



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
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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
NYSDOT Review of Environmental Assessment**

Dear Mr. Blodgett;

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

Glossary of Terms

- Cultural resources: NYSDOT 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. NYSDOT 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: NYSDOT suggests including the reference to the correspondence letter from Fish and Wildlife Service in Appendix A to the third sentence.

- Section S.4.11 - 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 (4) Mitigation, Water Resources: NYSDOT 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 Vel Automotive Facility, consistent with the National Pollutant Discharge Elimination System requirements under the Clean Water Act.'* NYSDOT further suggests changing *'storm water'* to *'stormwater'* throughout the report to be consistent.
- Section S.5 (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: NYSDOT recommends this segment be amended to incorporate the additional mitigation measures identified by NYSDOT 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 NYSDOT. 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 NYSDOT's Highway Work Permit process can be found at: <https://www.nysdot.gov/divisions/operating/oom/transportation-systems/traffic-operations-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 @ Mechanicville Facility

- Security improvements should also be addressed at the Mechanicville 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 @ Mechanicville 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 NYSDEC under Water Quality Certification Program.*"
- NYSDOT recommends the addition of an additional bullet on page 3.6-1, which reads: "*NYSDEC 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 Mechanicville 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 ensures 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 Mechanicville 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, NO_x, PM_{2.5} 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 MOBILE6.2 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 page 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

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 made the commitment to take appropriate actions to safeguard contractors and the environment from any hazardous materials encountered at the Mechanicville, in accordance with NYSDEC 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 Vel 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