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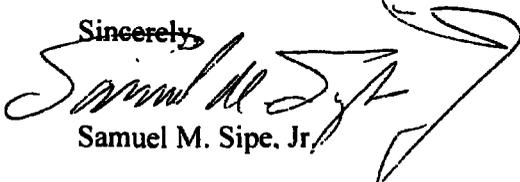
October 21, 2009

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: STB Finance Docket No. 35305

Dear Ms. Quinlan,

Enclosed for filing on behalf of BNSF Railway Company in the above-captioned matter are the following: (1) BNSF's Reply in Opposition to Arkansas Electric Cooperative Corporation's Petition for a Stay; and (2) BNSF's Reply to Arkansas Electric Cooperative Corporation's Petition for a Declaratory Order.

Sincerely,

Samuel M. Sipe, Jr.

Enclosures

cc: Counsel of record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35305

**BNSF RAILWAY COMPANY'S REPLY TO
ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S
PETITION FOR A DECLARATORY ORDER**

BNSF Railway Company ("BNSF") hereby replies to the October 2, 2009 Petition of Arkansas Electric Cooperative Corporation ("AECC") for a Declaratory Order ("Declaratory Order Petition").

I. INTRODUCTION

Mitigation of coal dust emissions is an important subject that BNSF has been working on intensively for several years. The service disruptions and congestion caused in 2005 by coal dust accumulation and heavy flooding show the importance of dealing with this issue in a proactive manner. Unfortunately, AECC's Declaratory Order Petition comes at the issue of coal dust emissions from the wrong direction by presuming that BNSF's proposed coal dust emissions standards are injurious to coal shippers. From this false presumption, AECC jumps to the false conclusion that the very promulgation of the coal dust emissions standards is an unreasonable practice. In fact, the whole purpose of coal dust mitigation is to ensure the safety and efficiency of coal transportation, an objective that is in the public interest and in the interests of railroads and shippers alike. Specifically, with its coal dust emissions standards, BNSF seeks to promote the uninterrupted flow of coal from mine to generating station and to avoid safety hazards, congestion and delays resulting from compromised rail infrastructure.

While the premise of AECC's petition is fatally flawed, BNSF nonetheless welcomes the opportunity for the Board to examine the reasonableness of BNSF's measures to address the coal dust issue. BNSF therefore endorses the Board's expeditious institution of a declaratory order proceeding. However, it is important that the issues to be considered in such a proceeding be properly framed. In this proceeding, BNSF will ask that the Board issue: (1) a declaration that BNSF is entitled to establish rules governing the operation of coal trains over its lines that are designed to inhibit the dispersion of coal dust in the interest of safe and efficient rail operations and of reliability of service; and (2) a declaration that the specific coal dust emissions standards set forth in items 100 and 101 of BNSF's Coal Rules publication denominated as Price List 6041-B ("Rule Publication 6041-B") are not unreasonable. With certain modifications discussed below, BNSF agrees with the schedule proposed by AECC for carrying out a declaratory order proceeding, and BNSF urges the Board expeditiously to initiate the proceeding.

II. BACKGROUND

AECC's Declaratory Order Petition seeks a declaration that Items 100 and 101 of BNSF's Rule Publication 6041-B constitute an unreasonable rule or practice. As described below, Items 100 and 101 of Rule Publication 6041-B set out certain coal dust mitigation requirements applicable to movements over the Powder River Basin ("PRB") Joint Line and over BNSF's Black Hills Subdivision respectively.

A. BNSF's PRB Coal Lines

BNSF and Union Pacific Railroad Company ("UP") jointly own and operate the Joint Line, a rail line that extends south from Caballo Junction in Campbell County, Wyoming, over 100 miles to connections with BNSF's and UP's independently owned east-west lines. Several coal mines served by both BNSF and UP are located along the Joint Line. BNSF's Black Hills

Subdivision refers to BNSF's independently owned rail lines that extend from Campbell County, Wyoming, at the north end of the Joint Line east through Edgemont and Alliance, Nebraska. BNSF's Black Hills Subdivision handles coal trains that originate at several mines that are not located on the Joint Line, as well as mines located on the Joint Line.

The Joint Line, BNSF's Black Hills Subdivision and the other rail lines leading out of the PRB are among the most densely traveled rail lines in the United States. Extremely high traffic levels over the Joint Line create formidable operational challenges. Under the agreement between BNSF and UP governing operations on the Joint Line, BNSF is entrusted with maintaining safe and efficient operations. BNSF places a premium on efficient operations to avoid congestion and resultant disruption in coal supply to electric utilities that burn PRB coal. The Joint Line Agreement was approved by the Interstate Commerce Commission ("ICC") in connection with its approval of the construction and operation of the Joint Line. *See Chicago & N. W. Transp. Co. Approval of Terms of Construction, Ownership & Operation of a Line of R.R. in Campbell & Converse Counties, Wyo.*, ICC Finance Docket No. 29066 (served Oct. 22, 1982).

Most of BNSF's coal transportation service over these lines is provided pursuant to confidential coal transportation agreements that are outside the scope of the Board's jurisdiction. *See* 49 U.S.C. 10709. However, BNSF also provides common carrier service to several coal shippers and holds itself out as a common carrier for PRB coal transportation. AECC is not a coal shipper on BNSF and has not requested common carrier service from BNSF. AECC is a part owner of facilities that obtain coal from the PRB, and BNSF believes that the coal is shipped to those facilities under a transportation contract involving UP.

B. Problems Resulting From Coal Dust Emissions

Coal is carried in open top cars that are typically loaded to capacity, which creates the risk of coal dust dispersion resulting from train movement and wind. Given the extremely high volume of coal traffic on BNSF's coal lines in the PRB, coal dust can accumulate rapidly along the railroad right of way and ballast can become contaminated by the accumulating coal dust. The contamination can have a particularly pronounced impact on the integrity of the ballast under conditions of heavy rainfall. *See Exhibit A at pages 1-2, 15, Coal Dust Mitigation Update*, presented by BNSF at the September 10, 2009 STB RETAC meeting.

In May 2005, there were two significant derailments on the Joint Line within a short period of time, resulting in considerable disruption in service and congestion. BNSF determined that the derailments resulted from weakened track structure caused primarily by a combination of coal dust and heavy flooding. The effects of the derailments and the repairs to the roadbed necessitated by the coal dust accumulation were widespread. *See, e.g.*, "A Mountain of Coal Waits for a Ride." *USA Today*, August 25, 2005. The Board subsequently acknowledged the importance of maintaining reliable coal transportation service when it established RETAC. *See Establishment of a Rail Energy Transportation Advisory Committee*, STB Ex Parte No. 670, at 2 (served July 17, 2007) ("The Board views the reliability of the nation's energy supply as crucial to this nation's economic and national security, and the transportation by rail of coal and other energy resources as a vital link in the energy supply chain.") The reliability of coal transportation service was also the subject of a proceeding initiated by the Federal Energy Regulatory Commission. *See Federal Energy Regulatory Commission, Discussions with Utility and Railroad Representatives on Market & Reliability Matters*, FERC Docket No. AD-6-8-000 (June 30, 2006) ("[FERC] met with utility and railroad representatives to discuss railroad coal-delivery matters and their impact on markets and electric reliability.").

BNSF set out to rectify and prevent the recurrence of the problems that occurred in 2005. It did so in part through a program of roadbed rehabilitation and enhanced maintenance. BNSF also undertook to determine whether there are feasible methods available to limit the dispersion of coal dust so as to minimize the possibility that the accumulation of coal dust on the roadbed could result in conditions that would lead to future derailments.

C. Measures For Limiting Coal Dust Dispersion

One means of limiting coal dust dispersion is proper loading (and avoiding overloading) of coal cars. BNSF carried out studies of alternative loading profiles for coal cars and determined that coal dust emissions could be reduced by changing the way coal was loaded into coal cars. See Exhibit A at page 11, showing how the erosion of coal dust can be reduced by loading coal cars with a more rounded contour that eliminates sharp angles and irregular surfaces. BNSF established standards for coal load profiles that will result in significantly less coal dust flying off the top of loaded coal cars.

BNSF also undertook extensive efforts to monitor dust emissions from loaded coal cars and audited a large number of coal trains for coal dust emissions. BNSF established trackside monitors and developed procedures for measuring coal dust emissions using the trackside data. BNSF collected data from thousands of trains to assist in formulating effective coal dust emissions standards. BNSF has also explored various measures that can be taken to meet coal dust emissions standards, including the application of a surfactant or topping agent to the top of the coal pile in a loaded coal car to inhibit the dispersion of coal dust.

D. Coal Dust Mitigation Standards in BNSF's Rules Publication

BNSF's coal dust mitigation standards are set out in Items 100 and 101 of Rule Publication 6041-B. Items 100 and 101 of Rule Publication 6041-B require that shippers moving

coal over the Joint Line or over BNSF's Black Hills Subdivision "shall ensure that all cars loaded with coal . . . shall be provided in accordance with BNSF's published template entitled 'Redesigned Chute Diagram' located in Appendix A to this publication." *See also* Exhibit A at page 10, which contains a photograph of a redesigned chute meeting the specifications of the Rule.

Items 100 and 101 further require that "[e]ffective November 1, 2009, shipper shall take all steps necessary to ensure that Trains handling cars loaded with Coal from any mine origin . . . shall not emit more than an Integrated Dust Value (IDV.2) of [a specified measure] in order to enhance retention of coal in rail cars." For trains operating on the Joint Line, the emission standard is an IDV.2 of 300 units; for trains operating on BNSF's Black Hills Subdivision, the standard is an IDV.2 of 245 units. Items 100 and 101 do not specify the measures that must be taken by coal shippers to meet the coal dust standards, but rather leave to the shippers and their coal suppliers the discretion to adopt appropriate measures. Nor does Rule Publication 6041-B contain provisions to enforce compliance with the standards, or prescribe penalties for failure to comply with the standards.

BNSF has taken steps to notify its coal shippers that it is suspending at this time the effective date of Items 100 and 101 of Rule Publication 6041-B from November 1, 2009 until August 1, 2010. *See* Exhibits B and C. BNSF is continuing to work with its coal shippers to implement coal dust mitigation measures and BNSF hopes and expects to achieve widespread compliance with its coal dust emissions standards by August 1, 2010. In addition, a suspension of the effective date at this time would provide the Board an opportunity to conduct a declaratory order proceeding that would address the reasonableness of BNSF's coal dust standards.

III. ARGUMENT

A. AECC Has Failed to Properly Frame Issues for Declaratory Relief Involving BNSF's Coal Dust Mitigation Standards

AECC's Declaratory Order Petition is based on a false premise. The assertion that BNSF's rules publication constitutes "a refusal to provide service" is patently false. Declaratory Order Petition at 1. There has been no showing that BNSF has failed to provide common carrier service to any coal shipper that has sought to use BNSF's transportation services.¹ In fact, BNSF has not taken any measures that adversely affect common carrier coal shippers. Therefore, BNSF's common carrier obligation to provide service on reasonable request is not at issue here.

BNSF has established coal dust emissions standards to protect against the fouling of ballast that occurs when a shipper's coal is released from a coal car during transit. Those standards would be the appropriate focus of a declaratory order proceeding. BNSF urges the Board promptly to initiate such a proceeding so that a full review of the standards can be completed before August 1, 2010. In the meantime, BNSF will continue to work closely with its shippers to identify specific implementation measures that would achieve compliance with its emissions standards.

At the present time, BNSF has not prescribed any particular measures to ensure compliance with its coal dust emissions standards and there can be no inquiry regarding the reasonableness of non-existent standards. For now, therefore, a declaratory order proceeding should focus on whether it is permissible for BNSF to establish coal dust emissions standards and the appropriateness of the specific standards that BNSF has established.

¹ As previously noted and as more fully explained in BNSF's Reply in Opposition to AECC's Petition for a Stay being simultaneously filed with this Reply, AECC is not a coal shipper on BNSF, let alone a shipper that has requested common carrier service from BNSF.

B. The Board Should Issue a Declaration that BNSF Has the Authority to Address the Coal Dust Issue

Notwithstanding the deficiencies in AECC's petition, it would be appropriate for the Board to institute a declaratory order proceeding that properly frames the issues raised by the coal dust problem on the Joint Line.² The first issue involves BNSF's authority to address the coal dust problem through operating rules.

There can be no serious dispute that the problem of coal dust accumulation on BNSF's rail lines has posed a serious challenge to safe and efficient operations on the Joint Line and BNSF's other PRB coal lines. The combination of coal dust accumulation and heavy flooding in 2005 led to serious disruptions in coal transportation service that must be avoided in the future. It is also beyond any serious dispute that the safe and efficient operation of the Joint Line and other PRB coal lines is in the interests of BNSF, UP, coal shippers and the public generally.

BNSF has the responsibility to assure the safe and efficient operation of its rail network and it has the authority to issue operating rules that will promote safe and efficient operations. The ICC's approval of the Joint Line Operating Agreement is an acknowledgement of BNSF's authority to act in this area. Indeed, AECC has not questioned BNSF's authority to impose the load profiling requirement of Items 100 and 101 as one means of mitigating the effects of coal dust emissions. Clearly it is appropriate for BNSF to seek ways to keep the shippers' coal from blowing out of the coal cars and fouling the rail ballast.

The Board should eliminate any uncertainty regarding BNSF's authority to adopt coal dust mitigation rules. Specifically, the Board should issue a declaratory order stating that it is

² There is a serious question whether AECC is a proper party to seek the initiation of a declaratory order proceeding on the coal dust emission question, but given the importance of this issue, BNSF nevertheless believes that the Board should initiate an expedited proceeding on properly framed issues involving BNSF's coal dust emissions standards.

reasonable for BNSF to take measures to ensure the safety and efficiency of coal train operations by curtailing coal dust emissions.

C. The Board Should Issue a Declaration that the Coal Dust Emissions Standards Adopted by BNSF Are Not Unreasonable

The Board should also consider the specific coal dust emissions standards set out in Items 100 and 101 of Rule Publication 6041-B. BNSF adopted its coal dust emissions standards after it conducted painstaking scientific and engineering research. BNSF determined through rigorous testing and analysis that the standards set out in Rule Publication 6041-B would reduce coal dust emissions to acceptable levels. Over the past several months, BNSF has audited train operations and monitored coal dust levels extensively to assess the level of coal dust emissions. And while BNSF has not prescribed particular measures that need to be taken to meet the emissions standards, BNSF has worked closely with coal shippers to identify measures such as the application of a surfactant that could be implemented to comply with the coal dust standards. The standards that BNSF has adopted are reasonable in the judgment of BNSF's management and the consultants retained to advise on this issue.

AECC faces a heavy burden in showing that BNSF's exercise of informed judgment in the case of the coal dust standards is unreasonable. BNSF is responsible for safe and efficient operations on its coal lines and it must have the discretion to adopt operating rules and standards that will permit safe and efficient operations. Since BNSF's coal dust emissions standards are supported by scientific and engineering studies and data, they should not be disturbed. Therefore, based on the evidence that BNSF will present showing the bases for its coal dust standards the Board should issue a declaratory order stating that the coal dust standards set out in Items 100 and 101 of Rule Publication 6041-B are not unreasonable.

D. The Board Should Proceed Expeditiously to Institute a Declaratory Order Proceeding

BNSF believes that the Board should proceed expeditiously to review the coal dust issue as discussed herein. BNSF urges the Board to initiate a declaratory order proceeding promptly so that any necessary discovery and preparation of evidence can begin right away and a decision can be reached by the summer of 2010. As noted previously, BNSF has suspended the effective date of Items 100 and 101 of Rule Publication 6041-B to allow the Board to conduct an expedited proceeding that addresses BNSF's coal dust standard. BNSF further believes that the procedural schedule proposed by AECC is acceptable with the following two changes: (1) to allow for a more complete record, both parties should file simultaneous opening, reply and rebuttal evidence and argument; and (2) the Board should provide an additional 15 days for the filing of reply evidence, which would result in a reply period corresponding to the 45 days available for the filing of opening evidence following the close of discovery. BNSF also requests that the Board provide for oral argument following the submission of the parties' evidentiary submissions. A proposed schedule is set out below.

- [Day 1] Entry of Board Order commencing proceeding.
- [Day 60] Close of discovery.
- [Day 105] AECC and BNSF file Opening Evidence and Argument.
- [Day 150] AECC and BNSF file Reply Evidence and Argument.
- [Day 165] AECC and BNSF file Rebuttal Evidence and Argument.
- [Day 180] Oral Argument.

Finally, if the Board initiates a declaratory order proceeding, it should enter a protective order. However, there are several deficiencies in the protective order proposed by AECC. *See* Motion of Arkansas Electric Cooperative Corporation for a Protective Order, filed

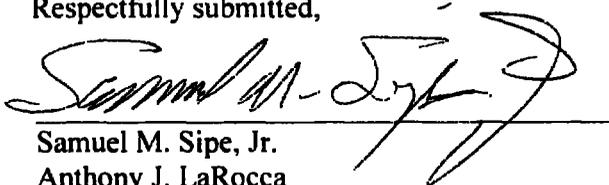
simultaneously with AECC's Petition for a Declaratory Order. Among other things, AECC's proposed protective order would establish only a single layer of confidentiality protection that is limited to highly sensitive materials that can be shown only to outside counsel and consultants. The Board's standard protective order used in rate reasonableness cases establishes a dual layer of protection. It provides protection for Confidential Information, which can be made available to employees and in-house counsel of a party, and for Highly Confidential Information such as shipper-specific data and business proprietary information, which can be shared only with outside counsel and consultants. Attached to this Reply at Exhibit D is a proposed protective order that is based on the protective order used in stand-alone cost cases. BNSF urges the Board to adopt its proposed protective order instead of the order proposed by AECC.

IV. CONCLUSION

BNSF believes that AECC's request for a declaratory order is based on a false premise that BNSF's coal dust standards are injurious to coal shippers. Nevertheless, for the reasons discussed above, BNSF believes that it would be appropriate for the Board expeditiously to initiate a declaratory order proceeding focused on properly framed issues. In particular, the Board should issue a declaration that (1) BNSF is entitled to establish rules governing the operation of coal trains over its lines that are designed to inhibit the dispersion of coal dust in the interest of safe and efficient rail operations and reliability of service; and (2) the specific coal dust emissions standards set forth in Items 100 and 101 of BNSF's Rule Publication 6041-B are not unreasonable.

Richard E. Weicher
Jill K. Mulligan
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2353

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel M. Sipe, Jr.", written over a horizontal line.

Samuel M. Sipe, Jr.
Anthony J. LaRocca
Kathryn J. Gainey
STEPTOE & JOHNSON LLP
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ATTORNEYS FOR
BNSF RAILWAY COMPANY

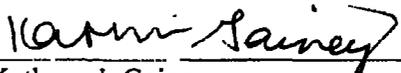
October 21, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2009, I have served a copy of the foregoing BNSF Railway Company's Reply to Arkansas Electric Cooperative Corporation's Petition for a Declaratory Order on the following by Federal Express:

Eric Von Salzen
Alex Menendez
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
(202) 842-2345

Attorneys for Arkansas Electric Cooperative Corporation



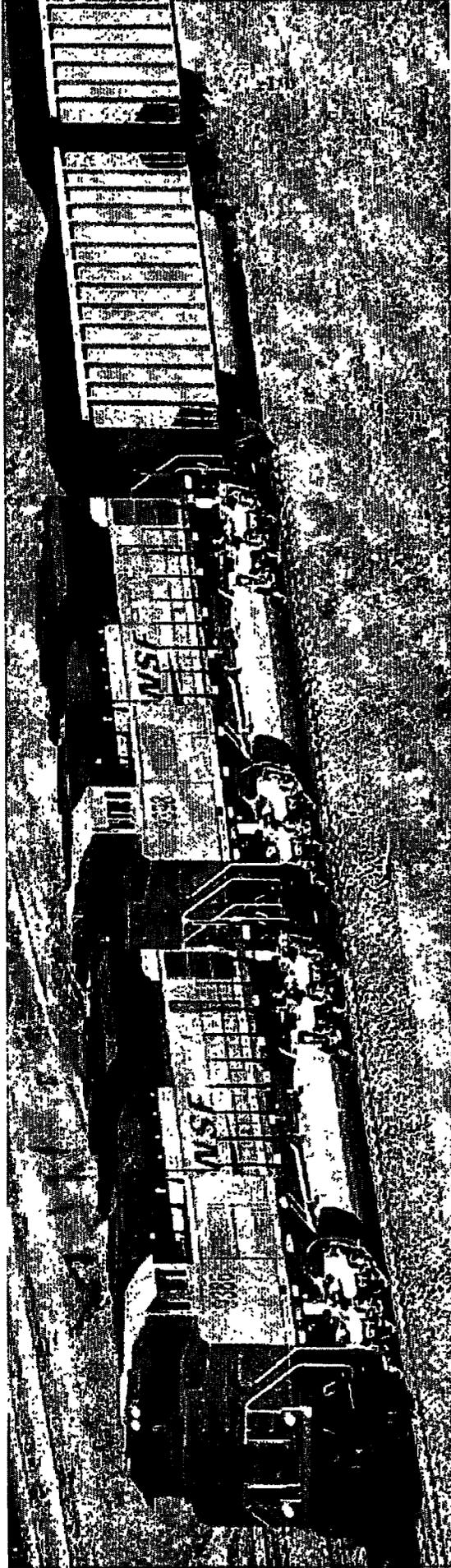
Kathryn J. Gainey

EXHIBIT A

Coal Dust Mitigation Update

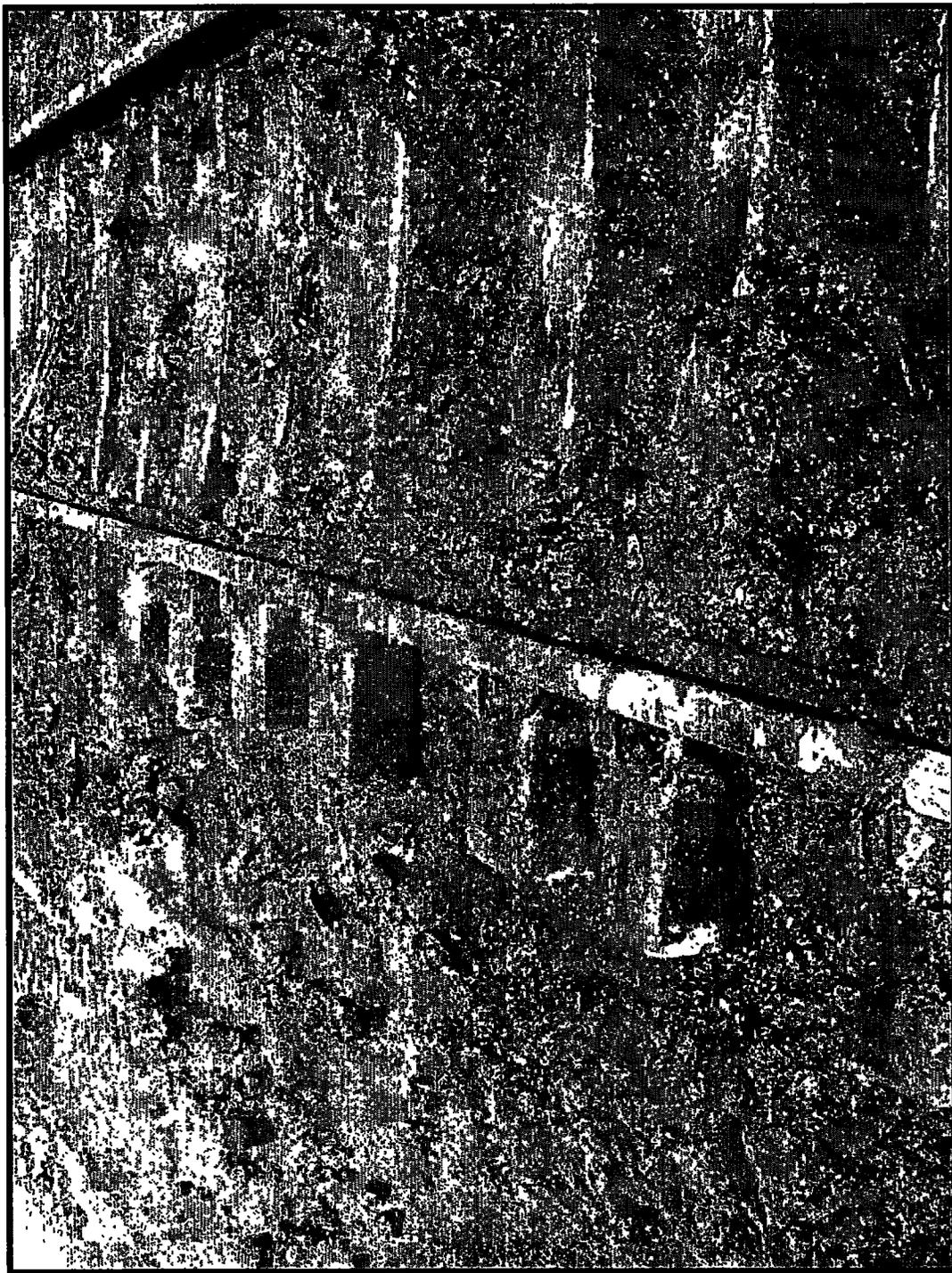
Surface Transportation Board – RETAC

September 10, 2009

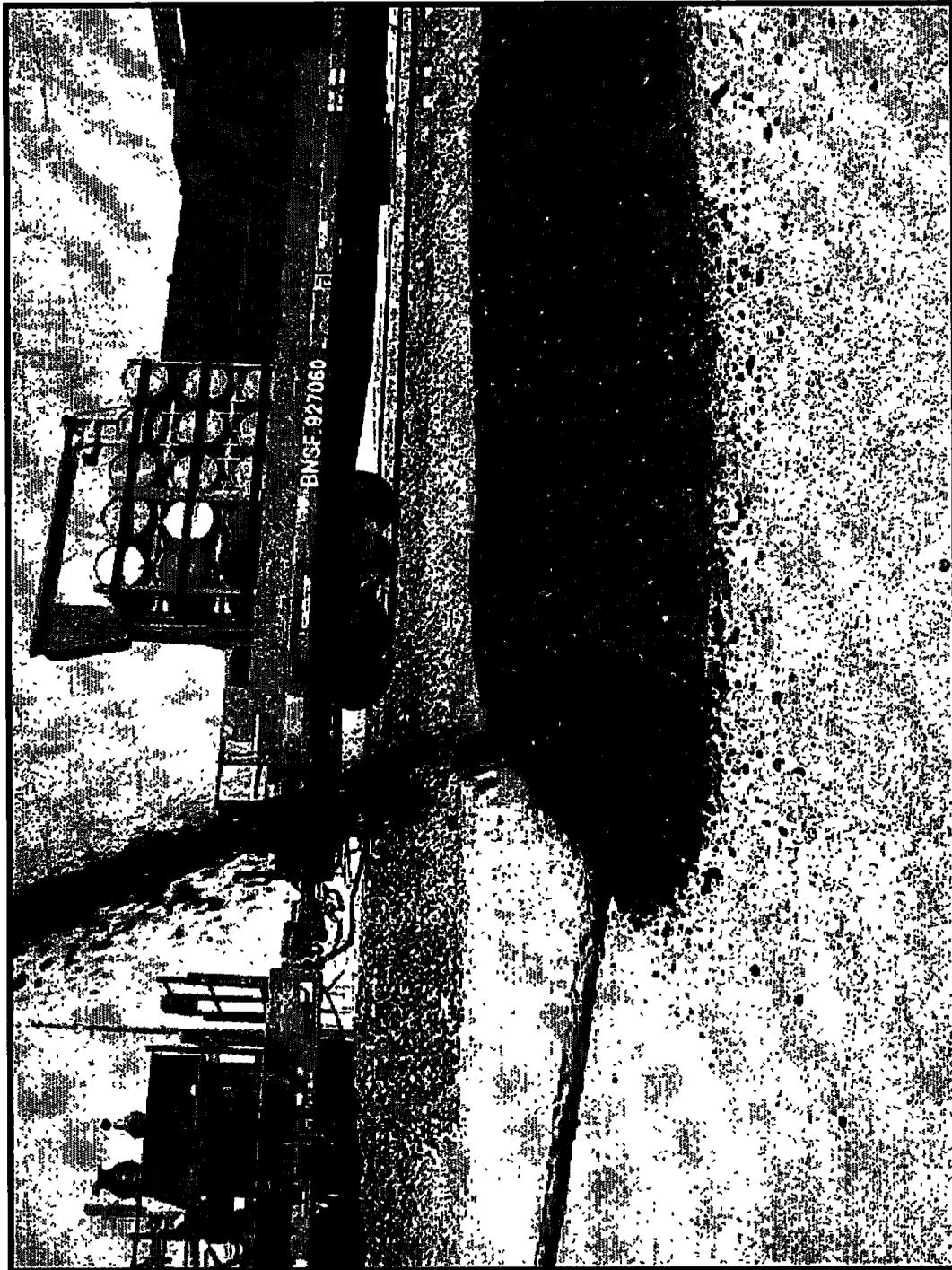


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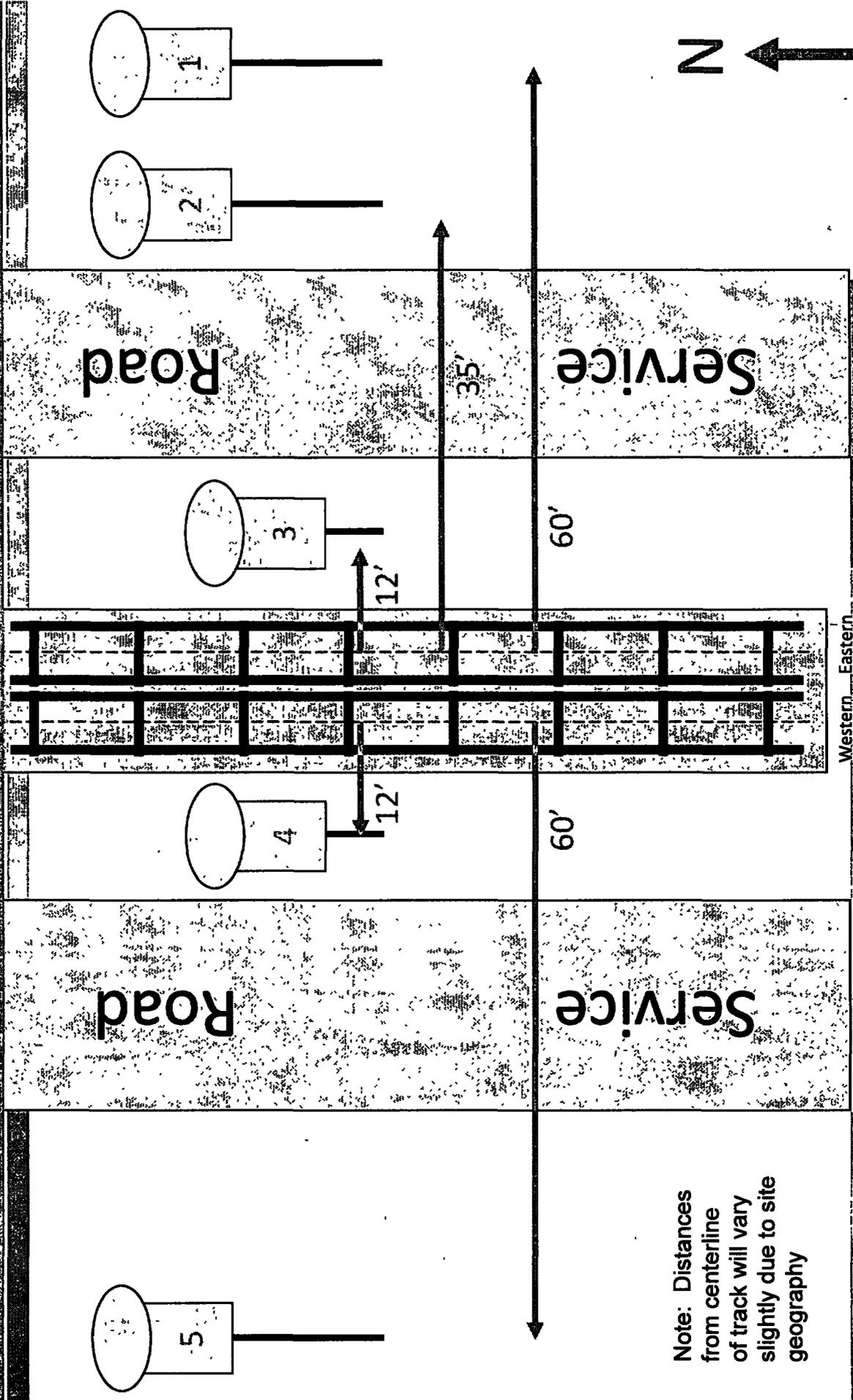
Rain Impact on Ballast Contaminated with Coal Dust



Undercutter Work – Normal Ballast is not Black



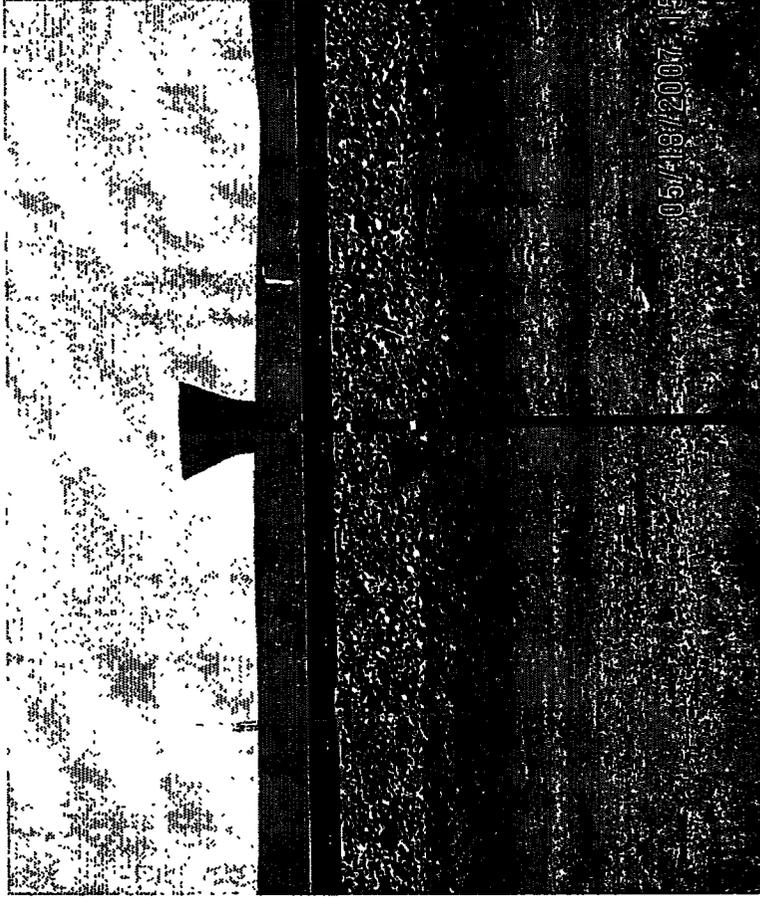
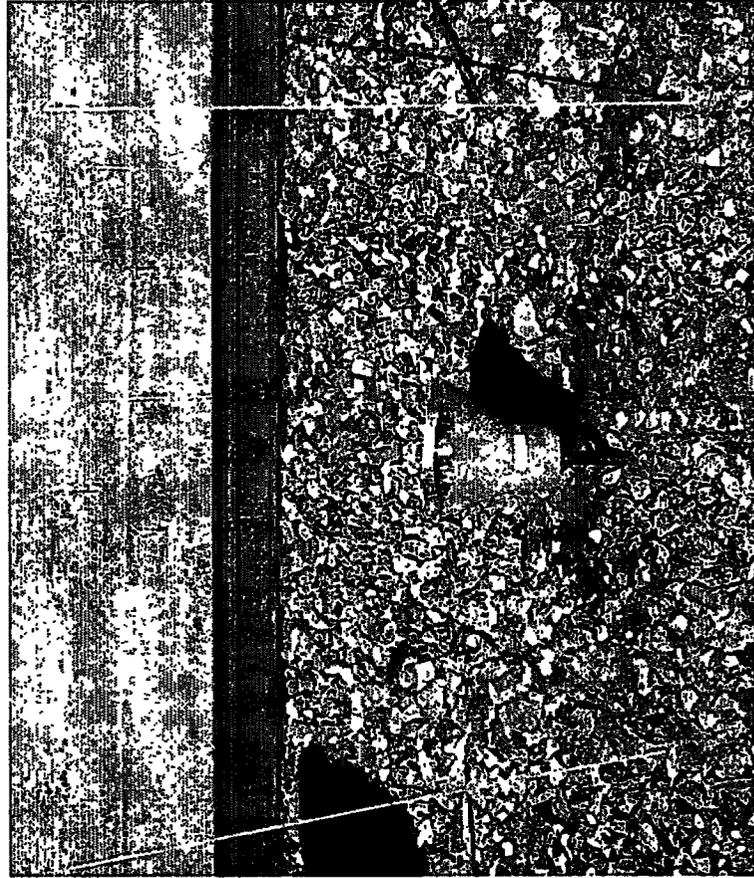
Schematic of Typical BNSF/UP Dustfall Collector Orin Subdivision Site



Note: Distances from centerline of track will vary slightly due to site geography

Dustfall Collectors

- Measure amount of dust deposited in the railroad right-of-way



Trackside Monitor (TSM)



Propeller
Anemometer

Dust Monitor

Temperature/
Relative Humidity
Sensor

Data Logger

Precipitation Gauge

Dustfall Collector

Trackside Monitors

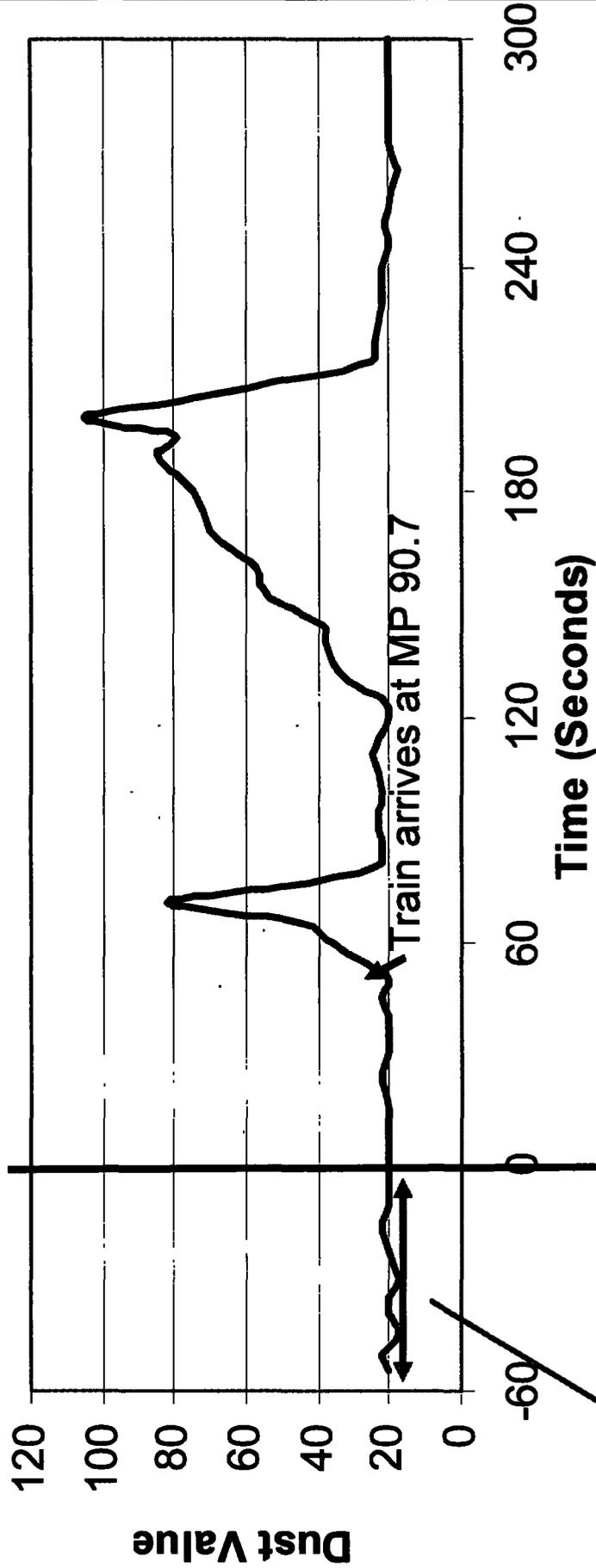
- **Measures dust emission of each passing train**
- **Locations:**
 - **MP 90.7 on Orin Sub**
 - **Towers on East and West sides of tracks**
 - **Approximately 50% of trains useable**
 - **MP 558.2 on Black Hills Sub**
 - **Towers on North and South sides of tracks**
 - **Approximately 75% of trains useable**
 - **MP 693.4 on Big Horn Sub**
 - **Data collection only at this time**

Post-Processing of Train Data

- **Train Removal Criteria for Compliance Analysis**
 - **Additional train (loaded or empty) passing TSM site within 6 minutes**
 - **High/Erratic background dust**
 - **Bin data into proper wind components**
 - **e.g., East dust monitor uses data with westerly wind component**
 - **e.g., West dust monitor uses data with easterly wind component**

Coal Dust Train Measurement

Dust Values for Passing Train at TrackSide Monitor

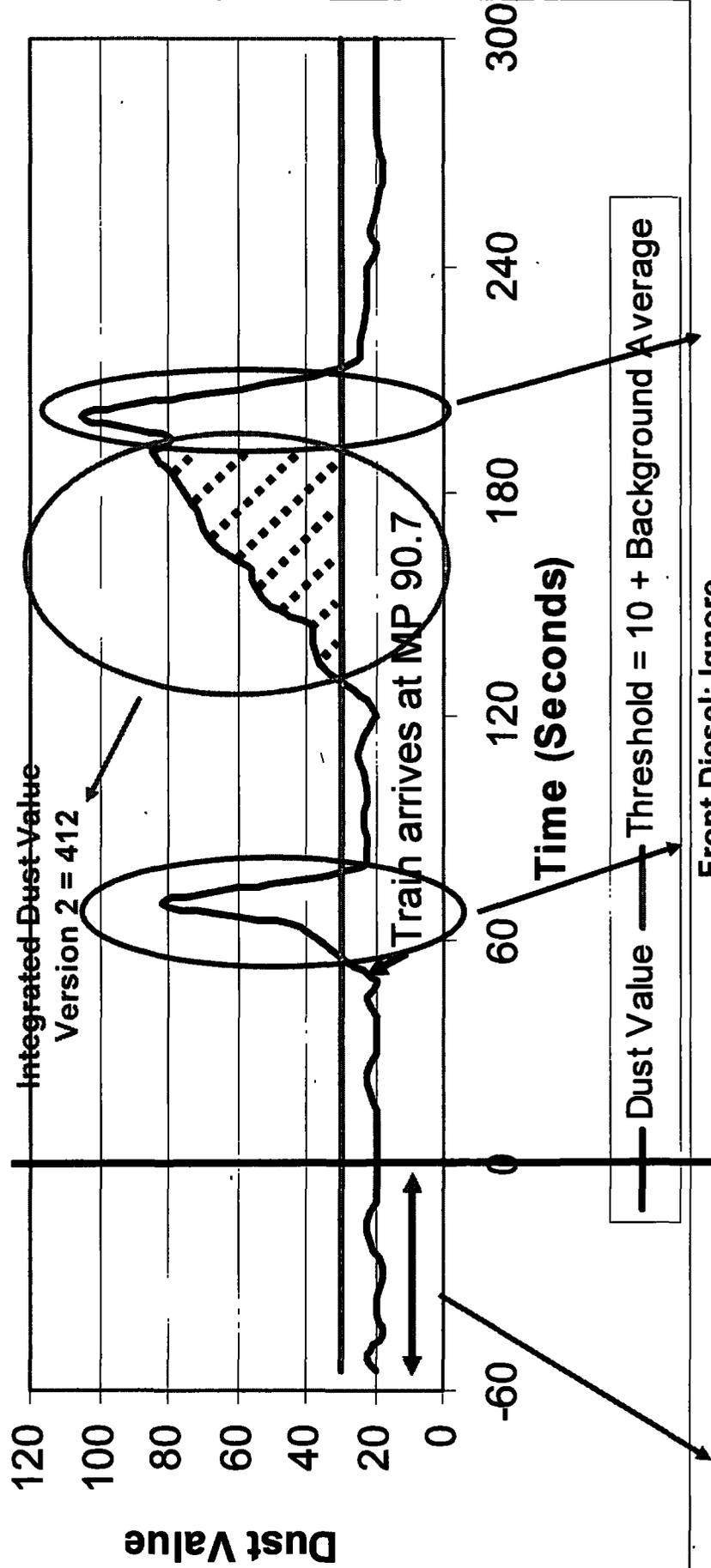


Environmental Background
Train Passage at MP 90.5 According to BNSF Train Data

Dust
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Integrated Dust Value (IDV.2)

Dust Values for Passing Train at TrackSide Monitor



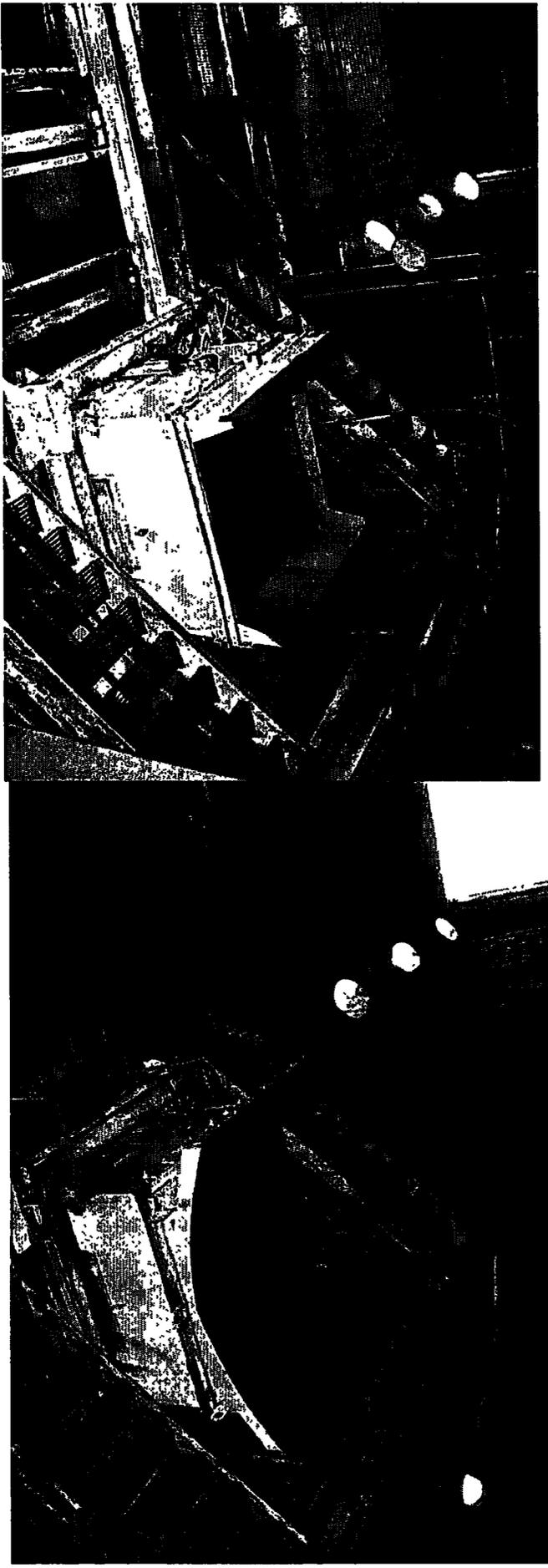
Environmental Background Dust

Train Passage at MP 90.5 According to BNSF Train Data

Front Diesel: Ignore first 30 seconds of values once dust signal exceeds threshold

Rear Diesel: Ignore last 15 seconds of dust signal

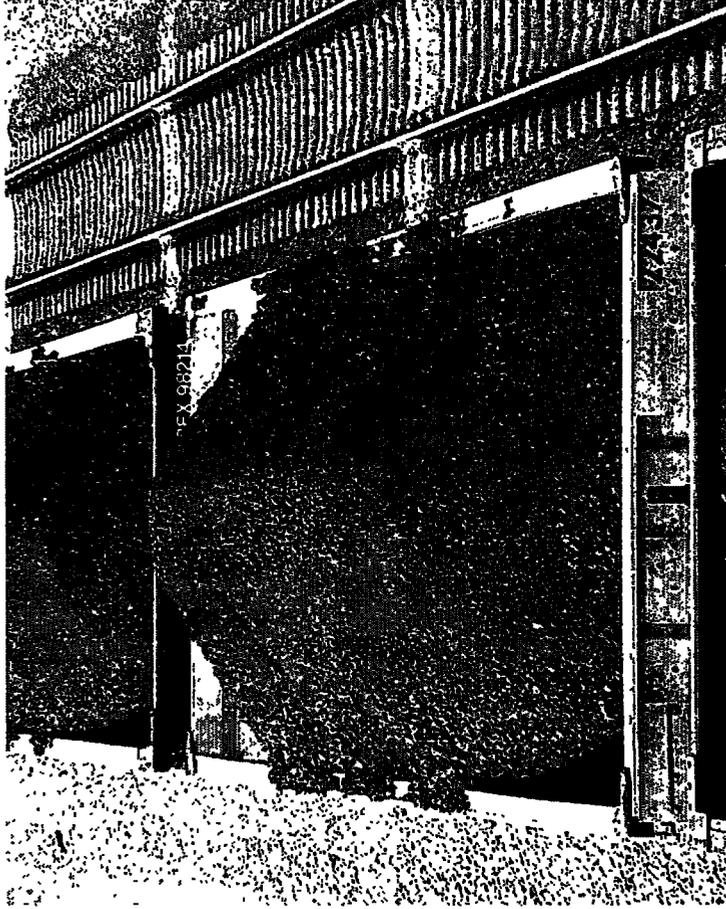
Improved Loading Profile



Redesigned Chute
Flared to 7 ft. wide
Same height as normal chute
Promotes bread loaf shape
Limits height chute can be raised

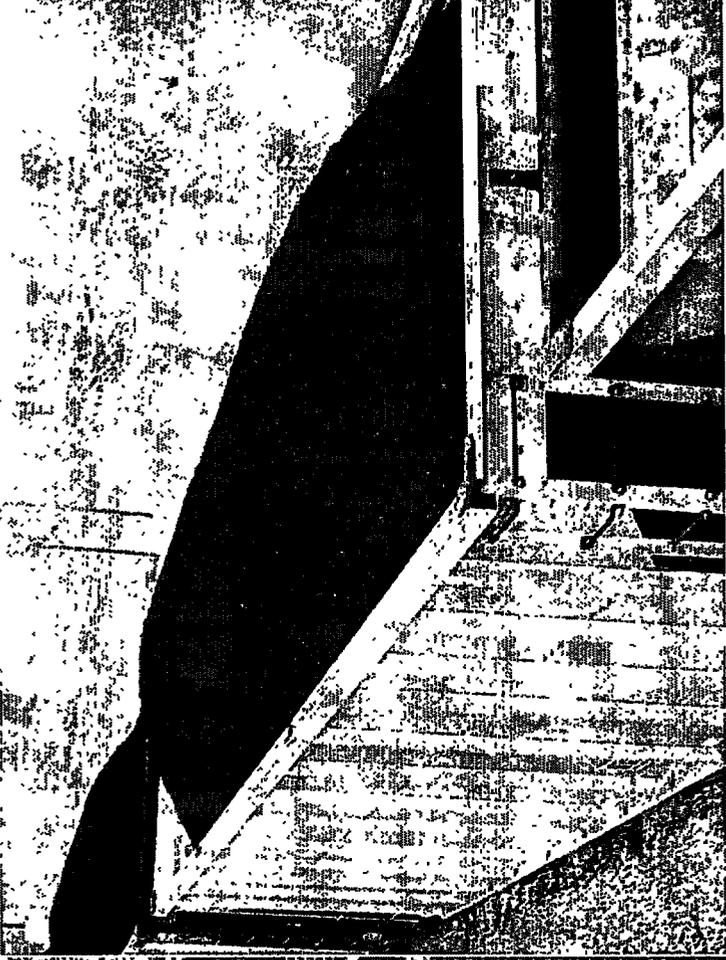
Normal Chute
5 ft. wide
Promotes center peaked load
Allows loading heights 3' to 4'
above sill

Impact of Modified Chutes



BEFORE

Note Peaked Loads, Sharp Lines, Steep Angle of Repose and other irregular surfaces which are susceptible to erosion



AFTER

Note Rounded Contour, No Sharp Angles, Flatter Angle of Repose and few irregular surfaces which are susceptible to erosion

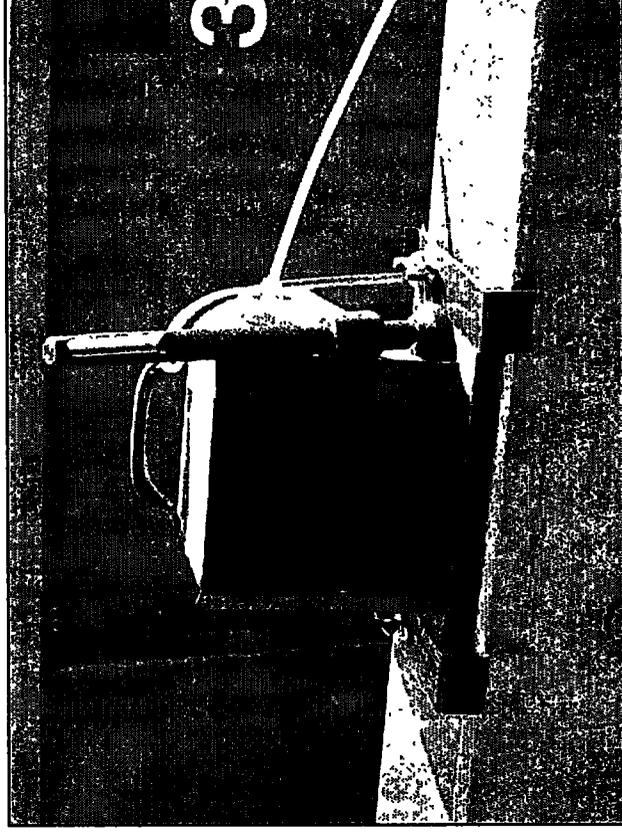
Field Profile Audits

- Monthly unannounced audits
- Trains found not in compliance, provide mines
 - Written report
 - Photograph
 - Video of train
- Audited 225 trains year to date

RTEPS and Passive Collectors



RTEPS typically applied on last car of train with Passive Collector to determine external forcings (Wind Speed/Direction, Precipitation, Ambient Temp/RH, Coal Surface Temp, and Airborne Dust)

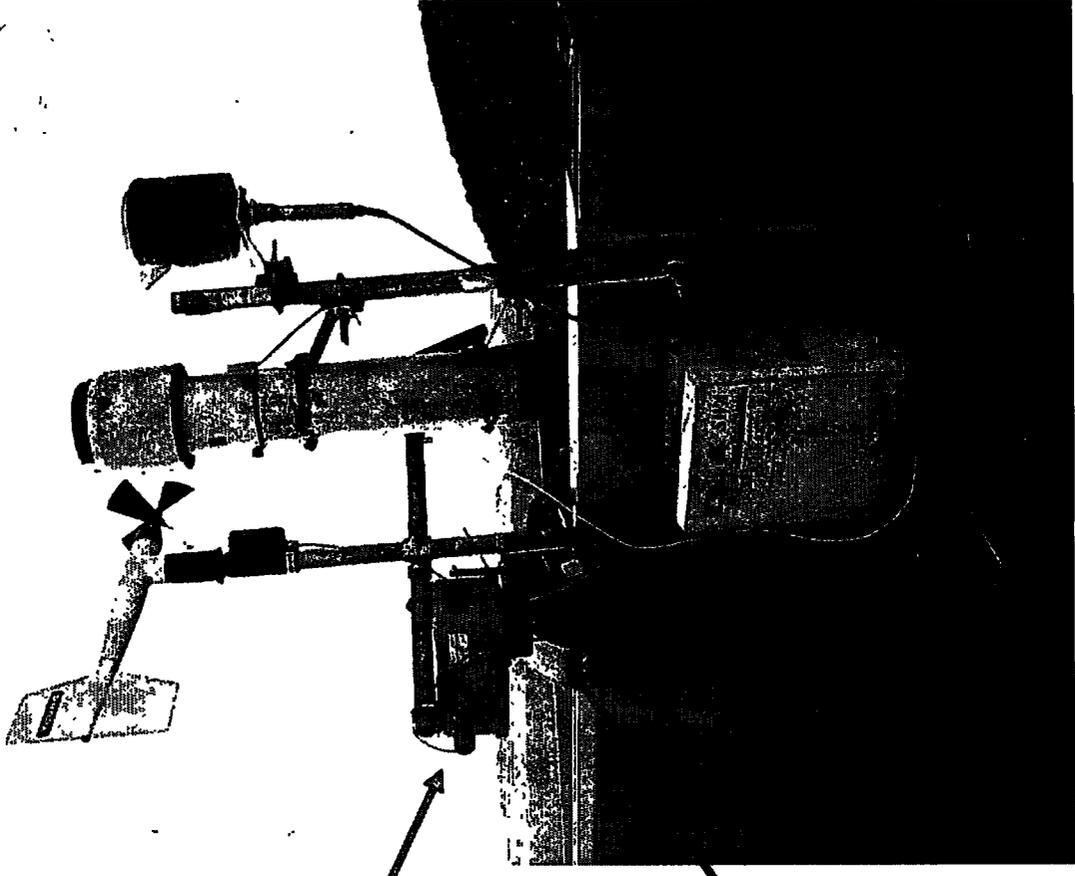


Passive Collectors applied in sets of 5 – 10 to test effectiveness of dust suppression method compared to control technique

Instrumentation

• Rail Transit Emission Profiling System (RTEPS)

- Airborne Dust Monitor
- Precipitation Gauge
- Ambient Temperature/Relative Humidity Sensor
- Propeller Anemometer
- Infrared Sensor for Coal Surface Temperature
- Global Positioning System
- Passive Dust Collector (PC)



Nacco Bridge – Undercut 2006



Coal has filtered down to the top of the bridge deck---

EXHIBIT B



Stevan B. Bobb
Group Vice President
Coal Marketing

BNSF Railway Company

2650 Lou Menk Drive
Fort Worth, Texas 76131-2830
P. O. Box 961051
Fort Worth, Texas 76161-0051

tel 817 867-6242
fax 817 352-7940

Stevan Bobb@bnsf.com

October 21, 2009

[Coal Shipper]

Dear [Coal Shipper]:

As you know, BNSF has put considerable time and resources toward identifying coal dust mitigation requirements that provide effective control with minimal burden, and we have continually engaged our customers and the mines that serve them in that effort. We have set reasonable and effective coal dust emission compliance standards for coal shippers as described in our operational rules and BNSF rule book. BNSF remains confident that it has established maximum dust emission standards that are reasonable and necessary to ensure the safety and efficiency of coal transportation. We have not specified particular mitigation measures that must be adopted by coal shippers to meet the BNSF coal dust emission standard, but have instead left to the shippers and their coal suppliers the discretion to identify and adopt appropriate mitigation measures.

BNSF has been presented with a number of customer requests to provide additional input regarding individual shipper compliance implementation programs. In addition, a consortium of vendors has proposed that BNSF allow them to design and facilitate a broad trial to assess the effectiveness of various mitigation methods. The suggested trial would align with requests made by a group of utilities who have requested that BNSF help facilitate their mitigation measurement study. To accelerate implementation of solutions to the coal dust problem, we are planning to take the steps identified below. We believe this will provide our customers with significant additional data to assist in identifying mitigation measures that will comply with BNSF's emission standards.

BNSF proposes a large-scale trial of mitigation measures in which all participants can obtain information on the effectiveness of various proposed mitigation measures. Based on prior feedback, we envision that the mitigation trial would include topper application, body feed application and, possibly, mechanical vibration.

While the details would need to be agreed to, we propose that application locations be set up at a subset of mine loadouts in order to provide economic density and minimize costs of the trial. Several mine sites appear to have fairly robust infrastructure for topper and body feed application and those properties may be the best places to perform applications. Those locations are Black Thunder, East Thunder, and North Antelope Rochelle. BNSF is, of course, open to discussions regarding the use of temporary infrastructure at other sites.

A major goal of the trial is to provide statistically significant measures on each result achieved using different mitigation approaches. To that end, BNSF would provide data support to the exercise, and would support providing integrated dust value (IDV.2) information on all measured trains to all trial participants. This may require some masking of train IDs to protect shipper confidentiality.

October 21, 2009
[Coal Shipper]

Page Two

As part of our effort to promote voluntary compliance with BNSF's coal dust emissions standard, BNSF will suspend the effective date of the standard until August 1, 2010. We hope and expect to achieve substantial compliance with the standard by that date, and we also expect that the Surface Transportation Board will by that date affirm the reasonableness of BNSF's emissions standard. We believe that the coal supply chain (utilities, mines, and BNSF) can and should use this interim period to increase its comfort with the various mitigation approaches that have been proposed.

Since your rate agreement with BNSF includes dust mitigation language, we would expect that you will pay for any chemical or application cost incurred during this trial period. As a trial participant, you will have access to all the data generated in the tests.

Please let me know as soon as possible of your interest in participating in the proposed trial as well as who at your company will be able to participate in planning this effort and be in a position to make commitments regarding trial participation. Thank you for your support in addressing this important issue and enabling PRB coal to remain a reliable, low-cost fuel source for electricity generation.

Sincerely,

A handwritten signature in black ink that reads "Steve Bobb". The signature is written in a cursive, slightly slanted style.

Steve Bobb

EXHIBIT C



Stevan B. Bobb
Group Vice President
Coal Marketing

BNSF Railway Company

2650 Lou Menk Drive
Fort Worth, Texas 76131-2830
P O Box 961051
Fort Worth, Texas 76161-0051
tel 817 867-6242
fax 817 352-7940
Stevan Bobb@bnsf.com

October 21, 2009

[Coal Shipper]

Dear [Coal Shipper]:

As you know, BNSF has put considerable time and resources toward identifying coal dust mitigation requirements that provide effective control with minimal burden, and we have continually engaged our customers and the mines that serve them in that effort. We have set reasonable and effective coal dust emission compliance standards for coal shippers as described in our operational rules and BNSF rule book. BNSF remains confident that it has established maximum dust emission standards that are reasonable and necessary to ensure the safety and efficiency of coal transportation. We have not specified particular mitigation measures that must be adopted by coal shippers to meet the BNSF coal dust emission standard, but have instead left to the shippers and their coal suppliers the discretion to identify and adopt appropriate mitigation measures.

BNSF has been presented with a number of customer requests to provide additional input regarding individual shipper compliance implementation programs. In addition, a consortium of vendors has proposed that BNSF allow them to design and facilitate a broad trial to assess the effectiveness of various mitigation methods. The suggested trial would align with requests made by a group of utilities who have requested that BNSF help facilitate their mitigation measurement study. To accelerate implementation of solutions to the coal dust problem, we are planning to take the steps identified below. We believe this will provide our customers with significant additional data to assist in identifying mitigation measures that will comply with BNSF's emission standards.

BNSF proposes a large-scale trial of mitigation measures in which all participants can obtain information on the effectiveness of various proposed mitigation measures. Based on prior feedback, we envision that the mitigation trial would include topper application, body feed application and, possibly, mechanical vibration.

While the details would need to be agreed to, we propose that application locations be set up at a subset of mine loadouts in order to provide economic density and minimize costs of the trial. Several mine sites appear to have fairly robust infrastructure for topper and body feed application and those properties may be the best places to perform applications. Those locations are Black Thunder, East Thunder, and North Antelope Rochelle. BNSF is, of course, open to discussions regarding the use of temporary infrastructure at other sites.

A major goal of the trial is to provide statistically significant measures on each result achieved using different mitigation approaches. To that end, BNSF would provide data support to the exercise, and would support providing integrated dust value (IDV.2) information on all measured trains to all trial participants. This may require some masking of train IDs to protect shipper confidentiality.

October 21, 2009
[Coal Shipper]

Page Two

As part of our effort to promote voluntary compliance with BNSF's coal dust emissions standard, BNSF will suspend the effective date of the standard until August 1, 2010. We hope and expect to achieve substantial compliance with the standard by that date, and we also expect that the Surface Transportation Board will by that date affirm the reasonableness of BNSF's emissions standard. We believe that the coal supply chain (utilities, mines, and BNSF) can and should use this interim period to increase its comfort with the various mitigation approaches that have been proposed.

Since your rate agreement with BNSF does not currently include explicit dust mitigation language, in exchange for your participation in the trial, BNSF would be willing to rebate to you the reasonable chemical or application cost incurred during the trial period. In addition, as a trial participant you will have access to all the data generated in the tests.

Please let me know as soon as possible of your interest in participating in the proposed trial as well as who at your company will be able to participate in planning this effort and be in a position to make commitments regarding trial participation. Thank you for your support in addressing this important issue and enabling PRB coal to remain a reliable, low-cost fuel source for electricity generation.

Sincerely,

A handwritten signature in black ink that reads "Steve Bobb". The signature is written in a cursive style with a large, prominent "S" and "B".

Steve Bobb

EXHIBIT D

PROTECTIVE ORDER

STB Finance Docket No. 35305

- I. Any party producing information, data, documents, or other material (hereinafter collectively referred to as "material") in discovery to another party to this proceeding, or submitting material in pleadings, that the party in good faith believes reflects proprietary or confidential information, may designate and stamp such material as "CONFIDENTIAL," and such material must be treated as confidential. Such material, any copies, and any data or notes derived therefrom:
 - (a) Shall be used solely for the purpose of this proceeding and any judicial review proceeding arising herefrom, and not for any other business, commercial, or competitive purpose.
 - (b) May be disclosed only to employees, counsel, or agents of the party requesting such material who have a need to know, handle, or review the material for purposes of this proceeding and any judicial review proceeding arising herefrom, and only where such employee, counsel, or agent has been given and has read a copy of this Protective Order, agrees to be bound by its terms, and executes the attached Undertaking for Confidential Material prior to receiving access to such materials.
 - (c) Must be destroyed by the requesting party, its employees, counsel, and agents, at the completion of this proceeding and any judicial review proceeding arising herefrom. However, counsel and consultants for a party are permitted to retain file copies of all pleadings which they were authorized to review under this Protective Order, including Paragraph 10.
 - (d) If contained in any pleading filed with the Board shall, in order to be kept confidential, be filed only in pleadings submitted in a package clearly marked on the outside "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14.
2. Any party producing material in discovery to another party to this proceeding, or submitting material in pleadings, may in good faith designate and stamp particular material, such as material containing shipper-specific rate or cost data or other competitively sensitive information, as "HIGHLY CONFIDENTIAL." If any party wishes to challenge such designation, the party may bring such matter to the attention of the Board. Material that is so designated may be disclosed only to outside counsel or outside consultants of the party requesting such materials who have a need to know, handle, or review the materials for purposes of this proceeding and any judicial review proceeding arising herefrom, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order, agree to be bound by its

terms, and execute the attached Undertaking for Highly Confidential Material prior to receiving access to such materials. Material designated as "HIGHLY CONFIDENTIAL" and produced in discovery under this provision shall be subject to all of the other provisions of this Protective Order, including without limitation paragraph 1.

3. In the event that a party produces material which should have been designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and inadvertently fails to designate the material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," the producing party may notify the other party in writing within 5 days of discovery of its inadvertent failure to make the confidentiality designation. The party who received the material without the confidentiality designation will return the non-designated portion (including any and all copies) or destroy it, as directed by the producing party, or take such other steps as the parties agree to in writing. The producing party will promptly furnish the receiving party with properly designated material.
4. In the event that a party inadvertently produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, the producing party may make a written request within a reasonable time after the producing party discovers the inadvertent disclosure that the other party return the inadvertently produced privileged document. The party who received the inadvertently produced document will either return the document to the producing party or destroy the document immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the document, the receiving party is not conceding that the document is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.
5. If any party intends to use "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material at hearings in this proceeding, or in any judicial review proceeding arising herefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material to the Board, or the court, as appropriate, with a written request that the Board or the court: (a) restrict attendance at the hearings during discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material; and (b) restrict access to the portion of the record or briefs reflecting discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.
6. If any party intends to use "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent, and all other counsel attending the deposition, and all portions of the deposition at which any such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material is used shall be restricted to persons who may review the material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of or disclose "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material shall be kept under seal and treated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.

7. To the extent that material reflecting the terms of shipper-specific data or other proprietary information is produced by a party in this or any related proceedings and is held and used by the receiving person in compliance with this Protective Order, such production, disclosure, and use of the material and of the data that the material contains will be deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904.
8. Except for this proceeding, the parties agree that if a party is required by law or order of a governmental or judicial body to release "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" material produced by the other party or copies or notes thereof as to which it obtained access pursuant to this Protective Order, the party so required shall notify the producing party in writing within 3 working days of the determination that the "CONFIDENTIAL" material, "HIGHLY CONFIDENTIAL" material, or copies or notes are to be released, or within 3 working days prior to such release, whichever is soonest, to permit the producing party the opportunity to contest the release.
9. Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in this proceeding.
10. Each party has a right to view its own data, information and documentation (i.e., information originally generated or compiled by or for that party), even if that data, information and documentation has been designated as "HIGHLY CONFIDENTIAL" by a producing party, without securing prior permission from the producing party. If a party or parties (the "filing party or parties") file and serve upon another party or parties (the "reviewing party or parties") a pleading or evidence containing the "HIGHLY CONFIDENTIAL" material of the filing party or parties, the filing party or parties shall also contemporaneously provide to outside counsel for the reviewing party or parties a list of the "HIGHLY CONFIDENTIAL" information of the filing party or parties contained in the pleading that must be redacted from the "HIGHLY CONFIDENTIAL" version prior to review by the In-house Personnel of the reviewing party or parties.
11. Any party filing with the Board a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" pleading in this proceeding should simultaneously file a public version of the pleading.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____ [date], governing the production of confidential documents in STB Finance Docket No. 35305, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35305 or any judicial review proceeding arising herefrom. I further agree not to disclose any data or information obtained under this Protective Order to any person who has not executed an Undertaking in the form hereof. At the conclusion of this proceeding and any judicial review proceeding arising herefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that counsel may retain copies of pleadings which they were authorized to review under the Protective Order.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

As outside [counsel] [consultant] for _____, for which I am acting in this proceeding, I have read the Protective Order served on _____ [date], governing the production of confidential documents in STB Finance Docket No. 35305, understand the same, and agree to be bound by its terms. I further agree not to disclose any data, information or material designated "HIGHLY CONFIDENTIAL" to any person or entity who: (i) is not eligible for access to "HIGHLY CONFIDENTIAL" material under the terms of the Protective Order, or (ii) has not executed a "HIGHLY CONFIDENTIAL" undertaking in the form hereof. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "HIGHLY CONFIDENTIAL," that I will limit my use of those documents and the information they contain to this proceeding and any judicial review proceeding arising herefrom, that I will take all necessary steps to assure that said documents and information will be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said documents or information by personnel of my client, its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding and any judicial review proceeding arising herefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel and consultants may retain file copies of pleadings filed with the Board. I further understand that I must destroy all notes or other documents containing such highly confidential information in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL" by, or disclose any information contained therein to, any persons or entities for which I am not acting in this proceeding.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____