



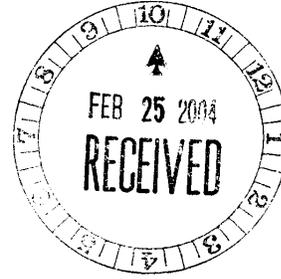
BOSTON & MAINE CORPORATION  
MAINE CENTRAL RAILROAD COMPANY  
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK  
NO. BILLERICA, MASS. 01862

210157

LAW DEPARTMENT  
(978) 663-1029

February 23, 2004



Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W., Suite 700  
Washington, D.C.

**Re: Granite State Concrete Co., Inc. and Milford-Bennington RR Co.,  
Inc. v. Boston and Maine Corp. and Springfield Terminal Railway  
Co.**  
Docket No. NOR ~~42038~~ 42083

Dear Secretary Williams:

Enclosed for filing please find a redacted original and 10 redacted copies of the Rebutal of the Boston and Maine Corporation and Springfield Terminal Railway Company in the above-referenced matter, as well as one original under seal. The defendants are making their filing in this manner pursuant to the Board's decision of November 26, 2003 adopting the protective order sought by the parties. As directed by the protective order, defendants are filing an original and 10 copies with all confidential information removed, and one original under seal with all confidential information intact. Also enclosed is a disk containing the documents being filed today, in both redacted and original versions.

Thank you for your attention to this matter. Please feel free to contact me if you should have any questions or comments.

Sincerely,

Robert E. Culliford  
Corporate Counsel

ENTERED  
Office of Proceedings

FEB 25 2004

Part of  
Public Record

cc: James E. Howard, Esq.—redacted and clean copies

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing documents were served on February 23, 2004, by Federal Express, postage prepaid, on counsel for the plaintiffs, as follows:

James E. Howard, Esquire  
James E. Howard, L.L.C.  
One Thompson Square, Suite 201  
Charlestown, MA 02129

  
Robert B. Culhford

February 23, 2004

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

Docket No. NOR 42083

---



**GRANITE STATE CONCRETE, Inc. and  
MILFORD BENNINGTON RAILROAD COMPANY, Inc.**

vs.

**BOSTON AND MAINE CORPORATION and  
SPRINGFIELD TERMINAL RAILWAY COMPANY**

---

**REBUTTAL OF THE BOSTON AND MAINE CORPORATION and  
SPRINGFIELD TERMINAL RAILWAY COMPANY**

---

The Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford") hereby submit their rebuttal to the reply filed on February 9, 2004 by Granite State Concrete Company, Inc. ("Granite State") and the Milford-Bennington Railroad Company, Inc. ("MBR").

**I. ARGUMENT**

**A. Guilford is not Seeking to Challenge the Board's Partial Revocation of the Class Exemption in its September 15<sup>th</sup> Decision.**

Contrary to the arguments presented by Granite State and MBR in their reply

ENTERED  
Office of Proceedings

**FEB 25 2004**

Part of  
Public Record

statement, Guilford is not seeking to appeal or otherwise challenge the Board's partial revocation of the Class Exemption for stone products in a decision served on September 15, 2003. *Granite State Concrete Company, Inc. and Milford-Bennington Railroad Company, Inc. v. Boston and Maine Corporation and Springfield Terminal Railway Company*, STB Docket No. 42083, served September 15, 2003 ("September 15<sup>th</sup> Decision"), at 5. What Guilford pointed out in its Opening Statement was that the September 15<sup>th</sup> Decision was a *partial* revocation of the Class Exemption for Stone Products ("Class Exemption"), as the Board clearly stated the exemption was only being revoked "...to the extent necessary to allow the Board to give consideration to [Guilford's] actions with respect to the service provided by [MBR] to Granite State. *Opening Statement of the Boston and Maine Corporation and Springfield Terminal Railway Company* ("Guilford Opening Statement"), at 6. This position is clearly supported by the September 15<sup>th</sup> Decision, which was simply a revocation "to the extent necessary" to allow the Board to initiate this proceeding, something it could not have done had the Class Exemption remained in complete effect. *Consolidated Rail Corp.—Declaratory Order—Exemption*, 1 I.C.C.2d 895 (1986). Moreover, if the Class Exemption were revoked in its entirety, the Board would not have reserved judgment on the issue of whether regulation, "...is required to carry out the many provisions of the rail transportation policy favoring competition." a determination that must be made prior to revocation. *September 15<sup>th</sup> Decision*, at 5, 49 U.S.C. § 10502(d).

As a result, contrary to the claims by Granite State and MBR that Guilford is attempting to somehow appeal the September 15<sup>th</sup> Decision or otherwise have the Class Exemption "reinstated", Guilford is simply pointing out the obvious, the September 15<sup>th</sup>

Decision was only a partial revocation of the Class Exemption. Furthermore, since the principal basis for this partial revocation was the alleged lack of truck options available to Granite State—a determination that is not supported by the record—Guilford believes that complete revocation is not appropriate.

**B. Trucking Competition was Available if Granite State Elected to Utilize this Mode of Transportation.**

Granite State and MBR spend substantial energy arguing that truck competition was not available during the period that Guilford allegedly prevented normal rail service, apparently realizing that the record in this proceeding does not support their position. Relying on two permits, issued in 1989 and 2001 respectively, Granite State and MBR continue to insist that Granite State is precluded from trucking larger stone products from Wilton to Milford. However, the plain language of both of these permits supports a finding that trucking was an option if Granite State chose to pursue it. Moreover, the record in this proceeding has also shown the Granite State does use trucks when it is in its best interest to do so, which in the case of four inch crushed stone it is not.

Pursuant to a permit issued by the Town of Wilton in 1989, Granite State was required to transport all product of its rock crusher by rail. *Reply Verified Statement of John G. MacLellan, III* (“MacLellan Reply V.S.”), Exhibit One. Despite this blanket prohibition on trucking, however, Granite State continued to use trucks to move so-called “crushed base” throughout the 1990’s, with no interference from the Town until later in that decade. *Deposition of John G. MacLellan, III* (“MacLellan Depo”), at 19 (Exhibit G to Guilford’s Opening Statement). Apparently, “crushed base” does not move well by

rail and therefore Granite State felt that the 1989 permit—despite its prohibition on trucking *all* product of the rock crusher—allowed for trucking of this material because it was a “byproduct” of the crusher and not the final product. *MacLellan Reply V.S.*, at 3. Notwithstanding the semantics utilized by Granite State to characterize the “crushed base” as a byproduct, it is plain that Granite State does use trucks when it is in their best interest to do so, and that the Town of Wilton did nothing to challenge this practice for over 10 years. *MacLellan Depo.*, at 19; *MacLellan Reply V.S.*, at 4.

When the Town of Wilton did question this practice, rather than order it to stop the Town simply issued a new permit in 2001 that expressly allowed for the trucking of “crushed base”, and also allowed an exception to the blanket prohibition on trucking four inch minus stone contained in the 1989 permit. *MacLellan Reply V.S.*, at 5, Exhibit Four. This exception allowed for the trucking of the product of the rock crusher in the event that rail service becomes “unavailable or impracticable”, terms that Granite State and MBR apparently believe have the same meaning—that rail service would have to cease for trucking to be an option. *Id.* However, by its plain language, the 2001 permit does allow trucking in the event that rail service were to cease *or* in the event that rail service did not cease but somehow became “impracticable”. In other words, the 2001 permit expressly contemplates that trucking of four inch minus stone is possible if rail service were affected in a manner that fell far short of cessation of service. Granite State and MBR make no attempt to address this issue, and instead simply say that they do not

believe the Town would allow the trucking of four inch stone unless rail service were to stop.<sup>1</sup>

To further support this contention, Granite State and MBR rely upon the minutes of the Planning Board meeting to establish that trucking could not be utilized for four inch stone without prior approval of the Town, but this assertion is also wrong. First, the permit itself does not require any prior approval, and it is the permit that defines the conditions under which Granite State may operate. Second, the minutes of the Planning Board produced by Granite State and MBR make it clear that MBR would have the discretion to determine whether rail service was “unavailable or impracticable”.

*MacLellan Reply V.S.*, Exhibit 5, Page One, line 36. Moreover, the minutes also show that prior approval for trucking is not necessary and that the Planning Board simply reserved the right to reconsider the site plan approval in the event rail service did become “unavailable or impracticable.” *Id.*, Exhibit Five, Page Two, lines 27-29, 34-37.

In addition, even if prior approval were required, nowhere do Granite State and MBR state that they approached the Planning Board for permission to truck product during the period when Guilford was allegedly severely restricting their ability to operate<sup>2</sup>. Instead, Granite State and MBR simply assumed that it would be a fruitless exercise. *Id.*, at 5. If, as Granite State and MBR allege, Guilford’s decision to implement separate operating windows severely damaged their operations, it would seem that Granite State and MBR would have sought to exercise their rights under the permit or the

---

<sup>1</sup> Implicit in this statement is that the effect of the separate operating windows implemented by Guilford could not have been too severe on either Granite State or MBR, certainly not to the point of being “impracticable”

<sup>2</sup> Nor for that matter does the record indicate the either Granite State or MBR approached the Town for permission to operate outside of the existing window.

assistance of the Town. Having done neither, their claims that trucking competition was not available are without merit.<sup>3</sup>

There is another, more compelling reason why Granite State does not utilize trucks for four inch minus stone, and that is because it is in their best interest to use the MBR for this purpose.<sup>4</sup> More particularly, Granite State is the only customer available to MBR, and the success of MBR is dependent upon being able to derive revenue from this source. *Id.* Exhibit Three, Page Two. Furthermore, apparently due to its reliance upon Granite State, MBR charges an artificially low rate for the movement of stone- [REDACTED] [REDACTED] despite the fact that its expenses for providing the service are approximately [REDACTED] *Deposition of Peter R. Leishman* ("Leishman Depo.") at 119. Exhibit A hereto. This low rate, established by a handshake between Granite State and MBR in 1991 and apparently never increased, makes it impossible for trucks to be competitive with rail in this instance. Because of the dependence of MBR upon Granite State for its financial survival and the market dominance that this leverage provides to Granite State, it is not likely that Granite State would use trucking even absent the purported limitations of the 1989 and 2001 permits. Accordingly, Granite State and MBR cannot rely upon the permitting restrictions to establish that there is a lack of truck competition, as neither Granite State nor MBR have shown any desire to utilize trucks, because it is not in their best interest to do so. As a result, complete revocation of the Class Exemption on this basis is unwarranted.

---

<sup>3</sup> Mr. MacLellan's claims that trucks would be required to travel over Town roads is contrary to his earlier testimony that Town roads are not necessary to transport by truck. *MacLellan Depo.*, at 23, Exhibit B hereto.

<sup>4</sup> Indeed, prior to MBR beginning operations, Granite State trucked all of its product from Wilton, and was actually interested in buying the line to establish a haul road to move trucks between Wilton and Milford. *MacLellan Depo.*, at 15, Exhibit B hereto.

### C. Damages Did Not Begin to Accrue Until the September 15<sup>th</sup> Decision

Relying upon an irrelevant decision that addresses damages to be assessed for the movement of a *regulated* commodity, Granite State and MBR assert that damages should have accrued prior to the date of the partial revocation of the exemption by the Board. Unfortunately, given the nature of the Class Exemption and the Board's clear decision in *Pejepscot*, it is plain that no damages could begin to accrue prior to September 15, 2003 at the earliest.

In the first instance, the Board has yet to completely revoke the Class Exemption as it applies to Guilford, as discussed in Point 1.A, above. Accordingly, it is likely that no damages can accrue unless and until the Board finds that total revocation is appropriate.

Second, the claim by Granite State and MBR that limiting the beginning of the accrual of damages to September 15, 2003 would reward Guilford for illegal practices is simply wrong. In reality, given the scope of the Class Exemption, Guilford could not have committed any illegal practices prior to revocation. As the Board noted in *Pejepscot*, "Thus, even if a carrier's conduct would constitute a statutory violation during a period of regulation, the exemption bars regulatory relief *during the period when the exemption is in force*. *Pejepscot Industrial Park, Inc. D/B/A Grimmel Industries—Petition for Declaratory Order* ("Pejepscot"), STB Finance Docket No. 33989, Served May 15, 2003, at 4 (*emphasis added*). Accordingly, prior to revocation Guilford cannot be charged with a violation of its statutory duties, as Guilford is relieved of those statutory obligations during the period that the exemption is in effect. Since the Class Exemption relieves Guilford of its common carrier obligations, it simply follows that

Guilford could not have violated the provisions of 49 U.S.C. §§10702, 11101, and 11102, as those provisions do not apply absent revocation.

Finally, even if the September 15<sup>th</sup> Decision was a complete revocation of the Class Exemption, it was limited to that date and was not revoked *ab initio*. As the Board noted in *Pejepscot*, a carrier's actions could at most constitute a violation during periods when the exemption is not in effect. *Pejepscot*, at 4. What the Board did not say—and could not say—was that after revocation a carrier would then be liable for its actions during the period that the exemption was in effect. Such a finding would turn the exemption process on its head, as carriers would no longer have the freedom to permit market forces to determine how they act, as they would constantly be concerned about future claims of statutory violations. This chilling effect would undermine the goal of the exemption process, which was to deregulate the railroad industry while providing for revocation when necessary or appropriate. *Illinois Commerce Commission v. ICC*, 819 F.2d 311, 313 (D.C. Cir. 1987).

**D. The Justifications Offered to Explain the Unsafe Conduct of MBR are Wholly Without Merit.**

Apparently desperate to show that the MBR does not routinely ignore customary safety rules and practices, Granite State and MBR resort to misstatements and half-truths to make their case. Because there is no factual support for any of these assertions, and indeed in many cases the evidence submitted by Granite State and MBR contradicts prior testimony and actions by MBR, it is clear that Guilford acted reasonably in response to an unsafe operating condition.

In the first contradiction, Granite State and MBR rely upon the testimony of Susan Madigan to support the proposition that no bulletin was required to be issued by

MBR. Ms. Madigan believes that a bulletin was not required to be issued because the derail was located within Yard Limits and that crews were required to be able to stop within one-half the distance of their range of vision. *Reply Verified Statement of Susan Madigan* (“Madigan Reply V.S.”), at 2. Yet despite Ms. Madigan’s belief, apparently Mr. Leishman felt that the issue was important enough to hold a briefing on the location of the derail for his employees. *Reply Verified Statement of Peter R. Leishman* (“Leishman Reply V.S.”), at 3. In light of the fact that the purpose of a bulletin is to notify employees of changes to instructions affecting the movement of trains (regardless of whether such movements are within Yard Limits or Main Track), and Mr. Leishman apparently felt that his crews should be alerted to the effect of the derail on MBR operations, it is astounding that MBR would not take the simple step of issuing a written bulletin to alert both Guilford and MBR crews to the existence of the derail. Perhaps most important, however, is that the MBR timetable requires that bulletins be issued to alert crews to changes and modifications to the NORAC Rule Book and Timetable, something that Ms. Madigan and Mr. Leishman either ignored or forgot. Exhibit C hereto.

In addition, notwithstanding Mr. Leishman’s prior agreement to utilize the derail for both passenger and freight operations, Ms. Madigan relies upon a hypertechnical interpretation of NORAC Rule 104(d) to claim that MBR was not required to maintain the derail in the derailing position at all times because the location of the derail was not marked as a “fouling point” in accordance with Rule 104(e). *Madigan Reply V.S.*, at 1. Of course, to reach this conclusion, Ms. Madigan ignores the very purpose underlying the placement of the derail at milepost 16.36, which was to prevent equipment from

inadvertently traveling onto—or “fouling”—Guilford’s line. On this point, there seems to be no dispute as even Mr. Leishman acknowledges that the derail was to be used to at least prevent passenger cars from fouling Guilford property. *Deposition of Peter R. Leishman* (“Leishman Depo.”) at 45, Exhibit A hereto. Accordingly, since the purpose of the derail was to prevent equipment from “fouling” Guilford’s property, NORAC Rule 104(d) did apply and MBR failed to adhere to its requirement that the derail be kept in a derailing position at all times when a train is not passing over it.

What is also puzzling about the insistence by Ms. Madigan and Mr. Leishman that the derail was not required to be kept in the derailing position is that this assertion ignores Mr. Leishman’s prior understanding of the proper use of derails. More particularly, as part of the procedure for qualifying MBR employees to operate on Guilford’s line, each MBR employee is required to undergo a rules class annually and to pass a test on the NORAC Rules at the conclusion of each class. *Rebuttal Verified Statement of Andrew Zompa* (“Zompa Rebuttal V.S.”), ¶ 2. In 2002 and 2003 this test asked what the proper position for a derail would be unless removed to permit movement, and on both occasions Mr. Leishman answered that the proper position would be the derailing position. *Id.*, ¶ 3, Attachments A and B. Now that Granite State and MBR desperately need to show that MBR was using the derail properly, however, Mr. Leishman apparently has either forgotten or ignored his prior statements regarding the proper use of a derail.

Next Granite State and MBR try to discredit Guilford by claiming that the reasons underlying Guilford’s request that a derail be installed on the property of MBR were illusory. That Granite State and MBR would raise this argument is yet another indication of their recognition that they have not made their case, for the simple reason that MBR

was informed of Guilford's concerns in late 2002, and expressed no objection at that time. *Deposition of Erwin R. Towle* ("Towle Depo"), at 22, Exhibit A to Guilford's Opening Statement, *Leishman Depo*, at 45-46, Exhibit A hereto. Moreover, neither MBR nor Granite State has previously raised any concerns with the use of the derail for passenger service only, and indeed agreed with the Federal Railroad Administration ("FRA") that this practice made sense for that purpose. *Verified Statement of F. Colin Pease in Support of Opening Statement of Granite State and MBR*, at 15. Given that Granite State and MBR apparently believed that the placement of the derail made sense in late 2002—and that the only disagreement is with regard to the extent of its use—they cannot now claim that Guilford did not have a sound basis for requesting that MBR install the derail at that time. Moreover, the claim that Guilford never inspected the passenger cars is simply wrong, as both Guilford and FRA inspected this equipment upon its arrival in Nashua, New Hampshire. *Rebuttal Verified Statement of James F. Olson* ("Olson Rebuttal V.S."), ¶ 2. Granite State and MBR are also wrong in contending that the passenger cars were fully compliant with applicable safety rules, as FRA found that the passenger cars were not in compliance with FRA regulations prior to their delivery to Wilton. *Id.*, ¶ 3, Attachment A.

**E. MBR's Justifications for Performing Maintenance Work on Guilford Property are Completely False and Without any Support in the Record of This Proceeding.**

In perhaps the clearest example yet that Granite State and MBR are willing to distort the truth in order to make their case, Granite State and MBR once again attempt to justify MBR's unauthorized and unsafe work on Guilford's property. By doing so,

Granite State and MBR have underscored the reasons why Guilford is so concerned with the manner in which the MBR operates its railroad.

Ignoring the testimony submitted by each Guilford employee deposed in this proceeding, Granite State and MBR continue to insist that Guilford was aware that MBR was performing maintenance work and that Guilford somehow condoned this practice. However, each employee that was asked whether they had knowledge of this practice testified that they did not. *Bergeron Depo.*, at 30-35, 42, *Nault Depo.*, at 10-11, *Preston Depo.*, at 7-10, *Garrity Depo.*, at 7, *Larkin Depo.*, at 11-15, *Morretto Depo.*, at 5-6. Exhibits 5 through 10 of Guilford's Reply to Motion to Compel. Undeterred, Granite State and MBR also attempt to show that each of these employees was lying about their knowledge of MBR maintenance practices, again despite the fact that each employee affirmed that they were being truthful in their testimony. *Verified Statements of Gary Nault, Calvin Preston, Steven Larkin, Roger Bergeron, Michael Moretto and Andrew Zompa in Support of Guilford's Reply to Granite State and MBR Motion to Compel*. On this issue, Granite State and MBR are simply wrong, and their continued efforts to prove their point is a clear sign of their desperation.<sup>5</sup>

Granite State and MBR also continue to assert that any maintenance work done on Guilford's line was done safely and in accordance with applicable regulations, despite the prior acknowledgement of MBR that this could not be so. For example, Mr.

---

<sup>5</sup> Granite State and MBR present supposedly new evidence that Guilford was aware of MBR's maintenance in the form of a letter from Mr. Bergeron to Mr. Leishman. *Leishman Rebutal V.S.*, Exhibit One. Contrary to the claims of Granite State and MBR, however, Mr. Bergeron did not write this letter because he had knowledge that MBR was maintaining Guilford's property. *Rebuttal Verified Statement of Roger Bergeron ("Bergeron Rebuttal V.S.")*, ¶ 2. In reality, Mr. Bergeron wrote this letter in response to an inquiry from Mr. Leishman as to whether MBR could maintain Guilford's line, and emphatically confirmed that this practice would not be permitted. *Id.*, ¶ 3.

Leishman states that he is properly qualified to perform maintenance work. *Leishman Reply V.S.*, at 4. While it may be true that Mr. Leishman is qualified to perform maintenance work on MBR property, by his own admission he is not qualified to do so on Guilford property. More particularly, when asked in his deposition whether he was qualified to maintain Guilford's property pursuant to 49 C.F.R. §213.7, Mr. Leishman answered that he was not. *Leishman Depo.*, at 28, Exhibit A hereto. Moreover, when asked in his deposition whether he was qualified under Guilford's Roadway Worker Protection rules, Mr. Leishman also testified that he was not<sup>6</sup>. *Leishman Depo.*, at 37, Exhibit A hereto. Finally, when asked if the Trackage Rights Agreement between MBR and Guilford permitted MBR to maintain Guilford's track, Mr. Leishman acknowledged that it did not. *Leishman Depo.*, at 36-37, Exhibit A hereto.

In an effort to bolster Mr. Leishman's testimony, Granite State and MBR once again rely upon Ms. Madigan for the proposition that the NORAC Rules did not require written permission from the Guilford dispatcher prior to taking the track out of service to perform maintenance. On this issue Ms. Madigan is wrong as well, apparently because she fails to understand the method of operation on Guilford's track under the NORAC Rules and/or does not understand the nature of maintenance work. More particularly, Ms. Madigan claims that written permission to occupy the track is only necessary where ABS, DCS or Interlocking Rules are in effect. *Madigan Reply V.S.*, at 3. Apparently, had Ms. Madigan realized that DCS rules are in effect on this portion of the Guilford line, her

---

<sup>6</sup> Granite State and MBR appear to argue that—because Guilford was not aware of MBR's practice of maintaining Guilford's line—Guilford could not know whether a violation of the Roadway Worker Protection regulations could have occurred. The issue is not whether Guilford's Roadway Worker Rules were followed or not, because Mr. Leishman was not qualified by Guilford pursuant to those rules. Accordingly simply performing maintenance when not qualified under the federal Roadway Worker Protection regulations is a violation. 49 C.F.R. §214.313.

position would have been different. *Zompa Rebuttal V.S.*, ¶ 4. Moreover, by its very nature track maintenance “disturbs the track”, providing another basis for requiring written permission prior occupy the track pursuant to NORAC Rule 132(1). *Id.*, ¶ 5.

Despite consistently acknowledging that he is not qualified to maintain Guilford’s property, Mr. Leishman apparently now believes that he is, which is perhaps the most important issue underlying this proceeding—that MBR cannot acknowledge when it has made a mistake. Instead, MBR and Mr. Leishman choose to either ignore the plain facts or to distort them to be more favorable to MBR.

**F. Wayne Wheeler was not Qualified to Operate Trains on Guilford Property in October, 2003.**

In yet another example of its woefully poor understanding of customary safety rules and practices, MBR continues to allege that engineer Wayne Wheeler was qualified to operate a locomotive on Guilford’s property in October, 2003. This position, however, ignores the qualifications procedures that had been utilized since MBR began operating over Guilford’s line, as well as the applicable safety regulations governing Engineer Certifications.

More particularly, MBR asserts that Mr. Wheeler had passed a Guilford rules exam in March of 2003, and that therefore he was qualified to operate a locomotive on Guilford property. What MBR does not disclose, however, was that Mr. Wheeler was not present on June 20, 2003 when every other MBR employee participated in a rules class to become qualified on the new operating procedures being implemented by Guilford. *Zompa Rebuttal V.S.*, ¶ 6. In addition, Mr. Leishman admitted in his deposition that Mr. Wheeler had not operated over the line for over a year prior to October, 2003, which

would require that Mr. Wheeler be re-qualified in the physical characteristics of the line pursuant to Guilford Special Instruction C.2, which he was not. *Leishman Depo.*, at 106, Exhibit A hereto, *Zompa Rebuttal V.S.*, ¶ 7, Attachment C. Finally, in October of 2003, MBR had not notified Guilford that Mr. Wheeler was a certified locomotive engineer, meaning that Guilford would be in violation of the applicable federal safety regulations if it had allowed Mr. Wheeler to operate a locomotive on Guilford property. *Rebuttal Verified Statement of Larry Ferguson* (“Ferguson Rebuttal V.S.”), ¶ 3, *49 C.F.R.* §240.229.

**G. Guilford did take Reasonable Steps to Accommodate Granite State and MBR.**

Not surprisingly, Granite State and MBR also attempt to show that Guilford did not take reasonable steps to accommodate Granite State and MBR by disputing or ignoring each step taken by Guilford to improve the efficiency of MBR operations. These attempts to discredit Guilford’s efforts to facilitate operations clearly show that nothing that Guilford could have done would have appeased Granite State and MBR.

Again distorting the facts, Granite State and MBR downplay Guilford’s efforts to assist MBR in response to a broken rail reported by MBR. Despite the fact that Guilford immediately dispatched a member of its Engineering Department to walk the MBR train over the broken rail and also to temporarily provide additional operating hours to make up for any lost time, Granite State and MBR take Guilford to task for failing to notify MBR that the broken rail had been repaired. This is a curious argument, considering that Mr. Leishman himself acknowledges that MBR elected not to operate despite the knowledge that the track was back in service. *Leishman Depo.*, at 94, Exhibit A hereto.

Finally, despite their claims that Guilford did not notify MBR that the track was back in service, Mr. Leishman was aware of this fact on the first day, yet still did not operate. *Leishman Depo.*, at 93, Exhibit A hereto. Once again, Granite State and MBR have shown their willingness to distort the facts to support their argument.

In perhaps the most bizarre claim yet, Granite State and MBR take Guilford to task for maintaining the line to permit operations at speeds of up to 10 miles per hour, something that both parties have sought for a number of years. *Verified Statement of Peter Leishman in Support of Opening Statement of Granite State and MBR*, at 11. Apparently, despite the fact that Guilford's Engineering Department has determined that the speed on the line is 10 miles per hour, MBR has elected not to operate above five miles per hour on the last one-half mile of the line. *Leishman Reply V.S.*, at 7. Once again, MBR apparently believes that it is in a better position than Guilford to determine the condition of Guilford's property, despite Mr. Leishman's past acknowledgement that he has no such qualifications. *Leishman Depo.*, at 28, Exhibit A hereto, 49 C.F.R. §213.7. Consequently, while MBR can operate at five miles per hour if it so chooses, the truth of the matter is that Guilford did rehabilitate the portion of the line that MBR appears to be so concerned about. As a result, Guilford recognizes that the speed on the entire line is 10 miles per hour and there is no basis to allege that Guilford has not improved operating times on the line by performing extensive rehabilitation without interfering with MBR's operations. *Bergeron Rebuttal V.S.*, ¶¶ 4-5.

**H. Granite State and MBR have not Shown That They Have Taken Reasonable Steps to Mitigate Their Damages.**

As pointed out by Guilford in its Reply, MBR could have moved significantly more trains than it actually did during November and December of 2003 by simply taking advantage of the revised operating window, the increased speeds on the line, and the exceptionally mild winter that New England has experienced to date. *Guilford Reply*, at 13. Nevertheless, Granite State and MBR continue to allege that their efforts to mitigate damages were reasonable. As the facts underlying this proceeding show, however, neither Granite State nor MBR were willing to undertake relatively simple steps to mitigate their damages, and instead ignored multiple opportunities to help themselves.

To support their contention that they have taken reasonable steps to mitigate their damages, Granite State and MBR assert that the shorter days and colder temperatures in November precluded them from operating more than three trains per day. Notwithstanding the vagaries of New England weather, however, this argument rings hollow for at least two reasons. First, it was mild in both November and December in New England, with temperatures remaining above freezing on most days. Second, shorter days only become relevant if MBR is willing to operate later in the day, and the facts clearly show that on multiple occasions MBR failed to take advantage of daylight for reasons that are unexplained.

More particularly, during November and early December of 2003 temperatures in New Hampshire were extremely mild, with the mean temperature being well above freezing as indicated in the chart attached hereto as Exhibit D. Accordingly, there is no

basis to support the claims of Granite State and MBR that cold weather had an effect on operations.<sup>7</sup>

Similarly, it is also clear that shorter days could not have affected the operations of MBR, because on most days MBR discontinued operations well before sundown and often before noon. Specifically, MBR discontinued operations before noon on November 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, and 21<sup>st</sup>. In addition, MBR also discontinued operations before three p.m. on November 3<sup>rd</sup>, 5<sup>th</sup>, 13<sup>th</sup>, 24<sup>th</sup>, 25<sup>th</sup>, and 26<sup>th</sup>. *Ferguson Rebuttal V.S.*, ¶ 4, Attachment A. Accordingly, given the short hours of operation voluntarily assumed by MBR, it is also difficult to see how shorter days in November had any effect on rail service. Likewise, it is also clear that MBR could have moved more trains if it chose to, and that MBR has offered no reasonable explanation as to why it did not operate longer each day.<sup>8</sup> Nor has Granite State or MBR attempted to explain why they discontinued operations on December 4, 2003, despite the unseasonably mild weather throughout December. *Guilford Reply*, at 13.

Granite State and MBR also seem to believe that it did not make sense to investigate the acquisition of additional cars to operate additional trains on the line by alleging that this would be prohibitively expensive and not feasible. Of course, Mr. Leishman has also admitted that he did not even investigate this option, which would lead to the conclusion that Granite State and MBR do not know whether the cost of acquiring additional cars would in fact be prohibitively expensive. *Leishman Depo.*, at 84-85,

---

<sup>7</sup> In fact, MBR has the past operated into January, which would seem to indicate a willingness to operate if possible. *MacLellan Opening Statement V.S.*, Exhibit One. Why that practice was not followed in this instance is unexplained.

<sup>8</sup> MBR's claims that it has moved as many cars in November of 2003 as the previous year are disingenuous, because operating speeds on the line were not raised to 10 miles per hour in 2002, and MBR does not indicate whether it worked longer days in that period or whether the temperatures were colder or warmer.

Exhibit A hereto. Furthermore, the assertion that it would not be feasible to operate additional trains on a single track line is simply wrong, as there is a passing siding along the line on which cars could be parked while a train is passing, making it in fact possible to operate additional trains. *Bergeron Rebutal V.S.*, ¶ 6.

In addition, as discussed in Point I.A. above, both Granite State and MBR apparently assumed—without asking—that they could truck product from Wilton to Milford. Accordingly, any claims made by Granite State and MBR with regard to the cost of trucking must be dismissed, as by their own admission neither party performed any credible research into this option.

Finally, MBR claims that it has lost approximately [REDACTED] in revenue as a result of Guilford's allegedly unreasonable actions, yet has failed to disclose the full amount of the expenses that it has avoided during this period. More particularly, MBR does identify some costs that have been avoided, but fails to mention that the full cost—on a per car basis—[REDACTED] *Leishman Depo.*, at 120, Exhibit A hereto. Accordingly, the most that MBR is entitled to recover is approximately [REDACTED] per car, the difference between revenue and expenses on a per car basis.

## II. CONCLUSION

For the foregoing reasons, Guilford respectfully requests that the Board find that Guilford has acted reasonably with respect to the operations of Granite State and MBR and/or that Granite State and MBR are not entitled to damages.

Respectfully submitted,



Robert B. Culliford  
Iron Horse Park  
North Billerica, MA 01862  
(978) 663-1029

Attorney for:

*Boston and Maine Corporation  
Springfield Terminal Railway  
Company*

**Exhibit A**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and  
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and  
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF PETER R. LEISHMAN, taken  
pursuant to Notice on behalf of Boston and  
Maine Corporation and Springfield Terminal  
Railway Company, before Simonne J. Elwood,  
R.P.R. and a Notary Public in and for the  
Commonwealth of Massachusetts, at the office of  
Guilford Rail System, Iron Horse Park, North  
Billerica, Massachusetts, commencing on  
Tuesday, November 11, 2003 at 10:02 a.m.

NEAL A. SALLOWAY - COURT REPORTERS  
FIVE CARDIGAN ROAD  
WEST PEABODY, MA 01960  
781-581-3993 - 978-535-0313 - FAX 978-536-3142

1           A           Oh, absolutely.

2           Q           Have you been qualified, pursuant to Section

3                       213.7, by Guilford to maintain Guilford

4                       property?

5           A           I answered that earlier, no.

6           Q           Okay. Now, I'll ask you one more time. What

7                       is your regulatory authority to be specific

8                       to walk a train over Guilford -- over a

9                       broken rail on Guilford's property?

10          A           I don't see where this prevents me from

11                       walking a train over --

12          Q           If you're not qualified -- I guess my

13                       question is this: If you're not qualified

14                       pursuant to 213.7 to maintain Guilford's

15                       property, would you be qualified to walk

16                       trains over broken rails which in railroad

17                       parlance, as I understand it, is part of

18                       maintenance?

19          A           Well, I'm sure of the answer on that one.

20          Q           Okay.

21          A           But I see nothing in this section that would

22                       prevent me from walking a train over a broken

23                       rail.

1 Q You do?

2 A I do.

3 Q Okay. Do you -- Are you -- Does the Trackage  
4 Rights Agreement from 1992 authorize you or  
5 anyone from Milford-Bennington to maintain  
6 Guilford's track?

7 A Well, I'll look at it again. (Reviewing  
8 document)

9 I believe there may be a section in  
10 here, maybe, Jim, you can help me, that if we  
11 want something in and above that we have to  
12 take care of it or pay for it, but I'm not  
13 sure, but there's something in here about --  
14 Let's see.

15 MR. HOWARD: Can we go off the record  
16 a minute?

17 (Whereupon an off-the-record  
18 discussion takes place.)

19 (Break takes place at 10:41 a.m.)

20 (Back on the record at 10:45 a.m.)

21 MR. HOWARD: Could you read back the  
22 pending question?

23 (Whereupon the Stenographer read back

1 the requested information.)

2 A I'm not aware of it, no.

3 Q You're not aware that it authorizes you?

4 A Right.

5 Q Okay. This is the same question that's

6 separate and apart: Are you qualified,

7 pursuant to Guilford's roadway worker track

8 maintenance program to perform work on

9 Guilford's track?

10 A I haven't taken a test if there's one that is

11 required. So I'm not aware that I'm -- if

12 there is such a requirement that I'm

13 qualified.

14 Q Have you taken it?

15 A If there is, I haven't taken a test, no.

16 Q So, to the best of your knowledge, you're not

17 qualified?

18 A To Guilford's, right.

19 Q Do you consider performing maintenance on a

20 railroad's track when you're not qualified

21 under that railroad's roadway worker

22 protection regulation rules to be a safe

23 practice?

1 several days prior to our meeting on the  
2 12th, and at such time, I called Kit Morgan  
3 and John Robinson and said that Guilford  
4 feels there may be a need for a temporary  
5 derail because the passenger cars may roll a  
6 way. They found it rather odd, and I said  
7 it's only temporary while the cars are stored  
8 in Wilton. That's at least a phone  
9 conversation, I believe, from Erwin Towle and  
10 Andy that there was rail concern within  
11 Guilford management that those two passenger  
12 cars may roll onto Guilford's track, and  
13 would I be amenable to a temporary device to  
14 keep the passenger cars from rolling down,  
15 and I said I'll meet with them, and that's  
16 when Andy and I had the meeting on the site.

17 Q Were you amenable to that?

18 A Yeah, a temporary derail, absolutely. I  
19 didn't have any problem with a temporary  
20 derail.

21 Q But the State of New Hampshire did have a  
22 problem with it?

23 A I think their biggest concern is they

1 thought, first of all, Guilford was making a  
2 demand that something should be placed on the  
3 State Corridor without, in fact, notifying  
4 them first.

5 My relationship with the state over  
6 the Trackage Rights Agreement that I signed  
7 with Mr. Steiniger made things a little  
8 difficult at times. It was an agreement that  
9 we worked out which the state was opposed to.

10 So, with that knowledge that I contact  
11 the state to inform them of this, and they  
12 felt it was just another, perhaps, exercise  
13 on Guilford pushing their authority because  
14 there's still some bad feelings over the  
15 Trackage Rights Agreement that I signed with  
16 Tom Steiniger or you folks on this.

17 Q So you were aware of the state's concerns,  
18 and the derail was installed, anyway?

19 A Just temporary to keep the cars rolling. I  
20 mean, I didn't see a particular problem with  
21 a temporary derail as I've said.

22 Q But the state objected?

23 A They objected to the fact that Guilford was,

1                   Saturday, and we unloaded during the day. We  
2                   had a train loaded at Wilton that we got  
3                   back, say, on a Friday. I believe we did  
4                   this at least once, and I recall that we had  
5                   a loaded train, and we brought it down on a  
6                   Saturday.

7           Q        Why did you only get --

8           A        Well, Wilton is restricted because you can't  
9                   run the quarry on weekends, period, daytime  
10                   or otherwise. So unless we had a loaded  
11                   train in Downtown Wilton, that didn't work  
12                   very well either. I mean, we tried every  
13                   possible arrangement to -- and at the very  
14                   most, we were in that hour or those hours  
15                   that you referred, 4:00 a.m. to 1:00 p.m. we  
16                   were only able to get two trains a day.

17          Q        Did you look into leasing additional cars?

18          A        I did not, no.

19          Q        Did you look into leasing additional  
20                   locomotives?

21          A        No. We didn't have any need to leasing any  
22                   locomotives. And as far as additional cars,  
23                   Rob, I guess we had that restriction that we

1                   couldn't do anything more than ten cars at a  
2                   time within our Trackage Rights Agreement.  
3           Q        If you could look at Section 1(c).  It's the  
4                   first page.  
5           A        Yeah.  
6           Q        I'm sorry.  1(a).  It's the first page.  
7                   This ten-car restriction you're  
8                   referring to, is that referenced in that  
9                   paragraph?  
10          A        It is, yeah.  It's underlined.  
11          Q        What's underlined?  
12          A        It says, "in ten car trains."  
13          Q        Does it say -- Does it limit the number of  
14                   trains you can operate?  
15          A        No.  Just units, maximum ten cars at a time.  
16                   It doesn't limit the number of trains, no.  
17          Q        Does it limit the number of cars that you  
18                   could lease or control?  
19          A        No.  
20          Q        Okay.  If we could go back to --  
21                   MR. CULLIFORD:  This would be Exhibit  
22                   4, I believe.  
23

1           A           That track was in place back in service that  
2                        Thursday until after, I believe, 1500.  
3           Q           How do you know that?  
4           A           Because I called late in the day on my  
5                        initiative, and it was still out of service  
6                        at 2:00 o'clock, 1400, and said, "We'll get  
7                        ahold of you as soon as possible." I later  
8                        learned the following morning, it was placed  
9                        back into service at 1500.  
10          Q           So you called Thursday?  
11          A           Yeah.  
12          Q           And then you called Friday morning?  
13          A           When we went on duty, -- I called before  
14                        at -- At that time, I had let one of my  
15                        employees go because I couldn't continue to  
16                        afford a full crew with the restrictions, and  
17                        I called from my home, talked to Candy, I  
18                        believe her name is, the dispatcher, to see  
19                        if, in fact, the track had been placed back  
20                        into service on Friday, and she said to the  
21                        best of her knowledge, it was back in  
22                        service.  
23          Q           Did you operate on Friday?



1 NORAC Rules Book which was signed by Andy  
2 sometime in April of this year even, his last  
3 test. So he was NORAC Rules qualified on  
4 Guilford as late as April of this year, and  
5 then he took the test again last Wednesday  
6 and passed that.

7 Q Let me be more specific. Was he qualified to  
8 operate on the Hillsboro branch?

9 A He's operated on the Hillsboro branch in the  
10 past for us with permission of the  
11 dispatcher, not as recently as this past  
12 year; but prior to that, he has.

13 Q The question was: Was he qualified to  
14 operate on the Hillsboro branch?

15 A As of Wednesday or now?

16 Q Prior to Wednesday?

17 A He had been, yes. My answer is yes.

18 Q Okay. Just a couple more follow-up questions  
19 if I could.

20 MR. CULLIFORD: And if this could be  
21 marked as Exhibit 6?

22 (Whereupon the Stenographer marked as  
23 Exhibit No. 6 - Letter - 7/16/03 to Mr. Peter

1 Q Okay. Any balance sheets?

2 A No. We just use -- We don't have an awful

3 lot of activity. So it's easy.

4 Q Okay. That's it for that.

5 MR. CULLIFORD: This is also, I would

6 assume, subject to the confidentiality

7 agreement?

8 MR. HOWARD: I don't know what the

9 question is yet.

10 MR. CULLIFORD: Well, I'm just letting

11 you know. It will remain subject to the

12 confidentiality agreement.

13 Q How much -- Do you have a contract with

14 Granite State for the movement of his stuff?

15 A None whatsoever.

16 Q Do you move them by quoted rates, tariffs?

17 A No. It was done on a handshake with Mr.

18 MacLellan back in about 1991, I believe.

19 That was our contract.

20 Q How much do you get per car?

21 A [REDACTED]

22 [REDACTED]

23 Q Loaded or empty?



# **Exhibit B**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and  
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and  
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF JOHN G. MacLELLAN, III,  
taken pursuant to Notice on behalf of Boston  
and Maine Corporation and Springfield Terminal  
Railway Company, before Simonne J. Elwood,  
R.P.R. and a Notary Public in and for the  
Commonwealth of Massachusetts, at the office of  
Guilford Rail System, Iron Horse Park, North  
Billerica, Massachusetts, commencing on  
Wednesday, November 12, 2003 at 9:06 a.m.

NEAL A. SALLOWAY - COURT REPORTERS  
FIVE CARDIGAN ROAD  
WEST PEABODY, MA 01960  
781-581-3993 - 978-535-0313 - FAX 978-536-3142

1 truck?

2 A That's right.

3 Q And then a decision was made to switch over  
4 to rail operations?

5 A That's right.

6 Q And that decision was made when?

7 A It was in the mid-'80s. In the mid-'80s, we  
8 had an agreement with Guilford to buy a  
9 section of the railbed. I guess it had been  
10 abandoned, and we had signed a purchase and  
11 sale to purchase it, to buy it. After that  
12 happened, the State of New Hampshire came in  
13 and exercised their right, some kind of right  
14 of first refusal, and they bought it. We had  
15 intended to use that railbed as a roadway to  
16 exit our site. Once the state bought the  
17 rail line, there appeared to be an  
18 opportunity to move material by rail, and so  
19 we pursued that.

20 Q And did you have to seek the assistance of  
21 the town?

22 A Well, the material that -- The Wilton site  
23 was a grandfathered site. It began operation

1 other owners' properties, there's access, but  
2 there's no legal access.

3 Q Okay. All right. Now, are you familiar with  
4 New Hampshire Route 31?

5 A Yes.

6 Q Does that connect to Route 101A or any  
7 major --

8 A Yeah. I believe it -- I think it crosses  
9 101A or 101, actually.

10 Q 101?

11 A Yeah.

12 Q To get there, does New Hampshire Route 31 go  
13 through the center of Wilton?

14 A You can get to 101 through the center of  
15 Wilton, but there's another way.

16 Q All right. Okay. Note 10, it essentially  
17 says the hours of operation are 6:30 a.m. to  
18 6:30 p.m., and then it says trucking shall  
19 not occur outside of the approved hours of  
20 operation.

21 Now, that seems to imply that trucking  
22 is an option from Wilton without any  
23 limitations on it, is that correct?

**Exhibit C**

**TIMETABLE**

**No. 6**

**FOR EMPLOYEES ONLY**

**EFFECTIVE 0001 HOURS SATURDAY  
MAY 1, 1999**

## SPECIAL INSTRUCTIONS

**A: TIMETABLE, RULE BOOK, SAFETY RULE BOOK, AIR BRAKE AND TRAIN HANDLING INTRUCTIONS, HAZARDOUS MATERIAL BOOK.**

In accordance with rule A, employees must have a copy of the current corrected timetable and rule book with them while on duty.

Employees must provide themselves with a copy of the current safety rules and must comply with them as well as know their meaning, intent and application of the safety rule of the day.

**Q: HOURS OF SERVICE**

Unless otherwise directed, train and engine crew members must not exceed 11 hours and 59 minutes.

**I: BULLETINS**

Change or modifications to the NORAC rule book, and Timetable will initially be issued by Bulletin Order. Bulletin orders will be issued as necessary. Employees will provide themselves with a copy of all bulletin orders in effect and keep such copies with them while on duty. Employees will not be required to sign the register at the bulletin board locations.

**20: ENGINE BELLS**

In application of rule 20, when a train is approaching a public crossing at grade, the engine bell must be sounded at least 1000 feet in advance of the crossing and continue to be sounded until engine passes the crossing.

**37: SPEEDS ON OTHER THAN MAIN TRACK**

All movements on other than main tracks must be made in accordance with the provisions of restricted speed.

**40: ENGINE RESTRICTIONS, SHORT TIME AMPERAGE RATING**

Traction motor damage can result through over-heating when traction motor short time rating are exceeded. The amperage ratings are correlated minimum speeds shown on the short time rating plate located on the amperage meter must be adhered to when operating the engine.

Siding Capacity	Stations	Mileage Distance from Nashua	Notes
	Milford (ST)	11.83	1, 2
10	Wilton (ST)	16.22	1
	Howard St.	16.36	
	Burns Hill	16.60	3
14	Granite State Quarry	18.45	
20	Quinn's Quarry	19.00	
	South Lyndeboro	20.00	
	Russell St.	24.40	
10	Greenfield	26.86	
	Fair Grounds	27.80	
	South Bennington	31.13	
	Elmwood	32.36	
		59.39*	
	Bennington	61.30*	
	End of Track	62.00*	

Direction from Howard St. to end of track is Northward. The track between Howard St. and end of track is designated as the Bennington main track. Permission is required to occupy the Bennington main track.

Notes: 1. Joint MBR/STR operation (Springfield Terminal Hillsboro Running Track).

2. MBR trains or track cars may not operate south of MP 11.

3. Formerly known as Highland St.

(\* ) Mileage measured from Worcester.

**1: LOCATION OF BULLETIN BOARD AND STANDARD CLOCKS**

62 Elm St., Milford, NH

MBR business and freight office.

**37: MAXIMUM SPEED AND PERMANENT SPEED RESTRICTIONS**

**BETWEEN**

Howard St. crossing	- South and North directions	- Max. 5 MPH
Howard St. to Burns Hill	- North direction	- 10 MPH
	- South direction	- 15 MPH
Burns Hill to GSC Quarry	- North direction	- 25 MPH
GSC Quarry to MP 17	- South direction	- 25 MPH
MP 17 to Burns Hill	- South direction	- 15 MPH
GSC Quarry to MP20	- South and North directions	- 10 MPH

**138: PUBLIC CROSSING GRADE WITH AUTOMATIC PROTECTION, CROSSBUCK PROTECTION AND/OR SPECIAL RESTRICTIONS**

**ENGINE WHISTLE RESTRICTIONS AND COLUMN EXPLANATIONS**

X - indicates crossing in effect  
Letter - indicates direction column in effect

When no " X " or " Letter " is indicated, there is no special means of protection.

CB - Crossing protected by cross buck sign. No automatic protection.

W/R - Whistle restriction : Except in emergency cases, whistle signal 19B must not be sounded in the direction specified. The following letters indicate the direction the whistle must not be sounded.

N - Northward  
S - Southward  
B - Both directions

**Note : Crossings with special requirements**

1. Flag protection required
2. Northward / Southward trains stop and protect.

138. PUBLIC CROSSINGS AT GRADE WITH AUTOMATIC OR CROSSBUCK PROTECTION AND/OR SPECIAL REQUIREMENTS.

Location	Crossing	CB	W/R	Note
Milford	Powers St.	X		
	Tonella Rd.	X		
	South St.	X		1
	Union St.	X		1
	Cottage St.	X		1
	West St.	X		1
	Westchester Dr.	X		
	Private			
	Richardsons			
	Private	X		
	Private	X		
	Hitchner Way	X		
	Route 101 Bypass			
	Private			
Wilton	Route 101			
	Howard St.	X	B	
	Burns Hill			
	Conrads ( RT. 31 )			
	Quinn's Crossing			
Lyndeboro	Rt. 31	X		
	Old Temple Rd.	X		
	Private	X		
	Crams Crossing	X		
	Buttrick's	X		
	Gulf Rd.	X		
Greenfield	School House Rd.	X		
	Russell Crossing	X		
	Ice House Crossing	X		
	Soapstone Crossing	X		
	Private	X		
	Route 136	X		
	Fair Grounds	X		
	Boat Crossing	X		
	Flynns Crossing	X		
Bennington	South Bennington Rd.	X		
	Hancock Tumpike	X		

**700: RADIO CHANNEL**

Milford-Bennington crews operating trains or track cars between Burns Hill, Wilton and MP 11 will insure that engine and/or portable radios are on STR yard channel.

**700A: RADIOS ON ENGINES**

When starting engines, make sure the radio switch is open. Extensive damage will result if the radio main switch is not open while the engine is being started.

**700B: RADIO BASE STATIONS**

<u>CHANNEL</u>	<u>LOCATION</u>	<u>HOURS ATTENDED</u>	<u>TELEPHONE</u>
MBR Disp.	Milford, NH	0700 - 1900 Mon - Fri.	603-673-7181

**ADDITIONAL RADIO-BASE STATION LOCATIONS**

<u>CHANNEL</u>	<u>LOCATION</u>	<u>HOURS ATTENDED</u>	<u>TELEPHONE</u>
MBR Disp.	Milford, NH	Continuous	603-673-3327

**714: TELEPHONE NUMBERS**  
Springfield Terminal Railway

Asst. Director of Train Operations	1-800-955-9208
District 2 Trains Operation Manager	1-800-955-9206
Nashua Yard Office	1-603-882-3221

**815: TRACK CAR SPEEDS**

Track cars must be able to stop within one half the range of vision at all times and must approach all hand operated switches prepared to stop until is ascertained that the switch points are properly lined.

**100: RESTRICTED AREAS FOR ENGINES AND HIGH CARS**

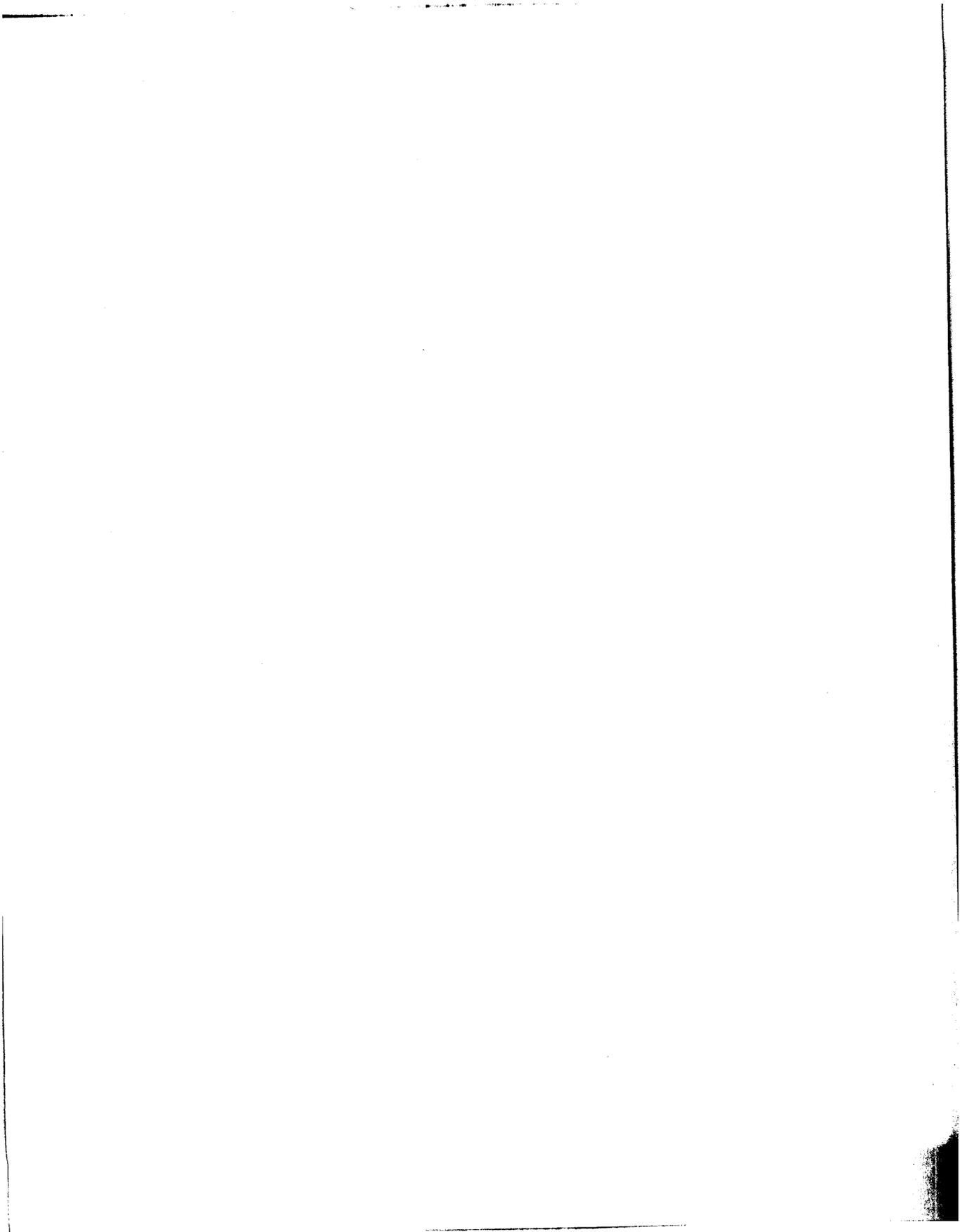
Granite State Quarry has a hopper over the tracks approximately 4 cars from derail, engine, high cars, and cabooses with viewers will not clear.

# **Exhibit D**

MEAN TEMPERATURES  
History for Manchester, NH  
11/1/03 - 12/8/03

DATE	MEAN TEMPERATURE	DATE	MEAN TEMPERATURE
11/1/03	62.9	12/1/03	40.5
11/2/03	51.8	12/2/03	22
11/3/03	51.5	12/3/03	19.1
11/4/03	44.4	12/4/03	21.4
11/5/03	39.9	12/5/03	18.2
11/6/03	48	12/6/03	21.3
11/7/03	48.5	12/7/03	25.9
11/8/03	35.5	12/8/03	28.5
11/9/03	29.1		
11/10/03	34		
11/11/03	32.4		
11/12/03	43.8		
11/13/03	46.6		
11/14/03	34		
11/15/03	29.4		
11/16/03	37.7		
11/17/03	39		
11/18/03	40		
11/19/03	50.9		
11/20/03	51		
11/21/03	46.6		
11/22/03	45.5		
11/23/03	41.1		
11/24/03	40.2		
11/25/03	37.3		
11/26/03	34.8		
11/27/03	42.1		
11/28/03	49.1		
11/29/03	49.3		
11/30/03	40		

Source: <http://www.wunderground.com/history/airport/KMHT>



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**Docket No. NOR 42083**

---

**GRANITE STATE CONCRETE COMPANY, INC. and  
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

**vs.**

**BOSTON AND MAINE CORPORATION and  
SPRINGFIELD TERMINAL RAILWAY COMPANY**

---

**REBUTTAL VERIFIED STATEMENT OF ANDREW D. ZOMPA**

Andrew D. Zompa deposes and states as follows:

1. I am the Director of Operating Rules for the Springfield Terminal Railway Company. I make this Verified Statement in support of the Rebuttal of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to the Reply of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") filed on February 9, 2004.

2. As part of the procedures for qualifying MBR employees to operate on Guilford's line, each MBR employee is required to undergo annual rules class and to pass a test on the NORAC Rules at the conclusion of each class.

3. In 2002 (Question 35) and 2003 (Question 10) this test asked what the proper position for a derail would be unless removed to permit movement, and Mr. Leishman answered on both occasions that the proper position would be the derailing position. Copies of the 2002 and 2003 tests and Mr. Leishman's answers thereto are attached hereto as Attachments A and B.

4. In her Reply Verified Statement, Susan Madigan acknowledges that pursuant to NORAC Rule 132 written permission from the Dispatcher is required to occupy track on which the method of operation is pursuant to DCS rules. The portion of Guilford's line over which MBR operates is subject to DCS rules and therefore MBR would be required to obtain verbal permission prior to occupying the track.

5. By its very nature, track maintenance "disturbs the track" within the meaning of NORAC Rule 132(1), which would be another reason why MBR would be required to obtain written permission from the Dispatcher to occupy Guilford's track to perform maintenance.

6. On June 20, 2003, I conducted a rules training class to qualify MBR employees under the new operating rules that had been implemented on the Guilford line over which MBR operates. Mr. Wayne Wheeler did not participate in this class and was therefore not qualified to operate over Guilford's line.

7. Pursuant to Guilford Special Instruction C.2, conductors and engineers who have not performed service within one year on territory in which they were previously qualified must be reviewed on the physical characteristics of that territory prior to operating over it. A copy of this Special Instruction is attached hereto as Attachment C.



# **Attachment A**

Name: *Star Lindeman*

Date: *3/12/15*

Test:

ANSWER SHEET

- 1. A B C D
- 2. A B C D
- 3. A B C D
- 4. A B C D
- 5. A B C D
- 6. A B C D
- 7. A B C D
- 8. A B C D
- 9. A B C D
- 10. A B C D
- 11. A B C D
- 12. A B C D
- 13. A B C D
- 14. A B C D
- 15. A B C D
- 16. A B C D
- 17. A B C D
- 18. A B C D
- 19. A B C D
- 20. A B C D
- 21. A B C D
- 22. A B C D
- 23. A B C D
- 24. A B C D
- 25. A B C D
- 26. A B C D
- 27. A B C D
- 28. A B C D
- 29. A B C D
- 30. A B C D
- 31. A B C D
- 32. A B C D
- 33. A B C D
- 34. A B C D
- 35. A B C D
- 36. A B C D
- 37. A B C D
- 38. A B C D
- 39. A B C D
- 40. A B C D
- 41. A B C D
- 42. A B C D
- 43. A B C D
- 44. A B C D
- 45. A B C D
- 46. A B C D
- 47. A B C D
- 48. A B C D
- 49. A B C D
- 50. A B C D
- 51. A B C D
- 52. A B C D
- 53. A B C D
- 54. A B C D
- 55. A B C D
- 56. A B C D
- 57. A B C D
- 58. A B C D
- 59. A B C D
- 60. A B C D
- 61. A B C D
- 62. A B C D
- 63. A B C D
- 64. A B C D
- 65. A B C D
- 66. A B C D
- 67. A B C D
- 68. A B C D
- 69. A B C D
- 70. A B C D
- 71. A B C D
- 72. A B C D
- 73. A B C D
- 74. A B C D
- 75. A B C D
- 76. A B C D
- 77. A B C D
- 78. A B C D
- 79. A B C D
- 80. A B C D
- 81. A B C D
- 82. A B C D
- 83. A B C D
- 84. A B C D
- 85. A B C D
- 86. A B C D
- 87. A B C D
- 88. A B C D
- 89. A B C D
- 90. A B C D
- 91. A B C D
- 92. A B C D
- 93. A B C D
- 94. A B C D
- 95. A B C D
- 96. A B C D
- 97. A B C D
- 98. A B C D
- 99. A B C D
- 100. A B C D
- 101. A B C D
- 102. A B C D
- 103. A B C D
- 104. A B C D
- 105. A B C D
- 106. A B C D
- 107. A B C D
- 108. A B C D
- 109. A B C D
- 110. A B C D
- 111. A B C D
- 112. A B C D
- 113. A B C D
- 114. A B C D
- 115. A B C D
- 116. A B C D
- 117. A B C D
- 118. A B C D
- 119. A B C D
- 120. A B C D
- 121. A B C D
- 122. A B C D
- 123. A B C D
- 124. A B C D
- 125. A B C D
- 126. A B C D
- 127. A B C D
- 128. A B C D
- 129. A B C D
- 130. A B C D
- 131. A B C D
- 132. A B C D
- 133. A B C D
- 134. A B C D
- 135. A B C D
- 136. A B C D
- 137. A B C D
- 138. A B C D
- 139. A B C D
- 140. A B C D
- 141. A B C D
- 142. A B C D
- 143. A B C D
- 144. A B C D
- 145. A B C D
- 146. A B C D
- 147. A B C D
- 148. A B C D
- 149. A B C D
- 150. A B C D

1.3

**SPRINGFIELD TERMINAL RAILWAY COMPANY**  
**Requalification On NORAC Operating Rules**  
**Conductors & Engineers**

=====

Do not write on this examination. Mark an "X" through the correct answer on the answer sheet provided. If you change the answer you choose for a question make it clear what your new choice is. If a question is not answered it will be marked wrong. The passing grade is 85%.

=====

1. What is of the first importance?
  - A) Getting paid on time.
  - B) Safety
  - C) Making sure you supervisor likes you.
  
2. Gambling, fighting or participating in any illegal, immoral or unauthorized activity while on duty or on company property is prohibited.
  - A) True
  - B) False
  
3. When required to perform service, sleeping or assuming the attitude of sleep is prohibited.
  - A) True
  - B) False
  
4. Are you required to know the meaning, intent and application of the Safety Rule of The Day?
  - A) Only when directed to do so by the Dispatcher.
  - B) No
  - C) Yes
  
5. How often will employees whose duties require them to be qualified on the operating rules be re-examined?
  - A) Every three years
  - B) Every two years
  - C) Every year
  
6. Employees must report for duty at the required time.
  - A) True
  - B) False
  
7. Employees are prohibited from using alcoholic beverages or intoxicants, having them in their possession, or being under their influence.
  - A) True
  - B) False

8. Bulletin Orders will be issued \_\_\_\_\_?
- A) twice a month effective at 0001 on the first and third Mondays.
  - B) on a once a Month basis effective at 0001 on the first Monday.
  - C) on a once a week basis effective at 0001 each Monday.
9. When does the Bulletin Order Summary become effective each month?
- A) On the first Sunday at 0001.
  - B) On the first Monday at 0001.
  - C) On the first Monday at 1200.
10. What books are employees required to maintain and have with them while on duty?
- A) Operating Rules and Timetable
  - B) Safety Rules
  - C) Both A and B
11. A Bulletin Order is.....
- A) a publication issued periodically by the designated officer, which contains information or instructions which do not affect the movement of trains.
  - B) a publication used to summarize changes to the Timetable and other instruction manuals. They contain revision pages for the timetable and are issued periodically by the designated officer.
  - C) a publication used to notify employees of changes to rules, procedures or other instructions affecting the movement of trains.
12. A controlled point is...
- A) a fixed signal, capable of displaying Stop indication, that is controlled by a Dispatcher or Operator.
  - B) a station designated in the timetable where signals are remotely controlled from the control station.
  - C) a fixed signal displayed to trains at the entrance of a block to govern the use of that block.
13. A Home Signal is.....
- A) a fixed signal displayed to trains at the entrance of a block to govern the use of that block.
  - B) a fixed signal used to govern the approach of a train to a home signal.
  - C) a fixed signal governing the entrance to an interlocking.
14. Normal Speed is.....
- A) not exceeding 10 MPH.
  - B) the maximum authorized speed.
  - C) not exceeding 30 MPH.

15. A Division Notice is.....

- A) a publication issued periodically by the designated officer, which contains information or instructions which do not affect the movement of trains.
- B) a publication used to summarize changes to the Timetable and other instruction manuals. They contain revision pages for the timetable and are issued periodically by the designated officer.
- C) a publication used to notify employees of changes to rules, procedures or other instructions affecting the movement of trains.

16. A General Order is...

- A) a publication issued periodically by the designated officer, which contains information or instructions which do not affect the movement of trains.
- B) a publication used to summarize changes to the Timetable and other instruction manuals. They contain revision pages for the timetable and are issued periodically by the designated officer.
- C) a publication used to notify employees of changes to rules, procedures or other instructions affecting the movement of trains.

17. Restricted Speed is \_\_\_\_\_.

- A) Control the movement to permit stopping within one half the range of vision—short of a switch improperly lined. Be on the lookout for broken rail. Speed must not exceed 20 MPH outside interlocking limits, or 15 MPH within interlocking limits. This speed applies to the entire movement.
- B) Control the movement to permit stopping within one half the range of vision--short of a train, obstruction. Be on the lookout for broken rail. Speed must not exceed 20 MPH outside interlocking limits, or 15 MPH within interlocking limits. This speed applies to the entire movement.
- C) Control the movement to permit stopping within one half the range of vision—short of a train or other railroad equipment, obstruction, or switch improperly lined, derails in the derailling position or any signal requiring a stop. Be on the lookout for broken rail. Speed must not exceed 20 MPH outside interlocking limits, or 15 MPH inside interlocking limits. This speed applies to the entire movement.

18. A marker \_\_\_\_\_.

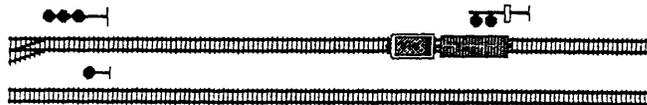
- A) is the number plate found on an automatic block signal.
- B) must be illuminated during the day time.
- C) is a reflector, flag, or highly visible marking device, in the red-orange-amber color range, affixed to the rear of a train to indicate that the train is complete.

19. If a train on a main track or controlled siding encounters an unattended fusee burning on a main track or controlled siding, or on a track next to a main track or controlled siding.....
- A) it must reduce speed and then proceed at Restricted Speed until the head end is 1 mile beyond the fusee.
  - B) it must stop and wait for the fusee to burn out before resuming movement.
  - C) it must stop. It must then proceed at Restricted Speed until the head end is 1 mile beyond the fusee.
20. Unless Otherwise specified what is the speed on running tracks and other than main tracks?
- A) Restricted speed, not exceeding 10 MPH.
  - B) Slow.
  - C) 10 MPH.



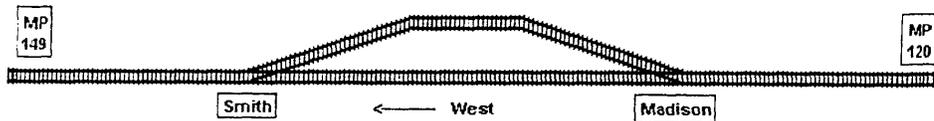
21. Hand operated switches may be left in the reverse position.
- A) False.
  - B) When authorized by the Dispatcher by Form D, Line 13.
  - C) As long as the Conductor advises the Dispatcher that the switch will be left in the reverse position.
22. Maximum authorized speed is ....
- A) shown on the Speed Summary (Speedo).
  - B) 40 MPH
  - C) Shown in the Timetable
23. When a train clears the track designated track on a specified direction Form D Line 2, the Form D authorizing the use of the track is...?
- A) Fulfilled and a new Form D must be issued for any further movement.
  - B) Canceled.
  - C) Annulled.
24. The engine whistle signal which must be sounded when approaching locations where men are working on tracks or bridges is?
- A) Two Long, One Short
  - B) One Long, One Short
  - C) Two Long, One Short and One Long

25. A train must not be operated without the minimum flagging equipment which consists of....?
- A) 6 fusees, red flag and red light.
  - B) 10 fusees, 10 torpedoes and red flag.
  - C) 6 fusees, red flag and white light.
26. Except within non-signaled yard limits or when a train is verbally authorized to operate one train length beyond the limits of an interlocking, trains must not occupy a main track within DCS territory without what?
- A) Form D, Line 2.
  - B) Verbal Permission.
  - C) Signal Indication.
27. When operating against the current of traffic, what rules apply?
- A) 251
  - B) Non-signaled DCS
  - C) both A and B are correct.
28. When operating against the current of traffic, at what speed may the train operate?
- A) Restricted Speed
  - B) Medium Speed
  - C) The Speed designated in the Timetable for such moves.
29. If permission, as per Rule 241, is given to a train to crossover and operate against the current of traffic, how far must the train be operated at Restricted Speed?
- A) Until the entire train clears the interlocking limit.
  - B) Through the interlocking and for the entire length authorized on the Form D.
  - C) Until the entire train passes a more favorable fixed signal.
30. When a train passes a distant signal which is displaying "Approach", what will the next signal be?
- A) A Stop Signal.
  - B) An interlocking signal.
  - C) Unknown, therefore the Conductor must contact the Dispatcher and ask if a favorable signal is displayed on the next signal.



31. If the train gets delayed in the above block, how must it approach the next signal?
- A) Prepared to Stop
  - B) At Medium Speed
  - C) At Slow Speed
32. If a train is stopped while it is moving through an interlocking by a Dispatcher, how may the train then move in either direction.
- A) When the train receives proper signal indication or permission of the Dispatcher.
  - B) When ready, the train may move at Restricted Speed
  - C) When the Conductor determines that it is time to resume movement.
33. When a train is delayed in an interlocking, how may it proceed?
- A) In accordance with the last signal indication received.
  - B) It must proceed at Restricted Speed unless the track is seen to be clear to the next signal and the next signal indicates proceed then the train may be operated in accordance with the last signal received.
  - C) At Restricted Speed.
34. What is the Normal Position of a Main Track switch?
- A) Lined for movement on the Main Track.
  - B) Lined for movement to other than Main Track.
  - C) Any position.
35. Derails must be kept in \_\_\_\_\_ position, except when removed to permit movement.
- A) Non-derailing
  - B) derailing
36. Main Track switches are in normal position...
- A) When lined for movement on the main track.
  - B) When lined for movement to the main track.
  - C) When lined for movement designated by the Timetable.
37. When must a plastic retainer strap be placed through the switch lock and hasp of a switch?
- A) When the switch is left in reverse position.
  - B) When the switch is spiked
  - C) Both A and B are correct

38. Is it permissible to operate through a station on a track located between a train which is receiving or discharging passengers and the station platform?
- A) Yes  
 B) No  
 C) Only at Slow Speed, sounding the whistle and ringing the bell.
39. When verbal permission is given to pass a stop signal, how will the verbal permission be issued?
- A) "No. \_\_\_\_ pass stop signal on \_\_\_\_ track at \_\_\_\_ (location) and proceed \_\_\_\_ (direction) to \_\_\_\_ track".  
 B) "No. \_\_\_\_ pass stop signal on \_\_\_\_ track at \_\_\_\_ (location) and proceed to \_\_\_\_ track".  
 C) "No. \_\_\_\_ pass stop signal on \_\_\_\_ track at \_\_\_\_ (location) and proceed from \_\_\_\_ track to \_\_\_\_ track".



40. The following Form D is in effect:
- Line 2: Operate in West direction on Single Track between MP 120 and Madison.*
- What is train required to do at Madison?
- A) Take the siding.  
 B) Contact the Dispatcher for further instructions.  
 C) Report clear.
41. For movements or other purposes requiring their use, Form D must be issued. Form D's will be numbered consecutively beginning at Midnight. On "ST" dispatched territory, the Form D number will be preceded by what letter?
- A) S  
 B) T  
 C) G
42. When a Form D is being transmitted, what must be done with respect to the numbers corresponding to the Line(s) which is/are being issued?
- A) Circle each line number.  
 B) Check off each number.  
 C) X out each number.

# **Attachment B**

Name: Peter Fishman Date: 11/5/03 Test:

ANSWER SHEET

- |                          |             |             |              |
|--------------------------|-------------|-------------|--------------|
| ✓ 1. A <del>B</del> C D  | 26. A B C D | 51. A B C D | 76. A B C D  |
| ✓ 2. A B <del>C</del> D  | 27. A B C D | 52. A B C D | 77. A B C D  |
| ✓ 3. A B <del>C</del> D  | 28. A B C D | 53. A B C D | 78. A B C D  |
| ✓ 4. A B <del>C</del> D  | 29. A B C D | 54. A B C D | 79. A B C D  |
| ✓ 5. A B <del>C</del> D  | 30. A B C D | 55. A B C D | 80. A B C D  |
| ✓ 6. A B <del>C</del> D  | 31. A B C D | 56. A B C D | 81. A B C D  |
| ✓ 7. A B <del>C</del> D  | 32. A B C D | 57. A B C D | 82. A B C D  |
| ✓ 8. A B <del>C</del> D  | 33. A B C D | 58. A B C D | 83. A B C D  |
| ✓ 9. A B C <del>D</del>  | 34. A B C D | 59. A B C D | 84. A B C D  |
| ✓ 10. A <del>B</del> C D | 35. A B C D | 60. A B C D | 85. A B C D  |
| ✓ 11. A <del>B</del> C D | 36. A B C D | 61. A B C D | 86. A B C D  |
| ✓ 12. A <del>B</del> C D | 37. A B C D | 62. A B C D | 87. A B C D  |
| ✓ 13. A B <del>C</del> D | 38. A B C D | 63. A B C D | 88. A B C D  |
| ✓ 14. A B C <del>D</del> | 39. A B C D | 64. A B C D | 89. A B C D  |
| ✓ 15. A <del>B</del> C D | 40. A B C D | 65. A B C D | 90. A B C D  |
| ✓ 16. A <del>B</del> C D | 41. A B C D | 66. A B C D | 91. A B C D  |
| ✓ 17. A B <del>C</del> D | 42. A B C D | 67. A B C D | 92. A B C D  |
| ✓ 18. A <del>B</del> C D | 43. A B C D | 68. A B C D | 93. A B C D  |
| ✓ 19. A <del>B</del> C D | 44. A B C D | 69. A B C D | 94. A B C D  |
| ✓ 20. A B <del>C</del> D | 45. A B C D | 70. A B C D | 95. A B C D  |
| 21. A B C D              | 46. A B C D | 71. A B C D | 96. A B C D  |
| 22. A B C D              | 47. A B C D | 72. A B C D | 97. A B C D  |
| 23. A B C D              | 48. A B C D | 73. A B C D | 98. A B C D  |
| 24. A B C D              | 49. A B C D | 74. A B C D | 99. A B C D  |
| 25. A B C D              | 50. A B C D | 75. A B C D | 100. A B C D |

**NORAC RULES TEST  
FOR THE MILFORD AND BENNINGTON RR.**

1. What is of the first importance?
  - A) Getting paid on time.
  - B) Safety
  - C) Making sure you supervisor likes you.
  
2. How often will employees whose duties require them to be qualified on the operating rules be re-examined?
  - A) Every three years
  - B) Every two years
  - C) Every year
  
3. Scheduled Bulletin Orders will be issued \_\_\_\_\_?
  - A) twice a month effective at 0001 on the first and third Mondays.
  - B) on a once a Month basis effective at 0001 on the first Monday.
  - C) on a once a week basis effective at 0001 each Monday.
  
4. A Bulletin Order is.....
  - A) a publication issued periodically by the designated officer, which contains information or instructions which do not affect the movement of trains.
  - B) a publication used to summarize changes to the Timetable and other instruction manuals. They contain revision pages for the timetable and are issued periodically by the designated officer.
  - C) a publication used to notify employees of changes to rules, procedures or other instructions affecting the movement of trains.
  
5. Restricted Speed is \_\_\_\_\_.
  - A) Control the movement to permit stopping within one half the range of vision— short of a switch improperly lined. Be on the lookout for broken rail. Speed must not exceed 20 MPH outside interlocking limits, or 15 MPH within interlocking limits. This speed applies to the entire movement.
  - B) Control the movement to permit stopping within one half the range of vision-- short of a train, obstruction. Be on the lookout for broken rail.

Speed must not exceed 20 MPH outside interlocking limits, or 15 MPH within interlocking limits. This speed applies to the entire movement.

- C) Control the movement to permit stopping within one half the range of vision— short of a train or other railroad equipment, obstruction, or switch improperly lined, derails in the derailing position or any signal requiring a stop. Be on the lookout for broken rail. Speed must not exceed 20 MPH outside interlocking limits, or 15 MPH inside interlocking limits. This speed applies to the entire movement.

6. A marker \_\_\_\_\_.

- A) is the number plate found on an automatic block signal.
- B) must be illuminated during the day time.
- C) is a reflector, flag, or highly visible marking device, in the red-orange-amber color range, affixed to the rear of a train to indicate that the train is complete.

7. If a train on a main track or controlled siding encounters an unattended fusee burning on a main track or controlled siding, or on a track next to a main track or controlled siding.....

- A) it must reduce speed and then proceed at Restricted Speed until the head end is 1 mile beyond the fusee.
- B) it must stop and wait for the fusee to burn out before resuming movement.
- C) it must stop. It must then proceed at Restricted Speed until the head end is 1 mile beyond the fusee.

8. The engine whistle signal which must be sounded when approaching locations where Roadway workers may be at work on tracks, bridges or other points is?

- A) Two Long, One Short
- B) One Long, One Short
- C) Two Long, One Short and One Long

9. A train must not be operated without the minimum flagging equipment which consists of....?

- A) 6 fusees, red flag and red light.
- B) 10 fusees, 10 torpedoes and red flag.
- D) 6 fusees, red flag and white light.

10. Derails must be kept in \_\_\_\_\_ position, except when removed to permit movement.
- A) Non-derailing
  - B) derailing
11. Main Track switches are in normal position...
- A) When lined for movement on the main track.
  - B) When lined for movement to the main track.
  - C) When lined for movement designated by the Timetable.
12. When must a plastic retainer strap be placed through the switch lock and hasp of a switch?
- A) When the switch is left in reverse position.
  - B) When the switch is spiked
  - C) Both A and B are correct
13. How are Yard Limits indicated?
- A. By Timetable
  - B. By use of Form D, Line 13
  - C. By yard limit signs.
  - D. Both B and C are correct.
14. When originating a radio call, employees must,
- A. Identify their employing railroad such as "Springfield Terminal".
  - B. Identify their mobile radio unit by symbol and engine number if on an extra train or, if on a TC, TC followed by the number of the car.
  - C. Say the word "Over" 3 times to obtain use of the radio channel.
  - D. Both A and B are correct.
15. When using the radio, "ROGER" is used...
- A. to signify that the message was received and understood. When required by Rule 705, it also means that instructions have been repeated correctly.
  - B. at the close of each transmission to which a response is expected.
  - C. at close of each transmission to which a response is not necessary, it must be preceded by proper identification.
16. When using the radio, "OVER" is used...

- A. to signify that the message was received and understood. When required by Rule 705, it also means that instructions have been repeated correctly.
- B. at the close of each transmission to which a response is expected.
- C. at close of each transmission to which a response is not necessary, it must be preceded by proper identification.

17. When using the radio, "OUT" is used...

- A. to signify that the message was received and understood. When required by Rule 705, it also means that instructions have been repeated correctly.
- B. at the close of each transmission to which a response is expected.
- C. at close of each transmission to which a response is not necessary, it must be preceded by proper identification.

18. What word must be transmitted 3 times to obtain use of radio channels for the initial report of conditions endangering train movements?

- A. Emergency
- B. Roger
- C. Over
- D. Out

19. A Train must not occupy yard limits without permission of the Dispatcher

- A. True
- B. False

20. Within non-signaled yard limits all movements must operate at what speed?

- A. 20 MPH
- B. The maximum authorized speed
- C. Restricted speed
- D. 5 MPH

# **Attachment C**

### **C.1: PHYSICAL CHARACTERISTICS QUALIFICATIONS FOR TRAIN AND ENGINE SERVICE EMPLOYEES**

Prior to being considered for qualification on physical characteristics, an employee must meet the following requirements:

1. Must be qualified on the NORAC Operating Rules and Timetable Special Instructions.
2. Must ride over the territory on which the employee desires to qualify. Head end permits are available from the training department or crew dispatchers office. The HE-1 permit authorizes the employee to ride on any Springfield Terminal train for the purpose of qualifying only.

The completed HE-1 Permit must be presented to the examining officer. The officer, in turn, will forward all reports that pertain to the employee's qualification to the Director of Engineer Training.

3. The employee must present an up to date timetable, rule book and a copy of all required Bulletin Orders and Division Notices when reporting for the oral examination. Employees will be questioned on the applicable rules and special instructions that apply to the territory.

Examples of (but not limited to) what an employee must know by name and location:

1. Stations, interlocking/CP Points(s) and who controls them, sidings, running tracks, track numbers, current of traffic, signal rules, etc.
2. All automatic block signals, grade crossings, switches and derails.
3. Maximum speeds and permanent speed restrictions.

The employee must demonstrate a thorough knowledge of the territory to become qualified.

Employees appearing before a particular company official for the purpose of qualifying on physical characteristics, and failing to qualify, must, when again attempting to qualify, appear before the same official previously involved.

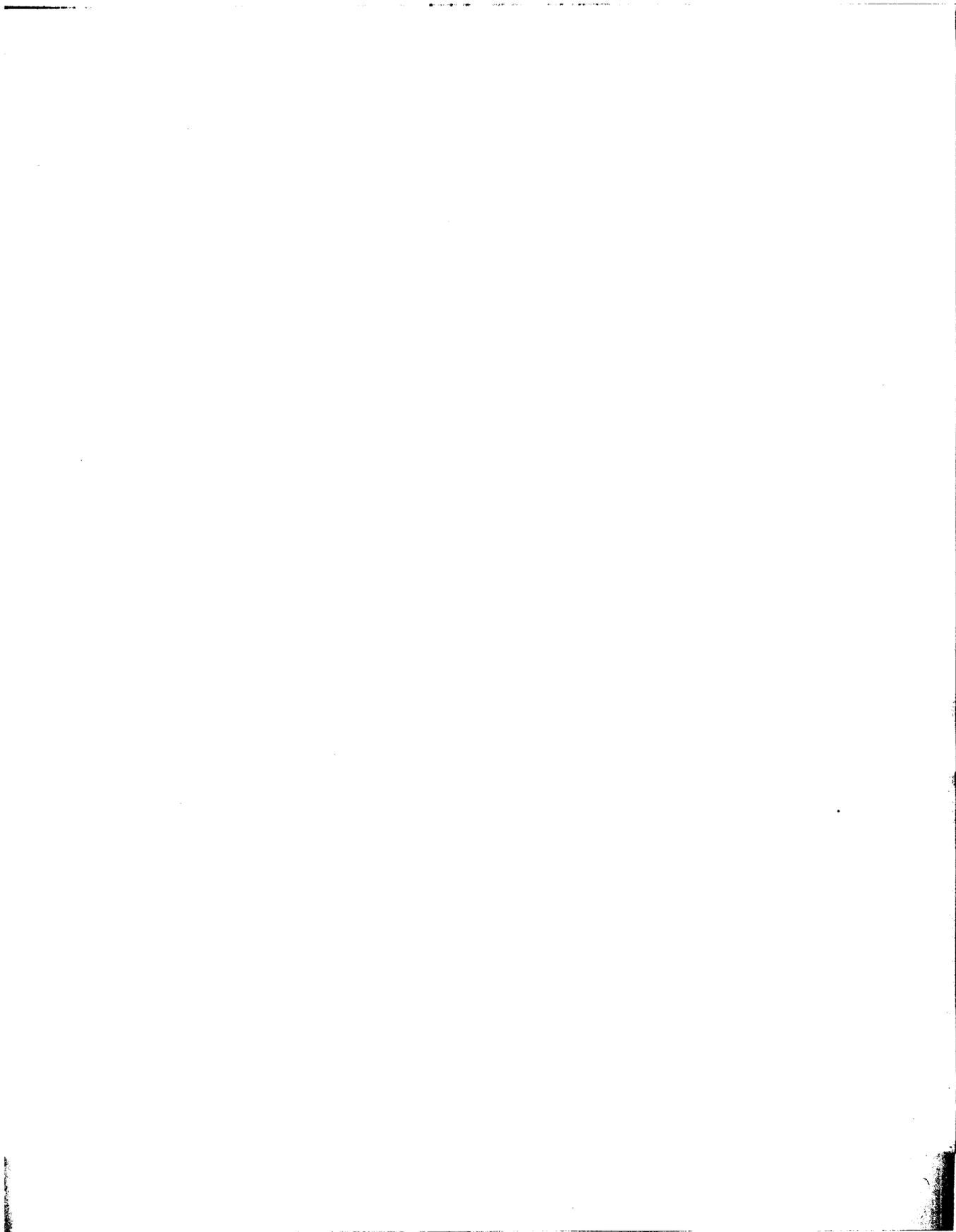
### **C.2: PHYSICAL CHARACTERISTICS PERFORMED SERVICE**

Conductors and Engineers that have not performed service within one (1) year on territory they were previously qualified on must **NOT** accept an assignment over such territory until they have been reviewed by a designated official on physical characteristics.

### **C.3: RETURNING TO SERVICE**

Before accepting an assignment the following applies to employees who are returning to service.

1. An employee who is returning to service after a period of ninety (90) days must report to a designated official for the following:



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**Docket No. NOR 42083**

---

**GRANITE STATE CONCRETE COMPANY, INC. and  
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

**vs.**

**BOSTON AND MAINE CORPORATION and  
SPRINGFIELD TERMINAL RAILWAY COMPANY**

---

**REBUTTAL VERIFIED STATEMENT OF ROGER D. BERGERON**

Roger D. Bergeron states as follows:

1. I am the Assistant Vice President-Engineering for the Springfield Terminal Railway Company. I make this Verified Statement in support of the Rebuttal of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to the Reply of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") filed on February 9, 2004

2. As Exhibit One to the Reply Verified Statement of Peter R. Leishman, MBR and Granite State have produced a letter dated August 26, 1994 and written by me. Contrary to the assertions made by MBR and Granite State, at the time of writing this letter I was not aware that MBR had been or would continue to maintain Guilford's track.

3. Rather, I wrote the letter in response to an inquiry by Mr. Leishman as to whether or not he could maintain Guilford's track. Since this practice would be a violation of the Federal Railroad Administration Track Safety Standards and the Trackage Rights

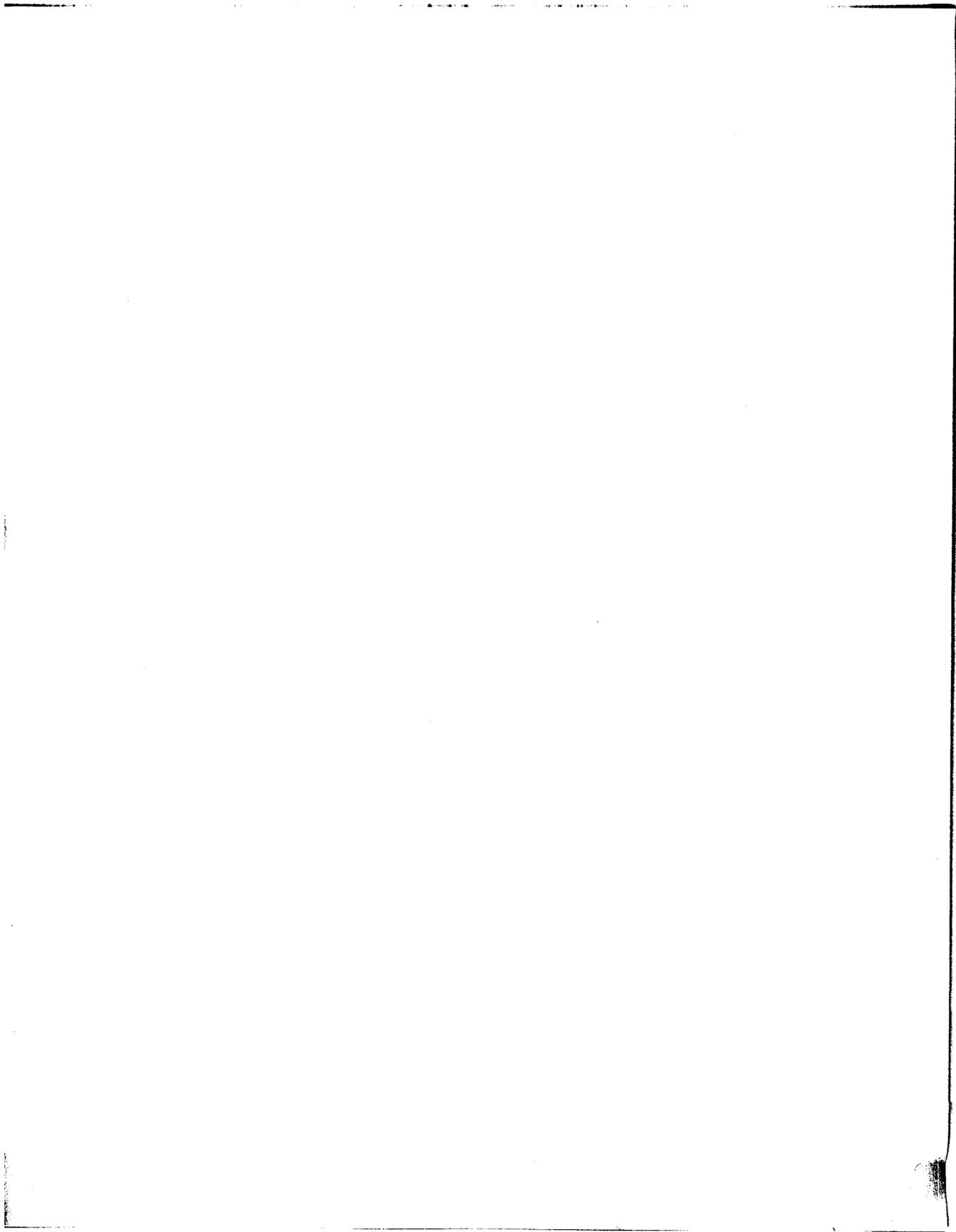
Agreement between Guilford and MBR, I informed Mr. Leishman that he did not have authority to maintain Guilford's track and that none would be forthcoming.

4. It has come to my attention that MBR is not currently operating at speeds of 10 miles per hour on an approximately one-half mile portion of the Guilford line because MBR these speeds are safe in this area. Despite MBR's claims to the contrary, Guilford has performed maintenance on the entire line—including this portion—to permit the speed on the line to be 10 miles per hour.

5. Guilford trains are authorized to operate over this section of track at a speed of up to 10 miles per hour, and there is no basis to believe that slower speeds are necessary or even safer on this portion.

6. It has also come to my attention that MBR does not believe that it is possible to operate more than one MBR train between Wilton and Milford on a single track line. However, this analysis is incorrect because there is a passing siding on the Guilford portion of the line over which MBR operates that would permit MBR two trains to be on this single track line at the same time.





**SURFACE TRANSPORTATION BOARD**

---

**Docket No. NOR 42083**

---

**GRANITE STATE CONCRETE COMPANY, INC. and  
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

**vs.**

**BOSTON AND MAINE CORPORATION and  
SPRINGFIELD TERMINAL RAILWAY COMPANY**

---

Larry L. Ferguson states as follows:

1. I am the Director of Train Operations for the Springfield Terminal Railway Company. I make this Verified Statement in support of the Rebuttal of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to the Reply of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") filed on February 9, 2004.
2. Traditionally, MBR provides Guilford with a list of certified locomotive engineers in its employ who—if qualified—would operate over Guilford's line.
3. By October of 2003, MBR had not identified Mr. Wayne Wheeler as a certified locomotive engineer, and Guilford accordingly could not permit Mr. Wheeler to operate over Guilford's line.
4. As shown in the chart attached hereto as Attachment A, MBR discontinued its operations before noon on six days in November of 2003. On six other occasions during that month, MBR also discontinued its operations prior to 3 p.m.



# **Attachment A**

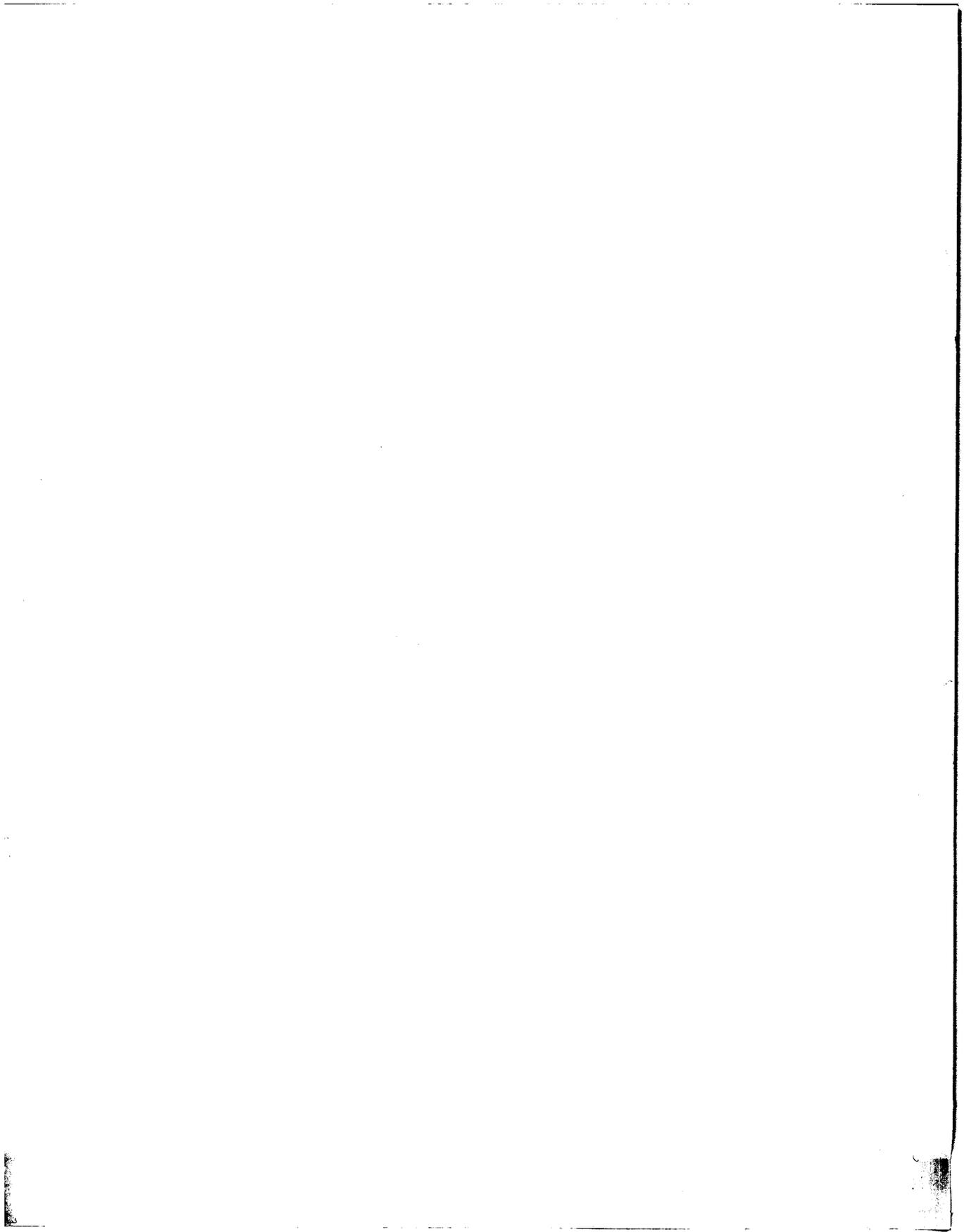
# MILFORD & BENNINGTON TRACKAGE RIGHTS

## SOUTH

NOVEMBER 2003

CALLED TO OPEN UP AT G.S.				CLEAR OF HOWARD STREET				ENTER Y/L AT HOWARD STREET				CALLED IN CLEAR AT G.S.	
DATE	CNDR	ENGR	ENGINE LDS/MTYS	DEPT G.S.	DEPT G.S.	HOWARD STREET	DATE	CNDR	ENGR	ENGINE LDS/MTYS	STREET	ARR G.S.	AT G.S.
11-3	Leashman	Raymond	901 0-9	0731	0731	1001	11-3	Leashman	Raymond	901 9-0	0739	0700	—
11-4	Leashman	Raymond	901 0-9	0720	0722	0751	11-3	"	"	9-0	1153	1200	1200
11-5	Leashman	Raymond	901 0-9	0724	0725	0750	11-4	Leashman	Raymond	901 9-0	1158	1147	—
11-5	Leashman	Raymond	901 0-9	1203	1205	1237	11-5	Leashman	Raymond	901 9-0	0709	0947	—
11-6	Leashman	Raymond	901 0-9	0737	0737	1003	11-6	Leashman	Raymond	901 9-0	0719	0747	—
11-7	Leashman	Raymond	901 0-9	0739	0740	0754	11-6	"	"	9-0	1108	1133	1136
11-10	Leashman	Raymond	901 0-9	0730	0732	0802	11-7	Leashman	Raymond	901 9-0	1024	1052	1052
11-11	Leashman	Raymond	901 0-9	0654	0657	0720	11-10	Leashman	Raymond	901 9-0	0739	0826	0834
11-12	Leashman	Raymond	901 0-9	0723	0725	0759	11-11	Leashman	Raymond	901 9-0	0715	0948	0948
11-12	"	"	9-0	1122	1120	1152	11-12	"	"	9-0	0727	1000	1024
11-13	Leashman	Raymond	901 0-9	0732	0730	0803	11-13	Leashman	Raymond	901 9-0	1402	1430	1436
11-14	"	"	9-0	1216	1216	1254	11-13	"	"	9-0	1011	1045	—
11-14	"	"	9-0	1052	1052	1123	11-14	Leashman	Raymond	901 9-0	0858	0935	—
11-14	"	"	9-0	1421	1421	1450	11-14	"	"	9-0	1230	1250	—
11-17	"	"	9-0	0704	0704	0745	11-17	Leashman	Raymond	901 9-0	1555	1625	1632
11-17	"	"	9-0	1044	1127	1137	11-17	"	"	9-0	0730	0948	0948
11-17	"	"	9-0	1427	1427	1459	11-17	"	"	9-0	1237	1455	1458
11-18	Leashman	Raymond	901 0-9	0735	0730	0710	11-17	"	"	9-0	1610	1637	1646
11-18	"	"	9-0	1241	1241	1312	11-18	Leashman	Raymond	901 9-0	1030	1102	—
11-19	Leashman	Raymond	901 0-9	0751	0752	0822	11-18	"	"	9-0	1430	1455	1637
11-19	"	"	9-0	1322	1325	1351	11-19	Leashman	Raymond	901 9-0	0733	1007	1022
11-20	Leashman	Raymond	901 0-9	0721	0722	0753	11-19	"	"	9-0	1505	1521	1548
11-20	"	"	9-0	1245	1245	1316	11-20	Leashman	Raymond	901 9-0	1059	1106	—
11-21	Leashman	Raymond	901 0-9	0640	0647	0724	11-20	Leashman	Raymond	901 9-0	1435	1453	1530
11-24	"	"	9-0	0721	0721	0807	11-21	Leashman	Raymond	901 9-0	0846	0904	1150





**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**Docket No. NOR 42083**

---

**GRANITE STATE CONCRETE COMPANY, INC. and  
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

**vs.**

**BOSTON AND MAINE CORPORATION and  
SPRINGFIELD TERMINAL RAILWAY COMPANY**

---

**REBUTTAL VERIFIED STATEMENT OF JAMES OLSON**

James F. Olson states as follows:

1. I am the Manager of Car Maintenance for the Springfield Terminal Railway Company. I make this Verified Statement in support of the Rebuttal of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to the Reply of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") filed on February 9, 2004.
2. On December 3, 2002 in Nashua, New Hampshire, Guilford and the Federal Railroad Administration ("FRA") conducted an inspection of two passenger cars that had arrived en route to the MBR.
3. As a result of this inspection, FRA concluded that these cars were not in compliance with the applicable FRA safety regulations, and issued a report to Guilford identifying the car defects. A copy of that inspection report is attached hereto as Attachment A.



# **Attachment A**

DEPARTMENT OF TRANSPORTATION  
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

OMB Approval No. 2130-0109

Inspector's Name <b>MARTIN, WAYNE</b>		Inspector's Signature <i>Wayne Martin</i>		Inspector's ID No. 56930	Report No. 196	Report Date 12/3/02	Violations Recommended <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
Railroad/Company Name & Address <b>SPRINGFIELD TERMINAL RAILWAY COMPANY IRONHORSE PARK NORTH BELLERICA, MA 01862</b>				Division <b>R SYSTEM</b>	Name <b>BRUCE NELSON</b>							
				Subdivision <b>ST</b>	Title <b>TRANSPORTATION SUPERVISOR</b>							
From City <b>NASHUA</b>	Code <b>0350</b>	Destination City & County			Code	File No.	From	To				
State <b>NH</b>	<b>33</b>	City			Inspection Point <b>NASHUA YARD</b>							
County <b>HILLSBOROUGH</b>	<b>C011</b>	Country										
Activity Code	<b>229D</b>	<b>231</b>	<b>232</b>	<b>215</b>	<b>MREC</b>			<b>CARS</b>				
Units	<b>2</b>	<b>17</b>	<b>17</b>	<b>15</b>	<b>1</b>			<b>15</b>				
Item	Locals/Equipment	Equipment/Track #	Type/Code	# of C/P's/USC	Defect Code	Subcode	Speed	Class	Train #/Site	ENR#	# of Occ. **	Activity Code
1	BC	30	OT	229	0023	A1				N	1	MREC
Description PERIODIC INSPECTION NOT MADE TO LOCOMOTIVE WITHIN 92 DAY - LAST DATE AUGUST 20, 2002												
Written Notification to FRA of Remedial Action is: <input type="checkbox"/> Required <input checked="" type="checkbox"/> Optional Railroad Action Code _____ Date (mm/dd/yyyy) _____ Comments on Item? <input type="checkbox"/>												
2	BC	30	OT	231	0136	C2				N	2	231
Description LADDER TREAD OR HANDHOLD HAVING LESS THAN THE REQUIRED CLEARANCE-FL-BR												
Written Notification to FRA of Remedial Action is: <input type="checkbox"/> Required <input checked="" type="checkbox"/> Optional Railroad Action Code _____ Date (mm/dd/yyyy) _____ Comments on Item? <input type="checkbox"/>												
3	BC	15	GT	231	0136	C2				N	1	231
Description LADDER TREAD OR HANDHOLD HAVING LESS THAN THE REQUIRED CLEARANCE-FI.												
Written Notification to FRA of Remedial Action is: <input type="checkbox"/> Required <input checked="" type="checkbox"/> Optional Railroad Action Code _____ Date (mm/dd/yyyy) _____ Comments on Item? <input type="checkbox"/>												
4	WLO	528183	B	232	0144	D2				N	1	232
Description BRAKE SHOE BROKEN-R2												
Written Notification to FRA of Remedial Action is: <input type="checkbox"/> Required <input checked="" type="checkbox"/> Optional Railroad Action Code _____ Date (mm/dd/yyyy) _____ Comments on Item? <input type="checkbox"/>												
5	TIPK	804784	F	215	0121	A1				N	1	215
Description CAR BODY CLEARANCE IMPROPER - LESS THAN 2 1/2" FROM TOP OF RAIL-LOAD SECURING BANDING DRAGGING UNDER CAR												
Written Notification to FRA of Remedial Action is: <input type="checkbox"/> Required <input checked="" type="checkbox"/> Optional Railroad Action Code _____ Date (mm/dd/yyyy) _____ Comments on Item? <input type="checkbox"/>												