



Dave Geraci
Manager - Network Rationalization

EI-949
CD

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Jacksonville, FL 32202
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August 9, 2004



Surface Transportation Board
Section of Environmental Analysis
1925 "K" Street NW -Suite 534
Washington, DC 20423-0001

RE: KY 22 - CSXT Proposed Abandonment - Southern Region, Huntington Division, Big Sandy Subdivision, between Dunleary (Milepost CMH 0.00) and end of track (Milepost CMH 1.43) also known as the Beaver Creek Spur, a distance of 1.43 miles in Pike County, Kentucky.
Docket No. AB-55 (Sub-No. 653X)

Gentlemen:

This refers to CSX Transportation's Petition for Exemption filed on July 15, 2004, requesting authority to abandon its rail line described above.

Attached is the response dated August 3, 2004 from the U.S. Department of the Army - Corps of Engineers in Huntington, WV *"Based upon a review of the submitted information it does not appear the rail line abandonment project would involve the placement of fill or dredged material in waters of the United States and therefore, no authorization is required from the Corps of Engineers for this activity."*

Sincerely,

Attachment

Copy: Mr. Jon Gold, CSXT, 500 Water Street-J150, Jacksonville, FL 32202
Mr. Lou Gitomer, Ball-Janik, LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005



DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

REPLY TO

ATTENTION OF:
Operations and Readiness Division
Regulatory Branch
Beaver Creek-200400977
Rail Line Abandonment

AUG 03 2004

Mr. Dave Geraci, Manager
CSX Transportation, Inc.
Network Revitalization-J200
500 Water Street
Jacksonville, Florida 32202

Dear Mr. Geraci:

I refer to your letter dated June 24, 2004 regarding the proposed abandonment of a section of rail line near Federal, in Pike County, Kentucky.

According to the information provided, you propose to abandon a section rail line which parallels Beaver Creek. The project would start near the confluence of Beaver Creek and the Russell Fork and continue upstream along the right descending bank of Beaver Creek a distance of 1.43 miles.

Section 404 of the Clean Water Act requires a Department of the Army (DA) permit be obtained prior to any discharge of dredged or fill material in waters of the United States, including wetlands. The Corps of Engineers' authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328. Navigable waters, their tributaries and adjacent wetlands are waters of the United States subject to the provisions of Section 404 of the CWA. **Section 10 of the Rivers and Harbors Act of 1899** requires that a DA permit be obtained prior to any work in, over or under navigable waters of the United States. The Corps of Engineers' authority to regulate navigable waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 329.

Based upon a review of the submitted information it does not appear the rail line abandonment project would involve the placement of fill or dredged material in waters of the United States and therefore, no authorization is required from the Corps of Engineers for this activity. However, if any work becomes necessary that would involve the placement of fill or dredged material in waters of the United States, a permit would be required from this office. This letter does not obviate the need to obtain other federal, state or local authorizations required by law.

-2-

If you have any questions concerning the above, please contact Richard Hemann of the South Regulatory Section at 304-399-5710.

Sincerely,

Sammy R. Judge

TS Teresa D. Spagna
Regulatory Project Manager
South Regulatory Section