to ensure that workers and receptors in the vicinity are not affected by fugitive dust or particulates. On-site workers must be informed of the requirements of the Soil Management Plan, and the plan must be available on-site throughout the course of the project.
- (ii) A Health and Safety Plan must be prepared by a qualified individual sufficiently trained in worker health and safety requirements and implemented prior to the commencement of any activity that is likely to disturb impacted soil within the AUL Area, rendering it more accessible. The Health and Safety Plan should clearly describe the location of the petroleum-impacted soil and specifically identify the type of personal protection (*i.e.* clothing, respirators), engineering controls, and environmental monitoring necessary to ensure that workers are not exposed to petroleum-contaminated soil through dermal contact, ingestion, and/or inhalation. Workers who may come in contact with impacted soil within the AUL Area must be informed of the location and depth of impacted soil and the requirements of the Health and Safety Plan, and the plan must be available on-site throughout the course of the project.

APPENDIX A: COMMENT LETTERS

This appendix contains comment letters received on the Environmental Assessment from interested parties. Table A-1 lists all of the parties from whom letters were received and their respective affiliations in the order they appear in this appendix.

Table A-1
Comment Letters Received

Commenter	Affiliation
Jane Downing	U.S. Environmental Protection Agency
Carolyn L. McCreary and Shaun A. Suhoski	Town of Ayer
Jon H. Hardie	Town of Royalston
Jane Lendway	State of Vermont Division for Historic Preservation
Eugene J. Colonese	State of Connecticut Department of Transportation
Thomas D. Hall	Committee to Improve Rail Service in Maine
Karen Rae	New York State Department of Transportation
Mindy Wormuth	Town of Halfmoon
Raymond Tylicki	Self/Individual
Joseph A. Elliot	Self/Individual

ET-16231

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023



December 15, 2008

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
Case Control Unit
395 E Street S.W.
Washington, DC 20423

Subject: EPA Comments on Environmental Assessment (EA) for the Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. - Joint Control and Operating/Pooling Agreements - Pan Am Southern, LLC

Dear Ms. Rutson:

The United States Environmental Protection Agency (EPA) - New England Region reviewed the Environmental Assessment (EA) for the Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. - Joint Control and Operating/Pooling Agreements - Pan Am Southern, LLC (Docket Number: ED_35147_0). Our review focused on construction and operation of the proposed San Vei Automotive Facility in Ayer, MA, and, in particular, the potential impacts to public drinking water sources in proximity to the proposed automobile unloading facility. Based on our review of the EA, we submit the following comments.

The EA describes the proposal to construct a new automotive facility, the San Vei facility, in Ayer, MA as part of a larger project to enhance existing rail infrastructure between Mechanicville, NY, and Ayer, MA. The proposed facility would be located on land designated as a Zone II wellhead protection area (WPA) for the Town of Ayer's drinking water supply, and designated as a Zone III WPA for the Town of Littleton's drinking water supply. According to the EA, a stormwater control system will be constructed to direct stormwater runoff to oil-water separators and to eight recharge areas providing suspended solids removal. The EA concludes that ground water quality and supply would be maintained.

EPA acknowledges that the EA includes a commitment to implement a Stormwater Pollution Prevention Plan (SWPPP) for construction and operation that meets EPA stormwater regulations and to abide by the conditions set forth in the Consent Decree between Guilford Rail Systems and the Town of Ayer, dated July 24, 2003. These provisions, which include a ground water monitoring program, are essential to preventing negative impacts to the aquifer from construction and continuing operation of the facility.

However, EPA is concerned that several important potential threats have not been addressed. These concerns are outlined below.

Impacts from De-Icing Practices

The salinization of drinking water aquifers due to road salt use is a serious problem that may threaten drinking water quality. Road salt is not removed by stormwater control systems or by filtration within the aquifer. Therefore, salt applied within the facility boundaries will be transported directly into ground water along with infiltrating stormwater. Because the use of salt for de-icing is not discussed in the EA, the potential impact from salt use is unclear. Since the site is located within a Zone II WPA, EPA recommends that the final EA should contain information on the development and implementation of a de-icing plan that minimizes the amount of salt used onsite.

Hazardous Materials and Spill Control

The EA does not provide details on the type of activities planned onsite, the use or storage of any potentially hazardous materials, or any spill prevention, response, or control measures to be used. Section S.5 indicates that the facility will "...store any hazardous substances in a secure location when not in use...", but it is not clear what hazardous substances will be onsite or what is meant by a "secure location". Further, it is not clear what is meant by "additional water quality control measures" in section 3.6.2.3. Because the site is located within a WPA, EPA would be concerned with the storage and use of materials that may pose a threat to the aquifer, including hazardous materials and fuels. Where the use and storage of hazardous materials and fuel cannot be avoided, the EA should describe specific spill prevention, response, and control measures that will be taken over the long term to minimize and respond to any release of hazardous materials or fuels. These measures should be included as enforceable items in the Surface Transportation Board's decision.

The consent decree describes a geomembrane liner to be used under the locomotive area (CD16). The integrity of this liner should be checked on a fixed, predetermined schedule and made available to the town of Ayer.

Communication with Local Water Systems

In addition to complying with all applicable requirements of the Massachusetts Contingency Plan and other federal, state, and local notification requirements, the EA should provide a provision to notify the Town of Ayer and the community water system in the Town of Ayer in the event of the release of any hazardous materials or fuels to the ground.

Stormwater Control System

Due to the proximity to sensitive ground water areas (i.e. Zone II WPA), EPA believes that stormwater infiltration without pre-treatment is not appropriate. The EA should specify what pre-treatment and infiltration measures will be instituted, with associated performance standards and long term operation and maintenance plans to ensure effective treatment beyond construction. The EA should also specify how stormwater

management practices will be consistent with MA and EPA stormwater requirements, including stormwater measures that are necessary to protect wellhead protection areas.

Ground Water Monitoring

As a provision of the Consent Decree, the installation of wells and ground water monitoring is required (CD3). The EA does not indicate what parameters will be measured, other than "ground water quality." EPA recommends that this monitoring include chloride, VOCs, dissolved metals, and basic field parameters (pH, conductivity, temperature, etc). The results of this sampling should be provided directly to the Ayer water system, in addition to Ayer town officials.

In addition to the comments above, EPA's comments on this project from 2002 should be addressed in the EA. These comments were the result of a meeting between EPA staff and Guilford Rail's engineer (Chase International) and were delivered via letter from EPA to Chase International on August 16, 2002. The comments included:

- A geomembrane liner would be installed under the alignment of the rail spur and a full-scale leak detection test would be performed.
- Provide an electronically-actuated gate valve (normally open) to isolate discharges from the water quality inlet at the rail spur in the event of a failure of the geomembrane liner or power outage.
- Provide inflatable pipe plugs (or equivalent) that can be readily deployed in the drainage system above the recharge basins in the event of a spill.
- Perform a full-scale falling head infiltration test on each recharge basin to confirm minimum design percolation rates.

Given the project's proximity to public drinking water sources, EPA requests that the EA be amended to address the items discussed above and to include any other provision that may be identified during the public process as necessary to protect the ground water resources during construction and in the long term. If you have any questions or need additional information, please contact Marcei Belaval at belaval.marcei@epa.gov or 617-918-1239.

Sincerely,



Jane Downing
Chief, Drinking Water Branch
United States Environmental Protection Agency
New England Region

ET - 16223

December 15, 2008

Mr. Kenneth Blodgett
Surface Transportation Board
Case Control Unit
395 E. Street, S.W.
Washington, DC 20423

RE: Comments on Environmental Assessment
Finance Docket No. 35147
Norfolk Southern Railway Company, Pan Am Railways, Inc. et al.
Joint Operating Agreements - Pan Am Southern LLC

Dear Mr. Blodgett:

Following are the comments of the Town of Ayer relative to the above-referenced Environmental Assessment. Through comments filed to date the Town has articulated as its fundamental concern the protection of the Spectacle Pond wellfields from construction and operation of a proposed new auto-unloading facility directly atop a Mass. Dept. of Environmental Protection (MaDEP) Zone II Recharge Area. These wells represent the Town's primary source of drinking water.

While considering the applicant's Environmental Assessment - and its proposed mitigation measures - the STB must utilize the full extent of its authority to ensure protection of this pristine drinking water supply. The Town's genuine concern, and the need for the STB's stringent review and protection of this vital water resource, is called for given the past circumstances of reportable releases to the MaDEP in just Ayer and Deerfield:

RIN	Location	Town	Notes
2-16349	Upper Railroad Yard	Ayer	(1700 gallons diesel fuel, temporary shut-down of drinking water wells pending assessment 7/8/2007)
2-16749	Pan Am Railways	Ayer	
2-17055	Railyard	Ayer	
2-17082	Near Two Rail Lines	Ayer	
2-14046	Barnum Road	Ayer	
1-12430	B&M Railroad Yard	Deerfield	(prepared tanker release 30,000 gallons of methanol 10/18/2001) (also Notices of Non-Compliance Issued 8/24/2006 and 10/14/2008)
1-13006	B&M E Deerfield Railway	Deerfield	
1-12219	B&M Railroad Yard	Deerfield	
1-12998	Railyard	Deerfield	
1-12501	East Deerfield Railway	Deerfield	
1-13894	McClellan Farm Road	Deerfield	
1-13894	B&M Railroad	Deerfield	
1-15823	B&M Railroad	Deerfield	
1-16603	Former Lake Asphalt Plant	Deerfield	(also Notice of Non-Compliance Issued 12/12/2007)
1-17029	Pan Am Railroad	Deerfield	

Appendix A: Comment Letters

Mr. Kenneth Blodgett
Surface Transportation Board
December 15, 2008
Page Two

Based upon this past experience it can reasonably be inferred that future events may occur. This makes the STB's involvement the highest priority.

In reviewing the proposed new auto-unloading facility, the Town would note that the activity proposed for the site does not conform with the Town's Aquifer Protection Bylaw (adopted December 1999) which prohibits trucking facilities within Zone II recharge areas.

Whereas the applicant's filing includes proposed construction of a new auto-unloading facility on a MaDEP designated Zone II aquifer for the town of Ayer's Spectacle Pond wellfields, and to mitigate against the potential of a catastrophic event despoiling the Town's primary drinking water supply, the Town would strongly encourage the STB to adopt the following:

1. Require applicants redevelop an existing, vacant auto-unloading facility located outside of the Zone II aquifer in favor of the new facility, and
2. At minimum, mandate inclusion of the SEA's environmental mitigation measures identified in Section S.5 (page S-7) of the Environmental Assessment with additional specificity and oversight through the Environmental Protection Agency and MaDEP, and
3. Require applicants to adhere to any comments or conditions suggested by the EPA, MaDEP, and Ayer's federal and state legislative delegation, and
4. Require PAS to install, and allow the Town of Ayer to operate, groundwater monitoring wells as detailed in the plan of Geolnsight dated July 30, 2007, entitled, "Spectacle Pond Wellfields, Proposed Well Locations: Pan Am Property" which plan was filed with the STB as Exhibit B, to the Town's September 4, 2008 comments.

The above requests for condition supplement the prior filings of the Town in this matter.

Sincerely,

Carolyn L. McCreary, Chair
Board of Selectmen

Shaun A. Suhoski
Town Administrator

cc: Board of Selectmen
Conservation Commission
Water Dept. Foreman
Board of Health
Paries of Record

ET-16216

Town of Royalston
Royalston, Massachusetts 01368



OFFICE OF THE SELECTMEN

December 10, 2008

Surface Transportation Board
Case Control Unit
395 E Street S.W.
Washington DC 20423
Attn: Kenneth Blodgett, Environmental Project Manager
Finance Docket No 36147 (FD 35147)

We have received your Environmental Assessment Document Decision ID No. 39520 of November 14, 2008. This is in response to your request for comments.

I am Jon Hardie, Selectman and Clerk of the Board of Selectmen, of the Town of Royalston, MA 01368. Speaking on behalf of the Board of Selectmen, we have carefully reviewed the document - in its entirety - and find it lacking on several critical points.

1. **Egregious and Intolerable Environmental Pollution:** We find intolerable, the persistent, and egregious emissions from 3 diesel engines, parked for hours in front of 3900 ft avg. length east-bound trains). These 3 engines are repeatedly left idling - year round - for as many as 45 or 20 hours - at each event - near a well crossing, in a narrow river gorge, immediately adjacent to approximately 300 residents of The Village of South Royalston, MA, which is found in this specific GIS location: 42.62249 North Lat and 72.44533 West Long. (see the annotated topo is attached and made a part of this comment)
2. **A long history of egregious behavior:** For more than 20 years, the various owners, (now PanAm Railways Inc. - and engineers of the trains using this track, which connects Greenfield and Fitchburg, MA) have chosen this historic and quiet Village of South Royalston MA to change crews. They have been completely oblivious of the horrific environmental impact and damage being done to the nearly 300 residents, as they sit in the air conditioned splendor in their cabs for many hours.
3. **Repeated Requests Dismissed & Damage Done:** In spite of repeated documented requests and demands, (A recent request to PanAm is attached and made a part of this comment) we continue to experience the horrific environmental impact of these carcinogens & incomplete products of combustion in the Village of South Royalston MA.

4. **How the unique environmental characteristic in The Village of South Royalston, compound the problem:** The cumulative 15-20 hour discharge of these 3 idling diesel engines is invariably trapped in a choking atmospheric temperature inversion and smog. In this narrow river gorge, immediately adjacent to a village of almost 300 (many elderly and children). It seeps into every open door or window; it prevents normal commerce, children waiting for school buses, or elderly residents walking their dogs or too the store in the village, it has a cumulative and devastating impact on the

1 of 2 Pages
Royalston Board of Selectmen, Town of Royalston MA 01368
Email: Select board Royalston <boa@royalston-ma.gov>

5. Our Specific Request for Environmental Hazard Mitigation: This abusive, egregious and intolerable behavior by the Railroad(s) of parking trains adjacent to the South Royalston Village must cease forthwith ... both the present owners and future owners. And,

6. We ask, as a condition of approval of this Joint Control and Operating/Feeding Agreement, or any future agreement that this egregious and intolerable behavior continue to be prohibited - in perpetuity - within a mile of this specific location noted above - in either direction.

7. Compensation for rail traffic initiated woods fires. We continue to allocate scarce local fire and emergency resource to combat often very difficult summer fires sparked by passing freight trains along the rugged terrain, adjacent to the river and steep gorge right of way, during dry periods. We expect the town to be reimbursed for these out of pocket expenditures on behalf of the railroad.

8. Disaster Preparedness and Mitigation We expect the railroad to actively participate in providing assistance in our disaster emergency preparedness planning and mediation - including prompt notification of spills which are likely to occur on the roadbed which is immediately adjacent to the river. Toxic chemicals and pollutants are regularly and frequently transported along this route.

9. Failure to pay real estate taxes in a timely fashion. Here and in many other small communities along the northern tier of MA, we find a systematic refusal to pay property taxes - when due. This pattern of arrogant and callous disregard for the communities through which this track and these trains must pass, as reflected above in the uncontrolled discharge and trapping of particulate matter from incomplete combustion, is yet another actionable event.

10. Payment of Local Real Estate Taxes When Due We request that as a condition of approval of these agreements, that the railroads be required to pay local property taxes promptly and when due, so that frankly we can afford to fight these fires and respond to toxic spills when they occur.

Thank you for your invitation to receive commentary, and we look forward to your supportive actions incorporating our requested environmental hazard mitigation requests in the conditions of approval

Jon H. Hardie, Selectman
Jon Hardie, Selectman & Clerk of the Board of Selectmen
Linda Alger, Chair
Andrew West, Member

Email: Selectboard Royalston <boa@royalston-ma.gov>
Town of Royalston MA 01368
cc: Senators & Representatives

2 of 2 Pages
Royalston Board of Selectmen, Town of Royalston MA 01368
Email: Select board Royalston <boa@royalston-ma.gov>

August 20, 2007

To: David Armstrong Fink
President, Pan Am Railways

RE: Death and Taxes in Roylston, a small rural Massachusetts community.
Pan Am Railroad's role as a good corporate citizen hangs in the balance

Dear David,

I had a kindly older lady (she's in her 90's) call me up. I'm a local selectman, and ask me a really tough question, one that only you can answer. She asked me, as those three big PAN AM Railway diesel engines had been idling, going on 15 or 20 hours in that temporary inversion, down in the narrow gorge, next to the route 68 bridge, beside the river, in our little village of South Roylston, near her house ... just like the topographic picture you see here, where the tracks go along south side of the river in an arc.



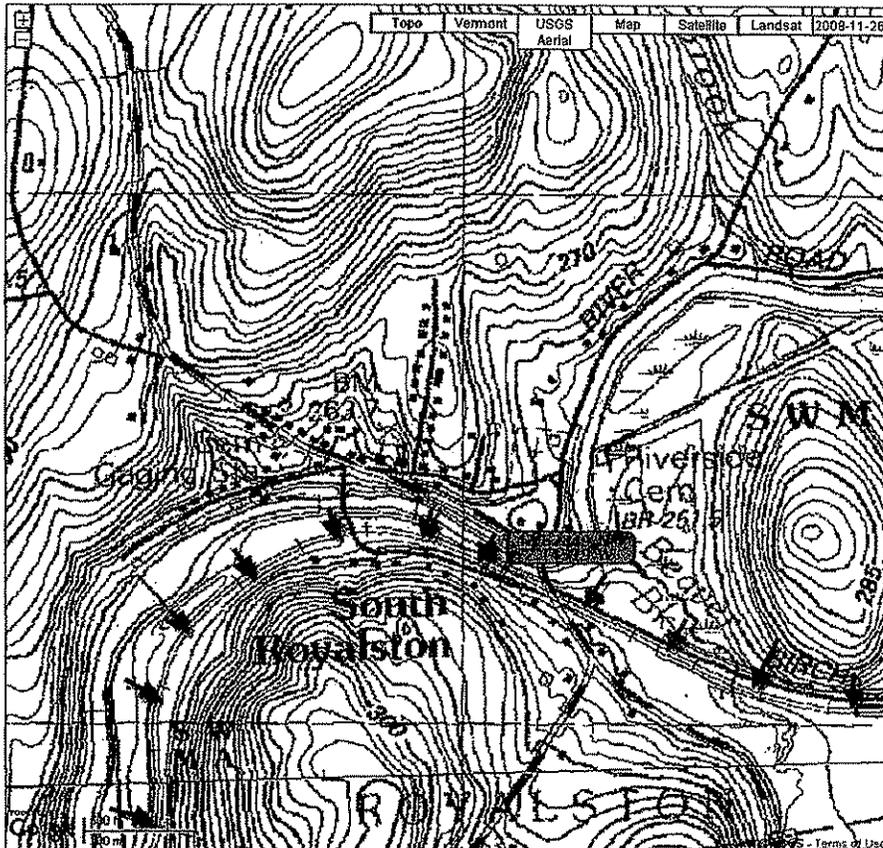
...She asked me if I knew who the president of PAN AM railways was. I said I did. "It was David Armstrong Fink", but I hadn't had the opportunity to meet him yet. Then she asked me the question that only you can answer, David. She said to me, "Do you think that Mr. David Armstrong Fink would do what these engines are doing to my lungs, to his grandmother? You see, she hadn't been able to go outside to visit her elderly friends in the village, or go to the village store, because those choking fumes were so heavy, there in the gorge, where they had been trapped, you know, just heavy and thick across the river, in amongst all those houses by that inversion.

But I said that I would ask ... I promised that I would ask you that question for her. She has survived the First World War, the Second World War, the Korean War, the those wars in Iraq and Afghanistan, and she wonders if she is going to have to die of emphysema here in the village of her birth, after all those years. As they say in those moving pictures ... Tell her I'm David ... Could you do that for her, and for several dozen of her elderly neighbors and those young kids on their way to school next week.

And while you're at it, why don't you pay your taxes. You're two years behind, and we're going to put your hand in tax file soon, and you'll have no place to run your trains. So, tell her you're going to stop parking your trains in our villages, and clean up the air, and that you'll pay your taxes ... she has for 70 or more years. Are you going to let a 90 year old lady embarrass you like that? David, Can you do that for her and for us? We would sure appreciate it. Thank You

Jon Hardie
For the Board of Selectman
Roylston, MA 01368

CC: Pan Am Staff: Cullford, Willey, Gaary, Boswick, Crawford & Nelson
CC: Mass DEP Regulatory Staff: Goff, Montemadi & Baker
CC Roylston Select Board: Alger, West & Hardie
CC Roylston Board of Health: Legat





State of Vermont
Division for Historic Preservation
National Life Building, Floor 2
Montpelier, VT 05602-0102
www.HistoricVermont.org

(phone) 802-828-9211
(fax) 802-828-3206

EI-10258
48

Agency of Commerce &
Community Development



December 10, 2008

Surface Transportation Board
Case Control Unit
395 E Street S.W.
Washington D.C. 20423

Re: Finance Docket No. 35147, Environmental Assessment, Norfolk Southern Railway
Company, Pan Am Railways, Inc. et al.
Surface Transportation Board/Section 106

Dear Ms. Ruston:

Thank you for the opportunity to comment on the above project and the related Environmental Assessment.

The Division for Historic Preservation reviewed this proposed undertaking pursuant to 36 CFR 800.4, regulations established by the Advisory Council on Historic Preservation to implement Section 106 of the National Historic Preservation Act. Project review consists of identifying the project's potential impacts to historic buildings and structures, historic districts, historic landscapes and settings, and to known or potential archeological resources.

It is our understanding that the proposed project involves the construction and repair of facilities located in the Commonwealth of Massachusetts and the State of New York. Because no undertakings are planned within the State of Vermont, we have no formal comments to offer on the proposed project.

If you have any questions or need clarification regarding any of the above, please do not hesitate to contact Devin Colman, Historic Buildings Specialist, at devin.colman@state.vt.us or 802-828-3043. Mr. Colman reviewed this project and prepared this letter. I concur with the findings and conclusions described above.

Sincerely,
VERMONT DIVISION FOR HISTORIC PRESERVATION

Jane Leffway
Jane Leffway
State Historic Preservation Officer





STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



2800 BERLIN TURNPIKE, P.O. BOX 317546
NEWINGTON, CONNECTICUT 06131-7546

Phone: 203-789-7189

December 23, 2008

Surface Transportation Board
Case Control Unit
395 E Street, SW
Washington, DC 20423

Attention: Mr. Kenneth Blodgett

**Re: Environmental Assessment Comments
STB Finance Docket No. 35147
Norfolk Southern Railway Company, Pan Am Railways, Inc.
et al – Joint Control and Operating/Pooling Agreements – Pan Am
Southern, LLC in NY, NH, VT, MA, and CT.**

The Connecticut Department of Transportation (Department) has reviewed the Environmental Assessment prepared in response to the petition filed by Norfolk Southern Railway Company, Pan Am Railways, Inc., Boston and Maine Corporation, and Springfield Terminal Railway Company. The petition seeks approval, under 49 U.S.C. 11322 and 11323, of the acquisition by Norfolk Southern and Boston and Maine of joint control and ownership of Pan Am Southern, LLC, a new rail carrier to be formed; and the agreements by which Springfield Terminal would operate the lines of Pan Am Southern, LLC and establish rail rates.

The primary objective of the proposed Transaction is to upgrade the existing rail infrastructure on the main line between Mechanicville, NY and Ayer, MA in order to provide more efficient movement of freight throughout the New England region. Unfortunately, the proposed Transaction anticipates virtually no change in the limited freight rail operations currently conducted by Springfield Terminal Railway Company (a unit of Pan Am Railways, Inc.) in Connecticut.

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Appendix A: Comment Letters

Mr. Kenneth Blodgett

-2-

December 23, 2008

The Department believes that there are significant rail freight opportunities in the region served by Pan Am Railways, Inc. and its connecting carriers, as previously stated in the August 20, 2008 Certificate of Service, which referenced the Department's August 11, 2008 comment letter to the Surface Transportation Board.

Pan Am Railways, Inc. stands to benefit by establishing Interchange Agreements with connecting railroads in our state, specifically the Connecticut Southern Railroad, the Central New England Railroad, the Naugatuck Railroad, the Housatonic Railroad, and the Providence & Worcester Railroad.

The Department supports efforts by Pan Am Railways, Inc. to establish a dialogue with these connecting carriers to take advantage of existing opportunities to move commodities such as lumber, aggregates, and construction and demolition debris (C&D) by rail.

The Department supports the creation of Pan Am Southern, LLC for the efficiencies that it will bring to the movement of rail freight in the New England and New York region. Pan Am Southern, LLC can contribute to the preservation and expansion of industry in our state, as well as the creation of jobs, the reduction of non-essential truck traffic, and the conservation of fuel.

Very truly yours,

Eugene J. Colofrese
Rail Administrator
Bureau of Public Transportation

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

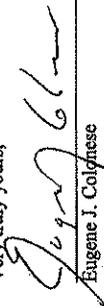
FINANCE DOCKET NO. 35147

NORFOLK SOUTHERN RAILWAY COMPANY, PAN AM RAILWAYS, INC.,
ET AL. - JOINT CONTROL AND OPERATING/POOL AGREEMENTS -
PAN AM SOUTHERN, LLC

CONNECTICUT DEPARTMENT OF TRANSPORTATION
CERTIFICATE OF SERVICE

In accordance with the Surface Transportation Board's decision served on July 24, 2008 in the above-captioned matter, the Connecticut Department of Transportation (CDOT) hereby certifies that it has this day served copies of its "Environmental Assessment Comments" document, dated December 23, 2008 upon all Parties of Record on the Board's Service List (see Exhibit A, attached hereto and incorporated herein by Reference), by first class mail, postage prepaid.

Very truly yours,



Eugene J. Colgnese
Rail Administrator
Bureau of Public Transportation
P.O. Box 317546
Newington, CT 06131-7546
Tel. (203) 789-7189
Fax (203) 789-6956

Dated: December 23, 2008

ET-16222
LB

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35147

NORFOLK SOUTHERN RAILWAY COMPANY, PAN AMERICAN RAILWAYS,
INC., ET AL - JOINT CONTROL AND OPERATING POOLING AGREEMENTS -
PAN AM SOUTHERN LLC

RESPONSE TO ENVIRONMENTAL ASSESSMENT
BY THE COMMITTEE TO IMPROVE RAIL SERVICE IN MAINE

Procedural posture of this filing

The Section of Environmental Analysis (SEA) of the Surface Transportation Board (STB) issued an Environmental Assessment (EA) relating to Finance Docket 35147 on November 14, 2008, with a comment due date of December 15, 2008. This document contains comments relating to this EA.

Who we are

The Committee to Improve Rail Service in Maine is a group comprised of business, political and civic leaders who have joined to intervene in the matter of Pan Am Southern LLC, in an effort to improve rail service in our State. We welcome the investments to be made by Norfolk Southern (NS) Railway and the resultant improvements in infrastructure that will be realized through the creation of Pan Am Southern (PAS). And while we commend the SEA for the attention to detail in the EA, we are compelled to point out the adverse environmental impact that will be made unless conditions are applied in the STB's approval of the creation of PAS.

The STB must consider indirect environmental impacts

The SEA has made a serious statement contrary to federal law, in alleging in the EA that, "The Board's practice consistently has been to mitigate only those impacts that result directly from the proposed action".¹ As the STB itself admits: "Under the National Environmental Policy Act (NEPA), the STB must take into account in its decision-making the environmental impacts of its actions, including direct, indirect and cumulative impacts. The STB must consider these impacts before making its final decision in a case."²

We are asking the SEA to follow federal law, and address the substantial environmental impairment, albeit indirect, that will result from the formation of Pan Am Southern. As we show below, Pan Am Railways (PAR) will continue to offer poor service in Maine, and will continue to defer maintenance and upkeep of their rail property. As a result, more of Maine's commerce will shift to truck transport instead of rail, resulting in a substantial negative environmental impact.

Maine is heavily dependent on trucks

More than 90% of Maine's manufactured goods moved by truck in 2005.³ This statistic was achieved in a state that was the second largest paper-producing state in the nation.⁴ In our earlier filings, we have documented the fact that Pan Am Railways operates their railroad properties in a manner that has resulted in a substantial amount of freight being moved by truck, instead of by rail. We pointed out the numerous complaints on the poor rail service offered by Pan Am Railways.⁵ We cited the example of the 100 or more railcars of pulpwood that were moved by rail every day in Maine but are now largely railcars of pulpwood that were moved by truck every day in Maine but are now largely moved by truck.⁶ When comparing the approximately 69,000 railcar loads⁷ that PAR now moves through Maine each year, versus the 162,658 railcar loads that moved over these same rails in 1978⁸ - prior to Pan Am Railways purchase of the Maine Central Railroad, one can safely assume that a substantial portion of this lost rail traffic now moves by

¹ Environmental Assessment, Finance Docket No. 35147; Page 4-2
² www.stb.dot.gov/stb/environment/sea.html
³ Maine Motor Transport Web Page; www.mmta.com/public/index.cfm?fuseaction=articles.view&id=1862
⁴ www.eppj.org/s_inpp/dec.asp?CID=133&DID=549321
⁵ The Committee to Improve Rail Service comment to this transaction FD 35147
⁶ Atlantic Northeast Rails and Ports; 08#02A, 29 February 2008, pg. 8
⁷ Atlantic Northeast Rails and Ports; 08#02A, 29 February 2008, pg. 5
⁸ Mountain Division Rail Study, Maine Department of Transportation; December 2007

truck. Indeed, in a report released by the American Society of Civil Engineers, we see that vehicle travel on Maine's highways increased by 22% from 1991 to 2001, while Maine's population grew by only 5% between 1990 and 2001.⁹ We believe that much of the vehicle increase can be attributed to greater truck traffic, which in turn stems from the poor rail service offered by Pan Am Railways.

Trucks impose a greater adverse environmental impact than railroads. We found the following data in the International Journal of Business Research: The U.S. Environmental Protection Agency estimates that for every ton-mile, a typical truck emits roughly three times more nitrogen oxides and particulates than a rail locomotive. Other studies suggest that trucks emit six to twelve times more pollutants per ton-mile than do railroads, depending upon the pollutant measured. According to the American Society of Mechanical Engineers, 2.5 million fewer tons of carbon dioxide would be emitted into the air annually if only 10 percent of U.S. intercity freight now moving by highway were shifted to rail (Association of American Railroads (AAR), 2001).¹⁰

We believe that a review of Pan Am Railways past and present operating standards will bear further evidence of the need for conditions. Our local newspapers are replete with examples of PAR's disregard for the environment.¹¹ We have documented the railroad's main line in Maine, which lists a track speed of 40 miles per hour between Mattawamkeag and Portland but was limited by track bulletin to either 10 or 25 miles per hour for this entire length of nearly 200 miles.¹² We have pointed out that the newest locomotives in their fleet were built in the mid-1970s, and have not been rebuilt to comply with current emission standards.¹³

Not can we expect improvements in service or infrastructure from the formation of Pan Am Southern. In remarks made before employees at PAR's Waterville, Maine repair facilities, railroad president David Fluk was heard to say that Pan Am Railways does not

⁹ www.asce.org/reportcard/pdf/me.pdf

¹⁰ International Journal of Business Research, March, 2007; H. Barry Spraggins

¹¹ We would point out some of PAR's more flagrant environmental violations; an oil spill in Ayer, Massachusetts that resulted in the railroad being indicted by the Massachusetts Attorney General; Office of the Massachusetts Attorney General; press release, May 27, 2008. An oil spill emanating from PAR's Rigby yard, which was attributed to the railroad's failure to maintain their waste oil recovery equipment; Portland Press Herald; September 19, 2007. Or the town of Deerfield, Massachusetts, and the problems they have had with PAR's pollution control plan for the Deerfield railroad yard: The Recorder; February 10, 2007, www.recorder.com

¹² Pan Am Railways Temporary Speed Restriction Summary #204, Effective 0300 Tuesday, July 22, 2008 to 0300 Wednesday, July 23, 2008

¹³ The Committee to Improve Rail Service in Maine comments to this transaction; FD 35147, August 11, 2008

plan to improve their service model in Maine.¹⁴ His position does not surprise those who know the rail industry here in New England. The US Clay Producers Association's expert; Gerald Fauth, an economic consultant with extensive experience working for the STB and appearing before the STB, said in his verified statement to the board on this very matter that, following the creation of PAS, Springfield Terminal Railway (ST, the PAR subsidiary who will operate both PAS and PAR) will favor PAS over PAR, will have too much paperwork, and will have overworked employees.¹⁵ The Milford - Bennington Railroad's owner, Peter Leishman, in his verified statement said, "The transaction is likely to improve service to customers that will be served by [PAS] and result in a degradation of service to everyone else."¹⁶

The Committee to Improve Rail Service in Maine fears that, unless conditions are imposed, PAR will continue to lose market share, and they will continue to maintain their property at marginal levels. The net result is that there will be more trucks on our highways, more exhaust fumes and more oil spills.

Pan Am Railways is of questionable financial standing

We cannot rely on PAR's good faith to provide adequate service. It does not have enough money to pay normal expenses, and has shown no commitment to devote any part of the \$47.5 million it will receive from the formation of PAS to improve rail service. As we have shown, there are a number of lawsuits pending against PAR and/or its affiliates for monies owed.¹⁷ Since we last listed these filings with the STB, we would add another; that of Horizon Milling, which filed suit this past October in a Massachusetts District Court for the amount of \$136, 633.92.¹⁸ And while PAR has recently settled a number of the lawsuits which have been brought against them, we question whether this is being done to place them in a better light before the STB in these proceedings? What can be done to protect the public good once Pan Am Southern has been approved, and PAR is no longer under the STB's scrutiny?

We would ask that you look very closely at the language that appears in the United

¹⁴ Atlantic Northeast Rails and Ports e-bulletin, 28 July 2008

¹⁵ US Clay Producers comments to this transaction FD 35147

¹⁶ MBR comments to this transaction FD 35147

¹⁷ The Committee to Improve Rail Service in Maine comments to this transaction; FD 35147, 5 September, 2008

¹⁸ Massachusetts District Court; Case No. 08-CV-11747, 15 October 2008

States Department of Transportation, Office of the Secretary's denial of Boston - Maine Airways certificate of public convenience and necessity. In this matter, the owner/management team of the airline and PAR were claiming that the airline could borrow money from the railroad to keep the airline on a sound financial footing. The United States Department of Transportation responded by saying that, "our review of the financial statements for ST (Springfield Terminal Railway), Boston - Maine Airline Company's (BMAC) sister company that committed to extend the air carrier a line-of-credit, indicated that the company did not have the funds necessary to support BMAC's operations and capital expenditures, let alone its own."¹⁹

Request for conditions

To avoid this looming environmental hazard, we ask the SEA to note the likelihood of much worse rail service in Maine unless PAR is required to maintain their physical plant and improve their rail service. Again, it is imperative that the Board consider the environmental impacts of the actions, including direct, indirect and cumulative impacts, as specified in the NEPA. The formation of the Pan Am Southern will affect all of New England, and not just the area comprising the Patriot Corridor. We suggest the following conditions be imposed on PAR service in Maine:

1. That within three years of the STB's approval in the matter of Pan Am Southern, Pan Am Railways agrees to upgrade and repair all of their track lying within the State of Maine; such that PAR will be in full compliance with the "Box B" speeds listed in their own Timetable Number 5, which was effective on April 1, 2006.
2. That PAR commit to the establishment of a comprehensive locomotive rebuild program, such that within four years of the STB's approval in the matter of Pan Am Southern, all Pan Am Railways/Springfield Terminal/Pan Am Southern locomotives have been rebuilt to full industry standards, in compliance with all current environmental standards and with the installation of auxiliary power units (APU).
3. That PAR commit to the assignment and maintenance of no less than 50 locomotives to their rail operations within the State of Maine. We calculated this number of locomotives as the number needed to handle the 69,000 loads that PAR moves within the State of Maine each year. The number also corresponds to the minimum number of

¹⁹ United States Department of Transportation, Office of the Secretary, Order 208-2-3, Served February 1, 2008

locomotives needed to provide ample opportunity for normal maintenance and repair, as well as complete overhaul, while still providing adequate rail service for the following Maine points on the PAR system:

- a. Bangor to Mattawamkeag and return
- b. Bangor to Portland and return
- c. Bangor to Bucksport and return
- d. Waterville to Portland and return
- e. Rurriford to Portland and return
- f. Madison to Waterville and return
- g. Bangor switchers
- h. Waterville switchers
- i. Kurnford switchers
- j. Riley's switchers
- k. Rigby switchers
- l. Woodland switcher

4. That PAR commit to a formal program to ensure that all Maine rail shippers have adequate railcar resources to meet their shipping needs. Such program will be devised by the STB, the Maine Department of Transportation (MDOT), the Maine Attorney General and PAR.

5. That PAR agrees to a penalty program to be devised by the STB, MDOT, the Maine Attorney General and PAR for failure to meet the conditions listed above.

²⁰ Thomas D. Hall, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading. Executed on December 15, 2008.

Thomas D. Hall
 Chairman
 The Committee to Improve Rail Service in Maine
 176 Merrill Road
 Pownal, Maine 04069
 (207) 688-4294

Dated: December 15, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35147

NORFOLK SOUTHERN RAILWAY COMPANY, PAN AMERICAN RAILWAYS,
INC., ET AL - JOINT CONTROL AND OPERATING POOLING AGREEMENTS -
PAN AM SOUTHERN LLC

CERTIFICATE OF SERVICE

In accordance with the Board's decision in the above referenced matter, served June 26, 2008, this will certify that The Committee to Improve Rail Service in Maine has this day served notice on all parties of record with a copy of this document, sent by US mail, postage pre-paid.

Sincerely,

Thomas D. Hall
Chairman
The Committee to Improve Rail Service in Maine
176 Merrill Road
Pownal, Maine 04069
(207) 688-4294

Dated: 15 December 2008



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N. Y. 12242
WWW.NYSDDOT.GOV

ASTRID C. CLAVN
COMMISSIONER

DAVID A. PATERSON
GOVERNOR

December 15, 2008

Surface Transportation Board
Case Control Unit
395 E Street S.W.
Washington, DC 20423
Attn: Kenneth Blodgett

RE: STB Finance Docket No. 35147
Norfolk Southern Railway Co., Pan Am Railways, Inc. et al.,
Joint Control and Operating / Pooling Agreements
Pan Am Southern, LLC
NYSDDOT Review of Environmental Assessment

Dear Mr. Blodgett:

The New York State Department of Transportation (NYSDDOT) has reviewed the Environmental Assessment for the subject proceeding and is pleased to offer the following comments:

Glossary of Terms

- **Cultural resources:** NYSDDOT suggests revising to read "Cultural resources include buildings, structures, districts, objects or sites determined eligible for, or listed on, the National Register of Historic Places."
- **Free Product:** The definition states: "A hazardous substance, typically referring to oil, that is present as a liquid on groundwater." The definition should be changed to reflect that free product is also often found below groundwater. NYSDDOT suggests "A non-aqueous (not water-based) liquid, that is found either floating atop groundwater or surface water (light non-aqueous phase liquid, or LNAPL) or that has sunk beneath groundwater or surface water (dense non-aqueous phase liquid, or DNAPL). Petroleum products like gasoline and diesel fuel are often encountered as floating product (LNAPL). Tetrachloroethylene (aka perchloroethylene or "perk") a chemical used in dry-cleaning, is a common sinking free product (DNAPL)."

Summary

- **Section S.4.7 - Biological Resources:** NYSDDOT suggests including the reference to the correspondence letter from Fish and Wildlife Service in Appendix A to the third sentence.

- **Section S.4.1.1 - Cultural Resources:** This section should only summarize the final results of the Section 106 process for the Mechanicville Facility project, similar to the conclusions for the Massachusetts facilities in that section.
- **Section S.5.1.4) Mitigation, Water Resources:** NYSDDOT suggests the text be changed to read "Applicants shall implement and comply with the terms and conditions of Stormwater Pollution Prevention Plans for the proposed Mechanicville Facility, consistent with State Pollutant Discharge Elimination System requirements and for the proposed San Yel Automotive Facility, consistent with the National Pollutant Discharge Elimination System requirements under the Clean Water Act." NYSDDOT further suggests changing "storm water" to "stormwater" throughout the report to be consistent.
- **Section S.5.1.13) - Mitigation, Cultural Resources:** The assessment of effect for cultural resources under Section 106 needs to be considered in order to assess mitigation measures for the Mechanicville Facility. Mitigation measures generally are the result of adverse effects to cultural resources and are specified in a Memorandum of Agreement concluding the Section 106 process. If no cultural resources are identified and/or the project results in a "No Historic Properties Affected" or "No Adverse Effect" determination, no mitigation measures for cultural resources are needed.
- **Section S.5 - Mitigation:** NYSDDOT recommends this segment be amended to incorporate the additional mitigation measures identified by NYSDDOT in these comments for Chapter 4.
- **Section S.6 - Conclusions and Request for Comments:** The assessment of effect for cultural resources under Section 106 should be completed prior to the determination that the project will "have no significant adverse environmental impacts" for the Mechanicville Facility.

Chapter 3.1.1 - Local Road Network

- The project plans for the Mechanicville Facility depict a new point of access to Route 67, a New York State highway. Construction of, or modification to, driveway entrances to state highways involving work within the highway right-of-way, may only be performed pursuant to a Highway Work Permit issued by NYSDDOT. A more detailed plan showing the proposed new access location and layout must be provided for our review and approval. The plan must include all existing points of access within several hundred feet of the proposed new access. An evaluation of the available sight distance for each critical traffic movement at proposed access location and for each expected vehicle type compared to the appropriate standard must be provided for our review and approval. Further information on NYSDDOT's Highway Work Permit process can be found at: <https://www.nysdot.gov/divisions/opening/consultation-systems/traffic-operational-section/highway-permits>.
- Table 3.1.1-6 states that 334 additional trucks a day will result on highways in the Mechanicville vicinity from this project. Page 3.2-2 states that these trucks would primarily travel west along Route 67 toward Interstate 87. The 2006 Highway Sufficiency Manual shows an AADT of 3250 with 7% trucks on this section of Route 67 which is a truck volume of approximately 225 per day. The additional 334 trucks per day is an increase of 150% and results in the truck percentage becoming 15% as a result of this project. Residents who live along this section of Route 67 may perceive this as significant. This section of Route 67 is predominantly 11 foot lanes with 3 foot shoulders. Anyone who chooses to walk or cycle on this section of Route 67 may also perceive

this as significant. The document and the public involvement process for the proposal needs to address this potential impact in enough detail to make it clear to the people who live along the primary truck routes, as well as the elected leaders in the affected municipalities including the Towns of Stillwater, Halfmoon, Malta, Clifton Park and the Village of Round Lake.

- Section 3.13 of the EA indicates that the Round Lake Bypass project is considered in the analysis of the Transaction's impact on the local road network. The 2012 design year analysis shows the Route 9/Route 67 intersection traffic control system as a traffic signal. It is our understanding that this intersection will be a roundabout. The analysis should take this into account.

Chapter 3.1.2 – Grade Crossing Delay and Safety

- The analysis of grade crossing safety and delay issues concluded that the transaction would not have an impact due to either increases in train volumes or train speeds. However, this analysis presumes the existing grade crossing devices are in a state of good repair. In reality, a number of the crossings included within the transaction territory have a history of unreliable operation. As such, the capital improvements necessary to increase train speeds should include commensurate investments in the grade crossing warning devices to ensure reliable operation and modifications necessary to accommodate increased train speeds.

Chapter 3.2.1 – Land Use @ Mechanville Facility

- Security improvements should also be addressed at the Mechanville facility which may include the installation of perimeter fencing and additional lighting on site.
- The last sentence of this section seems to infer that the effect of the Transaction-related truck traffic along Route 4 would be mitigated by the Town's Traffic Calming project. The Transaction should be providing the mitigation required for the impacts and effects that it generates – and should not be counting on mitigation that is planned by a third party.
- The Stillwater US Route 4 Corridor Plan (July 2006) is just that – a plan which provides design guidelines for along the corridor, and transportation recommendations to include vehicular, pedestrian, bicycle and public transportation improvements.

Chapter 3.3.1 – Hazardous Waste Sites @ Mechanville Facility

- NYSDOT notes that the EA does not discuss the handling and disposal of non-hazardous construction debris. NYSDOT recommends that these materials be disposed of in permitted facilities.

Chapter 3.6 – Water Resources

- NYSDOT recommends the text of the tenth bullet on page 3.6-1 be revised to read: "Section 401 of CWA – Implemented by NYSDOT under Water Quality Certification Program."
- NYSDOT recommends the addition of an additional bullet on page 3.6-1, which reads: "NYSDOT State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity that permit stormwater discharges."

Chapter 3.7 – Biological Resources

- NYSDOT notes that the EA does not discuss Executive Order 13112 and measures to minimize the spread of Invasive Species. The EA should be amended to add a statement that invasive species impacts will be considered and addressed during project design and construction as per Executive Order 13112 and, for the Mechanville Facility, NYSDOT's Environmental Procedures Manual (EPM) Chapter 4.8. This will include measures to prevent the introduction and spread of invasive species through incorporation of appropriate practices as practical.

Chapter 3.8 – Air Quality and Climate

- NYSDOT's comments submitted to the docket on July 9, 2008 stated "...it appears that construction of the facility will require a highway work permit to be issued by NYSDOT." Please note that projects requiring a NYSDOT highway work permit require compliance with the New York State Environmental Quality Review Act (SEQR).
 - It is assumed the Air Quality analysis was not conducted according to NYSDOT's EPM guidelines, which ensure compliance with SEQR; therefore, it is recommended the project sponsor ensure the document is compliant with SEQR.
 - Although the portion of the project in New York is located within a Carbon Monoxide (CO) and Particulate Matter (PM) attainment area, a CO and PM microscale screening and/or quantitative analysis may be warranted for the proposed Mechanville intermodal facility based on the guidelines in Chapter 1.1 and 1.2 of the EPM. Additionally, construction PM impacts for this facility should be assessed.
- NYSDOT's comments submitted to the docket on July 9, 2008 discussed "the elimination of 35,000 truck trips annually from New York's roadways." However, in the current EA, there is no reference to the elimination of 35,000 truck trips and the last paragraph on page 3.8-5 states "other truck traffic (approximately 19,000 trucks per year by 2012) is expected to decrease." If the scope of the project has changed, it should be noted in the document and any analyses performed should be based on the latest estimation of eliminated truck traffic.
 - As mentioned in comments previously submitted, the project sponsor should coordinate with the local Metropolitan Planning Organization (MPO) known as the Capital District Transportation Committee (CDTC), to determine how to appropriately account for the new intermodal facility in CDTC's planning activities.
- The document does not provide any of the modeling inputs or emission factors that were used for the emission analyses (Volatile Organic Compound, NOx, PM2.5 and Air Toxic Emissions). These data should be included in the document. Also, if the latest NYS Department of Environmental Conservation inputs were not used for the MOBIL.E6.2 modeling, the document should explain why alternative inputs were used.

Chapter 3.9 – Noise and Vibration

- It is NYSDOT's understanding that the noise impact criteria is +3dBA or 65DNL, rather than +3dBA and 65DNL. If so, there would be impacts in identified areas south of and at the east end of the project. Please verify the impact criteria.
- If impacts are identified, then abatement measures should be considered.

Chapter 3.11 – Cultural Resources

- The EA states the New York State Historic Preservation Office (NYSHPO) consultation was initiated on September 3, 2008 and further archaeological investigations will be completed "before construction". It also states architectural issues have been resolved due to lack of NYSHPO response to project information provided from that initiation. Identification of, and project assessment to, cultural resources under Section 106 should be concluded and adequately supported/documented in the final EA with a NYSHPO project effect determination for both architectural and archaeological resources. This should include "sufficient documentation to enable any reviewing party to understand its basis" [36 CFR 800.11(a)].
- All discussions of Phase 1, Phase 1A and Phase 1B archaeological surveys should be consistent with the New York Archaeological Council's *Standards* and with how these surveys correlate with the Section 106 process. NYSDOT suggests clarifying the reference to the design of a treatment plan if National Register sites are discovered.
- On page 3.11-1 at the second paragraph from the bottom, first sentence, NYSDOT recommends rewording to National "Historic" Preservation Act of 1966.
- On page 3.11-2, at the fourth paragraph, NYSDOT recommends revising the references to Section 3.10.1 and 3.10.2 since no sections correlate with that numbering.
- In Section 3.11.2.1 - Mechanicville Facility, NYSDOT recommends that the report clarify what documentation was sent to the SHPO for their review on September 3, 2008. The first sentence states that buildings over 50 years were previously removed from the site; however, the next sentence indicates that photographs of the remaining historic architectural resources were provided to SHPO for review.
- A finding of "no historic properties affected" is premature until all the archaeological investigations have been completed and provided to SHPO for review.
- Only one effect opinion should be issued to include both historic architecture and archaeological issues for the Mechanicville Facility. These assessments should be discussed and all supporting documentation included in the final EA.

Chapter 3.12 – Environmental Justice

- NYSDOT recommends that the report clarify the authority/rationale for the use of the 10 percentage points higher to define "meaningfully greater" when referring to Environmental justice communities.
- NYSDOT notes that there is some inconsistency within the report regarding the definition of "meaningfully greater." On pages 3.12-1, "meaningfully greater" is defined as "10 percent higher," whereas on page 3.12-2, "meaningfully greater" is defined as "10 percentage points higher."
- The percentage of families below the poverty level as indicated in Table 3.12-1 is 10% higher than those below the poverty line in Saratoga County as a whole, and, using the other threshold of "10 percentage points higher" show families nearing such a threshold. NYSDOT recommends

Appendix A: Comment Letters

that the final EA explore the relevant "minor adverse impacts" to the identified populations below the poverty line and discuss the extent to which such impacts are disproportionately felt by such populations.

Chapter 3.13 – Cumulative Impacts

- On page 3.13-4, the assessment of effect for cultural resources under Section 106 should be considered in order to assess cumulative impacts at the Mechanicville Facility.

Chapter 4.2 – Recommended Mitigation Measures for the Transaction

- In Chapter 3.3.1, the Applicants make a commitment to take appropriate actions to safeguard contractors and the environment from any hazardous materials encountered at the Mechanicville, in accordance with NYSDOT regulations. NYSDOT recommends that these commitments be carried forward as recommended mitigation measures.
- NYSDOT requests that approval of the transaction be conditioned on the Applicants securing the necessary Highway Work Permit for construction of the proposed highway access to Route 67 for the Mechanicville Facility.
- NYSDOT recommends that the text of Recommended Mitigation Measures for the Transaction, Water Resources, (4) be changed to read: *Applicants shall implement and comply with the terms and conditions of Stormwater Pollution Prevention Plans for the proposed Mechanicville Facility, consistent with State Pollutant Discharge Elimination System requirements and for the proposed San Val Automotive Facility, consistent with the National Pollutant Discharge Elimination System requirements under the Clean Water Act.*
- It is premature to assess mitigation measures for cultural resources before the Section 106 process for the Mechanicville Facility has been completed. Mitigation measures generally are the result of adverse effects to cultural resources and are specified in a Memorandum of Agreement concluding the Section 106 process. If no cultural resources are identified and/or the project results in a No Historic Properties Affected or No Adverse Effect determination, no mitigation measures for cultural resources are needed.

The New York State Department of Transportation appreciates the opportunity to review and comment upon this document. Any discussion or request for clarification of the comments provided herein should be addressed to Mr. Raymond F. Hessinger, P.E. at (518) 457-8075.

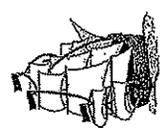
Sincerely,



Karen Rae
Deputy Commissioner,
Policy and Planning Division

ET-10217
TOWN of HALFMOON

2 Halfmoon Town Plaza, Halfmoon, NY 12065
County of Saratoga



Supervisor
Mindy A. Wormuth
Council
Walter F. Polak
Regina C. Parker
Paul Hotelling
Craig Hayner

(518) 371-7410, Ext. 2200 • Fax: (518) 371-0936
mwormuth@townofhalfmoon.org

December 10, 2008

Mr. Ken Blodgett
Case Control Unit
Surface Transportation Board
395 East Street, S.W.
Washington, DC 20423-0001

Dear Mr. Blodgett:

Your office issued a press release on November 14, 2008 regarding the "Norfolk Southern Railway Company and Pan Am Railways application (Finance Docket No. 35147). With that an Environmental Assessment was prepared.

I wrote to your office on July 1, 2008 regarding this matter (see attached letter). In that letter we indicated that the Town of Halfmoon is an interested party. We have never received a response to this letter. We evidenced concerns regarding the following: "More specifically, the Town has concerns regarding the proposed project and the possible negative effects on traffic safety, light pollution, noise pollution, and security concerns regarding both the type of materials to be transported and the site itself. We also asked to be advised on any public meetings that would be held. To our knowledge none have been advertised or held.

A review of the Environmental Assessment provides us with grave concerns regarding the thoroughness of your review. No mention was ever made of lighting concerns in the report. Since we have Town of Halfmoon residents who will be affected by this facility we wonder why the area of concern was not mentioned.

In all of the review sections it appears that your document indicates:

1. "Negligible effects" on traffic
2. No adverse impacts to land use.
3. No concerns about possible hazardous waste shipments
4. No adverse impacts on noise
5. The permitting process would mitigate impacts on the Anthony Kill

Some specific comments follow and are in addition to our general comments above:

- **S. Summary**
- **Summary, 3.3, Proposed Action and Alternatives**
 - The paragraph indicates that the project is in the City of Mechanicville, NY. The project parcel is located in the Town of Halfmoon, NY.
- **3. Affected Environment and Environmental Impacts**
- **3.1 Transportation, 3.1.1.3**
 - Neither of the projected traffic volumes mentions the potential for project related growth with the vicinity of the proposed site. The Town of Halfmoon has two approved Light Industrial PDD's (totaling 1,150,000SF of potential use) within this vicinity that have the potential to affect, or have an affect on, the traffic patterns in this area.
- **3.2 Land Use, 3.2**
 - Section 3.2.1 and Note 12 indicate that the project lies with in the Town of Halfmoon's Light Industrial and Commercial Zone (LI-C). The parcel is actually located within the Manufacturing Zone (M-1).
- **3.6 Water Resources, 3.6.1.1**
 - This section states that there are no water bodies near the Mechanicville Facility that are listed on the New York 303(d) water quality-limited water bodies list. There is a 303(d) listed water body, the Dwaas Kill Creek, which is a tributary of the Anthony Kill. This may require pretreatment prior to recharge into a stormwater pond.
 - **3.6 Water Resources, 3.6.1.1**
 - The NYS Stormwater Management Design Manual (April 2003) states that detention ponds meet water quantity goals but are an unacceptable practice for water quality because of poor pollutant removal, therefore requiring additional practices for treatment.
- **3.6 Water Resources, 3.6.1.4**
 - The NYS Stormwater Management Design Manual (April 2003) states that "For developments greater than 50 acres, with impervious cover greater than 25%, it is recommended that a detailed geomorphic assessment be performed to determine the appropriate level of control" for stream channel protection volume requirements.
- **3.8 Air Quality and Climate, 3.8.3, 3.8.4**
 - This sections states that there is expected to be a small increase in toxic emissions and greenhouse gas emissions at the site. It does not clarify how this may be mitigated, such as plantings and landscaping that could filter out such particulates.
- **3.9 Noise and Vibration**
 - The study does not indicate what time of year that the noise impacts were evaluated. It would seem that less vegetation during winter months could increase the noise exposure to the areas around the proposed site.

We may submit additional comments as more information becomes known and as we as a Town administer the local SEQRA process.

This review concerns our Town and its residents. While we understand the positive business results for the region we still feel our Town has not been involved in the process for review. Our citizens have not been given any opportunity for comment. We wonder why no public meetings were scheduled by your agency. I would appreciate hearing from you regarding our concerns.

Sincerely,



Mindy Wornath, Supervisor
Town of Halfmoon

Surface Transportation Board
INCOMING CORRESPONDENCE RECORD

#

E-Filing Correspondence Information Recorded by Danielle Gosselin on 11/19/2008 Status:

* Required Fields

Docket #: FD 35147 Affiliation: Self / Individual
 Name of Sender: Joseph A. Elliot Letter Type:
 Group: Ken Blodgett NEPA Type:
 Attention Of: In Public Docket? Yes No
 Date Received: Phone Number: C: 248.703.2813
 Date of Letter: Email Address: jaelliot76@hotmail.com
 Group's Address: 6723 Boonas Creek Lane Group's Zip Code: 37812
 Group's City: Knoxville
 Group's State: TN

Submitter's Comments:
 I am writing in support of the DEIS findings for the proposed Norfolk Southern and Pan Am Railways application for joint control and ownership of Pan Am Southern.
 I believe the benefits of this transaction will far outweigh the environmental impacts that may occur. Norfolk Southern is an environmental leader in the railroad industry, and their intermodal growth strategy will help to remove thousands of trucks from the highways annually, reducing CO2 and other particulate emissions.

STB's Comments:

STB's Responses:

Surface Transportation Board
INCOMING CORRESPONDENCE RECORD

#

E-Filing Correspondence Information Recorded by Danielle Gosselin on 11/18/2008 Status:

* Required Fields

Docket #: FD 35147 Affiliation: Self / Individual
 Name of Sender: Raymond Tylicki Letter Type:
 Group: Ken Blodgett NEPA Type:
 Attention Of: In Public Docket? Yes No
 Date Received: Phone Number: private
 Date of Letter: Email Address: raytylicki@yahoo.com
 Group's Address: 130 Geneva St Group's Zip Code: 14203
 Group's City: Buffalo
 Group's State: NY

Submitter's Comments:
 The former yard in Mechanicsville has reverted back to a meadow. The meadow is now a feeding ground for deer and other wildlife. As a hunter in this area I feel that putting the yard back will have a detrimental effect on wildlife in that deer will be forced into neighbors properties. While I support the rail project I feel that a Piggyback yard would be better suited at the Port of Albany by expanding the one that is already there or by focusing in the Industrial Park at Seneca. The trains that come in will be unloading up to 100 trucks or more a day. The impact on the city of Mechanicsville at 2,386 housing units at an average density of 2,865/sq mi and it limited tax base to fix its own roads from the impact of the trucks that would trundle through its streets would be significant. I also believe that more would need to be done to inform residents of this area about the approximate times of the trains so since the freight trains run on more or less a rough schedule that people can adjust when they are at a grade crossing.

STB's Comments:

STB's Responses:

APPENDIX B: CORRESPONDENCE WITH THE NEW YORK STATE HISTORIC PRESERVATION OFFICE

This appendix contains a letter from the New York State Historic Preservation Office dated December 22, 2008. The letter confirms that the *Phase 1A Literature Review and Archeological Sensitivity Assessment* for the proposed Mechanicville Facility is in accordance with Section 106 of the National Historic Preservation Act and relevant implementing regulations and concurs with the recommendation for Phase 1B field testing of the two areas delineated in the report.



**New York State Office of Parks,
Recreation and Historic Preservation**

Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

www.nysparks.com

David A. Paterson
Governor

Carol Ash
Commissioner

22 December 2008

Mr. Richard Starzak
IFC Jones & Stokes
811 West 7th Street, Suite 800
Los Angeles, CA 90017

Re: STB
Norfolk Southern Railway / Mechanicville Intermodal and Auto Facility
City of Mechanicville, Towns of Halfmoon and Stillwater, Saratoga County
08PR04526

Dear Mr. Starzak:

The State Historic Preservation Office (SHPO) has reviewed the information submitted for this project (*Phase IA Literature Review and Archeological Sensitivity Assessment, Mechanicville Intermodal and Auto Facility, City of Mechanicville, Saratoga County, New York, November 2008*, prepared by Hartgen Archeological Associates, Inc.). Our review has been in accordance with Section 106 of the National Historic Preservation Act and relevant implementing regulations.

SHPO concurs with the recommendation for Phase IB field testing of the two areas delineated in the report. SHPO also recommends that further consideration be given to the potential for the presence of remains of the late-19th and early-20th century locomotive servicing complex described on page 9 of the report and shown on Map 12b. Such remains, if present, may provide important information regarding the development of railroad technology.

SHPO looks forward to receiving the report of the Phase IB investigation.

If you have any questions please don't hesitate to contact me.

Sincerely,

Philip A. Perazio, OPRHP
Phone: 518-237-8643 x3276; FAX: 518-233-9049
Email: Philip.Perazio@oprhp.state.ny.us

Cc: Justin DiVirgilio, HAA (via email)