

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 649X)

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

Decided: January 4, 2008

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 1.57-mile line of railroad known as the Erie Industrial Track, on its Northern Region, Albany Division, Niagara Subdivision, extending from milepost QCJ 13.43 to milepost QCJ 15.0, in North Tonawanda, Niagara County, NY. Notice of the exemption was served and published in the Federal Register on September 26, 2007 (72 FR 54714-15). The exemption was scheduled to become effective on October 26, 2007, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) was filed by October 9, 2007.

On September 10, 2007, B P Rail Corporation d/b/a BP Rail (BPR) filed a formal expression of intent to file an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) to purchase CSXT's line proposed for abandonment. This filing automatically stayed the effective date of the exemption for 10 days, until November 5, 2007.¹ In the filing, BPR requested that CSXT provide it with substantial additional information. Given the materials requested, BPR also asked that the Board toll the period for BPR to submit its OFA (which would have been due by October 26, 2007)² for an additional 60 days to provide BPR with an opportunity to review and analyze the materials provided by CSXT and to submit its OFA. By decision served on October 30, 2007 (October 30 decision), the due date for BPR to file an OFA was tolled for 60 days, until December 26, 2007, and the effective date of the exemption was postponed until January 5, 2008.

By letter filed on November 27, 2007, BPR requests to withdraw its notice of intent to file an OFA, stating that it no longer intends to file an OFA for CSXT's line. BPR certifies that it served CSXT with a copy of its withdrawal letter. Accordingly, the OFA process prescribed in the October 30 decision will be terminated, and the exemption will be permitted to go into effect on January 5, 2008, subject to the conditions imposed in this decision.

¹ See 49 CFR 1152.27(c)(2)(i).

² See 49 CFR 1152.27(c)(2)(ii)(B).

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on October 1, 2007. In the EA, SEA recommends that two conditions be imposed upon any decision granting abandonment authority. First, SEA notes in the EA that the New York Department of State – Division of Coastal Resources (NYDCR) has indicated that CXST's application to NYDCR was incomplete for evaluation and has requested additional information. According to SEA, CSXT contacted NYDCR and explained that a copy of the environmental report would be sent to NYDCR, and NYDCR advised that it would review the environmental report, once received, to determine if any further application or permits would be necessary. Accordingly, SEA recommends that a condition be imposed requiring CSXT, prior to commencement of any salvage activities, to consult with NYDCR to determine whether the proposed abandonment would require further applications or permits and comply with its reasonable requirements.

Second, SEA notes in the EA that the New York State Department of Environmental Conservation, Division of Environmental Permits (NYSDEC/DEP), has advised that the wooden cross ties should be recycled for reuse or, if too deteriorated for future use, should be taken to an appropriate land fill for proper disposal. NYSDEC/DEP also has indicated that, since the proposed abandonment would likely involve land disturbance of over 1 acre, a State Pollutant Discharge Elimination System General Permit (GP-02-01) for stormwater discharge from construction activities may be required. In addition, NYSDEC/DEP stated that it could not make a determination as to whether there may be permits required pursuant to section 402 of the Clean Water Act (33 U.S.C. 1342). Accordingly, SEA recommends that a condition be imposed requiring CSXT, prior to commencement of any salvage activities, to consult with NYSDEC/DEP to determine whether a general permit for stormwater discharges would be required and comply with its reasonable requirements.

No comments to the EA were received by the October 15, 2007 due date, but upon further independent review, SEA recommends that the NYSDEC/DEP condition mentioned above be modified and that a new condition should be imposed in order to clarify language in the EA regarding an earlier comment received from NYSDEC/DEP. Thus, in addition to the NYDCR condition, SEA now recommends imposition of the following two conditions: prior to commencement of any salvage activities, CSXT shall consult with NYSDEC/DEP regarding the proper disposal of cross ties and comply with its reasonable requirements; and prior to commencement of any salvage activities, CSXT shall consult with NYSDEC/DEP to determine whether a general permit for storm water discharge or any additional permits pursuant to section 402 of the Clean Water Act would be required and comply with its reasonable requirements.

Accordingly, the conditions recommended by SEA in the EA, as subsequently modified, will be imposed. Based on SEA's recommendations, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. BPR's withdrawal of its notice of intent to file an OFA is accepted.
3. The October 30 decision is vacated to the extent necessary to permit the abandonment exemption in this proceeding to become effective on January 5, 2008, and the OFA process in this proceeding is terminated.
4. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the conditions that, prior to commencement of any salvage activities, CSXT: (1) consult with NYDCR to determine whether the proposed abandonment would require further applications or permits and comply with its reasonable requirements; (2) consult with NYSDEC/DEP regarding the proper disposal of cross ties and comply with its reasonable requirements; and (3) consult with NYSDEC/DEP to determine whether a general permit for stormwater discharge or any additional permits pursuant to section 402 of the Clean Water Act would be required and comply with its reasonable requirements.
5. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary