In CSX Corp., et al. - Control - Conrail Inc., et al., 3 S.T.B. 196 (1998) (Merger Dec. No. 89), Environmental Condition No. 11 of Appendix Q requires Applicants, with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that the specific requirements of this condition “shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities’ environmental concerns.” Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Merger Dec. No. 89, or by August 22, 2000.

By letter received at the Board on September 17, 2003, NS has requested a further extension of 6 months until March 22, 2004, to complete compliance with Environmental Condition No. 11 for rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111.

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1 In Merger Dec. No. 89, the Board approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail), and the division of their assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to collectively as Applicants.

2 3 S.T.B. at 588-90.

3 The Board granted, at the request of NS, several extensions of the compliance date, and the most recent extension was handled in Decision No. 210, served May 15, 2003, granting NS’ request for a further extension of the compliance date to September 22, 2003, for rail line segments N-100 and N-111.
(Fola Mine to Deepwater, WV). However, on September 22, 2003, the Board received another letter from NS advising that, since submitting the September 17 letter, NS has completed its obligations under Environmental Condition No. 11 for rail line segment N-111 in West Virginia, and no longer needs an extension of the September 22, 2003 compliance date for this rail segment.

NS advises that, in addition to obtaining Negotiated Agreements with eight local governments in Virginia and two local governments in West Virginia, NS has entered into settlement agreements with the owners of the eligible receptors earlier identified along N-100 and recently has undertaken additional field verification surveys along those portions of N-100 that are not subject to the Negotiated Agreements and other settlement agreements. NS further states that, as a result of the recent field verification surveys, it is now, with the assistance of local government representatives from each relevant jurisdiction, verifying ownership and eligibility criteria under Environmental Condition No. 11 for over 40 additional receptors. NS advises that it has entered into settlement agreements with the owners of a number of those receptors and is working diligently to contact the owners of the remaining receptors to provide settlement offers.

According to NS, the process of completing the field surveys and verifying ownership and other eligibility criteria under Environmental Condition No. 11 have required more time than anticipated. NS states that it is requesting an extension of 6 months to complete the settlement process and, if necessary, implement the noise mitigation protocol developed by NS and CSX and approved by the Board’s Section of Environmental Analysis for any owners of eligible receptors along rail line segment N-100.

The request for a 6-month extension to March 22, 2004, is reasonable and will be granted. However, the Board expects the parties to complete their negotiations and for NS to conclude the Environmental Condition No. 11 compliance process within the 6-month period so that no further extensions will be necessary.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.
It is ordered:

1. The compliance deadline for NS in Environmental Condition No. 11 of Appendix Q of Merger Dec. No. 89 is extended 6 months until March 22, 2004, with respect to rail line segment N-100 (Riverton Junction to Roanoke, VA).

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary
SERVICE LIST FOR: 22-sep-2003 STB FD 33388 0

CSX CORPORATION AND CSX TRANSPORTATION

JOHN D CIRAME, ASSISTANT SECRETARY
COMMUNION OF MASS. EXEC. OFFICE OF TRANSPT
10 PARK PLAZA ROOM 3170
BOSTON MA 02110-3969 US

WILLIAM D ANKNER PHD
R I DEPT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE RI 02903 US

JOHN R NADOLNY
14 AVIATION AVENUE
PORTSMOUTH NH 03801 US

ROBERT D ELDER
MAINE DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA ME 04333-0016 US

JAMES F SULLIVAN
CT DEPT OF TRANSPORTATION
P O BOX 317546
2800 BERLIN TURNPIKE
NEWINGTON CT 06131 US

EDWARD J RODRIGUEZ
HOUSATONIC RAILROAD
P O BOX 687
8 DAVIS ROAD WEST
OLD LYME CT 06371 US

RICHARD C CARPENTER
SOUTH WESTERN REGIONAL PLANNING AGENCY
888 WASHINGTON BOULEVARD, 3RD FLOOR
STAMFORD CT 06901 US

MICHAEL E STRICKLAND
NYK LINE (NORTH AMERICA) INC, SENIOR VICE PRESIDENT
300 LIGHTING WAY
SECAUCUS NJ 07094-1588 US

EDWARD LLOYD
RUTGERS ENVIRONMENTAL LAW CLINIC
15 WASHINGTON STREET
NEWARK NJ 07102 US

HONORABLE ROBERT G. TORRICELLI
UNITED STATES SENATE
1 RIVER FRONT PLAZA, 3RD FLOOR
NEWARK NJ 07102 US

J WILLIAM VAN DYKE
NJ TRANSPORTATION PLANNING AUTHORITY
ONE NEWARK CENTER 17TH FLOOR
NEWARK NJ 07102 US

MARTIN T DURKIN ESQ
DURKIN & BOGGIN ESQS
PO BOX 378
71 MT VERNON STREET
RIDGEFIELD PARK NJ 07660 US

CRAIG CURRY
CONSOLIDATED RAIL CORPORATION
1000 HOWARD BOULEVARD
MOUNT LAUREL NJ 08054 US

LAWRENCE PEPPER, JR
GRUCCIPE PEPPER
817 EAST LANDS AVE
VINELAND NJ 08360 US

JOHN F MCHUGH
6 WATER STREET, SUITE 401
NEW YORK NY 10004 US

HUGH H. WELSH
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
ONE MADISON AVENUE 7TH FLOOR
NEW YORK NY 10010 US

ANTHONY P. SEMANCIK
THE METROPOLITAN TRANSPORTATION AUTHORITY OF
347 MADISON AVENUE
NEW YORK NY 10017-3706 US

WALTER E ZULLIG JR
METRO-NORTH COMMUTER RAILROAD COMPANY
347 MADISON AVE
NEW YORK NY 10017-3706 US

R. LAWRENCE MCCAFFREY, JR.
UNIRAIL LLC
509 MADISON AVENUE, ROOM 2014
NEW YORK NY 10022-5520 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

09/22/2003
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<tr>
<th>Name</th>
<th>Address</th>
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<td>Daniel B. Walsh</td>
<td>152 Washington Avenue, Albany, NY 12210 US</td>
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<td>Diane Seitz</td>
<td>Central Hudson Gas &amp; Electric Corp, Poughkeepsie, NY 12601 US</td>
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<td>Irwin L. Davis</td>
<td>1900 State Tower Bldg., Syracuse, NY 13202 US</td>
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<td>Gary Edwards</td>
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<td>Sheila Meck Hyde</td>
<td>342 Central Avenue, Dunkirk, NY 14048 US</td>
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<td>John F Collins</td>
<td>Collins Collins &amp; Kantor PC, Buffalo, NY 14220 US</td>
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<td>R W Godwin</td>
<td>Brotherhood of Locomotive Engineers, Buffalo, NY 14220 US</td>
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<td>Ernest J Ierardi</td>
<td>Nixon Peabody LLP, Rochester, NY 14603-1051 US</td>
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<td>Jeanne Waldock</td>
<td>107 Grant Court, Orlean, NY 14760 US</td>
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<td>John J Clifi</td>
<td>3361 Stafford St, Pittsburgh, PA 15204-1441 US</td>
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<td>John A Vuono</td>
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<td>R J Henefeld</td>
<td>PPG Industries Inc, Pittsburgh, PA 15272 US</td>
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<td>Kurt W Carr</td>
<td>Pennsylvania Historical &amp; Museum Commission, Harrisburg, PA 17120 US</td>
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<tr>
<td>Richard A Geist</td>
<td>Main Capitol Building, Harrisburg, PA 17120 US</td>
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<td>H. W. Dunlevy</td>
<td>State Legislative Director UTU, Harrisburg, PA 17120 US</td>
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<td>Belnap Freeman</td>
<td>Belnap Freeman, Rosemont, PA 19010 US</td>
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<tr>
<td>Harry C Barbin</td>
<td>Barbin Lauffer &amp; O'Connell, Rockledge, PA 19046 US</td>
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</tr>
</tbody>
</table>

**SERVICE LIST FOR: 22-sep-2003 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION**

09/22/2003
SERVICE LIST FOR: 22-sep-2003 STB FD 33388 0

ERIK VON SALZEN
HOGAN & HARTSON
555 THIRTEENTH STREET N W
WASHINGTON DC 20004-1109 US

MARY GABRIELLE SPRAGUE
Arnold & Porter
555 TWELFTH STREET NW
WASHINGTON DC 20004-1202 US

SANDRA L BROWN
TROUTMAN SANDERS LLP
401 NINTH STREET NW SUITE 1000
WASHINGTON DC 20004-2134 US

PAUL A CUNNINGHAM
HARKINS CUNNINGHAM
801 PENNSYLVANIA AVENUE, N.W., SUITE 600
WASHINGTON DC 20004-2664 US

LOUIS E GITOMER
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

BRUNO MAESTRI
NORFOLK SOUTHERN CORPORATION
1500 K STREET NW SUITE 375
WASHINGTON DC 20005 US

L JOHN OSBORN
SONNENSCHEIN NATH & ROSENTHAL
1301 K STREET NW STE 600 EAST
WASH DC 20005 US

DAVID C REEVES
BAKER & MILLER PLLC
915 FIFTEENTH STREET, NW, STE 1000
WASHINGTON DC 20005-2318 US

MARK FILIPOVIC
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

ANDREW R. PLUMP
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 17TH ST., NW, STE. 600
WASHINGTON DC 20006 US

EDWARD WYTKIND EXECUTIVE DIRECTOR
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US
SERVICE LIST FOR: 22-sep-2003 STB FD 33388 0  CSX CORPORATION AND CSX TRANSPORTATION

G. KENT WOODMAN
THOMPSON COBURN LLP
1909 K STREET, N.W., SUITE 600
WASHINGTON DC 20006-1167 US

SCOTT M ZIMMERMAN
ZUCKERT SCOTT & RASENBURGER LLP
888 SEVENTEENTH STREET NW SUITE 600
WASHINGTON DC 20006-3309 US

RACHEL DANISH CAMPBELL
FOLEY & LARDNER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006-4103 US

JOHN H BROADLEY
JOHN H BROADLEY & ASSOCIATES P C
1054 31ST STREET NW SUITE 200
WASHINGTON DC 20007 US

DAVID K MONROE
GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY FIRST STREET NW STE 200
WASHINGTON DC 20007 US

ROBERT P VOM EIGEN
FOLEY & LARDNER
3000 K STREET, N.W., SUITE 500
WASHINGTON DC 20007-5143 US

RICHARD W NEWPHER
AMERICAN FARM BUREAU FEDERATION
600 MARYLAND AVE SW STE 800
WASHINGTON DC 20024 US

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20036 US

PETER A GREEENE
THOMPSON HINE FLORY
1920 N STREET N W SUITE 800
WASHINGTON DC 20036 US

GORDON P MACDOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

KEITH G O'BRIEN
REA CROSS & AUCHINCLOSS
1707 L STREET, N.W., SUITE 570
WASHINGTON DC 20036 US

WILLIAM W MILLAR
AMERICAN PUBLIC TRANSIT ASSOCIATION
1666 K STREET NW
WASHINGTON DC 20006-1215 US

JOHN V EDWARDS, ESQ
ZUCKERT SCOTT ET AL
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL AFFAIRS
CORN REFINERS ASSOCIATION
1701 PA AV NW
WASHINGTON DC 20006-5805 US

PAUL M DONOVAN
LAROE W 1NN MOERMAN & DONOVAN
4135 PARKGLEN COURT NW
WASHINGTON DC 20007 US

EDWARD D GREENBERG
GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY-FIRST STREET, NW
WASHINGTON DC 20007-4492 US

MICHAEL F MCBRIDE
LEBOEUF LAMB GREENE & MACRAE
1875 CONNECTICUT AVENUE NW STE 1200
WASHINGTON DC 20009-5728 US

KARYN A BOOTH
THOMPSON HINE & FLORY LLP
1920 N STREET, NW & FLORY LLP
WASHINGTON DC 20036 US

PAUL D COLEMAN
HOPPEL MAYER & COLEMAN
1000 CONNECTICUT AVENUE NW SUITE 400
WASHINGTON DC 20036 US

JAMES D HEFFNER
THE LAW OFFICES OF JAMES D HEFFNER
1920 N STREET, N.W., SUITE 800
WASHINGTON DC 20036 US

WILLIAM G. MAHONEY
HIGHSAW, MAHONEY & CLARKE
1050 SEVENTEENTH STREET NW SUITE 210
WASHINGTON DC 20036 US

HAROLD P QUINN JR
NATIONAL MINING ASSOCIATION
1130 17TH STREET NW
WASHINGTON DC 20036 US

09/22/2003
SERVICE LIST FOR: 22-sep-2003 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

EDWARD J FISHMAN
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE NW SUITE 210
WASHINGTON DC 20036-1221 US

JEFFREY O. MORENO
THOMPSON HINE LLP
1920 N STREET N W SUITE 800
WASHINGTON DC 20036-1600 US

FREDERICK L WOOD
THOMPSON HINE LLP
1920 N STREET N.W., SUITE 800
WASHINGTON DC 20036-1600 US

FRITZ R KAHN
FRITZ R KAHN PC
1920 N STREET NW 8TH FLOOR
WASHINGTON DC 20036-1601 US

JOHN K MASER III
THOMPSON HINE & FLORY LLP
1920 N STREET NW STE 800
WASHINGTON DC 20036-1601 US

ROSE-MICHELE WEINRYB
WEINER BRODSKY SIDMAN & KIDER PC
1300 19TH STREET NW 5TH FLOOR
WASHINGTON DC 20036-1609 US

DAVID H COBURN
STEPTOE & JOHNSON LLP
1330 CONNECTICUT AVENUE, N.W.
WASHINGTON DC 20036-1795 US

ANTHONY J. LAROCCA
STEPTOE & JOHNSON LLP
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

TIMOTHY M WALSH
STEPTOE & JOHNSON
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

KEVIN M SHEYS
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE NW 2ND FLOOR
WASHINGTON DC 20036-1800 US

JOSEPH GUERRIERI, JR.
GUERRIERI, EDMOND & CLAYMAN, PC
1625 MASSACHUSETTS AVE., NW. STE 700
WASHINGTON DC 20036-2243 US

DEBRA L WILLEN
GUERRIERI EDMOND & CLAYMAN PC
1625 MASSACHUSETTS AVENUE, N.W., STE 700
WASHINGTON DC 20036-2243 US

DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

KELVIN J DOWD
SLOVER & LOFTUS
1224 17TH STREET N W
WASHINGTON DC 20036-3003 US

DAVID M. JAFFE
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

JOHN M CUTLER JR
MCCARTHY SWEENEY HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

ANDREW P. GOLDSTEIN
MCCARTHY, SWEENEY & HARKAWAY, P.C.
2175 K STREET, N. W., SUITE 600
WASHINGTON DC 20037 US

STEVEN J KALISH
MCCARTHY SWEENEY & HARKAWAY P.C.
2175 K STREET, N.W., SUITE 600
WASHINGTON DC 20037 US

SCOTT N STONE
PATTON BOGGS
2550 M STREET NW
WASHINGTON DC 20037 US

DANIEL J SWEENEY
MCCARTHY SWEENEY & HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

JOHN L OBERDORFER
PATTON BOGGS LLP
2550 M ST NW
WASHINGTON DC 20037-1301 US

KEITH A KLINKWORTH
U.S. DEPARTMENT OF AGRICULTURE, AMS
1400 INDEPENDENCE AVENUE, S.W.
WASHINGTON DC 20250-0002 US
SERVICE LIST FOR: 22-sep-2003 STB FD 33388 0
CSI. CORPORATION AND CSX TRANSPORTATION

EILEEN S STOMMES
U.S. DEPARTMENT OF AGRICULTURE
1400 INDEPENDENCE AVENUE, S.W.
WASHINGTON DC 20250-0002 US

HONORABLE JOSEPH BIDEN, JR.
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE BOB GRAHAM
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE RICHARD LUGAR
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE RICK SANTORUM
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE EDWARD M. KENNEDY
UNITED STATES SENATE
WASHINGTON DC 20510-0001 US

HONORABLE CHRISTOPHER J DODD
UNITED STATES SENATE
WASH DC 20510-0702 US

HONORABLE MIKE DEWINE
UNITED STATES SENATE
WASHINGTON DC 20510-3503 US

HONORABLE JOHN H. CHAFEE
UNITED STATES SENATE
WASHINGTON DC 20510-3902 US

HONORABLE ROBERT BYRD
UNITED STATES SENATE
WASHINGTON DC 20510-6025 US

HONORABLE SHERROD BROWN
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
WASHINGTON DC 20426 US

HONORABLE JOHN BREAU
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE JOSEPH I LIEBERMAN
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE BARBARA A. MIKULSKI
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE CHARLES E SCHUMER
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE JOHN W. WARNER
U.S. SENATE
WASHINGTON DC 20510-0001 US

HONORABLE BYRON L. DORGAN
U.S. SENATOR
UNITED STATES SENATE
WASHINGTON DC 20510-3405 US

HONORABLE ARLEN SPECTER
UNITED STATES SENATE
WASHINGTON DC 20510-3802 US

HONORABLE JACK REED
U.S. SENATE
WASHINGTON DC 20510-3902 US

HONORABLE GARY ACKERMAN
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE SAXBY CHAMBLISS,
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US
<table>
<thead>
<tr>
<th>Name</th>
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<td>U. S. HOUSE OF REPRESENTATIVES</td>
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<td>UNITED STATES HOUSE OF</td>
<td>HONORABLE MARCY KAPTUR</td>
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<td>HONORABLE DENNIS J KUCINICH</td>
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<td>HONORABLE STEVEN LATOURETTE</td>
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<td>U. S. HOUSE OF REPRESENTATIVES</td>
<td>HONORABLE MICHAEL MCMULTY</td>
<td>U. S. HOUSE OF REPRESENTATIVES</td>
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<td>HONORABLE ROBERT W. NEY</td>
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<td>HONORABLE JAMES L OBERSTAR</td>
<td>US HOUSE OF REPRESENTATIVES</td>
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<td>HONORABLE MAJOR R. OWENS</td>
<td>UNITED STATES HOUSE</td>
<td>HONORABLE CHIP PICKERING</td>
<td>U. S. HOUSE OF REPRESENTATIVES</td>
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SERVICE LIST FOR: 22-sep-2003 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

HONORABLE JACK QUINN
U. S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE RALPH REGULA
U. S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BILL SHUSTER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE TED STRICKLAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE NYDIA M VELAZQUEZ
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JULIA CARSON
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1410 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

HONORABLE BOBBY L. RUSH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-9997 US

ROSSALIND A. KNAPP
U. S. DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET, S.W., ROOM 4102 C-30
WASHINGTON DC 20590 US

MICHAEL P. HARMONIS
DEPARTMENT OF JUSTICE
325 SEVENTH STREET, NW
WASHINGTON DC 20530 US

JOSEPH R. POMPONIO
FEDERAL RAILROAD ADMINISTRATION
400 SEVENTH STREET, S.W., RCC-20
WASHINGTON DC 20590 US

CHRISTOPHER TULLY
TRANSPORTATION COMMUNICATIONS INTERNATIONAL U
3 RESEARCH PLACE
ROCKVILLE MD 20850 US

MITCHELL M. KRAUS
TRANSPORTATION COMMUNICATIONS INTERNATIONAL U
3 RESEARCH PLACE
ROCKVILLE MD 20850-3279 US

JOHN M. ROBINSON
ATTORNEY AT LAW
9616 OLD SPRING ROAD
KENSINGTON MD 20895-3124 US
SERVICE LIST FOR: 22-se-j-2003 STB FD 33388 0
CSX CORPORATION AND CSX TRANSPORTATION

WILLIAM W WHITEHURST JR
W.W. WHITEHURST & ASSOCIATES, INC.
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030-1711 US

ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

CHARLES M CHADWICK
MARYLAND MIDLAND RAILWAY INC
P O BOX 1000
UNION BRIDGE MD 21791 US

PETER Q NYCE JR
U.S. DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

FRANCIS G MCKENNA
ANDERSON & PENDLETON
206 N WASHINGTON STREET SUITE 330
ALEXANDRIA VA 22314 US

ROBERT E MARTINEZ
VA SECRETARY OF TRANSPORTATION
P. O. BOX 1475
RICHMOND VA 23218 US

JOHN W SNOW
CHAIRMAN PRESIDENT AND CHIEF EXECUTIVE OFFICER
P. O. BOX 85629
RICHMOND VA 23285-5629 US

PARKERSON B MAQUILLING
NORFOLK SOUTHERN CORPORATION
THREE COMMERCIAL PLACE, LAW DEPT
NORFOLK VA 23510 US

JAMES A HIXON
SENIOR VICE PRESIDENT EMPLOYEE RELATIONS NOR
THREE COMMERCIAL PLACE
NORFOLK VA 23510-2191 US

HONORABLE JOHN WARNER
UNITED STATES SENATE
235 FEDERAL BUILDING
ABINGDON VA 24210-0887 US

TERRELL ELLIS
CAEZMV
P O BOX 176
CLAY WV 25043 US

JOHN HOY
P O BOX 117
GLEN BURNIE MD 21060 US

LINDA A JANAY J D
MARYLAND OFFICE OF PLANNING
301 WEST PRESTON STREET
BALTIMORE MD 21201-2365 US

WILLIAM P. JACKSON, JR.
JACKSON & JESSUP, P. C.
P O BOX 4030
3426 NORTH WASHINGTON BLVD
MCLEAN VA 22103 US

DAVID F. ZOLL
CHEMICAL MANUFACTURERS ASSOCIATION
COMMONWEALTH TOWER 1300 WILSON BLVD
ARLINGTON, VA 22209 US

KENNETH E SIEGEL
AMERICAN TRUCKING ASSOC INC
2200 MILL ROAD
ALEXANDRIA VA 22314-4677 US

MICHAEL J RUEHLING
CSX CORPORATION
ONE JAMES CENTER
RICHMOND VA 23219 US

GEORGE A ASPATORE GENERAL SOLICITOR - REGULATORY
NORFOLK SOUTHERN RAILWAY COMPANY
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

DAVID A SHELTON
NORFOLK SOUTHERN
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

L P KING JR
GENERAL CHAIRPERSON UTU
145 CAMPBELL AVE SW STE 207
ROANOKE VA 24011 US

VAUGHN R GROVES
PITTSTON COAL COMPANY
PO BOX 5100
LEBANON VA 24266 US

R K SARGENT
GENERAL CHAIRPERSON UTU
1319 CHESTNUT STREET
KENOVA WV 25530 US
<table>
<thead>
<tr>
<th>Name</th>
<th>Title/Position</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>E Noah H Tolson</td>
<td>NC DEPT OF TRANSPORTATION</td>
<td>P O BOX 25201, 1 S. WILINGTON STREET, RALEIGH NC 27611 US</td>
</tr>
<tr>
<td>Fred M Ehlers</td>
<td>NORFOLK SOUTHERN CORPORATION</td>
<td>185 SPRING STREET, SW, ATLANTA GA 30303 US</td>
</tr>
<tr>
<td>Darrell Bailey</td>
<td>CSX TRANSPORTATION</td>
<td>500 WATER STREET (J407), JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>J Randall Evans</td>
<td></td>
<td>500 WATER STREET (J150), JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>Bob (R J) Haulter</td>
<td>CSX TRANSPORTATION INC</td>
<td>500 WATER STREET (J120), JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>John W. Humes, Jr.</td>
<td>CSX TRANSPORTATION</td>
<td>SPEED CODE J-150, 500 WATER STREET, JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>Cynthia K Murphy</td>
<td>CSX TRANSPORTATIONI</td>
<td>500 WATER STREET (J407), JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>Natalie S Rosenberg</td>
<td>CSX TRANSPORTATION</td>
<td>500 WATER STREET SPEED CODE J 150, JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>T J Stephenson</td>
<td>CSX TRANSPORTATION INC</td>
<td>500 WATER STREET (J407), JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>Phillip L Bell</td>
<td>ERIE LACKAWANNA RAILROAD CO</td>
<td>PO BOX 1482, TALLAHASSEE FL 32302 US</td>
</tr>
<tr>
<td>James L Belcher</td>
<td>EASTMAN CHEMICAL COMPANY</td>
<td>PO BOX 431, KINGSPORT TN 37662 US</td>
</tr>
<tr>
<td>J H Clark</td>
<td>UTU, GENERAL CHAIRPERSON</td>
<td>441 NORTH LOUISIAN AVENUE, SUITE Q, ASHEVILLE NC 28806 US</td>
</tr>
<tr>
<td>Robert V Allen</td>
<td>CSX TRANSPORTATION</td>
<td>500 WATER STREET - J275, JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>Fred R Birkholz</td>
<td>CSX TRANSPORTATION LAW DEPT - J-150</td>
<td>500 WATER STREET, JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>Carl A Gerhardstein</td>
<td>CSX TRANSPORTATION RISK MGMT</td>
<td>500 WATER STREET-J275, JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>L L Hayes</td>
<td>CSX TRANSPORTATION</td>
<td>500 WTR STREET, JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>C K Murphy</td>
<td>CSX TRANSPORTATION INC</td>
<td>500 WATER STREET (J407), JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>Danford L Price</td>
<td>CSX TRANSPORTATION</td>
<td>500 WATER STREET (J300), JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>Charles M Rosenberger</td>
<td>CSX TRANSPORTATION</td>
<td>500 WATER STREET - J150, JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>Larry D Moody</td>
<td>GENERAL CHAIRMAN UTU</td>
<td>9550 REGENCY SQUARE BLVD #904, JACKSONVILLE FL 32225-8177 US</td>
</tr>
<tr>
<td>James J Keenan</td>
<td>ANCHOR GLASS CONTAINER CORPORATION</td>
<td>4343 ANCHOR PLAZA PARKWAY, TAMPA FL 33634 US</td>
</tr>
<tr>
<td>William L Osteen</td>
<td>ASSOCIATE GENERAL COUNSEL TVA</td>
<td>400 WEST SUMMIT HILL DRIVE, KNOXVILLE TN 37902 US</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 22-sep-2003 STB FD 33388-0 CSX CORPORATION AND CSX TRANSPORTATION

PHILIP SIDO
UNION CAMP CORPORATION
6400 POPLAR AVE
MEMPHIS TN 38197-0100 US

HONORABLE PAUL E. PATTON
GOVERNOR
700 CAPITOL AVENUE, STE. 100
FRANKFORT KY 40601 US

HONORABLE DEBORAH PRYCE
U. S. HOUSE OF REPRESENTATIVES
500 SOUTH FRONT STREET, ROOM 1130
COLUMBUS OH 43215 US

JAMES R JACOBS
JACOBS INDUSTRIES
2 QUARRY LANE
STONY RIDGE OH 43463 US

ROBERT E GREENLESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

RON MARQUARDT
LOCAL UNION 1810 UMWA
58659 EILEEN ST.
RAYLAND OH 43943 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

CUDELL IMPROVEMENT INC
11650 DETROIT AVE
CLEVELAND OH 44102-2320 US

DANIEL R ELLIOTT III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLINTON J MILLER III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CHRISTOPHER C MCCRACKEN
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

HONORABLE KIRK FORDICE, GOVERNOR
STATE OF MISSISSIPPI
P O BOX 139
JACKSON MS 39205 US

THOMAS M O'LEARY
OHIO RAIL DEVELOPMENT COMMISSION
50 W BROAD STREET 15TH FLOOR
COLUMBUS OH 43215 US

DOREEN C JOHNSON, CHIEF ANTITRUST SECTION
OHIO ATTORNEY GENERAL OFFICE
140 EAST TOWN STREET, FIRST FLOOR
COLUMBUS OH 43215-6001 US

ROBERT J COOPER
GENERAL CHAIRPERSON UTU
385 COMMODORE WAY APT 9
PERRYSBURG OH 43551-2784 US

ROBERT E MURRAY
OHIO VALLEY COAL CO
56854 PLEASANT RIDGE ROAD
MILLEDONIA OH 43902 US

CLARENCE TURNQUIST
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
2125 TRYON ROAD
ASHTABULA OH 44004 US

BARBARA O'KEEFE
VILLAGE OF WELLINGTON
115 WILLARD MEMORIAL SQ
WELLINGTON OH 44090 US

C L LITTLE
INTERNATIONAL PRESIDENT UTU
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLARENCE MONIN INTERNATIONAL PRES
BROTHERHOOD OF LOCOMOTIVE ENGINEERS MEZZANINE
1370 ONTARIO STREET
CLEVELAND OH 44113 US

INAJO DAVIS CHAPPELL
ASHTA CHEMICALS INC
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114-1538 US

09/22/2003
SERVICE LIST FOR: 22-sep-2003 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

CHARLES ZUNKERH
ROETZEL & ANDRESS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

Sylvia R. Chinn-Levy
NEFCO
180 EAST SOUTH STREET
AKRON OH 44311-2035 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

Randall C. Hunt
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO.
P O BOX 36963
4775 MUNSON ST NW
CANTON OH 44735-6963 US

D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

R A GRICE
GENERAL CHAIRPERSON UTU
817 KILBOURNE ST
BELLEVUE OH 44811-9431 US

RICHALED E KERTH
CHAMPION INTERNATIONAL CORPORATION
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

FAY D DUPUIS
CITY OF CINCINNATI
801 PLUM STREET
CINCINNATI OH 45202 US

ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LANETTE DRIVE
CINCINNATI OH 45230 US

THOMAS R RYDMAN PRESIDENT
INDIAN CREEK RAILROAD COMPANY
3905 W 600 NORTH
ANDERSON IN 46011 US

F RONALDS WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIDIAN STREET
INDIANAPOLIS IN 46202-1393 US

J PATRICK LATZ
HEAVY LIFT CARGO SYSTEM
PO BOX 51451
INDIANAPOLIS IN 46251-0451 US

MICHAEL CONNELLY
CITY OF EAST CHICAGO
4525 INDIANAPOLIS BLVD
EAST CHICAGO IN 46312 US

HAMILTON L CARMOUCHE, CORPORATION COUNSEL
CITY OF GARY
401 BROADWAY 4TH FLOOR
GARY IN 46402 US

HONORABLE PETER J. VISCLOSKEY
U.S. HOUSE OF REPRESENTATIVES
701 EAST 83RD AVENUE, SUITE 9
MERRILLVILLE IN 46410-6239 US

CHRISTOPHER J BURGER, PRESIDENT
CENTRAL RAILROAD COMPANY OF INDIANAPOLIS
PO BOX 554
KOKOMO IN 46903-0554 US

WILLIAM A. BON
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
26555 EVERGREEN ROAD, SUITE 200
SOUTHFIELD MI 48076 US

LARRY B KARNS
MICHIGAN DEPARTMENT OF TRANSPORTATION
425 WEST OTTAWA STREET
LANSING MI 48909 US

HONORABLE PETER J. VISCLOSKEY
U.S. HOUSE OF REPRESENTATIVES
701 EAST 83RD AVENUE, SUITE 9
MERRILLVILLE IN 46410-6239 US

OFFICE OF THE GOVERNOR
P.O. BOX 30013
LANSING MI 48909 US

T SCOTT BANNISTER
T SCOTT BANNISTER AND ASSOCIATES
1300 DES MOINES BUILDING 405 SIXTH AVENUE
DES MOINES IA 50309 US

BYRON D OLSEN
FELHAZER LARSON FENLON & VOGT PA
601 SECOND AVENUE SOUTH SUITE 4200
MINNEAPOLIS MN 55401-4302 US

LEO J WASESCHA
GOLD MEDAL DIVISION - GENERAL MILLS OPERATION
P O BOX 1113
NUMBER ONE GENERAL MILLS BULEVARD
MINNEAPOLIS MN 55440 US
SERVICE LIST FOR: 22-sep-2003 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

STEPHEN M UTHOFF
CONIGLIO & UTHOFF APLC
60 ELM AVENUE
LONG BEACH CA 90802-4910 US

RICHARD WELSH
NARPO
50-505 GRAND TRAVERSE
LA QUINTA CA 92253 US

JOHN D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

Records: 311
In Decision No. 198 (served September 19, 2001), the Board ruled that it would not order Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS) to keep open the Hollidaysburg Car Shops, located near Altoona, PA, beyond October 1, 2001, but the decision provided for certain conditions to be met by NS should it close the shops.

By motion filed September 27, 2001, the Commonwealth of Pennsylvania, the Transport Workers Union of America, the National Council of Firemen and Oilers/SEIU, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Boilermakers and Blacksmiths, the International Brotherhood of Electrical Workers, the Sheet Metal Workers International Association, and the Transportation-Communications International Union ask: (1) that the Board stay the effectiveness of Decision No. 198 pending judicial review; and (2) that the Board establish an expedited schedule, under which replies to the stay motion would be due October 2, 2001, and under which the Board would issue its decision on the merits of the stay motion by October 4, 2001. Movants indicate that an expedited schedule is needed in order to enable movants to know of the Board's ruling on the merits of the stay motion in time to seek, if necessary, a judicial stay from the United States Court of Appeals, prior to the date when NS would close the Car Shops.

In order to allow movants adequate time to seek a judicial stay if the Board declines to grant an administrative stay, any person that intends to submit a written reply to the stay motion is directed to file that reply with the Board no later than 5:00 p.m. on Tuesday, October 2, 2001. It is anticipated that, upon the receipt of any such replies, the Board will prepare a decision on the merits of the stay motion. It is further anticipated that the Board will endeavor to serve that

Movants add that, although the date on which NS will be able to close the Car Shops is not yet known precisely, it is expected to be in mid-October following the conclusion of presently ongoing arbitration, and following the provision by NS of 15 days' notice of the closure of the Car Shops.
decision, and to post that decision on its website (www.stb.dot.gov), on Thursday, October 4, 2001, or shortly thereafter.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Any interested person that intends to submit a written reply to the stay motion is directed to file that reply with the Board no later than 5:00 p.m. on Tuesday, October 2, 2001.

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>John D Cirame</td>
<td>10 Park Plaza Room 3170, Boston MA 02116-3969</td>
</tr>
<tr>
<td>John R Nadolny</td>
<td>14 Aviation Avenue, Portsmouth NH 03801 US</td>
</tr>
<tr>
<td>Karen E Songhurst</td>
<td>133 State Street, Montpelier VT 05633-5001 US</td>
</tr>
<tr>
<td>Edward J Rodriguez</td>
<td>P O Box 687, 8 Davis Road West, Old Lyme CT 06371 US</td>
</tr>
<tr>
<td>Michael E Strickland</td>
<td>NYC Line (North America) Inc, Senior Vice Pr 300 Lighting Way, Secaucus NJ 07094-1588 US</td>
</tr>
<tr>
<td>John F McNulty</td>
<td>18 N East Avenue, Vineland NJ 08360 US</td>
</tr>
<tr>
<td>JAMES E Howard</td>
<td>Kirkpatrick &amp; Lockhart, One Thompson Square, Ste 201, Charlestown MA 02129 US</td>
</tr>
<tr>
<td>William D Ankner PhD</td>
<td>R I Dept of Transportation, Two Capitol Hill, Providence RI 02903 US</td>
</tr>
<tr>
<td>Robert D Elder</td>
<td>Maine Department of Transportation, 16 State House Station, Augusta ME 04333-0016 US</td>
</tr>
<tr>
<td>James F Sullivan</td>
<td>CT Dept of Transportation, P O Box 317546, Newington CT 06131 US</td>
</tr>
<tr>
<td>Richard C Carpenter</td>
<td>South Western Regional Planning Agency, 888 Washington Boulevard, 3rd Floor, Stamford CT 06901 US</td>
</tr>
<tr>
<td>Edward Lloyd</td>
<td>Rutgers Environmental Law Clinic, 15 Washington Street, Newark NJ 07102 US</td>
</tr>
<tr>
<td>J William Van Dyke</td>
<td>NJ Transportation Planning Authority, One Newark Center 17th Floor, Newark NJ 07102 US</td>
</tr>
<tr>
<td>Craig Curry</td>
<td>Consolidated Rail Corporation, 1000 Howard Boulevard, Mount Laurel NJ 08054 US</td>
</tr>
<tr>
<td>Lawrence Pepper, Jr</td>
<td>Gruccio Pepper, 817 East Lands Ave, Vineland NJ 08360 US</td>
</tr>
<tr>
<td>Anthony P. Semancik</td>
<td>347 Madison Avenue, New York NY 10017-3706 US</td>
</tr>
<tr>
<td>James W Harris</td>
<td>The Metropolitan Planning Organization, 1 World Trade Center, Ste 82 East, New York NY 10048-0043 US</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 28-sep-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

HUGH H. WELSH
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-0202 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE, INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

SHEILA MECK HYDE
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

IRVING J RUBIN
P O BOX 243
YOUNGSTOWN NY 14174 US

JOHN F COLLINS
COLLINS COLLINS & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

R W GODWIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
810 ABBOTT ROAD SUITE 200
BUFFALO NY 14220 US

ERNEST J IERARDI
NIXON PEABODY LLP
P O BOX 31051
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

H DOUGLAS MIDKIFF
GENESEE TRANSPORTATION COUNCIL
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

JEANNE WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

JOHN J DOLFI
427 ELMHURST DRIVE
BELLE VERNON PA 15012 US

DAVID W. DONLEY
3361 STAFFORD ST
PITTSBURGH PA 15204-1441 US

JOHN A VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

HENRY M WICK, JR.
WICK STREIFF MEYER O'BOYLE SZELIGO
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219-3427 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

M E PETRUCCELLI
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

RICHARD R WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

D W DUNLEVY
STATE LEGISLATIVE DIRECTOR UTU
230 STATE STREET PA AFL-CIO BLDG 2ND FLOOR
HARRISBURG PA 17101 US
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kurt W. Carr</td>
<td>Bureau for Historic Preservation, P.O. Box 1026, Harrisburg PA 17108-1026 US</td>
</tr>
<tr>
<td>Richard A. Geist</td>
<td>Main Capitol Building, P.O. Box 22020, Harrisburg PA 17120-2020 US</td>
</tr>
<tr>
<td>Belnap Freeman</td>
<td>Belnap Freeman, 119 Hickory Lane, Rosemont PA 19010 US</td>
</tr>
<tr>
<td>John J. Grocki</td>
<td>Gra Inc, 115 West Av One Jenkintown Sta, Jenkintown PA 19046 US</td>
</tr>
<tr>
<td>G Craig Schelter</td>
<td>Philadelphia Industrial Development Corporation, 2600 Centre Square West 500 Market St, Philadelphia PA 19102 US</td>
</tr>
<tr>
<td>David Berger</td>
<td>Berger and Montague, P.C., 1622 Locust St, Philadelphia PA 19103-6305 US</td>
</tr>
<tr>
<td>John K. Leary, General Manager</td>
<td>Southeastern Pennsylvania Transportation Authority, 1234 Market Street 5th Floor, Philadelphia PA 19107-3780 US</td>
</tr>
<tr>
<td>Honoerable Joseph R. Biden, Jr.</td>
<td>United States Senate, 844 King Street, Wilmington DE 19801 US</td>
</tr>
<tr>
<td>E C. Wright</td>
<td>E I Du Pont de Nemours And Company, 1007 Market Street D-3100, Wilmington DE 19898 US</td>
</tr>
<tr>
<td>Martin W. Bercovici</td>
<td>Keller &amp; Heckman LLP, 1001 G St NW Suite 500 West, Washington DC 20001 US</td>
</tr>
<tr>
<td>James Howard</td>
<td>Coalition of Northeastern Governors, 400 North Capitol Street, Suite 382, Washington DC 20001 US</td>
</tr>
<tr>
<td>Honorale Thomas J Ridge</td>
<td>Governor, Commonwealth of Pennsylvania, 225 Main Capitol Building, Harrisburg PA 17120 US</td>
</tr>
<tr>
<td>Honorale Robert C. Jubelirer</td>
<td>Pennsylvania State Senate, Box 203030, State Capitol, Harrisburg PA 17120-3030 US</td>
</tr>
<tr>
<td>Harry C. Barbin</td>
<td>Barbin Lauffer &amp; O'Connell, 608 Huntingdon Pike, Rockledge PA 19046 US</td>
</tr>
<tr>
<td>Jonathan M. Broder</td>
<td>Consolidated Rail Corp, 2001 Market Street 16th Floor, Philadelphia PA 19101-1416 US</td>
</tr>
<tr>
<td>John J. Coscia, Executive Director</td>
<td>Delaware Valley Regional Planning Commission, 111 South Independence Mall East, Philadelphia PA 19106 US</td>
</tr>
<tr>
<td>Eric M. Hocky</td>
<td>Gollatz Griffin &amp; Ewing, P.O. Box 796, 213 West Miner Street, West Chester PA 19381-0796 US</td>
</tr>
<tr>
<td>J E. Thomas</td>
<td>Hercules Incorporated, 1313 North Market Street, Wilmington DE 19894 US</td>
</tr>
<tr>
<td>Frederick H. Scharanck</td>
<td>Keller &amp; Heckman, 778 PO Box, Dover DE 19903 US</td>
</tr>
<tr>
<td>Peter A. Gilbertson</td>
<td>Regional RRS of America, 122 C St NW Ste 850, Washington DC 20001 US</td>
</tr>
<tr>
<td>Terrence D. Jones</td>
<td>Keller &amp; Heckman, 1001 G St NW Ste 500 West, Washington DC 20001 US</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 28-sep-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION INC

CHARLES A SPITULNIK
MCLERO WATKINSON & MILLER
ONE MASSACHUSETTS AVENUE NW SUITE 800
WASHINGTON DC 20001-1401 US

DONALD F GRIFFIN ASSISTANT GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
10 G STREET NE STE 460
WASHINGTON DC 20002 US

DREW A HARKER
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

J MICHAEL HEMMER
COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004 US

DAVID C REEVES
TROUTMAN SANDERS LLP
401 NINTH STREET NW SUITE 1000
WASHINGTON DC 20004 US

GEORGE W MAYO JR
HOGAN & HARTSON L L P
555 THIRTEENTH STREET NW COLUMBIA SQUARE
WASHINGTON DC 20004-1109 US

MARY GABRIELLE SPRAGUE
ARNOLD & PORTER
555 TWELTH STREET NW
WASHINGTON DC 20004-1202 US

ROBERT A WIMBISH ESQ
HARKINS CUNNINGHAM
801 PENNSYLVANIA AVE NW
WASHINGTON DC 20004-2664 US

LOUIS E GITOMER
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

KARL MORELL
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

ALICE C SAYLOR
AMERICAN SHORT LINE & REGIONAL RAILROAD ASSOCIATION
1120 G STREET NW SUITE 520
WASHINGTON DC 20005 US

ROSS B CAPON
NATIONAL ASSOCIATION OF RAILROAD PASSENGER CARRIERS
900 2ND ST NE SUITE 300
WASHINGTON DC 20002 US

RICHARD G SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

JOHN D HEFFNER
555 12TH STREET NW SUITE 950 NORTH
WASHINGTON DC 20004 US

WILLIAM A MULLINS
TROUTMAN SANDERS LLP
401 NINTH STREET NW SUITE 1000
WASHINGTON DC 20004 US

PAUL REISTRUP
CSX TRANSPORTATION INC
1331 PENNSYLVANIA NW STE 500
WASHINGTON DC 20004 US

ERIC VON SALZEN
HOGAN & HARTSON
555 THIRTEENTH STREET N W
WASHINGTON DC 20004-1109 US

DENNIS G LYONS
ARNOLD & PORTER
555 TWELFTH STREET NW, STE 940
WASHINGTON DC 20004-1206 US

ROBERT A WIMBISH ESQ
HARKINS CUNNINGHAM
801 PENNSYLVANIA AVE NW
WASHINGTON DC 20004-2664 US

ALICE C SAYLOR
AMERICAN SHORT LINE & REGIONAL RAILROAD ASSOCIATION
1120 G STREET NW SUITE 520
WASHINGTON DC 20005 US

NEAL R GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AV NW
WASHINGTON DC 20005-3701 US
<table>
<thead>
<tr>
<th>Name</th>
<th>Firm/Address</th>
<th>City, State, Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>MARK FILIPOVIC</td>
<td>888 16TH STREET NW SUITE 650</td>
<td>WASHINGTON DC 20006 US</td>
</tr>
<tr>
<td>CONSTANCE A SADLER</td>
<td>SIDLEY &amp; AUSTIN BROWN &amp; WOOD</td>
<td>WASHINGTON DC 20006 US</td>
</tr>
<tr>
<td>JAMES R WEISS</td>
<td>PRESTON GATES ELLIS ET AL</td>
<td>WASHINGTON DC 20006 US</td>
</tr>
<tr>
<td>SCOTT M ZIMMERMAN</td>
<td>ZUCKERT SCOUTT &amp; RASENBERGER LLP</td>
<td>WASHINGTON DC 20006 US</td>
</tr>
<tr>
<td>RICHARD A ALLEN</td>
<td>ZUCKERT SCOUTT &amp; RASENBERGER LLP</td>
<td>WASHINGTON DC 20006 US</td>
</tr>
<tr>
<td>RACHEL DANISH CAMPBELL</td>
<td>Foley &amp; Lardner</td>
<td>WASHINGTON DC 20006 US</td>
</tr>
<tr>
<td>JOHN H BROADLEY</td>
<td>JOHN H BROADLEY &amp; ASSOCIATES PC</td>
<td>WASHINGTON DC 20007 US</td>
</tr>
<tr>
<td>DAVID K MONROE</td>
<td>GALLAND KHARASCH GREENBERT FELLMAN &amp; SWIRSKY</td>
<td>WASHINGTON DC 20007 US</td>
</tr>
<tr>
<td>SCOTT N STONE</td>
<td>PATTON BOGGS</td>
<td>WASHINGTON DC 20007 US</td>
</tr>
<tr>
<td>MICHAEL F MCBRIDE</td>
<td>LEBOEUF LAMB GREENE &amp; MACRAE</td>
<td>WASHINGTON DC 20009-5728 US</td>
</tr>
<tr>
<td>STEPHEN H BROWN</td>
<td>VORYS SATHER SEYMOUR AND PEASE</td>
<td>WASHINGTON DC 20036 US</td>
</tr>
<tr>
<td>ANDREW R. PLUMP</td>
<td>ZUCKERT, SCOUTT &amp; RASENBERGER. LLP</td>
<td>WASHINGTON DC 20006 US</td>
</tr>
<tr>
<td>ROBERT P VOM EIGEN</td>
<td>FOLEY &amp; LARDNER</td>
<td>WASHINGTON DC 20006 US</td>
</tr>
<tr>
<td>EDWARD WYTKIND</td>
<td>EXECUTIVE DIRECTOR</td>
<td>WASHINGTON DC 20006 US</td>
</tr>
<tr>
<td>WILLIAM W MILLAR</td>
<td>AMERICAN PUBLIC TRANSIT ASSOCIATION</td>
<td>WASHINGTON DC 20006-1215 US</td>
</tr>
<tr>
<td>JOHN V EDWARDS, ESQ</td>
<td>ZUCKERT SCOTT ET AL</td>
<td>WASHINGTON DC 20006-3939 US</td>
</tr>
<tr>
<td>SHERRI LEHMAN</td>
<td>DIRECTOR OF CONGRESSIONAL AFFAI</td>
<td>WASH DC 20006-5805 US</td>
</tr>
<tr>
<td>PAUL M DONOVAN</td>
<td>LAROE WINN MOERMAN &amp; DONOVAN</td>
<td>WASHINGTON DC 20007 US</td>
</tr>
<tr>
<td>CHRISTOPHER C O'HARA</td>
<td>BRICKFIELD BURCHETTE &amp; RITTS PC</td>
<td>WASHINGTON DC 20007 US</td>
</tr>
<tr>
<td>EDWARD D GREENBERG</td>
<td>GALLAND KHARASCH GREENBERG FELLMAN &amp; SWIRSKY</td>
<td>WASHINGTON DC 20007-4492 US</td>
</tr>
<tr>
<td>KARYN A BOOTH</td>
<td>THOMPSON HINE &amp; FLORY LLP</td>
<td>WASHINGTON DC 20036 US</td>
</tr>
<tr>
<td>DAVID H COBURN</td>
<td>STEPTOE &amp; JOHNSON</td>
<td>WASHINGTON DC 20036 US</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 28-sep-2001 STB FD 33388 0
CSX CORPORATION AND CSX TRANSPORTATION

PAUL D COLEMAN
HOPPEL MAYER & COLEMAN
1000 CONNECTICUT AVENUE NW SUITE 400
WASHINGTON DC 20036 US

RICHARD S EDELMAN
O'DONNELL SCHWARTZ & ANDERSON PC
1900 L STREET NW SUITE 707
WASHINGTON DC 20036 US

PAUL H LAMBOLEY
1717 N STREET NW
WASHINGTON DC 20036 US

PETER A GREENE
THOMPSON HINE FLORO
1920 N STREET NW SUITE 800
WASHINGTON DC 20036 US

WILLIAM G. MAHONEY
HIGHSAW, MAHONEY & CLARKE
1050 SEVENTEENTH STREET NW SUITE 210
WASHINGTON DC 20036 US

CHRISTOPHER A MILLS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

KEITH G O BRIEN
REA CROSS AND AUCHINCLOSS
1707 L STREET NW STE 570
WASHINGTON DC 20036 US

GORDON P MACDOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

NICHOLAS J DIMICHAEL
THOMPSON HINE LLP
1920 N STREET NW STE 800
WASHINGTON DC 20036-1601 US

HAROLD P QUINN JR
NATIONAL MINING ASSOCIATION
1130 17TH STREET NW
WASHINGTON DC 20036 US

FREDERIC L WOOD
THOMPSON HINE LLP
1920 N STREET
WASHINGTON DC 20036-1601 US

FRITZ R KAHN
1920 F STREET NW 8TH FLOOR
WASHINGTON DC 20036-1601 US

SAMUEL M SIPE JR
STEPTOE & JOHNSON LLP
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

ROSE-MICHELE WEINRYB
WEINER BRODSKY SIDMAN & KIDER
1300 19TH STREET NW 5TH FLOOR
WASHINGTON DC 20036-1609 US

EDWARD J FISHMAN
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE, N.W., 2ND FLOOR
WASHINGTON DC 20036-1800 US

TIMOTHY M WALSH
STEPTOE & JOHNSON
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

JOSEPH GUERRIERI, JR.
GUERRIERI, EDMOND & CLAYMAN, PC
1625 MASSACHUSETTS AVE., NW, STE 700
WASHINGTON DC 20036-2243 US

KEVIN M SHEYS
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE NW 2ND FLOOR
WASHINGTON DC 20036-1800 US

DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

DEBRA L WILLIN
GUERRIERI EDMOND & CLAYMAN PC
1625 MASSACHUSETTS AVENUE, N.W., STE 700
WASHINGTON DC 20036-2243 US

WILLIAM L SLOVER
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

KELVIN J DOWD
SLOVER & LOFTUS
1224 17TH STREET N W
WASHINGTON DC 20036-3003 US

09/28/2001
JOHN M CUTLER JR
MCCARTHY SWEENEEY HARKAWAY PC
2175 K STREET NW
WASHINGTON DC 20037 US

ANDREW P GOLDSTEIN
MCCARTHY SWEENEEY & HARKAWAY P C
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

STEVEN J KALISH
MCCARTHY SWEENEEY & HARKAWAY P C
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

DANIEL J SWEENEEY
MCCARTHY SWEENEEY & HARKAWAY P C
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

JOHN L OBERDORFER
PATTON BOGGS LLP
2550 M ST NW
WASHINGTON DC 20037-1301 US

KEITH A KLINDWORTH
U S DEPT OF AGRICULTURE
P O BOX 96456
WASHINGTON DC 20090 US

EILEEN S STOMMES
U S DEPARTMENT OF AGRICULTURE
P O BOX 96456 ROOM 4006-SOUTH BUILDING
WASHINGTON DC 20090-6456 US

MICHAEL V DUNN
RM 228W JAMIE L WHITTEN FEDERAL BLDG
WASHINGTON DC 20250 US

JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
WASHINGTON DC 20426 US

HONORABLE JOSEPH BIDEN, JR.
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE JOHN BREAUX
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE BCB GRAHAM
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE JOSEPH I LIEBERMAN
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE RICHARD LUGAR
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE BARBARA A. MIKULSKI
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE CHARLES E SCHUMER
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE EDWARD M. KENNEDY
UNITES STATES SENATE
WASHINGTON DC 20510-0001 US

HONORABLE JOHN V. WARNER
US SENATE
WASHINGTON DC 20510-0001 US

HONORABLE CHRISTOPHER J DODD
UNITED STATES SENATE
WASH DC 20510-0702 US

HONORABLE BYRON L. DORGAN
U.S. SENATOR
UNITED STATES SENATE
WASHINGTON DC 20510-3405 US

HONORABLE MIKE DEWINE
UNITED STATES SENATE
WASHINGTON DC 20510-3503 US

HONORABLE ARLEN SPECTER
UNITED STATES SENATE
WASHINGTON DC 20510-3802 US
SERVICE LIST FOR: 28-sep-2001 STE FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

HONORABLE RICK SANTORUM
UNITED STATES SENATE
WASHINGTON DC 20510-3804 US

HONORABLE JACK REED
U.S. SENATE
WASHINGTON DC 20510-3903 US

HONORABLE GARY ACKERMAN
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ED BRYANT
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BOB CLEMENT
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE DANNY K DAVIS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JOHN J DUNCAN
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PAUL E. GILLMOR
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE LUIS GUTIERREZ
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JESSE L. JACKSON, JR
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MARCY KAPTUR
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JOHN H. CHAFEE
UNITED STATES SENATE
WASHINGTON DC 20510-3902 US

HONORABLE ROBERT BYRD
UNITED STATES SENATE
WASHINGTON DC 20510-6025 US

HONORABLE SHERROD BROWN
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE SAXBY CHAMBLISS,
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE WILLIAM J. COYNE
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MIKE DOYLE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ELIOT L. ENGEL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BENJAMIN A. GILMAN
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MAURICE HINCHHEY
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE NANCY JOHNSON
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE DENNIS J. KUCINICH
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US
SERVICE LIST FOR: 28-sep-2001 STB FD 33388 0  CSX CORPORATION AND CSX TRANSPORTATION

HONORABLE JOHN J LAFALCE
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE WILLIAM O LIPINSKI
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CAROLYN B MALONEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE FRANK MASCARA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ROBERT MENENDEZ
U S HOUSE OF REPRESENTATIVES
WASH DC 20515 US

HONORABLE ROBERT W. NEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MAJOR R. OWENS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JACK QUINN
HOUSE OF REPRESENTATIVES
2448 RAYBURN BLDG
WASHINGTON DC 20515 US

HONORABLE RALPH REGULA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CHRISTOPHER SHAYS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BUD SHUSTER
ATTN: MIKE RICK
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE STEVE LATOURETTE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE NITA LOWEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JAMES MALONEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MICHAEL MCNULTY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JERROLD NADLER
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JAMES L OBERSTAR
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CHIP PICKERING
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CHARLES RANGEL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE THOMAS C SAWYER
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BILL SHUSTER
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE LOUISE M SLAUGHTER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US
HONORABLE DAVID M BEASLEY  
GOVERNOR  
P. O. BOX 11369  
COLUMBIA SC 29211 US

FRED R BIRKHOLZ  
CSX TRANSPORTATION LAW DEPT - J-150  
500 WATER STREET  
JACKSONVILLE FL 32202 US

CARL A GERHARSTEIN  
CSX TRANSPORTATION RISK MGMT  
500 WATER STREET-J275  
JACKSONVILLE FL 32202 US

J RANDALL EVANS  
500 WATER STREET (J150)  
JACKSONVILLE FL 32202 US

PAUL R HITCHCOCK  
CSX TRANSPORTATION LAW DEPARTMENT  
500 WATER STREET SC J-150  
JACKSONVILLE FL 32202 US

BOB HAULTER  
CSX TRANSPORTATION INC  
500 WATER STREET (J120)  
JACKSONVILLE FL 32202 US

CHARLES M ROSENBERGER  
CSX TRANSPORTATION  
500 WATER STREET - J150  
JACKSONVILLE FL 32202 US

JOHN W. HUMES, JR.  
CSX TRANSPORTATION  
SPEED CODE J-150  
500 WATER STREET  
JACKSONVILLE FL 32202 US

J L RODGERS  
GENERAL CHAIRMAN UTU  
9550 REGENCY SQUARE BLVD #904  
JACKSONVILLE FL 32225-6777 US

T J STEPHENSON  
CSX TRANSPORTATION INC  
500 WATER STREET (J407)  
JACKSONVILLE FL 32202 US

JAMES J KEENAN  
ANCHOR GLASS CONTAINER CORPORATION  
4343 ANCHOR PLAZA PARKWAY  
TAMPA FL 33634 US

PHILLIP L BELL  
ERIE LACKAWANNA RAILROAD CO  
PO BOX 1482  
TALLAHASSEE FL 32302 US

WILLIAM L OSTEEN  
ASSOCIATE GENERAL COUNSEL TVA  
400 WEST SUMMIT HILL DRIVE  
KNOXVILLE TN 37902 US

JAMES L BELCHER  
EASTMAN CHEMICAL COMPANY  
PO BOX 431  
KINGSPORT TN 37662 US

HONORABLE JUNE M. PATTON  
GOVERNOR  
700 CAPITOL AVENUE, STE. 100  
FRANKFORT KY 40601 US

THOMAS M O'LEARY  
OHIO RAIL DEVELOPMENT COMMISSION  
50 W BROAD STREET 15TH FLOOR  
COLUMBUS OH 43215 US

HONORABLE DEBORAH PRYCE  
U. S. HOUSE OF REPRESENTATIVES  
500 SOUTH FRONT STREET, ROOM 1130  
COLUMBUS OH 43215 US

DOREEN C JOHNSON, CHIEF ANTITRUST SECTION  
OHIO ATTY GENERAL OFFICE  
140 EAST TOWN STREET, FIRST FLOOR  
COLUMBUS OH 43215-6001 US

JAMES R JACOBS  
JACOBS INDUSTRIES  
2 QUARRY LANE  
STONY RIDGE OH 43463 US

DAVID CHAPMAN  
LAFARGE LIME OHIO INC  
P O BOX 128  
659 ANDERSON ROAD  
WOODVILLE OH 43469-0128 US

09/28/2001
SERVICE LIST FOR: 28-sep-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

ROBERT J COOPER
GENERAL CARRIER PERSON UTU
385 COMMERCIAL WAY APT 9
PERRYSBURG OH 43551-2784 US

ROBERT E MURRAY
OHIO VALLEY COAL CO
56854 PLEASANT RIDGE ROAD
ALLEDNA OH 43902 US

CLARENCE TURNQUIST
INTERNATIONAL LONGSHOREMEN’S ASSOCIATION
2125 TRYON ROAD
ASHTABULA OH 44004 US

CHARLES S. HESSE
CHARLES HESSE ASSOCIATES
7777 BAINBRIDGE ROAD
CHAGRIN FALLS OH 44023-2124 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

DANIEL R ELLIOTT III
ASST GENERAL COUNSEL UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLINTON J MILLER III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CHRISTOPHER C MCCracken
UIMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL
ASHTA CHEMICALS INC
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114-1538 US

SYLVIA R. CHINN-LEVY
NEFCO
969 CPLEY ROAD
AKRON OH 44320 US

RANDALL C. HUNT
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO.
P O BOX 36963
4775 MUNSON ST NW
CANTON OH 44735-6963 US

ROBERT E GREENLESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

RON MARQUARDT
LOCAL UNION 1810 UMWA
58659 EILEEN ST.
RAYLAND OH 43943 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

BARBARA O’KEEFE
VILLAGE OF WELLINGTON
115 WILLARD MEMORIAL SQ
WELLINGTON OH 44090 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

C L LITTLE
INTERNATIONAL PRESIDENT UTU
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLARENCE MONIN INTERNATIONAL PRES
BROTHERHOOD OF LOCOMOTIVE ENGINEERS MEZZANINE
1370 ONTARIO STREET
CLEVELAND OH 44113 US

DAVID ROLOFF
GOLDSTEIN & ROLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

CHARLES ZUMKEHR
ROETZEL & ANDRESS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

D G STRUNK JR
GENERAL CARRIER PERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US
<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Company/Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>R A GRICE</td>
<td>General Chairperson UTU</td>
<td>CSX CORPORATION AND CSX TRANSPORTATION</td>
</tr>
<tr>
<td>817 KILBOURNE ST</td>
<td></td>
<td></td>
</tr>
<tr>
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SERVICE LIST FOR: 28-sep-2001 STB FD 33388 0  CSX CORPORATION AND CSX TRANSPORTATION

RICHARD WELSH
NARPO
50-505 GRAND TRAVERSE
LA QUINTA CA 92253 US

JOHN D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

Records: 332
In Decision No. 186, served May 21, 2001, we directed Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) to show why we should not order the carrier to cancel its announced shut-down on October 1, 2001, of its Hollidaysburg Car Shops (HCS) located in Hollidaysburg, PA, near Altoona.\(^1\) Having considered the responses that we received from NS and others, we will not order NS to keep the HCS open beyond that date. However, given the unique circumstances here, should it proceed to close the HCS, we will require NS to extend the enhanced labor protection—consisting of "automatic certification" for New York Dock\(^2\) benefits—that it is providing for the transferring Hollidaysburg employees of three shopcraft unions to the transferring employees represented by the other shopcraft unions. We will also provide that current HCS employees who are not offered a new position, or cannot exercise their seniority to claim a position, will be deemed to be eligible, upon dismissal, to the New York Dock economic benefits. Finally, we will require NS to report quarterly on its efforts to keep open the nearby Juniata Locomotive Shop (JLS) and on its efforts to work with the Altoona/Hollidaysburg area on alternative economic development projects.

\(^1\) At the time of the May 21 decision, NS' proposed shut-down date for the HCS was September 1, 2001. Subsequently, in seeking an extension of the deadline for its showing, NS stated that it would not close the HCS before October 1, 2001.

\(^2\) New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979). The New York Dock conditions entitle employees to up to 6 years of monthly dismissal or displacement allowances to protect against a loss or diminution of wages resulting from a consolidation, and to relocation allowances.
BACKGROUND

In authorizing the Conrail transaction, the Board imposed, inter alia, a condition requiring CSX and NS to adhere to all of the representations they made during the course of the Conrail proceeding. Decision No. 89 at 176, ordering paragraph 19. In response to our order in Decision No. 186, NS contends that it never represented during the Conrail proceeding, either expressly or implicitly, that it intended to operate the HCS—without regard to business, economic, or operating conditions—for any minimum period of time after the Split Date. Rather, NS points to various occasions during the proceeding where it stated that continued operation of any of its facilities would depend on future circumstances that could not be predicted with any degree of certainty. While NS acknowledges that it stated an intention to continue operations at the HCS, to transfer car program work to the HCS, and to undertake an expanded “insourcing” effort to use the added car repair capacity at Hollidaysburg that it would gain from the Conrail transaction, the carrier asserts that its HCS-related statements in the Conrail application were simply good-faith expressions of how NS intended to operate the HCS and that it operated the HCS consistent with those intentions for 2 years after the Split Date.

NS states, however, that deteriorating economic conditions since the Split Date have forced the carrier to rethink its operations to make them compatible with current traffic levels, and to take various steps to reduce costs, increase efficiency, and restructure the company in a way that would better enable it to perform profitably. NS asserts that its decision to close the HCS—which, it notes, was neither the first facility nor the first large car shop affected—is but one of many steps that NS has had to take, and may have to take, and the carrier argues that it would be improper for us to intervene in these kinds of managerial decisions.

NS states that, while the Operating Plan that it submitted during the Conrail proceeding anticipated that it would expand its car fleet, NS has now found it necessary to contract its fleet, noting its announcement on January 23, 2001, that it would dispose of 12,000 surplus rail cars as part of its comprehensive restructuring effort, and its disposition, thus far, of 9,000 of those cars. The carrier asserts that, despite substantial efforts to “insource” work to the HCS, the HCS have

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3 The “Conrail transaction” involved the joint acquisition of control of Consolidated Rail Corporation (Conrail) by CSX Corporation and CSX Transportation, Inc. (collectively CSX) and NS and the division by CSX and NS of Conrail’s assets, which the Board authorized in this proceeding on July 23, 1998 (Decision No. 89). The control transaction was consummated on August 22, 1998, and the division of Conrail’s assets took place on June 1, 1999 (referred to here as the Split Date).

4 Among the various actions that it has taken, NS points out, were a reduction in its dividend for the first time in its history and a 25% reduction in its management workforce.
continued to operate at about one-third capacity since the Split Date, and it claims that, when analyzed as a stand-alone facility, the HCS are losing a substantial amount of money (almost $7 million in the year 2000). Because other car repair facilities on the NS system have the capacity (with the transfer of existing employees) to perform the kinds and amounts of repair work on NS equipment now being performed at Hollidaysburg, NS submits that it is entirely reasonable in current circumstances to close the HCS and transfer the work to the other facilities.

Acknowledging that the closure of the HCS would affect the local economy, NS further states that it has moved to mitigate those effects by exploring the possibility of selling the HCS to maintain employment in Blair County and working closely with the Altoona Blair County Development Corporation (ABCD Corporation) regarding the future of the HCS complex. NS also asserts that, because the work at the HCS is not being eliminated, but only transferred, "each and every Hollidaysburg agreement employee will have the opportunity for continued NS employment." NS-84 at 15 (emphasis in original). To that end, NS notes that previously negotiated agreements provide for transferring employees represented by three of the union petitioners, should they be subsequently dismissed or displaced, to be automatically certified for New York Dock income protection for up to 6 years, and the carrier asserts that, if negotiated settlements are reached, it would be willing to so certify employees represented by the other shopcraft unions who transfer as a result of the HCS closing.\(^5\)

Rail labor and the Commonwealth of Pennsylvania (collectively petitioners), on the other hand, jointly urge us to enforce NS' representations by requiring the carrier to retain the HCS for at least 5 years and to seek Board relief at the end of the 5-year period should it wish to close the HCS at that time. Petitioners contend that, in connection with the Conrail proceeding, NS made numerous and more unconditional public statements committing to the retention of, investment in, and expansion of work at the HCS, pointing especially to testimony of NS Chairman and Chief Executive Officer (CEO) David Goode before the United States Senate and other statements by Mr. Goode and NS officers, and also to various newspaper ads and press releases that were part of a carefully orchestrated campaign to win support for the Conrail proposal. Petitioners submit that these statements more clearly reveal NS' commitments, and, when read together with the carrier's more cautiously phrased record statements, were representations that petitioners could reasonably be expected to rely upon. As a result, petitioners argue, NS should not now be heard to argue that its commitments should not have been taken seriously.

\(^5\) Automatic certification, NS explains, means that transferring HCS employees would be relieved of the burden of demonstrating causation pursuant to Article I, § 11(e) of New York Dock, 360 I.C.C. at 88—i.e., that a subsequent dismissal or transfer to a lower-paying job had a nexus to the Conrail transaction—and thus would qualify for the New York Dock income protections upon those events.
Petitioners contend that NS' efforts to mitigate the damage that closure of the HCS would have on the Altoona area do not relieve NS of its commitments to the HCS, claiming that what NS is doing is no different from what any other large business would normally do when attempting to abandon and liquidate properties, and that its efforts hardly compensate for the closure of a facility with an annual payroll in excess of $20 million. Petitioners also dispute that NS acted in good faith with respect to its commitments to HCS. Petitioners point out that NS failed to invest the $4 million in the HCS that was promised and that the carrier has reduced utilization of the HCS through layoffs and deferral of maintenance on its own cars. Moreover, to the extent NS has claimed that the shut-down of the HCS is necessitated by a softened economy, petitioners point out that the current utilization of the HCS is not substantially below that in 1995, the base year used for NS' Operating Plan, and they submit that NS should not be permitted to break its commitments just because the economy has reverted to modest growth following a record period of expansion.

Finally, petitioners claim that NS' assertion that all HCS employees will have the opportunity for continued NS employment belies the fact that NS has identified only 156 jobs that would be available elsewhere on the NS system, while there are well over 300 employees currently working at the HCS. Petitioners submit that, if NS were truly attempting to make a good faith effort to mitigate the impact of its actions on HCS employees, it should, at a minimum, provide (1) that all HCS employees as of the Split Date (who have not resigned or retired) are covered by the New York Dock protective conditions in connection with the closing of the HCS and the transfer of HCS work to other locations; (2) that all those employees for whom there is no job will be protected for up to 6 years, and that NS will not assert that their furloughs were caused by other factors; and (3) that, for those who transfer, if they are furloughed at a new location, or if less senior employees at a transfer location are furloughed, they will be protected for up to 6 years and NS will not assert that New York Dock benefits are unavailable because the furloughs are due to other causes. Given the circumstances here, petitioners also suggest that, if we do not direct NS to retain and continue to operate the HCS, we could alternatively and appropriately determine that NS could be relieved of its commitments only if all HCS employees are deemed dismissed employees with no obligation to accept transfer to NS' other shops in order to retain the right to New York Dock benefits.

* Petitioners assert that, although NS has negotiated automatic New York Dock certification for transferring employees represented by three unions, and stated that it would discuss such arrangements with others, NS has not agreed that employees who were unable to obtain jobs at other locations (over half the current work force) would receive benefits, and has not forsworn asserting in the future that subsequent furloughs at the HCS or at transfer locations are caused by factors other than the Conrail transaction or the HCS closing.
Several other parties also filed replies in response to NS. The Rail Labor Division of the Transportation Trades Department, AFL-CIO (RLD), Pennsylvania Senator Jubelirer, and Pennsylvania Representative Stern argue that we should require NS to adhere to its representations and require NS to retain and operate HCS for a significant period of time after October 1, 2001, while AES Eastern Energy (AESE) asserts that NS did not make representations, but only projections that should not be enforced here. Other parties—the Association of American Railroads (AAR), the National Industrial Transportation League (NITL), and The Fertilizer Institute (TFI)—take no position on the proposed shut-down of the HCS, but suggest ways in which our determination here should be guided.

Correspondence was also received from U.S. Representatives Bill Shuster, Jack Quinn, and James L. Oberstar. Furthermore, on July 16, 2001, the Railroad Subcommittee of the Transportation and Infrastructure Committee of the U.S. House of Representatives held a hearing in Altoona on NS' announced closing of the HCS. By letter dated July 24, 2001, Rep. Quinn, the Chairman of the Subcommittee, forwarded to the Board: copies of the written testimony submitted to the Subcommittee; information in response to questions asked by Members at the hearing; a videotape submitted to the Subcommittee during the hearing and containing video clips of statements made by NS officials; and a videotape of the testimony obtained at the hearing. By letter dated August 17, 2001, Rep. Quinn further forwarded to the Board a copy of NS CEO David Goode's responses to certain additional information requests that had been made by Members of the Subcommittee. And, by letter dated September 14, 2001, Rep. Quinn also forwarded to the Board certain additional information provided by Mr. Thomas Lutton, President of the Transport Workers Union Local 2017.

AAR urges that the only representations that we should enforce are those that were made on the record, that projections in control applications should not be transformed into binding commitments, and that we should not second-guess or micro-manage railroad management decisions. AAR-1. On the other hand, NITL and TFI suggest that we should hold merging carriers to their representations as necessary to preserve the reliability, probity, and integrity of our merger proceedings, and that such an approach is consistent with our new merger rules issued in Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1) (STB served June 11, 2001), 66 FR 32582 (June 15, 2001). To that end, NITL submits that we should consider off-the-record statements that help to interpret ambiguous on-the-record statements, and that in assessing whether a statement is a representation, we should consider not only the wording, but also the circumstances (including its purpose and context, frequency, and identity of the speaker) and the nature of any contradictory statements. Holding a carrier to its representations, NITL submits, does not constitute micro-managing that carrier. NITL-17 at 8-11.
DISCUSSION AND CONCLUSIONS

It is evident that, during the course of and in connection with the Conrail proceeding, NS made a general commitment to the Altoona/Hollidaysburg area and to the employees of the HCS and the JLS that it would make these shops an important part of its post-transaction operations. This commitment was, in essence, both a commitment to the future economic well-being of the area and a commitment to the well-being of the individual employees of the HCS and the JLS, and it is supported by statements in the record and confirmed by other representations made by NS officials at the highest levels.\(^6\) NS has presented nothing here to change our prior conclusion that the carrier’s representations both before and during the merger process could not help but reasonably lead State and local interests to believe that NS would keep the shops open and to rely on that commitment in determining how they participated in the merger process. Decision No. 186 at 6.

For more than 2 years following the Split Date, NS kept its commitment by operating the HCS and the JLS, and the carrier has continued to devote resources to the JLS and make that shop an integral part of NS’ operations and to work with the Altoona/Hollidaysburg community, in light of its planned shut-down of the HCS, on economic development. However, since the Split Date, NS’ circumstances, impacted by a declining National economy, have worsened system-wide, forcing the carrier to make numerous operational and financial adjustments. In this regard, there appears little basis to expect that there will be sufficient work—whether NS-generated or “insourced”—for the shops to operate at the higher capacity levels needed to make

\(^6\) See, e.g., Testimony of NS Chairman and CEO Goode before the Senate Subcommittee on Transportation and Related Agencies, March 20, 1997, in response to questions from Senator Arlen Specter, reproduced in Joint Petition of Rail Labor and the Commonwealth of Pennsylvania (March 28, 2001), Exhibit 6. See also Decision No. 186 at 5-6, noting NS’ acknowledgment, in both the Conrail application and elsewhere, of the “unique repair/rebuild facilities” of the Hollidaysburg and Juniata shops, and the carrier’s intention to invest and take other steps to “fully utilize shop capacity” in ways that would not just maintain, but expand, operations and employment opportunities in the area.

NS argues that it is improper for us to rely on its “extra-record” statements. These public statements, however, especially those made by the very highest NS officials, help provide background and context against which NS’ “on-the-record” statements should be considered here. Our consideration of the NS public statements is within our discretion and is not precluded by our rules or by the Administrative Procedure Act. See 49 CFR 1114.1; 5 U.S.C. 555(e). See also, e.g., United States v. Pierce Auto Lines, 327 U.S. 515, 530 (1946) (Pierce); Oystershell Alliance v. USNRC, 800 F.2d 1201, 1204-05 (D.C. Cir. 1986) (Oystershell). Neither does our consideration of such statements unduly prejudice NS, as the carrier was given adequate opportunity to respond to the petitioners and supplement the record on the petition before us, which NS has done. See Pierce, 327 U.S. at 530; Oystershell, 800 F.2d at 1205.
the HCS viable. Under these circumstances, we will not require NS to invest previously promised funds or keep open the HCS after October 1, 2001, the carrier’s announced shut-down date.

In reaching this decision, the Board is reflecting the fact that, although the HCS employees will be most affected by the shut-down of the shops, protecting the HCS employees by requiring NS to continue HCS operations for some time could adversely impact other NS shops and employees, particularly in view of the current economic conditions. Given the size of the HCS (one of the largest group of shops of its kind in the world), if we were to require them to be kept open, it could mean that other NS car facilities would have to be idled or shut down and employees at those facilities relocated to Hollidaysburg and elsewhere. In short, favoring the HCS and its employees could work to disfavor other NS employees and locations.

However, while we will not require the HCS to be kept open, given the unique circumstances here—including the generally perceived commitment made by NS to the Altoona/Hollidaysburg area and to HCS employees, made largely to garner important local and state-wide support for the Conrail transaction from business, labor, and political interests in Conrail’s “home” State, and on which those interests reasonably relied—we are concerned that the normal procedures of the New York Dock conditions might not adequately protect the HCS employees here. Thus, should NS determine to proceed with closing the HCS, then pursuant to our authority under 49 U.S.C. 11324(c), 11326(a), 11327 and our express reservation of jurisdiction over the Conrail transaction, we will supplement the labor protective conditions that we previously imposed in Decision No. 89 by requiring NS to extend the enhanced labor protection—consisting of automatic certification for New York Dock benefits—that it is providing for transferring Hollidaysburg employees of three shopcraft unions to the transferring employees represented by the other shopcraft unions.10

We expect NS to honor its promise that “each and every Hollidaysburg agreement employee will have the opportunity for continued NS employment.” But, to assure the equitable treatment of these employees should NS not offer all of them continued employment, we will further supplement our previous conditions by providing that current HCS employees who are not afforded the opportunity to transfer to new employment elsewhere on NS, or cannot exercise their seniority to obtain such a position, will be deemed to be eligible, upon dismissal, to New

10 We will not grant petitioners’ request to eliminate the requirement that HCS employees must follow their work to new locations. As we explained in denying a request for similar relief in our decision approving the Conrail transaction, permitting rail carriers to transfer work and employees in carrying out a consolidation in exchange for providing income protection and other benefits is a “basic part of the bargain embodied” in the New York Dock conditions. Decision No. 89 at 128.
York Dock’s economic benefits. Should a dismissed employee be recalled and return to service on NS, his or her dismissal benefits would, of course, cease during re-employment. New York Dock, 360 at 86, § 6(b). As we noted in our decision approving the Conrail transaction, under New York Dock, once an employee has been dismissed, that employee may not be required to report to a work station that requires that employee to move his or her place of residence or else suffer the loss of dismissal payments. See Decision No. 89 at 128; New York Dock, 360 I.C.C. at 87, § 6(d).

Finally, we will require NS to report quarterly on its efforts to keep open the nearby JLS and on its efforts to work with the Altoona/Hollidaysburg area on alternative economic development projects. All of these requirements are meant to help ensure that NS will make every reasonable effort to fulfill its commitment to the Altoona/Hollidaysburg area and the involved employees.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proceeding initiated in Decision No. 186 is discontinued.

2. Should it proceed to close its Hollidaysburg Car Shops on or after October 1, 2001, NS must extend to all transferring HCS employees the “automatic certification” for New York Dock benefits that it previously negotiated with certain HCS employees, with remaining details to be worked out through negotiation between NS and the involved unions.

3. All current HCS employees who are not afforded the opportunity to transfer to a new position elsewhere on NS, or cannot exercise their seniority to claim such a position, are deemed to be eligible, upon their dismissal, for dismissal allowances pursuant to the New York Dock conditions.

4. NS must report on a periodic basis on its efforts to keep open the Juniata Locomotive Shop and on its efforts to work with the Altoona/Hollidaysburg area on alternative economic development projects. Such reports will be due on a quarterly basis, on the first business day of each calendar quarter. The first such report will be due on January 2, 2002.

11 The supplemental conditions provided here are afforded only to current HCS employees, not to those furloughed prior to NS’ announcement on February 21, 2001, that it would close the HCS. We make no determination here as to whether former employees are entitled to New York Dock protection, but leave that issue to arbitration, if necessary, under the normal procedures of New York Dock.
5. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes. Vice Chairman Clyburn commented with a separate expression.

Vemon A. Williams
Secretary

Vice Chairman Clyburn commenting:

While inferences can be made from this decision, the Board should be clear on how it views the nature of the "representations clause", which was initially placed in a footnote in the UP/SP merger Dec. No. 44\(^1\) and progressed to a more prominent position in an ordering paragraph in the Conrail Dec. No. 89.\(^2\) Is this clause a catchall phrase stating merely a goal for which to strive? Does it indicate a hard and fast rule to be interpreted literally, with no exceptions or consideration of extenuating circumstances? Maybe the interpretation of the representations clause depends on the specific wording or the context in which it is given. Further do we generally afford more flexibility to representations regarding matters of the operating plan or long term expenditures (because of the tentative nature of such projections), yet are more strict in our construction when dealing with specific services to particular customers? While I understand the conclusion the Board reaches in this difficult case, the Board, particularly in light of the importance of merger issues in this new paradigm, should give more guidance on how it interprets its own ordering paragraph.

Finally, although this decision does not order protection for employees at other locations, I believe the Board and the carrier should be diligent in protecting those less senior employees at a transfer location as well as the HCS employees should the shops be closed.

\(^1\) "During the course of this proceeding, applicants have made numerous representations to the effect that certain points will be covered, certain services will be provided, and so on. Some of these representations relate to the terms of the BNSF agreement; others do not. Applicants must adhere to all of their representations."

\(^2\) "Applicants must adhere to all of the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision."
SERVICE LIST FOR: 17-sep-2001 STB FD 33388 0

CSX CORPORATION AND CSX TRANSPORTATION

JAMES E HOWARD
KIRKPATRICK & LOCKHART
ONE THOMPSON SQUARE STE 201
CHARLESTOWN MA 02129 US

WILLIAM D ANKNER PHD
R I DEPT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE RI 02903 US

ROBERT D ELDER
MAINE DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA ME 04333-0016 US

HON. EDWARD M KENNEDY
UNITED STATES SENATE
2400 JOHN F KENNEDY FEDERAL ELDG
BOSTON MA 02203 US

JAMES F SULLIVAN
CT DEPT OF TRANSPORTATION
P O BOX 317546
2800 BERLIN TURNPIKE
NEWINGTON CT 06131 US

RICHARD C CARPENTER
SOUTH WESTERN REGIONAL PLANNING AGENCY
888 WASHINGTON BOULEVARD, 3RD FLOOR
STAMFORD CT 06901 US

EDWARD LLOYD
RUTGERS ENVIRONMENTAL LAW CLINIC
15 WASHINGTON STREET
NEWARK NJ 07102 US

JOHN D CIRAME, ASSISTANT SECRETARY
COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSPRT
10 PARK PLAZA ROOM 3170
BOSTON MA 02116-3969 US

JAMES E HOWARD
KIRKPATRICK & LOCKHART
ONE THOMPSON SQUARE STE 201
CHARLESTOWN MA 02129 US

WILLIAM D ANKNER PHD
R I DEPT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE RI 02903 US

ROBERT D ELDER
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P O BOX 317546
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NEWINGTON CT 06131 US

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UNITED STATES SENATE
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BOSTON MA 02203 US

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CT DEPT OF TRANSPORTATION
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2800 BERLIN TURNPIKE
NEWINGTON CT 06131 US

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SOUTH WESTERN REGIONAL PLANNING AGENCY
888 WASHINGTON BOULEVARD, 3RD FLOOR
STAMFORD CT 06901 US

EDWARD LLOYD
RUTGERS ENVIRONMENTAL LAW CLINIC
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NEWARK NJ 07102 US

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COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSPRT
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BOSTON MA 02116-3969 US

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KIRKPATRICK & LOCKHART
ONE THOMPSON SQUARE STE 201
CHARLESTOWN MA 02129 US

WILLIAM D ANKNER PHD
R I DEPT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE RI 02903 US

ROBERT D ELDER
MAINE DEPARTMENT OF TRANSPORTATION
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BOSTON MA 02203 US

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2800 BERLIN TURNPIKE
NEWINGTON CT 06131 US

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SOUTH WESTERN REGIONAL PLANNING AGENCY
888 WASHINGTON BOULEVARD, 3RD FLOOR
STAMFORD CT 06901 US

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RUTGERS ENVIRONMENTAL LAW CLINIC
15 WASHINGTON STREET
NEWARK NJ 07102 US

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COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSPRT
10 PARK PLAZA ROOM 3170
BOSTON MA 02116-3969 US

JAMES E HOWARD
KIRKPATRICK & LOCKHART
ONE THOMPSON SQUARE STE 201
CHARLESTOWN MA 02129 US

WILLIAM D ANKNER PHD
R I DEPT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE RI 02903 US

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AUGUSTA ME 04333-0016 US

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UNITED STATES SENATE
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BOSTON MA 02203 US

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NEWINGTON CT 06131 US

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NEWARK NJ 07102 US

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NEWINGTON CT 06131 US

RICHARD C CARPENTER
SOUTH WESTERN REGIONAL PLANNING AGENCY
888 WASHINGTON BOULEVARD, 3RD FLOOR
STAMFORD CT 06901 US

EDWARD LLOYD
RUTGERS ENVIRONMENTAL LAW CLINIC
15 WASHINGTON STREET
NEWARK NJ 07102 US
<table>
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<tr>
<th>Name</th>
<th>Address</th>
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<tbody>
<tr>
<td>R. Lawrence McCaffrey, Jr.</td>
<td>New York &amp; Atlantic Railway, 405 Lexington Avenue 50th Floor, New York NY 10174 US</td>
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<tr>
<td>Samuel J Nasca</td>
<td>Utu State Legislative Director, 35 Fuller Road Suite 205, Albany NY 12205 US</td>
<td>Albany NY</td>
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<tr>
<td>Daniel B. Walsh</td>
<td>Business Council of New York State, Inc., 152 Washington Avenue, Albany NY 12210 US</td>
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<td>Diane Seitz</td>
<td>Central Hudson Gas &amp; Electric Corp, 284 South Avenue, Poughkeepsie NY 12601 US</td>
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<td>Gary Edwards</td>
<td>Somerset Railroad, 7725 Lake Road, Barker NY 14012 US</td>
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<tr>
<td>Brian L. Collins</td>
<td>Collins Collins &amp; Kantor PC, 267 North Street, Buffalo NY 14201 US</td>
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<td>Irving J Rubin</td>
<td>P.O. Box 243, Youngstown NY 14174 US</td>
<td>Youngstown NY</td>
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<td>R. W. Godwin</td>
<td>Brotherhood of Locomotive Engineers, 810 Abbott Road Suite 200, Buffalo NY 14220 US</td>
<td>Buffalo NY</td>
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<td>Ernest J Ierardi</td>
<td>Nixon Peabody LLP, 31051 Clinton Square, Rochester NY 14603-1051 US</td>
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<td>H. Douglas Midkiff</td>
<td>Genesee Transportation Council, 65 West Broad St Ste 101, Rochester NY 14614-2210 US</td>
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<td>John J Dolfi</td>
<td>427 Elmhurst Drive, Belle Vernon PA 15012 US</td>
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<td>David W. Donley</td>
<td>3361 Stafford St, Pittsburgh PA 15204-1441 US</td>
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<td>John A Vuono</td>
<td>Vuono &amp; Gray, 2310 Grant Building, Pittsburgh PA 15219 US</td>
<td>Pittsburgh PA</td>
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<tr>
<td>Richard R Wilson</td>
<td>1126 Eight Av Ste 403, Altoona PA 16602 US</td>
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SERVICE LIST FOR: 17-sep-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20036 US

PAUL D COLEMAN
HOPPEL MAYER & COLEMAN
1000 CONNECTICUT AVENUE NW SUITE 400
WASHINGTON DC 20036 US

PETER A GREENE
THOMPSON HINE & FLORY
1920 N STREET N W SUITE 800
WASHINGTON DC 20036 US

Gordon P MacDougall
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

CHRISTOPHER A MILLS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

HAROLD P QUINN JR
NATIONAL MINING ASSOCIATION
1130 17TH STREET NW
WASHINGTON DC 20036 US

FRITZ R KAHN
1920 N STREET NW 8TH FLOOR
WASHINGTON DC 20036-1601 US

ROSE-MICHELE WEINRYB
WEINER BRODSKY SIDMAN & KIDER
1300 19TH STREET NW 5TH FLOOR
WASHINGTON DC 20036-1609 US

TIMOTHY M WALSH
STEPTOE & JOHNSON
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

KEVIN M SHEYS
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE NW 2ND FLOOR
WASHINGTON DC 20036-1800 US

DEBRA L WILLEN
GUERRIERI EDMOND & CLAYMAN PC
1625 MASSACHUSETTS AVENUE, N.W., STE 700
WASHINGTON DC 20036-2243 US

DAVID H COBURN
STEPTOE & JOHNSON
1330 CONNECTICUT AVENUE NW
WASHINGTON DC 20036 US

RICHARD S EDELMAN
O’DONNELL SCHWARTZ & ANDERSON PC
1900 L STREET NW SUITE 707
WASHINGTON DC 20036 US

PAUL H LAMBOLEY
1717 N STREET NW
WASHINGTON DC 20036 US

WILLIAM G. MAHONEY
HIGHSAW, MAHONEY & CLARKE
1050 SEVENTEENTH STREET NW SUITE 210
WASHINGTON DC 20036 US

KEITH G OBRIEN
REA CROSS AND AUCHINCLOSS
1707 L STREET NW STE 570
WASHINGTON DC 20036 US

NICHOLAS J DIMICHAEL
THOMPSON HINE LLP
1920 N STREET NW STE 800
WASHINGTON DC 20036-1601 US

FREDERIC L WOOD
THOMPSON HINE LLP
1920 N STREET
WASHINGTON DC 20036-1601 US

SAMUEL M SIPE JR
STEPTOE & JOHNSON LLP
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

EDWARD J FISHMAN
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE, N.W., 2ND FLOOR
WASHINGTON DC 20036-1800 US

JOSEPH GUERRIERI, JR.
GUERRIERI, EDMOND & CLAYMAN, PC
1625 MASSACHUSETTS AVE., NW. STE 700
WASHINGTON DC 20036-2243 US

DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

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<th>Name</th>
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<tr>
<td>Kelvin J Dowd</td>
<td>1224 17th Street NW</td>
<td>Washington DC</td>
<td>20036</td>
<td>3003</td>
</tr>
<tr>
<td>Slover &amp; Loftus</td>
<td>1224 SEVENTEENTH STREET NW</td>
<td>Washington DC</td>
<td>20036</td>
<td>3003</td>
</tr>
<tr>
<td>John M Cutler Jr</td>
<td>2175 K STREET NW</td>
<td>Washington DC</td>
<td>20037</td>
<td>US</td>
</tr>
<tr>
<td>McCarthy Sweeney &amp; Harkaway PC</td>
<td>2175 K STREET NW SUITE 600</td>
<td>Washington DC</td>
<td>20037</td>
<td>US</td>
</tr>
<tr>
<td>Saver J Kalish</td>
<td>2175 K STREET NW</td>
<td>Washington DC</td>
<td>20037</td>
<td>US</td>
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<tr>
<td>William L Slover</td>
<td>1224 17th Street NW</td>
<td>Washington DC</td>
<td>20036</td>
<td>3003</td>
</tr>
<tr>
<td>Andrew P Goldstein</td>
<td>2175 K STREET NW SUITE 600</td>
<td>Washington DC</td>
<td>20037</td>
<td>US</td>
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<tr>
<td>Slover Loftus</td>
<td>1224 SEVENTEENTH STREET NW</td>
<td>Washington DC</td>
<td>20036</td>
<td>3003</td>
</tr>
<tr>
<td>John L Oberdorfer</td>
<td>2550 M ST NW</td>
<td>Washington DC</td>
<td>20037</td>
<td>1301</td>
</tr>
<tr>
<td>Patton Boggs LLP</td>
<td>2550 M ST NW</td>
<td>Washington DC</td>
<td>20037</td>
<td>1301</td>
</tr>
<tr>
<td>Keith A Klindworth</td>
<td>J S DEPT OF AGRICULTURE</td>
<td>Washington DC</td>
<td>20090</td>
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<tr>
<td>Eileen S Stommes</td>
<td>U S DEPARTMENT OF AGRICULTURE</td>
<td>Washington DC</td>
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<td>Michael V Dunn</td>
<td>RM 228W JAMIE L WHITTEN FEDERAL BLDG</td>
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<td>Judge Jacob Leventhal</td>
<td>FEDERAL ENERGY REGULATORY COMMISSION</td>
<td>Washington DC</td>
<td>20426</td>
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<td>Honorable John Breaux</td>
<td>UNITED STATES SENATE</td>
<td>Washington DC</td>
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<td>Honorable Bob Graham</td>
<td>UNITED STATES SENATE</td>
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<td>Honorable Richard Lugar</td>
<td>UNITED STATES SENATE</td>
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<td>Hon Charles E Schumer</td>
<td>UNITED STATES SENATE</td>
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<td>Hon Christopher J Dodd</td>
<td>UNITED STATES SENATE</td>
<td>WASH DC 20510-0702</td>
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<td>Hon Warren</td>
<td>UNITED STATES SENATE</td>
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<td>Hon Charles E Schumer</td>
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<tr>
<td>Hon Mike DeWine</td>
<td>UNITED STATES SENATE</td>
<td>Washington DC</td>
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</table>
SERVICE LIST FOR: 17-sep-2001 STB FD 33388 O

HON DENNIS J. KUCINICH
UNITED STATES HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HON CAROLYN B. MALONEY
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE FRANK MASCARA
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

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U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

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U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. ROBERT MENENDEZ
U.S. HOUSE OF REPRESENTATIVES
WASH DC 20515 US

HON. ROBERT W. NEY
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MAJOR R. OWENS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. RALPH REGULA
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON RALPH REGULA
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. MICHAEL MCNULTY
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CHIP PICKERING
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

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U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

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U.S. HOUSE OF REPRESENTATIVES
WASH DC 20515 US

HONORABLE ROBERT W. NEY
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. RALPH REGULA
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. BUD SHUSTER
ATTN: MIKE RICK
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON THOMAS C. SAWYER
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BILL SHUSTER
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. THOMAS C. SAWYER
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. BUD SHUSTER
ATTN: MIKE RICK
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

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U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ED TOWNS
U. S. HOUSE OR REPRESENTATIVES
WASHINGTON DC 20515 US

HON NYDIA M VELAZQUEZ
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ROD R BLAGOJEVICH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1305 US

HONORABLE JAMES A. BARCIA
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2205 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

HONORABLE BOBBY L. RUSH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-9997 US

JOLENE MOLITORIS, ADMN.
FEDERAL RAILROAD ADMNS.
400 7TH STREET SW
WASHINGTON DC 20590 US

PAUL SAMUEL SMITH
US DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET SW ROOM 4102 C-30
WASHINGTON DC 20590 US

MITCHELL N KRAUS, GENERAL COUNSEL
TRANSPORTATION COMMUNICATIONS INTERNATIONAL U
3 RESEARCH PLACE
ROCKVILLE MD 20850-3279 US

WILLIAM W WHITEHURST JR
W W WHITEHURST & ASSOCIATES INC
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030-1711 US

HONORABLE TED STRICKLAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JAMES TRAFICANT JR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PETER J. VISCOSKY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JULIA CARSON
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1410 US

HONORABLE JOHN D. DINGELL
2328 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON DC 20515-2216 US

HONORABLE TOM DAVIS
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4611 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

MICHAEL P HARMONIS
DEPARTMENT OF JUSTICE
325 SEVENTH STREET, NW
WASHINGTON DC 20530 US

JOSEPH R POMPONIO
FEDERAL RAILROAD ADMINISTRATION
400 SEVENTH STREET SW RCC-20
WASHINGTON DC 20590 US

DAVID G ABRAHAM
SUITE 400W
7315 WISCONSIN AVENUE
BETHESDA MD 20814 US

JOHN M ROBINSON
ATTORNEY AT LAW
9616 OLD SPRING ROAD
KENSINGTON MD 20895-3124 US

JOHN HOY
P O BOX 117
GLEN BURNIE MD 21060 US
SERVICE LIST FOR: 17-sep-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

LINDA A JANET J D
MARYLAND OFFICE OF PLANNING
301 WEST PRESTON STREET
BALTIMORE MD 21201-2365 US

CHARLES M CHADWICK
MARYLAND MIDLAND RAILWAY INC
P O BOX 1000
UNION BRIDGE MD 21791 US

PFETE Q NYCE JR
U S DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

THOMAS E SCHICK
AMERICAN CHEMISTRY COUNCIL
1300 WILSON BOULEVARD
ARLINGTON VA 22209 US

WILLIAM P. JACKSON, JR.
JACKSON & JESSUP, P. C.
P O BOX 1240
3426 NORTH WASHINGTON BLVD
ARLINGTON VA 22210 US

FRANCIS G MCKENNA
ANDERSON & PENDLETON
206 N WASHINGTON STREET SUITE 330
ALEXANDRIA VA 22314 US

KENNETH E SIEGEL
AMERICAN TRUCKING ASSOCIATION INC
2200 MILL ROAD
ALEXANDRIA VA 22314-4677 US

ROBERT E MARTINEZ
VA SECRETARY OF TRANSPORTATION
P. O. BOX 1475
RICHMOND VA 23218 US

MICHAEL J RUEHLING
CSX CORPORATION
ONE JAMES CENTER
RICHMOND VA 23219 US

JOHN W SNOW
CHAIRMAN PRESIDENT AND CHIEF EXECUTIVE OFFICER
P O BOX 85629
RICHMOND VA 23285-5629 US

GEORGE A ASPATORE GENERAL SOLICITOR - REGULATORY
NORFOLK SOUTHERN RAILWAY COMPANY
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

PARKERSON B MAQUILLING
NORFOLK SOUTHERN CORPORATION
THREE COMMERCIAL PLACE, LAW DEPT
NORFOLK VA 23510 US

DAVID A SHELTON
NORFOLK SOUTHERN
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

JAMES A HIXON
SENIOR VICE PRESIDENT EMPLOYEE RELATIONS NOR
THREE COMMERCIAL PLACE
NORFOLK VA 23510-2191 US

L P KING JR
GENERAL CHAIRPERSON UTU
145 CAMPBELL AVE SW STE 207
ROANOKE VA 24011 US

HONORABLE JOHN WARNER
UNITED STATES SENATE
235 FEDERAL BUILDING
ABINGDON VA 24210-0887 US

VAUGHN R GROVES
PITTSTON COAL COMPANY
PO BOX 5100
LEBANON VA 24266 US

TERRELL ELLIS
CAEZ W
P O BOX 176
CLAY WV 25043 US

R K SARGENT
GENERAL CHAIRPERSON UTU
1319 CHESTNUT STREET
KNOXVA WV 25530 US

SCOTT M SAYLOR
NORTH CAROLINA RAILROAD COMPANY
3200 ATLANTIC AV STE 110
RALEIGH NC 27604-1640 US

E NORRIS TOLSON
NC DEPARTMENT OF TRANSPORTATION
P O BOX 25201
1 S. WILINGTON STREET
RALEIGH NC 27611 US

09/17/2001
<table>
<thead>
<tr>
<th>Name</th>
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<tr>
<td>J H Clark</td>
<td>UTU, GENERAL CHAIRPERSON</td>
<td>441 North Louisisana Avenue, Suite Q, Asheville NC 28806 US</td>
</tr>
<tr>
<td>FRED R BIRKHOlz</td>
<td>CSX TRANSPORTATION LAW DEPT - J-150</td>
<td>500 Water Street, Jacksonville FL 32202 US</td>
</tr>
<tr>
<td>CARL A GERHARDSTEIN</td>
<td>CSX TRANSPORTATION RISK MGMT</td>
<td>500 Water Street-J275, Jacksonville FL 32202 US</td>
</tr>
<tr>
<td>PAUL R HITCHCOCK</td>
<td>CSX TRANSPORTATION LAW DEPARTMENT</td>
<td>500 Water Street SC J-150, Jacksonville FL 32202 US</td>
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<tr>
<td>CHARLES M ROSENBERGER</td>
<td>CSX TRANSPORTATION</td>
<td>500 Water Street - J150, Jacksonville FL 32202 US</td>
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<tr>
<td>J L RODGERS</td>
<td>GENERAL CHAIRMAN UTU</td>
<td>9550 Regency Square Blvd #904, Jacksonville FL 32225-8177 US</td>
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<tr>
<td>JAMES J KEENAN</td>
<td>ANCHOR GLASS CONTAINER CORPORATION</td>
<td>4343 Anchor Plaza Parkway, Tampa FL 33634 US</td>
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<tr>
<td>WILLIAM L O'STEEN</td>
<td>ASSOCIATE GENERAL COUNSEL TVA</td>
<td>400 West Summit Hill Drive, Knoxville TN 37902 US</td>
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<tr>
<td>HONORABLE KIRK FORDICE</td>
<td>GOVERNOR, STATE OF MISSISSIPPI</td>
<td>P O Box 139, Jackson MS 39205 US</td>
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<tr>
<td>THOMAS M O'LEARY</td>
<td>OHIO RAIL DEVELOPMENT COMMISSION</td>
<td>50 W Broad Street 15th Floor, Columbus OH 43215 US</td>
</tr>
<tr>
<td>DOREEN C JOHNSON</td>
<td>CHIEF ANTITRUST SECTION</td>
<td>140 East Town Street, First Floor, Columbus OH 43215-6001 US</td>
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<tr>
<td>HONORABLE DAVID M BEASLEY</td>
<td>GOVERNOR, P. O. BOX 1*369</td>
<td>COLUMBIA SC 29211 US</td>
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<tr>
<td>J RANDALL EVANS</td>
<td>500 Water Street (J150), Jacksonville FL 32202 US</td>
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<td>BOB HAULTER</td>
<td>CSX TRANSPORTATION INC</td>
<td>500 Water Street (J120), Jacksonville FL 32202 US</td>
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<td>JOHN W. HUMES, JR.</td>
<td>CSX TRANSPORTATION SPEED CODE J-150</td>
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<td>ERIE LACKAWANNA RAILROAD CO</td>
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<td>JAMES L BELCHER</td>
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<td>P O Box 431, Kingsport TN 37662 US</td>
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<td>GOVERNOR, 700 Capitol Avenue, Ste. 100</td>
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<td>HONORABLE DEBORAH PRYCE</td>
<td>U. S. HOUSE OF REPRESENTATIVES</td>
<td>500 South Front Street, Room 1130, Columbus OH 43215 US</td>
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<td>JAMES R JACOBS</td>
<td>JACOBS INDUSTRIES</td>
<td>2 Quarry Lane, Stony Ridge OH 43463 US</td>
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CSX CORPORATION AND CSX TRANSPORTATION

DAVID CHAPMAN
LAFARGE LIME OHIO INC
P O BOX 128
659 ANDERSON ROAD
WOODVILLE OH 43469-0128 US

ROBERT E GREENLESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

RON MARQUARDT
LOCAL UNION 1810 UMWA
58659 EILEEN ST.
RAYLAND OH 43943 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

BARBARA O’KEEFE
VILLAGE OF WELLINGTON
115 WILLARD MEMORIAL SQ
WELLINGTON OH 44090 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

C L LITTLE
INTERNATIONAL PRESIDENT UTU
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLARENCE MONIN INTERNATIONAL PRES
BROTHERHOOD OF LOCOMOTIVE ENGINEERS MEZZANINE
1370 ONTARIO STREET
CLEVELAND OH 44113 US

DAVID ROLLOFF
GOLDSTEIN & ROLLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

CHARLES ZUMKEHR
ROETZEL & ANDREWS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

ROBERT J COOPER
GENERAL CHAIRPERSON UTU
385 COMMODORE WAY APT 9
PERRYSBURG OH 43551-2784 US

ROBERT E MURRAY
OHIO VALLEY COAL CO
56854 PLEASANT RIDGE ROAD
ALLEDCONIA OH 43902 US

CLARENCE TURNQUIST
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
2125 TRYON ROAD
ASHTABULA OH 44004 US

CHARLES S HESSE
CHARLES HESSE ASSOCIATES
7777 BAINBRIDGE ROAD
CHAGRIN FALLS OH 44023-2124 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

DANIEL R ELLIOTT III
ASST GENERAL COUNSEL UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLINTON J MILLER III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CHRISTOPHER C MCCracken
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL
ASHTA CHEMICALS INC
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114-1538 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COPLEY ROAD
AKRON OH 44320 US

RANDALL C. HUNT
KRUGLIK, WILKINS, GRIFFTHS & DOUGHERTY CO.
P O BOX 36963
4775 MUNSON ST NW
CANTON OH 44735-6963 US

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D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

RICHARD E KERTH
CHAMPION INTERNATIONAL CORPORATION
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LANEETTE DRIVE
CINCINNATI OH 45230 US

F RONALDS WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIDIAN STREET
INDIANAPOLIS IN 46202-1393 US

MICHAEL CONNELLY
CITY OF EAST CHICAGO
4525 INDIANAPOLIS BLVD
EAST CHICAGO IN 46312 US

HONORABLE PETER J. VISCLOSKY
U. S. HOUSE OF REPRESENTATIVES
215 WEST 35TH AVENUE
GARY IN 46408 US

CHRISTOPHER J BURGER, PRESIDENT
CENTRAL RAILROAD COMPANY OF INDIANAPOLIS
PO BOX 554
KOKOMO IN 46903-0554 US

JAMES E SHEPHERD
TUSCOLA & SAGINAW BAY
PO BOX 550
OWOSSO MI 48867-0550 US

HON JOHN ENGLER
OFFICE OF THE GOVERNOR
P O BOX 30013
LANSONG MI 48933 US

BYRON D OLSEN
FELHAEBER LARSON FENLON & VOGL PA
601 SECOND AVENUE SOUTH SUITE 4200
MINNEAPOLIS MN 55401-4302 US

GERALD J. VINCI
PRAIRIE GROUP
P. O. BOX 1123
7601 WEST 79TH STREET
BRIDGEVIEW IL 60455 US

R A GRICE
GENERAL CHAIRPERSON UTU
817 KILBOURNE ST
BELLEVUE OH 44811-9431 US

FAY D DUPUIS
CITY OF CINCINNATI
801 PLUM STREET
CINCINNATI OH 45202 US

THOMAS R RYDMAN PRESIDENT
INDIAN CREEK RAILROAD COMPANY
3905 W 600 NORTH
ANDERSON IN 46011 US

J PATRICK LATZ
HEAVY LI'T CARGO SYSTEM
PO BOX 51451
INDIANAPOLIS IN 46251-0451 US

HAMILTON L CARMOUCHER, CORPORATION COUNSEL
CITY OF GARY
401 BROADWAY 4TH FLOOR
GARY IN 46402 US

CARL FELLER
PO BOX 758
WATERLOO IN 46793-0758 US

WILLIAM A BON, GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
26555 EVERGREEN ROAD SUITE 200
SOUTHFIELD MI 48076 US

LARRY B KARNES
MICHIGAN DEPARTMENT OF TRANSPORTATION
PO BOX 30050
425 WEST OTTAWA STREET
LANSONG MI 48909 US

T SCOTT BANNISTER
T SCOTT BANNISTER AND ASSOCIATES
1300 DES MOINES BLVD 405 SIXTH AVENUE
DES MOINES IA 50309 US

LEO J WASECHA
GOLD MEDAL DIVISION - GENERAL MILLS OPERATION
P O BOX 1113
NUMBER ONE GENERAL MILLS BULEVARD
MINNEAPOLIS MN 55440 US

CHRISTINE H. ROSSO
IL ASSISTANT ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FLOOR
CHICAGO IL 60601 US
<table>
<thead>
<tr>
<th>Company/Name</th>
<th>Address/Location</th>
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<tr>
<td>William C. Sipple</td>
<td>Fletcher &amp; Sipple LLC, 150 N Stetson Ave Ste 3125 Two Prudential Plaza, Chicago IL 60601-6721 US</td>
</tr>
<tr>
<td></td>
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<tr>
<td>Richard F. Friedman Esq</td>
<td>Earl L. Neal &amp; Associates, 111 West Washington Street Ste 1700, Chicago IL 60602-2766 US</td>
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<tr>
<td>Thomas F. McFarland Jr</td>
<td>208 South LaSalle St Suite 1890, Chicago IL 60604-1194 US</td>
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<tr>
<td>Miles L. Tobin</td>
<td>Illinois Central Railroad, 455 North Cityfront Plaza Drive, Chicago IL 60611-5504 US</td>
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<tr>
<td>Scott A. Roney</td>
<td>Archer Daniels Midland Company, P.O. Box 1470, Decatur IL 62525 US</td>
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<tr>
<td>Ian Muir</td>
<td>Bunge Corporation, P.O. Box 28500, St. Louis MO 63146 US</td>
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<tr>
<td>George Van Haver</td>
<td>2340 South 35th Street, Omaha NE 68105 US</td>
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<tr>
<td>Charles R. Carr</td>
<td>Atofina Petrochemicals, Inc., 15710 JFK Blvd., Houston TX 77032 US</td>
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<tr>
<td>David L. Hall</td>
<td>Commonwealth Consulting Associates, 13103 FM 1960 West Suite 204, Houston TX 77055-4069 US</td>
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<tr>
<td>Jeffrey G. Dowdell</td>
<td>ExxonMobil Global Services Co., P.O. Box 3272, Houston TX 77253-3272 US</td>
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<tr>
<td>Richard A. Gavril</td>
<td>874 W 620 S, Tooele UT 84074-3261 US</td>
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<tr>
<td>Sandra J. Dearden</td>
<td>MDCO Transportation Management Ltd, 166 West Washington Suite 700, Chicago IL 60602 US</td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td>Roger A. Serpe</td>
<td>Indiana Harbor Belt Railroad Company, 111 West Jackson Boulevard, Ste 2215, Chicago IL 60604 US</td>
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<td>Sheldon A. Zabel</td>
<td>Schiff Hardin &amp; Waite, 7200 Sears Tower, Chicago IL 60606 US</td>
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<tr>
<td>Charles D. Bolam</td>
<td>United Transportation Union, 1400-20th Street, Granite City IL 62040 US</td>
</tr>
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<tr>
<td>Merrill L. Travis</td>
<td>Illinois Dept of Transportation, 2300 S Dirksen Parkway RM 302, Springfield IL 62764 US</td>
</tr>
<tr>
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</tr>
<tr>
<td>John Jay Rosacker</td>
<td>KS Dept of Transp, 217 SE 4th St 2nd Floor, Topeka KS 66603 US</td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td>Henry T. Dart</td>
<td>Plaintiff Management Committee, 609 East Gibson Street, Covington LA 70433 US</td>
</tr>
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<tr>
<td>Dennis A. Guth</td>
<td>West Lake Group, 2801 Post Oak Blvd, Houston TX 77056 US</td>
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<tr>
<td>Michael P. Ferro</td>
<td>Millennium Petrochemicals, Inc., P.O. Box 2583, Houston TX 77252-2583 US</td>
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<tr>
<td>Monty L. Parker Sr</td>
<td>CMC Steel Group, P.O. Box 911, Seguin TX 78156-0911 US</td>
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<tr>
<td>Brad F. Huston</td>
<td>Cyprus Amax Minerals, 2600 N Central Ave Ste 110, Phoenix AZ 85004-3012 US</td>
</tr>
</tbody>
</table>
RECORDS: 333
In CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196 (1998) (Merger Dec. No. 89), Environmental Condition No. 8(A) of Appendix Q requires Applicants, in order to address potential safety impacts, to upgrade existing warning devices at 86 public highway/rail at-grade crossings as listed in the decision. As pertinent here, NS is required to install “4-Quadrant Gates, or Alternative Mitigation such as Median Barriers” at the existing at-grade crossing located at York Road/SR 74 in Mechanicsburg, Cumberland County, PA. Environmental Condition No. 8(A)

1 In Merger Dec. No. 89, the Board approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail’s assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

2 3 S.T.B. at 580.

3 As provided in Environmental Condition No. 8(A), NS also may satisfy this requirement by entering into a Negotiated Agreement with the affected local jurisdiction and the state department of transportation to provide for alternative safety improvements in the vicinity of the identified highway/rail at-grade crossing that achieve at least an equivalent level of safety enhancement.

4 3 S.T.B. at 586.
required compliance with this provision within 2 years of the effective date of Merger Dec. No. 89, or by August 22, 2000.5

By letter received at the Board on August 14, 2002, NS has requested an 8-month extension of the deadline provided for in Environmental Condition No. 8(A), until April 30, 2003, for the York Road/SR 74 at-grade crossing in Mechanicsburg, PA.

According to NS, the Pennsylvania Public Utility Commission (PPUC) convened a field conference in August 2001 to assess the crossing improvement needs at York Road, and the Commonwealth then recommended alternate safety measures to be installed at this crossing, subject to a formal finding by the Commonwealth and a negotiated agreement with NS providing for the installation of the alternate crossing improvements. After further discussions with PPUC, NS filed an application with the PPUC on December 17, 2001, seeking approval of crossing improvements to be installed at the York Road crossing consisting of new automatic flashing-light signals and short-arm gates.

NS states that a second field investigation and conference was convened by PPUC at the York Road at-grade crossing on April 19, 2002, to consider the recommended crossing improvements, and was attended by NS, PPUC, and representatives of the Pennsylvania Department of Transportation, GPU Energy, Sprint Long Distance, and Comcast Cable Communications, Inc.6 NS advises that it was determined at this field conference that the preferred upgrade to the York Road at-grade crossing should consist of the installation by NS of new automatic flashing-light warning signals supplemented by short-arm gates on each approach in accordance with Part 8 of the Manual on Uniform Traffic Control Devices.

5 The Board granted, at the request of NS, two extensions of the compliance date. See Decision No. 153, served on May 31, 2000 (granting NS' request for an extension of the compliance date to August 22, 2001); and Decision No. 197, served on August 22, 2001 (granting NS' request for a further extension of the compliance date to August 22, 2002).

6 According to NS, the following municipalities and companies were informed about the conference but did not attend: Monroe Township, Cumberland County, Teppco, United Water Pennsylvania, PPL Electric Utilities Corporation, Verizon Pennsylvania, Inc., Southern Middleton Township Municipal Authority, Monroe Township Municipal Authority, Buckeye Pipeline Company, and Columbia Gas Transmission.
NS advises that, in a May 21, 2002 letter issued by the PPUC,7 NS's application filed December 17, 2001, for alteration of the York Road at-grade crossing was approved. NS states that it has agreed to bear the cost of design, construction, and maintenance of the flashing lights and short-arm gates, and to maintain the rubber rail seal and railroad crossing surface at the grade crossing. NS further advises that, while construction work is in progress at the grade crossing, PPUC directed NS to establish and maintain any necessary highway and pedestrian traffic detours or traffic controls, and that PPUC directed NS to submit a situation plan, a detailed circuit plan, and a cost estimate for the crossing for review by interested parties and approval by PPUC. NS states that other installation and maintenance responsibilities at the grade crossing were agreed to be performed by the Pennsylvania Department of Transportation and Monroe Township. According to NS, PPUC established a December 31, 2003 deadline for completion of the alteration of the York Road at-grade crossing.

NS states that it is requesting the time extension in order to provide for the installation of the improvements at the York Road at-grade crossing ordered by the Commonwealth in the PPUC Secretary's letter. The request for an 8-month extension to April 30, 2003, for the York Road/SR 74 at-grade crossing is reasonable and will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The compliance deadline for NS in Environmental Condition No. 8(A) with respect to the York Road/SR 74 at-grade crossing in Mechanicsburg, Cumberland County, PA. is extended 8 months until April 30, 2003.

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

7 NS enclosed a copy of the May 21, 2002 letter signed by James J. McNulty, Secretary, PPUC, in its submission to the Board requesting the time extension.
<table>
<thead>
<tr>
<th>Service List For: 20-Aug-2002 STB FD 33388 0</th>
<th>CSX Corporation and CSX Transportation</th>
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</thead>
<tbody>
<tr>
<td>JOHN D Cirame, Assistant Secretary</td>
<td>James B Loward</td>
</tr>
<tr>
<td>Commonwealth of Mass. Exec. Office of Transpt</td>
<td>Kirkpatrick &amp; Lockhart</td>
</tr>
<tr>
<td>10 Park Plaza Room 3170</td>
<td>One Thompson Square Ste 201</td>
</tr>
<tr>
<td>Boston MA 02116-3969 US</td>
<td>Charleston MA 02129 US</td>
</tr>
</tbody>
</table>

| Honorable Edward M Kennedy                  | William D Ankner PhD                   |
| United States Senate                        | R I Dept of Transportation              |
| 2400 John F Kennedy Federal Bldg             | Two Capitol Hill                        |
| Boston MA 02203 US                          | Providence RI 02903 US                  |

| John R Nadolny                              | Robert D Elder                         |
| 14 Aviation Avenue                          | Maine Department of Transportation     |
| Portsmouth NH 03801 US                      | 16 State House Station                 |
|                                              | Augusta ME 04333-0016 US               |

| Karen E Songhurst                           | James F Sullivan                       |
| State of Vermont                            | CT Dept of Transportation              |
| 133 State Street                            | P O Box 317846                         |
| Montpellicier VT 05633-5001 US              | 2800 Berlin Turnpike                   |
|                                              | Newtown CT 06311 US                    |

| Edward J Rodriguez                          | Richard C Carpenter                    |
| Housatonic Railroad                         | South Western Regional Planning Agency |
| P O Box 607                                 | 888 Washington Boulevard, 3rd Floor    |
| Old Lyme CT 06371 US                        | Stamford CT 06901 US                   |

| Michael E Strickland                        | Edward Lloyd                           |
| NYK Line (North America) Inc, Senior Vice Pre| Rutgers Environmental Law Clinic       |
| 300 Lighting Way                             | 15 Washington Street                   |
| Secaucus NJ 07094-1588 US                    | Newark NJ 07102 US                     |

| Honorable Robert G. Torricelli              | J William Van Dyke                     |
| United States Senate                        | NJ Transportation Planning Authority   |
| 1 River Front Plaza, 3rd Floor              | One Newark Center 17th Floor           |
| Newark NJ 07162 US                          | Newark NJ 07102 US                     |

| Martin T Durkin Esq                         | Craig Curry                            |
| Durkin & Boggia Esqs                         | Consolidated Rail Corporation          |
| P O Box 378                                 | 1000 Howard Boulevard                  |
| 71 Mt Vernon Street                         | Mount Laurel NJ 08054 US               |

| Lawrence Pepper, Jr                         | John F McHugh                          |
| Gruccio Pepper                              | McHugh & Barnes PC                     |
| 817 East Lands Ave                          | 6 Water Street, Suite 101              |
| Vineland NJ 08360 US                        | New York NY 10004 US                   |

| Hugh H. Welsh                               | Anthony P. Semancik                    |
| The Port Authority of New York and New Jersey| 347 Madison Avenue                     |
| One Madison Avenue, 7th Floor              | New York NY 10017-3706 US              |

| Walter E Zullig Jr                          | R. Lawrence Mccaffrey, Jr.             |
| Metro-North Commuter Railroad Company       | Unirail LLC                            |
| 347 Madison Ave                             | 405 Lexington Avenue 50th Floor       |
| New York NY 10017-3706 US                   | New York NY 10174 US                  |
SERVICE LIST FOR: 20-aug-2002 STB FD 33388 0

CSX CORPORATION AND CSX TRANSPORTATION

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE, INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

SHEILA MECK HYDE
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

JOHN F COLLINS
COLLINS COLLINS & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

R W GODWIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
810 ABBOTT ROAD SUITE 200
BUFFALO NY 14220 US

IRVING J RUBIN
71 FAIKAUAN DR
BUFFALO NY 14226-3421 US

ERNEST J IERRARDI
NIXON PEABODY LLP
P O BOX 31051
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

H DOUGLAS MIDKIFF
GENESEE TRANSPORTATION COUNCIL
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

JEANET WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

JOHN J DOLFI
427 ELMHURST DRIVE
BELLE VERNON PA 15012 US

DAVID W. DONLEY
3361 STAFFORD ST
PITTSBURGH PA 15204-1441 US

JOHN A VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

HENRY M WICK, JR.
WICK STREIFF MEYER O'BOYLE SZELIGO
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219-3427 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

M E PETRUCELLI
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

D W DUNLEVY
STATE LEGISLATIVE DIRECTOR UTU
210 STATE STREET PA AFL-CIO BLDG 2ND FLOOR
HARRISBURG PA 17101 US

KURT W CARR
PENNSYLVANIA HISTORICAL & MUSEUM COMMISSION
BUREAU FOR HISTORIC PRESERVATION
400 NORTH STREET
HARRISBURG PA 17120 US

HONORABLE THOMAS J RIDGE
GOVERNOR, COMMONWEALTH OF PENNSYLVANIA
225 MAIN CL/PITOL BUILDING
HARRISBURG PA 17120 US

RICHARD A GEIST
MAIN CAPITOL BUILDING
P.O. BOX 202020
HARRISBURG PA 17120-2020 US
SERVICE LIST FOR: 20-aug-2002 STB FD 33388 0

CSX CORPORATION AND CSX TRANSPORTATION

BELNAP FREEMAN
BELKNAP FREEMAN
119 HICKORY LANE
ROSEMONT PA 19010 US

HARRY C BARBIN
BARBIN LAUFFER & O'CONNELL
608 HUNTINGDON PIKE
ROCKLEDGE PA 19046 US

G CRAIG SCHELTER
PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION
2600 CENTRE SQUARE WEST 500 MARKET ST
PHILADELPHIA PA 19102 US

JOHN J EHLINGER JR
OBERMAYER REBMA MAXWELL & HIPPEL
1617 JOHN F. KENNEDY BLVD ONE PENN CENTER-19T
PHILADELPHIA PA 19103-1895 US

JOHN J COSCIA, EXECUTIVE DIRECTOR
DELAWARE VALLEY REGIONAL PLANNING COMMISSION
111 SOUTH INDEPENDENCE MALL EAST
PHILADELPHIA PA 19106 US

ERIC M ROCKY
GOLLATZ GRIFFIN & EWING P.C.
P O BOX 796
213 WEST MINER STREET
WEST CHESTER PA 19381-0796 US

J E THOMAS
HERCULES INCORPORATED
1313 NORTH MARKET STREET
WILMINGTON DE 19894 US

FREDERICK H SCHRANCK
PO BOX 778
DOVER DE 19903 US

PETER A GILBERTSON
REGIONAL RRS OF AMERICA
122 C ST NW STE 850
WASHINGTON DC 20001 US

TERRENCE D JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US

ROSS B CAPON
NATIONAL ASSOCIATION OF RAILROAD PASSENGERS
900 2ND ST NE SUITE 308
WASHINGTON DC 20002 US

08/20/2002
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>City, State, Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richard G Slattery</td>
<td>Amtrak</td>
<td>Washington, DC 20002</td>
</tr>
<tr>
<td>David C Reeves</td>
<td>Troutman Sanders LLP</td>
<td>Washington, DC 20004</td>
</tr>
<tr>
<td>George W Mayo Jr</td>
<td>Hogan &amp; Hartson LLP</td>
<td>Washington, DC 20004-1109</td>
</tr>
<tr>
<td>Mary Gabrielle Sprague</td>
<td>Troutman Sanders LLP</td>
<td>Washington, DC 20004-1202</td>
</tr>
<tr>
<td>Jonathan C. Benner</td>
<td>Troutman Sanders LLP</td>
<td>Washington, DC 20004-2134</td>
</tr>
<tr>
<td>Michael L Rosenthal</td>
<td>Covington &amp; Burling</td>
<td>Washington, DC 20004-2401</td>
</tr>
<tr>
<td>American Shortline and Regional RR Assoc.</td>
<td>1120 G Street NW, Suite 520</td>
<td>Washington, DC 20005 US</td>
</tr>
<tr>
<td>Louis E Gitomer</td>
<td>Ball Janik LLP</td>
<td>Washington, DC 20005 US</td>
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<tr>
<td>Karl Morell</td>
<td>Ball Janik LLP</td>
<td>Washington, DC 20005 US</td>
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<tr>
<td>Constance A Sadler</td>
<td>Sidley Austin Brown &amp; Wood LLP</td>
<td>Washington, DC 20005 US</td>
</tr>
<tr>
<td>Paul H Lamoley</td>
<td>1701 Pennsylvania Avenue, NW, Suite 300</td>
<td>Washington, DC 20005 US</td>
</tr>
<tr>
<td>John D Heffner</td>
<td>555 12th Street NW Suite 950 North</td>
<td>Washington, DC 20004 US</td>
</tr>
<tr>
<td>Paul Reistrup</td>
<td>CSX Transportation INC</td>
<td>Washington, DC 20004 US</td>
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<tr>
<td>Eric Von Salzen</td>
<td>Hogan &amp; Hartson</td>
<td>Washington, DC 20004-1109 US</td>
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<td>Dennis G Lyons</td>
<td>Arnold &amp; Porter</td>
<td>Washington, DC 20004-1206 US</td>
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<td>William A Nullins</td>
<td>Troutman Sanders LLP</td>
<td>Washington, DC 20004-2134 US</td>
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<td>Robert A Wimbish ESQ</td>
<td>Harkins Cunningham</td>
<td>Washington, DC 20004-2664 US</td>
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<td>Daniel Duff</td>
<td>American Public Transportation Association</td>
<td>Washington, DC 20005 US</td>
</tr>
<tr>
<td>Bruno Maestri</td>
<td>1500 K Street NW Suite 375</td>
<td>Washington, DC 20005 US</td>
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<tr>
<td>L John Osborn</td>
<td>Sonnenschein Nath &amp; Rosenthal</td>
<td>Washington, DC 20005 US</td>
</tr>
<tr>
<td>Mark Filipovic</td>
<td>888 16th Street NW Suite 650</td>
<td>Washington, DC 20006 US</td>
</tr>
<tr>
<td>Andrew R. Plump</td>
<td>Zuckert, Scoull &amp; Rasenberger, LLP</td>
<td>Washington, DC 20006 US</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 20-aug-2002 STB FD 33388 0

CSX CORPORATION AND CSX TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

ROBERT P VOM EIGEN
FOLEY & LARDNER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

EDWARD WYTKIND EXECUTIVE DIRECTOR
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

WILLIAM W MILLAR
AMERICAN PUBLIC TRANSIT ASSOCIATION
1666 K STREET NW
WASHINGTON DC 20006-1215 US

JOHN V EDWARDS, ESQ
ZUCKERT SCOTT ET AL
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL AFFAIRES
CORN REFINERS ASSOC
1701 PA AV NW
WASH DC 20006-5805 US

PAUL M DONOVAN
LAROE WINN MOERMAN & DONOVAN
4135 PARKOLEN COURT NW
WASHINGTON DC 20007 US

CHRISTOPHER C O'HARA
BRICKFIELD BURCHETTE & RITTIS PC
1025 THOMAS JEFFERSON ST NW EIGHTH FLOOR
WASHINGTON DC 20007 US

MICHAEL F MCBRIDE
LEBOEUF LAMB GREGGS & MACRAE
1875 CONNECTICUT AVENUE NW STE 1200
WASHINGTON DC 20009-5728 US

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20036 US

RICHARD S EDELMAN
O'CONNELL SCHWARTZ & ANDERSON PC
1900 L STREET NW SUITE 707
WASHINGTON DC 20006 US

GORDON P MACDOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

JAMES R WEISS
PRESTON GATES ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

SCOTT M ZIMMERMANN
ZUCKERT SCOTT & RASENBURGER LLP
888 SEVENTEENTH STREET NW
WASHINGTON DC 20006 US

RICHARD A. ALLEN
ZUCKERT SCOTT & RASENBURGER LLP
888 SEVENTEENTH STREET NW
WASHINGTON DC 20006-1309 US

RACHEL DANISH CAMPBELL
FOLEY & LARDNER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006-4103 US

JOHN H BROADLEY
JOHN H BROADLEY & ASSOCIATES PC
1054 31ST STREET NW SUITE 200
WASHINGTON DC 20007 US

DAVID K MONROE
GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY FIRST STREET NW STE 200
WASHINGTON DC 20007 US

EDWARD D GREENBERG
GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY-FIRST STREET, NW
WASHINGTON DC 20007-4492 US

KARYN A BOOTH
THOMPSON HINE & FLORY LLP
1920 N STREET, NW & FLORY LLP
WASHINGTON DC 20036 US

PAUL D COLEMAN
HOPPEL MAYER & COLEMAN
1000 CONNECTICUT AVENUE NW SUITE 400
WASHINGTON DC 20006 US

PETER A GREENE
THOMPSON HINE FLORY
1920 N STREET NW SUITE 800
WASHINGTON DC 20036 US

WILLIAM G. MAHONEY
HIGHSAW, MAHONEY & CLARKE
1050 SEVENTEENTH STREET NW SUITE 210
WASHINGTON DC 20036 US
<table>
<thead>
<tr>
<th>Name</th>
<th>Firm</th>
<th>Address</th>
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<tr>
<td>ROBERT P VOM EIGEN</td>
<td>Foley &amp; Lardner</td>
<td>888 16TH STREET N W STE 700</td>
<td>Washington DC 20006</td>
</tr>
<tr>
<td>EDWARD WYTKIND</td>
<td>Executive Director</td>
<td>Transportation Trades Department, AFL-CIO</td>
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<td>WILLIAM W MILLAR</td>
<td>Director</td>
<td>American Public Transit Association</td>
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<tr>
<td>JOHN V EDWARDS, ESQ</td>
<td>Zuckert, Scuit, &amp; Associates</td>
<td>1666 K STREET NW</td>
<td>Washington DC 20006-1215</td>
</tr>
<tr>
<td>SHERRI LEHMAN</td>
<td>Director of Congressional Affairs</td>
<td>Corn Refiners Association</td>
<td></td>
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<tr>
<td>PAUL M DONOVAN</td>
<td>Larson, Winn, Moorman, &amp; Donovan</td>
<td>4135 Parklenn Court NW</td>
<td>Washington DC 20007</td>
</tr>
<tr>
<td>CHRISTOPHER C O'HARA</td>
<td>Brickfield Burchette &amp; Ritts</td>
<td>1025 Thomas Jefferson St NW Eighth Floor</td>
<td>Washington DC 20007</td>
</tr>
<tr>
<td>MICHAEL F MCBRIDE</td>
<td>Lebeuf, Lamb, Greene &amp; Macrae</td>
<td>1875 Connecticut Avenue NW STE 1200</td>
<td>Washington DC 20002-5728</td>
</tr>
<tr>
<td>STEPHEN H BROWN</td>
<td>Vorys, Sater, Seymour &amp; Pease</td>
<td>1828 L STREET N W</td>
<td>Washington DC 20036</td>
</tr>
<tr>
<td>RICHARD S EDelman</td>
<td>O'Donnell, Schwartz &amp; Anderson</td>
<td>1900 L STREET NW SUITE 707</td>
<td>Washington DC 20036</td>
</tr>
<tr>
<td>GORDON P MACDOUGALL</td>
<td></td>
<td>1025 Connecticut Ave NW SUITE 410</td>
<td>Washington DC 20036</td>
</tr>
<tr>
<td>JAMES R WEISS</td>
<td>Preston Gates, Ellis, et al</td>
<td>1735 New York Avenue NW SUITE 500</td>
<td>Washington DC 20006</td>
</tr>
<tr>
<td>SCOTT M ZIMMERMAN</td>
<td>Zuckert, Scuit, &amp; Rasenberger LLP</td>
<td>888 Seventeenth Street NW</td>
<td>Washington DC 20006</td>
</tr>
<tr>
<td>RICHARD A. ALLEN</td>
<td></td>
<td>888 17TH STREET N W STE 600</td>
<td>Washington DC 20006-3309</td>
</tr>
<tr>
<td>RACHEL DANISH CAMPBELL</td>
<td>Foley &amp; Lardner</td>
<td>888 Sixteenth Street NW</td>
<td>Washington DC 20006-4103</td>
</tr>
<tr>
<td>JOHN H BROADLEY</td>
<td>John H Broadley &amp; Associates P C</td>
<td>1054 31ST STREET NW SUITE 200</td>
<td>Washington DC 20007</td>
</tr>
<tr>
<td>DOLL K MONROE</td>
<td>Galland, Kharasch, Greenberg, &amp; Swirsky</td>
<td>1054 Thirty First Street NW STE 200</td>
<td>Washington DC 20007</td>
</tr>
<tr>
<td>EDWARD D GREENBERG</td>
<td>Galland, Kharasch, Greenberg, &amp; Swirsky</td>
<td>1054 Thirty-First Street, NW</td>
<td>Washington DC 20007</td>
</tr>
<tr>
<td>KARYN A BOOTH</td>
<td>Thompson, Hine, &amp; Flory LLP</td>
<td>1920 N St, NW &amp; Flory LLP</td>
<td>Washington DC 20036</td>
</tr>
<tr>
<td>PAUL D COLEMAN</td>
<td>Noppel, Mayer, &amp; Coleman</td>
<td>1000 Connecticut Avenue NW SUITE 400</td>
<td>Washington DC 20036</td>
</tr>
<tr>
<td>PETER A GREENE</td>
<td>Thompson, Hine, Flory</td>
<td>1920 N Street NW SUITE 800</td>
<td>Washington DC 20036</td>
</tr>
<tr>
<td>WILLIAM G. MAHONEY</td>
<td>Highsaw, Mahoney &amp; Clarke</td>
<td>1050 Seventeenth Street NW SUITE 210</td>
<td>Washington DC 20036</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 20-aug-2002 STB FD 33388 0  CSX CORPORATION AND CSX TRANSPORTATION

KEITH G O'BRIEN
REA, CROSS & AUCHINCLOSS
1707 L STREET NW
WASHINGTON DC 20036 US

EDWARD J FISHMAN
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE NW SUITE 200
WASHINGTON DC 20036-1221 US

FRITZ R KAHN
SF&L RAILWAY, INC.
1920 N STREET NW 8TH FLOOR
WASHINGTON DC 20036-1601 US

ROSE-MICHELE WEINKRYB
WEINER BRODSKY SIDMAN & KIDER
1300 19TH STREET NW 5TH FLOOR
WASHINGTON DC 20036-1609 US

DAVID H. COBURN
STEPTOE & JOHNSON LLP
1330 CONNECTICUT AVENUE, N.W.
WASHINGTON DC 20036-1795 US

TIMOTHY M WALSH
STEPTOE & JOHNSON
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

JOSEPH GUERRIERI, JR.
GUERRIERI, EDMOND & CLAYMAN, PC
1625 MASSACHUSETTS AVE., NW STE 700
WASHINGTON DC 20036-2243 US

DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

KAREN HASSELL HERREN
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NN
WASHINGTON DC 20036-3003 US

JUDREW P GOLSTEIN
MCCARTHY SWEENEY & HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

SCOTT N STONE
PATTON BOOS
2550 M STREET NW
WASHINGTON DC 20037 US

HAROLD P QUINN JR
NATIONAL MINING ASSOCIATION
1130 17TH STREET NW
WASHINGTON DC 20036 US

NICHOLAS J DIMICHAEL
THOMPSON HINE LLP
1920 N STREET NW STE 800
WASHINGTON DC 20036-1601 US

FREDERIC L WOOD
THOMPSON HINE LLP
1920 N STREET
WASHINGTON DC 20036-1601 US

DAVID H COBURN
STEPTOS & JOHNSON
1330 CONNECTICUT AVENUE NW
WASHINGTON DC 20036-1795 US

SAMUEL M SIPE JR
STEPTOS & JOHNSON LLP
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

KEVIN M SHEYS
KIRKPATRICK & LOCKHART LLP
1600 MASSACHUSETTS AVENUE NW 2ND FLOOR
WASHINGTON DC 20036-1800 US

DEBRA L WILLEN
GUERRIERI EDMOND & CLAYMAN PC
1625 MASSACHUSETTS AVENUE, N.W., STE 700
WASHINGTON DC 20036-2243 US

KELVIN J DOND
SLOVER & LOFTUS
1224 17TH STREET N W
WASHINGTON DC 20036-3003 US

JOHN M CUTLER JR
MCCARTHY SWEENEY HARKAWAY PC
2175 K STREET NW
WASHINGTON DC 20037 US

STEVEN J KALISH
MCCARTHY SWEENEY & HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

DANIEL J SWEENEY
MCCARTHY SWEENEY & HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

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U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

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U. S. HOUSE OF REPRESENTATIVES
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WASHINGTON DC 20515 US

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U.S. HOUSE OF REPRESENTATIVES
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WASHINGTON DC 20515 US

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U.S. HOUSE OF REPRESENTATIVES
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U. S. HOUSE OF REPRESENTATIVES
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WASHINGTON DC 20515 US

HONORABLE MICHAEL MCNULTY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JERROLD NADLER
U. S. HOUSE OF REPRESENTATIVES
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WASHINGTON DC 20515 US

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WASHINGTON DC 20515 US

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WASHINGTON DC 20515 US

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U. S. HOUSE OF REPRESENTATIVES
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U. S. HOUSE OF REPRESENTATIVES
WASH DC 20515 US

HONORABLE ROBERT W. NEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MAJOR R. OWENS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JACK QUINN
HOUSE OF REPRESENTATIVES
2448 RAYBURN BLDG
WASHINGTON DC 20515 US

HONORABLE RALPH REGULA
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CHRISTOPHER SHAYS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BUD SHUSTER
ATTN: MIKE RICK
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE TED STRICKLAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JAMES TRAFICANT JR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PETER J. VISCLOSKY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US
<table>
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<td>HONORABLE ROD R. BLAGOJEVIC</td>
<td>U.S. House of Representatives, Washington, DC 20515-1305 US</td>
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<td>HONORABLE JAMES A. BARCIA</td>
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<td>U.S. House of Representatives, Washington, DC 20515-9997 US</td>
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<tr>
<td>JOLENE MOLITORIS, ADMN.</td>
<td>Federal Railroad Administration, 400 7th Street SW, Washington, DC 20590</td>
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<tr>
<td>PAUL SAMUEL SMITH</td>
<td>U.S. Department of Transportation, 400 Seventh Street SW Room 4102 C-30</td>
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<tr>
<td>CHRISTOPHER TULLY</td>
<td>Transportation Communications International, 3 Research Place, Rockville</td>
</tr>
<tr>
<td>JOHN M. ROBINSON</td>
<td>Attorney at Law, 9616 Old Spring Road, Kensington, MD 20895-3124 US</td>
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<td>JOHN HOY</td>
<td>P.O. Box 117, Glen Burnie, MD 21060 US</td>
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<tr>
<td>LINDA A. JANET J D</td>
<td>Maryland Office of Planning, 301 West Preston Street, Baltimore, MD 21201-2365</td>
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<tr>
<td>WILLIAM P. JACKSON, JR.</td>
<td>Jackson &amp; Jessup, P.C., P.O. Box 4030, 3426 North Washington Blvd, McLean, VA 22103 US</td>
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<td>L P King Jr</td>
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<td>John W Snow</td>
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<td>J RANDALL EVANS</td>
<td>CSX TRANSPORTATION</td>
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<td>LARRY D MOODY</td>
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<tr>
<td>JAMES J KEENAN</td>
<td>ANCHOR GLASS CONTAINER CORPORATION</td>
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<td>WILLIAM L OSTEREN</td>
<td>ASSOCIATE GENERAL COUNSEL TVA</td>
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<tr>
<td>HONORABLE KIRK FORDICE, GOVERNOR STATE OF MISSISSIPPI</td>
<td>700 CAPITOL AVENUE, STE. 100 FRANKFORT KY 40601 US</td>
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<tr>
<td>JAMES R JACOBS</td>
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<td>DAVID CHAPMAN</td>
<td>LAFARGE LIME OHIO INC</td>
<td>P O BOX 128</td>
<td>659 ANDERSON ROAD</td>
<td>WOODVILLE OH 43469-0128 US</td>
</tr>
<tr>
<td>ROBERT E GREENLESE</td>
<td>TOLEDO-LUCAS COUNTY PORT AUTHORITY</td>
<td>1 MARITIME PLAZA SUITE 700</td>
<td>TOLEDO OH 43604 US</td>
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<tr>
<td>RON MARQUARDT</td>
<td>LOCAL UNION 1810 UMWA</td>
<td>58659 EILEEN ST.</td>
<td>RAYLAND OH 43943 US</td>
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<tr>
<td>MAYOR VINCENT M URBIN</td>
<td>150 AVON BELLEN RD</td>
<td>AVON LAKE OH 44012 US</td>
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<tr>
<td>DAVID MILLER III</td>
<td>CUDELL IMPROVEMENT INC</td>
<td>11650 DETROIT AVE</td>
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<tr>
<td>DANIEL R ELLIOTT III</td>
<td>ASST GENERAL COUNSEL UNITED TRANSPORTATION UNION</td>
<td>14600 DETROIT AVENUE</td>
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<td>CLINTON J MILLER III</td>
<td>UNITED TRANSPORTATION UNION</td>
<td>14600 DETROIT AVENUE</td>
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<td>CHRISTOPHER C MCCRACKEN</td>
<td>ULMER &amp; BERNE LLP</td>
<td>1300 EAST NINTH STREET SUITE 900</td>
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<tr>
<td>CHARLES ZUMKHER</td>
<td>ROBZELL &amp; ANDRESS CO LPA</td>
<td>75 EAST MARKET STREET</td>
<td>AKRON OH 44308 US</td>
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<tr>
<td>CHARLES E ALLENBAUGH JR</td>
<td>EAST OHIO STONE COMPANY</td>
<td>2000 N BESSON ST</td>
<td>ALLIANCE OH 44601 US</td>
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<tr>
<td>D G STRUNK JR</td>
<td>GENERAL CHAIRPERSON UTU</td>
<td>817 KILBOURNE STREET</td>
<td>BELLEVUE OH 44811 US</td>
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<tr>
<td>ROBERT J COOPER</td>
<td>GENERAL CHAIRPERSON UTU</td>
<td>385 COMMODORE WAY APT 9</td>
<td>PERRYSBURG OH 43551-2784 US</td>
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<tr>
<td>ROBERT E MURRAY</td>
<td>OHIO VALLEY COAL CO</td>
<td>56854 PLEASANT RIDGE ROAD</td>
<td>ALLEDonia OH 43902 US</td>
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<tr>
<td>CLARENCE TURNQUIST</td>
<td>INTERNATIONAL LONGSHOREMEN'S ASSOCIATION</td>
<td>2125 TRYON ROAD</td>
<td>ASHTABULA OH 44004 US</td>
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<tr>
<td>BARBARA O'KEEFE</td>
<td>VILLAGE OF WELLINGTON</td>
<td>115 WILLARD MEMORIAL SQ</td>
<td>WELLINGTON OH 44090 US</td>
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<tr>
<td>ONE FIFTEEN HUNDRED BUILDING</td>
<td>11650 DETROIT AVE</td>
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<td>C L LITTLE</td>
<td>INTERNATIONAL PRESIDENT UTU</td>
<td>14600 DETROIT AVENUE</td>
<td>CLEVELAND OH 44107-4250 US</td>
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<tr>
<td>CLARENCE MONIN</td>
<td>INTERNATIONAL PRESIDENT UTU</td>
<td>1370 ONTARIO STREET</td>
<td>CLEVELAND OH 44113 US</td>
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<tr>
<td>INAJO DAVIS CHAPPLEL</td>
<td>ASHTR CHEMICALS INC</td>
<td>1300 EAST NINTH STREET SUITE 900</td>
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<tr>
<td>SYLVIA R. CHINN-LEVY</td>
<td>NEFCO</td>
<td>969 COPLEY ROAD</td>
<td>AKRON OH 44320 US</td>
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<tr>
<td>RANDALL C. HUNT</td>
<td>KRUGLIK, WILKINS, GRIFFITHS &amp; DOUGHERTY CO.</td>
<td>P O BOX 36963</td>
<td>4775 MUNSON ST NW</td>
<td>CANTON OH 44735-6963 US</td>
</tr>
<tr>
<td>R A GRICE</td>
<td>GENERAL CHAIRPERSON UTU</td>
<td>817 KILBOURNE ST</td>
<td>BELLEVUE OH 44811-9431 US</td>
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</tr>
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<tbody>
<tr>
<td>Richard E Kerth</td>
<td>Champion International Corporation</td>
<td>101 Knightsbridge Drive</td>
<td>Hamilton</td>
<td>OH</td>
<td>45020-0001</td>
</tr>
<tr>
<td>Robert Edwards</td>
<td>Eastern Transport and Logistics</td>
<td>1109 Lanette Drive</td>
<td>Cincinnati</td>
<td>OH</td>
<td>45230</td>
</tr>
<tr>
<td>F Ronalds Walker</td>
<td>Citizens Gas &amp; Coke Utility</td>
<td>2020 N Meridian Street</td>
<td>Indianapolis</td>
<td>IN</td>
<td>46202-1393</td>
</tr>
<tr>
<td>Michael Connelly</td>
<td>City of East Chicago</td>
<td>4525 Indianapolis Blvd</td>
<td>East Chicago</td>
<td>IL</td>
<td>46312</td>
</tr>
<tr>
<td>Honorable Peter J. Visclosky</td>
<td>U. S. House of Representatives</td>
<td>215 West 37th Avenue</td>
<td>Gary</td>
<td>IN</td>
<td>46408</td>
</tr>
<tr>
<td>William A Bon, General Counsel</td>
<td>Brotherhood of Maintenance of Way Employees</td>
<td>26555 Evergreen Road Suite 200</td>
<td>Southfield</td>
<td>MI</td>
<td>48076</td>
</tr>
<tr>
<td>Honorable John Engler</td>
<td>Office of the Governor</td>
<td>P O Box 30013</td>
<td>Lansing</td>
<td>MI</td>
<td>48909</td>
</tr>
<tr>
<td>Tom Neenan</td>
<td>Iowa Trails Council, Inc</td>
<td>P O Box 113</td>
<td>Center Point</td>
<td>IA</td>
<td>52213-0131</td>
</tr>
<tr>
<td>Leo J Waseschka</td>
<td>Gold Medal Division - General Mills Operation</td>
<td>P O Box 1113</td>
<td>Minneapolis</td>
<td>MN</td>
<td>55440</td>
</tr>
<tr>
<td>Christine H. J 1060</td>
<td>IL Assistant Attorney General</td>
<td>100 W Randolph S7 12th Floor</td>
<td>Chicago</td>
<td>IL</td>
<td>60601-021</td>
</tr>
<tr>
<td>Myles L Tobin</td>
<td>Canadian National/ Illinois Central Railroad</td>
<td>Two Prudential Plaza Suite 3125 - 180 North S</td>
<td>Chicago</td>
<td>IL</td>
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<tr>
<td>Fay D Dupuis</td>
<td>City of Cincinnati</td>
<td>801 Plum Street</td>
<td>Cincinnati</td>
<td>OH</td>
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<tr>
<td>Thomas R Rydman President</td>
<td>Indian Creek Railroad Company</td>
<td>3905 W 600 North</td>
<td>Anderson</td>
<td>IN</td>
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</tr>
<tr>
<td>J Patrick Latz</td>
<td>Heavy Lift Cargo System</td>
<td>P O Box 51451</td>
<td>Indianapolis</td>
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<td>46251-0451</td>
</tr>
<tr>
<td>Hamilton L Carmouche, Corp Counsel</td>
<td>City of Gary</td>
<td>401 Broadway 4th Floor</td>
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<td>IN</td>
<td>46402</td>
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<tr>
<td>Christopher J Burger, President</td>
<td>Central Railroad Company of Indianapolis</td>
<td>P O Box 554</td>
<td>Kokomo</td>
<td>MI</td>
<td>46903-0554</td>
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<tr>
<td>James E Shepherd</td>
<td>Tuscrala &amp; Saginaw Bay</td>
<td>P O Box 550</td>
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<td>MI</td>
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<td>Larry B Kanes</td>
<td>Michigan Department of Transportation</td>
<td>P O Box 30050</td>
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<td>Byron D Olsen</td>
<td>Fiehaber Larson Fenlon &amp; Vogt PA</td>
<td>501 Second Avenue South Suite 4200</td>
<td>Minneapolis</td>
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<tr>
<td>Gerald J. Vinci</td>
<td>Prairie Group</td>
<td>P. O. Box 1123</td>
<td>Bridgeview</td>
<td>IL</td>
<td>60455</td>
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<tr>
<td>William C Sippele</td>
<td>Fletcher &amp; Sippele LLC</td>
<td>180 N Stetson Ave Ste 3125 Two Prudential Pl</td>
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<tr>
<td>Richard F Friedman Esq</td>
<td>Earl L Neal &amp; Associates</td>
<td>111 West Washington Street Ste 1700</td>
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CSX CORPORATION AND CSX TRANSPORTATION

SANDRA J DEARDEN
HIGHROAD CONSULTING LTD
29 SOUTH LASALLE STREET, SUITE 450
CHICAGO IL 60603 US

THOMAS F MCFARLAND JR
THOMAS F MCFARLAND P C
208 SOUTH LASALLE ST SUITE 1890
CHICAGO IL 60604-1194 US

CHARLES D BOLAH
UNITED TRANSPORTATION UNION
1400-20TH STREET
GRANITE CITY IL 62040 US

MERRILL L TRAVIS
ILLINOIS DEPT OF TRANSPORTATION
2300 S DIRKSEN PARKWAY RM 302
SPRINGFIELD IL 62764 US

JOHN JAY ROBACKER
KS DEPT OF TRANSP
217 SE 4TH ST 2ND FLOOR
TOPEKA KS 66603 US

HENRY T DART
PLAINTIFF MANAGEMENT COMMITTEE
609 EAST GIBSON STREET
COVINGTON LA 70433 US

DENNIS A. GUTH
WEST LAKE GROUP
2801 POST OAK BLVD
HOUSTON TX 77056 US

MICHAEL P. FERRO
MILLENNIUM PETROCHEMICALS, INC.
P O BOX 2583
1221 MCKINNEY STREET SUITE 1600
HOUSTON TX 77252-2583 US

MONTY L PARKER SR
CMC STEEL GROUP
P O BOX 911
SEGUIN TX 78156-0911 US

STEPHEN M UTHOFF
CONIGLIO & UTHOFF
60 ELM AVENUE CONIGLIO PROFESSIONAL BLDG
LONG BEACH CA 90802-4910 US

JOHN D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

ROGER A SERPE
INDIANA HARBOR BELT RAILROAD COMPANY
111 WEST JACKSON BOULEVARD, STE 2215
CHICAGO IL 60604 US

SHELDON A ZABEL
SCHIFF HARDIN & WAITE
7200 SEARS TOWER
CHICAGO IL 60606 US

SCOTT A RONEY
ARCHER DANIELS MIDLAND COMPANY
P O BOX 1470
4666 FARIES PARKWAY
DECATUR IL 62525 US

IAN MUIR
BUNG E CORPORATION
P O BOX 28500
ST LOUIS MO 63146 US

GEORGE VAN HAVER
2340 SOUTH 35TH STREET
OMAHA NE 68105 US

CHARLES R. CARR
ATOFINA PETROCHEMICALS, INC.
15710 JFK BLVD.
HOUSTON TX 77032 US

DAVID L HALL
COMMONWEALTH CONSULTING ASSOCIATES
13103 FM 1990 WEST SUITE 204
HOUSTON TX 77065-4069 US

EDMUND J GARCIA
EXXONMOBIL GLOBAL SERVICES CO.
PO BOX 3272 WL3-1130
HOUSTON TX 77253-3272 US

RICHARD A GAVRIL
874 W 620 S
TOOELE UT 84074-3261 US

RICHARD WELSH
NARPO
50-505 GRAND TRAVERSE
LA QUINTA CA 92253 US

Records: 329

08/20/2002
Environmental Condition No. 8(A) of Appendix Q of Decision No. 89\(^1\) (Decision No. 89, slip op. at 393-99) requires Applicants, in order to address potential safety impacts at highway/rail at-grade crossings, to upgrade existing warning devices at 86 public highway/rail at-grade crossings as listed in the decision.\(^2\) As pertinent here, NS is required to: (1) install “Flashing Lights” at the at-grade crossing at Loomis Street in the Town of Ripley, Chautauqua County, NY; and (2) install “4-Quadrant Gates, or Alternative Mitigation such as Median Barriers” at the at-grade crossing located at York Road/SR 74 in Mechanicsburg, Cumberland County, PA. See Decision No. 89, slip op. at 398. Environmental Condition No. 8(A) requires compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of NS, the Board extended the compliance date for the at-grade crossings at Loomis Street and York Road/SR 74 until August 22, 2001. See Decision Nos. 155 and 157, served on May 31, 2000, respectively.

\(^1\) In Decision No. 89, served July 23, 1998, the Board approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail's assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

\(^2\) Alternatively, as provided in Environmental Condition No. 8(A), NS may satisfy this requirement by entering into a Negotiated Agreement with the affected local jurisdiction and the state department of transportation to provide for alternative safety improvements in the vicinity of the identified highway/rail at-grade crossing that achieve at least an equivalent level of safety enhancement.
By letter received at the Board on August 17, 2001, NS has requested a 1-year extension of the deadline provided for in Environmental Condition No. 8(A), until August 22, 2002, for the Loomis Street and York Road/SR 74 at-grade crossings.

With respect to the Loomis Street at-grade crossing, NS states that the New York Department of Transportation (NYDOT) had determined that the preferred alternative for this crossing was closure, and NYDOT asked NS not to install improvements at this crossing until it convened a Regulatory Hearing to address the closure issue. NS advises that, because local support for closure of this crossing has diminished, it does not know what plans by NYDOT and the Town of Ripley for this crossing will be approved. NS further advises that NYDOT has scheduled on-site meetings on August 14 and August 15, 2001, to discuss the Loomis Street and other grade crossings, but that NS does not know the outcome of those meetings. Accordingly, NS requests a 1-year extension of time so that a decision may be reached by NYDOT and the Town of Ripley in the interim. NS also states that it may seek a Negotiated Agreement with NYDOT and the Town of Ripley with respect to the Loomis Street at-grade crossing.

With respect to the York Road/SR 74 at-grade crossing, NS advises that the Pennsylvania Department of Transportation (PennDOT) determined that neither 4-quadrant gates nor median barriers are appropriate for this at-grade crossing due to the road configuration, and that the Pennsylvania Public Utilities Commission would have to conduct a formal review of the proposed crossing improvements and then issue findings and an order. NS states that the Commonwealth recently convened a field conference to evaluate the York Road/SR 74 at-grade crossing and that the Commonwealth has recommended that certain alternative measures be implemented in lieu of the installation of either 4-quadrant gates or median barriers. NS states that it is requesting an additional 1-year extension until August 22, 2002, in which to satisfy the requirements of Environmental Condition No. 8(A) for the York Road/SR 74 at-grade crossing so that the Commonwealth may formalize the preferred upgrades for York Road. NS also states that it may seek a Negotiated Agreement with the Commonwealth reflecting the alternative improvements.

The requests for a 1-year extension to August 22, 2002, for the Loomis Street and York Road/SR 74 at-grade crossings are reasonable and will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

---

1 NS advises that the alternative measures would include extending the crossing gate arms, relocating the signal in the southeast quadrant of the crossing, installing an additional signal in the southwest quadrant of the crossing, and installing 12-inch light units on all signals. NS also states that PennDOT would install pavement markings at the crossing and active advance warning signals in the existing roadway approach that is not currently so equipped.
It is ordered:

1. The compliance deadline for NS in Environmental Condition No. 8(A) with respect to the Loomis Street at-grade crossing in the Town of Ripley, Chautauqua County, NY, is extended 1 year until August 22, 2002.

2. The compliance deadline for NS in Environmental Condition No. 8(A) with respect to the York Road/SR 74 at-grade crossing in Mechanicsburg, Cumberland County, PA, is extended 1 year until August 22, 2002.

3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>JOHN D CIRAME, ASSISTANT SECRETARY</td>
<td>COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSPRT</td>
</tr>
<tr>
<td></td>
<td>10 PARK PLAZA ROOM 3170</td>
</tr>
<tr>
<td></td>
<td>BOSTON MA 02116-3969</td>
</tr>
<tr>
<td>HON. EDWARD M KENNEDY</td>
<td>UNITED STATES SENATE</td>
</tr>
<tr>
<td></td>
<td>2400 JOHN F KENNEDY FEDERAL BLDG</td>
</tr>
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<td>BOSTON MA 02203 US</td>
</tr>
<tr>
<td>JOHN R NADOLNY</td>
<td>14 AVIATION AVENUE</td>
</tr>
<tr>
<td></td>
<td>PORTSMOUTH NH 03801 US</td>
</tr>
<tr>
<td>KAREN E SONGHURST</td>
<td>STATE OF VERMONT</td>
</tr>
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<tr>
<td>EDWARD J RODRIGUE</td>
<td>HOUSATONIC RAILROAD</td>
</tr>
<tr>
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<td>P O BOX 687</td>
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<td>8 DAVIS ROAD WEST</td>
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<td>MICHAEL E STRICKLAND</td>
<td>NYK LINE (NORTH AMERICA) INC, SENIOR VICE PRE</td>
</tr>
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</tr>
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<td>MARTIN T DURKIN ESQ</td>
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<td>TIMOTHY G CHELIUS</td>
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<td>JOHN F MCHUGH</td>
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</tr>
<tr>
<td>WALTER E ZULLIG JR</td>
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</tr>
<tr>
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<tr>
<td>JAMES E HOWARD</td>
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<td>WILLIAM D ANKNER PHD</td>
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<tr>
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<td>P O BOX 317546</td>
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<td>2800 BERLIN TURNPIKE</td>
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<td>NEWINGTON CT 06131 US</td>
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<tr>
<td>RICHARD C CARPENTER</td>
<td>SOUTH WESTERN REGIONAL PLANNING AGENCY</td>
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<tr>
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<tr>
<td>EDWARD LLOYD</td>
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<td>J WILLIAM VAN DYKE</td>
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<td>JAMES W HARRIS</td>
<td>THE METROPOLITAN PLANNING ORGANIZATION</td>
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<td>Name</td>
<td>Title/Position</td>
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<tr>
<td>Hugh H. Welsh</td>
<td>Law Dept., Suite 67E</td>
</tr>
<tr>
<td>Samuel J. Nasca</td>
<td>UTU State Legislative Director</td>
</tr>
<tr>
<td>Diane Seitz</td>
<td>Central Hudson Gas &amp; Electric Corp</td>
</tr>
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<td>Gary Edwards</td>
<td>SomerSet Railroad</td>
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<tr>
<td>Irving J. Rubin</td>
<td>P.O. Box 243</td>
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<tr>
<td>R. W. Godwin</td>
<td>Brotherhood of Locomotive Engineers</td>
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<td>H. Douglas Midkiff</td>
<td>Genesee Transportation Council</td>
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<td>John J. Dolphi</td>
<td>427 Elmhurst Drive</td>
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<td>John A. Vuono</td>
<td>VUONO &amp; Gray</td>
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<td>R. J. Henefeld</td>
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<td>New York &amp; Atlantic Railway</td>
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<td>John F. Collins</td>
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<td>Ernest J. Ierardi</td>
<td>Nixon Hargrave Devans Doyle LLP</td>
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<td>Jeanne Waldoe</td>
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<td>Henry M. Wick, Jr.</td>
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<td>M. E. Petruccelli</td>
<td>PPG Industries Inc</td>
</tr>
<tr>
<td>Hon. Jerry A. Stern</td>
<td>Twelve Sheraton Drive</td>
</tr>
</tbody>
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08/22/2001
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<td>D W Dunlevy</td>
<td>State Legislative Director UTU</td>
<td>Harrisburg PA</td>
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<tr>
<td>Hon. Robert J. Ridge</td>
<td>Governor, Commonwealth of Pennsylvania</td>
<td>Harrisburg PA</td>
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<tr>
<td>Kurt W. Carr</td>
<td>Bureau for Historic Preservation</td>
<td>Harrisburg PA</td>
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<td>Rick A. Geist</td>
<td>Main Capitol Building</td>
<td>Harrisburg PA</td>
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<td>Hon. Robert C. Jubbier</td>
<td>Senate Box 2030300</td>
<td>Harrisburg PA</td>
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<tr>
<td>Harry C. Barbin</td>
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<td>Jonathan M. Broder</td>
<td>Consolidated Rail Corp</td>
<td>Philadelphia PA</td>
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<tr>
<td>John J. Coscia, Executive Dir.</td>
<td>Delaware Valley Regional Planning Commission</td>
<td>Philadelphia PA</td>
<td>PA</td>
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<tr>
<td>Eric M. Hocky</td>
<td>Gollatz Griffin &amp; Ewing</td>
<td>West Chester PA</td>
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<td>Frederick H. Schranck</td>
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<td>Peter A. Gilberton</td>
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<td>Washington DC</td>
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<td>John J. Grocki</td>
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<td>John K. Leary, General Man.</td>
<td>Southeastern Pennsylvania Transportation Auth</td>
<td>Philadelphia PA</td>
<td>PA</td>
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<td>Hon. Joseph R. Biden, Jr.</td>
<td>United States Senate</td>
<td>Wilmington DE</td>
<td>DE</td>
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<td>E. C. Wright</td>
<td>E. I. Du Pont de Nemours &amp; Company</td>
<td>Wilmington DE</td>
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<tr>
<td>Martin W. Bercovici</td>
<td>Keller &amp; Heckman LLP</td>
<td>Washington DC</td>
<td>DC</td>
<td>20001</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** The document includes addresses and contact information for various individuals and organizations.
SERVICE LIST FOR: 22-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATI

JAMES HOWARD
COALITION OF NORTHEASTERN GOVERNORS
400 NORTH CAPITOL STREET, SUITE 382
WASHINGTON DC 20001 US

CHARLES A SPITULNIK
MCLEOD WATKINSON & MILLER
ONE MASSACHUSETTS AVENUE NW SUITE 800
WASHINGTON DC 20001-1401 US

DONALD F GRIFFIN ASSISTANT GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
10 G STREET NE STE 460
WASHINGTON DC 20002 US

DREW A HARKER
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

WILLIAM A MULLINS
TROUTMAN SANDERS LLP
401 NINTH STREET NW SUITE 1000
WASHINGTON DC 20004 US

PAUL REISTRUP
CSX TRANSPORTATION INC
1331 PENNSYLVANIA NW STE 500
WASH 20004 US

ERIC VON SALZEN
HOGAN & HARTSON
555 THIRTEENTH STREET N W
WASHINGTON DC 20004-1109 US

DENNIS G LYONS
ARNOLD & PORTER
555 TWELFTH STREET NW, STE 940
WASHINGTON DC 20004-1206 US

DANIEL DUFF
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
1201 NEW YORK AV NW, STE 400
WASHINGTON DC 20005 US

BRUNO MAESTRI
NORFOLK SOUTHERN CORPORATION
1500 K STREET SUITE 375
WASHINGTON DC 20005 US

L JOHN OSBORN
SONNENSCHEIN NATH & ROSENTHAL
1301 K STREET NW STE 600 EAST
WASH DC 20005 US

TERRENCE D JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US

ROSS B CAPON
NATIONAL ASSOCIATION OF RAILROAD PASSENGERS
900 2ND ST NE SUITE 308
WASHINGTON DC 20002 US

RICHARD G SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

J MICHAEL HEMMER
COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004 US

DAVID C REEVES
TROUTMAN SANDERS LLP
401 NINTH STREET NW SUITE 1000
WASHINGTON DC 20004 US

GEORGE W MAYO JR
HOGAN & HARTSON L L P
555 THIRTEENTH STREET NW COLUMBIA SQUARE
WASHINGTON DC 20004-1109 US

MARY GABRIELLE SPRAGUE
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004-1202 US

ROBERT A WIMBISH ESQ
HARKINS CUNNINGHAM
801 PENNSYLVANIA AVE NW
WASHINGTON DC 20004-2664 US

LOUIS E GITOMER
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

KARL MORELL
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

ALICE C SAYLOR
AMERICAN SHORT LINE & REGIONAL RAILROAD ASSOCIATION
1120 G STREET NW SUITE 520
WASHINGTON DC 20005 US

08/22/2001
SERVICE LIST FOR: 22-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

NEAL R GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AV NW
WASHINGTON DC 20005-3701 US

MARK FILIPOVIC
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

ANDREW R. PLUMP
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 17TH ST., NW, STE. 600
WASHINGTON DC 20006 US

CONSTANCE A SADLER
SIDLEY & AUSTIN BROWN & WOOD
1722 EYE STREET NW
WASHINGTON DC 20006 US

ROBERT P VOM EIGEN
FOLEY & LARDNER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

JAMES R WEISS
PRESTON GATES ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

EDWARD WYTKIND EXECUTIVE DIRECTOR
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

SCOTT M ZIMMERMAN
ZUCKERT SCOUTT & RASENBERGER LLP
888 SEVENTEENTH STREET NW
WASHINGTON DC 20006 US

WILLIAM W MILLAR
AMERICAN PUBLIC TRANSIT ASSOCIATION
1666 K STREET NW
WASHINGTON DC 20006-1215 US

RICHARD A ALLEN
ZUCKERT SCOUTT & RASENBERGER LLP
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3309 US

JOHN V EDWARDS, ESQ
ZUCKERT SCOUTT ET AL
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

RACHEL DANISH CAMPBELL
FOLEY & LARDNER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006-4103 US

SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL AFFAIRS
CORNRefiners Association
1701 PA AV NW
WASH DC 20006-5805 US

JOHN H BROADLEY
JOHN H BROADLEY & ASSOCIATES PC
1054 31ST STREET NW SUITE 200
WASHINGTON DC 20007 US

FAUL M DONOVAN
LAKE WINN MORFMAN & DONOVAN
3900 HIGHWOOD COURT NW
WASHINGTON DC 20007 US

DAVID K MONROE
GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY FIRST STREET NW STE 200
WASHINGTON DC 20007 US

CHRISTOPHER C O'HARA
BRICKFIELD BURCHETTE & RITTS PC
1025 THOMAS JEFFERSON ST NW EIGHTH FLOOR
WASHINGTON DC 20007 US

SCOTT N STONE
PATTON BOOGS
2550 M STREET NW
WASHINGTON DC 20007 US

EDWARD D GREENBERG
GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY-FIRST STREET NW STE 200
WASHINGTON DC 20007-4492 US

MICHAEL F MCBRIDE
LEBOEUF LAMB GREENE & MACRAE
1875 CONNECTICUT AVENUE NW
WASHINGTON DC 20009-5728 US

KARYN A BOOTH
TOMPSON HINE & FLORY LLP
1920 N STREET, NW & FLORY LLP
WASHINGTON DC 20036 US

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20036 US

08/22/2001
SERVICE LIST FOR: 22-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

DAVID H COBURN
STEPTEO & JOHNSON
1330 CONNECTICUT AVENUE NW
WASHINGTON DC 20036 US

PAUL D COLEMAN
HOPPEL-MAYER & COLEMAN
1000 CONNECTICUT AVENUE NW SUITE 400
WASHINGTON DC 20036 US

RICHARD S EDELMAN
ODONNELL SCHWARTZ & ANDERSON PC
1900 L STREET NW SUITE 707
WASHINGTON DC 20036 US

PETER A GREENE
THOMPSON HINE FLORY
1920 N STREET NW SUITE 800
WASHINGTON DC 20036 US

JOHN D HEFFNER
REA CROSS & AUCHINCLOSS
1707 L STREET, NW, STE 570
WASHINGTON DC 20036 US

PAUL H LAMBOLEY
1717 N STREET NW
WASHINGTON DC 20036 US

GORDON P MACDOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

WILLIAM G. MAHONEY
HIGHSAW, MAHONEY & CLARKE
1050 SEVENTEENTH STREET NW SUITE 210
WASHINGTON DC 20036 US

CHRISTOPHER A MILLS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

KEITH G OBIEN
REA CROSS AND AUCHINCLOSS
1707 L STREET NW STE 570
WASHINGTON DC 20036 US

HAROLD P QUINN JR
NATIONAL MINING ASSOCIATION
1130 17TH STREET NW
WASHINGTON DC 20036 US

NICHOLAS J DIMICHAEL
THOMPSON HINE LLP
1920 N STREET NW STE 800
WASHINGTON DC 20036-1601 US

FRITZ R KAHN
1920 N STREET NW 8TH FLOOR
WASHINGTON DC 20036-1601 US

FREDERIC L WOOD
THOMPSON HINE LLP
1920 N STREET
WASHINGTON DC 20036-1601 US

ROSE-MICHELE WEINRYB
WEINER BRODSKY SIDMAN & KIDER
1300 19TH STREET NW 5TH FLOOR
WASHINGTON DC 20036-1609 US

SAMUEL M SIPE JR
STEPTEO & JOHNSON LLP
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

TIMOTHY M WALSH
STEPTEO & JOHNSON
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

EDWARD J FISHMAN
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE, N.W., 2ND FLOOR
WASHINGTON DC 20036-1800 US

KEVIN M SHEYS
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE NW 2ND FLOOR
WASHINGTON DC 20036-1800 US

JOSEPH GUERRIERI, JR.
GUERRIERI, EDMOND & CLAYMAN, PC
1625 MASSACHUSETTS AVE., NW, STE 700
WASHINGTON DC 20036-2243 US

DEBRA L WILLEN
GUERRIERI EDMOND & CLAYMAN PC
1625 MASSACHUSETTS AVENUE, N.W., STE 700
WASHINGTON DC 20036-2243 US

DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

08/22/2001
SERVICE LIST FOR: 22-aug-2001 STB FD 33389 0  CSX CORPORATION AND CSX TRANSPORTATION

KELVIN J DOWD
SLOVER & LOFTUS
1224 17TH STREET N W
WASHINGTON DC 20036-3003 US

WILLIAM L SLOVER
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

JOHN M CUTLER JR
MCCARTHY SWEENEY HARKAWAY PC
2175 K STREET NW
WASHINGTON DC 20037 US

ANDREW P GOLDSTEIN
MCCARTHY SWEENEY & HARKAWAY P C
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

STEVEN J KALISH
MCCARTHY SWEENEY & HARKAWAY P C
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

DANIEL J SWEENEY
MCCARTHY SWEENEY & HARKAWAY P C
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

JOHN L OBERDORFER
PATTON BOGGS LLP
2550 M ST NW
WASHINGTON DC 20037-1301 US

KEITH A KLINDWORTH
US DEPT OF AGRICULTURE
P O BOX 96456
WASHINGTON DC 20090 US

EILEEN S STOMMES
US DEPARTMENT OF AGRICULTURE
P O BOX 96456 ROOM 4006-SOUTH BUILDING
WASHINGTON DC 20090-6456 US

MICHAEL V DUNN
RM 228W JAMIE L WHITTEN FEDERAL BLDG
WASHINGTON DC 20250 US

JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
WASHINGTON DC 20426 US

MELISSA PICKWORTH
GENERAL ACCOUNTING OFFICE
441 G STREET, N.W., ROOM 2T23
WASHINGTON DC 20458 US

HON. JOSEPH BIDEN, JR.
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE JOHN BREAUX
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. JOSEPH I LIEBERMAN
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE BOB GRAHAM
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. BARBARA A. MIKULSKI
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE RICHARD LUGAR
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. JOHN W. WARNER
US SENATE
WASHINGTON DC 20510-0001 US

HON CHRISTOPHER J DODD
UNITED STATES SENATE
WASH DC 20510-0702 US

08/22/2001
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hon Marcy Kaptur</td>
<td>U.S. House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon Dennis J Kucinich</td>
<td>United States House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon Nita Lowey</td>
<td>U.S. House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon Carolyn B Maloney</td>
<td>U.S. House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon. James Maloney</td>
<td>U.S. House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon. Frank Mascara</td>
<td>U.S. House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon. Robert Menendez</td>
<td>U.S. House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon. Major R. Owens</td>
<td>United States House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon. Jack Quinn</td>
<td>House of Representatives 2448 Rayburn Bldg Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon. Charles Rangel</td>
<td>U.S. House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon. Thomas C Sawyer</td>
<td>U.S. House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon. Christopher Shays</td>
<td>U.S. House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Hon. Bud Shuster</td>
<td>Attention: Mike Rick U.S. House of Representatives Washington DC 20515 US</td>
</tr>
<tr>
<td>Name</td>
<td>Address</td>
</tr>
<tr>
<td>-------------------------------------</td>
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</tr>
<tr>
<td>HON. JAMES TRAFICANT JR</td>
<td>U. S. HOUSE OF REPRESENTATIVES 20515 US</td>
</tr>
<tr>
<td>HON. JOHN D. DINGELL</td>
<td>2328 RAYBURN HOUSE OFFICE BUILDING 20515-2216 US</td>
</tr>
<tr>
<td>MICHAEL P. HARMONIS</td>
<td>DEPARTMENT OF JUSTICE 325 SEVENTH STREET, NW</td>
</tr>
<tr>
<td></td>
<td>WASHINGTON DC 20530 US</td>
</tr>
<tr>
<td>JOSEPH R. POMPONIO</td>
<td>FEDERAL RAILROAD ADMINISTRATION 400 SEVENTH STREET SW RCC-20</td>
</tr>
<tr>
<td></td>
<td>WASHINGTON DC 20590 US</td>
</tr>
<tr>
<td>DAVID G. ABRAM</td>
<td>SUITE 400W 7315 WISCONSIN AVENUE 20814 US</td>
</tr>
<tr>
<td></td>
<td>BETHESDA MD 20814 US</td>
</tr>
<tr>
<td>JOHN M. ROBINSON</td>
<td>ATTORNEY AT LAW 9616 OLD SPRING ROAD 20895-3124 US</td>
</tr>
<tr>
<td></td>
<td>KENSINGTON MD 20895-3124 US</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 22-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

JOHN HOY
P O BOX 117
GLEN BURNIE MD 21060 US

LINDA A JANEX J D
MARYLAND OFFICE OF PLANNING
301 WEST PRESTON STREET
BALTIMORE MD 21201-2365 US

PETER O NYCE JR
U S DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

WILLIAM P. JACKSON, JR.
JACKSON & JESSUP, P. C.
P O BOX 1240
3426 NORTH WASHINGTON BLVD
ARLINGTON VA 22210 US

KENNETH E SIEGEL
AMERICAN TRUCKING ASSOC INC
2200 MILL ROAD
ALEXANDRIA VA 22314-4677 US

MICHAEL J RUEHLING
CSX CORPORATION
ONE JAMES CENTER
RICHMOND VA 23219 US

GEORGE A ASPATORE GENERAL SOLICITOR - REGULATORY
NORFOLK SOUTHERN RAILWAY COMPANY
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

DAVID A SHELTON
NORFOLK SOUTHERN
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

L P KING JR
GENERAL CHAIRPERSON UTU
145 CAMPBELL AVE SW STR 207
ROANOKE VA 24011 US

VAUGHN R GROVES
PITTSFORD COAL COMPANY
PO BOX 5100
LEBANON VA 24266 US

R K SARGENT
GENERAL CHAIRPERSON UTU
1319 CHESTNUT STREET
KENOVA WV 25530 US

ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

CHARLES M CHADWICK
MARYLAND MIDLAND RAILWAY INC
P O BOX 1000
UNION BRIDGE MD 21791 US

THOMAS E SCHICK
AMERICAN CHEMISTRY COUNCIL
1300 WILSON BOULEVARD
ARLINGTON VA 22209 US

FRANCIS O MCKENNA
ANDERSON & PENDLETON
206 N WASHINGTON STREET SUITE 330
ALEXANDRIA VA 22314 US

ROBERT E MARTINEZ
VA SECRETARY OF TRANSPORTATION
P. O. BOX 1475
RICHMOND VA 23218 US

JOHN W SNOW
CHAIRMAN PRESIDENT AND CHIEF EXECUTIVE OFFICER
P O BOX 85629
RICHMOND VA 23285-5629 US

PARKERSON B MAQUILLING
NORFOLK SOUTHERN CORPORATION
THREE COMMERCIAL PLACE, LAW DEPT
NORFOLK VA 23510 US

JAMES A HIXON
SENIOR VICE PRESIDENT EMPLOYEE RELATIONS
NORFOLK SOUTHERN CORPORATION
THREE COMMERCIAL PLACE
NORFOLK VA 23510-2191 US

HONORABLE JOHN WARNER
UNITED STATES SENATE
235 FEDERAL BUILDING
ABINGDON VA 24210-0887 US

TERRELL ELLIS
CAEZWV
P O BOX 176
CLAY WV 25043 US

SCOTT M SAYLOR
NORTH CAROLINA RAILROAD COMPANY
3200 ATLANTIC AV STE 110
Raleigh NC 27604-1640 US
SERVICE LIST FOR: 22-aug-2001 STB FD 33388 0
CSX CORPORATION AND CSX TRANSPORTATION

JAMES R JACOBS
JACOBS INDUSTRIES
2 QUARRY LANE
STONY RIDGE OH 43463 US

ROBERT J COOPER
GENERAL CHAIRPERSON UTU
385 COMMODORE WAY APT 9
PERRYSBURG OH 43551-2784 US

ROBERT E MURRAY
OHIO VALLEY COAL CO
56854 PLEASANT RIDGE ROAD
ALLEDONIA OH 43902 US

CLARENCE TURQUIST
INTERNATIONAL LONGSHOREMEN S ASSOCIATION
2125 TRYON ROAD
ASHTOBULA OH 44004 US

CHARLES S HESSE
CHARLES HESSE ASSOCIATES
7777 BAINBRIDGE ROAD
CHAGRIN FALLS OH 44023-2124 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

DANIEL R ELLIOTT III
ASST GENERAL COUNSEL UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLINTON J MILLER III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CHRISTOPHER C MCCrackEN
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL
ASHTA CHEMICALS INC
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114-1538 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COLEY ROAD
AKRON OH 44320 US

DAVID CHAPMAN
LAFARGE LIME OHIO INC
P O BOX 128
659 ANDERSON ROAD
WOOVILLE OH 43469-0128 US

ROBERT E GREENLESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

RON MARQUARDT
LOCAL UNION 1810 UMWA
58659 EILEEN ST.
RAYLAND OH 43943 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

BARBARA O'KEEFE
VILLAGE OF WELLINGTON
115 WILLARD MEMORIAL SQ
WELLINGTON OH 44090 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

C L LITTLE
INTERNATIONAL PRESIDENT UTU
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLARENCE MONIN INTERNATIONAL PRESIDENT
BROTHERHOOD OF LOCOMTIVE ENGINEERS MEZZANINE
1370 ONTARIO STREET
CLEVELAND OH 44113 US

DAVID ROLOFF
GOLDSTEIN & ROLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

CHARLES ZUMKEHR
ROETZEL & ANDRESS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

CHARLES E ALLENSBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

08/22/2001
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>MONTY L PARKER SR</td>
<td>CMC STEEL GROUP P O BOX 911 SEGUIN TX 78156-0911 US</td>
</tr>
<tr>
<td>BRAD F HUSTON</td>
<td>CYPRUS'AMAX MINERALS 2600 N CENTRAL AVE STE 110 PHOENIX AZ 85004-3012 US</td>
</tr>
<tr>
<td>STEPHEN M UTHOFF</td>
<td>CONIGLIO &amp; UTHOFF 60 ELM AVENUE, CONIGLIO PROFESSIONAL BLDG LONG BEACH CA 90802-4910 US</td>
</tr>
<tr>
<td>RICHARD WELSH</td>
<td>NARPO 50-505 GRAND TRAVERSE LA QUINTA CA 92253 US</td>
</tr>
<tr>
<td>JOHN D FITZGERALD</td>
<td>UTU, GENERAL CHAIRPERSON 400 E EVERGREEN BLVD STE 217 VANCOUVER WA 98660-3264 US</td>
</tr>
</tbody>
</table>

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Environmental Condition No. 11 of Appendix Q of Decision No. 89 (Decision No. 89, slip op. at 401-03) requires Applicants (including Consolidated Rail Corporation (CR), which administers the CSX/NS Shared Assets Areas), with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that: “Applicants shall certify compliance with this condition within 2 years of the effective date of the Board’s final decision. This condition shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities’ environmental concerns.” Environmental Condition No. 11 requires compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of CSX and CR, the Board extended the compliance date until August 22, 2001. See Decision No. 166, served on August 22, 2000.

By letter received at the Board on August 3, 2001, CSX, on behalf of CSX and CR, has requested a 6-month extension of the deadline provided for in Environmental Condition No. 11, until February 22, 2002. CSX states that it has worked diligently during the past 3 years to implement Environmental Condition No. 11, and has submitted to the Board 31 Negotiated Agreements that have been added to Environmental Condition No. 51 of Appendix Q of Decision No. 89.

CSX further advises that it has entered into Negotiated Agreements covering all of the eligible receptors identified in Environmental Condition No. 11 that are located in Indiana and

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In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and CR, and the division of their assets by CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX, NS, and CR are referred to collectively as Applicants for purposes of this decision.
Ohio, and that it has entered into agreements with nine responsible governments in Pennsylvania.\(^2\)

CSX also advises that CR has worked diligently to comply with Environmental Condition No. 11 with respect to the eligible receptors in the Detroit Shared Assets Area, that CR has entered into Negotiated Agreements with two responsible local governments, and that these Negotiated Agreements have been submitted to the Board and have been added to Environmental Condition No. 51.\(^3\)

CSX states that CSX and CR are continuing to have discussions with the owners of the remaining structures, and, if an agreement is not reached with particular property owners in the near future, CSX and CR will promptly evaluate feasible alternatives for implementing Environmental Condition No. 11 with respect to the structures. Accordingly, CSX states that a 6-month extension to February 22, 2002, would allow CSX and CR to complete negotiations with the owners of the eligible structures or to implement Environmental Condition No. 11 through alternative means if a negotiated agreement is not reached.

The request for a 6-month extension to February 22, 2002, is reasonable and will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The compliance deadline for CSX and CR in Environmental Condition No. 11 of Appendix Q of Decision No. 89 is extended 6 months until February 22, 2002.

\(^2\) CSX states that Elizabeth and Rostraver Townships, PA, requested CSX to contact individual property owners, and that CSX has contacted them and has entered into agreements with all but 6 property owners. CSX notes that there are 28 structures eligible for noise mitigation in these townships, and that it has satisfied Environmental Condition No. 11 with respect to almost 99% of the structures eligible for noise mitigation under this condition.

\(^3\) CSX advises that Allen Park, Ash Township, and Lincoln Park, MI, requested CR to contact individual property owners, and that CR has contacted them and has entered into an agreement with one property owner.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary
SERVICE LIST FOR: 20-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

JOHN D CIRAME, ASSISTANT SECRETARY
COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSPRT
10 PARK PLAZA ROOM 3170
BOSTON MA 02116-3969 US

JOHN R NADOLNY
14 AVIATION AVENUE
PORTSMOUTH NH 03801 US

KAREN E SONGHURST
STATE OF VERMONT
133 STATE STREET
MONTPELLIER VT 05633-5001 US

EDWARD J RODRIGUEZ
HOUSTON RAILROAD
P O BOX 687
8 DAVIS ROAD WEST
OLYME CT 06371 US

MICHAEL E STRICKLAND
NYK LINE (NORTH AMERICA) INC, SENIOR VICE PRES.
300 LIGHTING WAY
SECAUCUS NJ 07094-1588 US

HONORABLE ROBERT G. TORRICELLI
UNITED STATES SENATE
1 RIVER FRONT PLAZA, 3RD FLOOR
NEWARK NJ 07102 US

MARTIN T DURKIN ESQ
DURKIN & BOGGIA ESQS
PO BOX 378
71 MT VERNON STREET
RIDGEFIELD PARK NJ 07660 US

TIMOTHY G CHELIUS
18 N EAST AVENUE
VINELAND NJ 08360 US

JOHN F MCHugh
MCHUGH & BARNES P C
20 EXCHANGE PLACE 51ST FLOOR
NEW YORK NY 10005-3201 US

WALTER E ZULLIG JR
METRO-NORTH COMMUTER RAILROAD COMPANY
347 MADISON AVE
NEW YORK NY 10017-3706 US

JAMES E HOWARD
KIRKPATRICK & LOCKHART
ONE THOMPSON SQUARE STE 201
CHARLESTOWN MA 02129 US

WILLIAM D ANKNER PHD
R I DEPT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE RI 02903 US

ROBERT D ELDER
MAINE DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA ME 04333-0016 US

JAMES F SULLIVAN
CT DEPT OF TRANSPORTATION
P O BOX 317546
2800 BERLIN TURNPIKE
NEWINGTON CT 06131 US

RICHARD C CARPENTER
SOUTH WESTERN REGIONAL PLANNING AGENCY
888 WASHINGTON BOULEVARD, 3RD FLOOR
STAMFORD CT 06901 US

EDWARD LLOYD
RUTGERS ENVIRONMENTAL LAW CLINIC
15 WASHINGTON STREET
NEWARK NJ 07102 US

J WILLIAM VAN DYKE
NJ TRANSPORTATION PLANNING AUTHORITY
ONE NEWARK CENTER 17TH FLOOR
NEWARK NJ 07102 US

CRAIG CURRY
CONSOLIDATED RAIL CORPORATION
1000 HOWARD BOULEVARD
MOUNT LAUREL NJ 08054 US

LAWRENCE PEPPER, JR
GUCCIO PEPPER
817 EAST LANDS AVE
VINELAND NJ 08360 US

ANTHONY P. SEMANCIK
347 MADISON AVENUE
NEW YORK NY 10017-3706 US

JAMES W HARRIS
THE METROPOLITAN PLANNING ORGANIZATION
1 WORLD TRADE CENTER STE 82 EAST
NEW YORK NY 10048-0043 US

08/26/2001
SERVICE LIST FOR: 20-aug-2001 STB FD 33388 0

CSX CORPORATION AND CSX TRANSPORTATION

HUGH H. WELSH
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-0202 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

IRVING J RUBIN
P O BOX 243
YOUNGSTOWN NY 14174 US

R W GODWIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
810 ABBOTT ROAD SUITE 200
BUFFALO NY 14220 US

H DOUGLAS MIDKIFF
GENESEE TRANSPORTATION COUNCIL
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

JOHN J DOLFI
427 ELMHURST DRIVE
BELLE VERNON PA 15012 US

JOHN A VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

RICHARD R WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE, INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

SHEILA MECK HYDE
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

JOHN F COLLINS
COLLINS COLLINS & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

ERNEST J IERARDI
NIXON HARGRAVE DEVANS DOYLE LLP
PO BOX 1051
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

JEANNE WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

DAVID W. DONLEY
3361 STAFFORD ST
PITTSBURGH PA 15204-1441 US

HENRY M WICK, JR.
WICK STREIFF MEYER O'BOYLE SZELIGO
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219-3427 US

M E PETRUCCELLI
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

HON JERRY A STERN
TWELVE SHERATON DRIVE
ALTOONA PA 16603 US

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HONORABLE THOMAS J RIDGE
GOVERNOR, COMMONWEALTH OF PENNSYLVANIA
225 MAIN CAPITOL BUILDING
HARRISBURG PA 17120 US

HON ROBERT JUBELIRER
PENNSYLVANIA STATE SENATE
 SENATE BOX 203030
THE STATE CAPITOL
HARRISBURG PA 17120-3030 US

BELKNAP FREEMAN
BELKNAP FREEMAN
119 HICKORY LANE
ROSEMONT PA 19010 US

JOHN J GROCKI
GRA INC
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2600 CENTRE SQUARE WEST 500 MARKET ST
PHILADELPHIA PA 19102 US

DAVID BERGER
BERGER AND MONTAGUE, P. C.
1622 LOCUST ST
PHILADELPHIA PA 19103-6305 US

JOHN K A LEARY, GENERAL MANAGER
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY
1234 MARKET STREET 5TH FLOOR
PHILADELPHIA PA 19107-3780 US

HON JOSEPH R BIDEN, JR.
UNITED STATES SENATE
844 KING STREET
WILMINGTON DE 19801 US

E C WRIGHT
E I DU PONT DE NEMOURS AND COMPANY
1007 MARKET STREET D-3100
WILMINGTON DE 19898 US

MARTIN W BERCOVICI
KELLER & HECKMAN LLP
1001 G ST NW SUITE 500 WEST
WASHINGTON DC 20001 US

KURT W CARR
BUREAU FOR HISTORIC PRESERVATION
P O BOX 1026
HARRISBURG PA 17108-1026 US

RICHARD A GEIST
MAIN CAPITOL BUILDING
P.O. BOX 202020
HARRISBURG PA 17120-2020 US

HON ROBERT C JUBELIRER
SENATE BOX 203030
STATE CAPITOL
HARRISBURG PA 17120-3030 US

HARRY C BAHR
BARBIN LAUFFER & O'CONNELL
608 HUNTINGDON PIKE
ROCKLEDGE PA 19046 US

JONATHAN M BRODER
CONSOLIDATED RAIL CORP
P O BOX 41416
2001 MARKET STREET 15TH FLOOR
PHILADELPHIA PA 19101-1416 US

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DELAWARE VALLEY REGIONAL PLANNING COMMISSION
111 SOUTH INDEPENDENCE MALL EAST
PHILADELPHIA PA 19106 US

ERIC M HOCKY
GOLLATZ GRIFFIN & EWING
P O BOX 796
213 WEST MINER STREET
WEST CHESTER PA 19381-0796 US

J E THOMAS
HERCULES INCORPORATED
1313 NORTH MARKET STREET
WILMINGTON DE 19894 US

FREDERICK H SCHRANCK
PO BOX 778
DOVER DE 19903 US

PETER A GILBERTSON
REGIONAL RRS OF AMERICA
122 C ST NW STE 850
WASHINGTON DC 20001 US
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MARK FILIPOVIC
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

ANDREW R. PLUMP
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 17TH ST., NW, STE. 600
WASHINGTON DC 20006 US

CONSTANCE A SADLER
SIDLEY & AUSTIN BROWN & WOOD
1722 EYE STREET NW
WASHINGTON DC 20006 US

ROBERT P VOM EIGEN
FOLEY & LARDNER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

JAMES R WEISS
PRESTON GATES ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

EDWARD WYTKIND EXECUTIVE DIRECTOR
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

SCOTT M ZIMMERMAN
ZUCKERT SCOUTT & RASENBERGER LLP
888 SEVENTEENTH STREET NW
WASHINGTON DC 20006 US

WILLIAM W MILLAR
AMERICAN PUBLIC TRANSIT ASSOCIATION
1666 K STREET NW
WASHINGTON DC 20006-1215 US

RICHARD A ALLEN
ZUCKERT SCOUTT & RASENBERGER LLP
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3309 US

JOHN V EDWARDS, ESQ
ZUCKERT SCOUTT ET AL
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

RACHEL DANISH CAMPBELL
FOLEY & LARDNER
888 SIXTEENTH STREET NW
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SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL AFFAIRS
CORN REFINERS ASSOC
1701 PA AV NW
WASHINGTON DC 20006-5805 US

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JOHN H BROADLEY & ASSOCIATES P.C
1054 31ST STREET NW SUITE 200
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PAUL M DONOVAN
LAROE WINN MO'FRAN & DONOVAN
3900 HIGHWOOD COURT NW
WASHINGTON DC 20007 US

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GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
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BRICKFIELD BURCHETTE & RITTS PC
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WASHINGTON DC 20007 US

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GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY-FIRST STREET NW STE 200
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LEBOEUF LAMB GREENE & MACRAE
1875 CONNECTICUT AVENUE NW
WASHINGTON DC 20009-5728 US

KARYN A BOOTH
THOMPHON HINE & FLORY LLP
1920 17 STREET, NW & FLORY LLP
WASHINGTON DC 20036 US

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<td>GENERAL ACCOUNTING OFFICE</td>
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<td>HONORABLE JAMES MALONEY</td>
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<td>HONORABLE FRANK MASCARA</td>
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<td>HON MICHAEL MCNULTY</td>
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<td>HON. ROBERT MENENDEZ</td>
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<td>HONORABLE ROBERT W. NEY</td>
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<td>HON. JAMES L. OBERSTAR</td>
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<td>HONORABLE MAJOR R. OWENS</td>
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<td>HON CHRISTOPHER SHAYS</td>
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<td>HON. BUD SHUSTER</td>
<td>ATTN: MIKE RICK U.S. HOUSE OF REPRESENTATIVES WASHINGTON DC 20515 US</td>
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<td>HONORABLE BILL SHUSTER</td>
<td>U.S. HOUSE OF REPRESENTATIVES WASHINGTON DC 20515 US</td>
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</tr>
<tr>
<td>John Hoy</td>
<td>P.O. Box 117</td>
<td>Glen Burnie</td>
<td>MD</td>
<td>21060</td>
</tr>
<tr>
<td>Linda A. Janey J. D</td>
<td>Maryland Office of Planning</td>
<td>301 West Preston Street</td>
<td>Baltimore</td>
<td>MD</td>
</tr>
<tr>
<td>Peter Q. Nyce Jr</td>
<td>U.S. Department of the Army</td>
<td>901 North Stuart Street</td>
<td>Arlington</td>
<td>VA</td>
</tr>
<tr>
<td>William P. Jackson, Jr.</td>
<td>Jackson &amp; Jessup, P.C.</td>
<td>P.O. Box 1240</td>
<td>3426 North Washington Blvd</td>
<td>Arlington</td>
</tr>
<tr>
<td>Kenneth E. Siegel</td>
<td>American Trucking Association</td>
<td>2200 Mill Road</td>
<td>Alexandria</td>
<td>VA</td>
</tr>
<tr>
<td>Michael J. Ruehl</td>
<td>CSX Corporation</td>
<td>One James Center</td>
<td>Richmond</td>
<td>VA</td>
</tr>
<tr>
<td>George A. Aspatare</td>
<td>General Solicitor - Regulator</td>
<td>Norfolk Southern Railway Company</td>
<td>Three Commercial Place</td>
<td>Norfolk</td>
</tr>
<tr>
<td>David A. Shelton</td>
<td>Norfolk Southern</td>
<td>Three Commercial Place</td>
<td>Norfolk</td>
<td>VA</td>
</tr>
<tr>
<td>L. P. King Jr</td>
<td>General Chairperson UTU</td>
<td>145 Campbell Ave SW, Ste. 207</td>
<td>Roanoke</td>
<td>VA</td>
</tr>
<tr>
<td>Vaughn R. Groves</td>
<td>Pittston Coal Company</td>
<td>P.O. Box 5100</td>
<td>Lebanon</td>
<td>VA</td>
</tr>
<tr>
<td>R. K. Sargent</td>
<td>General Chairperson UTU</td>
<td>1319 Chestnut Street</td>
<td>Kenova</td>
<td>WV</td>
</tr>
<tr>
<td>Robert J. Will</td>
<td>United Transportation Union</td>
<td>4134 Grave Run Rd</td>
<td>Manchester</td>
<td>MD</td>
</tr>
<tr>
<td>Charles M. Chadwick</td>
<td>Maryland Midland Railway Inc</td>
<td>P.O. Box 1000</td>
<td>Union Bridge</td>
<td>MD</td>
</tr>
<tr>
<td>Thomas E. Schick</td>
<td>American Chemistry Council</td>
<td>1300 Wilson Boulevard</td>
<td>Arlington</td>
<td>VA</td>
</tr>
<tr>
<td>Francis G. McKenna</td>
<td>Anderson &amp; Pendleton</td>
<td>206 N Washington Street Suite 330</td>
<td>Alexandria</td>
<td>VA</td>
</tr>
<tr>
<td>Robert E. Martinez</td>
<td>Va Secretary of Transportation</td>
<td>P.O. Box 1475</td>
<td>Richmond</td>
<td>VA</td>
</tr>
<tr>
<td>John W. Snow</td>
<td>Chairman, President and Chief Executive Officer</td>
<td>P.O. Box 85629</td>
<td>Richmond</td>
<td>VA</td>
</tr>
<tr>
<td>Parkerson B. Maquiling</td>
<td>Norfolk Southern Corporation</td>
<td>Three Commercial Place, Law Dept</td>
<td>Norfolk</td>
<td>VA</td>
</tr>
<tr>
<td>James A. Hixon</td>
<td>Senior Vice President, Employee Relations</td>
<td>Norfolk</td>
<td>VA</td>
<td>23510-2191</td>
</tr>
<tr>
<td>Terrell Ellis</td>
<td>Caezwv</td>
<td>P.O. Box 176</td>
<td>Clay</td>
<td>WV</td>
</tr>
<tr>
<td>Scott M. Saylor</td>
<td>North Carolina Railroad Company</td>
<td>3200 Atlantic Ave Ste. 110</td>
<td>Raleigh</td>
<td>NC</td>
</tr>
</tbody>
</table>
E NORRIS TOLSON
NC DEPT OF TRANSPORTATION
P O BOX 25201
1 S. WILINGTON STREET
RALEIGH NC 27611 US

HONORABLE DAVID M BEASLEY
GOVERNOR
P. O. BOX 11369
COLUMBIA SC 29211 US

J RANDALL EVANS
500 WATER STREET (J150)
JACKSONVILLE FL 32202 US

BOB HAULTER
CSX TRANSPORTATION INC
500 WATER STREET (J120)
JACKSONVILLE FL 32202 US

JOHN W. HUMES, JR.
CSX TRANSPORTATION
SPEED CODE J-150
500 WATER STREET
JACKSONVILLE FL 32202 US

T J STEPHENSON
CSX TRANSPORTATION INC
500 WATER STREET (J407)
JACKSONVILLE FL 32202 US

PHILLIP L BELL
ERIE LACKAWANNA RAILROAD CO
PO BOX 1482
TALLAHASSEE FL 32302 US

JAMES L BELCHER
EASTMAN CHEMICAL COMPANY
PO BOX 431
KINGSPORT TN 37662 US

PHILIP SIDO
UNION CAMP CORPORATION
6400 POPULAR AVE
MEMPHIS TN 38197-0100 US

HONORABLE PAUL E. PATTON
GOVERNOR
700 CAPITOL AVENUE, STE. 100
FRANKFORT KY 40601 US

HONORABLE DEBORAH PRYCE
U. S. HOUSE OF REPRESENTATIVES
500 SOUTH FRONT STREET, ROOM 1130
COLUMBUS OH 43215 US

J H CLARK
UTU, GENERAL CHAIRPERSON
441 NORTH LOUISIAN AVENUE, SUITE Q
ASHEVILLE NC 28806 US

FRED R BIRKHOlz
CSX TRANSPORTATION LAW DEPT - J-150
500 WATER STREET
JACKSONVILLE FL 32202 US

CARL A GERHARDSTEIN
CSX TRANSPORTATION RISK MGMT
500 WATER STREET-J275
JACKSONVILLE FL 32202 US

PAUL R. HITCHCOCK
CSX TRANSPORTATION LAW DEPARTMENT
500 WATER STREET SC J-150
JACKSONVILLE FL 32202 US

CHARLES M ROSENBERGER
CSX TRANSPORTATION
500 WATER STREET - J150
JACKSONVILLE FL 32202 US

J L RODGERS
GENERAL CHAIRMAN UTU
9550 REGENCY SQUARE BLVD #904
JACKSONVILLE FL 32225-8177 US

JAMES J KEENAN
ANCHOR GLASS CONTAINER CORPORATION
4343 ANCHOR FLAZA PARKWAY
TAMPA FL 33634 US

WILLIAM L OSTEEN
ASSOCIATE GENERAL COUNSEL TVA
400 WEST SUMMIT HILL DRIVE
KNOXVILLE TN 37902 US

HONORABLE KIRK FORDICE, GOVERNOR
STATE OF MISSISSIPPI
P O BOX 139
JACKSON MS 39205 US

THOMAS M O'LEARY
OHIO RAIL DEVELOPMENT COMMISSION
50 W BROAD STREET 15TH FLOOR
COLUMBUS OH 43215 US

DOREEN C JOHNSON, CHIEF ANTITRUST SECTION
OHIO ATTY GENERAL OFFICE
140 EAST TOWN STREET, FIRST FLOOR
COLUMBUS OH 43215-6001 US
SERVICE LIST FOR: 20-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

JAMES R JACOBS
JACOBS INDUSTRIES
2 QUARRY LANE
STONY RIDGE OH 43463 US

ROBERT J COOPER
GENERAL CHAIRPERSON UTU
395 COMMODORE WAY APT 9
PERRYSBURG OH 43551-2784 US

ROBERT E MURRAY
OHIO VALLEY COAL CO
56854 PLEASANT RIDGE ROAD
ALLEDONIA OH 43902 US

CLARENCE TURNQUIST
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
2125 TRYON ROAD
ASHTABULA OH 44004 US

CHARLES S HESSE
CHARLES HESSE ASSOCIATES
7777 BAINBRIDGE ROAD
CHAGRIN FALLS OH 44023-2124 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

DANIEL R ELLIOTT III
ASSISTANT GENERAL COUNSEL UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLINTON J MILLER III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CHRISTOPHER C MCCracken
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL
ASHTA CHEMICALS INC
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114-1538 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COPLEY ROAD
AKRON OH 44320 US

DAVID CHAPMAN
LAFARGE LIME OHIO INC
P.O. BOX 128
659 ANDERSON ROAD
WOODVILLE OH 43469-0128 US

ROBERT E GREENLEE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

RON MARQUARDT
LOCAL UNION 1810 UMWA
58659 EILEEN ST.
RAYLAND OH 43943 US

BARBARA O'KEEFE
VILLAGE OF WELLINGTON
115 WILLARD MEMORIAL SQ
WELLINGTON OH 44090 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

C L LITTLE
INTERNATIONAL PRESIDENT UTU
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLARENCE MONIN INTERNATIONAL PRESIDENT
BROTHERHOOD OF LOCOMOTIVE ENGINEERS MEZZANINE
1370 ONTARIO STREET
CLEVELAND OH 44113 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COPLEY ROAD
AKRON OH 44320 US
<table>
<thead>
<tr>
<th>Name</th>
<th>Title/Company</th>
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<tr>
<td>R A Grice</td>
<td>General Chairperson UTU</td>
<td>817 Kilbourne St, Bellevue OH 44811-9431 US</td>
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<tr>
<td>D G Strink Jr</td>
<td>General Chairperson UTU</td>
<td>917 Kilbourne St, Bellevue OH 44811 US</td>
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<tr>
<td>Richard E Kerth</td>
<td>Champion International Corporation</td>
<td>101 Knightsbridge Drive, Hamilton OH 45020-0001 US</td>
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<tr>
<td>Robert Edwards</td>
<td>Eastern Transport and Logistics</td>
<td>1109 Lanette Dr, Cincinnati OH 45230 US</td>
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<tr>
<td>F Ronalds Walker</td>
<td>Citizens Gas &amp; Coke Utility</td>
<td>2020 N Meridian Street, Indianapolis IN 46202-1393 US</td>
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<tr>
<td>Michael Connelly</td>
<td>City of East Chicago</td>
<td>4525 Indianapolis Blvd, East Chicago IN 46312 US</td>
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<tr>
<td>P J. Visclosky</td>
<td>U.S. House of Representatives</td>
<td>215 West 35th Ave, Gary IN 46408 US</td>
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<tr>
<td>Christopher J Burger, President Central Railroad Company of Indianapolis</td>
<td>Po Box 554, Kokomo IN 46903-0554 US</td>
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<tr>
<td>JAMES E Shepherd</td>
<td>Tuscola &amp; Saginaw Bay</td>
<td>Po Box 550, Owosso MI 48867-0550 US</td>
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<tr>
<td>William A Bon, General Counsel Brotherhood of Maintenance of Way Employees</td>
<td>26555 Evergreen Road Suite 200, Southfield MI 48076 JS</td>
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<tr>
<td>James E Shepherd</td>
<td>Tuscola &amp; Saginaw Bay</td>
<td>Po Box 550, Owosso MI 48867-0550 US</td>
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<tr>
<td>Larry B Barnes</td>
<td>Michigan Department of Transportaiton</td>
<td>Po Box 30050, 425 West Ottawa St, Lansing MI 48909 US</td>
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<tr>
<td>Byron D Olsen</td>
<td>Felhaber Larson Fenlon &amp; Vogt PA</td>
<td>601 Second Ave, Minneapolis MN 55401-4302 US</td>
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<tr>
<td>T Scott Bannister</td>
<td>T Scott Bannister and Associates</td>
<td>1300 Des Moines Blvd, Des Moines IA 50309 US</td>
</tr>
<tr>
<td>Gerald J. Vinci</td>
<td>Prairie Group</td>
<td>P.O.Box 1123, Bridgeview IL 60455 US</td>
</tr>
<tr>
<td>Leo J Wasescha</td>
<td>Gold Medal Division - General Mills Operation</td>
<td>P.O.Box 1113, Number One General Mills Boulevard, Minneapolis MN 55440 US</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 20-aug-2001 STB FD 33368 0 CSX CORPORATION AND CSX TRANSPORTATION

MONTY L PARKER SR
CMC STEEL GROUP
P O BOX 911
SEGUIN TX 78156-0911 US

BRAD F HUSTON
CYPRUS AMAX MINERALS
2600 N CENTRAL AVE STE 110
PHOENIX AZ 85004-3012 US

STEPHEN M UTHOFF
CONIGLIO & UTHOFF
60 ELM AVENUE, CONIGLIO PROFESSIONAL BLDG
LONG BEACH CA 90802-4910 US

RICHARD WELSH
NARPO
50-505 GRAND TRAVERSE
LA QUINTA CA 92253 US

JOHN D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

Records: 335
Environmental Condition No. 11 of Appendix Q of Decision No. 89' (Decision No. 89, slip op. at 401-03) requires Applicants, with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that: "Applicants shall certify compliance with this condition within 2 years of the effective date of the Board’s final decision. This condition shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities’ environmental concerns." Environmental Condition No. 11 requires compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of NS, the Board extended the compliance date until August 22, 2001. See Decision No. 167, served on August 22, 2000.

By letter received at the Board on August 3, 2001, NS has requested extensions of the deadline provided for in Environmental Condition No. 11. NS requests a 6-month extension, until February 22, 2002, for rail line segments N-079 (Oak Harbor to Bellevue, OH) and N-085 (Bellevue to Sandusky Dock, OH), and a 9-month extension, until May 22, 2002, for rail line segments N-100 (Riverton Junction to Roanoke, VA) and N-111 (Fola Mine to Deepwater.

In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail’s assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.
WV).\(^2\) NS states that, during the past year, it has continued to consult with the responsible local governments located along these NS rail line segments and those discussions have resulted in negotiated agreements with eight local governments in Indiana, Virginia, and West Virginia.\(^3\)

NS advises that, with respect to its Environmental Condition No. 11 compliance obligations in Ohio, it is in the process of contacting the owners of the structures along rail line segments N-079 and N-085 that are eligible for mitigation and were verified by the Board’s Section of Environmental Analysis (SEA) through a field survey that NS requested.\(^4\) NS states that a 6-month extension to February 22, 2002, would allow it to complete its negotiations with the owners of the eligible structures or to evaluate and implement feasible alternatives to satisfy its mitigation obligations under Environmental Condition No. 11.

Concerning its Environmental Condition No. 11 compliance obligations in Virginia and West Virginia, NS advises that it has entered into Negotiated Agreements with six local governments of communities located along rail line segments N-100 and N-111, is continuing its discussions with some remaining local communities, and will contact the individual owners of structures on these line segments as soon as it receives the proper authorization by other local governments. NS further states that it is awaiting the results of a field survey it requested SEA to conduct concerning the location of receptor locations eligible for noise mitigation under Environmental Condition No. 11 along rail line segment N-100 in Virginia. Also, NS advises that it will continue its discussions with the relevant local governments in Virginia and West Virginia that have not yet decided whether to enter into Negotiated Agreements to address Environmental Condition No. 11. NS states that a 9-month extension to May 22, 2002, would allow it to complete the implementation of Environmental Condition No. 11 through additional Negotiated Agreements with the remaining communities and alternative arrangements with individual property owners to satisfy Environmental Condition No. 11 where appropriate.

\(^2\) In Environmental Condition No. 11, Appendix Q of Decision No. 89 (Decision No. 89, slip op. at 403), the Fola Mine-Deepwater, WV rail line segment was shown as “N-111.” In the August 3, 2001 letter to the Board, NS referred to the Fola Mine-Deepwater, WV rail line segment as “N-101.” Board staff contacted NS about the discrepancy and counsel for NS has confirmed that the correct reference for this rail line segment should have been “N-111.”

\(^3\) According to NS, it has submitted the eight Negotiated Agreements to the Board and the Board has either incorporated said agreements under Environmental Condition No. 51 of Appendix Q of Decision No. 89, or the requests are currently pending before the Board.

\(^4\) NS advises that it has received the necessary governmental concurrence to permit it to contact the owners of the eligible structures verified by SEA, and that, as of July 30, 2001, NS has settled or resolved its Environmental Condition No. 11 mitigation obligations with respect to 89 receptor locations and that only 9 receptor locations remain to be resolved.
The requests for a 6-month extension to February 22, 2002, with respect to rail line segments N-079 and N-085, and a 9-month extension to May 22, 2002, with respect to rail line segments N-100 and N-111 are reasonable and will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The compliance deadline for NS in Environmental Condition No. 11 of Appendix Q of Decision No. 89 is extended 6 months until February 22, 2002, with respect to rail line segments N-079 and N-085, and is extended 9 months until May 22, 2002, with respect to rail line segments N-100 and N-111.

2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary
HUGH H. WELSH
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-0202 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE, INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

SHEILA MECK HYDE
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

IRVING J RUBIN
P O BOX 243
YOUNGSTOWN NY 14174 US

JOHN F COLLINS
COLLINS COLLINS & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

R W GODWIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
810 ABBOTT ROAD SUITE 200
BUFFALO NY 14220 US

ERNEST J IERARDI
NIXON HARGRAVE DEVAN: DOYLE LLP
PO BOX 1051
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

H DOUGLAS MIDKIFF
GENESEE TRANSPORTATION COUNCIL
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

JEANNE WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

HON JERRY A STERN
TWELVE SHERATON DRIVE
ALTOONA PA 16603 US

JOHN J DOLFI
427 ELMHURST DRIVE
BELLE VERNON PA 15012 US

HENRY M WICK, JR.
WICK STREIFF MEYER O'BOYLE SZELIGO
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219-3427 US

JOHN A VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

M E PETRUCCELLI
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

HON JERRY A STERN
TWELVE SHERATON DRIVE
ALTOONA PA 16603 US

08/20/2001
JAMES HOWARD
COALITION OF NORTHEASTERN GOVERNORS
400 NORTH CAPITOL STREET, SUITE 382
WASHINGTON DC 20001 US

CHARLES A SPITULNIK
MCLEOD WATKINSON & MILLER
ONE MASSACHUSETTS AVENUE NW SUITE 800
WASHINGTON DC 20001-1401 US

DONALD F GRIFFIN ASSISTANT GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
10 G STREET NE STE 460
WASHINGTON DC 20002 US

DREW A HARKER
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

WILLIAM A MULLINS
TROUTMAN SANDERS LLP
401 NINTH STREET NW SUITE 1000
WASHINGTON DC 20004 US

PAUL REISTRUP
CSX TRANSPORTATION INC
1331 PENNSYLVANIA NW STE 500
WASHINGTON DC 20004 US

ERIC VON SALZEN
HOGAN & HARTSON
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109 US

DENNIS G LYONS
ARNOLD & PORTER
555 TWELFTH STREET NW, STE 940
WASHINGTON DC 20004-1206 US

DANIEL DUFF
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
1201 NEW YORK AV NW, STE 400
WASHINGTON DC 20005 US

BRUNO MAESTRI
NORFOLK SOUTHERN CORPORATION
1500 K STREET SUITE 375
WASHINGTON DC 20005 US

L JOHN OSBORN
SONNENSchein NATH & ROSENTHAL
1301 K STREET NW STE 600 EAST
WASHINGTON DC 20005 US

TERRENCE D JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US

ROSS B CAPON
NATIONAL ASSOCIATION OF RAILROAD PASSENGERS
900 2ND ST NE SUITE 308
WASHINGTON DC 20002 US

RICHARD G SLATTERY
AMTRAK
50 MASSACHUSETTS AVENUE NW
WASHINGTON DC 20002 US

J MICHAEL HEMMER
COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004 US

DAVID C REEVES
TROUTMAN SANDERS LLP
401 NINTH STREET NW SUITE 1000
WASHINGTON DC 20004 US

GEORGE W MAYO JR
HOGAN & HARTSON LLP
555 THIRTEENTH STREET NW COLUMBIA SQUARE
WASHINGTON DC 20004-1109 US

MARY GABRIELLE SPRAGUE
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004-1202 US

ROBERT A WIMBISH ESQ
HARKINS CUNNINGHAM
801 PENNSYLVANIA AVE NW
WASHINGTON DC 20004-2664 US

LOUIS E GITOMER
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

KARL MORELL
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

ALICE C SAYLOR
AMERICAN SHORT LINE & REGIONAL RAILROAD ASSOCIATION
1120 G STREET NW SUITE 520
WASHINGTON DC 20005 US
<table>
<thead>
<tr>
<th>Name</th>
<th>Firm</th>
<th>Address</th>
<th>City</th>
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<td>DAVID H COBURN</td>
<td>STEPTOE &amp; JOHNSON</td>
<td>1330 CONNECTICUT AVENUE NW</td>
<td>WASHINGTON DC</td>
<td>20036</td>
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</tr>
<tr>
<td>RICHARD S EDELMAN</td>
<td>O'DONELL SCHWARTZ &amp; ANDERSON PC</td>
<td>1900 L STREET NW SUITE 707</td>
<td>WASHINGTON DC</td>
<td>20036</td>
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</tr>
<tr>
<td>JOHN D HEFFNER</td>
<td>REA CROSS &amp; AUCHINCLOSS</td>
<td>1707 L STREET, NW, STE 570</td>
<td>WASHINGTON DC</td>
<td>20036</td>
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</tr>
<tr>
<td>GORDON P MACDOUGALL</td>
<td></td>
<td>1025 CONNECTICUT AVE NW SUITE 410</td>
<td>WASHINGTON DC</td>
<td>20036</td>
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<tr>
<td>CHRISTOPHER A MILLS</td>
<td>SLOVER &amp; LOFTUS</td>
<td>1224 SEVENTEENTH STREET NW</td>
<td>WASHINGTON DC</td>
<td>20036</td>
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<td>HAROLD P QUINN JR</td>
<td>NATIONAL MINING ASSOCIATON</td>
<td>1130 17TH STREET NW</td>
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<td>20036</td>
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<td>FRITZ R KAHN</td>
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<td>1920 N STREET NW 8TH FLOOR</td>
<td>WASHINGTON DC</td>
<td>20036-1601</td>
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<tr>
<td>ROSE-MICHELE WEINRYB</td>
<td>WEINER BRODSKY SIDMAN &amp; KIDER</td>
<td>1300 19TH STREET NW 5TH FLOOR</td>
<td>WASHINGTON DC</td>
<td>20036-1609</td>
<td>US</td>
</tr>
<tr>
<td>TIMOTHY M WALSH</td>
<td>STEPTOE &amp; JOHNSON</td>
<td>1330 CONNECTICUT AVENUE N W</td>
<td>WASHINGTON DC</td>
<td>20036-1795</td>
<td>US</td>
</tr>
<tr>
<td>KEVIN M SHEYS</td>
<td>KIRKPATRICK &amp; LOCKHART LLP</td>
<td>1800 MASSACHUSETTS AVENUE NW 2ND FLOOR</td>
<td>WASHINGTON DC</td>
<td>20036-1800</td>
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<tr>
<td>DEBRA L WILLEN</td>
<td>GUERRIERI EDMOND &amp; CLAYMAN PC</td>
<td>1625 MASSACHUSETTS AVENUE, N.W., STE 700</td>
<td>WASHINGTON DC</td>
<td>20036-2243</td>
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</tr>
<tr>
<td>PAUL D COLEMAN</td>
<td>HOPPEL MAYER &amp; COLEMAN</td>
<td>1000 CONNECTICUT AVENUE NW SUITE 400</td>
<td>WASHINGTON DC</td>
<td>20036</td>
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</tr>
<tr>
<td>PETER A GREENE</td>
<td>THOMPSON HINE FLORY</td>
<td>1920 N STREET N W SUITE 800</td>
<td>WASHINGTON DC</td>
<td>20036</td>
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<tr>
<td>PAUL H LAMBOLEY</td>
<td></td>
<td>1717 N STREET NW</td>
<td>WASHINGTON DC</td>
<td>20036</td>
<td>0</td>
</tr>
<tr>
<td>WILLIAM G. MAHONEY</td>
<td>HIGHSAW, MAHONEY &amp; CLARKE</td>
<td>1050 SEVENTEENTH STREET NW SUITE 210</td>
<td>WASHINGTON DC</td>
<td>20036</td>
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</tr>
<tr>
<td>KEITH G O'BRIEN</td>
<td>REA CROSS AND AUCHINCLOSS</td>
<td>1707 L STREET NW STE 570</td>
<td>WASHINGTON DC</td>
<td>20036</td>
<td>0</td>
</tr>
<tr>
<td>NICHOLAS J DIMICHAEL</td>
<td>THOMPSON HINE LLP</td>
<td>1920 N STREET NW STE 800</td>
<td>WASHINGTON DC</td>
<td>20036-1601</td>
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</tr>
<tr>
<td>FREDERIC L WOOD</td>
<td>THOMPSON HINE LLP</td>
<td>1920 N STREET</td>
<td>WASHINGTON DC</td>
<td>20036-1601</td>
<td>US</td>
</tr>
<tr>
<td>SAMUEL M SIPE JR</td>
<td>STEPTOE &amp; JOHNSON LLP</td>
<td>1330 CONNECTICUT AVENUE N W</td>
<td>WASHINGTON DC</td>
<td>20036-1795</td>
<td>US</td>
</tr>
<tr>
<td>EDWARD J FISHMAN</td>
<td>KIRKPATRICK &amp; LOCKHART LLP</td>
<td>1800 MASSACHUSETTS AVENUE, N.W., 2ND FLOOR</td>
<td>WASHINGTON DC</td>
<td>20036-1800</td>
<td>US</td>
</tr>
<tr>
<td>JOSEPH GUERRIERI, JR.</td>
<td>GUERRIERI, EDMOND &amp; CLAYMAN, PC</td>
<td>1625 MASSACHUSETTS AVE., NW, STE 700</td>
<td>WASHINGTON DC</td>
<td>20036-2243</td>
<td>US</td>
</tr>
<tr>
<td>DONALD G AVERY</td>
<td>SLOVER &amp; LOFTUS</td>
<td>1224 SEVENTEENTH STREET NW</td>
<td>WASHINGTON DC</td>
<td>20036-3003</td>
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</tr>
</tbody>
</table>
SERVICE LIST FOR: 20-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

HON MIKE DEWINE
UNITED STATES SENATE
WASHINGTON DC 20510-3503 US

HON RICK SANTORUM
UNITED STATES SENATE
WASHINGTON DC 20510-3804 US

HON JACK REED
U S SENATE
WASHINGTON DC 20510-3903 US

HON GARY ACKERMAN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. ED BRYANT
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BOB CLEMENT
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE DANNY K DAVIS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. JOHN J. DUNCAN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PAUL E. GILLMOR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE LUIS GUTIERREZ
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JESSE L. JACKSON, JR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON AMER SPECTER
UNITED STATES SENATE
WASHINGTON DC 20510-3802 US

HONORABLE JOHN H. CHAFEE
UNITED STATES SENATE
WASHINGTON DC 20510-3902 US

HONORABLE ROBERT BYRD
UNITED STATES SENATE
WASHINGTON DC 20510-6025 US

HON SHERROD BROWN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE SAXBY CHAMBLISS,
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. WILLIAM J. COYNE
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MIKE DOYLE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ELIOT ENGEL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BENJAMIN A. GILMAN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MAURICE HINCHEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NANCY JOHNSON
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

08/20/2001
SERVICE LIST FOR: 20-aug-2001 STB FD 33388 0
CSX CORPORATION AND CSX TRANSPORTATION

HON MARCY KAPTUR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JOHN J LAFALCE
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. WILLIAM O. LIPINSKI
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CAROLYN B MALONEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE FRANK MARCARA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. ROBERT MENENDEZ
U S HOUSE OF REPRESENTATIVES
WASH DC 20515 US

HONORABLE ROBERT W. NEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MAJOR R. OWENS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CHARLES RANGEL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON THOMAS C SAWYER
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. BUD SHUSTER
ATTN: MIKE RICK
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON DENNIS J KUCINICH
UNITED STATES HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HON. STEVE LATOURETTE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NITA LOWEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JAMES MALONEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MICHAEL MCNULTY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JERROLD NADLER
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. JAMES L. OBERSTAR
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CHIP PICKERING
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON RALPH REGULA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CHRISTOPHER SHAYS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BILL SHUSTER
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US
SERVICE LIST FOR: 20-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

HON LOUISE M SLAUGHTER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON ED TOWNS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NYDIA M VELAZQUEZ
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ROD R BLAGOJEVICH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1305 US

HONORABLE JAMES A. BARCIA
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2205 US

HONORABLE JACK QUINN
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3230 US

HONORABLE TOM DAVIS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4611 US

MICHAEL P HARMONIS
DEPARTMENT OF JUSTICE
325 SEVENTH STREET, NW
WASHINGTON DC 20530 US

JOSEPH R POMPONIO
FEDERAL RAILROAD ADMINISTRATION
400 SEVENTH STREET SW RCC-20
WASHINGTON DC 20590 US

DAVID G ABRAMAH
SUITE 400W
7315 WISCONSIN AVENUE
BETHESDA MD 20814 US

JOHN M ROBINSON
ATTORNEY AT LAW
9616 OLD SPRING ROAD
KENSINGTON MD 20895-3124 US

HONORABLE TED STRICKLAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JAMES TRAFFICANT JR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PETER J. VISCLOSKEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JULIA CARSON
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1410 US

HONORABLE JOHN D. DINGELL
2328 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON DC 20515-2216 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

HONORABLE BOBBY L. RUSH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-9997 US

JOLENE MOLITORIS, ADMN.
FEDERAL RAILROAD ADMNS.
400 7TH STREET SW
WASHINGTON DC 20590 US

PAUL SAMUEL SMITH
US DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET SW ROOM 4102 C-30
WASHINGTON DC 20590 US

MITCHELL M KRAUS, GENERAL COUNSEL
TRANSPORTATION COMMUNICATIONS INTERNATIONAL U
3 RESEARCH PLACE
ROCKVILLE MD 20850-3279 US

WILLIAM W WHITEHURST JR
W W WHITEHURST & ASSOCIATES INC
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030-1711 US

08/20/2001
SERVICE LIST FOR: 20-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION UNION

JOHN HOY
P O BOX 117
GLEN BURNIE MD 21060 US

ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

LINDA A JANELY J D
MARYLAND OFFICE OF PLANNING
301 WEST PRESTON STREET
BALTIMORE MD 21201-2365 US

CHARLES M CHADWICK
MARYLAND MIDLAND RAILWAY INC
P O BOX 1000
UNION BRIDGE MD 21791 US

PETER Q NYCE JR
U S DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

THOMAS E SCHICK
AMERICAN CHEMISTRY COUNCIL
1300 WILSON BOULEVARD
ARLINGTON VA 22209 US

WILLIAM P. JACKSON, JR.
JACKSON & JESSUP, P. C.
P O BOX 1240
3426 NORTH WASHINGTON BLVD
ARLINGTON VA 22210 US

FRANCIS G MCKENNA
ANDERSON & PENDLETON
206 N WASHINGTON STREET SUITE 330
ALEXANDRIA VA 22314 US

KENNETH E SIEGEL
AMERICAN TRUCKING ASSOC INC
2200 MILL ROAD
ALEXANDRIA VA 22314-4677 US

ROBERT E MARTINEZ
VA SECRETARY OF TRANSPORTATION
P. O. BOX 1475
RICHMOND VA 23218 US

MICHAEL J RUEHLING
CSX CORPORATION
ONE JAMES CENTER
RICHMOND VA 23219 US

JOHN W SNOW
CHAIRMAN PRESIDENT AND CHIEF EXECUTIVE OFFICER
P O BOX 85629
RICHMOND VA 23285-5629 US

GEORGE A ASPATORE GENERAL SOLICITOR - REGULATORY
NORFOLK SOUTHERN RAILWAY COMPANY
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

PARKERSON B MAQUILLING
NORFOLK SOUTHERN CORPORATION
THREE COMMERCIAL PLACE, LAW DEPT
NORFOLK VA 23510 US

DAVID A SHELTON
NORFOLK SOUTHERN
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

JAMES A HIXON
SENIOR VICE PRESIDENT EMPLOYEE RELATIONS NOR
THREE COMMERCIAL PLACE
NORFPOLK VA 23510-2191 US

L P KING JR
GENERAL CHAIRPERSON UTU
145 CAMPBELL AVE SW STE 207
ROANOKE VA 24011 US

HONORABLE JOHN WARNER
UNITED STATES SENATE
235 FEDERAL BUILDING
ABINGDON VA 24210-0887 US

VAUGHN R GROVES
PITTSTON COAL COMPANY
PO BOX 5100
LEBANON VA 24266 US

TERRELL ELLIS
CAEZWV
P O BOX 176
CLAY WV 25043 US

R K SARGENT
GENERAL CHAIRPERSON UTU
1319 CHESTNUT STREET
KENOVA WV 25530 US

SCOTT M SAYLOR
NORTH CAROLINA RAILROAD COMPANY
3200 ATLANTIC AV STE 110
RALIEGH NC 27604-1640 US
SERVICE LIST FOR: 20-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

E NORRIS TOLSON
NC DEPT OF TRANSPORTATION
P O BOX 25201
1 S. WILINGTON STREET
RALEIGH NC 27611 US

HONORABLE DAVID M BEASLEY
GOVERNOR
P. O. BOX 11369
COLUMBIA SC 29211 US

J RANDALL EVANS
500 WATER STREET (J150)
JACKSONVILLE FL 32202 US

J H CLARK
UTU, GENERAL CHAIRPERSON
441 NORTH LOUISIAN AVENUE, SUITE Q
ASHEVILLE NC 28806 US

FRED R BIRKHOHLZ
CSX TRANSPORTATION LAW DEPT - J-150
500 WATER STREET
JACKSONVILLE FL 32202 US

CARL A GERHARDSTEIN
CSX TRANSPORTATION RISK MGMT
500 WATER STREET-J275
JACKSONVILLE FL 32202 US

PAUL R. HITCHCOCK
CSX TRANSPORTATION LAW DEPARTMENT
500 WATER STREET SC J-150
JACKSONVILLE FL 32202 US

CHARLES M ROSENBERGER
CSX TRANSPORTATION
500 WATER STREET - J150
JACKSONVILLE FL 32202 US

J L RODGERS
GENERAL CHAIRMAN UTU
9550 REGENCY SQUARE BLVD #904
JACKSONVILLE FL 32225-8177 US

JAMES J KEENAN
ANCHOR GLASS CONTAINER CORPORATION
4343 ANCHOR PLAZA PARKWAY
TAMPA FL 33634 US

WILLIAM L OSTEEN
ASSOCIATE GENERAL COUNSEL TVA
400 WEST SUMMIT HILL DRIVE
KNOXVILLE TN 37902 US

HONORABLE KIRK FORDICE, GOVERNOR
STATE OF MISSISSIPPI
P O BOX 139
JACKSON MS 39205 US

THOMAS M O'LEARY
OHIO RAIL DEVELOPMENT COMMISSION
50 W BROAD STREET 15TH FLOOR
COLUMBUS OH 43215 US

DOREEN C JOHNSON, CHIEF ANTITRUST SECTION
OHIO ATTY GENERAL OFFICE
140 EAST TOWN STREET, FIRST FLOOR
COLUMBUS OH 43215-6001 US
SERVICE LIST FOR: 20-aug-2001 STB FD 33388 0  CSX CORPORATION AND CSX TRANSPORTATION

JAMES R JACOBS  
JACOBS INDUSTRIES  
2 QUARRY LANE  
STONY RIDGE OH 43463 US

DAVID CHAPMAN  
LAFARGE LIME OHIO INC  
P O BOX 128  
659 ANDERSON ROAD  
WOODBVILLE OH 43169-0128 US

ROBERT J COOPER  
GENERAL CHAIRPERSON UTU  
385 COMMODORE WAY APT 9  
PERRYSBURG OH 43551-2784 US

ROBERT E GREENLESE  
TOLEDO-LUCAS COUNTY PORT AUTHORITY  
1 MARITIME PLAZA SUITE 700  
TOLEDO OH 43604 US

JACOBS INDUSTRIES  
2 QUARRY LANE  
STONY RIDGE OH 43463 US

ROBERT E MURRAY  
OHIO VALLEY COAL CO  
56854 PLEASANT RIDGE ROAD  
ALLEDONIA OH 43902 US

RON MARQUARDT  
LOCAL UNION 1810 UNWA  
58659 EILEEN ST.  
RAYLAND OH 43943 US

CLARENCE TURNQUIST  
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION  
2125 TRYON ROAD  
ASHTABULA OH 44004 US

MAYOR VINCENT M URBIN  
150 AVON BELEDEN RD  
AVON LAKE OH 44012 US

CHARLES S HESSE  
CHARLES HESSE ASSOCIATES  
7777 BAINBRIDGE ROAD  
CUYAHOGA FALLS OH 44023-2124 US

BARBARA O'KEEFE  
VILLAGE OF WELLINGTON  
115 WILLARD MEMORIAL SQ  
WELLINGTON OH 44090 US

ANITA R BRINDZA  
THE ONE FIFTEEN HUNDRED BUILDING  
11500 FRANKLIN BLVD SUITE 104  
CLEVELAND OH 44102 US

COLETTA MCNAMEE SR  
CUDELL IMPROVEMENT INC  
11500 FRANKLIN BLVD STE 104  
CLEVELAND OH 44102 US

DANIEL R ELLIOTT III  
ASST GENERAL COUNSEL UNITED TRANSPORTATION UNION  
14600 DETROIT AVENUE  
CLEVELAND OH 44107-4250 US

C L LITTLE  
INTERNATIONAL PRESIDENT UTU  
14600 DETROIT AVENUE  
CLEVELAND OH 44107-4250 US

CLINTON J MILLER III  
UNITED TRANSPORTATION UNION  
14600 DETROIT AVENUE  
CLEVELAND OH 44107-4250 US

CLARENCE MONIN INTERNATIONAL PRES  
BROTHERHOOD OF LOCOMTIVE ENGINEERS MEZZANINE  
1370 ONTARIO STREET  
CLEVELAND OH 44113 US

CHRISTOPHER C MCCracken  
ULMER & BERNE LLP  
1300 EAST NINTH STREET SUITE 900  
CLEVELAND OH 44114 US

DAVID ROLOFF  
GOLDSTEIN & ROLOFF  
526 SUPERIOR AVENUE EAST SUITE 1440  
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL  
ASHTA CHEMICALS INC  
1300 EAST NINTH STREET SUITE 900  
CLEVELAND OH 44114-1538 US

CHARLES ZUMKEHR  
ROETZEL & ANDRESS CO LPA  
75 EAST MARKET STREET  
AKRON OH 44308 US

SYLVIA R. CHINN-LEVY  
NEFLO  
969 COOLEY ROAD  
AKRON OH 44320 US

CHARLES E ALLENBAUGH JR  
EAST OHIO STONE COMPANY  
2000 W BESSON ST  
ALLIANCE OH 44601 US

08/20/2001
SERVICE LIST FOR: 20-aug-2001 STB FD 33388 0

CSX CORPORATION AND CSX TRANSPORTATION

R ANDALL C. HUNT
KRUGLIACK, WILKINS, GRIFFITHS & DOUGHERTY CO.
P O BOX 25963
4775 MUNSON ST NW
CANTON OH 44735-6963 US

R A GRICE
GENERAL CHAIRPERSON UTU
817 KILBOURNE ST
BELLEVUE OH 44811-9431 US

FAY D DUPUIS
CITY OF CINCINNATI
801 PLUM STREET
CINCINNATI OH 45202 US

THOMAS R RYDMAN
INDIAN CREEK RAILROAD COMPANY
3905 W 600 NORTH
ANDERSON IN 46011 US

J PATRICK LATZ
HEAVY LIFT CARGO SYSTEM
PO BOX 51451
INDIANAPOLIS IN 46251-0451 US

HAMILTON L CARMouCHE, CORPORATION COUNSEL
CITY OF GARY
401 BROADWAY 4TH FLOOR
GARY IN 46402 US

CARL FELLER
PO BOX 758
WATERLOO IN 46793-0758 US

WILLIAM A BON, GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
26555 EVERGREEN ROAD SUITE 200
SOUTHFIELD MI 48076 US

LARRY B KARNES
MICHIGAN DEPARTMENT OF TRANSPORTATION
PO BOX 30050
425 WEST OTTAWA STREET
LANSING MI 48909 US

T SCOTT BANNISTER
T SCOTT BANNISTER AND ASSOCIATES
1300 DES MOINES BLDG 405 SIXTH AVENUE
DES MOINES IA 50309 US

LEO J WASESCHA
GOLD MEDAL DIVISION - GENERAL MILLS OPERATION
P O BOX 1113
NUMBER ONE GENERAL MILLS BULLEVAR
MINNEAPOLIS MN 55440 US

D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

RICHARD E KERTH
CHAMPION INTERNATIONAL CORPORATION
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LANETTE DRIVE
CINCINNATI OH 45230 US

F RONALDS WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIDIAN STREET
INDIANAPOLIS IN 46202-1393 US

MICHAEL CONNELLY
CITY OF EAST CHICAGO
4525 INDIANAPOLIS BLVD
EAST CHICAGO IN 46312 US

HONORABLE PETER J. VISCLOSKY
U. S. HOUSE OF REPRESENTATIVES
215 WEST 35TH AVENUE
GARY IN 46408 US

CHRISTOPHER J BURGER, PRESIDENT
CENTRAL RAILROAD COMPANY OF INDIANAPOLIS
PO BOX 554
KOKOMO IN 46903-0554 US

JAMES E SHEPHERD
TUSCOLA & SAGINAW BAY
PO BOX 550
OWOSSO MI 48867-0550 US

HON JOHN ENGLER
OFFICE OF THE GOVERNOR
P O BOX 30013
LANSING MI 48933 US

BYRON D OLSEN
FELHABER LARSON FENLON & VOGT PA
601 SECOND AVENUE SOUTH SUITE 4200
MINNEAPOLIS MN 55401-4302 US

GERALD J. VINCI
PRAIRIE GROUP
P. O. BOX 1123
7601 WEST 79TH STREET
BRIDGEVIEW IL 60455 US

08/20/2001 Page 14
Monty L Parker Sr  
CMC Steel Group  
P.O. Box 911  
Seguin, TX 78156-0911 US

Stephen M Uttoff  
Coniglio & Uttoff  
60 Elm Avenue, Coniglio Professional Bldg  
Long Beach, CA 90802-4910 US

Brad F Huston  
Cyprus Amax Minerals  
2600 N Central Ave Ste 110  
Phoenix, AZ 85004-3012 US

Richard Welsh  
NARPO  
50-505 Grand Traverse  
La Quinta, CA 92253 US

John D Fitzgerald  
UTU, General Chairperson  
400 E Evergreen Blvd Ste 217  
Vancouver, WA 98660-3264 US

Records: 335
Environmental Condition No. 11 of Appendix Q of Decision No. 891 (Decision No. 89, slip op. at 401-03) requires Applicants, with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that: "Applicants shall certify compliance with this condition within 2 years of the effective date of the Board’s final decision. This condition shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities’ environmental concerns."2

On May 24, 2001, NS provided us with a copy of a Negotiated Agreement between NS and Nicholas County, WV, dated May 3, 2001, and accepted by Nicholas County on May 16, 2001. According to NS, this Negotiated Agreement effectuates the Board’s preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. NS requests that Environmental Condition No. 11 be amended to reflect the parties’ Negotiated Agreement by

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1 In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail’s assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

2 Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of NS, by decision served on August 22, 2000, the compliance deadline in Environmental Condition No. 11 was extended 1 year until August 22, 2001, to allow NS to complete implementation of the condition through additional negotiated solutions with communities and an individualized noise mitigation program.
deleting the Nicholas County receptor from the receptors identified on the Fola Mine, WV, to Deepwater, WV line segment (N-111), and that the Negotiated Agreement between NS and Nicholas County be added to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires NS to comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. See Decision No. 89, slip op. at 420-21. Nicholas County concurs with the request.

In view of the Negotiated Agreement between NS and Nicholas County, WV, we will:
(1) add the Negotiated Agreement to Environmental Condition No. 51 of Appendix Q of Decision No. 89; and (2) amend Environmental Condition No. 11 of Appendix Q of Decision No. 89 to delete the receptor in Nicholas County from the receptors identified on the Fola Mine-Deepwater, WV line segment because the noise mitigation for that community has been superseded by the NS/Nicholas County Negotiated Agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. In accordance with the Negotiated Agreement between NS and Nicholas County, WV, dated May 3, 2001, and accepted by Nicholas County on May 16, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:


3. In addition, Environmental Condition No. 11 of Appendix Q of Decision No. 89 is amended to delete the receptor in Nicholas County from the receptors identified on the Fola Mine-Deepwater, WV line segment because the noise mitigation for that community has been superseded by the Negotiated Agreement.

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Environmental Condition No. 11 does not specifically reference Nicholas County. However, the noise receptor in Nicholas County is located outside the incorporated limits of the Town of Gauley Bridge, near Summersville. Accordingly, NS negotiated a separate agreement with Nicholas County. The Negotiated Agreement between NS and the Town of Gauley Bridge was addressed in Decision No. 190, served on July 6, 2001.
4. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 00 CSX CORPORATION AND CSX TRANSPORTATION

HUGH H. WELSH
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-0202 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE, INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

SHEILA MECK HYDE
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

IRVING J RUBIN
P O BOX 243
YOUNGSTOWN NY 14174 US

JOHN F COLLINS
COLLINS COLLINS & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

R W GODWIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
810 ABBOTT ROAD SUITE 200
BUFFALO NY 14220 US

ERNST J IERARDI
NIXON HARGRAVE DEVANS DOYLE LLP
PO BOX 1051
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

H DOUGLAS MIDKIFF
GENESEE TRANSPORTATION COUNCIL
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

JEANNE WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

DAVID W. DONLEY
3361 STAFFORD ST
PITTSBURGH PA 15204-1441 US

JOHN A VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

HENRY M WICK, JR.
WICK STREIFF MEYER O'BOYLE SZELIGO
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219-3427 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

M E PETRUCELLI
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

RICHARD R WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

HON JERRY A STERN
P O BOX 2023
TWO SHERATON DRIVE
ALTOONA PA 16603 US

D W DUNLEVY
STATE LEGISLATIVE DIRECTOR UTU
230 STATE STREET PA AFL-CIO BLDG 2ND FLOOR
HARRISBURG PA 17101 US
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0
CSX CORPORATION AND CSX TRANSPORTATION

MARK FILIPOVIC
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

CONSTANCE A SADLER
SIDLEY & AUSTIN BROWN & WOOD
1722 EYE STREET NW
WASHINGTON DC 20006 US

JAMES R WEISS
PRESTON GATES ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

SCOTT M ZIMMERMAN
ZUCKERT SCOUTT & RASENBERGER LLP
888 SEVENTEENTH STREET NW
WASHINGTON DC 20006 US

RICHARD A ALLEN
ZUCKERT SCOUTT & RASENBERGER LLP
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3309 US

RACHEL DANISH CAMPBELL
FOLEY & LARDNER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006-4103 US

JOHN H BROADLEY
JOHN H BROADLEY & ASSOCIATES PC
1054 31ST STREET NW SUITE 200
WASHINGTON DC 20007 US

DAVID K MONROE
GALLAND KARASH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY FIRST STREET NW STE 200
WASHINGTON DC 20007 US

S. LEE STONE
PATTON BOOGS
2550 M STREET NW
WASHINGTON DC 20007 US

MICHAEL F MCBRIDE
LEBOEUF LAMB GREENE & MACRAE
1875 CONNECTICUT AVENUE NW
WASHINGTON DC 20009-5728 US

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20036 US

ANDREW R. PLUMP
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 17TH ST., NW, STE. 600
WASHINGTON DC 20006 US

ROBERT P VOM EIGEN
FOLEY & LARDNER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

EDWARD WYTKIND EXECUTIVE DIRECTOR
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

WILLIAM W MILLAR
AMERICAN PUBLIC TRANSIT ASSOCIATION
1666 K STREET NW
WASHINGTON DC 20006-1215 US

JOHN V EDWARDS, ESQ
ZUCKERT SCOUTT ET AL
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL AFFAI
CORN REFINERS ASSOC
1701 PA AV NW
WASHINGTON DC 20006-5805 US

PAUL M DONOVAN
LAROE WINN MOERMAN & DONOVAN
3900 HIGHWOOD COURT NW
WASHINGTON DC 20007 US

CHRISTOPHER C O'HARA
BRICKFIELD BURCHETTE RITTTS PC
1025 THOMAS JEFFERSON ST NW EIGHTH FLOOR
WASHINGTON DC 20007 US

EDWARD D GREENBERG
GALLAND KARASH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY-FIRST STREET NW STE 200
WASHINGTON DC 20007-4492 US

KARYN A BOOTH
THOMPSON HINE & FLORY LLP
1920 N STREET, NW & FLORY LLP
WASHINGTON DC 20036 US

PAUL D COLEMAN
HOPPEL MAYER & COLEMAN
1000 CONNECTICUT AVENUE NW SUITE 400
WASHINGTON DC 20036 US

08/03/2001
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

JOHN M CUTCLE JR
MCARTHY SWEENEY HARKAWAY PC
2175 K STREET NW
WASHINGTON DC 20037 US

STEFAN J KALISH
MCARTHY SWEENEY & HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

JOHN L OBERDORFER
PATTON BOGGS LLP
2550 M ST NW
WASHINGTON DC 20037-1301 US

EILEEN S STOMMES
U S DEPARTMENT OF AGRICULTURE
P O BOX 96456 ROOM 4006-SOUTH BUILDING
WASHINGTON DC 20090-6456 US

JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
WASHINGTON DC 20426 US

HON. JOSEPH BIDEN, JR.
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON BYRN L DORGAN
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. JOSEPH I LIEBERMAN
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. BARBARA A. MIKULSKI
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. JOHN W. WARNER
US SENATE
WASHINGTON DC 20510-0001 US

HON MIKE DEWINE
UNITED STATES SENATE
WASHINGTON DC 20510-3503 US

ANDREW P GOLDSTEIN
MCARTHY SWEENEY & HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

DANIEL J SWEENEY
MCARTHY SWEENEY & HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

KEITH A KLINDEWORTH
U S DEPT OF AGRICULTURE
P O BOX 96456
WASHINGTON DC 20090 US

MICHAEL V DUNN
RM 228W JAMIE L WHITTEN FEDERAL BLDG
WASHINGTON DC 20250 US

EILEEN S STOMMES
U S DEPARTMENT OF AGRICULTURE
P O BOX 96456 ROOM 4006-SOUTH BUILDING
WASHINGTON DC 20090-6456 US

JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
WASHINGTON DC 20426 US

HON. JOSEPH BIDEN, JR.
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE JOHN BREAUX
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE BOB GRAHAM
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE RICHARD LUGAR
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON CHARLES E SCHUMER
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON CHRISTOPHER J DODD
UNITED STATES SENATE
WASHINGTON DC 20510-0702 US

HON ARLEN SPECTER
UNITED STATES SENATE
WASHINGTON DC 20510-3802 US

08/03/2001
<table>
<thead>
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<td>Honorable Paul E. Gillmor</td>
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<td>Hon Marcy Kaptur</td>
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<thead>
<tr>
<th>Name</th>
<th>Office</th>
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<tr>
<td>HONORABLE JOHN J. LAFALCE</td>
<td>U.S. House of</td>
<td>Washington, DC 20515, US</td>
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<tr>
<td>HON. STEVE LATOURETTE</td>
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<td>HON. WILLIAM O. LIPINSKI</td>
<td>U.S. House of</td>
<td>Washington, DC 20515, US</td>
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<td>HON NITA LOWE</td>
<td>Representatives</td>
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<td>HON CAROLYN B. MALONEY</td>
<td>U.S. House of</td>
<td>Washington, DC 20515, US</td>
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<td>HONORABLE JAMES MALONEY</td>
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<td>HONORABLE FRANK MASCARA</td>
<td>U.S. House of</td>
<td>Washington, DC 20515, US</td>
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<td>Representatives</td>
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<td>HON. ROBERT MENENDEZ</td>
<td>U.S. House of</td>
<td>Washington, DC 20515, US</td>
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<td>HON JERROLD NADLER</td>
<td>Representatives</td>
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<td>HONORABLE ROBERT W. NEY</td>
<td>U.S. House of</td>
<td>Washington, DC 20515, US</td>
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<tr>
<td>HON. JAMES L. OBERSTAR</td>
<td>Representatives</td>
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<tr>
<td>HONORABLE MAJOR R. OWENS</td>
<td>United States House</td>
<td>Washington, DC 20515, US</td>
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<tr>
<td>HONORABLE CHIP PICKERING</td>
<td>U.S. House of</td>
<td>Washington, DC 20515, US</td>
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<tr>
<td>HON CHARLES RANGEL</td>
<td>U.S. House of</td>
<td>Washington, DC 20515, US</td>
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<tr>
<td>HON RALPH REGULA</td>
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<tr>
<td>HON CHRISTOPHER SHAYS</td>
<td>Representatives</td>
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<tr>
<td>HON. BUD SHUSTER</td>
<td>Attn: Mike Rick</td>
<td>U.S. House of Representatives</td>
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<tr>
<td>HONORABLE BILL SHUSTER</td>
<td>U.S. House of</td>
<td>Washington, DC 20515, US</td>
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<tr>
<td>HON LOUISE M. SLAUGHTER</td>
<td>U.S. House of</td>
<td>Washington, DC 20515, US</td>
</tr>
<tr>
<td>HONORABLE TED STRICKLAND</td>
<td>Representatives</td>
<td></td>
</tr>
</tbody>
</table>

08/03/2001
SERVICE LIST FOR: 03-aug-2001 'TB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

HON ED TOWNS
U. S. HOUSE OR REPRESENTATIVES
WASHINGTON DC 20515 US

HON NYDIA M VELAZQUEZ
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ROD R BLAGOJEVICH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1305 US

HONORABLE JAMES A. BARCIA
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2205 US

HONORABLE JACK QUINN
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3230 US

HONORABLE TOM DAVIS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4611 US

MICHAEL P HARMONIS
DEPARTMENT OF JUSTICE
325 SEVENTH STREET, NW
WASHINGTON DC 20530 US

JOSEPH R POMPONTO
FEDERAL RAILROAD ADMINISTRATION
400 SEVENTH STREET SW RCC-20
WASHINGTON DC 20590 US

DAVID G ABRAHAM
SUITE 400W
7315 WISCONSIN AVENUE
BETHESDA MD 20814 US

JOHN M ROBINSON
9616 OLD SPRING ROAD
KENNINGTON MD 20895-3124 US

JOHN HOY
P O BOX 117
GLEN BURNIE MD 21060 US

HON JAMES TRAFICANT JR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PETER J. VISCLOSKY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JULIA CARSON
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1410 US

HONORABLE JOHN D. DINGELL
2328 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON DC 20515-2216 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

HONORABLE BOBBY L. RUSH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-9997 US

JOLENE MOLITORIS, ADMN.
FEDERAL RAILROAD ADMNS.
400 7TH STREET SW
WASHINGTON DC 20590 US

PAUL SAMUEL SMITH
US DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET SW ROOM 4102 C-30
WASHINGTON DC 20590 US

MITCHELL M KRAUS, GENERAL COUNSEL
TRANSPORTATION COMMUNICATIONS INTERNATIONAL U
3 RESEARCH PLACE
ROCKVILLE MD 20850-3279 US

WILLIAM W WHITEHURST JR
W W WHITEHURST & ASSOCIATES INC
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030-1711 US

ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

08/03/2001
HONORABLE DAVID M BEASLEY  
GOVERNOR  
P. O. BOX 11369  
COLUMBIA SC 29211 US

J RANDALL EVANS  
500 WATER STREET (J150)  
JACKSONVILLE FL 32202 US

BOB HAULTER  
CSX TRANSPORTATION INC  
500 WATER STREET (J120)  
JACKSONVILLE FL 32202 US

JOHN W. HUMES, JR.  
CSX TRANSPORTATION  
SPEED CODE J-150  
500 WATER STREET  
JACKSONVILLE FL 32202 US

T J STEPHENSON  
CSX TRANSPORTATION INC  
500 WATER STREET (J407)  
JACKSONVILLE FL 32202 US

PHILLIP L BELL  
ERIE LACKAWANNA RAILROAD CO  
PO BOX 1482  
TALLAHASSEE FL 32302 US

JAMES L BELCHER  
EASTMAN CHEMICAL COMPANY  
PO BOX 431  
KINGSPORT TN 37662 US

PHILIP SIDO  
UNION CAMP CORPORATION  
6400 POPLAR AVE  
MEMPHIS TN 38197-0100 US

HONORABLE PAUL E. PATTON  
GOVERNOR  
700 CAPITOL AVENUE, STE. 100  
FRANKFORT KY 40601 US

HONORABLE DEBORAH PRYCE  
U. S. HOUSE OF REPRESENTATIVES  
500 SOUTH FRONT STREET, ROOM 1130  
COLUMBUS OH 43215 US

JAMES R JACOBS  
JACOBS INDUSTRIES  
2 QUARRY LANE  
STONY RIDGE OH 43463 US

FRED R BIRKHOlz  
CSX TRANSPORTATION LAW DEPT - J-150  
500 WATER STREET  
JACKSONVILLE FL 32202 US

CARL A GERHA "STEIN  
CSX TRANSPORTATION RISK MGMT  
500 WATER STREET-J275  
JACKSONVILLE FL 32202 US

PAUL R. HITCHCOCK  
CSX TRANSPORTATION LAW DEPARTMENT  
500 WATER STREET SC J-150  
JACKSONVILLE FL 32202 US

CHARLES M ROSENBERGER  
CSX TRANSPORTATION  
500 WATER STREET - J150  
JACKSONVILLE FL 32202 US

J L RODGERS  
GENERAL CHAIRMAN UTU  
9550 PEGENCY SQUARE BLVD #904  
JACKSONVILLE FL 32225-8177 US

JAMES J KEENAN  
ANCHOR GLAS CONTAINER CORPORATION  
4343 ANCHOR PLAZA PARKWAY  
TAMPA FL 33634 US

WILLIAM L OSTEEN  
ASSOCIATE GENERAL COUNSEL TVA  
400 WEST SUMMIT HILL DRIVE  
KNOXVILLE TN 37902 US

HONORABLE KIRK FORDICE, GOVERNOR  
STATE OF MISSISSIPPI  
P O BOX 139  
JACKSON MS 39205 US

THOMAS M O'LEARY  
OHIO RAIL DEVELOPMENT COMMISSION  
50 W BROAD STREET 15TH FLOOR  
COLUMBUS OH 43215 US

DOREEN C JOHNSON, CHIEF ANTITRUST SECTION  
OHIO ATTORNEY GENERAL OFFICE  
140 EAST TOWN STREET, FIRST FLOOR  
COLUMBUS OH 43215-6001 US

DAVID CHAPMAN  
LAFARGE LIME OHIO INC  
P O BOX 128  
659 ANDERSON ROAD  
WOODVILLE OH 43469-0128 US

08/03/2001
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0  CSX CORPORATION AND CSX TRANSPORTATION

ROBERT J COOPER
GENERAL CHAIRPERSON UTU
385 COMMODORE WAY APT 9
PERRYSBURG OH 43551-2784 US

ROBERT E MURRAY
OHIO VALLEY COAL CO
56854 PLEASANT RIDGE ROAD
ALLEDONIA OH 43902 US

CLARENCE TURNQUIST
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
2125 TRYON ROAD
ASHTABULA OH 44004 US

CHARLES S HESSE
CHARLES HESSE ASSOCIATES
7777 BAINBRIDGE ROAD
CHAGRIN FALLS OH 44023-2124 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

DANIEL R ELLIOTT III
ASST GENERAL COUNSEL UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLINTON J MILLER III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CHRISTOPHER C MCCracken
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL
ASHTA CHEMICALS INC
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114-1538 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COLEY ROAD
AKRON OH 44320 US

RANDALL C. HUNT
KRUGLIANK, WILKINS, GRIFFITHS & DOUGHERTY CO.
P O BOX 36963
4775 MUNSON ST NW
CANTON OH 44735-6963 US

ROBERT E GREENLESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

RON MARQUARDT
LOCAL UNION 1810 UMWA
58659 EILEEN ST.
RAYLAND OH 43943 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

BARBARA O'KEEFE
VILLAGE OF WELLINGTON
115 WILLARD MEMORIAL SQ
WELLINGTON OH 44090 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

C L LITTLE
INTERNATIONAL PRESIDENT UTU
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

DAVID ROLOFF
GOLDSTEIN & ROLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

CHARLES ZUMKEHR
ROETZEL & ANDRESS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

08/03/2001
<table>
<thead>
<tr>
<th>Name</th>
<th>Company/Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>R. A. Grice</td>
<td>General Chairperson UTL 817 Kilbourne St Bellevue OH 44811-9431 US</td>
</tr>
<tr>
<td>F. Deluis</td>
<td>City of Cincinnati 801 Plum Street Cincinnati OH 45202 US</td>
</tr>
<tr>
<td>Thomas R Rydman President</td>
<td>Indian Creek Railroad Company 3905 W 600 North Anderson IN 46011 US</td>
</tr>
<tr>
<td>J. Patrick Latz</td>
<td>Heavy Lift Cargo System PO Box 51451 Indianapolis IN 46251-0451 US</td>
</tr>
<tr>
<td>H. L. Carmouche, Corp Counsel</td>
<td>City of Gary 401 Broadway 4th Floor Gary IN 46402 US</td>
</tr>
<tr>
<td>Carl Feller</td>
<td>PO Box 758 Waterloo IN 46793-0758 US</td>
</tr>
<tr>
<td>William A. Bon, Gen Counsel</td>
<td>Brotherhood of Maintenance of Way Employees 26555 Evergreen Road Suite 200 Southfield MI 48076 US</td>
</tr>
<tr>
<td>Larry B. Karnes</td>
<td>Michigan Department of Transportation PO Box 30050 425 West Ottawa Street Lansing MI 48909 US</td>
</tr>
<tr>
<td>Leo J. Wasescha</td>
<td>Gold Medal Division - General Mills Operation PO Box 1113 Number One General Mills Boulevard Minneapolis MN 55440 US</td>
</tr>
<tr>
<td>Richard E Kerth</td>
<td>Champion International Corporation 101 Knightsbridge Drive Hamilton OH 45020-0001 US</td>
</tr>
<tr>
<td>Robert Edwards</td>
<td>Eastern Transport and Logistics 1109 Lanette Drive Cincinnati OH 45230 US</td>
</tr>
<tr>
<td>F. E. Ronalds Walker</td>
<td>Citizens Gas &amp; Coke Utility 2020 N Meridian Street Indianapolis IN 46202-1393 US</td>
</tr>
<tr>
<td>Michael Connelly</td>
<td>City of East Chicago 4525 Indianapolis Blvd East Chicago IN 46312 US</td>
</tr>
<tr>
<td>Hon. Peter J. Visclosky</td>
<td>U.S. House of Representatives 215 West 35th Avenue Gary IN 46408 US</td>
</tr>
<tr>
<td>Christopher J. Burger, Pres.</td>
<td>Central Railroad Company of Indianapolis PO Box 554 Kokomo IN 46903-0554 US</td>
</tr>
<tr>
<td>James E. Shepherd</td>
<td>Tuscola &amp; Saginaw Bay PO Box 550 Owosso MI 48867-0550 US</td>
</tr>
<tr>
<td>Hon. John Engler</td>
<td>Office of the Governor PO Box 30013 Lansing MI 48933 US</td>
</tr>
<tr>
<td>Byron D. Olsen</td>
<td>Felhaber Larson Fenlon &amp; Vogt PA 601 Second Avenue South Suite 4200 Minneapolis MN 55401-4302 US</td>
</tr>
<tr>
<td>Gerald J. Vinci</td>
<td>Prairie Group P.O. Box 1123 7601 West 79th Street Bridgeview IL 60455 US</td>
</tr>
<tr>
<td>Christine H. Rosso</td>
<td>IL Assistant Attorney General 100 W Randolph St 13th Floor Chicago IL 60601 US</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

STEPHEN M UTHOFF
CONIGLIO & UTHOFF
60 ELM AVENUE, CONIGLIO PROFESSIONAL BLDG
LONG BEACH CA 90802-4910 US

RICHARD WELSH
NARPO
50-505 GRAND TRAVERSE
LA QUINTA CA 92253 US

JOHN D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

Records: 333
Environmental Condition No. 11 of Appendix Q of Decision No. 89\(^1\) (Decision No. 89, slip op. at 401-03) requires Applicants, with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that: “Applicants shall certify compliance with this condition within 2 years of the effective date of the Board’s final decision. This condition shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities’ environmental concerns.”\(^2\)

On June 26, 2001, NS provided us with a copy of a Negotiated Agreement between NS and Rockingham County, VA, dated May 30, 2001, and accepted by Rockingham County on June 19, 2001. According to NS, this Negotiated Agreement effectuates the Board’s preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. NS requests that Environmental Condition No. 11 be amended to reflect the parties’ Negotiated Agreement by

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1 In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail’s assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

2 Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of NS, by decision served on August 22, 2000, the compliance deadline in Environmental Condition No. 11 was extended 1 year until August 22, 2001, to allow NS to complete implementation of the condition through additional negotiated solutions with communities and an individualized noise mitigation program.
deleting the Rockingham County receptors from the receptors identified on the Riverton Junction, VA, to Roanoke, VA line segment (N-100), and that the Negotiated Agreement between NS and Rockingham County be added to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires NS to comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. See Decision No. 89, slip op. at 420-21. Rockingham County concurs with the request.

In view of the Negotiated Agreement between NS and Rockingham County, VA, we will: (1) add the Negotiated Agreement to Environmental Condition No. 51 of Appendix Q of Decision No. 89; and (2) amend Environmental Condition No. 11 of Appendix Q of Decision No. 89 to delete the receptors in Rockingham County from the receptors identified on the Riverton Junction-Roanoke, VA line segment because the noise mitigation for that community has been superseded by the NS/Rockingham County Negotiated Agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. In accordance with the Negotiated Agreement between NS and Rockingham County, VA, dated May 30, 2001, and accepted by Rockingham County on June 19, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:


3. In addition, Environmental Condition No. 11 of Appendix Q of Decision No. 89 is amended to delete the receptors in Rockingham County from the receptors identified on the Riverton Junction-Roanoke, VA line segment because the noise mitigation for that community has been superseded by the Negotiated Agreement.

Environmental Condition No. 11 does not specifically reference Rockingham County. However, two of the noise receptors in Rockingham County are located outside the incorporated limits of the Towns of Elkton, Grottoes, and Lynnwood, near Port Republic. Accordingly, NS negotiated a separate agreement with Rockingham County. Negotiated Agreements between NS and the Towns of Elkton and Grottoes were addressed in Decision Nos. 178 and 185, served on February 14, 2001, and April 20, 2001, respectively.
4. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

[Vernon A. Williams]

Vernon A. Williams
Secretary
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
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<tbody>
<tr>
<td>JAMES E HOWARD</td>
<td>90 CANAL STREET BOSTON MA 02114 US</td>
</tr>
<tr>
<td>HCN. Edward M Kennedy</td>
<td>UNITED STATES SENATE 2400 JOHN F KENNEDY FEDERAL BLDG BOSTON MA 02203 US</td>
</tr>
<tr>
<td>William D Ankeny Phd</td>
<td>R I DEPT OF TRANSPORTATION TWO CAPITOL HILL PROVIDENCE RI 02903 US</td>
</tr>
<tr>
<td>John R Nadolny</td>
<td>14 AVIATION AVENUE PORTSMOUTH NH 03801 US</td>
</tr>
<tr>
<td>Robert D Elder</td>
<td>MAINE DEPARTMENT OF TRANSPORTATION 16 STATE HOUSE STATION AUGUSTA ME 04333-0016 US</td>
</tr>
<tr>
<td>Karen E Songhurst</td>
<td>STATE OF VERMONT 133 STATE STREET MONTPELIER VT 05633-5001 US</td>
</tr>
<tr>
<td>James F Sullivan</td>
<td>CT DEPT OF TRANSPORTATION P O BOX 317546 2800 BERLIN TURNPIKE NEWINGTON CT 06113 US</td>
</tr>
<tr>
<td>Edward J Rodriguez</td>
<td>HOUSATONIC RAILROAD P O BOX 687 8 DAVIS ROAD WEST OLD LYME CT 06371 US</td>
</tr>
<tr>
<td>Richard C Carpenter</td>
<td>SOUTH WESTERN REGIONAL PLANNING AGENCY 888 WASHINGTON BOULEVARD, 3RD FLOOR STAMFORD CT 06901 US</td>
</tr>
<tr>
<td>Michael E Strickland</td>
<td>NYK LINE (NORTH AMERICA) INC, SENIOR VICE PRE 300 LIGHTING WAY SEACAUDUS NJ 07094-1588 US</td>
</tr>
<tr>
<td>Edward Lloyd</td>
<td>RUTGERS ENVIRONMENTAL LAW CLINIC 15 WASHINGTON STREET NEWARK NJ 07102 US</td>
</tr>
<tr>
<td>HONORABLE ROBERT G. Torricelli</td>
<td>UNITED STATES SENATE 1 RIVER FRONT PLAZA, 3RD FLOOR NEWARK NJ 07102 US</td>
</tr>
<tr>
<td>J WILLIAM Van Dyke</td>
<td>NJ TRANSPORTATION PLANNING AUTHORITY ONE NEWARK CENTER 17TH FLOOR NEWARK NJ 07102 US</td>
</tr>
<tr>
<td>Martin T Durkin Esq</td>
<td>DURKIN &amp; BOGGIA ESQS PO BOX 378 71 MT VERNON STREET RIDGEFIELD PARK NJ 07660 US</td>
</tr>
<tr>
<td>Craig Curry</td>
<td>CONSOLIDATED RAIL CORPORATION 1000 HOWARD BOULEVARD MOUNT LAUPEL NJ 08054 US</td>
</tr>
<tr>
<td>Timothy G Chelius</td>
<td>18 N EAST AVENUE VINEALAND NJ 08360 US</td>
</tr>
<tr>
<td>Lawrence Pepper, Jr</td>
<td>GRUCCIO PEPPER 817 EAST LANDS AVE VINEALAND NJ 08360 US</td>
</tr>
<tr>
<td>John F McHugh</td>
<td>MCHUGH &amp; BARNES PC 20 EXCHANGE PLACE 51ST FLOOR NEW YORK NY 10005-3201 US</td>
</tr>
<tr>
<td>Anthony P. Semancik</td>
<td>347 MADISON AVENUE NEW YORK NY 10017-3706 US</td>
</tr>
<tr>
<td>Walter E Zullig Jr</td>
<td>METRO-NORTH COMMUTER RAILROAD COMPANY 347 MADISON AVE NEW YORK NY 10017-3706 US</td>
</tr>
<tr>
<td>James W Harris</td>
<td>THE METROPOLITAN PLANNING ORGANIZATION 1 WORLD TRADE CENTER STE 82 EAST NEW YORK NY 10048-0043 US</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0  CSX CORPORATION AND CSX TRANSPORTATION

HUGH H. WELSH
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-0202 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

IRVING J RUBIN
P.O. BOX 243
YOUNGSTOWN NY 14174 US

R W GODWIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
810 ABBOTT ROAD SUITE 200
BUFFALO NY 14220 US

H DOUGLAS MIDKIFF
GENESEE TRANSPORTATION COUNCIL
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

DAVID W. DONLEY
3361 STAFFORD ST
PITTSBURGH PA 15204-1441 US

HENRY M WICK, JR.
WICK STRLEIF MEYER O'BOYLE SZELOG
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219-3427 US

M. E. PETRUCCELLI
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

HON JERRY A STERN
P.O BOX 2023
TWELVE SHERATON DRIVE
ALTOONA PA 16603 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE, INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

SHEILA MECK HYDE
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

JOHN F COLLINS
COLLINS COLLINS & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

ERNEST J IERARDI
NIXON HARGRAVE DEVANS DOYLE LLP
PO BOX 1051
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

JEANNE WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

JOHN A VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

RICHARD R WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

D W DUNLEVY
STATE LEGISLATIVE DIRECTOR UTU
230 STATE STREET PA AFL-CIO BLDG 2ND FLOOR
HARRISBURG PA 17101 US

08/03/2001
<table>
<thead>
<tr>
<th>Name</th>
<th>Position/Company</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>KURT W CARR</td>
<td>Bureau for Historic Preservation</td>
<td>P.O. Box 1026, Harrisburg PA 17108-1026 US</td>
</tr>
<tr>
<td>RICHARD A GEIST</td>
<td>Main Capitol Building</td>
<td>P.O. Box 202020, Harrisburg PA 17120-2020 US</td>
</tr>
<tr>
<td>HON ROBERT C JUBELINER</td>
<td>Senate Box 203030</td>
<td>State Capitol, Harrisburg PA 17120-3030 US</td>
</tr>
<tr>
<td>HARRY C BARBIN</td>
<td>Barbin Laufer &amp; O'Connell</td>
<td>608 Huntingdon Pike, Rockledge PA 19046 US</td>
</tr>
<tr>
<td>JONATHAN M BRODER</td>
<td>Consolidated Rail Corp</td>
<td>P.O. Box 41416, Philadelphia PA 19101-1416 US</td>
</tr>
<tr>
<td>JOHN J EHLINGER JR</td>
<td>Obermayer Rebmann Maxwell &amp; HippeL</td>
<td>1617 John F. Kennedy Blvd, Philadelphia PA 19103-1895 US</td>
</tr>
<tr>
<td>JOHN J COSCIA, EXECUTIVE DIRECTOR</td>
<td>Delaware Valley Regional Planning Commission</td>
<td>111 South Independence Mall East, Philadelphia PA 19106 US</td>
</tr>
<tr>
<td>ERIC M HOCKY</td>
<td>Gollatz Griffin &amp; Ewing</td>
<td>P.O. Box 796, West Chester PA 19381-0796 US</td>
</tr>
<tr>
<td>J E THOMAS</td>
<td>Hercules Incorporated</td>
<td>1313 North Market Street, Wilmington DE 19894 US</td>
</tr>
<tr>
<td>FREDERICK H SCHRANCK</td>
<td>Regional RR of America</td>
<td>P.O. Box 778, Dover DE 19903 US</td>
</tr>
<tr>
<td>PETER A GILBERTSON</td>
<td>Coalition of Northeastern Governors</td>
<td>122 C St NW Ste 850, Washington DC 20001 US</td>
</tr>
<tr>
<td>HONORABLE THOMAS J RIDGE</td>
<td>Governor, Commonwealth of Pennsylvania</td>
<td>225 Main Capitol Building, Harrisburg PA 17120 US</td>
</tr>
<tr>
<td>HON ROBERT JUBELINER</td>
<td>Pennsylvania State Senate</td>
<td>Senate Box 203030, The State Capitol, Harrisburg PA 17120-3030 US</td>
</tr>
<tr>
<td>BELNAP FREEMAN</td>
<td>PENNypia State Senate</td>
<td>Senate Box 203030, The State Capitol, Harrisburg PA 17120-3030 US</td>
</tr>
<tr>
<td>JOHN J GROCKI</td>
<td>Gra Inc</td>
<td>115 West Av One Jenkintown Sta, Jenkintown PA 19046 US</td>
</tr>
<tr>
<td>G CRAIG SCHELTER</td>
<td>Philadelphia Industrial Development Corporat</td>
<td>2600 Centre Square West 500 Market St, Philadelphia PA 19102 US</td>
</tr>
<tr>
<td>DAVID BERGER</td>
<td>Berger and Montague, P. C.</td>
<td>1622 Locust St, Philadelphia PA 19103-6305 US</td>
</tr>
<tr>
<td>JOHN K. LEARY, GENERAL MANAGER</td>
<td>Southeastern Pennsylvania Transportation Authority</td>
<td>1234 Market Street 5th Floor, Philadelphia PA 19107-3780 US</td>
</tr>
<tr>
<td>HON JOSEPH R BIDEN, JR.</td>
<td>United States Senate</td>
<td>844 King Street, Wilmington DE 19801 US</td>
</tr>
<tr>
<td>E C WRIGHT</td>
<td>E I Du Pont de Nemours and Company</td>
<td>1007 Market Street D-3100, Wilmington DE 19898 US</td>
</tr>
<tr>
<td>MARTIN W BERCOVICI</td>
<td>Keller &amp; Heckman LLP</td>
<td>1001 G St NW Suite 500 West, Washington DC 20001 US</td>
</tr>
<tr>
<td>JAMES HOWARD</td>
<td>Coalition of Northeastern Governors</td>
<td>400 North Capitol Street, Suite 382, Washington DC 20001 US</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Name</th>
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<tr>
<td>Terrence D Jones</td>
<td>Keller &amp; Heckman</td>
<td>1001 G St NW Ste 500 West</td>
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<td></td>
<td></td>
<td>Washington DC 20001 US</td>
</tr>
<tr>
<td>Charles A Spulnik</td>
<td>McLeod Watkins &amp; Miller</td>
<td>One Massachusetts Ave NW Ste 800</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington DC 20001-1401 US</td>
</tr>
<tr>
<td>Ross B C. Pon</td>
<td>National Association of Railroad Passengers</td>
<td>900 2nd St NE Ste 308</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington DC 20002 US</td>
</tr>
<tr>
<td>Richard G Slattery</td>
<td>Amtrak</td>
<td>60 Massachusetts Ave N E</td>
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<tr>
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<td>Washington DC 20002 US</td>
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<tr>
<td>J Michael Hemmer</td>
<td>Covington &amp; Burling</td>
<td>1201 Pennsylvania Ave N</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington DC 20004 US</td>
</tr>
<tr>
<td>David C Reeves</td>
<td>Troutman Sanders LLP</td>
<td>401 Ninth Street NW Ste 1000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington DC 20004 US</td>
</tr>
<tr>
<td>George W Mayo Jr</td>
<td>Hogan &amp; Hartson L L P</td>
<td>555 Thirteenth Street NW Columbia Square</td>
</tr>
<tr>
<td></td>
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<td>Washington DC 20004-1109 US</td>
</tr>
<tr>
<td>Mary Gabrielle Sprague</td>
<td>Arnold &amp; Porter</td>
<td>555 Twelfth Street NW</td>
</tr>
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<td>Washington DC 20004-1202 US</td>
</tr>
<tr>
<td>Robert A Wimbish Esq</td>
<td>Harkins Cunningham</td>
<td>801 Pennsylvania Ave NW</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington DC 20004-2664 US</td>
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<tr>
<td>Louis E Gitomer</td>
<td>Ball Janik LLP</td>
<td>1455 F Street NW Ste 225</td>
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<td>Washington DC 20005 US</td>
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<tr>
<td>Karl Morell</td>
<td>Ball Janik LLP</td>
<td>1455 F Street NW Ste 225</td>
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<td>Washington DC 20005 US</td>
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<tr>
<td>Alice C Saylor</td>
<td>American Short Line &amp; Regional Railroad Asso</td>
<td>1120 G Street NW Ste 520</td>
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<td>Washington DC 20005 US</td>
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<tr>
<td>Donald F Griffin</td>
<td>Assistant General Counsel</td>
<td>10 G Street NE Ste 460</td>
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<tr>
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<td>Troutman Sanders LLP</td>
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<td>Washington DC 20004 US</td>
</tr>
<tr>
<td>Paul Reistrup</td>
<td>CSX Transportation Inc</td>
<td>1331 Pennsylvania Ave NW Ste 500</td>
</tr>
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<td>Wash DC 20004 US</td>
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<tr>
<td>Eric Von Salzen</td>
<td>Hogan &amp; Hartson</td>
<td>555 Thirteenth Street Nw</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington DC 20004-1109 US</td>
</tr>
<tr>
<td>Dennis G Lyons</td>
<td>Arnold &amp; Porter</td>
<td>555 Twelfth Street NW, Ste 940</td>
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<td></td>
<td>Washington DC 20004-1206 US</td>
</tr>
<tr>
<td>Daniel Duff</td>
<td>American Public Transportation Association</td>
<td>1201 New York Av NW, Ste 400</td>
</tr>
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<td></td>
<td></td>
<td>Washington DC 20005 US</td>
</tr>
<tr>
<td>Bruno Maestri</td>
<td>Norfolk Southern Corporation</td>
<td>1500 K Street Suite 375</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington DC 20005 US</td>
</tr>
<tr>
<td>John Osborn</td>
<td>Sonnenschein Nath &amp; Rosenthal</td>
<td>1301 K Street NW Ste 600 EAST</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Wash DC 20005 US</td>
</tr>
<tr>
<td>Neal R Gross</td>
<td>Court Reporters and Transcribers</td>
<td>1323 Rhode Island Av NW</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington DC 20005-3701 US</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0

CSX CORPORATION AND CSX TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

MARK FILIPOVIC
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

CONSTANCE A SADLER
SIDLEY & AUSTIN BROWN & WOOD
1722 EYE STREET NW
WASHINGTON DC 20006 US

JAMES R WEISS
PRESTON GATES ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

SCOTT M ZIMMERMAN
ZUCKERT SCOTT & RASENBERGER LLP
888 SEVENTEENTH STREET NW
WASHINGTON DC 20006 US

RICHARD A ALLEN
ZUCKERT SCOTT & RASENBERGER LLP
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3309 US

RACHEL DANISH CAMPBELL
FOLEY & LARDNER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006-4103 US

JOHN H BROADLEY
JOHN H BROADLEY & ASSOCIATES P C
1054 31ST STREET NW SUITE 200
WASHINGTON DC 20007 US

DAVID K MONROE
GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY FIRST STREET NW STE 200
WASHINGTON DC 20007 US

SCOTT N STONE
PATTON BOGGS
2550 M STREET NW
WASHINGTON DC 20007 US

MICHAEL P MCBRIDE
LEBOEUF LAMB GREENE & MACRAE
1875 CONNECTICUT AVENUE NW
WASHINGTON DC 20009-5728 US

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20036 US
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

RICHARD S EDELMAN  
O'DONNELL SCHWARTZ & ANDERSON PC  
1900 L STREET NW SUITE 707  
WASHINGTON DC 20036 US

PETE A GREENE  
THOMPSON HINE & FLORY  
1920 N STREET NW SUITE 800  
WASHINGTON DC 20036 US

JOHN D HEFFNER  
REA CROSS & AUCHINCLOSS  
1707 L STREET, NW, STE 570  
WASHINGTON DC 20036 US

PAUL H LAMBOLEY  
1717 N STREET NW  
WASHINGTON DC 20036 US

GORDON P MACDOUGALL  
1025 CONNECTICUT AVE NW SUITE 410  
WASHINGTON DC 20036 US

WILLIAM G. MAHONEY  
HIGHSAW, MAHONEY & CLARKE  
1050 SEVENTEENTH STREET NW SUITE 210  
WASHINGTON DC 20036 US

CHRISTOPHER A MILLS  
SLOVER & LOFTUS  
1224 SEVENTEENTH STREET NW  
WASHINGTON DC 20036 US

KEITH G O'BRIEN  
REA CROSS AND AUCHINCLOSS  
1707 L STREET NW STE 570  
WASHINGTON DC 20036 US

HAROLD P QUINN JR  
NATIONAL MINING ASSOCIATION  
1130 17TH STREET NW  
WASHINGTON DC 20036 US

NICHOLAS J DIMICHAEL  
THOMPSON HINE LLP  
1920 N STREET NW STE 800  
WASHINGTON DC 20036-1601 US

FRITZ R KAHN  
1920 N STREET NW 8TH FLOOR  
WASHINGTON DC 20036-1601 US

FREDERIC L WOOD  
THOMPSON HINE LLP  
1920 N STREET NW  
WASHINGTON DC 20036-1601 US

ROSE-MICHELE WEINRYB  
WEINER BRODSKY SIDMAN & KIDER  
1300 19TH STREET NW 5TH FLOOR  
WASHINGTON DC 20036-1609 US

SAMUEL M SIPE JR  
STEP TOE & JOHNSON LLP  
1330 CONNECTICUT AVENUE NW  
WASHINGTON DC 20036-1795 US

TIMOTHY M WALKH  
STEP TOE & JOHNSON  
1330 CONNECTICUT AVENUE NW  
WASHINGTON DC 20036-1795 US

EDWARD J FISHMAN  
KIRKPATRICK & LOCKHART LLP  
1800 MASSACHUSETTS AVENUE, N.W., 2ND FLOOR  
WASHINGTON DC 20036-1800 US

KEVIN M SHEYS  
KIRKPATRICK & LOCKHART LLP  
1800 MASSACHUSETTS AVENUE NW 2ND FLOOR  
WASHINGTON DC 20036-1800 US

JOSEPH GUERRIERI, JR.  
GUERRIERI, EDMOND & CLAYMAN, PC  
1625 MASSACHUSETTS AVE., NW. STE 700  
WASHINGTON DC 20036-2243 US

DEBRA L WILLEN  
GUERRIERI EDMOND & CLAYMAN PC  
1625 MASSACHUSETTS AVENUE, N.W., STE 700  
WASHINGTON DC 20036-2243 US

DONALD G AVERY  
SLOVER & LOFTUS  
1224 SEVENTEENTH STREET NW  
WASHINGTON DC 20036-3003 US

KELVI J DOWD  
SLOVER & LOFTUS  
1224 17TH STREET NW  
WASHINGTON DC 20036-3003 US

WILLIAM L SLOVER  
SLOVER & LOFTUS  
1224 SEVENTEENTH STREET NW  
WASHINGTON DC 20036-3003 US
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

JOHN M CUTLER JR
MCCARTHY SWEENEY HARKAWAY PC
2175 K STREET NW
WASHINGTON DC 20037 US

ANDREW P GOLDSTEIN
MCCARTHY SWEENEY & HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

STEVEN J KALISH
MCCARTHY SWEENEY & HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

DANIEL J SWEENEY
MCCARTHY SWEENEY & HARKAWAY PC
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

JOHN L OBERDORFER
PATTON BOGGS LLP
2500 M ST NW
WASHINGTON DC 20037-1301 US

KEITH A KLINDWORTH
U S DEPT OF AGRICULTURE
P O BOX 96456
WASHINGTON DC 20090 US

EILEEN S STOMMES
U S DEPARTMENT OF AGRICULTURE
P O BOX 96456 ROOM 4006-SOUTH BUILDING
WASHINGTON DC 20090-6456 US

MELISSA PICKWORTH
GENERAL ACCOUNTING OFFICE
441 G STREET, N.W., ROOM 2T23
WASHINGTON DC 20458 US

JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
WASHINGTON DC 20426 US

HON. JOSEPH BIDEN, JR.
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE JOHN BREAUX
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. JOSEPH I LIEBERMAN
UNITED STATES SENATE
WASHINGTON DC 20510 US

HONORABLE RICHARD LUGAR
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. BARBARA A. MIKULSKI
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON CHARLES E SCHUMER
UNITED STATES SENATE
WASHINGTON DC 20510 US

HON. JOHN W. WARNER
US SENATE
WASHINGTON DC 20510-0001 US

HON CHRISTOPHER J DODD
UNITED STATES SENATE
WASHINGTON DC 20510-0702 US

HON MIKE DE WINE
UNITED STATES SENATE
WASHINGTON DC 20510-3503 US

HON ARLEN SPECTER
UNITED STATES SENATE
WASHINGTON DC 20510-3802 US
HON RICK SANTORUM  
UNITED STATES SENATE  
WASHINGTON DC 20510-3804 US

HON JACK REED  
U S SENATE  
WASHINGTON DC 20510-3903 US

HON GARY ACKERMAN  
U S HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HON. ED BRYANT  
U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HONORABLE BOB CLEMENT  
U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HONORABLE DANNY K DAVIS  
U. S. HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HON. JOHN J. DUNCAN  
U S HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HONORABLE PAUL E. GILLMOR  
U S HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HONORABLE LUIS GUTIERREZ  
U S HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HONORABLE JESSE L. JACKSON, JR  
U S HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HON MARCY KAPTUR  
U S HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HON RICHARD B. LUGAR  
UNITED STATES SENATE  
WASHINGTON DC 20510-3902 US

HONORABLE JOHN H. CHAFEE  
UNITED STATES SENATE  
WASHINGTON DC 20510-3902 US

HONORABLE ROBERT BYRD  
UNITED STATES SENATE  
WASHINGTON DC 20510-6025 US

HON SHERROD BROWN  
U S HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HONORABLE SAXBY CHAMBLISS,  
U. S. HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HON. WILLIAM J. COYNE  
UNITED STATES HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HONORABLE MIKE DOYLE  
U. S. HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HON ELIOT L ENGEL  
U. S. HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HONORABLE BENJAMIN A. GILMAN  
U S HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HON MAURICE HINCHLEY  
U. S. HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HON NANCY JOHNSON  
UNITED STATES HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515 US

HON DENNIS J KUCINICH  
UNITED STATES HOUSE REPRESENTATIVES  
WASHINGTON DC 20515 US

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CSX CORPORATION AND CSX TRANSPORTATION

HONORABLE JOHN J LAFALCE
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. STEVE LATOURETTE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. WILLIAM O. LIPINSKI
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NITA LOWEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CAROLYN B MALONEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JAMES MALONEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE FRANK MASCARA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MICHAEL MCNULTY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. ROBERT MENENDEZ
U S HOUSE OF REPRESENTATIVES
WASH DC 20515 US

HON JERROLD NADLER
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ROBERT W. NEY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. JAMES L. OBERSTAR
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE MAJOR R. OWENS
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CHIP PICKERING
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CHARLES RANGEL
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON RALPH REGULA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON THOMAS C SAWYER
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CHRISTOPHER SHAYS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON. BUD SHUSTER
ATTN: MIKE RICK
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE BILL SHUSTER
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON LOUISE M SLAUGHTER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE TED STRICKLAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

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CSX CORPORATION AND CSX TRANSPORTATION

HON ED TOWNS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NYDIA M VELAZQUEZ
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE ROD R BLAGOJEVICH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1305 US

HONORABLE JAMES A. BARCIA
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2205 US

HONORABLE JACK QUINN
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3230 US

HONORABLE TOM DAVIS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4611 US

MICHAEL P HARMONIS
DEPARTMENT OF JUSTICE
325 SEVENTH STREET, NW
WASHINGTON DC 20530 US

JOSEPH R POMPONIO
FEDERAL RAILROAD ADMINISTRATION
400 SEVENTH STREET SW RCC-20
WASHINGTON DC 20590 US

DAVID G ABRAHAM
SUITE 400W
7315 WISCONSIN AVENUE
BETHESDA MD 20814 US

JOHN M ROBINSON
9616 OLD SPRING ROAD
KENSINGTON MD 20895-3124 US

JOHN HOY
P O BOX 117
GLEN BURNIE MD 21060 US

HON JAMES TRAFICANT JR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PETER J. VISCLOSKY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON JULIA CARSON
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1410 US

HONORABLE JOHN D. DINGELL
2328 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON DC 20515-2216 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

HONORABLE BOBBY L. RUSH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-9997 US

JOLENE MOLITORIS, ADMN.
FEDERAL RAILROAD ADMIN.
400 7TH STREET SW
WASHINGTON DC 20590 US

PAUL SAMUEL SMITH
US DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET SW ROOM 4102 C-30
WASHINGTON DC 20590 US

MITCHELL M KRAUS, GENERAL COUNSEL
TRANSPORTATION COMMUNICATIONS INTERNATIONAL U
3 RESEARCH PLACE
ROCKVILLE MD 20850-3279 US

WILLIAM W WHITEHURST JR
W W WHITEHURST & ASSOCIATES INC
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030-1711 US

ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

LINDA A JANNEY J D
MARYLAND OFFICE OF PLANNING
361 WEST PRESTON STREET
Baltimore MD 21201-2365 US

PETER Q NYCE JR
U S DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

WILLIAM P. JACKSON, JR.
JACKSON & JESSUP, P. C.
P O BOX 1240
3426 NORTH WASHINGTON BLVD
ARLINGTON VA 22210 US

KENNETH E SIEGEL
AMERICAN TRUCKING ASSOC INC
2200 MILL ROAD
ALEXANDRIA VA 23314-4677 US

MICHAEL J RUEHLING
CSX CORPORATION
ONE JAMES CENTER
RICHMOND VA 23219 US

GEORGE A ASPATORE GENERAL SOLICITOR - REGULAT
NORFOLK SOUTHERN RAILWAY COMPANY
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

DAVID A SHELTON
NORFOLK SOUTHERN
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

L P KING JR
GENERAL CHAIRPERSON UTU
145 CAMPBELL AVE SW STE 207
ROANOKE VA 24011 US

VAUGHN R GROVES
PITTS ON COAL COMPANY
PO BOX 5100
LEBANON VA 24266 US

R K SARGENT
GENERAL CHAIRPERSON UTU
1319 CHESTNUT STREET
KENOVA WV 25530 US

E NORRIS TOLSON
NC DEPT OF TRANSPORTATION
P O BOX 25201
1 S. WILINGTON STREET
RALEIGH NC 27611 US

CHARLES M CHADWICK
MARYLAND MIDLAND RAILWAY INC
P O BOX 1000
UNION BRIDGE MD 21791 US

THOMAS E SCHICK
AMERICAN CHEMISTRY COUNCIL
1300 WILSON BOULEVARD
ARLINGTON VA 22209 US

FRANCIS G MCKENNA
ANDERSON & PENDLETON
206 N WASHINGTON STREET SUITE 330
ALEXANDRIA VA 22314 US

ROBERT E MARTINEZ
VA SECRETARY OF TRANSPORTATION
P. O. BOX 1475
RICHMOND VA 23218 US

JOHN W SNOW
CHAIRMAN PRESIDENT AND CHIEF EXECUTIVE OFFICER
P O BOX 85629
RICHMOND VA 23285-5629 US

PARKERSON B MAQUILLING
NORFOLK SOUTHERN CORPORATION
THREE COMMERCIAL PLACE, LAW DEPT
NORFOLK VA 23510 US

JAMES A HIXON
SENIOR VICE PRESIDENT EMPLOYEE RELATIONS NOR
THREE COMMERCIAL PLACE
NORFOLKVA 23510-2191 US

HONORABLE JOHN WARNER
UNITED STATES SENATE
235 FEDERAL BUILDING
ABINGDON VA 24210-0887 US

TERRELL ELLIS
CAFZ WV
P O BOX 176
CLAY WV 25043 US

SCOTT M SAYLOR
NORTH CAROLINA RAILROAD COMPANY
3200 ATLANTIC AV STE 110
RALEIGH NC 27604-1640 US

J H CLARK
UTU, GENERAL CHAIRPERSON
441 NORTH LOUISISAN AVENUE, SUITE Q
ASHEVILLE NC 28806 US
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0

CSX CORPORATION AND CSX TRANSPORTATION

HONORABLE DAVID M BEASLEY
GOVERNOR
P. O. BOX 11369
COLUMBIA SC 29211 US

J RANDALL EVANS
500 WATER STREET (J150)
JACKSONVILLE FL 32202 US

CARL A GERHARDEIN
CSX TRANSPORTATION RISK MGMT
500 WATER STREET - J275
JACKSONVILLE FL 32202 US

BOB HAULTER
CSX TRANSPORTATION INC
500 WATER STREET (J120)
JACKSONVILLE FL 32202 US

PAUL R. HITCHCOCK
CSX TRANSPORTATION LAW DEPARTMENT
500 WATER STREET SC J-150
JACKSONVILLE FL 32202 US

JOHN W. HUMES, JR.
CSX TRANSPORTATION
SPEED CODE J-150
500 WATER STREET
JACKSONVILLE FL 32202 US

CHARLES M ROSENBERGER
CSX TRANSPORTATION
500 WATER STREET - J150
JACKSONVILLE FL 32202 US

T J STEPHENSON
CSX TRANSPORTATION INC
500 WATER STREET (J407)
JACKSONVILLE FL 32202 US

J L RODGERS
GENERAL CHAIRMAN UTU
9550 REGENCY SQUARE BLVD #904
JACKSONVILLE FL 32225-8177 US

PHILLIP L BELL
ERIE LACKAWANNA RAILROAD CO
PO BOX 1982
TALLAHASSEE FL 32302 US

JAMES J KEENAN
ANCHOR GLASS CONTAIN'R CORPORATION
4343 ANCHOR PLAZA PARKWAY
TAMPA FL 33634 US

JAMES L BELCHER
EASTMAN CHEMICAL COMPANY
PO BOX 431
KINGSPORT TN 37662 US

WILLIAM L OSTEEN
ASSOCIATE GENERAL COUNSEL TVA
400 WEST SUMMIT HILL DRIVE
KNOXVILLE TN 37902 US

PHILIP SIDO
UNION CAMP CORPORATION
6400 POPULAR AVE
MEMPHIS TN 38197-0100 US

HONORABLE PAUL E. PATTON
GOVERNOR
700 CAPITOL AVENUE, STE. 100
FRANKFORT KY 40601 US

HONORABLE DEBORAH PRYCE
U. S. HOUSE OF REPRESENTATIVES
500 SOUTH FRONT STREET, ROOM 1130
COLUMBUS OH 43215 US

HONORABLE DEBORAH PRYCE
U.S. HOUSE OF REPRESENTATIVES
500 SOUTH FRONT STREET, ROOM 1130
COLUMBUS OH 43215 US

DOREEN C JOHNSON, CHIEF ANTITRUST SECTION
OHIO ATTY GENERAL OFFICE
140 EAST TOWN STREET, FIRST FLOOR
COLUMBUS OH 43215-6001 US

JAMES R JACOBS
JACOBS INDUSTRIES
2 QUARRY L TANE
STONY RIDGE OH 43463 US

DAVID CHAPMAN
LAFARGE LIME OHIO INC
P O BOX 128
659 ANDERSON ROAD
WOODVILLE OH 43469-0128 US

08/03/2001

Page 12
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0  CSX CORPORATION AND CSX TRANSPORTATION

ROBERT J COOPER
GENERAL CHAIRPERSON UTU
385 COMMODORE WAY APT 9
FERRYSBURG OH 43551-2784 US

ROBERT E MURRAY
OHIO VALLEY COAL CO
56854 PLEASANT RIDGE ROAD
ALLEDONIA OH 43902 US

CLARENCE TURNQUIST
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
2125 TRYON ROAD
ASHTABULA OH 44004 US

CHARLES S HESSE
CHARLES HESSE ASSOCIATES
7777 BAINBRIDGE ROAD
CHAGRIN FALLS OH 44023-2124 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

DANIEL R ELLIOTT III
ASST GENERAL COUNSEL UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLINTON J MILLER III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CHRISTOPHER C MCCracken
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL
ASHA CHEMICALS INC
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114-1538 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COPLE ST ROAD
AKRON OH 44320 US

RANDALL C. HUNT
KRUGLIANK, WILKINS, GRIFFITHS & DOUGHERTY CO.
P O BOX 36963
4775 MUNSON ST NW
CANTON OH 44735-6963 US

ROBERT E GREENLESEE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

RON MARQUARDT
LOCAL UNION 1810 UMWA
58659 EILEEN ST.
RAYLAND OH 43943 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

BARBARA O'KEEFE
VILLAGE OF WELLINGTON
115 WILLARD MEMORIAL SQ
WELLINGTON OH 44090 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

C L LITTLE
INTERNATIONAL PRESIDENT UTU
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLARENCE MONIN INTERNATIONAL PRES
BROTHERHOOD OF LOCOMOTIVE ENGINEERS MEZZANINE
1370 ONTARIO STREET
CLEVELAND OH 44113 US

DAVID ROLOFF
GOLDSTEIN & ROLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

CHARLES ZUMKEHR
ROETZEL & ANDREWS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

Page 13
<table>
<thead>
<tr>
<th>Name</th>
<th>Company/Position</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>R A Grice</td>
<td>General Chairperson UTU</td>
<td>817 Kilbourne St, Bellevue OH 44811-9431 US</td>
</tr>
<tr>
<td>Faye D Dupuis</td>
<td>City of Cincinnati</td>
<td>801 Plum Street, Cincinnati OH 45202 US</td>
</tr>
<tr>
<td>Thomas R Rydman</td>
<td>President, Indian Creek Railroad Co.</td>
<td>3901 W 600 North, Anderson IN 46011 US</td>
</tr>
<tr>
<td>J Patrick Latz</td>
<td>Heavy Lift Cargo System</td>
<td>PO Box 51451, Indianapolis IN 46251-0451 US</td>
</tr>
<tr>
<td>Hamilton L Carmouche</td>
<td>Corp Counsel, City of Gary</td>
<td>401 Broadway 4th Floor, Gary IN 46402 US</td>
</tr>
<tr>
<td>Carl Feller</td>
<td></td>
<td>PO Box 758, Waterloo IN 46793-0758 US</td>
</tr>
<tr>
<td>William A Bon</td>
<td>General Counsel, Brotherhood of MA</td>
<td>26555 Evergreen Road Suite 200, Southfield MI 48076 US</td>
</tr>
<tr>
<td>Larry B Karnes</td>
<td>Michigan Dept of Transportation</td>
<td>PO Box 30050, 425 West Ottawa Street, Lansing MI 48909 US</td>
</tr>
<tr>
<td>T Scott Bannister</td>
<td>T Scott Bannister &amp; Associates</td>
<td>1300 Des Moines Bldg 405 Sixth Avenue, Des Moines IA 50309 US</td>
</tr>
<tr>
<td>Leo J Wasescha</td>
<td>Gold Medal Divison - General Mills Op</td>
<td>P O Box 1113, Number One General Mills Bulevard, Minneapolis MN 55440 US</td>
</tr>
<tr>
<td>Richard A Gavrill</td>
<td></td>
<td>16700 Gentry Lane No 104, Tinley Park IL 60477 US</td>
</tr>
<tr>
<td>Richard E Kerth</td>
<td>Champion International Corporation</td>
<td>101 Knightsbridge Drive, Hamilton OH 45020-0001 US</td>
</tr>
<tr>
<td>Robert Edwards</td>
<td>Eastern Transport and Logistics</td>
<td>1109 Lanette Drive, Cincinnati OH 45230 US</td>
</tr>
<tr>
<td>F Ronalds Walker</td>
<td>Citizens Gas &amp; Coke Utility</td>
<td>2020 N Meridian Street, Indianapolis IN 46202-1393 US</td>
</tr>
<tr>
<td>Michael Connelly</td>
<td>City of East Chicago</td>
<td>4525 Indianapolis Blvd, East Chicago IN 46312 US</td>
</tr>
<tr>
<td>Honorable Peter J. Visclosky</td>
<td>U.S. House of Representatives</td>
<td>215 West 35th Avenue, Gary IN 46408 US</td>
</tr>
<tr>
<td>Christopher J Burger</td>
<td>President, Central Railroad Co of Indy</td>
<td>PO Box 554, Kokomo IN 46903-0554 US</td>
</tr>
<tr>
<td>James E Shepherd</td>
<td>Tuscola &amp; Saginaw Bay</td>
<td>PO Box 550, Owosso MI 48867-0550 US</td>
</tr>
<tr>
<td>Hon John Engler</td>
<td>Office of the Governor</td>
<td>P O Box 30013, Lansing MI 48933 US</td>
</tr>
<tr>
<td>Byron D Olsen</td>
<td>Felhaber Larson Fenlon &amp; Vogt PA</td>
<td>601 Second Avenue South Suite 4200, Minneapolis MN 55401-4302 US</td>
</tr>
<tr>
<td>Gerald J. Vinci</td>
<td>Prairie Group</td>
<td>P.O.Box 1123, 7601 West 79th Street, Bridgeview IL 60455 US</td>
</tr>
<tr>
<td>Christine H. Rosso</td>
<td>IL Assistant Attorney General</td>
<td>100 W Randolph St 13th Floor, Chicago IL 60601 US</td>
</tr>
</tbody>
</table>

08/03/2001
THOMAS J LITWILER
FLETCHER & SIPPEL LLC
180 NORTH STETSON AVENUE SUITE 3125 TWO PRUDE
CHICAGO IL 60601-6721 US

SANDRA J DEARDEN
MDCO TRANSPORTATION MANAGEMENT LTD
166 WEST WASHINGTON SUITE 700
CHICAGO IL 60602 US

ROGER A SERPE
INDIANA HARBOR BELT RAILROAD COMPANY
111 WEST JACKSON BOULEVARD, STE 2215
CHICAGO IL 60604 US

SHELDON A ZABEL
SCHIFF HARDIN & WAITE
7200 SEARS TOWER
CHICAGO IL 60606 US

CHARLES D BOLAM
UNITED TRANSPORTATION UNION
1400-20TH STREET
GRANITE CITY IL 62040 US

MERRILL L TRAVIS
ILLINOIS DEPT OF TRANSPORTATION
2300 S DIRKSEN PARKWAY RM 302
SPRINGFIELD IL 62764 US

JOHN JAY ROSACKER
KS DEPT OF TRANSP
217 SE 4TH ST 2ND FLOOR
TOPEKA KS 66603 US

HENRY T DART
PLAINTIFF MANAGEMENT COMMITTEE
609 EAST GIBSON STREET
COVINGTON LA 70433 US

DENNIS A. GUTH
WEST LAKE GROUP
2801 POST OAK BLVD
HOUSTON TX 77056 US

MICHAEL P. FERRO
MILLENIUM PETROCHEMICALS, INC.
P O BOX 2583
1221 MCKINNEY STREET SUITE 1600
HOUSTON TX 77252-2583 US

MONTY L PARKER SR
CMC STEEL GROUP
P O BOX 911
SEGUISN TX 78156-0911 US

WILLIAM C SIPPEL
FLETCHER & SIPPEL LLC
180 N STETSON AVE SUITE 3125 TWO PRUDENTIAL PLAZA
CHICAGO IL 60601-6721 US

RICHARD F FRIEDMAN ESQ
EARL L NEAL & ASSOCIATES
111 WEST WASHINGTON STREET STE 1700
CHICAGO IL 60602-2766 US

THOMAS F MCFARLAND JR
208 SOUTH LASALLE ST SUITE 1890
CHICAGO IL 60604-1194 US

MYLES L TOBIN
ILLINOIS CENTRAL RAILROAD
455 NORTH CITYFRONT PLAZA DRIVE
CHICAGO IL 60611-5504 US

SCOTT A RONEY
ARCHER DANIELS MIDLAND COMPANY
P O BOX 1470
4656 FARIES PARKWAY
DECATUR IL 62525 US

IAN MUIR
BUNGE CORPORATION
P O BOX 28500
ST LOUIS MO 63146 US

GEORGE VAN HAVER
2340 SOUTH 35TH STREET
OMAHA NE 68105 US

CHARLES R. CARR
ATOFINA PETROCHEMICALS, INC.
15710 JFK BLVD.
HOUSTON TX 77032 US

DAVID L HALL
COMMONWEALTH CONSULTING ASSOCIATES
13103 FM 1960 WEST SUITE 204
HOUSTON TX 77065-4069 US

JEFFREY G DOWDELL
EXXONMOBIL GLOBAL SERVICES CO.
PO BOX 3272
HOUSTON TX 77253-3272 US

BRAD F HUSTON
CYPRUS AMAX MINERALS
2600 N CENTRAL AVE STE 110
PHOENIX AZ 85004-3012 US
SERVICE LIST FOR: 03-aug-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

STEPHEN M UTHOFF
CONIGLIO & UTHOFF
60 ELM AVENUE, CONIGLIO PROFESSIONAL BLDG
LONG BEACH CA 90802-4910 US

RICHARD WELSH
NARPO
50-505 GRAND TRAVERSE
LA QUINTA CA 92253 US

JOHN D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

Records: 333

08/03/2001
FOR RELEASE
Wednesday, August 1, 2001
No. 01-34

Contact: Dennis Watson
(202) 565-1596
TDD/TTY 1 (800) 877-8339
www.stb.dot.gov

COURT OF APPEALS SUMMARILY UPHOLDS
SURFACE TRANSPORTATION BOARD'S HANDLING OF
"INDIANAPOLIS POWER & LIGHT" ISSUE IN BOARD'S OVERSIGHT OF
THE "CONRAIL MERGER"

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that
the United States Court of Appeals for the District of Columbia Circuit has summarily upheld the
Board's handling of certain issues raised by Indianapolis Power & Light Company ("IP&L") in
connection with the Board's annual oversight of the "CSX-NS-Conrail railroad transaction."

In that transaction, the CSX and Norfolk Southern (NS) rail systems acquired control of
Conrail and divided its assets between them. The privately structured transaction, as proposed by
the railroads and as approved by the Board, was a procompetitive restructuring of rail
transportation throughout much of the eastern United States, resulting in new, two-railroad
competition for thousands of shippers that had been previously served only by Conrail. The
Board found that the transaction, which also produced new single-line service for many shippers,
generally did not diminish competition. Nevertheless, the Board imposed numerous conditions to
mitigate potential harm to particular shippers and other parties and, in some cases, to further
enhance the available competitive options. The Board also established an oversight process to ensure that its conditions are carried out and that they are effective.

Nonetheless, various parties, including IP&L, challenged in court the Board’s action approving the transaction. In a decision issued on April 25, 2001, the United States Court of Appeals for the Second Circuit affirmed the Board’s decision in all respects in *Erie-Niagara Rail Steering Committee, et al. v. Surface Transportation Board*, 247 F.3d 437 (2d Cir. 2001). The Second Circuit rejected IP&L’s argument that the Board did not do enough to preserve competition at IP&L’s power plant in Indianapolis, finding that the Board’s competition-preserving conditions, along with its post-merger monitoring through the oversight process, were adequate and that “any effort to craft additional conditions for IP&L is premature.”

IP&L, however, had also challenged, in the United States Court of Appeals for the District of Columbia Circuit, a follow-up decision in the Board’s Conrail oversight proceeding denying IP&L’s renewed request for additional competition-preserving conditions beyond those the Board had originally imposed in approving the transaction. After the Second Circuit’s ruling, CSX, NS, and the Board asked the D.C. Circuit to summarily affirm (decide the case without briefing or oral argument) the Board’s decision on the ground that IP&L still has yet to test, and therefore has yet to establish any inadequacy in, the conditions that the Board provided for its benefit so as to warrant further relief. IP&L opposed the request, arguing that the proceeding raised important issues of first impression. The court agreed with CSX, NS, and the Board, finding that there was no basis for undoing the Board’s action.

All pending court litigation regarding the Board’s approval of the Conrail transaction is now resolved, with the Board’s action having been upheld in all respects.

The court’s decision was issued in *Indianapolis Power & Light Company v. Surface Transportation Board*, No. 01-1005 (D.C. Cir. July 26, 2001).
Environmental Condition No. 11 of Appendix Q of Decision No. 89\(^1\) (Decision No. 89, slip op at 401-03) requires Applicants, with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that:  “Applicants shall certify compliance with this condition within 2 years of the effective date of the Board’s final decision. This condition shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities’ environmental concerns.”\(^2\)

On May 10, 2001, CSX provided us with a copy of a Negotiated Agreement between CSX and Perrysburg Township, Wood County, OH, dated April 5, 2001, and accepted by Perrysburg Township on May 7, 2001. According to CSX, this Negotiated Agreement effectuates the Board’s preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. CSX requests that Environmental Condition No. 11 be amended to reflect the

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\(^1\) In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail’s assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

\(^2\) Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of CSX, by decision served on August 22, 2000, the compliance deadline in Environmental Condition No. 11 was extended 1 year until August 22, 2001, to allow CSX to complete implementation of the condition through additional negotiated solutions with communities and an individualized noise mitigation program.
The parties' Negotiated Agreement by deleting the Perrysburg Township receptor from the receptors identified on the Deshler, OH, to Toledo, OH line segment (C-065), and that the Negotiated Agreement between CSX and Perrysburg Township be added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires CSX to comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. See Decision No. 89, slip op. at 420-21. Perrysburg Township concurs with the request.

In view of the Negotiated Agreement between CSX and Perrysburg Township, Wood County, OH, we will: (1) add the Negotiated Agreement to Environmental Condition No. 51 of Appendix Q of Decision No. 89; and (2) amend Environmental Condition No. 11 of Appendix Q of Decision No. 89 to delete the receptor in Perrysburg Township from the receptors identified on the Deshler to Toledo, OH line segment because the noise mitigation for that community has been superseded by the CSX/Perrysburg Township Negotiated Agreement. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. In accordance with the Negotiated Agreement between CSX and Perrysburg Township, Wood County, OH, dated April 5, 2001, and accepted by Perrysburg Township on May 7, 2001, the following is added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:


3. In addition, Environmental Condition No. 11 of Appendix Q of Decision No. 89 is amended to delete the receptor in Perrysburg Township from the receptors identified on the Deshler to Toledo, OH line segment because the noise mitigation for that community has been superseded by the Negotiated Agreement.

   Environmental Condition No. 11 does not specifically reference Perrysburg Township. However, one of the ten receptors that was identified within the City of Perrysburg is actually located in Perrysburg Township. Accordingly, CSX negotiated a separate agreement with Perrysburg Township. The Negotiated Agreement between CSX and the City of Perrysburg, OH, was addressed in Decision No. 172, served on October 13, 2000.
4. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>Zip</th>
</tr>
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<tbody>
<tr>
<td>Paul E Crawford</td>
<td>Massachusetts Central Railroad Corp</td>
<td>Palmer MA</td>
<td>01069</td>
<td></td>
</tr>
<tr>
<td>William D Anker, PhD</td>
<td>RI Dept of Transportation</td>
<td>Providence RI</td>
<td>02903</td>
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<tr>
<td>Robert P Elder</td>
<td>Maine Dept of Transportation</td>
<td>Augusta ME</td>
<td>04333</td>
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<td>James P Sullivan</td>
<td>CT Dept of Transportation</td>
<td>Stamford CT</td>
<td>06131</td>
<td></td>
</tr>
<tr>
<td>Richard G Carpenter</td>
<td>South Western Regional Planning</td>
<td>Stamford CT</td>
<td>06901</td>
<td></td>
</tr>
<tr>
<td>Edward Lloyd</td>
<td>Rutgers Environmental Law Clinic</td>
<td>Newark NJ</td>
<td>07102</td>
<td></td>
</tr>
<tr>
<td>J William Van Dyke</td>
<td>NJ Transportation Planning Authority</td>
<td>Newark NJ</td>
<td>07102</td>
<td></td>
</tr>
<tr>
<td>Craig Curry</td>
<td>Consolidated Rail Corporation</td>
<td>Vineland NJ</td>
<td>08360</td>
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<tr>
<td>Lawrence Pepper, Jr</td>
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<td>Anthony P. Semancik</td>
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<td>Edward J Rodriguez</td>
<td>Housatonic Railroad</td>
<td>Old Lyme CT</td>
<td>06371</td>
<td></td>
</tr>
<tr>
<td>Michael E Strickland</td>
<td>NYK Line (North America) Inc, Senior</td>
<td>Secaucus NJ</td>
<td>07094</td>
<td>1588</td>
</tr>
<tr>
<td>Honorable Robert G. Torricelli</td>
<td>United States Senate</td>
<td>Newark NJ</td>
<td>07102</td>
<td></td>
</tr>
<tr>
<td>Martin T Durkin</td>
<td>Durkin &amp; Boggia Esqs</td>
<td>Ridgefield NJ</td>
<td>07660</td>
<td></td>
</tr>
<tr>
<td>Timothy G Chelius</td>
<td></td>
<td>Vineland NJ</td>
<td>08360</td>
<td></td>
</tr>
<tr>
<td>John F McHugh</td>
<td></td>
<td>New York NY</td>
<td>10055</td>
<td>3201</td>
</tr>
<tr>
<td>Walter E Zullig Jr</td>
<td>Metro-North Commuter Railroad Corp</td>
<td>New York NY</td>
<td>10017</td>
<td>3706</td>
</tr>
</tbody>
</table>
SERVICE LIST FOR: 10-jul-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION INC.

JAMES W HARRIS
THE METROPOLITAN PLANNING ORGANIZATION
1 WORLD TRADE CENTER STE 82 EAST
NEW YORK NY 10048-0043 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

R. MCCAFFREY, JR.
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-0202 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE, INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

SHEILA MEEK HYDE
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

JOHN F. COLLINS
COLLINS COLLINS & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

IRVING J RUBIN
P O BOX 243
YOUNGSTOWN NY 14174 US

ERNEST J IERARDI
NIXON HARKRIDGE DEVANS DOYLE LLP
PO BOX 1851
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

R W GODWIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
810 ABBOTT ROAD SUITE 200
BUFFALO NY 14220 US

JEANNE WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

DAVID W. DONLEY
3361 STAFFORD ST
PITTSBURGH PA 15204-1441 US

JOHN A VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

HENRY M WICK, JR.
WICK STREIFF ET AL
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219-3427 US

R J HENEFIELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

M E PETRUCELLI
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

RICHARD R WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

D W DUNLEVY
STATE LEGISLATIVE DIRECTOR UTU
230 STATE STREET PA AFL-CIO BLDG 2ND FLOOR
HARRISBURG PA 17101 US

07/10/2001
KURT W CARR
BUREAU FOR HISTORIC PRESERVATION
P.O. BOX 1026
HARRISBURG PA 17108-1026 US

HONORABLE THOMAS J RIDGE
GOVERNOR, COMMONWEALTH OF PENNSYLVANIA
225 MAIN CAPITOL BUILDING
HARRISBURG PA 17120 US

RICHARD A GRIST
MAIN CAPITOL BUILDING
P.O. BOX 202020
HARRISBURG PA 17120-2026 US

HON ROBERT JUBELIRER
PENNSYLVANIA STATE SENATE
SENATE BOX 203030
THE STATE CAPITOL
HARRISBURG PA 17120-3030 US

BELKNAP FREEMAN
BELKNAP FREEMAN
119 HICKORY LANE
ROSEMONT PA 19010 US

HARRY C BARBIN
BARBIN LAUFFER & O'CONNELL
608 HUNTINGDON PIKE
ROCKLEDGE PA 19046 US

JOHN J GROCKI
GRA INC
115 WEST AV ONE JENKINTOWN STA
JENKINTOWN PA 19046 US

JONATHAN M BRODER
CONSOLIDATED RAIL CORP
P.O. BOX 41416
2001 MARKET STREET 16TH FLOOR
PHILADELPHIA PA 19101-1416 US

G CRAIG SCHELTERT
PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION
2600 CENTRE SQUARE WEST 500 MARKET ST
PHILADELPHIA PA 19102 US

JOHN J EHLINGER JR
OBERMAYER REBMANN MAXWELL & HIPPEL
1617 JOHN F. KENNEDY BLVD ONE PENN CENTER-19T
PHILADELPHIA PA 19103-1895 US

DAVID BERGER
BERGER AND MONTAGUE, P.C.
1622 LOCUST ST
PHILADELPHIA PA 19103-6305 US

JOHN J COSCIA, EXECUTIVE DIRECTOR
DELAWARE VALLEY REGIONAL PLANNING COMMISSION
111 SOUTH INDEPENDENCE MALL EAST
PHILADELPHIA PA 19106 US

JOHN K LEARY, GENERAL MANAGER
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY
1.34 MARKET STREET 5TH FLOOR
PHILADELPHIA PA 19107-3780 US

ERIC M HOCKY
GOLLATZ GRIFFIN & EWING
P.O. BOX 796
213 WEST MINER STREET
WEST CHESTER PA 19381-0796 US

HON JOSEPH R BIDEN, JR.
UNITED STATES SENATE
844 KING STREET
WILMINGTON DE 19801 US

J E THOMAS
HERCULES INCORPORATED
1333 NORTH MARKET STREET
WILMINGTON DE 19894 US

E C WRIGHT
E I DU PONT DE NEMOURS AND COMPANY
1007 MARKET STREET D-3100
WILMINGTON DE 19898 US

FREDERICK H SCHRANCK
P.O. BOX 778
DOVER DE 19903 US

E C WRIGHT
E I DU PONT DE NEMOURS AND COMPANY
1007 MARKET STREET D-3100
WILMINGTON DE 19898 US

PETER A GILBERTSON
REGIONAL PRESIDENTS OF AMERICA
122 C ST NW STE 850
WASHINGTON DC 20001 US

E C WRIGHT
E I DU PONT DE NEMOURS AND COMPANY
1007 MARKET STREET D-3100
WILMINGTON DE 19898 US

JAMES HOWARD
COALITION OF NORTHEASTERN GOVERNORS
400 NORTH CAPITOL STREET, SUITE 382
WASHINGTON DC 20001 US

TERRENCE D JONES
KELLER & HECKMAN LLP
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US
SERVICE LIST FOR: 10-Jul-2001 STB FD 33388 0
CSX CORPORATION AND CSX TRANSPORTATION INC

CHARLES A SPITULNIK
MCLEOD WATKINSON & MILLER
ONE MASSACHUSETTS AVENUE NW SUITE 800
WASHINGTON DC 20001-1401 US

DONALD F GRIFFIN ASSISTANT GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
10 G STREET NE STE 460
WASHINGTON DC 20002 US

RICHARD G SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

DREW A HARKER
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

J MICHAEL HEMMER
COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004 US

WILLIAM A MULLINS
TROUTMAN SANDERS LLP
401 NINTH STREET NW SUITE 1000
WASHINGTON DC 20004 US

PAUL ESTRUP
CSX TRANSPORTATION INC
1331 PENNSYLVANIA AVENUE NW STE 500
WASH DC 20004 US

GEORGE W YAYO JR
HOGAN & HARTSON LLP
555 THIRTEENTH STREET NW COLUMBIA SQUARE
WASHINGTON DC 20004-1109 US

ERIC VON SALZEN
HOGAN & HARTSON
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109 US

MARY GABRIELLE SPRAGUE
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004-1202 US

DENNIS G LYONS
ARNOLD & PORTER
555 TWELFTH STREET NW, STE 940
WASHINGTON DC 20004-1206 US

ROBERT A WIMBISH ESQ
HARKINS CUNNINGHAM
801 PENNSYLVANIA AVE NW
WASHINGTON DC 20004-2664 US

DANIEL DUFF
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
1301 NEW YORK AV NW, STE 400
WASHINGTON DC 20005 US

LOUIS E GITOMER
BALL JANIK LLP
1435 F STREET NW SUITE 225
WASHINGTON DC 20005 US

BRUNO MAESTRI
NORFOLK SOUTHERN CORPORATION
1500 K STREET SUITE 375
WASHINGTON DC 20005 US

KARL MORELL
BALL JANIK LLP
1435 F STREET NW SUITE 225
WASHINGTON DC 20005 US

L JOHN OSBORN
SONNENSCHEIN NATH & ROSENTHAL
1301 K STREET NW STE 600 EAST
WASH DC 20005 US

ALICE C SAYLOR
AMERICAN SHORT LINE & REGIONAL RAILROAD ASSOCIATION
1120 G STREET NW SUITE 520
WASHINGTON DC 20005 US

NEAL P GROSS
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ANDREW R. PLUMP
ZUCKER, SCOTT & RASENBERGER LLP
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WASHINGTON DC 20006 US

CONSTANCE A SADLER
SIDLEY & AUSTIN BROWN & WOOD
1722 EYEW STREET NW
WASHINGTON DC 20006 US

ALICIA SERAFTY
FOLEY & LORDNER
888 SIXTEENTH ST., N.W.
WASHINGTON DC 20006 US
PAUL H. LAMBOLEY  
1917 N STREET NW  
WASHINGTON DC 20036 US

GORDON P. MACDOUGALL  
1025 CONNECTICUT AVE NW SUITE 410  
WASHINGTON DC 20036 US

WILLIAM G. MAHONEY  
HIGHSAW, MAHONEY & CLARKE  
1050 SEVENTEENTH STREET NW SUITE 210  
WASHINGTON DC 20036 US

CHRISTOPHER A. MILLS  
SLOVER & LOFTUS  
1224 SEVENTEENTH STREET NW  
WASHINGTON DC 20036 US

KEITH G. O'BRIEN  
RHA CROSS AND AUCHINCLOSS  
1707 L STREET NW STE 570  
WASHINGTON DC 20036 US

HAROLD P. QUINN JR  
NATIONAL MINING ASSOCIATION  
1130 17TH STREET NW  
WASHINGTON DC 20036 US

FRITZ R. BAHN  
1920 N STREET NW 8TH FLOOR  
WASHINGTON DC 20036-1601 US

FREDDIE L. WOOD  
THOMPSON HINE LLP  
1920 N STREET  
WASHINGTON DC 20036-1601 US

ROSE-MICHELLE WEINKYB  
WEINER BRODSKY SIDMAN & KIDER  
1300 19TH STREET NW 5TH FLOOR  
WASHINGTON DC 20036-1609 US

SAMUEL M. SIPE JR  
STEPH & JOHNSON LLP  
1330 CONNECTICUT AVENUE NW  
WASHINGTON DC 20036-1795 US

TOMMY M. WALSH  
STEPH & JOHNSON  
1330 CONNECTICUT AVENUE NW  
WASHINGTON DC 20036-1795 US

EDWARD J. FISHMAN  
KIRKPATRICK & LOCKHART LLP  
1800 MASSACHUSETTS AVENUE, N.W., 2ND FLOOR  
WASHINGTON DC 20036-1800 US

KEVIN M. CHEYS  
KIRKPATRICK & LOCKHART LLP  
1800 MASSACHUSETTS AVENUE NW 2ND FLOOR  
WASHINGTON DC 20036-1800 US

JOSEPH GUERRIERI, JR.  
GUERRIERI, EDMOND & CLAYMAN, PC  
1625 MASSACHUSETTS AVE., NW. STE 700  
WASHINGTON DC 20036-2243 US

DEBRA L. MILLER  
GUERRIERI, EDMOND & CLAYMAN PC  
1625 MASSACHUSETTS AVENUE, N.W., STE 700  
WASHINGTON DC 20036-2243 US

DONALD G. AVERY  
SLOVER & LOFTUS  
1224 SEVENTEENTH STREET NW  
WASHINGTON DC 20036-3003 US

KELVIN J. DOWD  
SLOVER & LOFTUS  
1224 17TH STREET NW  
WASHINGTON DC 20036-3003 US

WILLIAM L. SLOVER  
SLOVER & LOFTUS  
1224 SEVENTEENTH STREET NW  
WASHINGTON DC 20036-3003 US

JOHN M. CUTLER JR  
MCARTHUR SWEENEY HARKAWAY PC  
2175 K STREET NW  
WASHINGTON DC 20037 US

ANDREW P. GOLDSTEIN  
MCARTHUR SWEENEY & HARKAWAY PC  
2175 K STREET NW SUITE 600  
WASHINGTON DC 20037 US

STEVEN J. KALISH  
MCARTHUR SWEENEY & HARKAWAY PC  
2175 K STREET NW SUITE 600  
WASHINGTON DC 20037 US
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<td>WASHINGTON DC 20037-1301 US</td>
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<td>KEITH A. KLINDWORTH</td>
<td>U S DEPT OF AGRICULTURE</td>
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<td>KEITH A. KLINDWORTH</td>
<td>WASHINGTON DC 20090-6456 US</td>
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<td>MICHAEL V. DUNN</td>
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<td>MICHAEL V. DUNN</td>
<td>WASHINGTON DC 20250 US</td>
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<td>GENERAL CHAIRPERSON UTU</td>
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<td>GENERAL CHAIRPERSON UTU</td>
<td>1319 CHESTNUT STREET KENOVY WV 25530 US</td>
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<td>NC DEPT OF TRANSPORTATION</td>
<td>1 S. WILMINGTON STREET RALEIGH NC 27611 US</td>
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<td>GOVERNOR</td>
<td>P. O. BOX 11369 COLUMBIA, SC 29211 US</td>
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<td>FRANCIS G. MCKENNA</td>
<td></td>
<td>206 N WASHINGTON STREET SUITE 330 ALEXANDRIA VA 22314 US</td>
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<td>VA SECRETARY OF TRANSPORTATION</td>
<td>P. O. BOX 1475 RICHMOND VA 23216 US</td>
</tr>
<tr>
<td>JOHN W. SNOW</td>
<td>CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER</td>
<td>RICHDON VA 23285-5629 US</td>
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<td>NORFOLK SOUTHERN CORPORATION</td>
<td>THREE COMMERCIAL PLACE, LAW DEPT NORFOLK VA 23510 US</td>
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<td>SENIOR VICE PRESIDENT, EMPLOYEE RELATIONS NOR</td>
<td>THREE COMMERCIAL PLACE NORFOLK VA 23510-2191 US</td>
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<td>HONORABLE JOHN WARNER</td>
<td>UNITED STATES SENATE</td>
<td>235 FEDERAL BUILDING ARLINGTON VA 2410-0887 US</td>
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<tr>
<td>TERRELL ELLIS</td>
<td>CAEZWV</td>
<td>P. O. BOX 176 CLAY WV 25043 US</td>
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<tr>
<td>SCOTT M. SAYLOR</td>
<td>NORTH CAROLINA RAILROAD COMPANY</td>
<td>3200 ATLANTIC AV STE 110 RALEIGH NC 27604-1640 US</td>
</tr>
<tr>
<td>J. R. BARBEE</td>
<td>GENERAL CHAIRPERSON UTU</td>
<td>441 N LOUISIANA AVE STE 0 ASHEVILLE NC 28806-3791 US</td>
</tr>
<tr>
<td>FRED R. BIRKHOZ</td>
<td>CSX TRANSPORTATION LAW DEPT - J-150</td>
<td>500 WATER STREET JACKSONVILLE FL 32202 US</td>
</tr>
<tr>
<td>CARL A. GERHARDSTEIN</td>
<td>CSX TRANSPORTATION RISK MGMT</td>
<td>500 WATER STREET-J275 JACKSONVILLE FL 32202 US</td>
</tr>
</tbody>
</table>
MAJOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

BARBARA O'KEEFE
VILLAGE OF WELLINGTON
115 WILLARD MEMORIAL SQ
WELLINGTON OH 44090 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

C L LITTLE
INTERNATIONAL PRESIDENT UTU
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLARENCE MONIN INTERNATIONAL PRES
BROTHERHOOD OF LOCOMTIVE ENGINEERS MEZZANINE
1370 ONTARIO STREET
CLEVELAND OH 44113 US

DAVID ROLLOFF
GOLDSTEIN & ROLLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

CHARLES ZUMKEHR
ROETZEL & ANDRESS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

RICHARD E KERTH
CHAMPION INTERNATIONAL CORPORATION
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LANETTE DRIVE
CINCINNATI OH 45230 US
SERVICE LIST FOR: 10-jul-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

THOMAS R. RYDMAN, PRESIDENT
INDIAN CREEK RAILROAD COMPANY
3905 W. 600 NORTH
ANDERSON IN 46011 US

J. PATRICK LATZ
HEAVY LIFT CARGO SYSTEM
PO BOX 51451
INDIANAPOLIS IN 46251-0451 US

HAMILTON L. CARMOUCHE, CORPORATION COUNSEL
CITY OF GARY
401 BROADWAY 4TH FLOOR
GARY IN 46402 US

CARL FELLER
PO BOX 758
WATERLOO IN 46793-0758 US

WILLIAM A. DON, GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
26555 EVERGREEN ROAD SUITE 200
SOUTHFIELD MI 48076 US

LARRY B. KARNES
MICHIGAN DEPARTMENT OF TRANSPORTATION
PO BOX 30030
425 WEST OTTAWA STREET
LANSING MI 48909 US

T. SCOTT BANNISTER
T. SCOTT BANNISTER AND ASSOCIATES
1300 DES MOINES BLDG 405 SIXTH AVENUE
DES MOINES IA 50309 US

LEO J. HASBROA
GOLD MEDAL DIVISION - GENERAL MILLS OPERATION
PO BOX 1113
NUMBER ONE GENERAL MILLS BULEVARD
MINNEAPOLIS MN 55440 US

RICHARD A. CAVRILL
16700 GENTRY LANE NO 104
TINLEY PARK IL 60477 US

THOMAS J. LITWILER
FLETCHER & SIPPEL LLC
180 NORTH STETSON AVENUE SUITE 3125 TWO PRUDE
CHICAGO IL 60601-6721 US

SANDRA J. DEARDEN
MDC TRANSPORTATION MANAGEMENT LTD
166 WEST WASHINGTON SUITE 700
CHICAGO IL 60602 US

F. RONALDS WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIDIAN STREET
INDIANAPOLIS IN 46202-1393 US

MICHAEL CONNELLY
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4525 INDIANAPOLIS BLVD
EAST CHICAGO IN 46312 US

HONORABLE PETER J. VISCOSKY
U. S. HOUSE OF REPRESENTATIVES
215 WEST 35TH AVENUE
GARY IN 46408 US

CHRISTOPHER J. BURGER, PRESIDENT
CENTRAL RAILROAD COMPANY OF INDIANAPOLIS
PO BOX 554
KOKOMO IN 46903-0554 US

JAMES E. SHEPERD
TUSCOLA & SAGINAW BAY
PO BOX 550
OWOSSO MI 48867-0550 US

HON. JOHN ENGLER
OFFICE OF THE GOVERNOR
PO BOX 30013
LANSING MI 48933 US

BYRON D. OLSCH
FELHABER LAKSON FENLON & VOGT PA
601 SECOND AVENUE SOUTH SUITE 4200
MINNEAPOLIS MN 55401-4302 US

GERALD J. VINCI
PRAIRIE GROUP
P.O. BOX 1123
7601 WEST 79TH STREET
BRIDGEVIEW IL 60455 US

CHRISTINE H. ROSSO
IL ASSISTANT ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FLOOR
CHICAGO IL 60601 US

WILLIAM C. SIPPEL
FLETCHER & SIPPEL LLC
180 N STETSON AVE STE 3125 TWO PRUDENTIAL PLA
CHICAGO IL 60601-6721 US

RICHARD F. FRIEDMAN ESQ
EARL L. NEAL & ASSOCIATES
111 WEST WASHINGTON STREET STE 1700
CHICAGO IL 60602-2766 US
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<td>KS Dept of Transp, 217 SE 4th St 2nd Floor, Topeka, KS 66603</td>
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<td>Ian M. Muir</td>
<td>Bunce Corporation, PO Box 28500, St Louis, MO 63146</td>
</tr>
<tr>
<td>George Van Haver</td>
<td>2340 South 35th Street, Omaha, NE 68105</td>
</tr>
<tr>
<td>Charles R. Carr</td>
<td>Atofina Petrochemicals, Inc., 15710 JFK Blvd, Houston, TX 77032</td>
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<tr>
<td>David L. Hall</td>
<td>Commonwealth Consulting Associates, 13103 FM 1960 West Suite 204, Houston, TX 77065-4069</td>
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<td>Jeffrey G. Dowdell</td>
<td>ExxonMobil Global Services Co., PO Box 3272, Houston, TX 77253-3272</td>
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<tr>
<td>Brad F. Huston</td>
<td>Cyprus Amax Minerals, 2600 N Central Ave, Ste 110, Phoenix, AZ 85004-3012</td>
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<tr>
<td>Richard Welsh</td>
<td>Narpo, 50-505 Grand Traverse, La Quinta, CA 92253</td>
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Records: 329
Environmental Condition No. 36(B) of Appendix Q of Decision No. 89\(^1\) (Decision No. 89, slip op. at 414) requires NS, with the concurrence of the City of Oak Harbor, OH, to provide, install, and maintain a real-time train location monitoring system to improve local emergency response vehicle dispatching. Environmental Condition No. 36(B) further provides: "At a minimum, the system shall use appropriate technology to detect trains approaching the city on NS rail line segments N-079, N-077, N-294, and N-483 and shall display the train locations at an emergency response center to be specified by the City."

On May 21, 2001, NS provided us with a copy of a Negotiated Agreement between NS and the Village of Oak Harbor, OH, dated May 2, 2001, and accepted by the Village of Oak Harbor on May 15, 2001. According to NS, this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. In view of the Negotiated Agreement with the Village of Oak Harbor, NS requests that the Board issue an order providing that Environmental Condition No. 51 of Appendix Q of Decision No. 89 be amended by adding this Negotiated Agreement to the list of Negotiated Agreements entered into by NS, and that Environmental Condition No. 36(B) of Appendix Q of Decision No. 89 be superseded by the Negotiated Agreement. Environmental Condition No. 51 requires NS to comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. See Decision No. 89, slip op. at 420-21. The Village of Oak Harbor concurs with the request.

\(^1\) In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail's assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.
In view of the Negotiated Agreement between NS and the Village of Oak Harbor, OH, we will: (1) add the Negotiated Agreement to Environmental Condition No. 51 of Appendix Q of Decision No. 89; and (2) delete Environmental Condition No. 36(B) of Appendix Q of Decision No. 89, which has been superseded by the Negotiated Agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. In accordance with the Negotiated Agreement between NS and the Village of Oak Harbor, OH, dated May 2, 2001, and accepted by the Village of Oak Harbor on May 15, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:


3. In addition, Environmental Condition No. 36(B) of Appendix Q of Decision No. 89 is deleted because the mitigation requirement for that condition has been superseded by the parties' Negotiated Agreement.

4. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary
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<tr>
<td>PAUL E CRAWFORD</td>
<td>MASSACHUSETTS CENTRAL RAILROAD CORPORATION TWO WILBRAHAM STREET PALMER MA 01069 US</td>
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<td>JOHN D CIRAME, ASSISTANT SECRETARY</td>
<td>COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSPT 10 PARK PLAZA ROOM 3170 BOSTON MA 02116-3969 US</td>
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<td>WILLIAM D. ANKNER, PHD</td>
<td>R I DEPT OF TRANSPORTATION TWO CAPITOL HILL PROVIDENCE RI 02903 US</td>
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<td>ROBERT D. ELDER</td>
<td>MAINE DEPARTMENT OF TRANSPORTATION 16 STATE HOUSE STATION AUGUSTA ME 04333-0016 US</td>
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<tr>
<td>JAMES F. SULLIVAN</td>
<td>CT DEPT OF TRANSPORTATION P O BOX 317546 2800 BERLIN TUNPKIE NEWINGTON CT 06131 US</td>
</tr>
<tr>
<td>RICHARD C. CARPENTER</td>
<td>SOUTH WESTERN REGIONAL PLANNING AGENCY 888 WASHINGTON BOULEVARD, 3RD FLOOR STAMFORD CT 06901 US</td>
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<td>EDWARD LLOYD</td>
<td>RUTGERS ENVIRONMENTAL LAW CLINIC 15 WASHINGTON STREET NEWARK NJ 07102 US</td>
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<td>J WILLIAM VAN DYKE</td>
<td>NJ TRANSPORTATION PLANNING AUTHORITY ONE NEWARK CENTER 17TH FLOOR NEWARK NJ 07102 US</td>
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<td>CRAIG CURRY</td>
<td>CONSOLIDATED RAIL CORPORATION 1000 HOWARD BOULEVARD MOUNT LAUREL NJ 08054 US</td>
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<td>LAWRENCE PEPPER, JR</td>
<td>GRUCCIO PEPPER 817 EAST LANDS AVE VINEILAND NJ 08360 US</td>
</tr>
<tr>
<td>ANTHONY P. SEMANCIK</td>
<td>347 MADISON AVENUE NEW YORK NY 10017-3706 US</td>
</tr>
</tbody>
</table>

| JAMES E. HOWARD               | 90 CANAL STREET BOSTON MA 02114 US |
| HON. EDWARD M. KENNEDY        | UNITES STATES SENATE 2400 JOHN F KENNEDY FEDERAL BLDG BOSTON MA 02203 US |
| JOHN R. NADOLNY               | 14 AVIATION AVENUE PORTSMOUTH NH 03801 US |
| KAREN E. SONGHURST            | STATE OF VERMONT 133 STATE STREET MONTPELIER VT 05633-5001 US |
| EDWARD J. RODRIGUEZ           | HOUSATONIC RAILROAD P O BOX 687 8 DAVIS ROAD WEST OLD LYME CT 06371 US |
| MICHAEL E. STRICKLAND         | NYK LINE (NORTH AMERICA) INC, SENIOR VICE PRE 300 LIGHTING WAY Secaucus NJ 07094-1588 US |
| JONATHAN OSBORNE              | NYC COMMISSIONER FOR TRANSPORTATION 100 HOWARD BOULEVARD MOUNT LAUREL NJ 08054 US |
| MARTIN T. DURKIN, ESQ         | DURKIN & BOOGIA ESQS PO BOX 378 71 MT VERNON STREET RIDGEFIELD PARK NJ 07660 US |
| TIMOTHY G. CHELIUS             | NEW YORK NY 10017-3706 US |
| JOHN F. MCHUGH                 | 1000 HOWARD BOULEVARD MOUNT LAUREL NJ 08054 US |
| WALTER E. ZULLIG, JR           | MUNICIPAL COMMITTEE RAILROAD COMPANY 347 MADISON AVE NEW YORK NY 10017-3706 US |

07/10/2001
SERVICE LIST FOR: 10-jul-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

JAMES W HARRIS
THE METROPOLITAN PLANNING ORGANIZATION
1 WORLD TRADE CENTER STE 82 EAST
NEW YORK NY 10048-0043 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE, INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

JAMES W HARRIS
THE METROPOLITAN PLANNING ORGANIZATION
1 WORLD TRADE CENTER STE 82 EAST
NEW YORK NY 10048-0043 US

R. LAWRENCE MCCAFFREY, JR.
NEW YORK & ATLANTIC RAILWAY
405 LEXINGTON AVENUE 50TH FLOOR
NEW YORK NY 10174 US

DANIEL B. WALSH
BUSINESS COUNCIL OF NEW YORK STATE, INC.
152 WASHINGTON AVENUE
ALBANY NY 12210 US

IRWIN L. DAVIS
1900 STATE TOWER BLDG.
SYRACUSE NY 13202 US

SHEILA MECK HYDE
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

JOHN F COLLINS
COLLINS COLLINS & KANTOR PC
267 NORTH STREET
BUFFALO NY 14201 US

ERNEST J GERARDI
NIXON HARGRAVE DEVANS DOYLE LLP
PO BOX 1051
CLINTON SQUARE
ROCHESTER NY 14603-1051 US

JEANNE WALDOCK
107 GRANT COURT
ORLEAN NY 14760 US

JOHN A VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

RICHARD R WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

HUGH H. WELSH
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-0202 US

SAMUEL J NASCA
UTU STATE LEGISLATIVE DIRECTOR
35 FULLER ROAD SUITE 205
ALBANY NY 12205 US

DIANE SEITZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

GARY EDWARDS
SOMERSET RAILROAD
7725 LAKE ROAD
BARKER NY 14012 US

IRVING J RUBIN
P O BOX 243
YOUNGSTOWN NY 14174 US

R W GODWIN
BROTHEHOOD OF LOCOMOTIVE ENGINEERS
810 ABBOTT ROAD SUITE 200
BUFFALO NY 14220 US

H DOUGLAS M DUNLEVY
STATE LEGISLATIVE DIRECTOR UTU
230 STATE STREET PA AFL-CIO BLDG 2ND FLOOR
PITTSBURGH PA 17101 US
SERVICE LIST FOR: 10-31-2001 STB FD 33388 O

CHARLES A SPITULNIK
MCLEOD WATKINSON & MILLER
ONE MASSACHUSETTS AVENUE NW SUITE 800
WASHINGTON DC 20001-1401 US

RICHARD G SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

J MICHAEL HEMMER
COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004 US

PAUL REISTREP
CSX TRANSPORTATION INC
1331 PENNSYLVANIA NW STE 500
WASH DC 20004 US

ERIC VON SALZEN
HOGAN & HARTSON
555 THIRTEENTH STREET N W
WASHINGTON DC 20004-1109 US

DENNIS G LYONS
ARNOLD & PORTER
555 TWELFTH STREET NW, STE 940
WASHINGTON DC 20004-1206 US

DANIEL DUFF
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
1201 NEW YORK AV NW, STE 400
WASHINGTON DC 20005 US

BRUNO MAESTRI
NORFOLK SOUTHERN CORPORATION
1500 K STREET SUITE 375
WASHINGTON DC 20005 US

L JOHN OSEORN
SONNENSCHNITZ NATH & ROSENTHAL
1301 K STREET NW STE 600 EAST
WASH DC 20005 US

NEAL R GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AV NW
WASHINGTON DC 20005-3701 US

CONSTANCE A SADLER
SIDLEY & AUSTIN BROWN & WOOD
1722 EYE STREET NW
WASHINGTON DC 20006 US

DONALD F GRIFFIN ASSISTANT GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
10 G STREET NE STE 460
WASHINGTON DC 20002 US

DREW A HARKER
ARNOLD & PORTER
555 TWELFTH STREET NW
WASHINGTON DC 20004 US

WILLIAM A MULLINS
TROUTMAN SANDERS LLP
401 NINTH STREET NW SUITE 1000
WASHINGTON DC 20004 US

ROBERT A WIMBISH ESQ
HARKINS CUNNINGHAM
801 PENNSYLVANIA AVE NW
WASHINGTON DC 20004-2664 US

KARL MORELL
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

ALICE C SAYLOR
AMERICAN SHORT LINE & REGIONAL RAILROAD ASSO
1120 G STREET NW SUITE 520
WASHINGTON DC 20005 US

ANDREW R. PLUMP
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 17TH ST., NW, STE. 600
WASHINGTON DC 20006 US

ALICIA SERAFTY
FOLEY & LARDNER
888 SIXTEENTH ST., N.W.
WASHINGTON DC 20006 US
SERVICE LIST FOR: 10-jul-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

ROBERT P VOM EIGEN
FOLEY & LARDNER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

JAMES R WEISS
PRESTON GATES ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

EDWARD WYTKIND EXECUTIVE DIRECTOR
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

SCOTT M ZIMMERMAN
ZUCKERT SCOTT & RASENBERGER L L P
888 SEVENTEENTH STREET NW
WASHINGTON DC 20006 US

WILLIAM W MILLAR
AMERICAN PUBLIC TRANSIT ASSOCIATION
1666 K STREET NW
WASHINGTON DC 20006-1215 US

RICHARD A ALLEN
ZUCKERT SCOTT & RASENBERGER L L P
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3309 US

JOHN V EDWARDS, ESQ
ZUCKERT SCOTT ET AL
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3939 US

RACHEL DANISH CAMPBELL
FOLEY & LARDNER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006-4103 US

SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL AFFAI
CORN REFINERS ASSOC
1701 PA AV NW
WASH DC 20006-5805 US

JOHN H BROADLEY
JOHN H BROADLEY & ASSOCIATES P C
1054 31ST STREET NW SUITE 200
WASHINGTON DC 20007 US

PAUL M DONOVAN
LAROE WINN MOERMAN & DONOVAN
3900 HIGHWOOD COURT NW
WASHINGTON DC 20007 US

DAVID K MONROE
GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY FIRST STREET NW STE 200
WASHINGTON DC 20007 US

CHRISTOPHER C O'HARA
BRICKFIELD BURCHETTE & RITTS PC
1025 THOMAS JEFFERSON ST NW EIGHTH FLOOR
WASHINGTON DC 20007 US

SCOTT STONE
2550 M STREET NW
WASHINGTON DC 20007 US

EDWARD D GREENBERG
GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY-FIRST STREET NW STE 200
WASHINGTON DC 20007-4492 US

MICHAEL F MCBRIDE
LEBOEUF LAMB GREENE & MACRAE
1875 CONNECTICUT AVENUE NW
WASHINGTON DC 20009-5728 US

KARYN A BOOTH
THOMPSON HINE & FLORY LLP
1920 N STREET, NW & FLORY LLP
WASHINGTON: DC 20036 US

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20006 US

PAUL D COLEMAN
HOPPEL MAYER & COLEMAN
1000 CONNECTICUT AVENUE NW SUITE 400
WASHINGTON DC 20036 US

RICHARD S EDELMAN
O'DONNELL SCHWARTZ & ANDERSON PC
1900 L STREET NW SUITE 707
WASHINGTON DC 20036 US

PETER A GREENE
THOMPSON HINE FLORY
1920 N STREET N W SUITE 800
WASHINGTON DC 20036 US

JOHN D HEFFNER
REID CROSS & AUCHINCLOSS
1707 L STREET, NW, STE 570
WASHINGTON DC 20036 US
<table>
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<td>1025 Connecticut Ave NW Suite 410</td>
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<td>Mccarthy Sweeney &amp; Harkaway P C</td>
<td>Washington DC 20037 US</td>
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<tr>
<td>John L Oberdorfer</td>
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<td>Washington DC 20037-1301 US</td>
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<td>Washington DC 20090 US</td>
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<td>Eileen S Stommes</td>
<td>U S Department of Agriculture</td>
<td>Washington DC 20090-6456 US</td>
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<tr>
<td>Michael V Dunn</td>
<td>Room 228W Jamie L Whitten Federal Bldg</td>
<td>Washington DC 20250 US</td>
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<tr>
<td>Melissa Pickworth</td>
<td>General Accounting Office</td>
<td>Washington DC 20458 US</td>
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<tr>
<td>HONORABLE John Breaux</td>
<td>United States Senate</td>
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<td>HONORABLE John H. Chafee</td>
<td>United States Senate</td>
<td>Washington DC 20510-3902 US</td>
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<tr>
<td>Hon. Joseph Biden, Jr.</td>
<td>United States Senate</td>
<td>Washington DC 20510 US</td>
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<td>Hon. Byron L Dorgan</td>
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<td>Hon. Mike Dewine</td>
<td>United States Senate</td>
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<td>Hon. Rick Santorum</td>
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<td>UNITED STATES SENATE</td>
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U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1305 US

HONORABLE JAMES A. BARCIA
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2205 US

HONORABLE JOHN D. DINGELL
2328 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON DC 20515-2216 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

HONORABLE BOBBY L. RUSH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-9997 US

MICHAEL P HARMONIS
DEPARTMENT OF JUSTICE
325 SEVENTH STREET, NW
WASHINGTON DC 20530 US

JOSEPH R POMPONIO
FEDERAL RAILROAD ADMINISTRATION
400 SEVENTH STREET SW RCC-20
WASHINGTON DC 20590 US

DAVID G ABRAHAM
SUITE 400W
7315 WISCONSIN AVENUE
BETHESDA MD 20814 US

JOHN M ROBINSON
9616 OLD SPRING ROAD
KENSGINGTON MD 20895-3124 US

JOHN HOY
P O BOX 117
GLEN BURNIE MD 21060 US

LINDA A JANET J D
MARYLAND OFFICE OF PLANNING
301 WEST PRESTON STREET
BALTIMORE MD 21201-2365 US

PETER Q NYCE JR
U S DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

HON JULIA CARSON
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1410 US

HONORABLE JULIA CARSON
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1410 US

HONORABLE TOM DAVIS
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4611 US

HONORABLE RICHARD BURR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3305 US

HONORABLE JULIA CARSON
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1410 US

HONORABLE JOHN D. DINGELL
2328 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON DC 20515-2216 US

JOLENE MOLITORIS, ADMN.
FEDERAL RAILROAD ADMIN.
400 7TH STREET SW
WASHINGTON DC 20590 US

PAUL SAMUEL SMITH
US DEPARTMENT OF TRANSPORTATION
400 SEVENTH STREET SW ROOM 4102 C-30
WASHINGTON DC 20590 US

MITCHELL M KRAUS, GENERAL COUNSEL
TRANSPORTATION COMMUNICATIONS INTERNATIONAL U
3 RESEARCH PLACE
ROCKVILLE MD 20850-3279 US

WILLIAM W WHITEHURST JR
W W WHITEHURST & ASSOCIATES INC
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030-1711 US

ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

CHARLES M CHADWICK
MARYLAND MIDLAND RAILWAY INC
P O BOX 1000
UNION BRIDGE MD 21791 US

THOMAS E SCHICK
AMERICAN CHEMISTRY COUNCIL
1300 WILSON BOULEVARD
ARLINGTON VA 22209 US
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<tr>
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<td>William P. Jackson, Jr.</td>
<td>CSX Corporation and CSX Transportation</td>
<td>3426 North Washington Blvd, Arlington, VA 22210 US</td>
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<tr>
<td>Michael J. Ruehlting</td>
<td>CSX Corporation</td>
<td>P.O. Box 85629, Richmond, VA 23218 US</td>
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<tr>
<td>Francis G. McKenna</td>
<td>General Solicitor - Regular</td>
<td>206 N Washington Street Suite 330, Alexandria, VA 22314 US</td>
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<tr>
<td>Robert E. Martinez</td>
<td>Secretary of Transportation</td>
<td>P.O. Box 1475, Richmond, VA 23218 US</td>
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<tr>
<td>John W. Snow</td>
<td>Chairman, President and Chief Executive Officer</td>
<td>P.O. Box 85629, Richmond, VA 23218 US</td>
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<tr>
<td>David A. Shelton</td>
<td>Norfolk Southern Corporation</td>
<td>Three Commercial Place, Norfolk, VA 23510 US</td>
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<tr>
<td>L. P. King Jr.</td>
<td>General Chairperson UTU</td>
<td>145 Campbell Ave SW Ste 207, Roanoke, VA 24011 US</td>
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<tr>
<td>Vaughtn R. Groves</td>
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<tr>
<td>R. K. Sargent</td>
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<td>J. R. Barbee</td>
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<tr>
<td>Honorable David M. Beasley</td>
<td>Governor of North Carolina Railroad Company</td>
<td>3200 Atlantic Ave Ste 110, Raleigh, NC 27604-1640 US</td>
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<tr>
<td>Fred R. Birkholz</td>
<td>CSX Transportation Law Dept - J-150</td>
<td>500 Water Street, Jacksonville, FL 32202 US</td>
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<tr>
<td>Carl A. Gerhardtstein</td>
<td>CSX Transportation Risk Mgmt</td>
<td>500 Water Street-J275, Jacksonville, FL 32202 US</td>
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SERGEANT TURNQUIST
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
2125 TRYON ROAD
ASHATUBA OH 44004 US

CHARLES S HESS
CHARLES HESS ASSOCIATES
7777 BAINBRIDGE ROAD
CABRIN FALLS OH 44023-2124 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44107-4250 US

DANIEL R ELIOT III
AGST GENERAL COUNSEL UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLINTON J MILLER III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CHRISTOPHER C MCCrackEN
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL
ASHA CHEMICALS INC
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114-1538 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COLEY ROAD
AKRON OH 44320 US

RANDALL C. HUNT
KRULIKI WILKINS, GRIFFITHS & DOUGHERTY CO.
P O BOX 36963
4775 MUNSON ST NW
CANTON OH 44735-6963 US

R A GRICE
GENERAL CHAIRPERSON UTU
817 KILBOURNE ST
BELLEVUE OH 44811-9431 US

FAY D DUPUIS
CITY OF CINCINNATI
801 PLUM STREET
CINCINNATI OH 45202 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

BARBARA O'KEEFE
VILLAGE OF WELLINGTON
115 WILLARD MEMORIAL SQ
WELLINGTON OH 44090 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

C L LITTLE
INTERNATIONAL PRESIDENT UTU
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLARENCE MONIN INTERNATIONAL PRES
BROTHERHOOD OF LOCOMTIVE ENGINEERS MEZZANINE
1370 ONTARIO STREET
CLEVELAND OH 44113 US

DAVID ROLOFF
GOLSTEIN & ROLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

CHARLES ZUMKEHR
ROETZEL & ANDREWS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

RICHARD R KERTH
CHAMPION INTERNATIONAL CORPORATION
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LANETTE DRIVE
CINCINNATI OH 45230 US

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<td>TINLEY PARK IL 60477 US</td>
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<td>LANSING MI 48910 US</td>
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<td>FELHABER LARSON FENLON &amp; VOGT PA</td>
<td>601 SECOND AVENUE SOUTH SUITE 4200</td>
<td>MINNEAPOLIS MN 55401-4302 US</td>
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<td>FRAIRIE GROUP</td>
<td>P O BOX 1123</td>
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<td>100 W RANDOLPH ST 13TH FLOOR</td>
<td>CHICAGO IL 60601 US</td>
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<td>180 N STETSON AVE STE 3125 TWO PRUDENTIAL PLA</td>
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<td>RICHARD F FRIEDMAN ESQ</td>
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<td>111 WEST WASHINGTON STREET STE 1700</td>
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SERVICE LIST FOR: 10-jul-2001 STB FD 33388 0
CSX CORPORATION AND CSX TRANSPORTATION

ROGER A SERPE
INDIANA HARBOR BELT RAILROAD COMPANY
111 WEST JACKSON BOULEVARD, STE 2215
CHICAGO IL 60604 US

SHELDON A ZABEL
SCHIFF HARDIN & WAITE
7200 SEARS TOWER
CHICAGO IL 60606 US

CHARLES D BOLAM
UNITED TRANSPORTATION UNION
1400-20TH STREET
GRANITE CITY IL 62040 US

MERRILL L TRAVIS
ILLINOIS DEPT OF TRANSPORTATION
2300 S DIXIE TOWER PARKWAY RM 302
SPRINGFIELD IL 62704 US

JOHN JAY ROSACKER
KS DEPT OF TRANSP.
217 SE 4TH ST 2ND FLOOR
TOPEKA KS 66603 US

HENRY T DART
PLAINTIFF MANAGEMENT COMMITTEE
609 EAST GIBSON STREET
COVINGTON KY 70433 US

DENNIS A. GUETH
WEST LAKE GROUP
2801 POST OAK BLVD
HOUSTON TX 77056 US

MICHAEL P. FERRO
MILLENNIUM PETROCHEMICALS, INC.
P O BOX 2583
1221 MCKINNEY STREET SUITE 1600
HOUSTON TX 77252-2583 US

MONTY L PARKER SR
CMC STEEL GROUP
P O BOX 911
SEGUIS TX 78156-0911 US

STEPHEN MUTHOFF
CONIGLIO & MUTHOFF
60 ELM AVENUE, CONIGLIO PROFESSIONAL BLDG
LONG BEACH CA 90802-4910 US

JOHN D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERTON BLVD STE 217
VANCOUVER WA 98660-3264 US

THOMAS P MCFARLAND JR
208 SOUTH LASALLE ST SUITE 1890
CHICAGO IL 60604-1194 US

MYLES L TOBIN
ILLINOIS CENTRAL RAILROAD
455 NORTH CITYFRONT PLAZA DRIVE
CHICAGO IL 60611-5504 US

SCOTT A RONEY
ARCHER DANIELS MIDLAND COMPANY
P O BOX 1470
4666 FARRIES PARKWAY
DECATUR IL 62525 US

IAN MUIR
Bunge Corporation
P O BOX 28500
ST LOUIS MO 63146 US

GEORGE VAN HAVER
2340 SOUTH 35TH STREET
OMAHA NE 68105 US

CHARLES R. CARR
ATOFINA PETROCHEMICALS, INC.
1101 JFK BLVD.
HOUSTON TX 77032 US

DAVID L HALL
COMMONWEALTH CONSULTING ASSOCIATES
13103 FM 1960 WEST SUITE 204
HOUSTON TX 77065-4069 US

JEFFREY G DOWDELL
EXXONMOBIL GLOBAL SERVICES CO.
PO BOX 3272
HOUSTON TX 77253-3272 US

BRAD F HUSON
CYPRUS AMAX MINERALS
2600 N CENTRAL AVE STE 110
PHOENIX AZ 85004-3012 US

RICHARD WELSH
NARPO
50-505 GRAND TRAVERSE
LA QUINTA CA 92253 US

Records: 329

07/10/2001
Environmental Condition No. 11 of Appendix Q of Decision No. 89\(^1\) (Decision No. 89, slip op. at 401-03) requires Applicants, with the concurrence of the responsible local governments, to mitigate train wayside noise (locomotive engine and wheel/rail noise) at noise-sensitive receptor locations on certain rail line segments. Environmental Condition No. 11 further provides that: "Applicants shall certify compliance with this condition within 2 years of the effective date of the Board's final decision. This condition shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities' environmental concerns."\(^2\)

On May 9, 2001, NS provided us with a copy of a Negotiated Agreement between NS and the Town of Gauley Bridge, WV, dated April 27, 2001, and accepted by the Town of Gauley Bridge on May 2, 2001. According to NS, this Negotiated Agreement effectuates the Board's preference for privately negotiated solutions stated in Decision No. 89, slip op. at 153. NS requests that Environmental Condition No. 11 be amended to reflect the parties' Negotiated

---

\(^1\) In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively, Conrail) and the division of Conrail's assets by CSX Corporation and CSX Transportation, Inc. (collectively, CSX), and by Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS). CSX and NS are referred to as Applicants.

\(^2\) Environmental Condition No. 11 required compliance with this provision within 2 years of the effective date of Decision No. 89, or by August 22, 2000. At the request of NS, by decision served on August 22, 2000, the compliance deadline in Environmental Condition No. 11 was extended 1 year until August 22, 2001, to allow NS to complete implementation of the condition through additional negotiated solutions with communities and an individualized noise mitigation program.
Agreement by deleting the Town of Gauley Bridge receptors from those identified on the Fola Mine, WV, to Deepwater, WV line segment (N-111), and that the Negotiated Agreement between NS and the Town of Gauley Bridge be added to the NS Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires NS to comply with the terms of all Negotiated Agreements developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. See Decision No. 89, slip op. at 420-21. The Town of Gauley Bridge concurs with the request.

In view of the Negotiated Agreement between NS and the Town of Gauley Bridge, WV, we will: (1) add the Negotiated Agreement to Environmental Condition No. 51 of Appendix Q of Decision No. 89; and (2) amend Environmental Condition No. 11 of Appendix Q of Decision No. 89 to delete the receptors in the Town of Gauley Bridge from the receptors identified on the Fola Mine-Deepwater, WV line segment because the noise mitigation for that community has been superseded by the NS/Town of Gauley Bridge Negotiated Agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. In accordance with the Negotiated Agreement between NS and the Town of Gauley Bridge, WV, dated April 27, 2001, and accepted by the Town of Gauley Bridge on May 2, 2001, the following is added to the NS Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:


3. In addition, Environmental Condition No. 11 of Appendix Q of Decision No. 89 is amended to delete the receptors in the Town of Gauley Bridge from the receptors identified on the Fola Mine-Deepwater, WV line segment because the noise mitigation for that community has been superseded by the Negotiated Agreement.
4. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

[Vernon A. Williams signature]

Vernon A. Williams  
Secretary
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
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<tbody>
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**SERVICE LIST FOR: 06-jul-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION**

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<td>RICHARD R WILSON</td>
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<td>HUGH H. WELSH</td>
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<td>SAMUEL J NASCA</td>
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<td>IRVING J RUBIN</td>
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<td>YOUNGSTOWN</td>
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<td>R W GODWIN</td>
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<td>DAVID W. DONLEY</td>
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SERVICE LIST FOR: 06-jul-2001 STB FD 33388 0
CSX CORPORATION AND CSX TRANSPORTATION

KURT W CARR
BUREAU FOR HISTORIC PRESERVATION
P O BOX 1026
HARRISBURG PA 17108-1026 US

RICHARD A GEIST
MAIN CAPITOL BUILDING
P.O. BOX 202020
HARRISBURG PA 17120-2020 US

BELNAP FREEMAN
BELNAP FREEMAN
119 HICKORY LANE
ROSEMONT PA 19010 US

JOHN J GROCKI
GRA INC
115 WEST AV ONE JENKINTOWN STA
JENKINTOWN PA 19046 US

G CRAIG SCHELTER
PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATI
2600 CENTRE SQUARE WEST 500 MARKET ST
PHILADELPHIA PA 19102 US

DAVID BERGER
BERGER AND MONTAGUE, P. C.
1622 LOCUST ST
PHILADELPHIA PA 19103-6305 US

JOHN K. LEARY, GENERAL MANAGER
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTH
1234 MARKET STREET 5TH FLOOR
PHILADELPHIA PA 19107-3780 US

HON JOSEPH R BIDEN, JR.
UNITED STATES SENATE
844 KING STREET
WILMINGTON DE 19801 US

E C WRIGHT
E I DU PONT DE NEMOURS AND COMPANY
1007 MARKET STREET D-3100
WILMINGTON DE 19898 US

MARTIN W BERCOVICI
KELLER & HECKMAN LLP
1001 G ST NW SUITE 500 WEST
WASHINGTON DC 20001 US

JAMES HOWARD
COALITION OF NORTHEASTERN GOVERNORS
400 NORTH CAPITOL STREET, SUITE 382
WASHINGTON DC 20001 US

HONORABLE THOMAS J RIDGE
GOVERNOR, COMMONWEALTH OF PENNSYLVANIA
225 MAIN CAPITOL BUILDING
HARRISBURG PA 17120 US

HON ROBERT JUDELIRER
PENNSYLVANIA STATE SENATE
SENATE BOX 203030
THE STATE CAPITOL
HARRISBURG PA 17120-3030 US

HARRY C BARBIN
BARBIN LAUFFER & O'CONNELL
608 HUNTINGDON PIKE
ROCKLEDGE PA 19046 US

JOFA THAN M BRODER
CONSOLIDATED RAIL CORP
P O BOX 41416
2001 MARKET STREET 16TH FLOOR
PHILADELPHIA PA 19101-1416 US

JOHN J EHLINGER JR
OBERMAYER REBMANN MAXWELL & HIPPEL
1617 JOHN F. KENNEDY BLVD ONE PENN CENTER-19T
PHILADELPHIA PA 19103-1895 US

JOHN J COSCIA, EXECUTIVE DIRECTOR
DELWARE VALLEY REGIONAL PLANNING COMMISSION
111 SOUTH INDEPENDENCE MALL EAST
PHILADELPHIA PA 19106 US

ERIC M HOCKY
GOLLATZ GRIFFIN & EWING
P O BOX 796
213 WEST MINER STREET
WEST CHESTER PA 19381-0796 US

J E THOMAS
HERCULES INCORPORATED
1313 NORTH MARKET STREET
WILMINGTON DE 19894 US

PETER A GILBERTSON
REGIONAL RRS OF AMERICA
122 C ST NW STE 850
WASHINGTON DC 20001 US

TERRENCE D JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US
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CSX CORPORATION AND CSX TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
ROBERT P VOM EIGEN
FOLEY & LARDNER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

EDWARD WYTKIND EXECUTIVE DIRECTOR
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
888 16TH STREET NW SUITE 650
WASHINGTON DC 20006 US

WILLIAM W MILLAR
AMERICAN PUBLIC TRANSIT ASSOCIATION
1666 K STREET NW
WASHINGTON DC 20006-1215 US

JOHN V EDWARDS, ESQ
ZUCKERT SCOTT ET AL
888 17TH STREET NW STE 600
WASHINGTON DC 20006-3939 US

SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL AFFAIRS
CORN REFINERS ASSOC
1701 PA AV NW
WASH DC 20006-5805 US

PAUL M DONOVAN
LAROE WINN MOERMAN & DONOVAN
3900 HIGHWOOD COURT NW
WASHINGTON DC 20007 US

CHRISTOPHER C O'HARA
BRICKFIELD BURCHETTE & RITTS PC
1025 THOMAS JEFFERSON ST NW EIGHTH FLOOR
WASHINGTON DC 20007 US

EDWARD D GREENBERG
GALLAND KHAHASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY-FIRST STREET NW STE 200
WASHINGTON DC 20007-4492 US

KARYN A BOOTH
THOMPSON HINE & FLORY LLP
1920 N STREET, NW & FLORY LLP
WASHINGTON DC 20036 US

PAUL D COLEMAN
HOPPEL MAYER & COLEMAN
1000 CONNECTICUT AVENUE NW SUITE 400
WASHINGTON DC 20036 US

PETER A GREENE
THOMPSON HINE FLORY
1920 N STREET N W SUITE 800
WASHINGTON DC 20036 US

JAMES R WEISS
PRESTON GATES ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

SCOTT M ZIMMERMAN
ZUCKERT SCOTT & RASENBERGER LLP
888 SEVENTEENTH STREET NW
WASHINGTON DC 20006 US

RICHARD A ALLEN
ZUCKERT SCOTT & RASENBERGER LLP
888 17TH STREET N W STE 600
WASHINGTON DC 20006-3309 US

RACHEL DANISH CAMPBELL
FOLEY & LARDNER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006-4103 US

JOHN H BROADLEY
JOHN H BROADLEY & ASSOCIATES PC
1054 31ST STREET NW SUITE 200
WASHINGTON DC 20007 US

DAVID K MONROE
GALLAND KHARASCH GREENBERG FELLMAN & SWIRSKY
1054 THIRTY FIRST STREET NW STE 200
WASHINGTON DC 20007 US

SCOTT STONE
2550 M STREET NW
WASHINGTON DC 20007 US

MICHAEL F MCBRIDE
LEBOEUF LAMB GREENE & MACRAE
1875 CONNECTICUT AVENUE NW
WASHINGTON DC 20009-5728 US

STEPHEN H BROWN
VORYS SATHER SEYMOUR AND PEASE
1828 L STREET N W
WASHINGTON DC 20036 US

RICHARD S EDELMAN
O'DONNELL SCHWARTZ & ANDERSON PC
1900 L STREET NW SUITE 707
WASHINGTON DC 20036 US

JOHN D HEFFNER
REA CROSS & AUCHINCLOSS
1707 L STREET, NW, STE 570
WASHINGTON DC 20036 US
SERVICE LIST
FOR:
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PAUL H LAMBOLEY
1717 N STREET NW
WASHINGTON DC 20036 US

GORDON P MACDOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

WILLIAM G. MAHONEY
HIGHSAW, MAHONEY & CLARKE
1050 SEVENTEENTH STREET NW SUITE 210
WASHINGTON DC 20036 US

CHRISTOPHER A MILLS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

KEITH G OBIEN
REA CROSS AND AUCHINCLOSS
1707 L STREET NW STE 570
WASHINGTON DC 20036 US

HAROLD P QUINN JR
NATIONAL MINING ASSOCIATION
1130 17TH STREET NW
WASHINGTON DC 20036 US

FRITZ P KAHN
1920 N STREET NW 8TH FLOOR
WASHINGTON DC 20036-1601 US

FREDERIC L WOOD
THOMPSON HINE LLP
1920 N STREET
WASHINGTON DC 20036-1601 US

ROSE-MICHELE WEINRYB
WEINER BRODSKY SIDMAN & KIDER
1300 19TH STREET NW 5TH FLOOR
WASHINGTON DC 20036-1609 US

SAMUEL M SIPE JR
STEPHAN & JOHNSON LLP
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

TIMOTHY M WALSH
STEPHAN & JOHNSON
1330 CONNECTICUT AVENUE N W
WASHINGTON DC 20036-1795 US

EDWARD J FISHMAN
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE, N.W., 2ND FLOOR
WASHINGTON DC 20036-1800 US

KEVIN M SHEYS
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE N W
WASHINGTON DC 20036-1800 US

JOSEPH GUERRIERI, JR.
GUERRIERI, EDMOND & CLAYMAN, PC
1625 MASSACHUSETTS AVE., NW, STE 700
WASHINGTON DC 20036-2243 US

DEBRA L WILLEN
GUERRIERI EDMOND & CLAYMAN PC
1625 MASSACHUSETTS AVENUE, N.W., STE 700
WASHINGTON DC 20036-2243 US

DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

KELVIN J DOWD
SLOVER & LOFTUS
1224 17TH STREET N W
WASHINGTON DC 20036-3003 US

WILLIAM L SLOVER
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

SCOTT N STONE
O’DONNELL SCHWARTZ ANDERSON PC
1900 L ST #707
WASHINGTON DC 20036-5023 US

JOHN M CUTLER JR
MCCARTHY SWEENEY HARKAWAY PC
2175 K STREET NW
WASHINGTON DC 20037 US

ANDREW P GOLDSTEIN
MCCARTHY SWEENEY & HARKAWAY P C
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

STEVEN J KALISH
MCCARTHY SWEENEY & HARKAWAY P C
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

KEVIN M. SHEYS
KIRKPATRICK & LOCKHART LLP
1800 MASSACHUSETTS AVENUE, N.W., 2ND FLOOR
WASHINGTON DC 20036-1800 US

DEBRA L WILLEN
GUERRIERI EDMOND & CLAYMAN PC
1625 MASSACHUSETTS AVENUE, N.W., STE 700
WASHINGTON DC 20036-2243 US

DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

WILLIAM L SLOVER
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US

JOHN M CUTLER JR
MCCARTHY SWEENEY HARKAWAY PC
2175 K STREET NW
WASHINGTON DC 20037 US

STEVEN J KALISH
MCCARTHY SWEENEY & HARKAWAY P C
2175 K STREET NW SUITE 600
WASHINGTON DC 20037 US

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<td>DANIEL J SWEENY</td>
<td>McCARTHY SWEENY &amp; HARKAWAY P C</td>
<td>2175 K STREET NW SUITE 600</td>
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<td>JOHN L OBERDORFER</td>
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<tr>
<td>KEITH A KLINKWORTH</td>
<td>U S DEPT OF AGRICULTURE</td>
<td>P O BOX 96456</td>
<td>WASHINGTON DC</td>
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<td>EILEEN S STOMMES</td>
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<td>P O BOX 96456 ROOM 4006-SOUTH BUILDING</td>
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<td>441 G STREET, N.W., ROOM 2T23</td>
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<td>U. S. HOUSE OF REPRESENTATIVES</td>
<td>WASHINGTON DC 20515 US</td>
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<td>HON JAMES TRAFICANT JR</td>
<td>U. S. HOUSE OF REPRESENTATIVES</td>
<td>WASHINGTON DC 20515 US</td>
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<tr>
<td>HONORABLE PETER J. VISCLOSKY</td>
<td>U S HOUSE OF REPRESENTATIVES</td>
<td>WASHINGTON DC 20515 US</td>
</tr>
<tr>
<td>Name</td>
<td>Address 1</td>
<td>City, State Zip Code</td>
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<tr>
<td>HONORABLE ROD R BLAGOJEVICH</td>
<td>U.S. House of Representatives</td>
<td>Washington DC 20515-1305 US</td>
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<tr>
<td>HONORABLE JAMES A. BARCIA</td>
<td>US House of Representatives</td>
<td>Washington DC 20515-2205 US</td>
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<tr>
<td>HON JACK QUINN</td>
<td>U.S. House of Representatives</td>
<td>Washington DC 20515-3230 US</td>
</tr>
<tr>
<td>HONORABLE TOM DAVIS</td>
<td>U.S. House of Representatives</td>
<td>Washington DC 20515-4611 US</td>
</tr>
<tr>
<td>MICHAEL P HARMSNIS</td>
<td>Department of Justice</td>
<td>325 Seventh Street, NW</td>
</tr>
<tr>
<td>JOSEPH R POMPONIO</td>
<td>Federal Railroad Administration</td>
<td>400 Seventh Street SW RCC-20</td>
</tr>
<tr>
<td>DAVID G ABRAHAM</td>
<td>Suite 400W</td>
<td>7315 Wisconsin Avenue</td>
</tr>
<tr>
<td>JOHN M ROBINSON</td>
<td>9616 Old Spring Road</td>
<td>Kensington MD 20895-3124 US</td>
</tr>
<tr>
<td>JOHN HOY</td>
<td>P.O. Box 117</td>
<td>Glen Burnie MD 21060 US</td>
</tr>
<tr>
<td>LINDA A JANNEY J D</td>
<td>Maryland Office of Planning</td>
<td>301 West Preston Street</td>
</tr>
<tr>
<td>PETER Q NYCE JR</td>
<td>U.S. Department of the Army</td>
<td>901 North Stuart Street</td>
</tr>
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</table>

07/06/2001
SERVICE LIST FOR: 06-jul-2001 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

WILLIAM P. JACKSON, JR.
JACKSON & JESSUP, P. C.
P O BOX 1240
3426 NORTH WASHINGTON BLVD
ARLINGTON VA 22210 US

KENNETH E SIEGEL
AMERICAN TRUCKING ASSOC INC
2200 MILL ROAD
ALEXANDRIA VA 22314-4677 US

MICHAEL J RUEHLING
CSX CORPORATION
ONE JAMES CENTER
RICHMOND VA 23219 US

GEORGE A ASPAORE GENERAL SOLICITOR - REGULATORY
NORFOLK SOUTHERN RAILWAY COMPANY
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

DAVID A SHELTON
NORFOLK SOUTHERN
THREE COMMERCIAL PLACE
NORFOLK VA 23510 US

L P KING JR
GENERAL CHAIRPERSON UTU
145 CAMPBELL AVE SW STE 207
ROANOKE VA 24011 US

VAUGHN R GROVES
PITTSFORD CANAL COMPANY
PO BOX 5100
LEBANON VA 24266 US

R K SARGENT
GENERAL CHAIRPERSON UTU
1319 CHESTNUT STREET
KENOVA WV 25534 US

E NORRIS TOLSON
NC DEPT OF TRANSPORTATION
P O BOX 25201
1 S. WILINGTON STREET
RALEIGH NC 27611 US

HONORABLE DAVID M BEASLEY
GOVERNOR
P. O. BOX 11369
COLUMBIA SC 29211 US

J RANDALL EVANS
500 WATER STREET (J150)
JACKSONVILLE FL 32202 US

FRANCIS G MCKENNA
ANDERSON & PENDLETON
206 N WASHINGTON STREET SUITE 330
ALEXANDRIA VA 22314 US

ROBERT E MARTINEZ
VA SECRETARY OF TRANSPORTATION
P. O. BOX 1475
RICHMOND VA 23218 US

JOHN W SNOW
CHAIRMAN PRESIDENT AND CHIEF EXECUTIVE OFFICER
P O BOX 85629
RICHMOND VA 23229-5629 US

PARKERSON B MAQUILLING
NORFOLK SOUTHERN CORPORATION
THREE COMMERCIAL PLACE, LAW DEPT
NORFOLK VA 23510 US

JAMES A HIXON
SENIOR VICE PRESIDENT EMPLOYEE RELATIONS NOR
THREE COMMERCIAL PLACE
NORFOLK VA 23510-2191 US

HONORABLE JOHN WARNER
UNITED STATES SENATE
235 FEDERAL BUILDING
ABINGDON VA 24210-0887 US

TERRELL ELLIS
CAEZM
PO BOX 176
CLAY WV 25043 US

SCOTT M SAYLOR
NORTH CAROLINA RAILROAD COMPANY
3200 ATLANTIC AV STE 110
RALEIGH NC 27604-1640 US

J R BARBEE
GENERAL CHAIRPERSON UTU
441 N LOUISIANA AVE STE Q
ASHEVILLE NC 28806-3791 US

FRED R BIRKHOLZ
CSX TRANSPORTATION LAW DEPT - J-150
500 WATER STREET
JACKSONVILLE FL 32202 US

CARL A GERHARDSTEIN
CSX TRANSPORTATION RISK MGMT
500 WATER STREET-J275
JACKSONVILLE FL 32202 US

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SERVICE LIST FOR: 06-jul-2001 STB FD 33388 0

CSX CORPORATION AND CSX TRANSPORTATION

CLARENCE TURNQUIST
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
2125 TRYON ROAD
ASHTABULA OH 44004 US

CHARLES S HESSE
CHARLES HESSE ASSOCIATES
7777 BAINBRIDGE ROAD
CHAGRIN FALLS OH 44023-2124 US

ANITA R BRINDZA
THE ONFIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

DANIEL R ELLIOTT III
ASST GENERAL COUNSEL UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLINTON J MILLER III
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CHRISTOPHER C MCCracken
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

INAJO DAVIS CHAPPELL
ASHTA CHEMICALS INC
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114-1538 US

SYLVIA R. CHINN-LEVY
NEFCO
969 COLEY ROAD
AKRON OH 44320 US

RANDALL C. HUNT
KRUGLIACK, WILKINS, GRIFFIS & DOUGHERTY CO.
P O BOX 36963
4775 MUNSON ST NW
CANTON OH 44735-6963 US

R A GRICE
GENERAL CHAIRPERSON UTU
817 KILBOURNE ST
BELLEVUE OH 44811-9431 US

FAY D DUPUIS
CITY OF CINCINNATI
801 PLUM STREET
CINCINNATI OH 45202 US

MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

BARBARA O'KEEFE
VILLAGE OF WELLINGTON
115 WILLARD MEMORIAL SQ
WELLINGTON OH 44090 US

COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

C L LITTLE
INTERNATIONAL PRESIDENT UTU
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

CLARENCE MONIN INTERNATIONAL PRES
BROTHERHOOD OF LOCOMOTIVE ENGINEERS MEZZANINE
1370 ONTARIO STREET
CLEVELAND OH 44113 US

DAVID ROLOFF
GOLDSTEIN & ROLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

CHARLES ZUNKER
ROETZEL & UNDRESS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

RICHARD E KERTH
CHAMPION INTERNATIONAL CORPORATION
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LANETTE DRIVE
CINCINNATI OH 45230 US

07/06/2001
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<thead>
<tr>
<th>Name</th>
<th>Company/Mailer</th>
<th>Address</th>
<th>City</th>
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<tr>
<td>ROGER A SERPE</td>
<td>INDIANA HARBOR BELT RAILROAD COMPANY</td>
<td>111 WEST JACKSON BOULEVARD, STE 2215</td>
<td>CHICAGO</td>
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<td>SHELDON A ZABEL</td>
<td>SCHIFF HARDIN &amp; WAITE</td>
<td>7200 SEARS TOWER</td>
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<td>CHARLES D BOLAM</td>
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<td>MERRILL L TRAVIS</td>
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<td>JOHN JAY ROSACKER</td>
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<td>HENRY T DART</td>
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<td>609 EAST GIBSON STREET</td>
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<td>DENNIS A. GUTH</td>
<td>WEST LAKE GROUP</td>
<td>2801 POST OAK BLVD</td>
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<td>MICHAEL P. FERRO</td>
<td>MILLENNIUM PETROCHEMICALS, INC.</td>
<td>P O BOX 2583</td>
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<td>CHARLES R. CARR</td>
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<td>DAVID L HaLL</td>
<td>COMMONWEALTH CONSULTING ASSOCIATES</td>
<td>13103 FM 1960 WEST SUITE 204</td>
<td>HOUSTON</td>
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<td>JEFFREY G DOWDELL</td>
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<td>BRAD F HUSTON</td>
<td>CYPRUS AMAX MINERALS</td>
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<td>PHOENIX</td>
<td>AZ</td>
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<td>RICHARD WELSH</td>
<td>NARPO</td>
<td>50-505 GRAND TRAVERSE</td>
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**Records:** 329