

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-303 (SUB-NO. 28X)

WISCONSIN CENTRAL LTD.
--ABANDONMENT EXEMPTION--
IN ASHLAND COUNTY, WI

MOTION FOR STAY AND SUPPLEMENTAL COMMENTS OF
WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Michael J. Cain
Bureau of Legal Services
Wisconsin Department of Natural Resources
101 South Webster St.
P. O. Box 7921
Madison, WI 53707-7921
(608) 266-2177

Attorney for Wisconsin Department of
Natural Resources

Dated: March 10, 2006

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INTRODUCTION

On January 3, 2006, Wisconsin Central Ltd. ("WCL") filed a Notice of Exemption ("the Notice") pursuant to 49 C.F.R. 1152.50 for approval to abandon trackage in Ashland County, WI. The proposed abandonment extends from milepost 434.49 and continues 5,160 feet to the end of WCL's Ashland Ore Dock ("the Dock"). At page 6 of the Notice, WCL indicated that it would be working with The Wisconsin Department of Natural Resources ("WisDNR") and the Board of Commissioners of Public Lands ("BCPL"). At page 7 of the Notice, WCL indicated that if it were unable to get permits for its proposal to transfer the Dock, it would consider removing the structure in accordance with applicable state law.

WisDNR is the designated state agency in environmental matters in Wisconsin. See Chapters 30, 281 and 283, Wis. Stats. WisDNR filed Comments on the Environment/Historic Report dated April 1, 2005.

COMMENTS ON ENVIRONMENTAL AND REGULATORY ISSUES

Under service date of February 28, 2006, SEA issued the Environmental Assessment (“EA”) in this matter. The EA included a number of conditions, including the requirement that no party take steps to alter the Dock until the Section 106 process has been completed. The Section 106 process will take a significant period of time, and it WisDNR’s understanding that the Dock would not be transferred or removed before that time.

The EA acknowledges that the “Dock is highly deteriorated – large pieces of concrete have fallen off in several places.” However, the conditions proposed in the EA do not address, 1) how to deal with the ongoing damage to the environment while Section 106 process continues, 2) what would happen if the Dock is transferred to the Northeastern Maritime Historical Foundation (“the Foundation”) or 3) if subsequent to the transfer to the Foundation, the Dock needs to be removed.

WisDNR requested that provisions be made related to maintenance and/or removal of the Dock based upon a study by a qualified professional engineer. The City of Ashland is concerned about stabilizing the Dock structure and assurances to ensure long-term maintenance and financial responsibility for removal if necessary. It also would require a third-party structural engineer to verify costs.

There are a number of environmental and regulatory issues which relate to the potential abandonment of the rail line and, specifically, the Dock. These issues were generally outlined in our April 1, 2005, Comments on the Environment/Historic Report.

There have been discussions between WCL, the City of Ashland, the Northeastern Maritime Historical Foundation, agencies of the State of WI (including WisDOT, WisDNR, WisDOA, SHPO, and the BCPL), the US Army Corps of Engineers, and other interested parties concerning the need to undertake a feasibility study to determine whether a viable proposal can be developed to transfer, obtain the necessary state and federal regulatory approvals, and maintain this structure in WI waters. That feasibility study is currently under way. All parties recognize that such maintenance would require regulatory approvals from the WisDNR and BCPL since this structure is on the bed of Lake Superior, which is held in trust by the State of Wisconsin. There are procedures under Chapters 24 and 30, Wis. Stats., which require review and approvals before such regulatory approval could be granted.

The conditions imposed by the SEA only deal with salvage and the Section 106 processes. SEA did not propose to set any conditions should the Dock remains in place, which could lead to long-term environmental impacts. The feasibility study will provide answers for these long-term environmental concerns. The SHPO is also reviewing these issues under the Section 106 review process.

Until these studies have been completed, an informed decision on environmental and regulatory issues cannot be made. Before the State of Wisconsin can approve the maintenance of this structure on the bed of Lake Superior, these reviews need to be completed and there needs to be in place a mechanism to assure that the structure is legally authorized to ensure that it is properly maintained in the future. A critical part of the final approval in this matter will be the development of financial assurances to support the financial viability of the maintenance of the structure or, in the alternative, the presence of necessary funds and mechanisms to assure that the structure is properly abandoned and removed from the bed of Lake Superior by WCL.

CONCLUSION

WisDNR respectfully requests that the Board grant a stay relating to Abandonment Exemption issued on February 23, 2006. We further request that no final decision be rendered in this matter until the feasibility study has been completed and a final plan has been developed, has obtained the necessary approvals, and that the conditions include appropriate financial assurances to assure that the Ashland Ore Dock will either be properly maintained or that it will be properly removed from the bed of Lake Superior. WisDNR would respectfully request that that the SEA propose conditions to address the long-term environmental concerns if the Dock is not salvaged conditioned upon the engineering study.

Further, the WisDNR requests that this submission be filed as a comment on the Environmental Assessment dated February 28, 2006. The portion of the Environmental Report and suggested conditions relating to “Water Resources” needs to be revised to reflect the environmental and regulatory issues relating to maintaining this structure on the bed of Lake Superior. Without the necessary conditions in place, the issuance of this Abandonment Exemption and Environmental Assessment could result in serious impacts to Wisconsin’s water resources and potential significant financial liability to the public.

Respectfully submitted,

Michael J. Cain
Bureau of Legal Services
Wisconsin Department of Natural Resources
101 South Webster St.
P. O. Box 7921
Madison, WI 53707-7921

(608) 266-2177

Attorney for Wisconsin Department of
Natural Resources

March 10, 2006

Verification

I, _____(Michael J. Cain), declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Executed on _____day of March, 2006.

Michael J. Cain

pc: Secretary Scott Hassett
Service List

CERTIFICATE OF SERVICE

Case No.: AB-303 (Sub-No. 28X)
Case Name: Wisconsin Central Ltd. -- Abandonment Exemption in -- Ashland County, WI

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Susan L. Eley, being first duly sworn, on oath deposes and says that: she is not a party to the above-entitled action; she is employed by the State of Wisconsin, Department of Natural Resources, in the capacity of Paralegal.

On the 13th day of March, 2005, she served one copy of the Motion for Stay and Supplemental Comments of Wisconsin Department of Natural Resources upon each of the following at his/her respective last known address:

Michael J. Barron, Jr.
CN Railroad
17641 S. Ashland Avenue
Homewood, IL 60430

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2832

Wisconsin Department Of Transportation
4802 Sheboygan Avenue
Madison, WI 53707-7910

Wisconsin Historical Society
Historic Preservation
816 State Street
Madison, WI 53706

Kathleen Kowal
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

William L Gantz
Wisconsin Department Of Natural Resources
810 W Maple Street - Northern Region Headquarters
Spooner, WI 54801

Brian Knapp
City Of Ashland - City Hall
601 Main Street West
Ashland, WI 54806

Allyn Lepeska
Wisconsin Department Of Transportation - Office Of General Counsel
P O BOX 7910
Madison, WI 53707-7910

Vicki Schaefer
Property Management WI DOT
P O BOX 7914
Madison, WI 53707-7914

Jason Berkner
U.S. Army Corps Of Engineers
15954 Rivers Edge Drive, Suite 240
Hayward, WI 54843

Brea Lemke
Zoning Administrator/Planning Specialist
601 Main Street West
Ashland, WI 54806

John Robinson
Wisconsin Department Of Natural Resources
P. O. Box 4001
Eau Claire, WI 54702

Lisie Kitchel
Wisconsin Department Of Natural Resources - Bureau Of Endangered
Resources
P. O. Box 7921
Madison, WI 53707:

Sheldon Johnson
Northwest Regional Planning Commission

1400 South River Street
Spooner, WI 54801

John Spangberg
Wisconsin Department Of Natural Resources
2501 Gold Course Road
Ashland, WI 54806

by mail in the following manner:

She properly mailed a true and correct copy of the aforesaid document, addressed as stated above, by first-class mail, postage prepaid, but without any request to the postal officers for the return thereof in case of non-delivery to the person addressed.

Susan L. Eley

Subscribed and sworn to before me
this 13th day of March, 2006.

Thomas F. Steidl
Notary Public, State of Wisconsin
My Commission is permanent.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
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TTY Access via relay - 711

March 10, 2006

Office of the Secretary
Case Control Unit
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

**RE: STB Docket Number AB-303 (Sub-No. 28X) Wisconsin Central LTD. ---
Abandonment Exemption-- In Ashland County, WI**

Dear Gentlepersons:

The Wisconsin Department of Natural Resources is the state agency responsible for administering environmental laws and regulatory issues relating to the use of public waters.

Our Department has been involved in public meetings and discussions with the applicant and interested parties before the abandonment exemption was filed. Our Department has continuing concerns about environmental and regulatory issues relating to this abandonment exemption.

These have been outlined in our previous correspondence relating to the Environmental Assessment.

The Wisconsin Department of Natural Resources hereby notifies the Board of its desire to be listed as a party of record in the above captioned proceeding. We will be filing, under separate cover, a request for a stay and comments on the Environmental Assessment in this matter.

We are enclosing this original request and 10 copies. Also enclosed is a certificate of service indicating that the notice has been properly served on the other parties of record.

Please include the following on the service list for the proceeding:

Wisconsin Department of Natural Resources

Michael J. Cain, Bureau of Legal Services

101 South Webster St.

P.O. Box 7921

Madison, WI 53707-7910

Fax Number 608-266-6983

Email address: Michael.Cain@dnr.state.wi.us

Please date stamp and return a duplicate copy of this letter in the prepaid, return mail envelope for verification of receipt. Thank you.

Sincerely,

Scott Hassett
Secretary

Verification

I, _____(Scott Hassett), declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Executed on _____ day of March, 2006.

Scott Hassett, Secretary

Enclosure (Certificate of Service, Motion for Stay and Comments)

cc: Secretary Scott Hassett
Mary Schlaefer-AD/5
Congressman David Obey
Senator Robert Jauch
Representative Gary Sherman
John Gozdzialski-NOR
Duane Lahti-NOR
Thomas German-BCPL
Michael Cain-LS/5

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107 Sutliff Ave.
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