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SERVICE DATE – DECEMBER 15, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 256X)

NORFOLK SOUTHERN RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN
CHESTER COUNTY, PA

Decided: December 14, 2004

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 0.8-mile line of railroad between milepost 18.92 and milepost 19.72 at Downington, in Chester County, PA.¹ Notice of the exemption was served and published in the Federal Register on November 18, 2004 (69 FR 67625). The exemption is scheduled to become effective on December 18, 2004.

The Board’s Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 23, 2004. In the EA, SEA states that the Pennsylvania Historical and Museum Commission (SHPO) has not completed its evaluation of the potential impact of this project on historic resources. Accordingly, SEA recommended a condition requiring NSR to retain its interest in and take no steps to alter the historic integrity of the rail line or any sites and structures eligible or potentially eligible for listing in the National Register of Historic Places (National Register) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

SEA also states in the EA that the U.S. Fish and Wildlife Service (FWS) has indicated that the project area is within the range of the bog turtle (Clemmys muhlenbergii), a Federally listed threatened species. SEA further states in the EA that the Pennsylvania Department of Conservation and Natural Resources has also provided a list of other threatened and endangered flora and fauna that occur in the vicinity of the project area. Therefore, SEA recommended that, prior to conducting any salvage activities, NSR shall consult with FWS’s Hadley, Massachusetts Office, Region 5, regarding potential

¹ According to NSR, the subject line overlaps 0.28 miles of a line that was authorized for abandonment in Consolidated Rail Corporation–Abandonment Exemption–Chester County, PA, Docket No. AB-167 (Sub-No. 1136X) (ICC served Sept. 19, 1994), because NSR has not been able to verify that Consolidated Rail Corporation exercised the abandonment authority with respect to that segment.

impacts from salvage activities to threatened and endangered species, and shall report the outcome of these consultations to SEA.

Finally, SEA states in the EA that, according to NSR, the rail line proposed for abandonment crosses an unnamed waterway and passes through wetlands. Accordingly, SEA recommended that NSR consult with the U.S. Army Corps of Engineers, Philadelphia District (Corps), to determine whether a permit is required under section 404 of the Clean Water Act, 33 U.S.C. 1344, prior to conducting salvage operations on the line.

Comments to the EA were due by December 8, 2004. In a letter dated December 2, 2004, the SHPO informed NSR that the proposed abandonment and disposition of the railroad right-of-way will have no adverse effect on any National Register eligible historic resources. According to the SHPO, the portion of the eligible railroad within the project right-of-way has lost integrity and is no longer a contributing element to the subject line proposed for abandonment. Based on the SHPO's comments, SEA no longer recommends that the section 106 condition be imposed. Accordingly, the conditions recommended by SEA in the EA will be imposed, except that the section 106 condition will not be imposed.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the conditions that NSR shall: (1) prior to conducting any salvage activities, consult with FWS's Hadley, Massachusetts Office, Region 5, regarding potential impacts from salvage activities to threatened and endangered species, and report the outcome of these consultations to SEA; and (2) consult with the Corps to determine if a permit is required under section 404 of the Clean Water Act, 33 U.S.C. 1344, prior to conducting salvage operations on the line.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary