

225831

LAW OFFICE  
THOMAS F. MCFARLAND, P.C.  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
mcfarland@aol.com

THOMAS F. MCFARLAND

October 5, 2009



**FILED**

OCT 6 - 2009

**SURFACE  
TRANSPORTATION BOARD**

By UPS overnight mail

Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W., Suite 100  
Washington, DC 20024

Re: Finance Docket No. 35302, *Bell Oil Terminal, Inc. v. BNSF Railway Company*

Dear Ms. Quinlan:

Hereby transmitted for filing with the Board are the original and 10 copies of a Complaint under 49 U.S.C. 11103(b) for Installation and Operation of a Switch Connection..

Also transmitted is a check for \$250 to cover the filing fee.

Very truly yours,

Thomas F. McFarland  
*Attorney for Bell Oil Terminal, Inc.*

*TMcF kl enc wp8.0\1179-B\1rstb1*

cc: *(by UPS overnight mail)*  
Richard Weicher, Esq.  
Vice President and General Counsel-Regulatory  
BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, TX 76131-2830  
and  
547 West Jackson Blvd., Suite 1509  
Chicago, IL 60661

ENTERED  
Office of Proceedings

OCT 6 - 2009

Part of  
Public Record

**FEE RECEIVED**

OCT 6 - 2009

**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

BELL OIL TERMINAL, INC., )

Complainant, )

v. )

BNSF RAILWAY COMPANY, )

Defendant. )

FINANCE DOCKET  
NO. 35302



COMPLAINT UNDER 49 U.S.C. 11103(b)  
FOR INSTALLATION AND OPERATION OF  
A SWITCH CONNECTION

**FEE RECEIVED**  
OCT 6 - 2009  
SURFACE  
TRANSPORTATION BOARD

BELL OIL TERMINAL, INC.  
3741 South Pulaski Road  
Chicago, IL 60623

Complainant

**FILED**  
OCT 6 - 2009  
SURFACE  
TRANSPORTATION BOARD

ENTERED  
Office of Proceedings

OCT 6 - 2009

Part of  
Public Record

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
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Attorney for Complainant

DATE FILED: October 6, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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BELL OIL TERMINAL, INC., )  
 )  
 Complainant, )  
 v. )  
 )  
 BNSF RAILWAY COMPANY, )  
 )  
 Defendant. )  
 )

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FINANCE DOCKET  
NO. 35302



**COMPLAINT UNDER 49 U.S.C. 11103(b)  
FOR INSTALLATION AND OPERATION OF  
A SWITCH CONNECTION**

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Pursuant to 49 U.S.C. § 11103(b), 49 U.S.C. § 11701(b) and 49 C.F.R. § 1111.1, BELL OIL TERMINAL, INC. (“Bell Oil”) hereby complains that BNSF RAILWAY COMPANY (“BNSF”) is violating 49 U.S.C. § 11103(a) by failing and refusing to construct, maintain, and operate, on reasonable terms, a switch connection to connect a private sidetrack to be constructed by Bell Oil to BNSF’s line of railroad at Chicago, IL.

Bell Oil submits the following in support of its complaint.

**I**

Bell Oil owns and operates a terminal at 3741 South Pulaski Road, Chicago, IL for receipt, storage, and distribution of liquid asphalt (“Pulaski Terminal”). The Pulaski Terminal is certified to ship asphalt for state construction projects in Illinois, Indiana, Iowa, Michigan, and Wisconsin.

## II

BNSF is a common carrier by railroad subject to the jurisdiction of the Surface Transportation Board (“the Board”) under the Interstate Commerce Act as amended, including, as here pertinent, 49 U.S.C. § 11103 governing construction, maintenance, and operation of switch connections between private sidetracks and common carrier tracks.

## III

By letter dated September 9, 2008, Bell Oil submitted an application under 49 U.S.C. § 11103(a) for BNSF to construct, maintain, and operate a switch connection on reasonable conditions between BNSF’s rail line and a private sidetrack to be constructed by Bell Oil at its Pulaski Terminal in Chicago, IL. A copy of that application is attached to this Complaint as Appendix 1.

## IV

The switch connection thereby applied for by Bell Oil is reasonably practicable; can be made safely; and will furnish sufficient business to justify its construction, maintenance, and operation.

## V

At a meeting between representatives of BNSF’s Industrial Development Department and officials of Bell Oil at the Bell Oil Pulaski Terminal on November 13, 2008, BNSF representatives agreed that a switch connection between a recently reconfigured BNSF track connecting tracks in BNSF’s Chicago and Chillicothe Subdivisions, and a 10-car private sidetrack to be constructed on BNSF land to be leased to Bell Oil immediately south of Bell Oil’s property, could be constructed at a cost of less than \$250,000. Appendix 2 attached to this

Complaint is a copy of an e-mail message from Mr. Peter Wittich, President of Interstate Asphalt Corp. and its affiliate, Bell Oil, to Mr. Tony M. Kurdziel of BNSF's Industrial Development Department, sent immediately after that meeting, confirming the agreements reached at that meeting.

## VI

Mr. Wittich's reference in Appendix 2 to "common carrier obligation" was to acknowledgment by BNSF representatives at the November 13, 2008 meeting that BNSF has a common carrier obligation to install, maintain, and operate a switch connection to a Bell Oil private sidetrack on reasonable conditions if such a connection would be practicable, safe, and justified by the traffic that would be shipped over it.

## VII

Mr. Wittich's reference in Appendix 2 to "switch and design per Ed and Mark Anderson" was to a print of a switch connection and private sidetrack proposed by Mr. Ed Landreth, Bell Oil's transportation consultant, and agreed to by Mr. Mark Anderson, a representative of BNSF's Engineering Department, which has been referred to by BNSF and Bell Oil representatives as "Plan C".

## VIII

Mr. Wittich's reference in Appendix 2 to "Thanks for the good meeting. Let's get it done - file NBR and stay all STB to at least 60 days" was to express Bell Oil's gratitude to BNSF for agreeing to construct the switch connection and to lease land for private sidetrack; to confirm Bell Oil's desire to go forward with that construction and lease; and to defer for at least 60 days

Bell Oil's filing of a complaint with the STB in the absence of an agreement for a switch connection.

## IX

Mr. Wittich's reference in Appendix 2 to "Switch cost and track to clearance at 150 per foot" was to the cost of \$150 per track foot estimated by BNSF representatives for the cost of the switch connection and track on BNSF property.

## X

Mr. Wittich's reference in Appendix 2 to "Consider previous service removed by BN" was to BNSF's duty to construct a replacement track in light of BNSF's unilateral removal of a track by which Bell Oil and its predecessors had received rail service in the past, in conjunction with BNSF's construction of a track connecting its Chicago and Chillicothe Subdivisions.

## XI

BNSF subsequently disclaimed the agreements reached at the November 13, 2008 meeting. Thereafter, negotiations for a voluntary switch connection were unsuccessful.

## XII

BNSF has now offered to provide a switch connection at Bell Oil's Pulaski Terminal only if Bell Oil were to advance the cost of construction of the connection and related facilities located on BNSF property, which cost is more than 6 times the cost of Plan C previously agreed to by BNSF, and only if Bell Oil were to agree to maintain the switch connection and related facilities on a continuing basis.

### **XIII**

BNSF has effectively denied Bell Oil's application for construction, maintenance, and operation of a switch connection at Bell Oil's Pulaski Terminal in Chicago by means of attaching unreasonable conditions to approval of that application, i.e., the condition that Bell Oil advance the cost of such construction and the condition that Bell Oil maintain the switch connection.

### **XIV**

By reason of the foregoing facts and circumstances, BNSF has failed and refused to provide a switch connection on reasonable conditions to connect its track to a private sidetrack to be constructed at Bell Oil's Pulaski Terminal, Chicago, IL, in violation of 49 U.S.C. § 11103(a).

### **CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, the Board should institute a proceeding for investigation into the allegations of this Complaint and, on the basis of that investigation, should direct BNSF to comply with the provisions of 49 U.S.C. § 11103(a) by constructing, maintaining, and operating, on reasonable terms, a switch connection between its track and a private sidetrack to be constructed by Bell Oil at its Pulaski Terminal, Chicago, Illinois.

Respectfully submitted,

BELL OIL TERMINAL, INC.  
3741 South Pulaski Road  
Chicago, IL 60623

Complainant

Thomas F. McFarland

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 (fax)  
mcfarland@aol.com  
Attorney for Complainant

DATE FILED: October 6, 2009

**COMPLAINT**

**APPENDIX 1**

1179-A

LAW OFFICE  
**THOMAS F. MCFARLAND, PC.**  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
mcfarland@aol.com

THOMAS F. MCFARLAND

September 9, 2008

Certified Mail - Return Receipt Requested

7002 2410 0002 2930 7984

Richard Weicher, Esq.  
Vice President & General Counsel-Regulatory  
BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, TX 76131-2830

Re: Application of Bell Oil Terminal, Inc. under 49 U.S.C. 11103(a)  
for a Switch Connection

Dear Rick:

This is an Application by BELL OIL TERMINAL, INC. (Bell Oil) under 49 U.S.C. 11103(a), for BNSF RAILWAY COMPANY (BNSF) to construct, maintain, and operate a switch connection between BNSF's rail line and a private sidetrack to be constructed by Bell Oil on its property at Chicago, IL.<sup>1/</sup>

The persons at BNSF who are most familiar with this matter are Eric Pitcher, Regional Manager Economic Development, Chicago, IL, and Sarah Bailiff, Assistant Vice President, Joint Facilities and Contracts (former Senior General Attorney), Fort Worth, TX.

**STATUTORY AUTHORITY AND STANDARDS**

It is provided in 49 U.S.C. 11103(a) as follows:

On application of . . . a shipper tendering interstate traffic for transportation, a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall construct, maintain, and operate, on reasonable conditions, a switch connection to connect that . . . private side track with its railroad and shall furnish cars to move that traffic to the best of its ability without discrimination in favor of or against the shipper when the connection —

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<sup>1/</sup> It is recognized that BNSF would not be obligated to construct a switch connection until after Bell Oil completes construction of its private sidetrack.

Richard Weicher, Esq.  
September 9, 2008  
Page 2

- (1) is reasonably practicable;
- (2) can be made safely; and
- (3) will furnish sufficient business to justify its construction and maintenance.

The right of a shipper to connect its private sidetrack to the national rail system did not exist at common law. "Section 1(9) (now 49 U.S.C. 11103) was enacted to facilitate the installation of switch connections." *Joint Pet. for Declar. Order - Private Sidetrack - General Motors Corp. and the Long Island R. Co.*, 351 I.C.C. 691, 1976 ICC LEXIS 107 at \*14. (*General Motors* case). The "switch connection" statute should be construed liberally to give effect to that Congressional intent.

In recent years, rail carriers have been reluctant to agree to switch connections between private sidetracks and their main line tracks that are largely devoted to through trainload traffic. However, if the conditions in Section 11103(a) for establishment of a switch connection are shown to exist, the switch connection must be made whether desired by the carrier or not. *Imperial Wheel Co. v. St. Louis, I.M.&S. R. Co.*, 20 I.C.C. 56, 59 (1910).

The standard of "reasonably practicable" refers to operational feasibility and legal restraint. A rail carrier cannot be forced to make a switch connection if there are physical conditions that would obstruct operation of the connection, or if there are legal conditions that would make such operation unlawful. *Limits Industrial Building Co. v. Baltimore & O.C. Term. R. Co.*, 258 I.C.C. 438, 441 (1924). *See, also, K&K Warehouse - Exempt. from 49 USC 11104 and 10901(d)*, 1987 ICC LEXIS 374 at \*9 (Finance Docket No. 30858, served April 3, 1987).

The standard of "safely made" is easily understood. For instance, there must be sufficient distance between the main track and the private sidetrack's clearance point so that railroad equipment can safely clear on both tracks. *See Union Carbide Corp. v. Norfolk & W.R. Co.*, 323 I.C.C. 65, 72 (1964).

The standard of "sufficient business" refers to revenues from traffic furnished by means of the private sidetrack compared to the rail carrier's cost to construct and maintain the switch connection. *Union Carbide Corp. v. Norfolk & W.R. Co.*, *supra*, 323 I.C.C. at 72-73. Because it is customary for a rail carrier to pay for the cost to construct and maintain the portion of the switch connection that is located on the rail carrier's property, that is the cost that must be sufficiently offset by revenues from traffic over the private sidetrack.

"The purpose of section 1(9) (now section 11103[a]) can be defeated just as well by failure to operate a switch connection on reasonable terms as by a refusal to construct a connection in the first instance." *General Motors* case, *supra*, 1976 ICC LEXIS 107 at \*14. By the same token, an application under 49 U.S.C. 11103(a) can be as effectively denied by

Richard Weicher, Esq.  
September 9, 2008  
Page 3

attaching unreasonable conditions to ostensible approval of such an application as by an express denial of such an application.

It is provided in 49 U.S.C. 11103(b) that if a rail carrier fails to install a switch connection after application therefor is made under 49 U.S.C. 11103(a), the affected shipper may file a complaint with the Surface Transportation Board (STB), who is to investigate the complaint and decide the safety, practicability, justification, and compensation for the connection. Bell Oil is prepared to file such a complaint at the STB if BNSF were to:

- (1) deny this application; or
- (2) effectively deny this Application by attaching unreasonable conditions to approval of this Application; or
- (3) unreasonably delay a ruling on this Application.

#### FACTS

Bell Oil distributes liquid asphalt on property in Chicago that is located east of Pulaski Road between BNSF's Chillicothe Subdivision trackage on its south and the Chicago Sanitary and Ship Canal on its north. That property was bisected by BNSF's north-south Chicago Subdivision (former Illinois Northern) trackage that connected BNSF trackage north of the Ship Canal with BNSF's Corwith Yard south of the Chillicothe Subdivision. The Bell Oil property west of that north-south trackage is improved with storage tanks for liquid asphalt (western property). The Bell Oil property east of that north-south trackage is in the process of being improved by construction of additional storage tanks for that commodity (eastern property).

Until recently, Bell Oil's western property was able to be rail served by means of a switch located on BNSF's north-south Chicago Subdivision trackage a short distance south of BNSF's bridge over the Ship Canal, and a BNSF-owned sidetrack that extended close to Bell Oil's western property. That switch and sidetrack were removed by BNSF in conjunction with BNSF's construction of a new track connecting BNSF's Chicago Subdivision and Chillicothe Subdivision trackage (connector track). Construction of that connector track was part of a Chicago-area "CREATE" project that also involved removal of the Chicago Subdivision trackage south of the connector-track switch, and removal of the crossing diamonds at the former intersection of the Chicago Subdivision and Chillicothe Subdivision tracks.

For many years, as recently as 2002, Bell Oil (or its predecessors) received liquid asphalt in tank cars on the sidetrack located near its western property. There were several years of nonuse of rail service after 2002. However, in 2006, substantially-increased demand for liquid asphalt in the Chicago area caused Bell Oil to request BNSF to resume rail service to Bell Oil's property. It was that increased demand that led to the current construction of additional storage tanks on Bell Oil's eastern property.

Richard Weicher, Esq.  
September 9, 2008  
Page 4

BNSF tentatively agreed to construct a switch connection from BNSF's new connector track to private sidetrack to be constructed on Bell Oil's property. That switch connection is illustrated on a drawing that is attached to this Application as Appendix 1. BNSF estimated that the cost of construction of that switch connection would be approximately \$145,000 (see e-mail messages attached as Appendix 2).

However, soon thereafter, BNSF raised that cost estimate to over \$4 million. Attached to this Application as Appendix 3 is a copy of that BNSF cost estimate.

BNSF subsequently notified Bell Oil that BNSF was not willing to provide a switch connection from that connector track to private sidetrack on Bell Oil's property because such connection would be unduly disruptive of BNSF's CREATE project. The sidetrack near Bell Oil's property was later removed by BNSF in conjunction with that project.

If a switch connection were to be made with its private sidetrack, Bell Oil would receive approximately 200 carloads of liquid asphalt on that track in the first year of its existence. That would increase to approximately 500 carloads per year by the third year of operation of that sidetrack. In order to maximize BNSF's revenues, Bell Oil would purchase liquid asphalt primarily from origins served by BNSF. Bell Oil controls the routing of the liquid asphalt that it receives. Thus, BNSF would handle the great majority of Bell Oil's liquid asphalt in single-line service, and would receive its maximum haul (and maximum revenues) on the small percentage of shipments that would be transported by more than one carrier. Bell Oil's shipments of liquid asphalt generate rail revenues of approximately \$4,000 per carload. Thus, BNSF would be expected to realize nearly \$800,000 in revenue from Bell Oil's traffic in the first year, and nearly \$2 million per year by the third year of operation. Bell Oil's private sidetrack would be constructed to accommodate at least 10 tank cars at a time. Bell Oil would receive 10-car shipments on that sidetrack. That would minimize BNSF's switching costs per car. Moreover, BNSF would not incur freight car costs in conjunction with those shipments because the traffic would be transported in privately-owned tank cars. Inasmuch as BNSF's revenues from Bell Oil traffic would be maximized, and BNSF's costs associated with that traffic would be minimized, BNSF would be expected to derive a reasonable profit from the traffic produced by Bell Oil's private sidetrack.

### **ARGUMENT**

This Application should be approved. BNSF should agree to construct, maintain, and operate a switch connection to Bell Oil's private sidetrack because all of the statutory prerequisites for that action are shown to be satisfied.

The switch connection hereby applied for would clearly furnish sufficient business to justify the cost of its construction and maintenance. BNSF would derive nearly \$2 million in

Richard Weicher, Esq.  
September 9, 2008  
Page 5

revenues from Bell Oil's traffic every year. Bell Oil's receipt of that traffic in 10-car shipments in privately-owned cars would minimize BNSF's associated operating costs. The profits from that traffic would be sufficient to amortize the cost of construction and maintenance of the required switch connection within a reasonable period of time. That cost is the cost to connect the nearest track in BNSF's Chillicothe Subdivision with Bell Oil's proposed private sidetrack at the most convenient location of such connection. That main line location for the switch connection is dictated by BNSF's refusal to construct a connection from its newly-constructed connector track.<sup>2/</sup>

A switch connection from a track in BNSF's Chillicothe Subdivision to Bell Oil's private sidetrack would be reasonably practicable and can be safely made.<sup>3/</sup> There are no operational obstructions nor legal impediments to construction of a switch connection at that location. There are numerous switch connections between main line tracks and private sidetracks throughout the United States. Moreover, without regard to Bell Oil's traffic, BNSF would be required to operate a local train in the area to transport traffic interchanged with Central Illinois Railroad Company north of the Ship Canal bridge.

Please review this Application and respond to it as soon as possible, but not later than 30 days after the date of the Application.

Very truly yours,



Thomas F. McFarland  
*Attorney for Bell Oil Terminal, Inc.*

*TMcF.kl-wp8 0\1179-A\lrRW1*

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<sup>2/</sup> The profits from Bell Oil's traffic would be sufficient to amortize the costs of construction of a switch connection from the connector track if those costs were fairly and accurately determined. The costs in Appendix 3, as claimed by BNSF, are in large part unrelated to the proposed switch connection, and are otherwise grossly overstated. The costs claimed by BNSF include \$1.56 million for construction of four crossing diamonds, but the proposed switch connection would not involve the crossing of any tracks that would require a crossing diamond, let alone four crossing diamonds. Other costs would not be required (500 crossing ties) or are patently excessive (\$1.5 million-plus in signal costs).

<sup>3/</sup> Another alternative is a switch connection immediately south of the Ship Canal bridge with a private sidetrack that Bell Oil would construct on its eastern property. In a message to me dated October 27, 2006, Sarah Bailiff stated that such a switch connection would not be inconsistent with BNSF's track improvements under the CREATE program.

THOMAS F. MCFARLAND

Richard Weicher, Esq.  
September 9, 2008  
Page 6

cc: Mr. Peter Wittich, *by e-mail to pwittich@interstateasphalt.com*  
Mr. Chuck Thomas, *by e-mail to cthomas@interstateasphalt.com*  
Mr. Frank Wilson, *by e-mail to fwilson@interstateasphalt.com*  
Mr. Ed Landreth, *by e-mail to ewlandreth@aol.com*



RE: Corwith, IL- Bell Oil

<http://webmail.aol.com/38575/aol/en-us/Mail/PrintMessage.aspx>

From: Anderson, Mark S (Engineering) <Mark.Anderson@bnsf.com>  
 To: BRandall@hanson-inc.com; Stack, Clyde D <Clyde.Stack@bnsf.com>  
 Cc: Pitcher, Eric G <Eric.Pitcher@bnsf.com>; Fitzgerald, Jennifer <Jennifer.Fitzgerald@bnsf.com>;  
 ewlandreth@aol.com  
 Subject: RE: Corwith, IL- Bell Oil  
 Date: Fri, 17 Aug 2007 11:46 am  
 Attachments: 08-AER-BellOil.pdf (2165K)

Brad- The stationing on the attached is not correct. The new location of the main line turnout is more like 318+60 (not 319+40.33). This explains why we have estimated an additional 454 TF rather than the 377 TF that Ed references.

Clyde- How will this affect the ~\$145K estimate? Is it as simple as changing it proportionally to \$120,142.00? ((377/454) x 145,000)

Thanks,  
 Mark Anderson  
 913-551-4434  
[mark.anderson@bnsf.com](mailto:mark.anderson@bnsf.com)

-----Original Message-----

From: [ewlandreth@aol.com](mailto:ewlandreth@aol.com) [mailto:[ewlandreth@aol.com](mailto:ewlandreth@aol.com)]  
 Sent: Friday, August 17, 2007 12:13 PM  
 To: Anderson, Mark S (Engineering); BRandall@hanson-inc.com  
 Cc: Pitcher, Eric G; Fitzgerald, Jennifer; Davenport, David L (Chicago); Chatten, Brian P; Stack, Clyde D  
 Subject: Re: Corwith, IL- Bell Oil

Mark, Bell Oil will have no problem including the 377 TF of track plus the No. 9 RH Switch in the force account estimate as long as the track (2.7 panels) are credited to Bell Oil when the No. 9 Switch is installed in the lead. Bell Oil can then place the 2.7 panels at the south end of the Bell Oil industry Track.

Ed Landreth  
 505-239-9915

-----Original Message-----

From: Anderson, Mark S (Engineering) <Mark.Anderson@bnsf.com>  
 To: [ewlandreth@aol.com](mailto:ewlandreth@aol.com); BRandall@hanson-inc.com  
 Cc: Pitcher, Eric G <Eric.Pitcher@bnsf.com>; Fitzgerald, Jennifer <Jennifer.Fitzgerald@bnsf.com>; Davenport, David L (Chicago) <David.Davenport@bnsf.com>; Chatten, Brian P <Brian.Chatten@bnsf.com>; Stack, Clyde D <Clyde.Stack@bnsf.com>  
 Sent: Fri, 17 Aug 2007 10:29 am  
 Subject: Corwith, IL- Bell Oil

Brad- Could you please send me the CAD file of the print you sent Clyde yesterday (microstation or a recent version of AutoCAD). I do not need the serial, I only need the track design line work if that makes it easier.

Ed- I just compared the original BNSF plan to the most recent Bell Oil revision. The main line point of switch is moving westward 454'. I realize that 107' of this will be the new #9 turnout; however, we need to plan for the worst case scenario. Worst case scenario would be that there is a delay in the delivery of the Bell Oil #9 RHTO. Chances of this are quite high, it happens often. The CREATE project can not be delayed once we start moving dirt. We need to have the money for the extra 454 TF in hand, so that we can order the extra track material, and construct the entire connection in the event there are problems with fabrication and delivery of the Bell Oil turnout. Therefore, we will proceed with the Bell Oil estimate to account for the extra 454' of track in addition to the turnout, derail, and signal work. If we get lucky and the Bell Oil turnout is on site and ready to be installed at the time we construct the connection track, that will be an issue Bell Oil will need to work out with our Economic Development department.

RE: Corwith, IL- Bell Oil

<http://webmail.aol.com/38575/aol/en-us/Mail/PrintMessage.aspx>

Concerning the derail placement, it must be at least 50' beyond the 14' clear point. So, as long as it's between this key point and the Bell Oil turnout, it doesn't really matter where it is placed (as long as there is room for the switch stand).

Thanks,

Mark Anderson

913-551-4434

[mark.anderson@bnsf.com](mailto:mark.anderson@bnsf.com)

-----Original Message-----

**From:** [ewlandreth@aol.com](mailto:ewlandreth@aol.com) [<mailto:ewlandreth@aol.com>]

**Sent:** Thursday, August 16, 2007 5:05 PM

**To:** Anderson, Mark S (Engineering); Stack, Clyde D

**Subject:** Re: 07R0029-Bell Oil Track

This should work for the Bell Oil Terminal as long as the industry track is on 33' track centers with the North Main Line.

Mark you may want to also consider the following:

Locating the switch point derail 80' east of the PT of the connecting track is no more effective than locating the point of the derail 30' east of the PT. The tangent of the connecting track should be on 15' track centers with the North Bound Main and the switch point derail will be a RH turnout (turning out to the North).

The Estimate for Bell Oil should also consider the following:

Original BNSF connecting track plan had a total length of 600'

Present BNSF plan has a total length of 977'

377' Track feet difference between the two plans (by Industry)

-107' Track feet - Lead of Switch (Included in Cost of Switch)

270' Additional Track Feet (by Industry)

Ed Landreth

Phone: 505-239-0915

-----Original Message-----

**From:** Anderson, Mark S (Engineering) <[Mark.Anderson@bnsf.com](mailto:Mark.Anderson@bnsf.com)>

**To:** [EWlandreth@aol.com](mailto:EWlandreth@aol.com); Stack, Clyde D <[Clyde.Stack@bnsf.com](mailto:Clyde.Stack@bnsf.com)>

**Sent:** Thu, 16 Aug 2007 1:02 pm

**Subject:** FW: 07R0029-Bell Oil Track

Looks good to me.

Ed- Does this look like it will work for Bell Oil?

Thanks,

Mark Anderson

913-551-4434

[mark.anderson@bnsf.com](mailto:mark.anderson@bnsf.com)

-----Original Message-----

**From:** Stack, Clyde D

**Sent:** Thursday, August 16, 2007 12:50 PM

**To:** Anderson, Mark S (Engineering)

**Subject:** FW: 07R0029-Bell Oil Track

How's this look?

-----Original Message-----

**From:** Bradley Randall [<mailto:BRandall@hanson-inc.com>]

**Sent:** Thursday, August 16, 2007 12:35 PM

**To:** Stack, Clyde D

**Cc:** Stephen Gaudette

**Subject:** 07R0029-Bell Oil Track

**Cost Estimate**  
**Interstate Asphalt/Bell Oil Terminal Project**  
**3741 S. Pulaski Road**  
**Chicago, IL 60623**  
**09/19/07**

	<u>Subtotal \$</u>	<u>Total \$</u>
<b>Construct four (4) railroad crossing diamonds</b>	<b>1,560,000</b>	
<b>Relay 2,640 feet track with 136 lb rail</b>		
<b>Remove existing track as required</b>		
<b>Replace 500 crossing ties</b>		
<b>Replace 330 feet bridge ties</b>		
<b>Place and surface 900 tons ballast</b>		
<b>Equipment rental and other track materials</b>	<b>980,468</b>	
<b>Signal costs</b>	<b>1,539,118</b>	
<b><u>Total \$</u></b>		<b>4,079,586</b>

**COMPLAINT**

**APPENDIX 2**



117a-A

**From:** Peter Wittich <pwittich@interstateasphalt.com>  
**To:** Tony M Kurdziel <Tony.Kurdziel@BNSF.com>  
**Cc:** Ed Landreth <ewlandreth@aol.com>; Eric Pitcher <eric.pitcher@bnsf.com>; Tom McFarland <mcfarland@aol.com>; Jess Guzman <jguzman@ameropanoil.com>  
**Subject:** Bell meeting  
**Date:** Thu, 13 Nov 2008 10:28 am

---

Common Carrier Obligation

Switch and design per Ed and Mark Anderson  
600 feet usable south of bell fence on BN property

Thanks for the good meeting  
Let's get it done -file NBR and stay all stb to at least 60 days

Switch cost and track to clearance at 150 per foot  
Consider previous service removed by BN

Sincere Thanks

Peter Wittich  
President  
Interstate Asphalt Corp.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2009, I served the foregoing document, Complaint Under 49 U.S.C. 11103(b) For Installation And Operation Of A Switch Connection, by UPS overnight mail on Richard Weicher, Esq., Vice President & General Counsel-Regulatory, BNSF Railway Company, 2650 Lou Menk Drive, Fort Worth, TX 76131-2830 and 547 W. Jackson Blvd., Ste. 1509, Chicago, IL 60661.

*Thomas F. McFarland*

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Thomas F. McFarland