

STB FD-33388 (SUB 91) 6-1-00 D 198856 1 of 2

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June 1, 2000

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**BY HAND**

Surface Transportation Board  
Office of the Secretary  
Case Control Unit  
ATTN: STB Finance Docket No. 33388 (Sub-No. 91)  
1925 K Street, NW  
Washington, D.C. 20423-0001

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Office of the Secretary  
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**Re: Finance Docket No. 33388 (Sub-No. 91) (General Oversight)**

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are the original and 25 copies of NS-1, the First General Oversight Report of Norfolk Southern Corporation and Norfolk Southern Railway Company. Also enclosed is a 3.5 inch computer disk containing the text of NS-1 in WordPerfect 5.1 format.

Kindly date-stamp the three additional enclosed copies of NS-1 and return them to our messenger.

Please feel free to call if you have any questions.

Sincerely,

Richard A. Allen  
Scott M. Zimmerman

*Attorneys for Norfolk Southern Corporation  
and Norfolk Southern Railway Company*

Enclosures

cc: Service list in Finance Docket No. 33388 (Sub-No. 91)



198056

NS-1

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 33388 (Sub-No. 91)

CSX CORPORATION AND CSX TRANSPORTATION, INC.  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
-- CONTROL AND OPERATING LEASES/AGREEMENTS --  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

(GENERAL OVERSIGHT)

**FIRST GENERAL OVERSIGHT REPORT OF  
NORFOLK SOUTHERN CORPORATION  
AND NORFOLK SOUTHERN RAILWAY COMPANY**

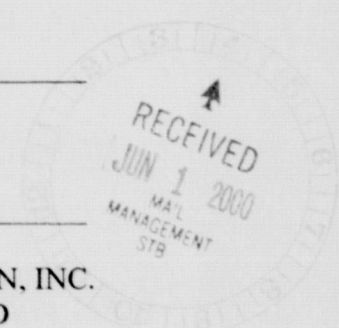
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Date: June 1, 2000



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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET No. 33388 (Sub-No. 91)

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CSX CORPORATION AND CSX TRANSPORTATION, INC.  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
-- CONTROL AND OPERATING LEASES/AGREEMENTS --  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

(GENERAL OVERSIGHT)

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**FIRST GENERAL OVERSIGHT REPORT OF  
NORFOLK SOUTHERN CORPORATION  
AND NORFOLK SOUTHERN RAILWAY COMPANY**

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Pursuant to Decision No. 1 in Finance Docket No. 33388 (Sub-No. 91) ("Decision No. 1"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") hereby submit their first comprehensive report on implementation of the Conrail control transaction (the "Transaction") authorized by the Board in Decision No. 89 in Finance Docket No. 33388 (served July 23, 1998) ("Decision No. 89").

**INTRODUCTION**

In Decision No. 89, the Board approved, with conditions, acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, "Conrail") by (a) NS and (b) CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), and the division of the operation of a portion of the assets of Conrail by and between NS and CSX. In approving the Transaction, the Board, among other things, retained general

oversight of the Transaction for five years to permit it to assess the progress of the Transaction's implementation and the effects of the various conditions the Board imposed. NS and CSX consummated the division and began the separate operation of those assets on June 1, 1999 (sometimes referred to here as "Day One" or "Split Date").

When it established the general oversight condition in Decision No. 89, the Board set out a number of broad themes that it noted would be encompassed within its general oversight of the Transaction, such as assessing the Transaction-related impacts within the Chicago switching district, ensuring adherence to various representations made by the Applicants, and monitoring of Board-imposed environmental conditions. *See* Decision No. 89, slip op. at 160-161. In Decision No. 1 in this subdocket, the Board instituted this proceeding to implement the 5-year general oversight condition imposed in Decision No. 89, and directed NS and CSX to file by June 1, 2000 "progress reports respecting their implementation of the Conrail transaction," containing "in-depth analyses of implementation of the transaction and of the workings of the various conditions" established by the Board. Decision No. 1, slip op. at 3.

\* \* \*

This report is divided into two main parts. The first part discusses a number of broad issues pertaining to implementation of the Conrail Transaction. The second part will consist of a point-by-point discussion of various specific conditions imposed on NS (or both Applicants) or directly affecting NS.<sup>1</sup>

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<sup>1</sup> Conditions that pertain solely to CSX and do not directly affect NS are not addressed in this report. Certain conditions that impose obligations solely on CSX but directly affect NS – for example, a condition requiring transfer of trackage rights by CSX to NS – are discussed.



## **I. IMPLEMENTATION OVERVIEW**

### **1. Reintroduction Of Competitive Two-Carrier Service**

The Conrail Transaction was unique among railroad transactions. The Transaction divided the operation of the assets of a major railroad into three parts, changed the railroad map of the eastern United States and reintroduced rail-to-rail competition into major markets in the Northeast for the first time in decades.

Because of the complexity of the Transaction, both NS and CSX initially experienced implementation difficulties. The NS metrics did not begin to turn around until October 1999. Accordingly, even though we are at the one-year anniversary of the start-up of the Transaction, we are in reality only a few months into the Transaction as proposed by the Applicants. At this point in time, it is too early to assess the full effects of reintroducing two-carrier competition to major markets in the Northeast. Nonetheless, we believe that accomplishments thus far give an indication of the benefits of the Transaction and what the future holds for eastern railroading.

Operations in the Shared Assets Areas ("SAAs") so far have been difficult, but manageable. Intermodal traffic between Chicago and New York/New Jersey and coal traffic originating in the Monongahela are two of the major competitive success stories. Customers have benefited as NS and CSX have vigorously competed with one another for business which previously had been able to be handled solely by Conrail. NS customers will see even more benefits as our Rutherford intermodal facility (near Harrisburg, PA) comes on line in June 2000. Rutherford will allow more efficient handling of east-west intermodal traffic and can eliminate a number of cross-town drays in Chicago. Rutherford has the capacity and is situated to handle north-south traffic as well as east-west flows. When our intermodal facility in Austell (near Atlanta, GA) is

completed, we will be able to offer intermodal customers the efficient north-south service discussed in our Application to the Board.

Where there was inadequate infrastructure to accommodate the needs of two carriers, the reintroduction of competitive rail service has been delayed. A prime example is Buffalo, where NS found itself with more traffic than anticipated, but with limited infrastructure to handle the traffic since CSX had been allocated the operation of much of Conrail's yard capacity. NS adjusted its capital investments and moved quickly to add capacity by rebuilding Bison Yard, a former joint NS/Conrail yard, the Conrail portion of which had been closed because Conrail did not need the yard to support its operations. NS also adjusted its plans by working with the Buffalo & Pittsburgh to gain additional yard facilities.

Another example is the Southern Tier. NS is placing increased emphasis on industrial development along the route. NS established an industrial development office in Binghamton, NY shortly before Split Date to work closely and cooperatively with the State of New York, and other public and private sector economic development recruitment organizations, to locate new rail-served industry. The NUCOR Corporation's recent announcement that it will be locating a new steel truss manufacturing plant employing 300 people, to be served via the Southern Tier, is evidence that this invigorated collaborative effort is working.

Our Monongahela coal traffic and our Chicago-New York/New Jersey intermodal have been early successes notwithstanding our start-up service problems. This traffic moves either in unit trains (in the case of coal) or with minimal blocking (in the case of intermodal). It is easier for railroads to provide these types of train service. No matter



how efficient the railroad, other service is more problematic, largely because of the time spent switching in terminals (and on the line of road).

In addition to service improvements from our capital projects, customers will continue to see incremental improvements as we refine our operating plan (including better blocking schemes and other service design changes) to provide more consistent service. Although we are not as far along as we had hoped to be (because of our start-up problems), we remain confident that the positive developments of the last several months will continue so that customers will enjoy the full benefits of the enhanced competition made possible by the Conrail Transaction.

## **2. Capital Improvement And Investment In Infrastructure**

The NS Operating Plan submitted in STB Finance Docket No. 33388 estimated the need for over \$500 million in construction and upgrade projects related to the Conrail Transaction. See CSX/NS-20 (Volume 3B) (NS Operating Plan) at 267 et seq. NS began reporting the progress of these projects as of the Control Date (when NS and CSX were authorized by Decision No. 89 to exercise control over Conrail) as part of its operational monitoring report that it submits monthly to the STB.

As of May 31, 2000, NS has completed construction on 35 projects relating to the Transaction. Twelve projects are currently in progress, and NS expects to complete all of those by the end of 2001. These projects and their status (as of May 31, 2000) are listed in the following chart:<sup>2</sup>

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<sup>2</sup> If status of project phase is blank, work on that part of the project has not yet begun.

Location		Project	Dept	Phase	Status
Alexandria	IN	Construct track connection Estimated Completion Date: Complete	Track	Design	Complete
				Grading	Complete
			Signal	Const	Complete
				Design	Complete
Allentown - Reading	PA	Traffic Control System Estimated Completion Date: 4Q01	Signal	Design	In progress
				Const	
Angola	NY	Upgrade existing siding, construct new siding Estimated Completion Date: Complete	Track	Design	Complete
				Grading	Complete
			Bridge	Const	Complete
				Design	Complete
			Signal	Const	Complete
Ashtabula	OH	Construct connection track Estimated Completion Date: Complete	Track	Design	Complete
			Signal	Const	Complete
				Const	Complete
Attica	IN	Extend siding 4, 580 track feet Estimated Completion Date: Complete	Track	Design	Complete
				Grading	Complete
			Signal	Const	Complete
				Design	Complete
Boundbrook	NJ	Extend siding 15,000 track feet Estimated Completion Date:	Track	Design	Project being defined.
				Grading	Undetermined
			Signal	Const	
Bristol	VA	Extend siding 14,255 track feet Estimated Completion Date: Complete	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Bridge	Design	Complete
			Signal	Const	Complete
Bucyrus	OH	Construct track connection Estimated Completion Date: Complete	Land	Design	Complete
					Complete
			Signal	Grading	Complete
				Const	Complete
				Design	Complete
Buffalo -	NY	Traffic control system and remove pole line.	Signal	Const	Complete



Location		Project	Dept	Phase	Status
Cleveland	OH	Estimated Completion Date: Complete		Const	Complete
Buffalo	NY	Rehabilitate tracks in sub-leased BPRR yard Estimated Completion Date: Complete	Track	Const	Complete
Buffalo	NY	Construct connection to BPRR yard Estimated Completion Date: Complete	Track	Design Grading Const	Complete Complete Complete
			Signal	Design Const	Complete Complete
Buffalo	NY	Reconstruct portion of Bison Yard Estimated Completion Date: Complete	Track	Design Grading Const	Complete Complete Complete
			Signal	Design Const	Complete Complete
Butler	IN	Construct track connection Estimated Completion Date: Undetermined	Track	Design Grading	Project being defined.
			Signal	Const Design Const	
Chicago	IL	Expand and improve 47th St Yard Intermodal Terminal Estimated Completion Date: 3Q00	Track	Design Grade/ Pave	Complete In progress
Cloggsville	OH	Track Rehabilitation Estimated Completion Date: Complete	Track	Design Const	Complete Complete
Cloggsville	OH	Construct second main Estimated Completion Date: 4Q00	Track	Design Grading Const	Complete In progress In progress
			Bridge	Design Const	Complete In progress
			Signal	Design Const	Complete In progress
Columbus	OH	Construct track connection Estimated Completion Date: Complete	Track	Design Grading Const	Complete Complete Complete
			Signal	Design Const	Complete Complete
Crockett	VA	Construct 9,100 foot new siding Estimated Completion Date: Complete	Land Track	Design Grading Const	Complete Complete Complete
			Bridge	Design	Complete



Location		Project	Dept	Phase	Status
				Const	Complete
			Signal	Design	Complete
				Const	Complete
Croxtan	NJ	Expand and improve intermodal terminal	Track	Design	Complete
		Estimated Completion Date: Complete		Grade/ Pave	Complete
E-Rail	NJ	Expand and improve intermodal terminal	Track	Design	In progress
		Estimated Completion Date: 2Q01		Grade/ Pave	
Erie	PA	Erie Track Realign Project	Track	Design	In progress
		Estimated Completion Date: 3Q01		Grading	
			Signal	Const	
				Design	Complete
				Const	
Flemington	NJ	Construct 12,500 foot siding	Track	Design	Project being defined.
		Estimated Completion Date: Undetermined		Grading	
			Signal	Const	
				Design	
				Const	
Hadley Jct	IN	Double tracking	Track	Design	Project being defined.
(Ft Wayne)		Estimated Completion Date: Undetermined		Grading	
			Signal	Const	
				Design	
				Const	
Hagerstown Sec	PA	Construct siding	Track	Design	Complete
		Estimated Completion Date: Complete		Grading	Complete
(Greencastle)			Signal	Const	Complete
				Design	Complete
				Const	Complete
Hagerstown Sec	PA	Traffic Control	Signal	Design	Complete
		Estimated Completion Date: 4Q00		Const	In progress
Harrisburg	PA	Construct double track	Land		In progress
		Estimated Completion Date: 4Q00	Track	Design	Complete
				Grading	

Location		Project	Dept	Phase	Status
			Signal	Const Design Const	Complete In progress
Harrisburg (Rutherford)	PA	Construct intermodal terminal Estimated Completion Date: 3Q00	Track	Design Grade/ Pave	Complete In progress
Harrisburg - Reading	PA	Traffic Control System and remove pole line Estimated Completion Date: 4Q00	Signal	Design Const	Complete In progress
KD Tower - Cumberland Falls	KY	Extending double track 40,120 feet Estimated Completion Date: Complete	Track	Design Grading	Complete Complete
			Signal	Const Design Const	Complete Complete Complete
Knoxville - Chattanooga	TN	Double Stack Clearances Estimated Completion Date: Complete	Track	Design Const	Complete Complete
			Bridge	Design	Complete
Marshfield	IN	Upgrade and extend siding 7,908 feet Estimated Completion Date: Complete	Land Track	Design Grading Const	Complete Complete Complete
			Bridge	Design Const	Complete Complete
			Signal	Design Const	Complete Complete
Oak Harbor	OH	Construct track connection Estimated Completion Date: Complete	Land Track	Design Grading Const	Complete Complete Complete
			Signal	Design Const	Complete Complete
Pattensburg	NJ	Clearance-9 Bridges Estimated Completion Date: Complete	Bridge	Design Const	Complete Complete
Pattensburg	NJ	Siding Extensions Estimated Completion Date: Complete	Track	Design Grading Const	Complete Complete Complete
			Signal	Design Const	Complete Complete
Pattensburg	NJ	Tunnel Clearance Estimated Completion Date: Complete	Bridge	Design Const	Complete Complete
Philadelphia	PA	Construct crossover - Zoo Estimated Completion Date:	Track	Design Grading	Project being defined.



Location	Project	Dept	Phase	Status
	Undetermined			
		Signal	Const Design Const	
Piney Flats	TN Extend siding 6,610 feet Estimated Completion Date: Complete	Land Track	Design Grading Const	Complete Complete Complete Complete
		Signal	Design Const	Complete Complete
Port Reading	NJ Chemical Coast Clearance Projects Estimated Completion Date: Complete	Track Bridge	Design Const Design Const	Complete Complete Complete Complete
Rader	TN Extend siding 5,189 feet Estimated Completion Date: Complete	Land Track	Design Grading Const	Complete Complete Complete Complete
		Bridge	Design Const	Complete Complete
		Signal	Design Const	Complete Complete
Reading -	PA Traffic Control System and remove pole line	Signal	Design	Complete
Philadelphia	PA Estimated Completion Date: 4Q01		Const	
Riverton Jct -	VA Clearance projects	Bridge	Design	Complete
Roanoke	VA Estimated Completion Date: Complete		Const	Complete
Sandusky (Bellevue)	OH Construct Triple Crown Terminal Estimated Completion Date: Complete	Track	Design Grade/ Pave	Complete Complete
		Building	Const	Complete
Sandusky- Columbus	OH Double Track: S 13.60 - S 26.00 Estimated Completion Date: Complete	Track	Design Grading Const	Complete Complete Complete Complete
		Signal	Design Const	Complete Complete
Sandusky- Columbus	OH Double Track: S 78.10 - S 88.40 Estimated Completion Date: 4Q00	Land Track	Design Grading Const	In progress Complete
		Signal	Design Const	In progress
Sandusky- Columbus	OH Double Track: S 88.20 - S 95.60 Estimated Completion Date: 2Q00	Land Track	Design	In progress Complete

Location		Project	Dept	Phase	Status
				Grading	Complete
				Const	In progress
			Signal	Design	Complete
				Const	Complete
Sidney	IL	Construct track connection Estimated Completion Date: Complete	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Signal	Design	Complete
				Const	Complete
Sido	MO	Double tracking 36,458 track feet Estimated Completion Date: Complete	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Bridge	Design	Complete
				Const	Complete
			Signal	Design	Complete
				Const	Complete
Sloan	IL	Extend siding 5,027 track feet Estimated Completion Date: Complete	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Signal	Design	Complete
				Const	Complete
Southern Tier	NY	Southern Tier Rehabilitation	Track	Const	Project being defined.
		Estimated Completion Date: Undetermined	Bridge	Design	In progress
				Const	
St. Louis	MO	Expand Mitchell Triple Crown Terminal	Track	Design	Complete
(Mitchell)		Estimated Completion Date: Complete		Grade/ Pave	Complete
			Signal	Design	Complete
				Const	Complete
Toledo	OH	Intermodal Terminal	Track	Design	Project being defined.
		Estimated Completion Date: Undetermined		Grade/ Pave	
Tolono	IL	Track Connection Estimated Completion Date: Complete	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Signal	Design	Complete
				Const	Complete
Vermillion	OH	Track Connection Estimated Completion Date: Complete	Land		Complete
			Track	Design	Complete
				Grading	Complete
				Const	Complete



Location	Project	Dept	Phase	Status
		Signal	Design	Complete
			Const	Complete
Wabash	IN Construct connection track	Track	Const	Complete
	Estimated Completion Date: Complete	Signal	Design	Complete
			Const	Complete

As a result of the traffic flows that materialized or changed after NS began operating in the former Conrail territory, NS has added projects and has placed a different level of priority on certain projects that were initially described in its Operating Plan. NS has added or expanded projects in Ashtabula, OH, Buffalo, NY, Harrisburg, PA, Sandusky, OH and Wabash, IN. NS has deferred completion of eight construction projects described in the Operating Plan; these are in Boundbrook, NJ, Butler, IN, E-Rail, NJ, Flemington, NJ, Hadley Junction, IN, Philadelphia, PA, Southern Tier, NY and Toledo, OH.

The SAAs were the subject of capital improvements relating to the continuing Conrail-operated assets. Examples of significant SAA capacity improvement projects completed by Conrail since the Split Date include:

- Adding two new, high capacity yard tracks at Port Reading Yard in Woodbridge, NJ;
- Adding a new connection to NYS&W near Croxton Yard; and
- Expanding capacity of Dillard Yard in Detroit.

### 3. Service/Operational Monitoring

Operational and service issues are not encompassed within this general oversight proceeding. See Decision No. 89, slip op. at 161; Decision No. 1, slip op. at 3. As noted earlier, both NS and CSX experienced difficulties initially in implementing an



exceedingly complex Transaction, and service unquestionably suffered. The extraordinary efforts of NS's employees to surmount these difficulties, along with new computer systems and additions to infrastructure, began to show results in October 1999. Since then, three important measures of service — average train speed, total cars on line, and average dwell time — have steadily improved on the NS system.

The Board has been fully informed on a continuing basis of operational and service issues and the overall status of service on the expanded NS and CSX systems as a result of the operational monitoring condition the Board imposed in Decision No. 89, the periodic reporting requirements set forth at pages 162-165 of that decision and the close oversight and frequent communications that the Board's staff maintains with Applicants on operational and service issues.

#### **4. Labor**

In Ordering Paragraphs 77-80 of Decision No. 89, the Board imposed labor protective conditions on various elements of the Conrail Transaction. Additionally, in Ordering Paragraph 27, the Board directed that the Applicants "should meet with labor representatives and attempt to form task forces for the purpose of promoting labor-management dialogue concerning implementation and safety issues."

Prior to June 1, 1999, *New York Dock* Implementing Agreements were obtained with all of the labor organizations representing the respective classes and crafts of Conrail employees and each of the three railroads. In all, 18 labor implementing agreements were obtained. Of these, only three required the assistance of an Article I Section 4 neutral referee in NS's case. Two of the arbitrated implementing agreements

were appealed to the STB. In each instance, a voluntary implementing agreement (adopting the award with modifications) was entered into prior to the STB rendering a decision, and the appeals were withdrawn.<sup>3</sup>

The implementing agreements covered the myriad details appropriate and necessary to implement such a complex Transaction. These included such subjects as allocation of employees; integration of seniority and crediting prior service for benefits, vacation and leave purposes; procedures for filing claims for *New York Dock* dismissal or displacement allowances; procedures for providing notice and effecting initial and future coordinations; provisions for moving and relocation of employees; the application of specified collective bargaining agreements; the geographic coverage of new or modified seniority districts; and for some crafts, orderly procedures for continued operations while aspects of the Transaction were phased in through full implementation.

The implementing agreement process and the effects of the Transaction have resulted in well over 7,000 NS employees being certified as entitled to receive a displacement or dismissal allowance. On average, over 1,600 NS employees receive a displacement allowance each month. There are five requests to arbitrate claims under Section 11 of the *New York Dock* conditions, and the process of establishing a *New York Dock* Committee for each matter is underway. One arbitration was completed; the Committee upheld the NS's position. Several organizations (BMWE, SMWIA, TWU,

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<sup>3</sup> These two agreements involved maintenance of way crafts and the carmen craft. In connection with the agreement concluded with the Brotherhood of Maintenance of Way Employees ("BMWE"), BMWE subsequently filed a petition with the Board seeking to vacate the underlying arbitration award issued by the neutral arbitrator, William E. Fredenberger, Jr. That petition (STB Finance Docket 33388 (Sub-No. 88)) has not been ruled on by the Board.



NCF&O, and IAM) are claiming *New York Dock* benefits for employees whose positions were abolished in the early part of this year. NS has offered to arbitrate many claims on an expedited basis; others are under review. Three lawsuits were filed in Ohio on behalf of supervisors seeking *New York Dock* benefits; motions to dismiss were granted.

In compliance with Ordering Paragraph 27, NS Labor Management Task Force meetings were held with those labor organizations responding to NS's invitation to meet. In addition, monthly meetings of the Operations Division System Safety Committee are held with senior NS Operations executives and local labor organization representatives throughout the NS system. Several of these meetings were held on the Conrail properties. The NS Chief Operations Officer meets regularly with the operating craft representatives. Ongoing contacts between Labor Relations personnel and organization representatives continue on a daily basis.

On the continuing Conrail, there have been few disputes regarding labor protective conditions. A total of 612 employees have been certified as entitled to *New York Dock* displacement allowances, with approximately 50 displacement allowances being paid each month. Claims for displacement allowances have been submitted under the *New York Dock* protective conditions on behalf of employees represented by several labor organizations. Discussions of these claims are ongoing. One organization, the BMW, has requested arbitration. Discussion of these claims has been requested by Conrail.

**5. Relationship With Shortlines**

Long before the Conrail Transaction, NS worked with its connecting shortlines as partners to develop rail business. NS has worked hard to implement the Railroad Industry Agreement between the Class I railroads and the Class II's and III's. For example, we have reduced switch charges, promoted Interline Service Agreements (we currently have them in place with 25 of our shortlines) and negotiated car hire to allow the purchase of new cars by one of our shortlines.

NS's philosophy of working with its shortlines in a spirit of cooperation remains unchanged. What has changed is the number of shortlines with which NS now connects. During our start-up problems, we asked our shortlines for assistance, and they provided it. We waived (on a temporary basis) some so-called "paper barriers" when they might otherwise have lost some business. We are meeting with our shortline connections to explore better ways of doing business with one another. We have already had meetings for shortlines in eight of our eleven operating divisions.

**6. Relationship With Amtrak And Passenger Authorities**

In Decision No. 89, the Board declined to impose any of the conditions requested by various passenger railroads, but said it would monitor "transaction-related impacts on Amtrak passenger operations" during the oversight period. Decision No. 89 at 173-74.

Four passenger railroads also operate over Conrail lines that NS now operates: Metro-North Commuter Railroad Company ("Metro-North"), New Jersey Department of Transportation/New Jersey Transit Corporation ("NJT"), Southeastern Pennsylvania



Transportation Authority ("SEPTA") and Amtrak. NS has agreements with all of these railroads.

#### **Metro-North**

The pre-Split Date Metro-North/Conrail agreement covered Metro-North operations over trackage now operated by CSX as well as Southern Tier trackage between Port Jervis and Suffern, New York, operated by NS. NS consented to Conrail's proposal to extend this agreement for a period of five years, upon the expiration of the then-current term at the end of 1997. NS has improved communications with Metro-North and is working in partnership with Metro-North to re-evaluate future capacity needs on the Southern Tier.

#### **New Jersey Transit**

The Conrail trackage NJT operates over is now operated by CSAO, NS and CSX. On March 20, 1998, NS and CSX executed a letter agreement with NJT that covers, among other matters, the following:

- **Coordination:** NS and CSX agreed to a "mechanism for coordination and communication." NS has met with NJT on operational and contractual matters, and will continue to do so. NS has received no complaints from NJT concerning coordination of passenger and freight train operations.
- **Automatic Train Control/Positive Train Stop:** NS agreed that any locomotives operated over NJT trackage would be equipped with ATC/PTS apparatus. NS has met with NJT to discuss various features of NJT's ATC/PTS requirements.
- **Rate Negotiations:** The parties agreed to "enter into negotiations regarding the rates paid by either NJT or Conrail for trackage rights under the NJT and Conrail



Trackage Rights Agreement." NS is in compliance with this requirement, as it is participating fully in these negotiations.

- **Townley, NJ, Passenger Station:** The parties agreed to NJT's construction of a new passenger rail station at Townley, NJ, and to "cooperate and support NJT's effort to achieve timely construction and operation of the station...." NS and CSX have fully complied, and the station is currently under construction.
- **Northeast Corridor Freight Use:** NS and CSX agreed that "where NJT's interests may be affected and subject to Amtrak's concurrence, NJT should be given the opportunity to participate in discussions [concerning] usage of the Northeast Corridor for freight purposes." This section of the letter agreement is not yet operative, but NS will fully comply when it becomes so.
- **Bordentown Secondary.** Conrail has sold its Bordentown Secondary to NJT for construction of a light rail line between Trenton and Camden.

#### SEPTA

NS, CSX and SEPTA entered into an agreement on June 1, 1998 extending for five years the term of the previous Conrail-SEPTA Trackage Rights Agreement. Because SEPTA operates over much more trackage shared with CSX than with NS, there are portions of the SEPTA agreement that pertain primarily or solely to CSX. Nevertheless, SEPTA, NS and CSX are in constant contact with regard to operating issues. In addition, the agreement requires NS to "work closely in good faith" with SEPTA on development, where feasible, of new passenger service over the "Cross County Corridor" (between Morrisville and Downingtown, PA) and the "Schuylkill Valley Corridor" (between

Philadelphia and Reading, PA). NS has been in frank and earnest discussions and will continue to work with SEPTA to develop feasible new passenger opportunities.

### **Amtrak**

NS entered into two agreements with Amtrak in connection with the Conrail Transaction, both of which were submitted to the Board on May 15, 1998. The first is a settlement agreement among NS, CSX, Conrail and Amtrak styled "Principles of Cooperation Concerning the Northeast Corridor." This agreement sets forth the parties' agreements concerning the rights of NS, CSX and their affiliates to operate over Amtrak's Northeast Corridor and other properties upon the Board's approval of the Conrail Transaction. The agreement also required Amtrak to file a statement with the Board withdrawing its request for conditions and supporting the Transaction and called for the Board to require NS and CSX to file reports concerning on-time performance. The second agreement is a Memorandum of Understanding among NS, Conrail and Amtrak concerning, among other things, cooperative efforts to implement high-speed passenger service on the Michigan line between Chicago and Detroit.

NS is in compliance with the terms of the foregoing agreements and has continued its good working relationship with Amtrak regarding Amtrak operations throughout the NS system. NS has been meeting with Amtrak on a regular basis on matters related to new passenger service and Express service. The parties continue to have a good dialogue regarding daily operations over Amtrak's Northeast Corridor and have daily conference calls at the local supervisory level.



## **7. Safety Implementation**

In Decision No. 52, served on November 3, 1997, the Board required NS, CSX, and Conrail to submit Safety Integration Plans (SIPs) to address rail safety issues raised in comments by the United States Department of Transportation. Adopting a format suggested by the Federal Railroad Administration (FRA), NS filed its Safety Integration Plan on December 3, 1997.

On May 19, 1998, the Board and the FRA executed a Memorandum of Understanding (MOU) which provided that if the Conrail Transaction were approved, FRA would monitor the Transaction's potential impact on safety. In Decision No. 89 approving the Transaction, the Board placed two conditions implementing the MOU process:

Environmental Condition 49(A). Applicants shall comply with the Safety Integration Plans, which may be modified and updated as necessary to respond to evolving conditions.

Environmental Condition 49(B). Applicants shall participate and fully cooperate with the ongoing regulatory activities associated with the safety integration process, as described in the Memorandum of Understanding agreed to by the Board and FRA with the concurrence of the U.S. Department of Transportation, until FRA affirms to the Board in writing that the integration of Applicants' systems has been completed safely and satisfactorily.

FRA prepared a "Conrail Merger Safety Assessment and Surveillance Plan," introduced to the carriers on September 4, 1998, which provided a background for NS's and FRA's analysis of safety implementation on the Conrail territories operated by NS. NS dedicated a senior team of safety, operating, information technology/systems, and legal personnel to this effort.

Beginning in October, 1998, NS has periodically met with and updated FRA on the progress of its safety implementation. In these meetings and updates, NS has



provided a description and timeline for completion of projects, including, *inter alia*, corporate safety culture, training, operating practices, equipment allocation, employee staffing and information systems compatibility. As of the most recent NS safety integration meeting with FRA, April 5, 2000, NS had satisfactorily completed all but six of the 65 safety implementation items that it had originally identified.<sup>4</sup>

In addition to regularly scheduled safety implementation reports, NS has provided extensive supplemental information and reports to the FRA concerning the preparation of, training for, and implementation of, information technology and information systems on NS's new Northern Region. Presentations on IT/IS issues as they relate to the movement of hazardous materials were made at a joint meeting<sup>5</sup> with FRA in Newark, New Jersey on November 2-3, 1999. At that meeting FRA was apprised of both pre-split and ongoing efforts to assure compliance with hazardous materials regulations. Before the end of 1999 NS conducted more than 100 audits of hazmat compliance throughout former Conrail territory operated by NS, and on the SAAs. FRA hazmat inspectors have been active participants in many of these audits.

It is important to note that despite early service-related problems, Norfolk Southern's industry-leading safety record has remained exemplary since June 1, 1999.<sup>6</sup> NS has not experienced a major train accident or Transaction-related employee fatality

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<sup>4</sup> In accordance with Decision No. 52, NS and CSX had also submitted a Safety Integration Plan for the Conrail Shared Assets Operation. As part of the safety implementation process, Conrail too has provided updates to and attended meetings with FRA.

<sup>5</sup> Other attendees included representatives from CSX and Conrail.

<sup>6</sup> In fact, NS's standing as the nation's safest Class I railroad was acknowledged on May 12, 2000 when NS was awarded its 11<sup>th</sup> consecutive gold E. H. Harriman Award.

since that date. Moreover, as shown in the table below, FRA-reportable injuries on the former Conrail territory now operated by NS have decreased markedly in all departments since Day One.

**Reportable Injuries; Conrail Territory Operated by NS**

	<u>6/1-12/31 1999</u>	<u>6/1-12/31 1998</u>	<u>Percent Improved</u>	<u>First 4 months 2000</u>	<u>First 4 months 1999</u>	<u>Percent Improved</u>
<b>Transportation</b>	69	80	13.75	37	55	32.72
<b>Mechanical</b>	19	26	26.92	8	15	46.66
<b>Engineering</b>	15	38	60.52	7	16	56.25
<b>TOTAL</b>	103	144	28.47	52	86	39.53

This improvement in safety can be attributed to, among other things, recognition that NS's systems and practices had to be carefully and thoroughly introduced to new Northern Region employees. To this end, NS took a number of steps, including the following:

- The NS "Six Point Action Plan for Safety of Operations" was issued to Conrail employees prior to Day One.
- The NS Safety and General Conduct Rule Book was phased in from Day One until it was in effect in all departments by January 1, 2000.
- DuPont Safety Audit training was completed on the NS Northern Region prior to Day One and Safety Audits have been conducted since Day One.
- The NS Internal Control Plan regarding harassment and intimidation was posted throughout the NS Northern Region prior to Day One.



- The NS Safety Committee structure was implemented in Engineering, Mechanical and Transportation Departments on the Northern Region on Day One, the NS Northern Region Safety Planning Committee began in May, 1999, and NS's senior-level Operations Division Safety Steering Committee ("ODSSC") held several meetings in Northern Region locations.
- NS's Personal Injury Reporting System was implemented on Day One. Training was conducted on each division and in major shops.
- Total System Accident Reporting ("TSAR") for grade crossing and train accidents was implemented on June 1, 1999. Training was conducted on each division prior to Day One.
- Critical Incident Response Training is ongoing on Northern Region divisions.
- Northern Region Engineering, Transportation and Mechanical Departments have received monthly distributions of training videos, posters and safety statistical information for use in employee contacts, and posting on safety bulletin boards since Day One.
- Prior to Day One, the NS Safety Department delivered Safety Bulletin Boards to all Conrail divisions and shops.
- The NS Safety Incentive Plan Stock Award was implemented on the Northern Region on June 1, 1999. Over 1,000 former Conrail (now NS) employees received a 1999 stock award under the plan.



**8. Impact On Chicago Switching District**

The Conrail Transaction has had no material adverse effect on Chicago operations. Chicago is currently working well from an operating standpoint. As carriers look to improve their overall efficiency, the Conrail Transaction should have a positive impact. As previously mentioned, NS's Rutherford intermodal facility is expected to simplify NS's Chicago operations and to reduce the number of trucks involved in draying trailers and containers across Chicago.

The Conrail Transaction likewise has had no material adverse effect on the status of IHB as a neutral switch carrier. The 51 percent of IHB stock owned by Conrail before the Transaction is still owned by Conrail (although the voting is equally controlled by NS and CSX). IHB also has the same operating personnel post-Transaction as it had pre-Transaction.

The Conrail Transaction has caused some changes with respect to the IHB. CSX has added capacity to accommodate the increased CSX traffic moving via IHB and improve the east-west traffic flows. IHB now dispatches the IHB east-west line and the north-south line from a consolidated CSX/IHB control center.

IHB continues to serve as a neutral switch carrier in Chicago. NS is unaware of any complaints that the Conrail Transaction has caused IHB to act otherwise. IHB continues to operate at the same level of efficiency, including comparable pre- and post-split dwell times.

9. **Effects Of The Transaction On Jurisdiction Thresholds And Revenue Adequacy**

In Decision No. 89, the Board discussed at length the arguments of some parties that CSX Corporation ("CSXC") and Norfolk Southern Corporation ("NSC") had paid an excessive price for the Conrail stock and the requests for conditions of these parties that would have prohibited Applicants from using their costs of acquiring the Conrail stock in calculating jurisdictional thresholds under 49 U.S.C. § 10707(d)(1)(A) or in calculating revenue adequacy. The conditions these parties requested would have required instead the use of predecessor (*i.e.*, Conrail's) historic book value for those purposes. The parties making these claims referred to an "acquisition premium." The Board rejected their arguments and declined to impose the requested conditions. The Board's decision indicated that in the oversight proceedings it would assess the effect of the Transaction on the jurisdictional threshold applicable to rate reasonableness cases and on the Board's revenue adequacy determinations.

In the Board's decision, among other things, the Board found that the price Applicants paid for Conrail was not excessive or unfair to any of the parties or their shareholders, but instead represented the best evidence of Conrail's fair market value. Dec. No. 89 at 66. The Board found that the requested conditions were unwarranted and the positions urged by the protesting parties were also contrary to Generally Accepted Accounting Principles ("GAAP"), which the Board's predecessor had specifically adopted for use in revenue adequacy determinations in Ex Parte No. 483, Railroad Revenue Adequacy – 1988 Determination, 6 I.C.C. 933 (1990), an action affirmed judicially in Association of American Railroads v. ICC, 978 F.2d 737 (D.C. Cir. 1992). *Id.* at 62-65. Although different parties defined the term "acquisition premium" in



different ways, the Board in Decision No. 89 defined it as "the difference between the book value [i.e., the value of Conrail's properties stated on Conrail's books before the Transaction] and the purchase price of the Conrail properties." Id. at 62, n. 93.

NS concurs fully with the Board's discussion of these issues in Decision No. 89. There is no basis for the suggestion, implied in the term "acquisition premium," that NS and CSX paid an excessive price for Conrail or for the contention that using asset values contemporaneous with the acquisition of the Conrail stock for the properties of Conrail operated by NS and CSX as part of their railroad systems is inappropriate or that it is likely to have a significant effect on jurisdictional thresholds or extent of revenue adequacy. The Board's resolution of these issues (and others) in Decision No. 89 is, as the Board knows, pending judicial review in the Second Circuit.

In terms of the Board's oversight, it is too early to make any precise assessments of the Transaction's effect on these matters for the reasons discussed below.

Effects On Jurisdictional Thresholds. With respect to jurisdictional thresholds, we note at the outset that the determination of jurisdictional thresholds for reviewing challenged rail rates under 49 U.S.C. § 10707(d)(1)(A) depends on the specific characteristics of the movement in question, and those characteristics can vary widely from movement to movement. It is therefore not possible to generalize about the effects of the Transaction on those determinations, except with reference to a hypothetical, but in practice nonexistent, "average" movement using system-wide figures.

Even in terms of a hypothetical average movement based on system-wide figures, it is not possible at this point to make a quantitative comparison between pre-Transaction and post-Transaction URCS costs because the Board has not yet determined and issued



the 1999 ratios of variable to fixed costs ("variability ratios") for the various cost categories of the individual Class I railroads, and is not expected to do so until September 2000. Accordingly, although NS filed its 1999 Form R-1 reporting the 1999 revenues and costs of its combined railroad subsidiaries on March 31, 2000, NS is unable at this time to quantify its total 1999 variable costs. Since jurisdictional thresholds are determined by the ratio of a railroad's revenues to its variable costs, a hypothetical system-wide revenue/variable cost ratio, whether or not meaningful, cannot yet be determined for 1999.<sup>7</sup>

Although it is not possible at this time to make quantitative comparisons between pre-Transaction and post-Transaction revenue/variable cost ratios, one point should be made. As explained in Decision No. 89 (pages 22-30), the Transaction is structured not as an acquisition of Conrail's assets by NS and CSX but as a lease and operation by the two railroads, Norfolk Southern Railway Company ("NSR") and CSX Transportation,

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<sup>7</sup> Even when the variability ratios for 1999 are determined, the variable cost figures for 1999 will be of limited usefulness in depicting the effects of the Transaction on NSR's system-wide variable costs for several reasons. First, the 1999 R-1 includes costs from two very different periods: the last seven months, which include costs associated with Conrail properties operated by NSR, and the first five months, which do not. Because of the mid-year implementation of the Transaction, the 1999 R-1 figures are not representative of the results that would be obtained from a full year of operations by the combined NSR/Conrail system, even if there were no changes in costs and revenues from one year to the other. Second, the figures from 1999 are not representative of what may be expected in a normal post-Transaction year for the additional reason that NSR's costs since Day One have been affected by the costs associated with the difficult process of integrating two rail systems discussed earlier.

Inc. ("CSXT") of assets that continue to be owned by Conrail and its subsidiaries, PRR and NYC.<sup>8</sup>

The Application, in its *pro forma* financial statements, analyzed the acquisition under "purchase accounting" principles, allocating 58 percent of the value of Conrail's total assets to NS and 42 percent to CSX. The effects of purchase accounting are reflected in the consolidated financial statements of NSC, which holds a non-controlling equity interest in the jointly owned company that was the vehicle for the joint acquisition of Conrail. The jointly owned company employs purchase accounting to account for its ownership interest of Conrail. However, each of NS and CSX ultimately determined that, consistent with GAAP, the appropriate method of accounting for the Transaction at the railroad level, and hence for reports to the Board, was as an operating agreement and a lease of the Conrail subsidiaries' assets by NSR and CSXT.

As set forth in the transaction documents filed with the Board, annual operating fees and lease charges are payable to Conrail and its two subsidiaries by the two railroads. While the Conrail property leased and operated by NSR does not appear in NSR's R-1 as NSR property, payments NSR makes to PRR and Conrail constitute NSR operating expenses, some percentage of which is deemed variable costs under URCS. The amounts of those payments are based on independent appraisals which established fair rental value for the Conrail assets on a basis contemporary with the Transaction, not on the historic book values of Conrail. See Dec. No. 89 at 30; CSX/NS-18 at 45. Thus,

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<sup>8</sup> At the same time, however, the two holding companies, NSC and CSXC, have become the joint owners of the outstanding Conrail stock through "Green Acquisition Corp."



the form of accounting adopted at the railroad level does involve a contemporaneous reevaluation of Conrail at the time of the Conrail Transaction (as does the purchase accounting method). Accordingly, while the Transaction certainly affects the total revenues and variable costs of NSR and CSXT as reported on their 1999 R-1 filings, the effects are not identical to the effects that would have obtained through the employment of purchase accounting at the railroad level.

Effects On Revenue Adequacy. Each year the Board determines the railroad industry's cost of capital, on the basis of which it then makes an annual determination of each Class I railroad's "revenue adequacy" in accordance with the standards developed in Standards for Railroad Revenue Adequacy, 364 I.C.C. 803 (1981), Standards for Railroad Revenue Adequacy, 3 I.C.C.2d 261 (1986), and Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes, 5 I.C.C.2d 65 (1988). The Board made its most recent revenue adequacy determination, for the year 1998, in Ex Parte No. 552 (Sub-No. 3), Railroad Revenue Adequacy—1998 Determination, served September 9, 1999, finding only one Class I railroad, Illinois Central Railroad Company, to be revenue adequate. The Board has not yet made its revenue adequacy determinations for the year 1999.

Inasmuch as a carrier's revenue adequacy is a determination the Board must and will make, it is neither necessary nor appropriate for NS to attempt to predict that determination in this report. However, the same general comments made earlier as to why the figures from NSR's 1999 Form R-1 are of limited utility in depicting the effects of the Transaction on NSR with regard to jurisdictional threshold determinations apply as well to the determination of revenue adequacy. Furthermore, NSR's revenue adequacy



will also not be directly affected by the amount NSC paid to acquire its interest in Conrail, including the so-called "acquisition premium." As explained earlier, because the Transaction is structured as an operating agreement and lease of assets that continue to be owned by Conrail and its subsidiary PRR, rather than as a sale of assets to NSR, no purchase accounting adjustment to the value of NSR's assets in its accounts and Form R-1 was called for. Indeed, for purposes of calculating NSR's net investment base (and thus its return on investment and revenue adequacy) using Schedule 250, the value of property leased by NSR is included in NSR's Schedule 250 at Conrail's historic net book value (gross book value less accumulated depreciation), not at fair market value, which results in a lower net investment base, and thus a higher return on net investment and higher degree of revenue adequacy, than would be the case if those assets had been acquired by NSR and written up in value to reflect their acquisition cost.

## **II. REVIEW OF OTHER SPECIFIC CONDITIONS IMPOSED BY THE BOARD**

### **1. Notifications to the Board.**

The Board required the Applicants to provide various written notifications and confirmations pertaining to the Control Date and the division of the operation of Conrail's assets on Day One. Decision No. 89, Ordering Paragraphs 2, 3 and 4. These conditions were complied with. *See* letter from Richard Allen filed with the Board on behalf of Applicants on August 24, 1998 (regarding the Control Date); and CSX/NS-218 (filed May 17, 1999), CSX/NS-219 (filed June 16, 1999), and letter from Jonathan M. Broder filed with the Board on August 11, 1999 (regarding Day One).

## **2. Conrail Existing Transportation Contracts.**

The Board ordered, with respect to existing Conrail transportation contracts containing an antiassignment or other similar clause, that at the end of the 180-day period beginning on Day One, a customer with such a contract may elect either (a) to continue the contract until its expiration under the same terms with the carrier that provided service during the 180-day period, or (b) to exercise whatever termination rights existed under the contract, upon 30 days' notice to the serving carrier. Decision No. 89, Ordering Paragraph 10.

NS has complied with this condition. The competition resulting from the Transaction, spurred by various customers' ability to terminate their existing Conrail contracts after the 180-day period, has had the salutary competitive effect of prompting both carriers, NS and CSX, to renegotiate numerous of these contracts with customers. Moreover, there have been no disputes between NS and any customer with respect to the implementation of this condition.

## **3. Adherence to the NITL agreement, as modified.**

The Board ordered Applicants to adhere to all of the terms of the NITL settlement agreement, subject to the modifications ordered by the Board in Decision No. 89. Decision No. 89, Ordering Paragraph 20. Each of the major elements of the NITL agreement, and the applicable modifications by the Board, are discussed below:

(a) *Conrail Transaction Council.* Pursuant to the NITL agreement, CSX and NS created the Conrail Transaction Council. The Council's membership is not just NITL and the railroads; it includes many other organizations representing affected rail



users, including the Chemical Manufacturers Association, the Society of the Plastics Industry, Inc., the Intermodal Association of North America, the American Iron and Steel Institute, the Transportation Intermediaries Association, the National Grain and Feed Association, Edison Electric Institute, the American Forest and Paper Products Association, the Institute of Scrap Recycling Industries, the American Automobile Manufacturers Association, The Fertilizer Institute and others.

Since its inception in early 1998, the Council has met more than 20 times. The matters discussed have included the carriers' metrics and every major implementation activity, as well as many relatively minor ones. More recently, the principal focus of the meetings has been the reports of NS and CSX on the status of operations and feedback provided by their customers. The format of the meetings has encouraged free and full exchanges of information and concerns among the members, and NS believes they have been conducted by all participants in the spirit not of fault-finding but of genuinely trying to make the Transaction work. NS strongly believes that the Council and its meetings have greatly helped NS in implementing the Transaction, by serving as a vehicle for disseminating and exchanging information that has helped the Transaction work better for all concerned.

As directed by the Board, *see* Decision No. 89, slip op. at 55, NS continues to participate in the Council to date.

(b) *Shared Assets Areas descriptions of operations.* The NITL agreement calls for Applicants to provide to the Conrail Transaction Council, by February 1, 1998, summary descriptions of how operations will be conducted in each of the three SAAs. NS complied with this requirement.



(c) *Conrail Rail Transportation Contracts.* The NITL agreement provides, with respect to customers whose existing Conrail contracts were allocated under Section 2.2(c) of the transaction Agreement, that those customers could, after six months' experience, submit to expedited arbitration the question of whether or not there was a basis for transferring the responsibility for service to the other carrier. The Board modified this aspect of the agreement with respect to customers whose Conrail contracts contained antiassignment or similar provisions, by providing for an override of those antiassignment clauses for 180 days, after which time whatever termination rights provided in those contracts could be exercised. As discussed above in Section II.2, this "limited override" provision has been complied with, and numerous Conrail rail transportation contracts have been renegotiated. As for the arbitration provision in the NITL agreement, no customer to date has found it necessary to invoke that provision.

(d) *Interline service.* The NITL agreement provides that, with respect to Conrail customers on routes over which at least 50 cars were shipped in single-line Conrail service in the year prior to the Control Date, and where service would become joint-line CSX-NS service after the Split Date, on request of the customer, NS and CSX will, for three years, maintain the Conrail rate subject to RCAF-U adjustment, and "work with that shipper to provide fair and reasonable joint-line service." Disagreements over routing or interchange points may be submitted to binding arbitration.

The Board in Decision No. 89 expanded this provision to cover situations in which a Class III carrier could provide through service connecting solely with Conrail pre-Transaction, but post-Transaction must provide a three-carrier connecting service with both CSX and NS. In that situation, the Class III carrier may invoke the single-line

to joint-line protection of the NITL agreement. Decision No. 89, slip op. at 56. To date, no Class III carrier has requested this protection.

(e) *Gateways.* The NITL agreement provides that "NS and CSX anticipate that all major interchanges with other carriers will remain open as long as they are economically efficient." NS has complied with this condition; it has closed no economically efficient gateways.

(f) *Reciprocal switching.* The NITL agreement provides that NS or CSX, as the case may be, will keep open to reciprocal switching for ten years any point at which Conrail provided reciprocal switching and also that for five years, reciprocal switching charges between NS and CSX at those points will not exceed \$250 per car, subject to annual RCAF-U adjustment. Further, at all other points and/or with all other carriers, switching rates are to be limited to existing rates plus RCAF-U adjustment or a negotiated amount not to exceed the existing rate plus RCAF-U adjustment.

The Board expanded these provisions in Decision No. 89 to require, where feasible, preservation of switching agreements in both directions – NS and CSX over Conrail and Conrail over NS and CSX – under the same terms provided in the NITL agreement. The Board also mandated preservation of switching arrangements and rate accommodations in cases in which shortline railroads paid switching charges to Conrail pre-Transaction. Decision No. 89, slip op. at 57. NS has complied with this provision of the NITL agreement, as expanded by the Board.

(g) *Preparation for separate operations.* The NITL agreement provides for various notifications to be made to the STB. NS complied with those requirements. See letter from Richard Allen filed with the Board on May 26, 1999.



(h) *Facilities within Shared Assets Areas.* The NITL agreement provides that during the term of the Shared Assets Areas Operating Agreements, any new or existing facility within the three SAAs (other than an "Operator Facility") shall be open to both CSX and NS to the extent and as provided in those Agreements, and construes those Agreements as generally providing that both CSX and NS shall have access to existing and new customer-owned facilities in the SAAs, that both CSX and NS may invest in joint facilities in the SAAs in order to gain access to such facilities, and that either NS or CSX may solely develop facilities that it will own or control and exclusively access. The Board in Decision No. 89 emphasized that during the term of the Shared Assets Area Operating Agreements, all existing and new customer-owned facilities within the SAAs may be served by both CSX and NS. See Decision No. 89, slip op. at 58.

NS is in compliance with this condition. With regard to new facilities, since June 1, 1999, NS's primary focus of attention has been on implementing the Transaction and solving service issues that arose in the months following the June 1, 1999 split; as a result, to date there have been few new facilities or improvements in the SAAs. To the extent that new facilities have opened, NS believes the process in place to approve and promote such improvements has worked adequately.

(i) *Board oversight and reporting.* The NITL agreement sought STB oversight for three years; the Board expanded its oversight to five years. The agreement also provided for quarterly reporting by NS and CSX and development by CSX, NS and the Conrail Transaction Council of objective, measurable standards to be used in the quarterly reports.



NS, CSX, and the Conrail Transaction Council developed the following performance metrics to monitor performance: cars on line by owner and by type; average train speed by traffic mix; average terminal dwell time at specific terminals; and average days on line for empty and loaded cars. In addition to these measures, the Association of American Railroads requested that NS and CSX report bill of lading timeliness. In an effort to allow the public to better monitor service, NS and CSX report all of these metrics on a weekly basis, rather than a quarterly basis. Updated metrics are posted on each railroad's website as well as the AAR's website every Wednesday.

**4. Adherence to settlement agreements.**

The Board specifically required NS and CSX to adhere to the terms of settlement agreements entered into with Amtrak, the Southern Tier West Regional Planning and Development Board, the United Transportation Union, the Empire State Passengers Association, and the City of Indianapolis. Decision No. 89, Ordering Paragraph 21. NS is not a party to the latter two agreements. With respect to the others, NS has complied with the terms of its settlement agreements with Amtrak (as discussed above in Section I.6), STWRB and UTU.

**5. Intermodal truck traffic monitoring.**

The Board required applicants to monitor the origins, destinations and routings for truck traffic at their intermodal terminals in Northern New Jersey and Massachusetts so as to permit the Board to determine whether the Transaction has led to substantially increased traffic over the George Washington Bridge, and to report their findings

quarterly. NS has submitted five reports including data surveyed from its intermodal terminal in Croxton, NJ covering the period from January 1, 1999 through March 31, 2000.

**6. Indianapolis Power & Light.**

The Board required applicants to allow IP&L to choose between service to its Stout plant provided directly by NS or via switching by the Indiana Rail Road Company ("INRD"), to allow creation of an interchange at MP 6.0 on the Petersburg Subdivision of Indiana Southern Railroad ("ISRR") for traffic moving to or from the Stout or Perry K plants, and to provide conditional rights for either NS or ISRR to serve any build-out to the Indianapolis Belt Line. Decision No. 89, Ordering Paragraph 23.

As the Board well knows, the issue of relief for the Stout plant generated a number of pleadings and several Board decisions subsequent to Decision No. 89. In its last report to the Board on this matter (NS-77, filed March 22, 1999), NS reported that it and INRD had agreed in principle on the terms of an agreement granting NS trackage rights over the tracks of INRD to permit NS direct physical access to the Stout plant. NS further reported that it, INRD and CSX (the majority owner of INRD) had agreed in principle on terms that would permit NS, in lieu of using its direct trackage rights access to Stout, to use the switching services of CSX and INRD for the movement of coal from Indiana Southern Railroad ("ISRR") to the Stout plant. This agreement, as NS further explained in NS-78 (filed April 6, 1999), was intended to lay the necessary groundwork for any subsequent, mutually-beneficial alternative arrangement between NS and ISRR for service to Stout if NS and ISRR were to come to believe that such an alternative



arrangement was warranted, as contemplated by the Board in Decision No. 115 (served February 8, 1999) and reaffirmed in Decision No. 125 (served May 20, 1999).

A trackage rights agreement between CSX and NS specifying the terms and conditions of NS's trackage rights over CSX tracks serving Indianapolis has been concluded. A trackage rights agreement between NS and INRD regarding NS's trackage rights over INRD tracks has been concluded as well.

NS has not provided service to IP&L's Stout Plant since Day One. NS and IP&L have engaged in negotiations with respect to transportation of coal from ISRR origins to the Stout Plant via an ISRR/NS movement; to date, however, the parties have not come to an agreement. In those discussions, however, IP&L has informed NS coal marketing personnel that IP&L and INRD have entered into a long-term transportation agreement under which IP&L will be committed for some time to moving the vast majority of its coal requirement for the Stout plant via INRD. Thus, during the pendency of that contract, the amount of coal open to competition is very limited.

The trackage rights that the Board granted to NS over the line of INRD serving the Stout plant, apart from opening a joint ISRR/NS move to Stout from ISRR origins, also, significantly, opens new single-line NS routes between the Stout plant and NS coal origins in the east. NS believes that, as a result of that new opportunity, it will be able to compete head-to-head against CSXT eastern-origin coal for service to Stout from NS coal origins in the east once the IP&L/INRD contract expires.

**7. Consultation with ASHTA Chemicals, Inc.**

Applicants were directed to consult with ASHTA concerning the routing of its hazardous materials. Decision No. 89, Ordering Paragraph 24. Notwithstanding that Ordering Paragraph 24 is directed to "Applicants," as the Board notes elsewhere in Decision No. 89 ASHTA is served post-Transaction solely by CSX. See Decision No. 89, slip op. at 113. Compliance with this condition, therefore, is most appropriately addressed solely to CSX.

**8. Discussions with Port of Wilmington.**

Since June 1, 1999, NS has provided rail service and performed switching operations into and out of the Port of Wilmington, Delaware. Decision No. 89 directed Applicants to enter into discussions with the Port of Wilmington respecting any problems concerning switching services and charges, and to advise the Board of the status of those discussions by no later than September 21, 1998. Decision No. 89, Ordering Paragraph No. 25.

In the months following the issuance of Decision No. 89, representatives of NS, the Port and the Delaware Department of Transportation met several times; as NS reported to the Board in September 1998, the parties discussed issues such as "switching services and charges, marketing opportunities, and other matters of mutual interest."

**9. CSX access to the Monongahela.**

The Board directed that the Applicants adhere to their representation that although NS will have operational control of Conrail's MGA lines, CSX will have equal access to



all current and future facilities located on or accessed from those lines. Decision No. 89, Ordering Paragraph 26. Commercial access to the Monongahela and operation on the Monongahela is covered by the Monongahela Usage Agreement and an operating plan and accounting plan which provide assurance of commercial access to CSXT on a fair and equal basis. Planning for the scheduling of train pickups occurs weekly and monthly, and is coordinated daily through frequent communication. We believe that operations in the Monongahela have exceeded expectations.

**10. Transfer of Buffalo Creek trackage rights.**

The Board directed CSX to transfer to NS its trackage rights over the Conrail line that was formerly a Buffalo Creek Railroad line. Decision No. 89, Ordering Paragraph 34. Those trackage rights have been transferred per the Board's condition.

**11. Nonexpansion of paper barriers.**

Decision No. 89 provided that, with respect to any shortline, such as Reading Blue Mountain & Northern Railroad Company ("RBMN"), that operates over lines formerly operated over by CSX, NS, or Conrail (or any of their predecessors), and that, in connection with such operations, is subject to a "blocking" provision, CSX and NS, as appropriate, must enter into an arrangement that has the effect of providing that the reach of such blocking provision is not expanded as a result of the CSX/NS/CR Transaction.

Decision No. 89, Ordering Paragraph 39.

NS recognizes that the Board restricted the blocking provision applicable to RBMN to destinations on NS that were formerly Conrail destinations; NS has interpreted,

and will continue to interpret, that blocking provision accordingly. *See* Decision No. 89, slip op. at 77. NS also has interpreted, and will continue to interpret, other relevant blocking provisions in a manner consistent with the Board's direction that the reach of such blocking provisions is not to be expanded as a result of the Transaction. To date, however, no shortline has requested that NS enter into any formal agreement memorializing such interpretation.

**12. Ann Arbor Railroad's contract with Chrysler.**

Decision No. 89 provides that CSX and NS must take no action that would undermine or interfere with the ability of the Ann Arbor Railroad "to provide quality interline service" under its new contract with Chrysler. Decision No. 89, Ordering Paragraph 40. NS has complied, and will continue to comply, with this condition.

**13. Transfer of Keensburg-Carol trackage rights.**

The Board directed that Conrail's trackage rights on the NS line between Keensburg, Illinois and Carol, Indiana be transferred to CSX. Decision No. 89, Ordering Paragraph 42. Those trackage rights were transferred per the Board's condition.

**14. Wyandot Dolomite and National Lime and Stone ("NS&L").**

The Board, in Ordering Paragraph 43 in Decision No. 89, stated that, "[a]s respects Wyandot and NS&L, CSX and NS: must adhere to their offer to provide single-line service for all existing movements of aggregates, provided they are tendered in unit-trains or blocks of 40 or more cars; and in other circumstances including new



movements, for shipments moving at least 75 miles, must arrange run-through operations (for shipments of 60 cars or more) and pre-blocking arrangements (for shipments of 10 to 60 cars)." NS has not received any requests from these customers to develop new moves for aggregates from CSX origins in Woodville, Carey, and Spore, Ohio to any NS destinations.

**15. NS access to Joseph Smith & Sons.**

Pursuant to Decision No. 89, Ordering Paragraph 44, NS shall have access to any new line constructed by JS&S or NS, or by any entity other than CSX, between the JS&S facility at Capital Heights, Maryland, and any line over which NS has trackage rights. It is NS's understanding that, to date, no such build-out from the JS&S facility has been constructed.

**16. Wheeling & Lake Erie Railway Co.**

In Decision No. 89, the Board required Applicants to: "(a) grant W&LE overhead haulage or trackage rights access to Toledo, with connections to [Ann Arbor Railroad] and other railroads at Toledo, (b) extend W&LE's lease at, and trackage rights access to, NS' Huron Dock on Lake Erie, and (c) grant W&LE overhead haulage or trackage rights to Lima, OH, with a connection to [Indiana & Ohio Railway Company] at Lima. Applicants and W&LE must attempt to negotiate a solution with regard to these matters; and, if negotiations are not fully successful, may submit separate proposals no later than October 21, 1998." The Board went on to provide, "Further, applicants and W&LE must attempt to negotiate an agreement concerning mutually beneficial arrangements,

including allowing W&LE to provide service to aggregates shippers or to serve shippers along CSX's line between Benwood and Brooklyn Junction, WV, and inform us of any such arrangements reached." Decision No. 89, Ordering Paragraph 68.

On October 21, 1998, NS filed with the Board a report and proposal (NS-71), in both Public and Highly Confidential versions, regarding negotiations as to the relief granted to W&LE that pertained to NS.<sup>9</sup> The same day, W&LE filed a petition (WLE-10) for "clarification" of the relief the Board granted to W&LE in Decision No. 89. On November 10, 1998, NS responded to W&LE's petition for clarification (NS-72, both Public and Highly Confidential versions), and W&LE responded to NS's October 21 report (W&LE-11).<sup>10</sup>

The parties' dispute regarding the scope of the relief granted by the Board in Ordering Paragraph 68 was resolved in Decision No. 107 (served December 9, 1998). There, the Board denied W&LE's request for "clarification," and reaffirmed that, as pertains to NS, (1) W&LE's Toledo haulage or trackage rights were overhead rights only, and did not permit W&LE access to local Toledo industries; (2) the Board's direction to "extend W&LE's lease at. and trackage rights access to" Huron Dock did not require NS to divest Huron Dock via a grant of permanent, lease-to-own trackage rights as W&LE had sought; and (3) negotiations regarding other "mutually beneficial arrangements" were to be just that – negotiations over matters of mutual benefit – and were not to presuppose

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<sup>9</sup> Of conditions (a), (b) and (c) in Ordering Paragraph 68 of Decision No. 89, only (a) and (b) pertain to NS. Condition (c), overhead haulage or trackage rights to Lima, pertains to CSX, as NS understands that W&LE has chosen the CSX route to Lima.

<sup>10</sup> At the same time, there was a similar disagreement between W&LE and CSX regarding the scope of relief granted to W&LE, reflected in additional pleadings filed by CSX and W&LE. See Decision No. 107, slip op. at 5-6.



the granting of any particular relief or access by W&LE to any particular customers. See Decision No. 107, slip op. at 7-8.

Despite being unable to agree on several items, including matters not mandated by the STB such as the lease to W&LE of space at Homestead Yard in Toledo, NS and W&LE have acted to ensure that the Board's intentions regarding the conditions were in no way compromised during the pendency of the negotiations on access to Toledo and the terms and conditions of the extension of the Huron Dock lease.<sup>11</sup> As a result, neither NS nor W&LE has deemed it necessary to return to the STB for guidance, although their respective positions on certain issues remain far apart.

W&LE has remained as lessee and sole occupant of the Huron Dock. The primary questions continuing to face the parties concern the term of the extension of the lease beyond its initial term which ended September 27, 1998, and when that term begins. As set forth in NS's submission of October 18, 1998, and reviewed and discussed in Decision No. 107, served December 9, 1998, NS offered two different terms of extension – either a five year exclusive occupancy lease from the expiration of the initial term or ten years from the expiration of the initial term with modifications permitting NS to use 60% of the Huron Dock. Until October 1999, W&LE sought the ten-year sixty-forty split option, and negotiations focused on the surface-area split and other terms required of parties sharing a long-time iron ore dock. W&LE's more recent position is that it wants the five-year exclusive occupancy extension, but beginning on the date the

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<sup>11</sup> Of course, the trackage rights to Huron Dock will be extended on the same terms and conditions as before to the end of the term of the W&LE lease of the dock. No further extension is required.

lease extension documents are signed. W&LE's position is that until it signs a new lease extension document, it is a hold-over tenant and none of the time since the original lease expired on September 27, 1998 counts toward the extension ordered by the Board. NS remains optimistic of resolution of this issue, but if the parties are unable to resolve this issue, NS will ask for Board intervention.

With regard to the Bellevue-Toledo trackage rights, the primary issue separating the parties is capacity enhancements required to handle increases in W&LE traffic. Prior to the June 1, 1999 Split Date, NS was concerned that the capacity on the Bellevue-Toledo route chosen by W&LE would be insufficient to handle both NS and W&LE trains then anticipated to move over the route. Accordingly, NS asked, and W&LE agreed, initially to implement the Toledo access through haulage. The haulage service ran until mid-October 1999, when W&LE converted the haulage to trackage rights.<sup>12</sup> NS's experience with the integration of its new Northern Region confirmed its capacity constraint concerns. Since June 1, NS has invested substantially in capacity improvements necessary to handle traffic on the line, particularly on the most congested section between Bellevue and Oak Harbor. With some exceptions brought about by operational congestion, NS has been just able to handle its traffic between Bellevue and Toledo as a result of these improvements.

The NS concerns regarding capacity on the route were intensified by statements by W&LE that it intended to place substantially more traffic on the overloaded route – a

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<sup>12</sup> NS took steps to ensure that W&LE's desire to initiate direct trackage rights service was accommodated. NS and W&LE signed an agreement, dated October 18, 1999, permitting immediate initiation of trackage rights service (under authority granted by the (continued...))



prophecy that seems to have come true with the announcement on May 5, 2000 that CN, in conjunction with BNSF, intends to use the W&LE trackage rights over NS to move traffic in and out of Pennsylvania.<sup>13</sup> NS will certainly continue to permit W&LE to use NS's right-of-way between Bellevue and Toledo to move any of this traffic or other traffic it is able to move, as the Board has required, but NS believes that W&LE should be responsible for any capacity enhancements required to move more than one W&LE train per day per direction. Should the parties be unable to agree on this matter, NS will submit the matter to the Board for resolution.

#### **17. Environmental Conditions.**

In Decision No. 89 approving the Conrail Transaction, the Board imposed upon the Applicants a number of environmental conditions ("Environmental Conditions"). The Environmental Conditions are described in detail in Appendix Q of Decision No. 89. Summarized below is the status of Norfolk Southern's implementation of those Environmental Conditions that are applicable to NS. Certain of the Environmental Conditions require that NS certify compliance to the Board. With respect to those Environmental Conditions for which NS has certified compliance, the date of certification is indicated below. NS has also submitted to the Board for its approval

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(...continued)

Board in Decision 89 and subsequently) under a temporary agreement with a limit of one train per day in each direction between Manhattan Junction in Toledo and Bellevue.

<sup>13</sup> This service is detailed in the press release "Canadian National offers western Pennsylvania shippers expanded rail reach in partnership with regional/short-line railroads and local officials," [http://www.cn.ca/cnwebsite.nsf/public/en\\_News20000505](http://www.cn.ca/cnwebsite.nsf/public/en_News20000505), published May 5, 2000. W&LE connects with CN via the Bellevue - Toledo trackage (continued...)

Negotiated Agreements NS has entered into with various local and state governmental authorities to address environmental concerns related to the Conrail Transaction. The Negotiated Agreements supersede the specific terms of various Environmental Conditions included in Decision No. 89, and the Board has accepted and incorporated the Negotiated Agreements pursuant to Environmental Condition 51. In addition, NS has provided monthly status reports to the Board's Section of Environmental Analysis which summarize the status of its compliance with each Environmental Condition applicable to NS.

**1. Environmental Condition 1(A) (Safety: Highway/Rail At-Grade Crossings)**

NS certified compliance with Environmental Condition 1(A) for the 23 NS rail line segments specified in Environmental Condition 1(A) by letter to the Secretary dated August 27, 1999.

**2. Environmental Condition 1(B) (Safety: Highway/Rail At-Grade Crossings)**

NS certified compliance with Environmental Condition 1(B) for the 23 NS rail line segments specified in Environmental Condition 1(B) by letter to the Secretary dated April 30, 1999.

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(...continued)

rights on NS and over the Maumee River Bridge, which W&LE will purchase for \$1 as part of the grant of the trackage rights.



**3. Environmental Condition 1(C) (Safety: Highway/Rail At-Grade Crossings)**

It is the policy and practice of NS to comply with applicable Federal<sup>1</sup>, state, and local regulations regarding prompt maintenance of public highway/rail at-grade crossings, including those located on the 23 NS rail line segments specified in Environmental Condition 1(C).

**4. Environmental Condition 1(D) (Safety: Highway/Rail At-Grade Crossings)**

NS made Operation Lifesaver programs available to the communities, schools and other organizations located along the 23 NS rail line segments specified in Environmental Condition 1(D) prior to June 1, 1999.

**5. Environmental Condition 2 (Safety: Hazardous Materials Transport)**

It is the policy and practice of NS to comply with the current Association of American Railroads "key train" guidelines.

**6. Environmental Condition 4(A) (Safety: Hazardous Materials Transport)**

NS certified compliance with Environmental Condition 4(A) for those of the 23 NS rail line segments specified in Condition 4(A) which would become "key routes" as a result of the Conrail Transaction by letter to the Secretary dated May 13, 1999.

**7. Environmental Condition 4(B) (Safety: Hazardous Materials Transport)**

NS certified compliance with Environmental Condition 4(B) for all of the NS rail line segments specified in Environmental Condition 4(A) or Environmental Condition 4(C) by letter to the Secretary dated February 22, 1999. Material changes have not been made to the NS Emergency Response Plans in the interim.

**8. Environmental Condition 4(C) (Safety: Hazardous Materials Transport)**

NS certified compliance with Environmental Condition 4(C) for all of the NS rail line segments specified in Environmental Condition 4(C) by letter to the Secretary dated February 22, 1999.

**9. Environmental Condition 4(D) (Safety: Hazardous Materials Transport)**

NS has completed all drills for rail line segments N-041, N-044, N-046, N-074, N-075, N-079 and N-081. Drills for rail line segments N-045 and N-070 will be completed by NS by August 22, 2000. Certification of compliance by NS with Environmental Condition 4(D) for all of the NS rail line segments specified in Environmental Condition 4(D) will be submitted by NS to the Board upon completion by August 22, 2000.



**10. Environmental Condition 5(A) (Safety: Hazardous Materials Transport)**

NS certified compliance with Environmental Condition 5(A) for all of the NS rail line segments specified in Environmental Condition 4(A) or Environmental Condition 4(C) by letter to the Secretary dated February 22, 1999.

**11. Environmental Condition 5(B) (Safety: Hazardous Materials Transport)**

It is NS policy to contact the National Response Center (NRC) in the event of a reportable hazardous material, hazardous substance or oil release, including any such releases with the potential to affect wetlands or wildlife habitats. The U.S. Environmental Protection Agency (EPA) has confirmed with NS that upon notification from the NRC, EPA contacts the U.S. Fish and Wildlife Service (USFWS) when appropriate. Therefore, notification by NS of a release to the NRC results in notification to the USFWS when appropriate.

**12. Environmental Condition 6 (Safety: Hazardous Materials Transport)**

NS certified compliance with Environmental Condition 6 for all of the NS rail yards and intermodal facilities specified in Environmental Condition 6 by letter to the Secretary dated August 20, 1999.

**13. Environmental Condition 7 (Safety: Freight Rail Operations)**

It is NS policy and practice to conduct track inspections to detect rail flaws on each rail line segment, including on the 5 NS rail line segments specified in Environmental Condition 7, at least once every 40 million gross ton-miles of

rail traffic or annually, whichever occurs first, consistent with the Federal Railroad Administration's Proposed Rule for gross ton mile-based inspections, 49 CFR Part 213.237, Docket No. RST-90-1.

**14. Environmental Conditions 8(A) (Safety: Highway/Rail At-Grade Crossings)**

NS has completed the highway/rail crossing safety upgrades specified in Environmental Condition 8(A) for NS at-grade crossings at the following locations:

- CR 100 E, Alexandria, Indiana (FRA 474598M)
- Notestine Rd., Graybill, Indiana (FRA 478188C)
- Estella Ave., New Haven, Indiana (FRA 478216D)
- Engle Rd., Fort Wayne, Indiana (FRA 478240E)
- Briant St., Huntington, Indiana (FRA 478270W)
- Olive St., Wabash, Indiana (FRA 478313M)
- Cedar St., Logansport, Indiana (FRA 484216S)
- 18<sup>th</sup> St., Logansport, Indiana (FRA 484229T)
- CR 900 N, Colburn, Indiana (FRA 484267C)
- CR 700 N, Colburn, Indiana (FRA 484269R)
- CR 500 E, Buck Creek, Indiana (FRA 484282E)
- Rockland Rd., Winchester, Virginia (FRA 468634S)
- Galion-Marseilles, Marion, Ohio (FRA 481546M)
- Reiff Church Rd., Mauginsville, Maryland (FRA 534883D)
- Shawley Dr., Mauginsville, Maryland (FRA 534887F)



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In addition, the following NS at-grade crossing safety upgrades specified in Environmental Condition 8(A) are presently under construction and will be completed prior to August 22, 2000:

- TR 145, Ivesdale, Illinois (FRA 479957T)
- CR 172, West Point, Indiana (FRA 484323G)
- CR 250 W, Peru, Indiana (FRA 484209G)
- Washington St./CR 100 E, Burrows, Indiana (FRA 484246J)
- Meridian Line, New Waverly, Indiana (FRA 484248X)
- Criswall, Mechanicsburg, Pennsylvania (FRA 592295C)
- Mill, Mechanicsburg, Pennsylvania (FRA 592320H)
- Alleman, Marion, Pennsylvania (FRA 535151U)
- Hayes Rd., Milner, Pennsylvania (FRA 535163N)

Safety improvements for certain other NS at-grade crossings specified in Environmental Condition 8(A) have been addressed by NS through Negotiated Agreements. NS has submitted to the Secretary each of the Environmental Condition 8(A) Negotiated Agreements NS has entered into with state and local governments, seeking an order from the Board recognizing that the requirements of Environmental Condition 8(A) with respect to the NS at-grade crossings addressed by a Negotiated Agreement have been superseded and amending Environmental Condition 51 to incorporate those Negotiated Agreements. The



following Environmental Condition 8(A) Negotiated Agreements have been made by NS:

(a) On December 4, 1998, NS entered into a Negotiated Agreement with the City of Lafayette, Indiana (the "Lafayette Memorandum of Understanding") regarding highway/rail crossing safety upgrades in that City. In Decision No. 118 (service date March 23, 1999), the Board confirmed that the Lafayette Memorandum of Understanding supersedes NS's obligations under Environmental Condition 8(A) regarding safety upgrades at the 10 NS at-grade crossings in the City of Lafayette which were specified under Environmental Condition 8(A):

- Smith St., West Point, Indiana (FRA 484311M)(as noted in NS's March 1, 1999 submittal of the Lafayette Memorandum of Understanding to the STB, the Smith St. grade crossing is actually located in Lafayette, Indiana rather than in West Point, Indiana)
- 4<sup>th</sup> St./U.S. 231, Lafayette, Indiana (FRA 484309L)
- 5<sup>th</sup> St., Lafayette, Indiana (FRA 484308E)
- Romig St., Lafayette, Indiana (FRA 484306R)
- 7<sup>th</sup> St., Lafayette, Indiana (FRA 484303V)
- 8<sup>th</sup> St., Lafayette, Indiana (FRA 484302N)
- Union St., Lafayette, Indiana (FRA 484294Y)
- 17<sup>th</sup> & Salem, Lafayette, Indiana (FRA 484293S)
- 18<sup>th</sup> St., Lafayette, Indiana (FRA 484292K)
- Greenbush St., Lafayette, Indiana (FRA 484291D)

The Board incorporated the December 4, 1998 Lafayette Memorandum of Understanding under Environmental Condition 51 in Decision No. 118.

(b) On February 10, 1999, NS entered into a Negotiated Agreement (the "Railroad Corridor Safety Agreement") with the Ohio Rail Development Commission (ORDC) and the Public Utilities Commission of Ohio (PUCO) regarding highway/rail crossing safety upgrades in Ohio. In Decision No. 131 (service date July 13, 1999), the Board confirmed that the Railroad Corridor Safety Agreement with ORDC and PUCO supersedes NS's obligations under Environmental Condition 8(A) regarding safety upgrades at the 9 NS at-grade crossings in Ohio which were specified under this Environmental Condition:

- Andrews, Bucyrus, Ohio (FRA 481572C)
- Hopely, Bucyrus, Ohio (FRA 481561P)
- Bardshar, Sandusky, Ohio (FRA 481659T)
- Skadden/CR 42, Sandusky, Ohio (FRA 481660M)
- Galion-Marseilles, Marion, Ohio (FRA 481546M) (upgrade completed prior to execution date of Railroad Corridor Safety Agreement)
- Scott Twp. Rd. 190, Marion, Ohio (FRA 481547U)
- Kilbourne, Bellevue, Ohio (FRA 473668W)
- CR 292, Bellevue, Ohio (FRA 473673T)
- Fangboner Rd., Kingsway, Ohio (FRA 473726P)

(c) On April 20, 2000, NS submitted to the Secretary a Negotiated Agreement with the Indiana Department of Transportation (INDOT) regarding a safety upgrade to a highway/rail crossing (Anthony Blvd (FRA 478226J)) in Fort Wayne, Indiana. Board issuance of an order is pending.



(d) On April 28, 2000, NS submitted to the Secretary a Negotiated Agreement with the INDOT and Tippecanoe County regarding a safety upgrade to a highway/rail crossing (CR 400 S (FRA 484319S)) in West Point, Indiana. Board issuance of an order is pending.

NS has filed petitions with the Board for an extension of the compliance deadline for the remaining five NS highway/rail at-grade crossings specified in Environmental Condition 8(A) to allow additional time for the resolution of closure or alternative safety improvement issues by state and local governments:

- Loomis St., Ripley, New York (FRA 471825F)
- SR 7, Berryville, Virginia (FRA 468599F)
- Guilford Springs Rd., Guilford Township, Pennsylvania (FRA 535146X)
- Lucas Rd., Erie, Pennsylvania (FRA 471940M)
- York Rd./SR 74, Mechanicsburg, Pennsylvania (FRA 592290T)

NS requested that the deadline be extended by one year until August 22, 2001.

The Board issued orders on May 31, 2000 extending the deadline for completion of Environmental Condition 8(A) with respect to those 5 grade crossings until August 22, 2001.

To date, NS has submitted seven quarterly reports to the Secretary summarizing the completion status for those NS highway/rail at-grade crossings subject to Environmental Condition 8(A). The most recent quarterly report was submitted May 22, 2000.



**15. Environmental Condition 8(B) (Safety: Highway/Rail At-Grade Crossings)**

In Decision No. 108 (service date December 17, 1998), the Board granted NS and CSX an extension of time in which to complete negotiations with the State of Ohio concerning highway/rail at-grade crossing improvements. NS and the State of Ohio successfully completed their negotiations and memorialized their agreement in the February 10, 1999 Railroad Corridor Safety Agreement. As previously described, the Board in Decision No. 131 amended Environmental Condition 51 to include the Railroad Corridor Safety Agreement among NS, the ORDC and PUCO.

**16. Environmental Condition 10 (Transportation: Highway/Rail At-Grade Crossing Delay)**

With respect to the 2 NS at-grade crossings specified in Environmental Condition 10 (SR 9 and Harrison Street, Alexandria, Indiana), NS completed the installation of a new connection track linking NS to former Conrail lines in October 1998. The new track allows rail traffic to move continuously through the City of Alexandria, Indiana, thus reducing crossing blockage at SR 9 and Harrison Street.

**17. Environmental Condition 11 (Noise)**

To date, NS has entered into Negotiated Agreements with the following responsible local governments pursuant to Environmental Condition 11:

- Madison County, Indiana

- City of Muncie, Indiana

Pursuant to Decisions No. 144 (service date March 21, 2000) and No. 145 (service date March 21, 2000), respectively, the Board has amended Environmental Condition 11 and Environmental Condition 51 to incorporate these Negotiated Agreements.

Negotiations pertaining to wayside noise mitigation are ongoing between NS and Erie County, Ohio, the responsible local governments in Virginia and the responsible local governments in West Virginia for those NS line segment areas identified under Environmental Condition 11.

The following communities have informed NS that they wish NS to pursue Environmental Condition 11 discussions with individual property owners:

- Sandusky County, Ohio
- City of Fremont, Ohio
- City of Clyde, Ohio
- City of Bellevue, Ohio

#### **18. Environmental Condition 15 (Cultural Resources)**

NS conducted a feasibility study, including preliminary design for the rehabilitation of the Shellpot Bridge, and submitted a copy of the study to the Delaware State Historic Preservation Office on February 17, 1999. The Board reported NS's compliance with Environmental Condition 15 to the Advisory Council on Historic Preservation by letter dated September 3, 1999. NS has not altered the historic integrity of the bridge.



**19. Environmental Condition 16 (Natural Resources)**

A study conducted on May 27, 1998 found that only the connection west of Coen Road in Vermilion could potentially adversely affect Federally listed or endangered species. Construction of the connection west of Coen Road has been postponed indefinitely for reasons unrelated to Environmental Condition 16. The connection east of Coen Road in Vermilion was completed on March 30, 1999.

**20. Environmental Condition 18 (Tolono, IL)**

Construction of the Tolono Connection was completed March 12, 1999. This construction was limited to within the existing right-of-way; Daggy Street was not adversely impacted. The Tolono Connection was put into service on October 29, 1999.

**21. Environmental Condition 19 (Alexandria, IN)**

NS completed installation of flashing lights and gates at the highway/rail at-grade crossings at Berry, Broadway, and Washington Streets in Alexandria, Indiana on November 18, 1998.

**22. Environmental Condition 20(A) (Attica, IN/ Emergency Response)**

NS certified compliance with Environmental Condition 20(A) by letter to the Secretary dated February 22, 1999.



**23. Environmental Condition 20(B) (Attica, IN/ Emergency Response)**

NS certified compliance with Environmental Condition 20(B) by letter to the Secretary dated February 22, 1999.

**24. Environmental Condition 20(C) (Attica, IN/ Emergency Response)**

NS funded participation in a training session, conducted February 16-20, 1999, at the national training center in Pueblo, Colorado, for two representatives of the emergency response provider for Attica, Indiana.

**25. Environmental Condition 21(i) (Four City Consortium, IN)**

NS is complying with the requirement of Environmental Condition 21(i) which requires that NS and CSX attend regularly scheduled meetings convened by the Four City Consortium for a period of three years following the effective date of the Board's Decision No. 89. NS, along with CSX and the Indiana Harbor Belt Railroad, attended the first such meeting convened by the Four City Consortium on March 15, 2000. Reports on the progress of operational and capital improvements required by the Board to address highway/rail at-grade crossing safety and delay issues in the Four City Consortium area were provided at that meeting. The second meeting convened by the Four City Consortium was attended by NS on April 27, 2000.

In addition, on April 12, 2000 NS provided to the Four City Consortium a status report of monthly average train traffic volumes and speeds on the applicable portion of rail line segment N-469 (Hobart to Hammond) for the period

December 1998 through March 2000. Monthly traffic updates will continue to be made available to the Four City Consortium by NS. NS is also working independently and with the Indiana Harbor Belt Railroad and the City of Hammond to develop means by which to improve traffic flow in the Four City Consortium area.

**26. Environmental Condition 22(A) (Lafayette, IN/ Emergency Response)**

NS certified compliance with Environmental Condition 22(A) by letter to the Secretary dated February 22, 1999.

**27. Environmental Condition 22(B) (Lafayette, IN/ Emergency Response)**

NS certified compliance with Environmental Condition 22(B) by letter to the Secretary dated February 22, 1999.

**28. Environmental Condition 22(C) (Lafayette, IN/ Emergency Response)**

NS funded participation in a training session, conducted February 16-20, 1999, at the national training center in Pueblo, Colorado, for two representatives of the emergency response provider for Lafayette, Indiana.

**29. Environmental Condition 24 (Dunkirk, NY)**

NS implemented its Trespasser Abatement Program in Dunkirk, New York, in August 1998. "No Trespassing" signs have been posted along the NS



right-of-way through Dunkirk. Numerous Operation Lifesaver presentations have been made in Dunkirk public schools.

**30. Environmental Condition 25 (Ashtabula, OH/ Emergency Response)**

NS has held meetings with representatives of Ashtabula, Ohio and the STB's Section of Environmental Analysis to discuss the real-time train location monitoring system, including display of train locations at designated emergency response centers, proposed for Ashtabula. The system design for Ashtabula is scheduled to be completed by June 2001 and system installation is scheduled to be completed by December 2001.

**31. Environmental Conditions 26(A) (Greater Cleveland Area, OH)**

NS has implemented and funded the track structure and signal system modifications necessary for the Cloggsville routing alternative. Phase I track construction is complete. Phase II track grading and track construction is in progress. Signal construction currently is in progress. The West 65<sup>th</sup> Street and Train Avenue bridges currently are under construction. Full operational completion is currently scheduled for August 15, 2000.

**32. Environmental Condition 26(B) (Greater Cleveland Area, OH)**

NS has complied with Environmental Condition 26(B) by stationing fully trained supervisory personnel with emergency response authority within the Greater Cleveland Area seven days a week and 24 hours a day.



**33. Environmental Condition 26(C) (Greater Cleveland Area, OH)**

Design of the train defect detection system to scan all NS trains entering the Greater Cleveland Area is scheduled for completion by December 2000. The defect detection devices are scheduled for installation by August 2001.

**34. Environmental Condition 26(D) (Greater Cleveland Area, OH)**

No jointed rail exists on NS lines in the residential areas of Greater Cleveland, and any new rail construction by NS in such areas will involve continuous welded rail. Plans are in progress to install rail lubrication systems at curves on NS lines where doing so would result in effective noise abatement for residential areas. In accordance with NS standard procedures, all rail bridges and overhead structures in the Greater Cleveland Area for which NS has maintenance responsibilities were inspected in 1999 (all such bridges and structures were found to be safe for the level of rail traffic using them). NS has designated a community liaison to work closely and regularly with local government representatives and citizens to address community concerns regarding NS operations.

**35. Environmental Condition 27(A) (Cleveland Heights, OH/ Emergency Response)**

NS has certified compliance with Environmental Condition 27(A) by letter to the Secretary dated March 16, 1999.

**36. Environmental Condition 27(B) (Cleveland Heights, OH/ Emergency Response)**

NS has certified compliance with Environmental Condition 27(B) by letter to the Secretary dated February 22, 1999.

**37. Environmental Condition 27(C) (Cleveland Heights, OH/ Emergency Response)**

NS funded participation in a training session, conducted February 16-20, 1999, at the national training center in Pueblo, Colorado, for two representatives of the emergency response provider for Cleveland Heights, Ohio.

**38. Environmental Condition 28 (Conneaut, OH)**

NS has held meetings with representatives of Conneaut, Ohio and the STB's Section of Environmental Analysis to discuss the real-time train location monitoring system, including display of train locations at designated emergency response centers, proposed for Conneaut. The system design for Conneaut is scheduled to be completed by December 2000 and system installation is scheduled to be completed by June 2001.

**39. Environmental Condition 30(A) (Euclid, OH/ Emergency Response)**

NS certified compliance with Environmental Condition 30(A) by letter to the Secretary dated April 21, 1999.



**40. Environmental Condition 30(B) (Euclid, OH/ Emergency Response)**

NS certified compliance with Environmental Condition 30(B) by letter to the Secretary dated February 22, 1999.

**41. Environmental Condition 30(C) (Euclid, OH/ Emergency Response)**

NS funded participation in a training session, conducted February 16-20, 1999, at the national training center in Pueblo, Colorado, for two representatives of the emergency response provider for Euclid, Ohio.

**42. Environmental Condition 31(A) (Fostoria, OH)**

NS and CSX met with City representatives on January 12, 1999 to present the plans for the real-time train monitoring system which has been designed to indicate the location of trains on the designated CSX and NS rail line segments within 5 miles of Fostoria Tower. The system will show continuous real-time rail traffic conditions on the CSX and NS rights-of-way on the designated rail line segments through Fostoria. NS and CSX met on April 4, 2000 to discuss plans for implementation of the real-time train monitoring system in Fostoria. The monitoring system is to be installed during the third quarter of 2000.

**43. Environmental Condition 31(B) (Fostoria, OH)**

On March 30, 1999, NS completed installation of constant warning time circuits at all NS highway/rail at-grade crossings in Fostoria that are equipped with active warning devices.



**44. Environmental Condition 31(C) (Fostoria, OH)**

NS has been informed that CSX completed installation of a direct voice hotline as required by Environmental Condition 31(C) during the first quarter of 2000.

**45. Environmental Condition 31(D) (Fostoria, OH)**

It is the policy and practice of NS to hold trains in areas to minimize to the extent practicable trains blocking major highway/rail at-grade crossings in Fostoria. A public hearing was held in Tiffin, Ohio on February 29, 2000 to discuss issues of local concern. NS has addressed concerns raised by neighboring property owners by allowing them access to the NS right-of-way roads.

**46. Environmental Condition 33 (Mentor, OH)**

On January 13, 2000, the Federal Railroad Administration (FRA) published a proposed rule requiring locomotive horn sounding at all crossings, with the exception of crossings within designated "quiet zones". By letter dated On January 21, 2000, NS informed the City of Mentor, Ohio of the proposed rule, summarizing the quiet zone provisions. Upon request, NS is prepared to assist the City if it chooses to seek quiet zone status from the FRA.

**47. Environmental Condition 35 (North Ridgeville, OH)**

NS consulted with the Town of North Ridgeville, Ohio regarding local issues/concerns, and reported to the Board the results of those discussions by letter dated February 22, 1999.

**48. Environmental Condition 36(A) (Oak Harbor, OH)**

In a letter from the Ottawa County Engineer dated June 18, 1998, NS received written concurrence of Ottawa County on the project design NS had previously submitted to the Board for NS's plan to construct a new highway/rail at-grade crossing at Toussaint-Portage Road in Oak Harbor, Ohio. NS completed construction of the new highway/rail at-grade crossing at Toussaint-Portage Road on December 8, 1998.

**49. Environmental Condition 36(B) (Oak Harbor, OH)**

NS has held meetings with representatives of Oak Harbor, Ohio and the STB's Section of Environmental Analysis to discuss the real-time train location monitoring system, including display of train locations at designated emergency response centers, proposed for Oak Harbor. The system design for Oak Harbor is scheduled to be completed by June 2001 and system installation is scheduled to be completed by December 2001.

**50. Environmental Condition 37 (Oxford Township, OH)**

NS completed installation of flashing light devices at its highway/rail at-grade crossing at Thomas Road in Oxford Township, Ohio on December 18, 1998. NS certified compliance with Environmental Condition 37 by letter to the Secretary dated February 22, 1999.

**51. Environmental Condition 39 (Vermilion, OH)**

The Vermilion construction project was completed March 30, 1999. The connection as constructed did not require a new highway/rail at-grade crossing at Coen Road.

**52. Environmental Condition 42(A) (Erie, PA)**

NS and the City of Erie are coordinating a set of modifications to their April 9, 1998 Memorandum of Understanding (the "Erie MOU") to take into account conditions beyond the reasonable control of NS that have affected the original schedule for completion of the 19<sup>th</sup> Street Track Relocation Project (the "Project"). A draft letter agreement incorporating modifications to the Erie MOU has been prepared by NS and provided to the City. NS expects soon to receive the necessary final clearance from CSXT that will allow work to progress on the CSXT right-of-way where the NS bypass will be constructed, as described in the Primary Application filed June 23, 1997. Assuming that the final approval from CSXT is forthcoming, NS expects to complete the bypass portion of the Project by October 1, 2001 and to complete the reconstruction of 19<sup>th</sup> Street by August 1,



2002. NS has agreed to donate 5 parcels of land to the City of Erie (parcels 2, 3A, 3B, 4 and 5 as identified on maps provided to the City), with an estimated value of \$300,000. NS would retain a temporary easement with respect to the 5 parcels to permit rail operations to occur on the parcels until such time as the 19<sup>th</sup> Street operations cease. NS is complying with or has satisfied all other applicable provisions of the Erie MOU that are not affected by the change in the schedule for construction and relocation.

**53. Environmental Condition 42(B) (Erie, PA)**

NS completed documentation of the guard shanties and bridges (including photographs) and presented the documentation in a report submitted to the Pennsylvania State Historic Preservation Office on October 5, 1998. The guard shanties will be relocated following completion of the Erie Rail Relocation Project.

**54. Environmental Condition 43(A) (Seneca Nation/ Emergency Response)**

The Seneca Nation provided comments on NS's Hazardous Materials Response Plan on September 30, 1999. NS revised the Plan for the Seneca Nation on December 23, 1999 in accordance with these comments. NS funded participation in a training session, conducted February 16-20, 1999, at the national training center in Pueblo, Colorado, for two representatives of the emergency response provider for the Seneca Nation. In addition, NS conducted an

emergency response drill with the emergency response provider for the Seneca Nation on October 20, 1999.

**55. Environmental Condition 43(B) (Seneca Nation/ Emergency Response)**

NS completed installation of Operation Respond software and associated training for the Seneca Nation on February 15, 1999.

**56. Environmental Condition 44 (Constructions and Abandonments)**

NS has employed the Board-stipulated Best Management Practices (Attachment A of Appendix Q) with respect to the Transaction-related construction and abandonment projects.

**57. Environmental Condition 45 (Constructions and Abandonments)**

For all Transaction-related constructions and abandonments, NS has complied with all applicable Federal, state and local regulations, including those concerning solid and hazardous waste handling, and environmental permit requirements. NS has used Board-stipulated Best Management Practices (Attachment A of Appendix Q) for all Transaction-related constructions and abandonments to minimize potential environmental impacts on water bodies, wetlands and navigation and to minimize fugitive dust emissions. In addition, for all Transaction-related constructions and abandonments, NS has complied with the requirements of Environmental Condition 45(g) (use of herbicides and qualified personnel or contractors to apply herbicides).



**58. Environmental Condition 48 (Bucyrus, Ohio)**

The Section 106 process of the National Historic Preservation Act was completed for historic sites identified in Bucyrus, Ohio on November 30, 1998. NS retained its interest in these sites and took no steps to alter the historic integrity of the sites prior to the completion of the Section 106 process.

**59. Environmental Condition 49(A) (Safety Integration)**

A summary of the status of NS's compliance with Environmental Condition 49(A) may be found at Section I.7 of this Report.

**60. Environmental Condition 49(B) (Safety Integration)**

A summary of the status of NS's compliance with Environmental Condition 49(B) may be found at Section I.7 of this Report.

**61. Environmental Condition 51 (Negotiated Agreements)**

To date, NS has entered into the following Negotiated Agreements with governmental bodies and organizations, each of which has been added by the Board to Environmental Condition 51. A brief description of NS's compliance status for each Negotiated Agreement is provided below:

1. **Commonwealth of Pennsylvania and the City of Philadelphia** (October 21, 1997)

NS is complying with the commitments included in the October 21, 1997 agreement among the Commonwealth of Pennsylvania, the City



of Philadelphia and NS. Two annual payments of \$2 million, directed by the Commonwealth and the City of Philadelphia, have been made by NS to date, and the third annual payment of \$2 million is scheduled to be made July 1, 2000. To date, commitments exceeding \$15 million have been made for expenditures towards rail-served economic development programs in the Commonwealth. NS has commenced operations at a new intermodal facility constructed in Bethlehem, Pennsylvania. NS is working with the Department of Community and Economic Development to identify suitable projects for up front capital expenditures by NS. NS anticipates the execution of an agreement with the City of Philadelphia in the next few months pertaining to the development of the Philadelphia Naval Business Center (the "PNBC"). The agreement will include provision for an intermodal facility at the AmeriPort International Terminal. NS investment in this intermodal facility is estimated to cost approximately \$16 million. A new NS Mid-Atlantic Regional headquarters has been established in Philadelphia, including a Vice President and other senior NS management positions. New jobs for Pennsylvania have been created at, among other rail-related locations, the Mid-Atlantic Regional headquarters of NS, the new intermodal facility in Bethlehem and the facility in Rutherford, Pennsylvania. Additional jobs will be created with the construction and completion of the new intermodal facility planned for the PNBC. In addition, NS has reserved land for the construction of an automobile distribution facility at the

PNBC. Negotiations are on-going between NS and SEPTA to address a track connection at the Zoo interlocking and the extension of SEPTA service on the Harrisburg and NS rail lines.

2. **State of Maryland** (September 24, 1997)

In pursuit of the fundamental goal of the September 21, 1997 letter agreement between Norfolk Southern and the State of Maryland, Norfolk Southern is continuing its efforts to bring improved freight rail service and vigorous competition to the State. Norfolk Southern has to date been successful in obtaining an agreement from Amtrak to raise the weight limit on track throughout the State of Maryland along the Northeast Corridor. This has resulted in improved freight rail service to Baltimore. In addition, freight rail service to the Eastern Shore has been improved as the result of the weight limit increase on the branch line in Salisbury, Maryland. This is a significant development for several agricultural interests on the Eastern Shore. Norfolk Southern continues to assist the State in exploring opportunities for industrial development to benefit the State's economy. Capital improvements discussed in the letter agreement have so far not proven immediately necessary or economically viable in the new operating environment, but discussions have been initiated to advance these improvements in partnership with the State.



3. **Toledo-Lucas County Port Authority and Toledo Metropolitan Area Council of Governments** (February 18, 1998)

In accordance with the February 18, 1998 letter agreement among Norfolk Southern, the Toledo-Lucas County Port Authority and the Toledo Metropolitan Area Council of Governments, Norfolk Southern obtained authorization from the STB to discontinue operations over the Toledo Pivot Bridge and Norfolk Southern has refrained from seeking authority to abandon the bridge. Norfolk Southern and CSX have cooperated to provide smoother train operations at Vickers in Northwood, Ohio. Additional investigation of the right-of-way along the Toledo-Maumee Line (Mileposts TM-5.0 and TM-12.5) has determined that CSX owns the right-of-way in question. Therefore, donation and quitclaim of the right-of-way to the Toledo Metropolitan Area Council of Governments by Norfolk Southern is not possible.

4. **City of Erie, Pennsylvania** (April 9, 1998)

The April 9, 1998 Memorandum of Understanding with the City of Erie is addressed in the discussion of Environmental Condition 42(A) above.

5. **City of Tilton, Illinois** (April 14, 1998)

NS is complying with the requirements of the Negotiated Agreement with the City of Tilton, Illinois.



6. **City of Fremont, Ohio** (April 15, 1998)

NS is complying with the requirements of the Negotiated Agreement with the City of Fremont, Ohio.

7. **City of Bellevue, Ohio** (April 22, 1998)

NS is complying with the requirements of the Negotiated Agreement with the City of Bellevue, Ohio. Negotiations are on-going regarding noise mitigation issues.

8. **City of East Cleveland, Ohio** (April 27, 1998)

NS is complying with the requirements of the Negotiated Agreement with the City of East Cleveland, Ohio. NS met with the City on March 22, 2000 to address local concerns.

9. **City of Danville, Illinois** (May 5, 1998)

NS is complying with the requirements of the Negotiated Agreement with the City of Danville, Illinois.

10. **National Railroad Passenger Corporation (Amtrak)** (May 14, 1998)

A summary of NS's compliance with the May 14, 1998 Amtrak agreements may be found at Section I.6 of this Report.

11. **City of Cleveland, Ohio** (May 22, 1998)

NS is complying with the requirements of the Negotiated Agreement with the City of Cleveland, Ohio. NS has requested an extension of the schedule for conducting joint inspections with the City of NS and Conrail facilities in Cleveland; the City's response is pending. Upon completion of these inspections, NS will submit an Asset Management Plan to the City.

12. **Cities of Bay Village, Rocky River, and Lakewood, Ohio** (June 2, 1998)

NS is complying with the requirements of the Negotiated Agreement with the Cities of Bay Village, Rocky River, and Lakewood, Ohio.

13. **City of Lafayette, Indiana** (December 4, 1998)

The December 4, 1998 Memorandum of Understanding with the City of Lafayette is addressed in the discussion of Environmental Condition 8(A) above. NS has complied with the requirement in this Memorandum of Understanding to advance funds for the use of the City in the Lafayette Rail Relocation Project.

14. **The Ohio Rail Development Commission and the Public Utilities Commission of Ohio** (February 10, 1999)

The February 10, 1999 Rail Corridor Safety Agreement among NS, the Ohio Rail Development Commission and the Public Utilities Commission of Ohio is addressed in the discussion of Environmental

Condition 8(A) above. NS is complying with the requirements of the Rail Corridor Safety Agreement.

15. **Madison County, Indiana** (January 4, 2000)

The January 4, 2000 Negotiated Agreement between NS and Madison County, Indiana is addressed in the discussion of Environmental Condition 11 above. NS is complying with the stipulation of this Negotiated Agreement.

16. **City of Muncie, Indiana** (January 4, 2000)

The January 4, 2000 Negotiated Agreement between NS and the City of Muncie, Indiana is addressed in the discussion of Environmental Condition 11 above. NS is complying with the stipulation of this Negotiated Agreement.

The following Negotiated Agreements with governmental bodies or organizations have been jointly entered into by NS and CSX and have been added by the Board to Environmental Condition 51:

1. **Cities of Brook Park and Olmsted Falls, Ohio** (February 24, 1998)

NS is complying with the requirements of the Negotiated Agreement with the Cities of Brook Park and Olmsted Falls.



2. **New Jersey Department of Transportation/New Jersey Transit Corporation** (March 20, 1998)

A summary of NS's compliance with the March 20, 1998 agreement with the New Jersey Department of Transportation and the New Jersey Transit Corporation may be found at Section I.6 of this Report.

3. **National Railroad Passenger Corporation (Amtrak)** (May 14, 1998)

A summary of NS's compliance with the May 14, 1998 agreements with Amtrak may be found at Section I.6 of this Report.

4. **Southeastern Pennsylvania Transportation Authority (SEPTA)** (June 1, 1998)

A summary of NS's compliance with the June 1, 1998 agreement with SEPTA may be found at Section I.6 of this Report.

5. **City of Berea, Ohio** (June 1, 1998)

NS is complying with the substantive requirements of the June 1, 1998 Agreement in Principle among the City of Berea, CSX and NS (the "June 1, 1998 Agreement"), found in Items 1-5 of the June 1, 1998 Agreement. Implementation of Items 1-5 has proceeded without development of a formal work plan by the City of Berea, CSX and NS. The June 1, 1998 letter agreement was supplemented by an April 15, 1999 letter agreement among the City of Berea, CSX and NS (the "April 15, 1999 Supplement") which sets out the funding obligations of CSX and NS

in satisfaction of Item 1 of the June 1, 1998 Agreement. NS is complying with the funding obligations applicable to NS included in the April 15, 1999 Supplement.

**62. Environmental Conditions Applicable to the Conrail Shared Assets Operator ("CSAO")**

**1. Environmental Condition 1(A)  
[Safety: Highway/Rail At-Grade Crossings]**

CSAO certified compliance with Environmental Condition 1(A) by letter to the Secretary dated May 24, 1999.

**2. Environmental Condition 1(B)  
[Safety: Highway/Rail At-Grade Crossings]**

CSAO certified compliance with Environmental Condition 1(B) by letter to the Secretary dated May 24, 1999.

**3. Environmental Condition 1(C)  
[Safety: Highway/Rail At-Grade Crossings]**

It is CSAO policy and practice to comply with all applicable Federal, state and local regulations regarding maintenance of public highway/rail at-grade crossings. CSAO enhanced the condition of the crossings on the Carleton, MI to Ecorse, MI line segment (S-020) in connection with the rehabilitation of the Lincoln Secondary.



4. **Environmental Condition 1(D)**  
**[Safety: Highway/Rail At-Grade Crossings]**

CSAO made Operation Lifesaver programs available to the communities, schools and other organizations located along the Carleton, MI to Ecorse, MI line segment (S-020).

5. **Environmental Condition 2**  
**[Safety: Hazardous Materials Transport]**

It is CSAO policy and practice to comply with the current Association of American Railroads "key train" guidelines.

6. **Environmental Condition 4(A)**  
**[Safety: Hazardous Materials Transport]**

CSAO certified compliance with Environmental Condition 4(A) by letter to the Secretary dated May 24, 1999.

7. **Environmental Condition 4(B)**  
**[Safety: Hazardous Materials Transport]**

CSAO certified compliance with Environmental Condition 4(B) by letter to the Secretary dated May 24, 1999.

8. **Environmental Condition 4(C)**  
**[Safety: Hazardous Materials Transport]**

CSAO certified compliance with Environmental Condition 4(C) by letter to the Secretary dated May 24, 1999.

9. **Environmental Condition 4(D)**  
**[Safety: Hazardous Materials Transport]**

CSAO certified compliance with Environmental Condition 4(D) by letter to the Secretary dated April 19, 2000.



10. **Environmental Condition 5(A)**  
**[Safety: Hazardous Materials Transport]**

CSAO certified compliance with Environmental Condition 5(A) by letter to the Secretary dated May 24, 1999.

11. **Environmental Condition 6**  
**[Safety: Hazardous Materials Transport]**

CSAO certified compliance with Environmental Condition 6 by letter to the Secretary dated August 22, 1999.

12. **Environmental Condition 8(A)**  
**[Safety: Highway/Rail At-Grade Crossings]**

CSAO certified compliance with Environmental Condition 8(A) by letter to the Secretary dated December 14, 1999.

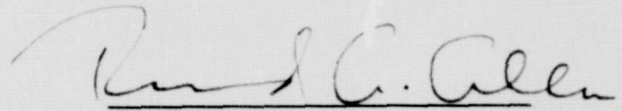
13. **Environmental Condition 11 [Noise]**

CSAO entered into a Negotiated Agreement with Brownstown Township, MI, which agreement was approved by the Board in Decision No. 152 (served April 18, 2000). Negotiations are ongoing with Ash Township, MI; Huron Township, MI; and Lincoln Park, MI. It is the present position of Allen Park, MI that CSAO should proceed by contacting individual property owners.

14. **Environmental Conditions 49(A) and 49(B)**  
**[Safety Integration Conditions]**

Compliance with these conditions is discussed in Part I.7 (Safety) of this report.

Respectfully submitted,



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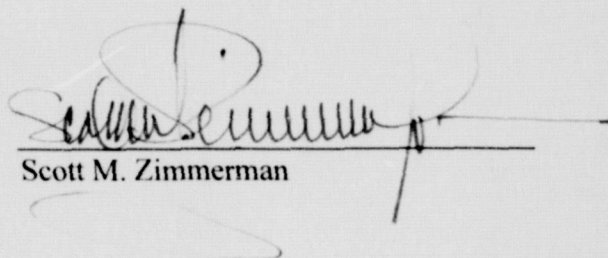
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June 1, 2000

## CERTIFICATE OF SERVICE

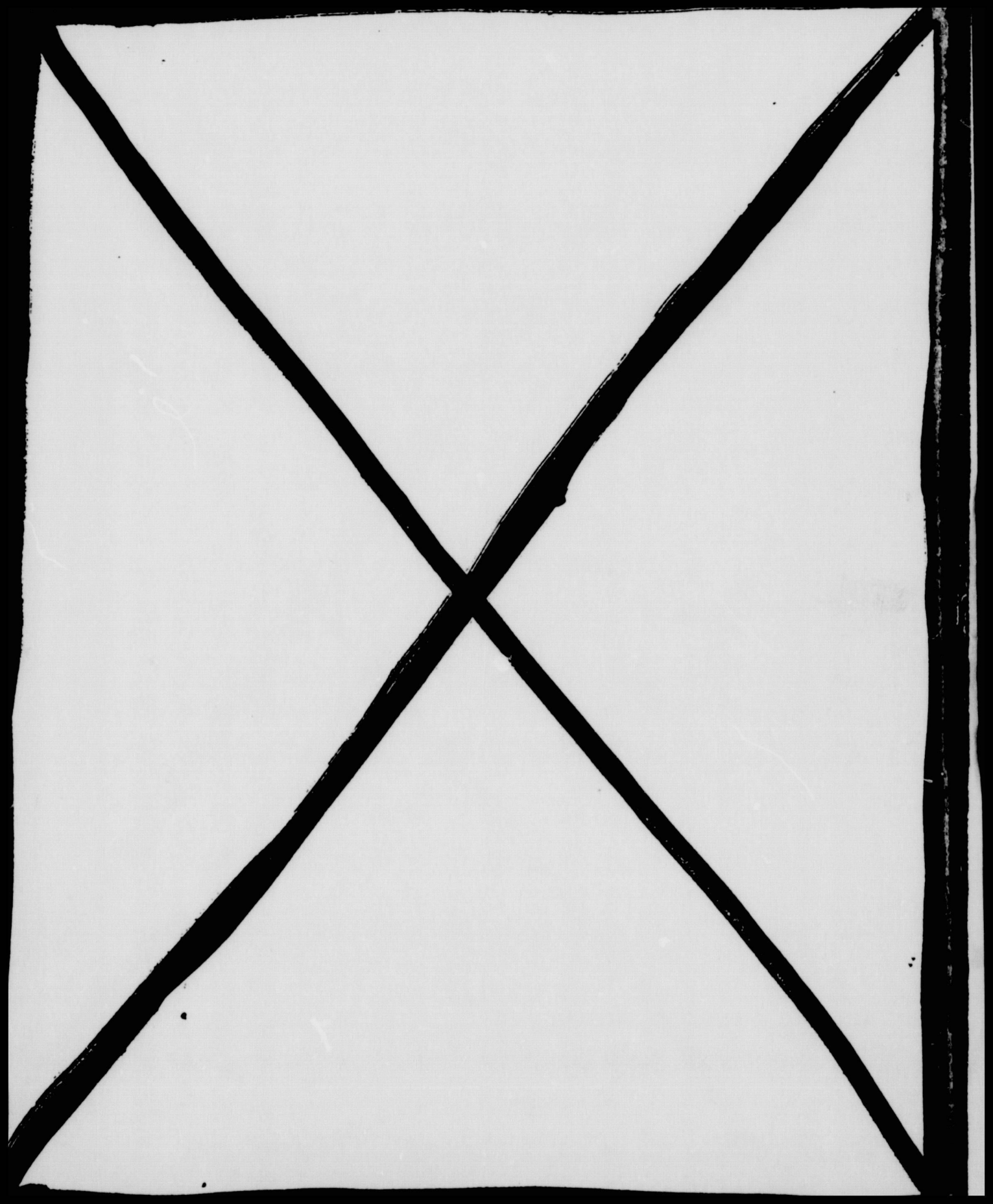
I hereby certify that on this 1st day of June, 2000 a copy of the foregoing "First General Oversight Report of Norfolk Southern Corporation and Norfolk Southern Railway Company" was served by first class mail, postage prepaid, or by more expeditious means, on all known parties to the proceeding in Finance Docket No. 33388 (Sub-No. 91).



Scott M. Zimmerman







STB

FD-33388 (SUB 91)

5-31-00

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Before the  
**SURFACE TRANSPORTATION BOARD**  
Washington, D.C. 20423



**FINANCE DOCKET NO. 33388 (Sub-No. 91)**

**CONRAIL MERGER OVERSIGHT**

**NOTICE OF INTENT TO PARTICIPATE  
OF  
THE CITY OF CLEVELAND, OHIO**

Please enter the appearance of the undersigned counsel on behalf of the City of  
Cleveland, Ohio, which intends to participate as a party of record in this proceeding.

Office of the Secretary

MAY 31 2000

Part of  
Public Record

Respectfully submitted,

Cornell P. Carter  
Director of Law

By: 

Richard F. Horvath  
Chief Corporate Counsel

CITY OF CLEVELAND  
Department of Law - Room 106  
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Counsel for the City of Cleveland, Ohio  
Dated: May 30, 2000

