

# CLARK HILL

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September 22, 2014

## VIA FEDEX

Cynthia T. Brown  
Chief, Section of Administration, Office of  
Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20024

Re: **Paulsboro Refining Company LLC -  
Adverse Abandonment -  
SMS Rail Service, Inc. - In Gloucester County, NJ**  
STB Docket No. AB-1095 (Sub. No. 1)  
**Application for Adverse Abandonment**  
(color copies included)

Dear Ms. Brown:

We are writing on behalf of the Paulsboro Refining Company LLC ("PRC") as a follow up to our July 15, 2014 letter in which we respectfully requested that the Surface Transportation Board (the "Board") issue a decision on the Application for Adverse Abandonment in the above referenced matter as promptly as possible for the reasons outlined in the application and in that letter. Our request is reinforced by the additional incidents described below.

PRC operates a petroleum refinery located on approximately 950 acres on the Delaware River in Paulsboro, New Jersey, just south of Philadelphia and approximately 30 miles north of the Delaware City refinery. PRC employs approximately 460 full-time employees and hundreds of contractors at the refinery.

The refinery has throughput capacity of 180,000 barrels per day and a Nelson complexity rating of 13.2, which allows it to process a variety of medium to heavy sour crude oils. The refinery

operates 24 hours per day, seven days per week, predominately producing gasoline, heating oil and aviation jet fuel, as well as Group I lubricant base oils and asphalt.

PRC relies exclusively on SMS Rail Service Inc. ("SMS") to provide a safe and efficient rail operation inside the refinery. Typically there are approximately 200 railcars inside the refinery, with eight to twelve rail movements by SMS per day.

Since our July 15<sup>th</sup> letter, SMS has been responsible for derailing two more trains inside the refinery. The first was on September 3, 2014, when two engines derailed carrying four cars into the LPG rack. (See SMS Incident Report and photographs attached as Exhibit A). The cause was a combination of a wide gauge and sharp curve. As a result of that incident, SMS repaired the damaged section of track, which included laying new ties.<sup>1</sup>

While performing the repairs, SMS' maintenance crew allowed a train to operate over the tracks although it had not re-spiked the new ties to the rail. (See SMS Incident Report and photographs attached as Exhibit B). A photograph showing the spikes they failed to put back in place, as well as the open spaces in the ties showing where the spikes should have been placed is attached hereto as Exhibit C. As a result of SMS' negligence, two additional rail cars subsequently derailed on September 11, 2014. One car contained butane, a highly combustible product, and the other was an empty LPG rail car.

PRC acknowledges that there was minimal damage and that SMS repaired the tracks and restored service; however, given the commodities being handled, the risks of significant damage from incidents such as this are great.

In our July 15<sup>th</sup> letter PRC expressed concerns about SMS continuing to provide rail services to the refinery stating that if the Board continues to delay its decision on the adverse abandonment application, additional rail-related incidents could occur at the refinery. These most recent derailments show that PRC's concerns are real and support the case for a prompt decision on application.<sup>2</sup>

PRC originally filed for adverse abandonment with the STB on January 10, 2014 because it felt the need to replace SMS with a safety conscious, responsible operator, and SMS failed to

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<sup>1</sup> Although the information in this letter is submitted to support PRC's need for resolution of this proceeding and not as the basis for Board decision on the incidents themselves, PRC is submitting a verification with this letter.

<sup>2</sup> Given the time since the application was filed, this is not a request for an "expedited" decision as SMS contends. Further, PRC recognizes that this letter could further delay the decision while the Board waits for SMS to respond. However, because of the continuing issues and risks PRC is exposed to, it feels compelled to update the Board.

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September 22, 2014  
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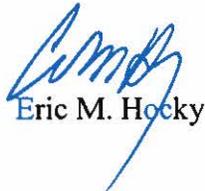
voluntarily seek authority to abandon when its contract was terminated. Should a significant rail event occur at PRC due to SMS' inadequate and unsafe performance, recognizing all of the scrutiny and adverse attention rail movements of hydrocarbons are receiving, such an event will undoubtedly receive significant media attention. PRC will improve this situation quickly if the abandonment is approved and PRC is allowed to replace SMS.

In light of the two recent derailments and escalating safety concerns, PRC respectfully renews its request that the Board promptly issue a decision. Thank you for your consideration of this request.

I am enclosing an additional 10 copies of this letter so that it can be filed of record in this proceeding. Please time stamp the additional copy of this letter to indicate receipt and return it to me in the stamped, self-addressed envelope provided for your convenience.

Respectfully,

CLARK HILL, PLC

  
Eric M. Hocky

EMH/e

cc: All parties shown on attached service list

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September 22, 2014  
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**AB 1095 (Sub No. 1) Service List**

**By email:**

Fritz R. Kahn  
1919 M Street, NW  
7<sup>th</sup> Floor  
Washington, DC 20036

David Ziccardi  
Conrail  
1717 Arch Street, 32<sup>nd</sup> Floor  
Philadelphia, PA 19103

David Coleman  
Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510

Paul Hitchcock  
CSX Transportation, Inc.  
Law Department  
500 Water Street, J150  
Jacksonville, FL 32202

**By US First Class Mail, postage prepaid:**

Michael A. Carrocino, Facility Manager  
Exxon Mobil Research and Engineering  
Company  
600 Billingsport Road  
Paulsboro, NJ 08066



**VERIFICATION**

I, James Fedena, hereby verify under penalty of perjury that the facts set forth in the foregoing Letter are true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on September 22, 2014.

A handwritten signature in cursive script, appearing to read 'James Fedena', written over a horizontal line.

James Fedena  
Senior Vice President

**EXHIBIT A**

## **Incident Report**

**Date:** 9/3/14 @ approximately 9:00am

**Crew:** PA-1

**Engineer:** W.D. Fediuk

**Conductor:** R.A. Risko

**Brakeman:** W.D. Reehle

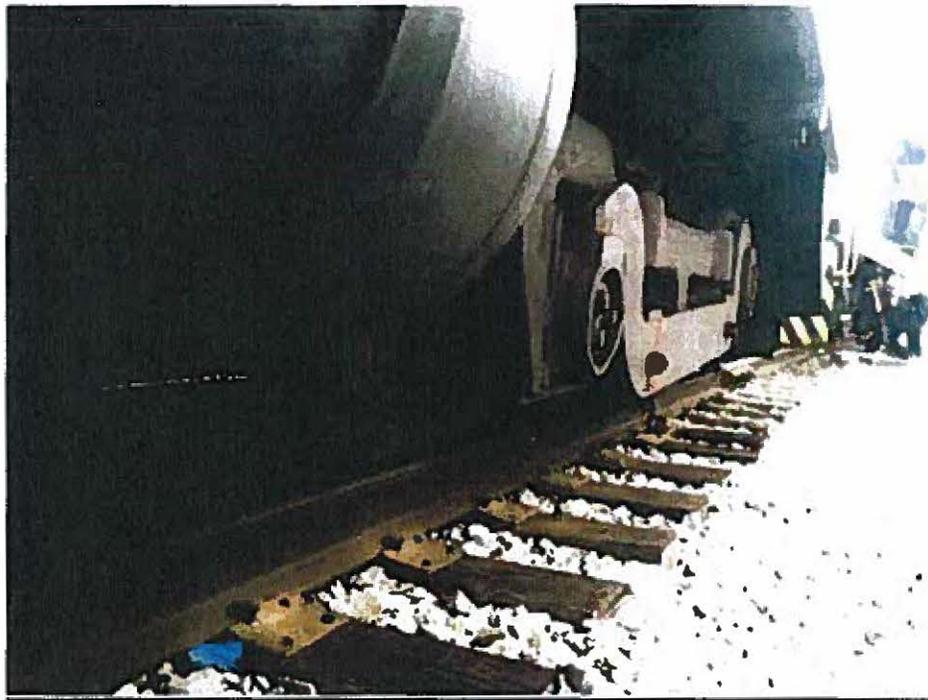
**Brakeman:** D. Hinkle

**Description of Incident:** The PA-1 crew, utilizing engines 301 and 438, was shoving 4 cars into the LPG Rack to be placed at spots 3 through 6. As the train approached spot #3, Engineer Fediuk felt a bump and brought the train to a stop. Upon inspection, the L3 wheel on engine 438 and the L1 & L3 wheel on engine 301 were found to have derailed.

**Cause of Incident:** Track gauge at the point of derailment was found to be 58.5" under load; 58" is the maximum gauge allowed for FRA class 1 track. When measured without a load, the gauge was found to be just under 58". The combination of wide gauge and a sharp curve allowed the L3 wheel on engine 438 to drop into the gauge, spreading the track and causing the L1 and L3 wheels on engine 301 to derail. Initial inspection of the derailment site found the ties and rail to be in good condition.

**Remedial Action:** The SMS track department had both engines re-railed by 10:30am. The LPG Rack was spotted immediately after. Rail was pulled up, ties plugged, and rail re-spiked to bring the curve back to 57.5" gauge. Track will be placed back in service by 5pm on 9/3/14. SMS will have a track foreman onsite to observe the first movements over the track. Engineer W.D. Fediuk was sent for post incident drug testing; initial results have come back negative.

M.E. McGrath  
Trainmaster  
SMS Rail Lines  
609-338-1882





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**EXHIBIT B**

# Incident Report

**Date:** 9/11/14 @ approximately 8:00am

**Crew:** PA-1

**Engineer:** J.R. Pfeiffer  
**Conductor:** W.D. Reehle  
**Brakeman:** O.J. Terry  
**Brakeman:** D. Hinkle

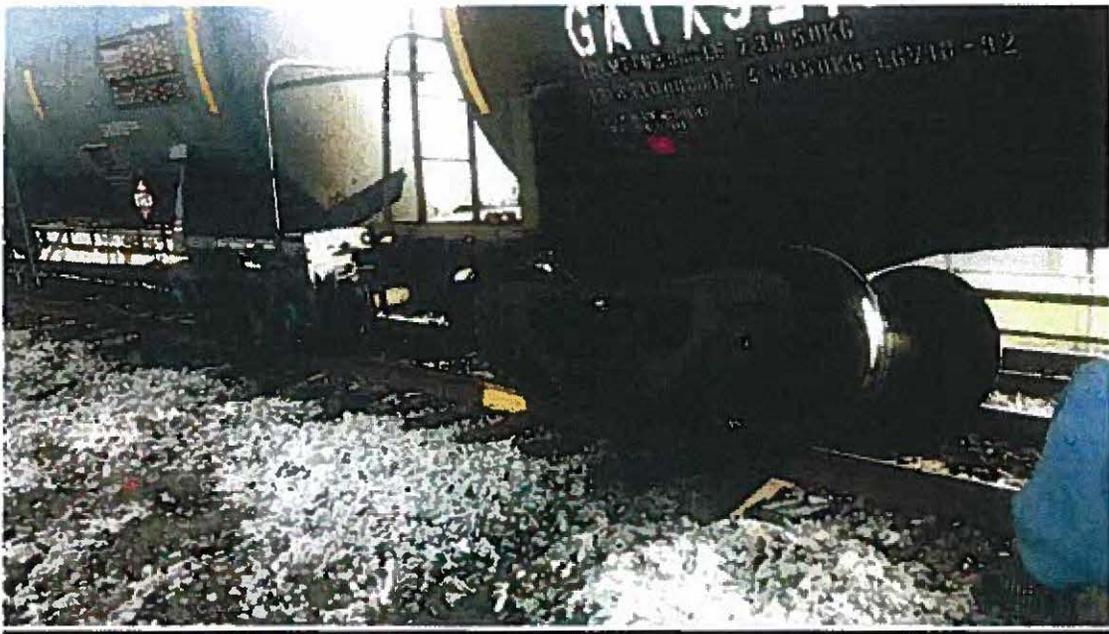
**Description of Incident:** The PA-1 crew, utilizing engine 438, was shoving 5 cars into the LPG Rack to be placed at spots 1 through 5. Ties were being replaced on the LPG Rack lead under the direction of Track Foreman George Sutch. The train crew was given permission from Foreman Sutch to enter the work area; movement was to be made at walking speed. As the cars were being shoved into the LPG Rack, Engineer Pfeiffer observed the car against the locomotive, GATX 9213, drop down and list from side to side. The movement was immediately brought to a stop. Further investigation revealed that 2 wheels from GATX 9213 and 4 wheels from GATX 209457 had derailed. The lead 2 wheels of GATX 209547 dropped in, spreading the rail and causing the other wheels to fall.

**Cause of Incident:** Track Foreman Sutch had replaced approximately 30 ties on the LPG Rack lead, however, they were not spiked up to the rail. Forman Sutch felt that the remaining ties would be good enough to hold the gauge while the LPG Rack drill was made. A judgement error was made by Foreman Sutch; the existing spiked ties were not enough to hold the gauge, and a derailment resulted.

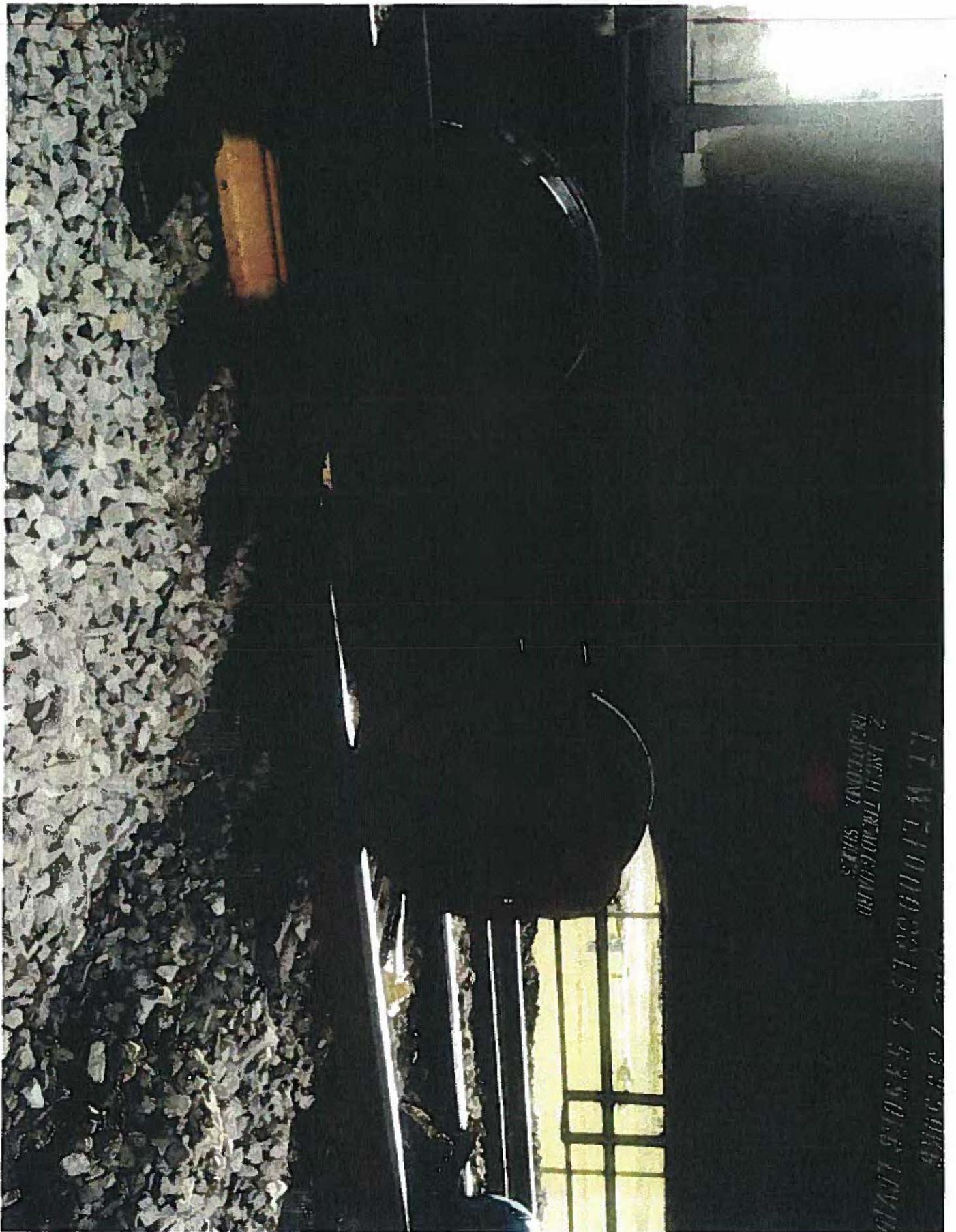
**Remedial Action:** The SMS track department had both cars re-railed by 10:00am. Ties were properly spiked up, track re-gauged and inspected before being returned to service. Track was returned to service at 11:45am. The LPG Rack was spotted immediately after. SMS will have a track foreman onsite to observe the first movements over the track. Track Foreman George Sutch was sent for post incident drug testing; initial results have come back negative. It is common practice in the industry to allow trains to pass over un-spiked ties, usually at restricted speed and under the authority of the Track Foreman in charge of the work area. Due to this incident, we will be re-training our track employees and also requiring all ties to be properly spiked before a train will be allowed to pass through the work area.

M.E. McGrath  
Trainmaster  
SMS Rail Lines  
609-338-1882

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703 3985  
L. W. TROTT  
2. JERRY TROTT  
TAMMAM. SHES

X 952822



**GATX**

LD LMT 163100 L  
LT W/T 99900 LB

2 INCH TREAD COND. SHOES

40X  
MM



**EXHIBIT C**

