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HOGAN & HARTSON
L.L.P.

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Office of the Secretary
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Public Record
GEORGE W. MAYO, JR.
PARTNER
(202) 637-5679
GWMAYO@HHLAW.COM

November 4, 1999



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555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
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BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation

Finance Docket No. 33388 (Sub No. 69), Responsive Application -- State of New York, By and Through Its Department of Transportation, and The New York City Economic Development Corporation

Dear Secretary Williams:

Enclosed for filing in the above-referenced dockets are an original and twenty-five copies of the "Joint Motion of Canadian Pacific Parties, CSX Corporation, and CSX Transportation, Inc. To Dismiss Without Prejudice Canadian Pacific Parties' Petition To Enforce Trackage and Switching Rights Imposed by the Board". Also enclosed is a 3.5-inch diskette, formatted for WordPerfect 7.0, containing the pleading.

Thank you for your assistance.

Sincerely,

George W. Mayo, Jr.
George W. Mayo, Jr.
Attorney for Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited

GWM:jms

Enclosures

cc: Counsel for Parties Required To Be Served

BRUSSELS BUDAPEST LONDON MOSCOW PARIS* PRAGUE* WARSAW
BALTIMORE, MD COLORADO SPRINGS, CO DENVER, CO LOS ANGELES, CA McLEAN, VA NEW YORK, NY ROCKVILLE, MD

*Affiliated Office

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK,
BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION,
AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

JOINT MOTION OF CANADIAN PACIFIC PARTIES, CSX CORPORATION, AND CSX
TRANSPORTATION, INC. TO DISMISS WITHOUT PREJUDICE
CANADIAN PACIFIC PARTIES' PETITION TO ENFORCE TRACKAGE AND
SWITCHING RIGHTS IMPOSED BY THE BOARD

MARCELLA M. SZEL
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Attorneys for Canadian Pacific Railway Company, Delaware and Hudson
Railway Company Inc., Soo Line Corp., and St. Lawrence & Hudson Railway
Company Limited

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PAUL R. HITCHCOCK
CSX TRANSPORTATION, INC.
One James Center
500 Water Street
Speed Code J-120
Jacksonville, FL 32202
(904) 359-3100

Counsel for CSX Corporation and CSX Transportation, Inc.

November 4, 1999

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION--STATE OF NEW YORK,
BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION,
AND THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

**JOINT MOTION OF CANADIAN PACIFIC PARTIES, CSX CORPORATION, AND
CSX TRANSPORTATION, INC. TO DISMISS WITHOUT PREJUDICE
CANADIAN PACIFIC PARTIES' PETITION TO ENFORCE TRackage AND
SWITCHING RIGHTS IMPOSED BY THE BOARD**

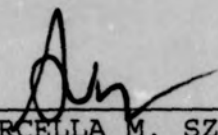
The Canadian Pacific Parties 1/ and CSX 2/ hereby move
to dismiss without prejudice "Canadian Pacific Parties' Petition
To Enforce Trackage and Switching Rights Imposed by the Board"
(CP-31), filed on July 27, 1999.

1/ "Canadian Pacific Parties" or "CP" refer collectively to
Canadian Pacific Railway Company, Delaware and Hudson Railway
Company Inc., Soo Line Railroad Company and St. Lawrence & Hudson
Railway Company Limited.

2/ "CSX" refers collectively to CSX Corporation and CSX
Transportation, Inc.

CP and CSX have reached a settlement agreement that resolves the issues presented in the petition, and that provides among other things that the parties shall jointly seek dismissal of the petition without prejudice. Accordingly, CP and CSX request the Board to dismiss CP's petition, and to do so without prejudice.

Respectfully submitted,



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Attorneys for Canadian Pacific
Railway Company, Delaware and
Hudson Railway Company, Inc., Soo
Line Railroad Company, and
St. Lawrence & Hudson Railway
Company Limited

and

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Counsel for CSX Corporation and
CSX Transportation, Inc.

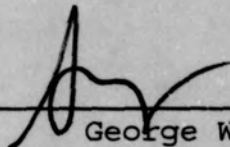
November 4, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 1999, I served by the means indicated below a copy of the foregoing Joint Motion of Canadian Pacific Parties, CSX Corporation, and CSX Transportation, Inc. To Dismiss Without Prejudice Canadian Pacific Parties' Petition To Enforce Trackage And Switching Rights Imposed by the Board:

Counsel for CSX, NYCEDC and NYDOT
(by hand)

Counsel for all parties requesting a copy
(by first-class mail or by hand where requested)



George W. Mayo, Jr.

STB

FD-33388

3-26-99

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1 OF 3

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Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

FILE IN DOCKET

March 14, 2000

FD-33388

Mr. Clinton J. Miller, III
General Counsel
Mr. Daniel R. Elliott, III
Assistant General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107

Dear Messrs. Miller and Elliott:

In the UTU-8 petition filed March 26, 1999, United Transportation Union (UTU) sought intensified oversight, by the Surface Transportation Board (Board) in conjunction with the Federal Railroad Administration (FRA), of the implementation of the Safety Integration Plans (SIPs) filed by applicant in the Conrail Acquisition proceeding (STB Finance Docket No. 33388).

By letter dated April 7, 1999, I advised you that, because FRA was the appropriate agency to address initially the concerns raised in the UTU-8 petition, I had referred that petition to FRA and had asked FRA to advise the Board, pursuant to the SIP process, of any action taken by FRA and of any action that needed to be taken by the Board to assure the safe implementation of the Conrail Acquisition transaction.

By letter dated February 18, 2000 (which indicates that a copy was sent to Mr. Charles L. Little, UTU's International President), FRA advised that, as far as FRA has been able to determine, the pre-"Split Date" incidents referenced in the UTU-8 petition had no direct relationship to the Conrail Acquisition transaction and/or to the SIPs developed by CSX and NS to address the integration of operations. FRA did not in that letter advise the Board, nor has FRA in any other manner advised the Board that any action needs to be taken by the Board to assure the safe implementation of the Conrail Acquisition transaction. Thus, the Board at this time contemplates no further action in response to the UTU-8 petition.

We will, of course, remain alert to safety issues as CSX and NS continue to implement the Conrail Acquisition transaction and as we conduct our general oversight proceeding. We also expect that you and other concerned persons will call attention to safety matters that need to be addressed.

We look forward to the continued joint efforts of rail employees, the railroads, FRA, and the Board to foster a safe working environment for railroad employees. The Conrail Acquisition proceeding has laid the groundwork for the cooperative elements necessary to ensuring safe working conditions.

I hope that this information is useful to you. Please do not hesitate to contact me if we can be helpful in the future. A copy of this letter has been placed in the docket of STB Finance Docket No. 33388.

Sincerely,

Linda J. Morgan
Linda J. Morgan

cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
Administrator Molitoris



U.S. Department
of Transportation

**Federal Railroad
Administration**

Administrator

1120 Vermont Ave., NW.
Washington, DC 20590

FEB 18 2000

FILE IN DOCKET

CHIEF OF BUREAU

FEB 24 12 29 PM '00

RECEIVED
SURFACE TRANSPORTATION
BOARD

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear *Linda* Chairman Morgan:

Thank you for your letter in which you forwarded a petition from the United Transportation Union (UTU) seeking intensified oversight of the implementation of the Safety Integration Plans (SIPs) filed by the applicants in the Consolidated Rail Corporation (Conrail) Acquisition proceeding, STB Docket No. 33388. UTU's concerns addressed incidents which occurred in January and February 1999 prior to the actual split up of Conrail by CSX Transportation, Incorporated (CSXT) and Norfolk Southern Corporation (NS) on June 1, 1999 (split date). Please accept my apologies for the delay in responding to your letter.

As described in UTU's letter addressed to me on January 25, 1999, on this same matter (enclosed with the copy of the petition that you forwarded), two Conrail crew members died in Ohio; one in New Jersey, and one in New York between January 14-22, 1999, in unrelated incidents. Also highlighted was the most publicized incident which occurred on January 17, 1999, near Toledo, Ohio, when three Conrail trains collided killing a conductor who was a legislative representative and secretary/treasurer of UTU Local 227 in Huntington, Indiana, and a locomotive engineer represented by the Brotherhood of Locomotive Engineers (BLE), Division 457 in Toledo.

While each of the above noted fatalities were extremely serious and tragic incidents unto themselves, none of them occurred following the Split Date. Through a very intensive safety oversight process which was set in motion in the fall of 1998 by the Federal Railroad Administration (FRA), a 43-member SIPs/Safety Surveillance Team has closely monitored the operating practices and safety of both pre-split and post-split Conrail. This extraordinary safety oversight was provided by FRA in a proactive role in addition to the normal complement of inspectors (Motive Power and Equipment, Operating Practices, Hazardous Materials, Signal and Train Control, and Track disciplines) which provided a safety review of Conrail on an ongoing basis prior to Split Date. FRA's intensive safety oversight was described in detail to the Surface Transportation Board (STB) in FRA's first biannual

report which was forwarded to STB on May 4, 1999, in accordance with our *Memorandum of Understanding (MOU)*.^{1 2} Copies of both of these documents are being forwarded with a copy of this letter to the UTU and BLE Presidents for further information (Enclosures 1 and 2).

As STB is aware, SIPs in the Conrail acquisition proceeding were designed for the railroads to coordinate with FRA regarding safety requirements and the individual railroad commitments to ensure that the transaction was safely implemented. During the period prior to the Split Date, both NS and CSXT directed the existing Conrail management to operate as it had in the past with no major changes in front-line personnel and/or infrastructure. Thus, the incidents which occurred prior to the Split Date occurred under existing Conrail operating practices and oversight by existing Conrail managers. The aforementioned incidents which occurred prior to the "Split Date" as far as FRA has been able to determine had no direct relationship to the acquisition and/or the SIPs developed by the railroads to address the integration of operations. Therefore, FRA could not advise of any further Board action required at the time of your April 7, 1999 letter to address acquisition related matters for these incidents. You may be assured, however, as the railroads and labor representatives were during this time period, that FRA continued to faithfully execute its full measure of safety enforcement and delegated safety authority toward any safety issues which arose within Conrail and the acquiring railroads.

This response has been delayed as FRA field personnel and headquarters staff have performed the required field data collection and analysis of a "Conrail Operational Review" that was conducted throughout the former Conrail divisions and acquired properties during this same period of time. A copy of the results of that study³ is also being forwarded under separate cover to the UTU and BLE Presidents to address their concerns over work/rest (fatigue) issues raised in UTU's petition that you forwarded in your letter of April 7, 1999.

As an additional update, FRA further intensified its oversight of the acquisition during the three-week period immediately preceding and following the Split Date (May 17 thru July 1, 1999) by adding ten (10) inspectors to the Conrail Merger Surveillance Team (43 members total). In addition to the NS, CSXT and Conrail Shared Assets safety monitoring teams, a "Chicago Gateway" team led by Deputy Regional Administrator David Blackmore was added for oversight of traffic flows through that important gateway from East to West (Enclosure 3). The details of this surveillance and the findings of the acquisition integration for the period April 16, 1999, through December 31, 1999, will be forwarded to STB with our MOU specified bi-annual report of December 1999.

¹ Memorandum of Understanding Between the Surface Transportation Board and the Federal Railroad Administration; CSX and NS Acquisition of Conrail, Finance Docket No. 33388 Implementation of Safety Integration Plans; May 19, 1999.

² First Briefing Report Covering Period of July 23, 1998-April 15, 1999; *Conrail Merger Surveillance: NS, CSX, and CSAO SIP/Safety Update*; May 4, 1999.

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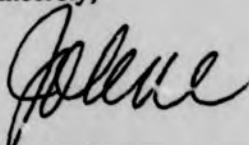
FRA reportable injuries for employees working in former Conrail territory over the same period last year. As of August 20, NS (for its Northern region-three divisions) identified 36 FRA reportable injuries compared with 63 FRA reportable injuries for that same time period last year at Conrail. As of July, CSXT had identified a 17 percent improvement for FRA reportable injuries in comparison with former Conrail territory. Throughout CSXT's system, including the Conrail acquired territories, there has been a 23 percent decline from a year ago in reportable personal injuries; Conrail Shared Assets as of July reported only 20 injuries since the Split Date (all of them minor in nature). Preliminary reports indicate that the train accident and highway grade crossing incident rates will be at comparable levels to the rates of the previous year at Conrail. Although there has been significant line and yard congestion, as well as extended dwell times identified for equipment in yards (service performance issues) at the CSXT and NS acquired properties and Shared Assets since the Split Date, the safety record at all three companies has been admirable to date.

All of the above noted documents covering Conrail acquisition safety surveillance have been made available for public review on FRA's Internet accessible web page since mid-year 1999 at <http://www.fra.dot.gov/site/index.htm>. The Office of Safety has been working closely with Mr. Mel Clemens of your staff to ensure that our Conrail acquisition integration safety assessments are frequently updated and shared between the two agencies.

I must regretfully inform you that it has been brought to my attention that the post-split Conrail acquired territories had its first train service fatality as recorded on November 4, 1999. A NS machinist was killed while preparing locomotives for service near Cleveland, Ohio, in the early morning hours as he moved from an adjacent track into the path of NS Train TVLA traveling at 60 mph. This incident is being thoroughly investigated by NS and FRA to ascertain the "root cause" of the incident and ascertain if there were any merger integration implications. The preliminary review has not identified any merger related safety issues.

I wish to thank you and your staff for the very close working relationship that has been established with FRA on merger safety related matters. Both the Conrail and Canadian National/Illinois Central mergers have directly benefitted from this close working relationship by assuring for the highest levels of intensive safety oversight in the history of such mega-mergers. Please give me a call if there are any additional questions or needs in this regard. The next bi-annual report on FRA's safety assessment of the Conrail merger is in the state of review and should arrive at STB during the First Quarter of 2000.

Sincerely,



Jolene M. Molitoris
Administrator

Enclosures (3)

cc: Mr. Charles L. Little, UTU
Mr. Edward Dubroski, BLE
Mr. Melvin F. Clemens, STB



U.S. Department
of Transportation

**Federal Railroad
Administration**

Administrator

1120 Vermont Ave., NW.
Washington, DC 20590

FEB 18 2000

FILE IN DOCKET

FD-33388

FEB 24 12 24 PM '00

RECEIVED
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Washington, D.C. 20423-0001

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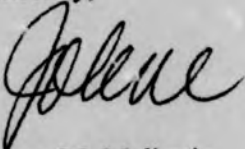
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Sincerely,



Jolene M. Molitoris
Administrator

Enclosures (3)

cc: Mr. Charles L. Little, UTU
Mr. Edward Dubroski, BLE
Mr. Melvin F. Clemens, STB

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SURFACE TRANSPORTATION BOARD
AND THE FEDERAL RAILROAD ADMINISTRATION**

FILE IN DOCKET

**CSX AND NS ACQUISITION OF CONRAIL, FINANCE DOCKET NO. 33388
IMPLEMENTATION OF SAFETY INTEGRATION PLANS**

WHEREAS, the United States Department of Transportation (DOT) filed comments with the Surface Transportation Board (Board) reflecting the concern of the Federal Railroad Administration (FRA), the agency within DOT responsible for enforcement of railroad safety regulations, about the effect that the proposed acquisition of Conrail by CSX and NS (Conrail Acquisition) might have on rail safety, and FRA's recommendation that the Board require CSX and NS to develop plans detailing the procedures each would follow to integrate the part of Conrail it is acquiring into its operations in a manner that will maintain safety at every step of the process in the event that the acquisition is approved by the Board; and

WHEREAS, the Board, in its Decision No. 52 issued on November 3, 1997, directed Applicants CSX and NS, and Conrail to the extent it will be responsible for operation in the Shared Assets Areas, to prepare and submit to the Board detailed Safety Integration Plans (SIPS) explaining the process by which they intended to integrate Conrail into their operations, in the event the Board approved the proposed Conrail Acquisition; and

WHEREAS, working closely with FRA, the carriers developed the SIPS and submitted them to the Board on December 3, 1997. The Board's Section of Environmental Analysis (SEA) included the SIPS in the Draft EIS for the proposed Conrail Acquisition to provide an opportunity for

review and comment by FRA and the public and SEA has carefully reviewed the plans and comments; and

WHEREAS, DOT's comments on the Draft EIS state that FRA is satisfied that the SIPS address and satisfactorily mitigate every safety concern raised in the environmental review portion of the pending Conrail Acquisition proceeding and that no other mitigation on this subject is necessary or appropriate. In addition, DOT's comments state that FRA is satisfied with the Applicants' commitments made to date and that, in the event the Board approves the Conrail Acquisition, FRA will continue to work as appropriate with the Applicants to address integration issues that arise; and

WHEREAS, the FRA and the Board wish to enter into a memorandum of understanding (MOU) to clarify the actions each will take to assure the successful implementation of the SIPs.

NOW, THEREFORE, in the event the Board approves the Conrail Acquisition, in consideration of the premises and the mutual undertakings hereafter set forth, the FRA and the Board do hereby agree as follows:

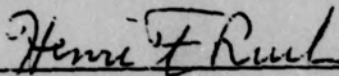
1. Both FRA and the Board recognize that safety integration is an ongoing process that involves both agencies. Accordingly, FRA will exercise its authority over rail safety matters to monitor, evaluate and review the Applicants' progress in implementing their SIP.

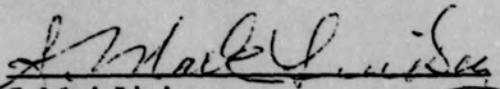
2. FRA will keep the Board informed of the Applicants' progress. If deemed necessary by FRA, FRA may request the Board to exercise its oversight authority over the Applicants and take action to correct identified deficiencies and address safety problems arising out of the approved transaction. FRA will be responsive to the requirements of public safety and the safe implementation of post-acquisition rail operations by the Applicants.

3. In those circumstances where FRA informs the Board of a concern that may require Board action, FRA will provide sufficient information to the Board to identify the safety deficiency, describe the implications of the deficiency, and provide recommendations for correcting the deficiency.

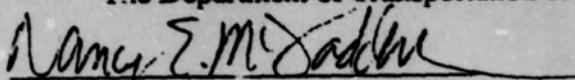
4. FRA agrees to report significant safety integration issues to the Board if and when they occur. FRA also will report to the Board from time to time, as FRA deems appropriate, but not less than biannually, regarding safety integration of the Conrail Acquisition. FRA's reporting will continue until safety integration implementation has been completed to the satisfaction of FRA, and FRA affirms to the Board in writing that the proposed integration has been completed satisfactorily.

IN WITNESS HEREOF, the parties hereto have executed this MOU on this 19 day of May, 1998.


Henri F. Rush
General Counsel
Surface Transportation Board


S. Mark Lindsey
Chief Counsel
Federal Railroad Administration

The Department of Transportation concurs in this memorandum of understanding.


Nancy E. McFadden
General Counsel
U.S. Department of Transportation



U.S. Department
of Transportation

Federal Railroad
Administration

FILE IN DOCKET

**First Briefing Report
Covering Period of July 23, 1998 - April 15, 1999**

**Conrail Merger Surveillance: NS, CSX, and CSAQ
SIP/Safety Update**

For: Surface Transportation Board
c/o The Honorable Linda J. Morgan
Chairman

(In compliance with MOU of May 19, 1998)

Submitted by: Federal Railroad Administration
Office of Safety Assurance and Compliance
Washington, D.C.

May 4, 1999



U.S. Department
of Transportation
**Federal Railroad
Administration**

Office of the Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

MAY - 4 1999

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear Chairman Morgan:

Pursuant to the *Memorandum of Understanding Between the Surface Transportation Board (STB) and the Federal Railroad Administration (FRA)* dated May 19, 1998, FRA is forwarding its first biannual status report to the STB covering the safety integration of the Conrail merger (enclosed).

This report is dated May 4, 1999, and covers the period of FRA's surveillance of safety integration from July 23, 1998, (merger approval) through April 15, 1999. During this period the two acquirers of Conrail properties, Norfolk Southern Corporation (NS) and CSX Transportation, Incorporated (CSX) have been carrying out planned preparatory safety actions, but as yet have not taken major merger actions. NS and CSX moved the split date forward to June 1, 1999, I believe, based in part upon their commitment to addressing the complex issues involved in their Safety Integration Plans (SIPs). In addition to addressing the requirements of their SIPs, the two acquiring railroads and the Conrail Shared Assets Operations (CSAO) have been concentrating upon organizational structure, employee training and resource allocation, completing labor agreements and ensuring that the computer systems of all three entities and the acquired properties are compatible and operating effectively for the split date.

As stated in the report, "at this time there are no performance/safety conditions identified or foreseen by FRA on the NS, CSX, or CSAO acquired territories which the Agency believes warrant STB oversight actions to correct deficiencies and/or address safety problems arising out of approval of the merger and its ongoing integration." FRA will, however, continue its close and focused scrutiny of potential safety issues arising from the merger.

FRA identified early the safety issues inherent in a merger of this magnitude in proposing that SIPs be completed. As expressed by FRA in its October 21, 1997 filing, with the STB, *Safety Assessment of CSX/NS Proposed Acquisition of Conrail*, the safety issues and concerns that must be addressed by the acquirers of Conrail during the course of merger integration are highly complex and, heretofore, were not well defined. The FRA is committed fully to assuring the appropriate resolution of the many safety related facets of the merger: corporate culture, dispatching practices, compatibility of computer systems, retention of institutional knowledge and highly competent employees, training and certification of employees, compliance with operating rules, sufficient allocation of personnel, and employee rest and quality of life issues.

In addition to the formal SIP/Safety Merger Surveillance Program being carried out by FRA as identified in the report, I am personally making visits to Conrail sites to ascertain from municipalities, railroad front-line management and the railroad employees, first hand, how the merger is proceeding and their local concerns. On April 6, 1999, I convened a meeting of the senior operating officers of Conrail, CSX, NS, the major Western carriers (Burlington Northern Santa Fe, Union Pacific, Illinois Central and Wisconsin Central), as well as the major switching lines of the Chicago and St. Louis shipping gateways at FRA's Washington headquarters to review split date plans and assure the continued smooth flow of traffic through these vital shipping lanes.

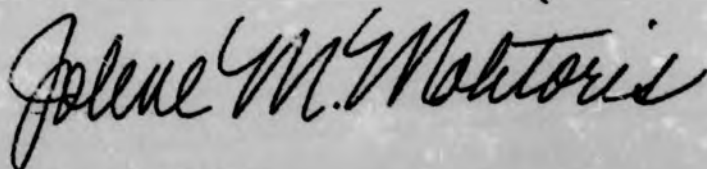
A major split date operations strategy planning session was set by NS and CSX with the Western carriers and the Chicago and St. Louis belt line and switching carriers at Chicago on April 21-23, 1999. This is to ensure that shippers are receiving appropriate advance split date shipment handling instructions, computer information systems are functioning effectively and that new or modified operations are well defined so that service disruptions do not occur.

Since March, and to be continued throughout the split date period, FRA has initiated special "safety blitzes" incorporating up to 30-40 Operating Practices inspectors at a time and other safety officers to ascertain safety conditions and formulate mitigating measures for any safety issues that arise. Additionally, we plan to have a significant number of SIP Team and other safety officers stationed strategically at operating headquarters, dispatch centers, and customer service centers throughout CSX, NS and the Conrail acquired territories well in advance of and during the split date period.

The FRA will continue its close surveillance of the safety integration of the Conrail merger and will apprise STB of the status with its next regular biannual report and/or at any time that suspect deficiencies of major consequence arise.

The cooperation of the STB's staff with that of FRA has been welcomed for both the joint Safety Integration Plan (SIP) rulemaking and this very critical monitoring of the ongoing merger integration. With the merger split date fast approaching (June 1), I am confident that the deeply-rooted and long planned SIP safety actions of NS, CSX and the CSAO, as well as FRA's close surveillance and that of our joint regulatory efforts, will contribute significantly to a safe integration.

Sincerely,



Jolene M. Molitorie
Administrator

Enclosure

Conrail Merger Surveillance: NS, CSX, and CSAO

SIP/Safety Update

I. Background

Mega-Railroads and the Challenges of Safety and Service: While mergers have long been a part of the railroad industry, FRA became concerned that recent mergers involving Class I railroads have resulted in the creation of mega-railroads, which pose new and unique challenges to railroad safety and service. With tens of thousands of employees spanning as much as two-thirds of the United States, the distance between the decision-makers in the corporate board rooms and rank-and-file rail workers at the ballast line becomes immense. The vast size and complexity of the rail operations on these mega-carriers pose significant obstacles to effective communications and coordination elements that are critical to both railroad safety and service.

FRA also found that the careful integration of corporate cultures can be as important to the success of a railroad mega-merger as the integration of route structure, traffic flows, and operating practices. Differences in traditions, values, and expectations among managers, supervisors, and front-line employees must be acknowledged and collective efforts undertaken to unify these cultures, drawing upon the best practices of each, so that the various elements of the newly merged railroad may operate as a single, seamless entity.

On June 23, 1997, CSX Transportation Inc. (CSX) and Norfolk Southern Railway (NS) filed an application with STB to acquire control of Consolidated Rail Corporation and Conrail, Inc., (Conrail or CR) and to divide the assets, including 10,000 miles of track, equipment, and facilities, between them. Under the proposed acquisition plan, NS would acquire 58 percent of Conrail's assets, while CSX would acquire the remaining 42 percent. Certain Conrail assets would be contained in three areas of joint operations known as the Conrail Shared Assets Operations (CSAO) in Detroit, northern New Jersey, and southern New Jersey/Philadelphia. CSX and NS will provide service to shippers in the CSAOs via their own trains, crews, and equipment, with maintenance and dispatching being provided by a jointly owned successor to Conrail. FRA recognized that the complex nature of this merger/acquisition warranted a special effort to address these unique challenges of coordination, communications, and culture.

Safety Integration Plans: FRA responded to the challenge by conducting a formal safety assessment of recent mega-mergers involving the Union Pacific (UP) and Burlington Northern Santa Fe (BNSF) railroads to examine issues and concerns associated with railroad mergers of such a large magnitude. FRA then conducted a thorough safety assessment of the proposed Conrail acquisition, including a review of the applicant's Operating Plans and a risk assessment of 61 Conrail line segments. The Department of Transportation (DOT) filing with STB on October 21, 1997, provided STB with findings and recommendations from the safety assessment.

One of the most significant recommendations in the DOT filing was a request that STB require the acquiring railroads to develop, for the first time ever, **Safety Integration Plans (SIPs)** as a condition of the merger to help ensure the safe integration of Conrail properties into their systems. Subsequently, on November 3, 1997, STB issued an order requiring NS and CSX to prepare their respective SIPs within 30 days.

To aid in the development of the SIPs, FRA established first-ever **SIP Guidelines** (see Appendix Item I) that outlined 13 safety-critical areas that each applicant's SIP would be required to address. NS and CSX each worked collaboratively with FRA to develop their SIPs and met STB's filing deadline (December 3, 1997). FRA acknowledged in its final brief with STB that the applicants had developed sufficient SIPs addressing all of the significant safety issues, and that they provided rational approaches for merger integration.

On May 19, 1998, FRA and STB executed a Memorandum of Understanding (MOU) providing that, if the Conrail merger were approved, FRA would:

- ▶ monitor the impact that the integration of operations has on safety, keep STB informed of progress in implementing CSX/NS/CSAO SIPs and of any deficiencies or problems; thereby enabling STB an opportunity to exercise oversight authority and take corrective actions to identified deficiencies and address safety problems arising out of the transaction; and
- ▶ provide periodic reports to the Board on the SIP implementation process (at least biannually), including a final report when the proposed integration has been satisfactorily completed.

Formal approval of the merger was granted by STB on July 23, 1998, with 83 consequential conditions, some of which included:

- ▶ Applicants to submit SIPs;
- ▶ 5-year oversight;
- ▶ Environmental conditions (some 50 listed actions, many safety orientated);
- ▶ Comply with the National Industrial Transportation League (NITL) agreement to include measurable standards for quarterly performance reporting;
- ▶ Adhere to agreements with Amtrak, the City of Cleveland, railroad labor organizations, and others (many containing important safety elements); and
- ▶ Meet with labor to form task forces to dialogue on implementation/safety issues.

As a result of the merger, CSX will operate approximately 4,000 miles of Conrail routes, and increase its system to 22,300 miles serving 23 States east of the Mississippi, the District of Columbia, and small portions of Quebec and Ontario; NS will operate about 7,200 miles of Conrail routes, and will increase its system to 21,600 miles serving 22 States in the East, plus the District of Columbia and the province of Ontario.

II. FRA's Merger Surveillance Team

On September 4, 1998, FRA's Office of Safety initiated its long-term safety surveillance program for the merger; *FRA's Conrail Merger Safety Assessment and Surveillance Plan* (see Appendix Item II) was unveiled in an orientation session held at FRA headquarters for CSX, NS, and CSAO operations and planning officers. Fifteen senior-level officers attended representing all three organizations. Key attendees included:

- ▶ CSX - Mr. Frank Pursley - Vice President of Operations Support/Safety Integration;
- ▶ NS - Mr. Chuck Wehrmeister - Vice President of Safety and Environmental; and
- ▶ CSAO - Mr. Ronald Batory - Vice President of Operations.

The items contained in FRA's merger surveillance program include:

- ▶ The SIPs and accountability worksheets filed by CSX, NS, and CSAO with FRA, which detail the applicants', allocation of funds, personnel, training commitments, facilities, and other resources;
- ▶ Current operating safety conditions at CSX, NS, and CSAO and their acquired properties; safety audits and surveys; FRA's required statistical reporting; and inspections/violations identified by FRA inspectors;
- ▶ Review of past and ongoing FRA Safety Assurance and Compliance Program (SACP) efforts conducted at each railroad;
- ▶ Close review of progress made on safety conditions set by STB.

Staff members from FRA's Office of Safety have been designated to contact planning officers from NS, CSX, and CSAO at regular intervals to obtain updates of their SIPs, identify new safety commitments (SIPs are "living" documents), and assess the status of safety issues and concerns.

FRA designated 3 Regional Safety Assessment and Surveillance managers and 30 geographically placed merger inspectors/monitors to provide very close surveillance of CSX, NS, and CSAO field integration of the merger; regular, periodic Region reviews are to be conducted and formal biannual written reports identifying safety integration progress are to be provided by FRA to STB.

On August 20, 1998, FRA's Surveillance Management Team, consisting of an Office of Safety headquarters representative and the 3 regional managers from the Team, visited the former Conrail headquarters "Blue Room" operations center, observed the morning planning meeting, and reviewed SIP/safety actions ongoing at former Conrail; other announced and "unannounced" visits and SIP/safety reviews will be accomplished by the management team and individual surveillance monitors as the merger progresses.

III. SIP/Safety Progress Reports

General

Split Date: Although permitted by STB to proceed with merger implementation any time after September 1998, CSX and NS have both elected to proceed toward the split date in a planned, gradual approach to ensure the safe and seamless integration of Conrail's operations into their own railroad systems. STB's requirement that implementing agreements with labor organizations and computer systems integration be in place prior to the split date has postponed the split date to June 1, 1999.

Merger Integration Planning Teams: CSX merger-integration planning is headed by Executive Vice President of Coal and Merger Planning, Michael J. Ward, with three principal teams: Headquarters, Technology, and "Day One." Consultants are assisting in the planning efforts using CPM (Critical Path Method)-type computer tools with over 50,000 project management tasks identified. NS Vice President Nancy Fleischman heads a five-member integration team with full-time responsibilities for NS merger-integration planning. NS has also enlisted consultant services and has established transition implementation teams for specific functions such as train dispatching, crew management, training, operating rules, commuter and passenger train issues, etc.

Transition of Dispatching and Operations: The relocation of current Conrail train dispatching desks is underway and scheduled to be completed in June 1999. Desks at the current Conrail dispatching facilities are being reallocated as follows: Albany to Harrisburg (2 desks), Mt. Laurel to Harrisburg (5 desks); Mt. Laurel to Albany (2 desks), Dearborn to Indianapolis (2 desks), and Indianapolis to Dearborn (2 desks).

Conrail's current operations center in Philadelphia, commonly referred to as the "Blue Room," has already been divided between CSX and NS employees. After the "Split Date," NS will relocate its portion of the operations center to Atlanta, while CSX will retain the Philadelphia center.

Rolling Stock Allocation: CSX and NS have split the existing Conrail locomotive fleet of over 1,900 units by a ratio of 42 percent and 58 percent, respectively. CSX will have more than 800 units, and NS will have 1,128 Conrail units. These units will be conveyed or leased to entities identified as NYC and PRR, which will then lease or sublease the units to CSX and NS, respectively. Prior to the split date, units allocated to CSX will be marked "NYC," and units allocated to NS will retain their Conrail markings but will be renumbered with NS sequence numbers.

CSX and NS have also divided Conrail's current freight car fleet of over 45,000 cars according to the same 42 percent to 58 percent ratio. These cars will be conveyed or leased to NYC and

PRR, which will then lease or sublease the cars to CSX and NS, respectively. Cars allocated to CSX will be marked "NYC," and cars allocated to NS will retain their Conrail markings.

Information Technology and Y2K: Information technology (IT) systems work planned at CSX and NS is nearing completion, and testing of some key cut-over systems is ongoing. For example:

- ▶ The shipment inventory system known as "TRIMS" is being tested and is expected to be ready for cut-over on June 1, 1999.
- ▶ The Train Dispatching System is tested and ready for implementation.
- ▶ CSX and NS are both addressing Y2K compliance of Conrail's IT systems. Certain Conrail operations systems are being made Year 2000 compliant because field rollout of NS and CSX systems on Conrail-allocated territory will not be completed until after the Year 2000. Also, certain Conrail IT systems will continue to operate on CSAO after the merger integration is completed.

Concerns Over Operating Rules Training for Foreign Carriers: The FRA Surveillance Team recently became concerned about NS and CSX provisions for providing operating rules training for employees of Amtrak and other railroads, including shortlines and commuter carriers, that will operate on the NS and CSX acquired after "Split Date." FRA's Surveillance Team has raised this issue directly with NS, CSX, and CSAO and will continue to monitor efforts to ensure that timely rules training is provided to employees of all the railroads that will operate over Conrail territories acquired by CSX and NS

Track Protection at Buffalo, New York: FRA's Surveillance Team identified a safety concern involving a location in Buffalo, New York. Between Conrail's CP Draw and CP 437, there are four adjoining tracks. After "Split Date," two of the tracks will be controlled by NS and two by CSX. Procedures to coordinate track-maintenance fouling time and provisions for dispatchers' protection should be developed. FRA has addressed this concern directly with Conrail, CSX, and NS and will monitor the resolution.

Labor Concerns Over Staffing Needs in Buffalo: Rail labor has expressed concerns over CSX and NS-projected needs for Train and Engine Service personnel in the Buffalo, New York, area. Initially, labor believed that CSX projected a need for 195 engineer positions, while NS projected a need for 40 engineer positions. However, these projections were eventually reduced. CSX now projects jobs for 144 engineers, while NS would require 44 positions. Rail labor has expressed strong reservations over such a significant change in job requirements and questions whether the carriers will be sufficiently staffed to handle the traffic in a safe and efficient manner. FRA will continue to closely monitor rail operations in the Buffalo area.

Interim Conrail Operations

New Conrail Board of Directors: On August 22, 1998, CSX and NS terminated the voting trust that held shares of Conrail common stock and elected a new Conrail Board of Directors:

CSX

John Snow, Chairman/CEO
Pete Carpenter, President, CSX
Mark Arin, EVP, Law and PA
Paul Goodwin, EVP, Finance/CFO

NS

David Goode, Chairman/CEO
James Bishop Jr., EVP Law
Stephen Tobias, Vice Chairman/COO
Henry Wolf, Vice Chairman and CFO

Former Conrail officers and employees are continuing to manage the railroad until split date, thereby retaining institutional knowledge for a smooth transition. Messrs. Tim O'Toole, recently appointed President and CEO of Conrail, and Doug Greer, General Manager of Train Operations, and the entire team of Division operating officers and transportation employees beneath them are operating Conrail day-to-day much as it operated in the past. Messrs. Tony Ingram, NS senior management liaison, and Jim Fallon, CSX senior management liaison, are providing daily oversight and advice at the operations center at Conrail headquarters in Philadelphia.

Safety Reviews of Conrail's Operations Center: Representatives from FRA's Merger Surveillance Team have conducted three safety reviews at Conrail's headquarters in Philadelphia, these reviews took place on November 20, 1998, January 29, 1999 and March 25, 1999. At each of these sessions, the FRA Surveillance Team observed Conrail's early-morning planning meeting with its five divisions and then conducted intensive SIP review/update sessions with CSX, NS, and CSAO representatives. FRA observed that the railroad appeared to be running smoothly, and the overall operation was improving from automobile strikes, harsh winter weather conditions, and recent train accidents. It was noted that critical trains were generally running at or slightly ahead of schedule. Yard congestion appeared to be under control, and Conrail had an adequate supply of train crews to move the freight. No reports were heard of trains being held for power.

At the January 29 meeting, it was reported that Conway Yard had a computer failure; however, the computer problem occurred during a program upgrade that did not appear to be merger-related. The fact that the railroad was able to handle the bulk of the traffic out of Conway, despite the loss of the computer, was an indication that local management had a backup plan and was able to adapt the facility to the emergency without affecting the entire railroad.

Furthermore, FRA observed that the current CSX, NS, and Conrail management team in charge of Conrail operations appears to be sound. Units worked together cohesively and relied upon each other's strengths to address issues. The division personnel were encouraged to raise safety and performance issues during their morning briefings. Conrail field and headquarters managers addressed the daily issues with what can be described as a "can do" attitude.

Indications of the ability of the "interim" Conrail operations team to handle difficult and unforeseen contingencies can be seen in that Conrail has maintained reliable service despite being faced with the following adverse conditions:

- ▶ On June 21, 1998, Conrail's train PIEL-1B derailed 21 cars on the Harvard connection in the city of Cleveland leading to substantial equipment damage and significant train delays.
- ▶ The General Motors strike that ended in July negatively affected carloadings at Conrail; 26 of the auto maker's 29 assembly plants in North America were shut down for several weeks.
- ▶ On August 14, 1998, the Brotherhood of Maintenance of Way Employees initiated a strike against Conrail over scope issues related to the construction of track in Marysville, Ohio.
- ▶ On January 2, 1999, the blizzard of '99 virtually buried the Midwest with the worst snow storm in over 30 years for the Chicago area. The snow storm drastically affected the operations of all freight carriers, commuter lines, and Amtrak. Several days of sub-zero weather, high winds, and drifting snow caused frozen switches, frozen locomotives, train air brake problems, stranded crews, and signal problems; Conrail had Level-3 weather alerts on the Albany, Dearborn, and Indianapolis divisions, and the lasting effects to operating performance were felt for several weeks.

Performance Measures: Conrail's performance statistics for the first 10 months of 1998 were favorable. Performance measures include Traffic Levels and Assets, Intermodal On-Time Performance, Automotive On-Time Performance, Core Merchandise, and Unit Coal Train Performance. (See Appendix Item III);

Overall Safety Performance: Overall, Conrail's safety performance in 1998 was positive. A noteworthy achievement is the fact that Conrail reported no employee on-duty fatalities in 1998, the first time the railroad has reached the goal of zero employee deaths. In 1998, Conrail achieved record levels of safety with the lowest employee injury rate, the lowest number of highway-rail grade crossing accidents, and the lowest overall accident/incident rate in the railroad's history. (See Appendix Items IV-A and IV-B)

FRA did note an increasing trend in low speed train accidents and derailments occurring in yards. After further analysis, FRA identified three major yards in Elkhart, Indiana; Conway, Pennsylvania; and Selkirk, New York, where most of the increases occurred. FRA is currently working directly with the carrier and its employees to develop action plans at each location to address this concern.

Fatal Rail Accidents and Incidents: While statistics are useful tools in assessing the level of safety of a railroad, FRA recognizes that safety means much more than the sum total of data and statistics. Safety in the railroad industry is a matter of life and death. The loss of even a single life in a railroad-related accident is an unacceptable tragedy. Preventing serious rail accidents must be a top priority, not only for FRA but for the highest levels of railroad leadership. When Conrail experienced three significant train accidents and two switching accidents that resulted in four fatalities during the first quarter of 1999, FRA dispatched a senior-level safety team to meet with top Conrail management to thoroughly analyze these tragic events and devise corrective action plans. The incidents that prompted this investigation included: 1) Port Newark, New Jersey - a switching accident that resulted in a conductor fatality; 2) Stryker, Ohio - a rear end collision in heavy fog that resulted in a conductor and engineer fatality; 3) Ft. Plain, New York - a train derailment that resulted in a major hazmat spill; 4) Alexander, New York - a switching accident that resulted in a conductor fatality when a car turned over while shoveling over a crossing with ice and snow in the flange way; and 5) Momence, Illinois - a Conrail freight train failed to stop at an at-grade rail crossing and collided with a Union Pacific freight train resulting in injuries to three crew members.

Under the direction of FRA's Acting Deputy Associate Administrator for Safety Assurance, FRA's Merger Surveillance Team conducted a special safety review of the four train incidents with senior Conrail management at the railroad's operations center. Together, the senior level Conrail and FRA team conducted a detailed review and analysis of investigative reports concerning each incident. Subsequently, Conrail was directed to develop action plans to prevent a recurrence of similar incidents. Conrail did develop action plans to address each incident and submitted copies of the plans to FRA's Office of Safety. Several of these plans deal with accidents that are still under investigation by the National Transportation Safety Board and formal findings of cause have yet to be issued. In these cases, Conrail's action plans must be regarded as interim measures. The Merger Surveillance Team identified no direct causal relationship between these incidents and the ongoing merger integration.

FRA Operating Practices Assessment: FRA also undertook an extensive, two-week system wide review of operating practices on Conrail with a 35-member Federal and State inspection team consisting of operating practices inspectors from FRA Regions 1, 2, 3, 4, and 6. The purpose of this review was to assess the overall level of operating safety and to ensure that Conrail managers, front-line supervisors, and rank-and-file employees remained focused on safety during this interim period. During a merger, it is not unusual for railroad personnel to experience anxiety over workplace changes associated with the merger. FRA believes an extra effort is often necessary to maintain a strong focus on safety during such times.

From March 29 through April 9, the inspection team conducted focused inspection activities, including 382 train rides involving 7,817 miles in both local and over-the-road service. The team also conducted operating-practices efficiency testing and performed records inspections. At many locations throughout the Conrail system, inspections were conducted on an around-the-clock basis.

Inspectors also conducted listening sessions with several hundred Conrail managers and employees to learn their views about the state of safety on Conrail during this interim period. The inspection team saw no evidence of deterioration in Conrail's supervisory oversight. Furthermore, the team found the level of commitment and attention to safety was very high among Conrail workers, supervisors, and managers in the operating department.

Thus far, FRA believes the current Conrail leadership team, which has been overseeing the railroad's operation during the interim period between the approval of the merger and "split date," appears to be carrying out its responsibilities and decisions in a reasonable and prudent manner.

CSX SIP/Safety Actions

CSX updated its SIP with FRA on 1/23/98, 7/20/98, 8/31/98, 11/9/98, 1/29/99, and 3/25/99. The present SIP contains some 85 safety action items that identify resource commitments and time lines, including personnel, facilities, and training. All SIP action items as reviewed are on schedule. Furthermore, CSX is on schedule with all work/safety commitments to STB as specified in the conditions of Appendix Q of the merger approval.

CSX's integration efforts over the past several months have emphasized:

- ☐ hiring extra engineers and conductors to protect potential traffic;
- ☐ managing "churn" (minimizing turnover and displacement of personnel) for all groups; and
- ☐ leaving existing organizations in place.

Retention of Institutional Knowledge: CSX has made a significant effort over the past several months to retain "institutional knowledge" from Conrail by hiring senior officers and other management employees to join the CSX team, some of the senior management hired by CSX include:

Mr. Ronald Conway - Exec. VP of Operations (former CR Sr. VP Operations);
Mr. Lester Passa - President CSX Intermodal (former CR VP-Automotive Group);
Mr. Frank Nichols - Sr. VP- Employee Relations (former CR SR. VP- Org. Per.);
Mr. Gerry Gates - VP Consolidation & Day 1 Team Ldr. (former VP Cust. Sup.);
Mr. Gary Spiegel - VP Network Operations (former CR VP Service Delivery);
Mr. James Kasprzycki - GM Conrail Engr. (former CR Dir. Asset Optimization);
Mr. Wayne Richards - GM. Servc. Lane Integration (former CR Gen. Mgr.); and
Mr. Howard Elliott - Dir. Hazardous Materials (former CR Director Hazmat Sys.).

Three former Conrail board members were appointed to the CSX corporation board: H. Furlong Baldwin, former U.S. Secretary of Transportation Claude S. Brinegar, and E. Bradley Jones (30 years of Conrail Board experience).

Safety Culture: CSX established a Cultural Enrichment Team in early 1998 consisting of the CSX chief safety officer, a cross section of headquarters and field managers, and a cross section of labor representatives focusing on the following key issues: 1) safe work environment, 2) building trust and teamwork, 3) premiere service, and 4) work atmosphere.

- CSX vice president's "safety blitz" consisting of listening posts were held on all CSX service lanes in late 1998. Vice president "Safety Champions" are being paired as safety advocates for all operating units in the field during 1999.

- On July 1, 1998, CSX announced a new "Individual Development and Personal Accountability Policy" for all United Transportation Union (UTU) and Brotherhood of Locomotive Engineers (BLE) employees, which replaces its former disciplinary policy; the Yardmaster's Union, American Train Dispatchers, Brotherhood of Maintenance of Way Employees (BMWE), and the Mechanical crafts have since joined in the policy. This policy is intended to be implemented on the acquired Conrail properties.

Labor Agreements: Labor-implementing agreements were reached by CSX in conjunction with NS on a voluntary basis with all the labor organizations except the BMWE and the BLE. Arbitration pursuant to the protective conditions imposed by STB was conducted with BMWE and a decision was rendered on January 14, 1999, imposing an implementing agreement with both parties. BMWE has now appealed that decision to STB. Also, the voluntary agreement reached with the Transport Workers Union (TWU), representing certain carmen on Conrail, failed ratification. As a consequence, arbitration was required and a decision was rendered on February 27, 1999, which imposes an implementing agreement on the parties. Finally, in the case of the BLE, an agreement settlement was reached through arbitration.

Training and Instructions: CSX initiated a number of training and instructional initiatives to ensure that employees on the acquired territories will have sufficient knowledge and understanding of CSX operations and procedures to ensure the safety and efficiency of rail operations immediately upon "Split Date." The following is a brief summary of the more significant training and instructional initiatives.

- ▶ Annual rules certification for CSX train and engine service employees will be provided via multimedia pods in 1999. Conrail employees will retain their two-day classroom certification program for 1999.
- ▶ A unified book of rules for Conrail acquired territories will be developed during the year 2000.
- ▶ Operating rules training is being conducted throughout 1999 on Conrail territory being allocated to CSX. Operating rules training on CSX has nearly been completed using an interactive multimedia computer-based format.
- ▶ In 1998, CSX established two facilities to offer five-week conductor classroom training courses for employees on the Conrail territories, one in Rome, New York, and the other in Philadelphia.
- ▶ The split date rulebook with both Northeast Operating Rules Advisory Committee (NORAC) and CSX rules is ready for distribution. Timetables have been developed and will be available for split date, but are not yet printed.

Staffing Levels: CSX has calculated the staffing requirements to handle traffic increases that result from the acquisition and to compensate for attrition. Consequently, the railroad has hired/promoted approximately 2,000 train crew (T&E) members in 1998; 1,298 conductors were promoted in 1998, and an additional 810 are in the pipeline for 1999. CSX has established schools in Atlanta, Cincinnati, Philadelphia and Jacksonville to train new employees. A "Train the Trainer" program has been developed with 25 trainers now on the affected service lanes and 35 new Road Foremen of Equipment (RFE's) have been deployed.

Wave I job offers to Conrail field employees was completed in June 1998 (94 percent acceptance rate); Wave II offers including Headquarters and Commercial personnel were completed at the end of 1998 (75 percent acceptance rate).

Fatigue Mitigation: CSX is developing specific Fatigue Countermeasures and Alertness Awareness programs applicable to all employees, including those in the Conrail acquired territory.

Y2K: Primary efforts to make CSX's information technology (IT) systems Y2K compliant have been completed and verification testing is currently underway. A plan for the retirement of Conrail's IT systems has been completed. Portions of the Conrail IT system that are intended to support CSAO operations will remain in place. Conrail movements began appearing on CSX data screens in late 1998. A 25-person group will be added to CSX's command center at Jacksonville to teleconference with Conrail's Nation Customer Service Center (Pittsburgh) prior to split date to monitor IT systems integration.

Infrastructure and Equipment: CSX has undertaken equipment and infrastructure upgrades and modifications to meet the demands of service resulting from the acquisition and to maintain the safety and reliability of rail operations on the merged carrier. The following is a brief description of the status of some of the more significant infrastructure and equipment issues.

- ▶ Current projections for locomotive acquisitions at CSX for 1999 are 36 CW44AC's, 112 CW60AC's and 39 SD70 MAC's (180 in total); CSX's current fleet is 2,829 locomotives. CSXT will receive 817 locomotives from the Conrail fleet at split date.
- ▶ CSX's newly double-tracked, 270-mile high capacity B&O line is now open to traffic after \$220 million in rehabilitation in 1998.
- ▶ A new coal car inspection operation is being added to CSX's SIP commitments; empty coal hoppers will be routed back to MGA coal fields from Northeastern utilities through New Castle, Pennsylvania facility. The railroad has added carmen and inspect on tracks.

- ▶ CSX is currently modifying former RF&P corridor 60 HZ locomotive cab signals to be compatible with Conrail system locomotives (100 HZ); 73 CSXT locomotives also affected and are being fitted with additional software/hardware; testing of modifications was ongoing during February 1999.
- ▶ CSX track connections are being constructed on schedule for B&O Double Track, Greenwich and Marion, Ohio, Cleveland Short Line, Philadelphia - Grays Ferry, Philadelphia - Belmont, and River Line Siding Extensions. Conrail has also completed rehabilitation of the Grays Ferry Branch in South Philadelphia, which links the CSX's former B&O East End Subdivision with Conrail's High Line (near the location of Amtrak's PHIL Interlocking). New signals have been installed to protect the branch at both PHIL Interlocking and CSX's 58th Street Interlocking. Train movements on the Grays Ferry Branch are currently handled by Conrail's Philadelphia Division Dispatcher. Train movements over the Grays Ferry Branch are restricted to 10 mph. CSX plans to divert freight traffic onto the Grays Ferry Branch and Conrail's Harrisburg Line in order to reach intermodal terminals in South Philadelphia.
- ▶ CSX has also indicated plans to operate freight traffic destined for North Jersey via the Grays Ferry Branch, the High Line, the Belmont Connection and onto the Trenton Line (former Reading Main Line to Bound Brook, New Jersey).

Communications With the OMID: FRA's Surveillance Team was recently informed by Ontario Midland Railroad (OMID) at Sodus, New York, that, as a result of recent changes in traffic routing by Conrail and computer incompatibility, the OMID is not being notified of cars delivered to it at Newark, New Jersey. Communications with the OMID is important because this shortline carrier does transport hazardous materials. FRA is addressing this concern directly with Conrail and CSX and will continue to monitor this matter to ensure that proper hazardous materials communications protocols between CSX and OMID are established.

NS SIP/Safety Actions

On July 10, 1998, NS announced the formation of a third operating region, the new Northern Region which will join the Eastern and Western regions; the new Northern Region will consist of three divisions (the Harrisburg, Pittsburgh and Dearborn divisions) which will incorporate Conrail acquired territories; formation of a Northern Region safety Committee is ongoing.

Transition implementation teams were established in late 1997 to address key issues such as train dispatching, train crew management, operating rules, commuter and passenger train operations, personnel and others. At NS 120 teams were established with up to 400 management employees involved. NS has updated their SIP with FRA on 1/26/98, 6/15/98, 10/6/98, 11/19/98, 1/29/99 and 3/25/99. Their present SIP contains some 65 safety action items that identify resource commitments and time lines, including personnel, facilities and training. NS has also added 50 safety related STB condition items for tracking, including grade crossings, hazmat emergency response and training. All SIP action items as reviewed are on schedule. Also, NS is on schedule with all work/safety commitments to the STB as specified in the conditions of Appendix Q of the merger approval.

NS integration over the past several months has emphasized:

- train and Engineer (T&E) hiring and training;
- employee communication; and
- cultural integration

Retention of Institutional Knowledge: NS over the past several months has also moved to retain "institutional knowledge" from Conrail by hiring senior officers and other senior management employees to join the NS team; some of the senior management retained include:

Mr. John Samuels - VP Oper. Planning & Budget (former CR VP Oper. Assets);
Mr. William Barringer - Director Safety (former CR Director safety);
Mr. Daniel Mazur - Assist. VP Strategic Planning (former CR AVP Asset Mgt.);
Mr. Joseph Arsenault - Director Systems Dev. (former CR Dir. Sys. Dev.);
Mr. Richard Davidson - Dir. Selection & Placement (former Dir. Select. & Place.);
Mr. James Newton - President Triple Crown Svcs. (Former Pres. ConrailDirect);
Mr. Thomas D. Newhart - Dir. Coal Trans. (former CR GM - Unit Train Svcs.);
Mr. Gregory Comstock - GM Western Reg. (former CR AVP Svc.Design/Net.);
Mr. Hugh J. Kiley, Jr. - AVP Trans. Svcs. (former CR VP Svc. Design & Plan.);
Mr. Robert Huffman - Sr. AVP Intermodal Ops. (former CR GM Intern. Ops.);
Mr. Ramond Rumsey - Chief Eng. Maint. Svcs. (former CR Ch. Eng. RW. Assets);
Mr. Francis Weckerle - Nat'l. Acct. Mgr. (Former CR Dir.- Nat'l. Accts/Chrysler);
Mr. Jeffery Burton - General Solicitor (former CR Sr. Dir. Labor Relations);
Mr. Anthony Licate - Dir. Labor Relations (former CR Dir. Labor Relations);
Mr. Gerhard Thelen - AVP Mechanical (former CR AVP - Engineering).

Safety Culture: NS instituted the "Six Tenets of Safety" program on the Conrail divisions that will make up its Northern Region. The program is designed to teach employees about the principles, practices and values behind the NS safety culture. Employee training on the NS's Conrail territories is still in progress.

In October, 1997 NS hired safety consultants from DuPont to evaluate three Conrail divisions and the Juanita and Hollidaysburg Shops. The analysis has been completed and their report was recently offered to FRA, where it is currently under review.

Labor Agreements: Labor implementing agreements have been reached by Conrail, CSX and NS with all of the labor organizations except the BMW. Arbitration pursuant to the protective conditions imposed by the STB was conducted with BMW and a decision rendered on January 14, 1999, establishing an implementing agreement for the parties. BMW has now appealed that decision to the STB. Also, the agreement reached with the TWU representing certain carmen on Conrail failed ratification. As a consequence, arbitration was required and a decision was rendered on February 27, 1999, which establishes an implementing agreement for the parties.

Training and Instructions: NS initiated a number of training and instructional initiatives to ensure that employees on the acquired territories will have sufficient knowledge and understanding of NS operations and procedures to ensure the safety and efficiency of rail operations immediately upon "Split Date." The following is a brief summary of the more significant training and instructional initiatives.

- ▶ NS is using the McDonough, Georgia, simulator for locomotive engineer training and estimates a continuing rate of 500 trainees per year for the combined system. Conrail engineers are still being trained at the Transportation Training Center at Conway Yard until the "Split Date."
- ▶ Dispatcher training is still being conducted at Conrail offices and will continue past the split date until NS's dispatching system is completely installed. NS, like Conrail, relies upon division dispatching (versus centralized). Dispatchers desks at Albany, Mt. Laurel and Harrisburg offices have been realigned and relocations are currently in progress and are expected to be completed in June 1999.
- ▶ NS annual operating rules training (eight-hour training class) is presently ongoing on the NS and soon will begin on NS's Conrail acquired lines. Draft bulletins for modified safety practices and rules will be submitted for management approval 30 days prior to the split date.
- ▶ Training for Accident/Incident reporting will occur during the Second Quarter 1999 involving approximately 550 supervisors.

- ▶ Training materials have been distributed to operating departments and specific training has started on the Northern Region. Twenty-two Training Teams have been established to address customer billing, payroll, crew management, procurement, police, National Customer Service Center, train dispatching, car and locomotive distribution and interline settlement.
- ▶ Conrail and NS both use P.S. Technology for computerized crew management. Training will be provided for 3,800 Conrail T&E employees within 180 days after the split date.

Staffing Levels: One hundred thirty trainees have been hired on Conrail to support staffing needs for the NS's new Northern Region. NS is providing new-hire training for train service personnel at the McDonough, Georgia, Training Center (five months of classroom and OJT learning assignments). NS anticipates training 1,100 new hire trainees per year across its system with approximately 300 on the Northern Region during 1999. Conrail is still using the Academy of Industrial Training outside Philadelphia until split date. NS is presently modifying the Accelerated Conductor's Training program to account for Conrail practices, procedures and facilities.

Training Time for Engineers: At a listening sessions held in Buffalo, Syracuse, and Selkirk, New York, in the first quarter of 1999, the primary safety concern expressed by Conrail Train and Engine service employees was "the lack of time that Conrail required for a new employee to be on the job prior to promotion to locomotive engineer" and the relative inexperience of some of the newly promoted locomotive engineers. NS has policies that should adequately address this concern because it requires new hires to complete at least one year of train service before being permitted to operate a locomotive in training. By contrast the current Conrail program has no such requirement and allows employees to be promoted to locomotive engineer once they have successfully completed training, without regard to prior train service experience.

Operating Rules and Practices: NS has taken significant steps to harmonize operating rules, practices and procedures on the acquired territory. The following is a brief synopsis of some of the more significant operating practices initiatives:

- ▶ NS has joined NORAC as an associate member and applied for full membership.
- ▶ NS Timetables and Bulletin Orders covering the acquired territories are ready for distribution.
- ▶ NS's random drug and alcohol tester (the TK Group) will be used for all of NS tests, including NS's Conrail acquired lines, after the split date.
- ▶ Contracts needed to cover emergency response contractors at NS's Conrail acquired properties are in place for the split date.

- ▶ NS's concept for spill containment yards has been introduced at Conrail (Conway and Elkhart Yards).

Y2K: NS's information technology systems largely have been made Y2K compliant and testing is underway. Completion and final testing will be accomplished in the third quarter of 1999. The retirement plan for Conrail systems was completed in April 1998.

Equipment and Infrastructure: NS has undertaken equipment and infrastructure upgrades and modifications to meet the demands of service resulting from the acquisition and to maintain the safety and reliability of rail operations on the merged carrier. The following is a brief description of the status of some of the more significant infrastructure and equipment issues.

- ▶ NS will avoid retiring locomotives in 1998 and 1999 to ensure it has sufficient motive power to meet the demands of service. NS also purchased 116 new locomotives in 1998 and will purchase 150 in 1999. Conrail purchased 24 new cab signal equipped locomotives in 1998 for future assignment to NS. NS will have approximately 1,127 locomotives equipped for operation on Conrail lines and Amtrak's Northeast Corridor.
- ▶ NS is participating in the FRA/Conrail/CSX sponsored Positive Train Control project on the Manassas-Harrisburg test corridor; NS is the Phase II project manager.
- ▶ Conrail's grade crossing inventory has been fully integrated into the Norfolk Southern Grade Crossing Inventory system.
- ▶ NS track connections are being constructed on schedule for Sidney, Illinois, Alexandria, Indiana, Cloggsville Rehabilitation, Pattenburg Tunnel (Phase 1), Greencastle, Pennsylvania, Oak Harbor, Columbus, Bucyrus, and Vermillion, Ohio.
- ▶ NS has committed to many merger related facility/track changes, most notably:
 - Alexandria, Indiana - The new connection to the NS Frankfort District at Alexandria has been established as a remote interlocking, controlled by the NS dispatcher at Fort Wayne. The connection will enable southbound trains on the Conrail Marion Branch to continue east on NS. This would allow Norfolk Southern to move freight traffic between Elkhart, Indiana and Cincinnati, Ohio. Conrail is currently in the process of installing new ties and rail on the Marion Branch.

- ☐ Columbus, Ohio - NS is progressing with the construction of a new connection to link Conrail's Columbus Line with the NS's Bellevue to Portsmouth, Ohio mainline. A connection at CP Colson, linking the NS line with Conrail's Fort Wayne Line is being rebuilt.
 - ☐ Charlotte, North Carolina - NS is investing 13.5 million dollars to expand its Charlotte Roadway Shop. The facility designs, manufactures and rebuilds the railroads fleet of maintenance of way equipment. The 57,000 square foot expansion will include a new machine shop and the enlargement of the existing heavy repair facility. The current Conrail Roadway Shop located in Canton, Ohio, will be closed after the split date.
 - ☐ Bulk Transfer Terminals - NS has opened three new bulk transfer terminals located at Doraville, Georgia (just north of Atlanta), Charlotte, North Carolina, and Chattanooga, Tennessee.
 - ☐ Intermodal Terminal - NS has agreed to a joint partnership with Bethlehem Steel to develop a new intermodal terminal on the site of the former Bethlehem Steel Mill in Bethlehem. This new terminal will be located on the Lehigh main line (former Lehigh Valley) and will provide easy access to western New Jersey, Philadelphia, and Scranton areas.
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CSAO SIP/Safety Actions

The Conrail corporate identity will survive after split date and will be responsible for managing and operating the CSAO. The CSAO updated its SIP on January 26, 1998; September 4, 1998; November 20, 1998; January 29, 1999 and March 25, 1999. As a living document, the SIP outlines the status of the CSAO's efforts to address 22 safety action items including training requirements, hazardous materials handling issues and IT needs. The SIP also contains the status of 17 safety related matters that stem from conditions imposed by the STB, most of these conditions concern highway/rail grade crossings, hazardous material emergency response and training requirements, each of the 17 items are reported to be progressing on schedule.

After "Split Date," the CSAO will continue to maintain and follow the majority of policies and practices currently in place on Conrail. For example:

- Current Conrail safety programs will be observed in the CSAO. The Conrail leadership team for the CSAO is committed to continuing efforts to enhance and improve these programs.
- Designated service delivery for all yards and customer switching within the CSAO territory will be maintained in accordance with current Conrail schedules and commitments. Transitional steps underway ensure that the existing Shared Assets Areas yard and dock service asset are properly preserved and maintained to support this service after "Split Date."

Conrail Leadership Team: The CSAO principal officers and many associated staffers have already been appointed and brought on board; the leadership team includes:

- Mr. Tim O'Toole - President and Chief Executive Officer;
- Mr. Don Nelson - Senior Vice President of Operations;
- Mr. Ron Batory - Vice President Operations;
- Mr. Craig Curry - Chief Environmental and Safety Officer; and
- Mr. Neil Ferrone - Director Safety.

The Governance Team includes the Board of Directors, President and Chief Executive Officer, and the Operations Committee (Engineering, Mechanical, NCSC, Blue Room Operations and five Division General Managers).

Operations and Operating Practices: Conrail will continue to observe the NORAC Rules for operations in the CSAO; thereby ensuring compatibility among the commuter, inter-city passenger and freight entities that operate over the CSAO territory. Dispatcher ranks will be filled with trained Conrail dispatchers familiar with the assigned CSAO territories. Conrail will dispatch North and South Jersey/Philadelphia from an existing Mt. Laurel, New Jersey location. Dispatching for the Detroit Shared Assets Area will initially be from Dearborn, Michigan.

Relocation of the Detroit desk to Mount Laurel is scheduled for August 15, 1999. The following are the significant operating issues that are being addressed.

- ▶ Conrail will handle within the CSAO territory all hazardous materials functions and will be supported by five (5) qualified emergency response contractors.
- ▶ Conrail is finalizing procedural changes, to be effective June 1, 1999, for post accident toxicological testing, certification and qualification of locomotive engineers, physical characteristics training of train and enginemen, train and accident reporting and operational testing.

Competition In The CSAO: Since the first announcements of the Conrail merger acquisition and review of the early SIP filings by NS, CSX and the CSAO, FRA has maintained a keen interest in the planned, joint operation of the CSAO. FRA believes there will be intense competition for business by NS and CSX in the Northern New Jersey/Southern New Jersey shared asset areas. How the CSAO equitably provides services to assemble, dispatch and maintain trains, crews and equipment operated within the shared asset areas will significantly impact the quality and safety of service provided to the northeastern seaboard shippers.

Intermodal facilities may represent a particular challenge for CSAO in managing rail operations in the face of this competition. The North Jersey Operating Shared Assets Area Plan assigns current Conrail intermodal facilities at Croxton, Portside and E-rail to NS. CSXT will operate the intermodal facilities at South Kearney and North Bergen. The facilities of APL, Ltd. and Mahr Terminals commonly referred to as "Express Rail" will be open to both railroads. CSAO officers have pledged neutrality of operations. General assignment guidelines have been formulated and are now being finalized for train routing within the CSAO territories (see Appendix Item V).

Unanticipated congestion or traffic disruptions at these facilities have the potential to migrate well beyond the CSAO area of operations and could impact rail service on CSX, NS or other carriers. FRA's Merger Surveillance Team will carefully monitor rail operations in the Shared Assets Areas and is prepared to act immediately to work with all parties to resolve potential service problems should they arise.

Equipment and Infrastructure: Upon "Split Date," CSX and NS will provide a total of 133 locomotives to Conrail for operations in the CSAO territories. FRA-mandated Quarterly Inspections of locomotives for North Jersey and South Jersey will be performed within the CSAO territory. The Detroit Shared Assets Area will receive such inspections outside the CSAO territory from both CSX and NS. The parent companies will perform heavy repairs for all CSAO designated motive power. Since the CSAO will be dependent upon CSX and NS for its motive power needs FRA will continue to monitor the CSAO locomotive fleet to ensure that it is sufficient to handle the traffic needs of this critical area of operations.

The Conrail track budget for the CSAO for 1999 is \$13.5 million. Preliminary budget plans for the CSAO territories have been formulated. An additional \$6.6 million is earmarked for the bridges and tunnels and other asset improvements. The Communications and Signals budget is \$2.5 million.

Currently a number of construction projects are underway in the North Jersey area. These will provide a direct benefit to Conrail, CSX and NS after the split date. A few of these projects are delineated below:

- ☐ Croxtan Yard - Conrail has initiated improvements at Croxtan Yard located in Jersey City and Secaucus. This facility will go to the NS on split date. Improvements include construction of a 7 track industrial switching yard, each track will hold 30 cars. Plans call for this yard to be the base of operations for the industrial switching crews that will service the former Erie Lackawanna industrial trackage operated by NS and New Jersey Transit. NS also plans to relocate the bulk transfer terminal now located in the center of Croxtan Yard and expand the current intermodal facility into this area.
- ☐ New York Susquehanna and Western - has established a connection linking Conrail's River Line with the NYS&W's Southern Division at Ridgefield Park, New Jersey. The connection will allow Conrail (later CSX) to have direct access to the CSLI Intermodal facility located at the NYS&W's Little Ferry terminal.
- ☐ Lehigh Line - On the Lehigh Line (former Lehigh Valley) ties are being replaced between CP Brook (Bound Brook) and CP Potter (Edson, New Jersey). The Pattenburg Tunnel is being single tracked in order to accommodate double stack container trains. In advance of this project, the existing passing siding is being reconfigured. The siding is being extended one mile to the west, from the current CP West Portal interlocking. A new interlocking will be constructed at the west portal of the tunnel. The siding will be eliminated through the tunnel, and only the single track main line will remain in the mile long bore. On the east side of the tunnel, a new interlocking is under construction. This will connect the current passing siding with the single track main line.

IV. Metropolitan SIP/STB Issues

The Conrail acquisition is especially significant for a number of metropolitan areas, primarily in Ohio and the Chicago area, that had been served by the CSX, NS and Conrail. Anticipated changes in freight traffic flows, route structure and operating practices raised uncertainty among many in these communities about the impact of the acquisition on important issues involving, potential congestion at highway/rail grade crossings, increased train traffic noise in residential areas, changes in employment levels and job assignments for railroad workers and other issues. A number of the STB conditions and items in the SIP's concern issues in these metropolitan areas.

Thus far NS has provided FRA with complete documents, updated as of February 23, 1999, regarding the status of items mandated by the STB as a condition of the merger. NS reports that the STB mandates; including those projects affecting Cleveland, Lakewood, Bay Village, Rocky Run, the Cloggsville Project, the Vermillion Project and others, are all on schedule.

Congressman Dennis Kucinich's office held a Conrail merger progress assessment meeting on March 8, 1999, in Lakewood, Ohio, to discuss acquisition issues that affect the West Shore communities in Ohio. Area Mayors and representatives from NS, CSX, the State of Ohio and the FRA met to discuss the implementation of recently completed agreements involving the parties. Representatives present from NS and CSX indicated that all agreements with their respective companies are on schedule and most will be completed before the June 1 deadline.

Increased Rail Traffic at Highway/Rail Grade Crossings: As a precaution to prepare communities and motorists for increases in rail traffic at highway grade crossings, notification letters will be sent to police agencies for each of the public crossings on rail lines identified as having an increase in rail traffic of eight trains or more, within three months of September 1, 1999. NS and CSX are installing temporary notification signs or message boards on railroad property at each crossing clearly advising motorists of the impending increase in traffic and speeds. These signs will be in place no less than 30 days before, and remain for 6 months after the increase in traffic occurs. Signs will be placed at 81 crossings and installation will be completed by September 1999. The crossings will also carry signs with a 24-hours per day, toll-free phone number to report crossing malfunctions. The railroads will provide sufficient funds to start construction of an underpass at Berea, Ohio, to expedite completion of a grade separation project.

Blocked Highway/Rail Crossings: The City of Olmstead Falls indicated a problem exists with Conrail train crews using their town as a crew change point which results in blocked highway/rail crossings for long periods of time. NS has committed to stopping this practice.

Rail Jobs in the Cleveland Area: There has been considerable uncertainty particularly among the ranks of Conrail employees, about how the Conrail acquisition would affect rail labor in the greater Cleveland area. As plans for the acquisition began to crystalize it was learned that there

would be an overall increase of seven (7) positions among Agreement personnel; this includes clerks, engineers and trainmen. The impact of rail positions is as follows: a net of 59 job abolishments, 44 job creations, 16 transfers out and 38 transfers in. Even recently, many Conrail employees appear to remain uninformed about the impact the acquisition will have on their positions, especially on territories allocated to the NS. The NS responded by issuing a survey to Agreement employees so they could make their views known about their work preferences.

Coordination of Rail Operations in the Greater Chicago Area: Since the early days of railroading, Chicago has been the nation's pre-eminent railroad transportation hub. The greater Chicago area has nearly 100 rail junctions and at-grade rail crossings, which have long posed significant challenges for the coordination of rail traffic. With the anticipated increase in traffic that is likely to result from the acquisition, FRA has been concerned about the potential for rail traffic congestion in the Chicago area. A service interruption on one railroad can quickly impact rail service on a connecting carrier. Furthermore, the Chicago area has a large number of highway-rail grade crossings, many of which are located on busy city streets, major thoroughfares and in residential neighborhoods. Likewise, rail service disruptions can have a serious adverse impact on highway traffic.

During the first week in April 1999, FRA Administrator Jolene Molitoris met with representatives from CSX, NS and the other major rail carriers in the Chicago area, urging them to work together to better coordinate traffic flows in an attempt to minimize the potential for rail congestion and reduce disruption to highway traffic and residential neighborhoods. The railroads have begun meeting and are in the process of developing coordinated operating and maintenance plans to address these concerns. FRA will continue to monitor the progress of efforts to improve rail traffic flows in the greater Chicago area.

V. Future of the SIP Process

Continued FRA Monitoring: FRA will continue its close surveillance of the Conrail merger integration process in the manner as previously described and will provide biannual reports to the STB about the progress of CSX, NS and CSAO in implementing and updating their SIPs until integration of the Conrail territories into those three entities is successfully completed. In addition to the bi-annual reports, FRA may be called upon by STB to issue special reports relative to the SIP process.

FRA's Merger Surveillance Team will continue to conduct "listening sessions" in the field to obtain direct input from front line employees, rail labor representatives, field supervisors and other parties regarding safety, service and operating concerns as long as the merger integration process continues. Listening sessions in February 1999 between FRA SIP Team Leaders and several rail labor leaders did not reveal any specific safety concerns. However, the labor representatives did express concerns about how the current Conrail employees might be affected by discipline policies and seniority issues on the acquiring railroads.

Joint STB/FRA Rulemaking: Based upon collaboration between the FRA and STB, a joint Notice of Proposed Rulemaking (NPRM) was published in the *Federal Register* on December 31, 1998, establishing proposed criteria and conditions under which Safety Integration Plans would be required in as a condition of future railroad mergers and acquisitions. The proposed rule would require that SIPs be developed for significant mergers and acquisitions as defined in the NPRM. Furthermore, the NPRM outlines the respective roles of the STB and FRA in the development, implementation and oversight in the SIP process.

VI. FRA's Summary Comments on the Status of the Conrail Acquisition

A significant beneficial effect of the SIPs has already been demonstrated in the graduated approach to integration of the acquired Conrail territories used by the acquiring railroads. The retention of many well qualified Conrail managers by CSX, NS and CSAO will allow these carriers to draw upon a high level of institutional knowledge when operating the newly acquired Conrail territories. The staging of implementation actions over the past seven months has lessened the potential for a degradation in safety and performance.

Need for Continuing Effort: Safety requires constant attention and effort. Both CSX and NS are operating safety review trains to view the newly acquired territories and introduce high level managers to Conrail personnel. The carriers are also providing extensive safety training prior to the split date. FRA believes that this is a prudent safety measure. These efforts clearly demonstrate CSX and NS each desire to judiciously integrate the former Conrail properties into their new respective railroads.

Monitoring Competition in the CSAO: FRA believes that it is very important to monitor the operations and performance in the CSAO areas, specifically, intermodal operations of the Northern New Jersey Shared Assets Area. If not properly managed, competition between CSX and NS in these areas could potentially lead to safety concerns or service disruptions that could migrate to other areas of the rail network. FRA will continue to conduct close surveillance of these operations as the merger progresses. CSAO's detailed planning has continued to progress and has provided assurances for the safety of these operations

Interim Conrail Operations: Based upon FRA's recent observations at Conrail's Operations Center and the seven-month period of feedback from FRA's Surveillance Team Conrail is operating well at the present time. Reports indicate the carrier will have increased loadings and revenue for 1998-1999, and that the physical plant and facilities are poised for successful merger integration.

Conclusion: Between the time of this report and "Split Date," CSX, NS and CSAO must have IT systems work complete and tested; necessary labor agreements in place; training completed; team projects completed and operational readiness established. This work appears to be continuing on schedule. During the period covered by this review, no performance or safety conditions have been identified or foreseen on the NS, CSX, or CSAO acquired territories, arising out of approval of the acquisition or its ongoing integration, that FRA believes would necessitate further STB oversight actions at this time.

APPENDIX

Conrail Merger Surveillance: NS, CSX & CSAO
SIP/Safety Update

Appendix Items:

- I. Federal Railroad Administration (FRA) Office of Safety
Safety Integration Plan Guidelines - Rev. 3 of 11/24/97
- II. *FRA's Conrail Merger Safety Assessment and Surveillance Plan* - 9/3/98
- III. *Conrail Operations* (Performance Measures) - Presentation November 20, 1998
- IV. A. *FRA's Office of Safety Statistics for Conrail*
- IV. B. *Safety Update Presentation to the FRA* - November 20, 1998
- V. *Safety Integration Plan Review Shared Assets Operations* - January 29, 1999

Appendix I.

Rev. 3 of 11/24/97

**Federal Railroad Administration (FRA)
Office of Safety**

SAFETY INTEGRATION PLAN GUIDELINES

**November 7, 1997
Washington, D.C**

SAFETY INTEGRATION PLAN GUIDELINES

Introduction

The Federal Railroad Administration (FRA) has determined from the mergers of the Union Pacific Railroad Company and the Southern Pacific Transportation Company and the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company that integrating operations of two Class 1 railroads into one railroad presents significant challenges to rail safety. Investigations of recent collisions, derailments, and other serious incidents reveal a correlation between inadequately planned operational integration of independent railroad entities and compromises of rail safety. Railroads merging with or acquiring other railroads must prepare thorough and complete, formal, written safety integration plans to ensure safe operations.

For these reasons, FRA submits the following guidelines that CSX Transportation, Incorporated (CSXT), and Norfolk Southern Corporation (NS) should address in their respective safety integration plans (SIP). The SIPs should focus on the formulation, development, issuance, and implementation of measures that address specific operational elements, as detailed below, necessary to ensure compliance with the Federal railroad safety laws and otherwise provide safe railroad operations. As one example of how a SIP should extend beyond the reach of present Federal railroad safety regulations, an acquiring carrier should assure that personnel in safety-critical positions are not so burdened with tasks unrelated to safety that they cannot adequately perform their safety-critical functions. Principally, CSXT's and NS's SIPs must: show how their practices differ from Conrail's; identify as the end state to be achieved once their respective acquisitions are consummated practices that will minimize or eliminate incidents and injuries, and promote a culture emphasizing rail safety; and demonstrate step-by-step how they will effect the transition from current circumstances to their desired end states while maintaining safety. FRA underscores the need for the acquiring railroads to define the steps or procedures proposed to integrate Consolidated Rail Corporation's (Conrail) operational plans with their own during the transition process (*i.e.*, until the acquisition is complete). FRA concludes that a SIP addressing the subject areas below will strengthen CSXT's and NS's integral operational interests and ensure safe rail transportation.

Safety Integration Plan

1. **Content of Plan:** Provide the following information for each subject matter listed in number 2:
 - a. Itemized list or index of measures addressing (i) how Conrail differs from the acquiring railroad and best practices identified from either; (ii) description of how the railroad will operate once the acquisition is completed; (iii) step-by-step description of how elements of acquired property, including Conrail Shared Assets Operating Areas, will be integrated with operations of acquiring railroad; and (iv) efforts to comply with Federal regulations;

- b. Allocation of resources (e.g., work effort expressed as person-days per year, capital, facilities, and technology) directed to that subject;
- c. Schedule for implementing plans addressing that subject.

2. Subject Matters To Be Addressed In Plan

- a. Corporate Safety Culture
 - i. Management attitudes, directives, priorities, practices, and philosophies, within each operating administration or division, that is directed to employee training, staffing, health, morale and safety practices
 - ii. How organizational priorities will be balanced between (1) enhancing productivity (e.g., employment reduction and elimination of resource duplication) to achieve economic efficiency and (2) minimizing safety risks with no compromise of safety (e.g., narrowed communication forums between labor and management, excess hours, and loss of institutional knowledge)
- b. Training
 - i. Train and engine service personnel
 - ii. Roadway worker and bridge worker personnel
 - iii. Motive Power and Equipment personnel
 - iv. Dispatching and operating personnel
 - v. Signal and Train Control personnel
 - vi. Hazardous materials personnel
- c. Operating Practices
 - i. Operating rules, practices, and instruction
 - (1) Training and qualifying train crews
 - (2) Rulebook(s) to govern
 - (3) Standardizing operational testing programs
 - ii. Accidents/Incidents
 - (1) Reporting procedures for accidents/incidents
 - (2) Procedures available to employees perceiving intimidation and harassment under Railroad Accidents/Incidents regulations
 - iii. Alcohol and Drug
 - (1) Integration of Conrail program with acquiring railroads' programs
 - (2) Implementation of Post Accident Toxicological Testing and Random Drug and Alcohol Testing programs on acquired territories
 - iv. Locomotive Engineer Qualification and Certification
 - (1) Qualifying and certifying engineers on acquired territories
 - v. Hours of Services laws
 - (1) Implementing measures for electronic recordkeeping
 - (2) Centralizing crew management functions
 - vi. Yard/terminal operations
 - (1) Training and instructing employees to ensure familiarity with rules

governing yard/terminal operations

- d. Motive Power and Equipment
 - i. Qualifying employees on inspections and tests of rolling equipment
 - ii. Implementing mechanical department maintenance and equipment service plans
 - iii. Implementing measures to ensure safe freight operations and compliance with the law when "blocking" and "block swapping" trains
 - iv. Ensuring a sufficient fleet service and inventory to carry out field operations
- e. Signal and Train Control
 - i. Operating budgets addressing
 - (1) Training
 - (2) Maintenance
 - (3) Capital improvements
 - (4) Research and development projects and programs
 - ii. Ensuring safety maintenance with integration of, or migration to, properties acquired, specifically, Automatic Cab Signal/Automatic Train Control systems and wayside and cab signal aspects and indications
- f. Track and Structures
 - i. Maintenance, management and rehabilitation of track and bridges
 - ii. Inspection program for track and bridges
 - iii. Sufficient employee (including supervisors) coverage for track and bridge safety
- g. Hazardous Materials
 - i. Programs addressing field operations and internal safety audits
 - ii. Need for comprehensive inspection program addressing:
 - (1) Field inspections
 - (2) Hazardous materials communication standards (e.g., shipping paper, marking, labeling, and placarding requirements)
 - (3) Employment staffing to implement program
 - (4) Emergency response practices and procedures
 - iii. Computer software systems to ensure immediate availability of hazardous materials shipping paper information
 - iv. Customer service centers
 - (1) Sufficient employment staff levels
 - (2) Timely generation and transmission of hazmat information on trains and shipments to customers and Federal officials
- h. Dispatching Operations
 - i. Measures to eliminate or minimize excess service performed and reduce maximum dispatching workloads, including criteria used for determining maximum safe workloads
 - ii. Integrating acquired dispatching system with acquiring railroads' systems

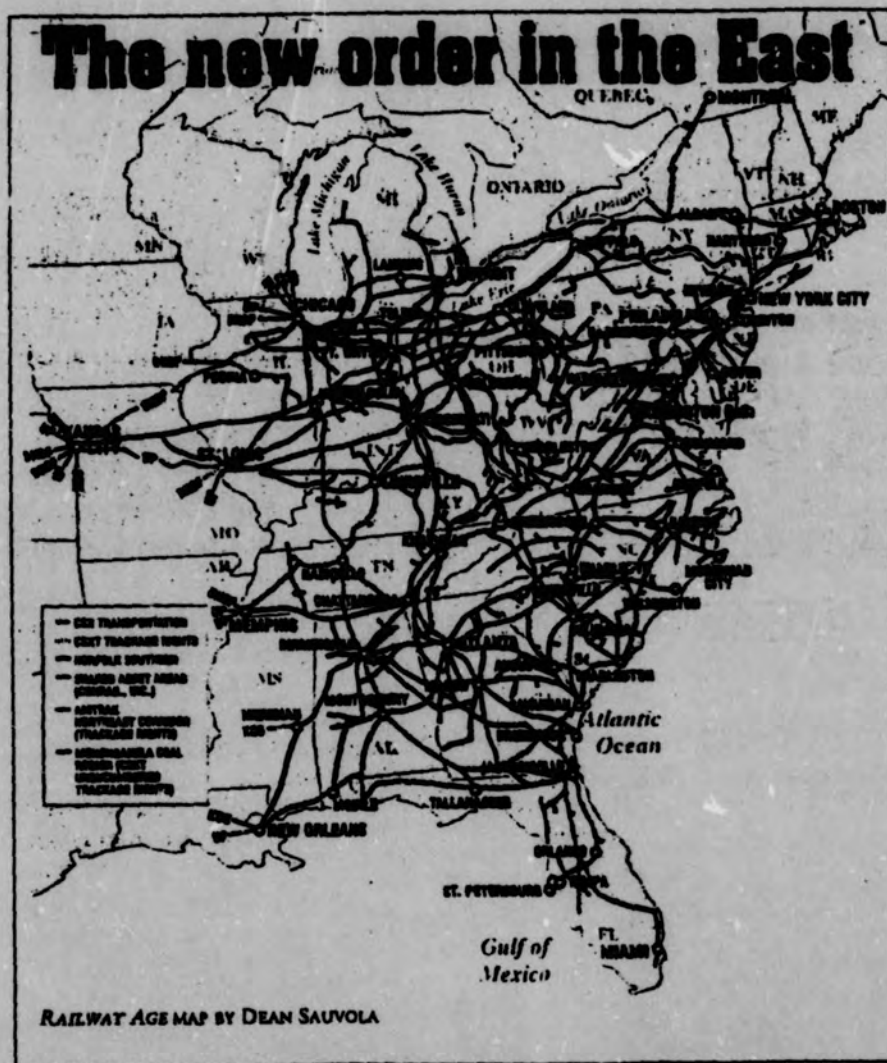
- i. Highway-rail Grade Crossings
Safety prevention and emergency response program addressing:
 - (1) Increase traffic volume, speeds, and track at crossings
 - (2) Improved warning devices
 - (3) Rail safety education of public
 - (4) Improved crossings with emphasis on closing existing crossings
- j. Allocation and deployment of personnel in following sectors:
 - i. Management of safety programs
 - ii. Roadway maintenance
 - iii. Motive Power and Equipment maintenance
 - iv. Dispatching operations
 - v. Train and Engine service
 - vi. Yard and terminal service
 - vii. Signal and Train Control maintenance
 - viii. Customer service centers
- k. Employee "Quality of Life" issues
 - i. Rest
 - ii. Travel/time away from home
 - iii. Perceptions of harassment or intimidation
 - iv. Health and wellness programs
 - v. Morale
 - vi. Availability and distribution of personal safety equipment (e.g., safety shoes, eye protection, and ear plugs)
- l. Relationship between freight and passenger service. Each plan to address the integration of freight and passenger operations on the following lines:
 - i. MARC
 - ii. SEPTA
 - iii. VRE
 - iv. METRA
 - v. NJTR
 - vi. MNCW
 - vii. MBTA
 - viii. Amtrak
- m. Information Systems Compatibility. Each plan to address information systems to be implemented that will provide for the uninhibited interchange of information between the acquiring railroads in the following areas:
 - i. Train consists
 - ii. Train performance
 - iii. Waybill/car movements
 - iv. Dispatching
 - v. Hazmat

vi	Crew management
vii	Accident/incident reporting and record keeping
viii	Equipment management (locomotives and freight cars)
ix	Emergency shutdowns



U.S. Department
of Transportation

Federal Railroad
Administration



FRA's Conrail Merger Safety Assessment
and
Surveillance Plan

FRA's Conrail Merger Safety Assessment
and
Surveillance Plan

1.0 Background:

On June 23, 1997 the acquiring railroads (CSX and NS) filed their application with the Surface Transportation Board (STB) to acquire Conrail. The proposal was to divide Conrail's assets, and create two rail networks that will compete with one another throughout the eastern United States (\$10.2 billion acquisition with 58%/42% division of ownership, respectively, by NS/CSX). Over a ten-month period FRA conducted a formal safety assessment of the proposed mega-merger and participated in a series of STB scheduled filings.

In August 1997 FRA initiated its safety assessment of the NS/CSX proposed acquisition by reviewing both applicant's proposed operating plans, and also performing an analytical safety risk assessment of some 61 affected line segments at CS/NS/CR. It was determined that detailed safety planning was not provided in either railroad's operating plans (not previously required in ICC/STB filings), and that there were at least four major route segments of the planned merger with projected safety risk increases of greater than 50%. During this same time period, FRA also performed parallel safety reviews of the service performance "meltdown" occurring at UP/SP and operations at BNSF, CSX, NS and Conrail. On October 21, 1997 DOT (FRA) filed its findings with STB and recommended that the Applicants be required to develop "first time ever" *Safety Integration Plans (SIPs)*. Within two weeks the STB ordered CSX and NS to develop Safety Integration Plans (SIPs) within 30 days which extended the merger processing schedule by 45 days.

FRA immediately went to work to assist the railroads in effectively structuring their SIPs by developing *Safety Integration Plan Guidelines* (rev. 3 of 11/24/97). These guidelines covering 13 safety-critical areas (including corporate safety culture) were furnished to the applicant railroads in early November 1997. Thereby, the applicant railroads were able to quickly and diligently prepare their planned merger safety actions and filed their completed SIPs with STB on the December 3 deadline.

Although their SIPs were considered complete for STB's purposes, both railroads have continued to work closely with DOT (FRA) to identify additional timing (schedules) and resource allocations (workforce and \$) for all of their SIP specified safety action items. Both railroads provided 30-40 page documents with itemized safety actions (60-70) to be accomplished over the proposed three- five year integration period. These more detailed safety actions have become referred to as *Safety Integration Plan Accountability (SIPA)* worksheets. FRA plans to use these documented commitments (planned safety actions with assigned resources) by both railroads as the primary baseline to monitor progress of their merger implementation (integration). In a written decision issued on July 23, 1998 the STB approved the Conrail merger with certain conditions.

2.0 Merger SIP/Safety Integration Surveillance:

2.1 Following approval of the merger by STB, CSX and NS have jointly agreed to proceed from "Control Date" to "Split Date" ("Day One" or "Closing Date") in a planned approach. "Day One" is the date on which applicants will effect the division between CSX and NS of the operation and use of the assets of Conrail. The conditions set forth by the STB in its merger approval for CSX and NS are inherently expected to delay any significant merger related safety action items by either party until the Fourth Quarter of 1998 or until January 1, 1999, or thereafter.

2.2 The items in which DOT(FRA) will concentrate for SIP/safety surveillance and the assessment of progress towards successful merger integration include:

- The SIPs and SIPAs filed by each railroad and the CSAO.
- Present operating safety conditions at each railroad (CSX, NS and Conrail acquired properties and CSAO); safety audits and surveys; statistical reporting of the affected railroads; and examination of inspectors reports/violations.
- Review of past and on-going Safety Assurance and Compliance Program (SACP) efforts at each railroad.
- Close surveillance of progress made by each railroad on the safety related merger conditions set by the STB.
- Liaison review with the STB on evaluation of Operational Monitoring reports tendered by each railroad (15 specific reporting requirements imposed by STB).

2.3 The STB in its approval of the merger imposed a five (5) year oversight condition, as well as the following safety related conditions:

(1) "Applicants should meet with labor representatives and attempt to form task forces for the purpose of promoting labor-management dialogue concerning implementation and safety issues."

(2) "Applicants must comply with the environmental mitigation conditions set forth in Appendix Q." For the purpose of SIP/safety surveillance, FRA will focus upon those conditions which are explicitly safety related: Conditions 1(A), 1(B), 1(C), 1(D), 2, 3, 4(A), 4(B), 4(C), 4(D), 5(A), 5(B), 6, 7, 8(A), 8(B), 9, 10, 19, 20(A), 20(B), 20(C), 21, 22(A), 22(B), 22(C), 23, 24, 25, 26(A), 26(B), 26(C), 26(D), 27(A), 27(B), 27(C), 28, 29(A), 29(B), 29(C), 29(D), 30(A), 30(B), 30(C), 31(A), 31(B), 31(C), 31(D), 31(E), 31(F), 31(G), 32(A), 32(B), 32(C), 33, 34(A), 34(B), 34(C), 34(D), 35, 36(A), 36(B), 37, 38(A), 38(B), 38(C), 39, 40, 41(A), 41(B), 41(C), 42(A), 42(B), 43(A), 43(B), 46, 49(A), 49(B) and 50.

(3) "The Promotion of Safety. Our decision clearly promotes safety. More than half of the environmental conditions involve safety. For the first time ever in a merger, the applicants were required to submit safety integration plans. And, as part of the merger implementation oversight, the implementation of these plans will be carefully monitored through a *Memorandum of Understanding* (MOU) between the Board and the Department of Transportation, which clearly represents a cooperative governmental initiative in the public interest."

3.0 Merger SIP/Safety Surveillance Staff:

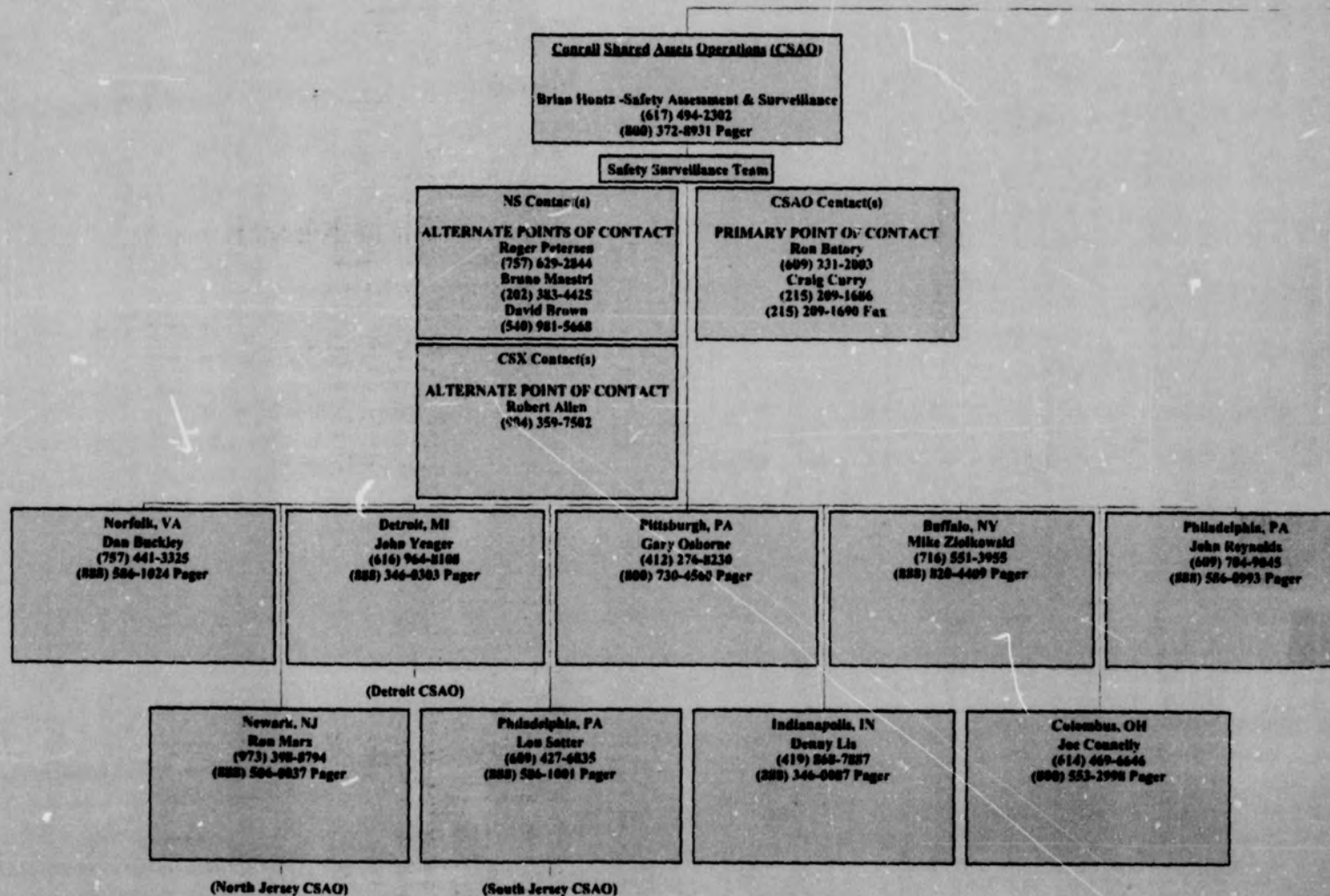
FRA's intent is to monitor the progress of the safety integration of each railroad with the least intrusive measures and procedures as feasible to do so. FRA, however, will use headquarters staff, regional officers and local field inspectors and all of its compliance tools, as required, to conduct close surveillance and monitoring of the progress of the merger. Responsibility for overall monitoring oversight will be vested with FRA's Office of Safety Assurance and Compliance (*see Conrail Merger Safety Surveillance organizational chart, page 5*). There will be an FRA assigned Senior Surveillance Officer and Director, Surveillance to assure that monitoring activities and proficient surveillance practices remain on track throughout the required period of merger integration. These officers will be the headquarters contacts for CSX, NS, the CSAO and the STB. Reporting through the Director, Surveillance will be three (3) Regional Surveillance Officers responsible for the oversight of specific safety related actions taken by CSX, NS and the Conrail Shared Assets Operations (Conrail). Each Regional Surveillance Officer will have several strategically located SIP/safety monitors (inspectors) that will report compliance with the SIP action items and other operating safety conditions. The Regional Surveillance Officers will use all of the methods identified in Section 2.1 thru 2.3 to appropriately assess the progress made on SIP safety action items and the progress of merger integration related to local safety conditions in their assigned areas.

4.0 Merger Safety Progress Reviews/Reports:

4.1 All items addressed in Section 2.0 are to be considered in the on-going SIP/safety progress reviews. Written monthly SIP/safety assessment progress reports will be developed by the Regional Surveillance Officers and submitted to FRA headquarters (Office of Safety Assurance and Compliance through the Surveillance Director). Copies of these reports are to be furnished to the designated liaison officers from CSX, NS and the CSAO (Conrail) on a current basis.

4.2 The headquarters Director, Surveillance will provide independent summary progress reports on the merger integration to FRA's senior management as required. Comprehensive written reports on SIP/safety progress will be provided by FRA to the STB on a biannual basis (January and July 1) of each year starting in 1999 as specified in the MOU. FRA will provide copies of these reports to CSX, NS and the CSAO (Conrail) on a current basis. The style and format of these reports will be determined by FRA staff.

FRA's Conrail Merger Safety Surveillance



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STB

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OF

3

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03/22/99

Office of Safety Assurance and Compliance

Office of Safety Assurance and Compliance

4.3 FRA's Director, Surveillance and/or the Regional Surveillance Officers will conduct frequent SIP/safety integration reviews separately with NS, CSX and CSAO designated liaison officers (at least quarterly). These reviews will be conducted on a formal basis with meeting minutes and written summary findings to be provided. The progress summaries and meeting minutes will be separately retained on FRA's files for CSX, NS, and the CSAO.

4.4 During the period of time between the "control date" of the STB approved acquisitions and the "split dates" for CSX and NS, FRA staff will establish the surveillance organization referenced on page 5 and will perform interim monthly report monitoring on the same basis as described in Sections 4.1 thru 4.3.

Conrail Operations

D. A. G. G.
General Manager of Operations
Philadelphia, PA
19101-1000

Conrail Operations

Philadelphia

o Blue Room

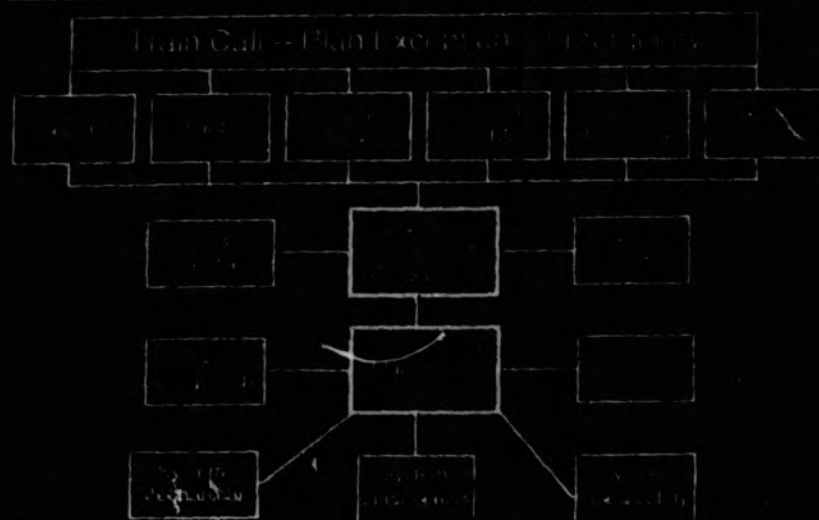
- System Link to Field Execution

- Protects Customer Service
- Authorizes Operating Plan Exceptions
- Manages Premium Train Networks
- Assigns Locomotive Assets
- Communicates Corporate Policy
- Monitors Performance

A description of how Philadelphia impacts Conrail Operations.

Conrail Operations

Primary Communication Flow



A chart of how communication flows on Conrail.

How Conrail works -- From basic "Train Call" -- to exceptions -- to emergencies.

The yards, the NCSC, Crews, ect. talk to each other and their Division offices.

Division Offices talk to the Dearborn Crew Center -- Other Railroads -- and the Blue Room.

The Blue Room authorizes Division Plan exceptions -- protects active shipments with Customer Service and plans future changes to the operating plan with the Service Groups.

Other SYSTEM efforts, such as maintenance of way planning, flow from the Blue Room.

Traffic Levels and Assets

Year to Date through October 31

Average Daily:

Carloads Locomotives T&E Mancount



A description of traffic levels and asset availability.

Average Daily Carloads so far in 1998 (through October 31) were up 4.2% over last year.

We've increased our locomotive fleet by 2.6% to handle the higher traffic levels.

Note: We didn't need 4.2% more engines because our existing trains absorbed more than 1% some of the additional business.

Our year to date average T&E mancount rose only 0.8% versus last year -- but that count has risen dramatically during the past two months, during our peak volume period -- October's population was up 3.6% over January's.

Transportation Products

Service Group Breakdown

Intermodal

- Premium
- Domestic
- International

Automotive

- Parts
- Finished Vehicles

CORE

- General Merchandise
- Trailload: Grain, Metals, Chemical, Waste, Stone

Unit Train

- Coal and Iron Ore

A service group description and the products handled by each group.

Intermodal

Year to Date through October 31

On-Time Performance

Premium Trains

Premium Shipment

Domestic Shipment



NOTE: 1997 was a great service year for Conrail -- we were cited by several publications and received a number of customer awards as the No. 1 service railroad in the country -- 1997 is our benchmark year.

Intermodal Performance measures so far in 1998:

Premium Trains -- Up 0.5%.

Premium Shipment Availability -- Up 0.2%.

Domestic Shipment Availability -- Unchanged

Automotive

Year to Date through October 31

On-Time Performance

Parts Shipments

Finished Vehicle

Parts



100.0

101.5



100.0

98.1

Our auto parts shipments moved a little better this year -- up 1.5%.

Our mult-level trains were down 1.9%

NOTE: Train congestion due to the Short Line work in Cleveland -- where our Eastbound Mult-Level Fleet is built -- was the single largest factor for the performance decline

CORE Merchandise

Year to Date Through October 31

Key Operating
Measures

Yard Departures

Shipment Transit

Train Performance

Yard Connections

The key measures that we use to evaluate our CORE performance are virtually unchanged:

	1997	1996	Difference	
Yard Departures (% On-Time)	66.9	65.7	-0.5	Unfavorable
Train Performance (% On-Time)	62.9	62.6	-0.3	Unfavorable
Yard Connections % Made Connection	75.7	77.9	2.2	Favorable
Shipment Transit (Hours)	70.6	71.9	1.3	Unfavorable

These numbers indicate another good CORE year.

Unit Train

Year to Date through October 31

On-Time Performance

Loaded Coal Trains



Empty Coal Trains



Our coal trains are also in line with last year's performance.

Loaded trains -- down 1.1% -- but above our 90.0% goal

Empty trains -- up 0.8% -- also over our 90.0% goal.

Unit Train

Year to Date through October 31

On-Time Performance

Loaded Coal Trains

Empty Coal Trains



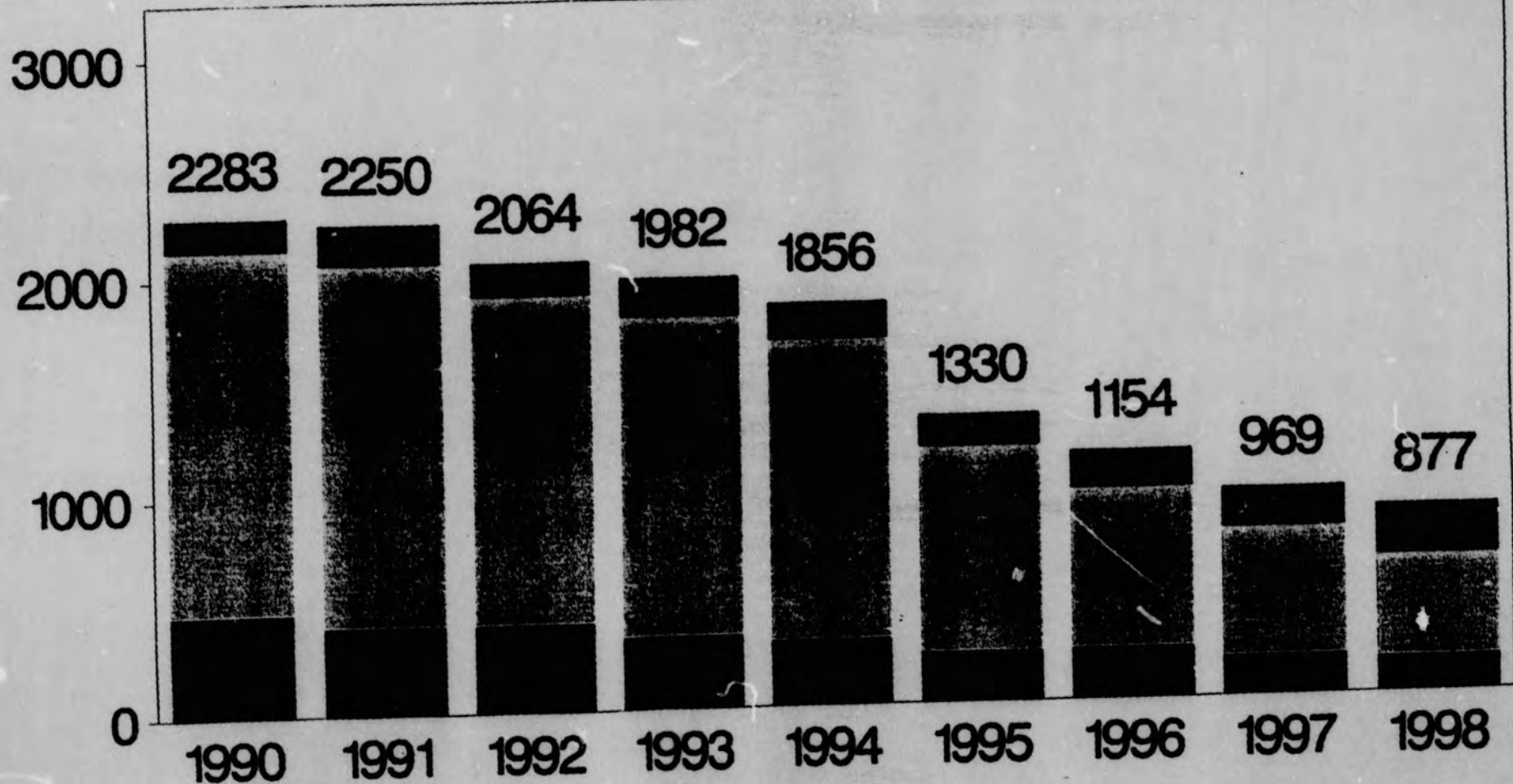
Our coal trains are also in line with last year's performance.

Loaded trains -- down 1.1% -- but above our 90.0% goal

Empty trains -- up 0.8% -- also over our 90.0% goal.

TOTAL ACCIDENT/INCIDENTS JAN — DEC (1998 Preliminary)

FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL



Highway-rail

Other incs.

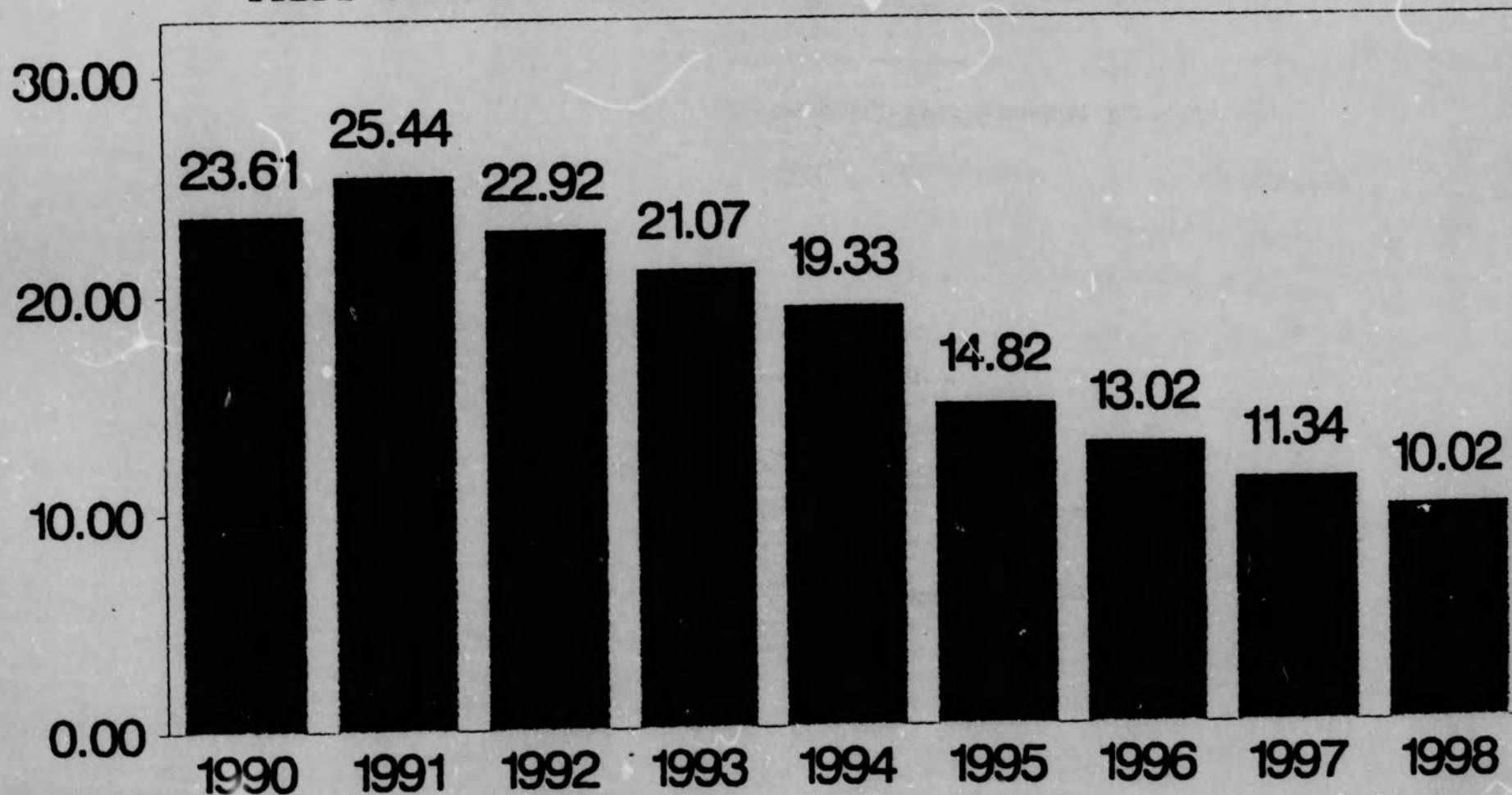
Train acc

"Other Incidents" are primarily employees hurt in the work place.

TOTAL ACCIDENT/INCIDENT RATE

JAN — DEC (1998 Preliminary)

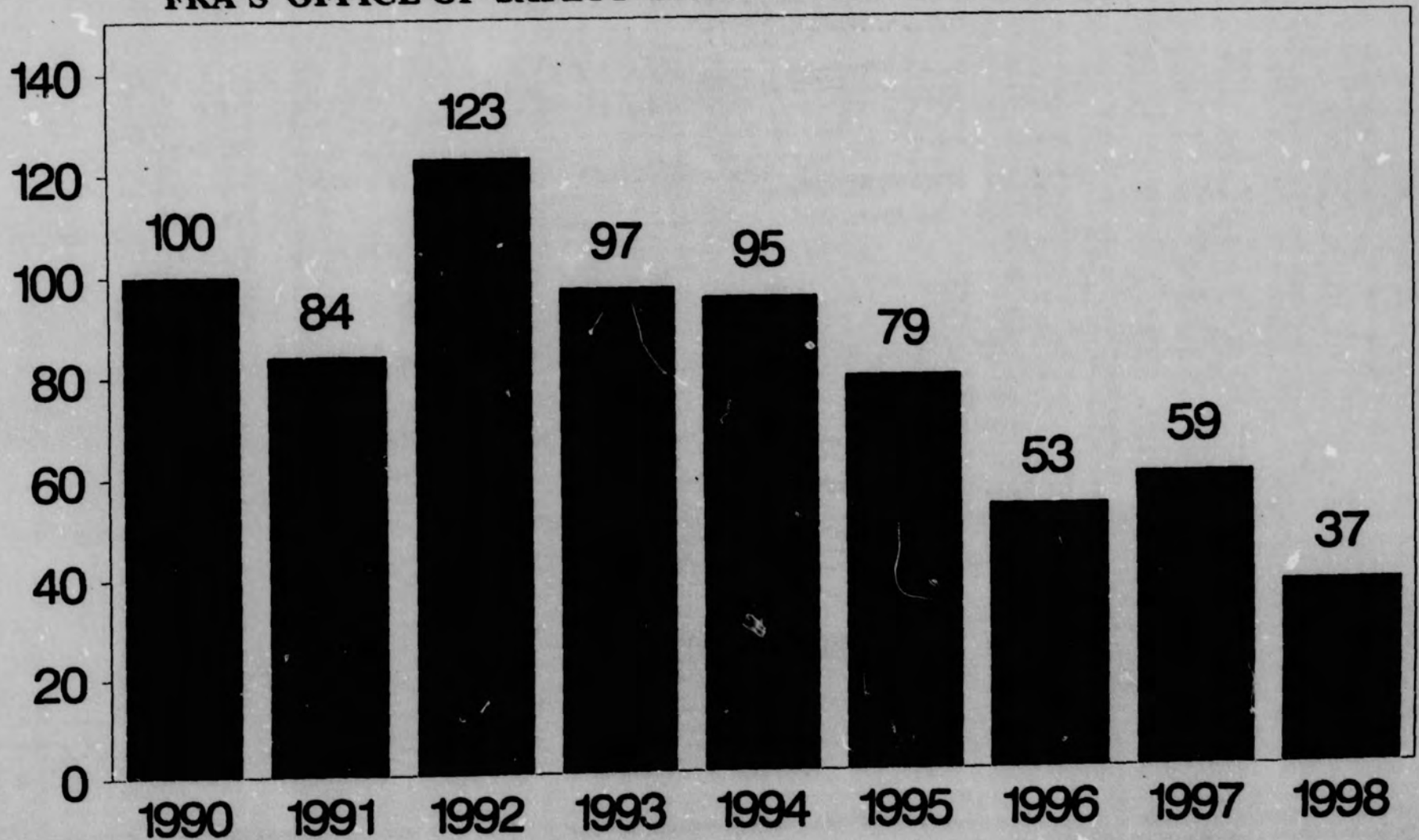
FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL



Rate is the total number of reported events time 1,000,000
divided by the sum of train miles and employee hours

TOTAL FATALITIES
JAN — DEC (1998 Preliminary)

FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL



____ Highway—rail

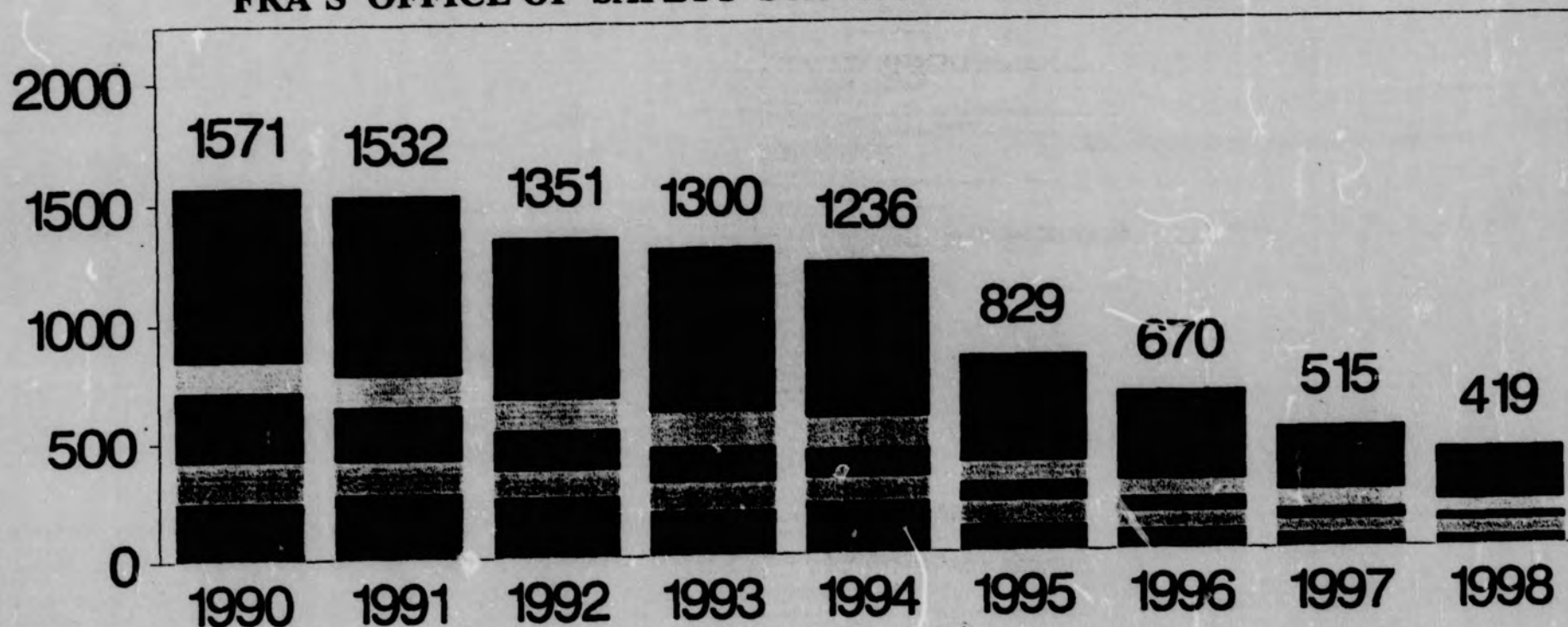
____ Other incs.

____ Train acc

EMPLOYEE NONFATAL CONDITIONS

JAN — DEC (1998 Preliminary)

FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL



— Bruises

— Other

— Sprains/strains

— Cuts

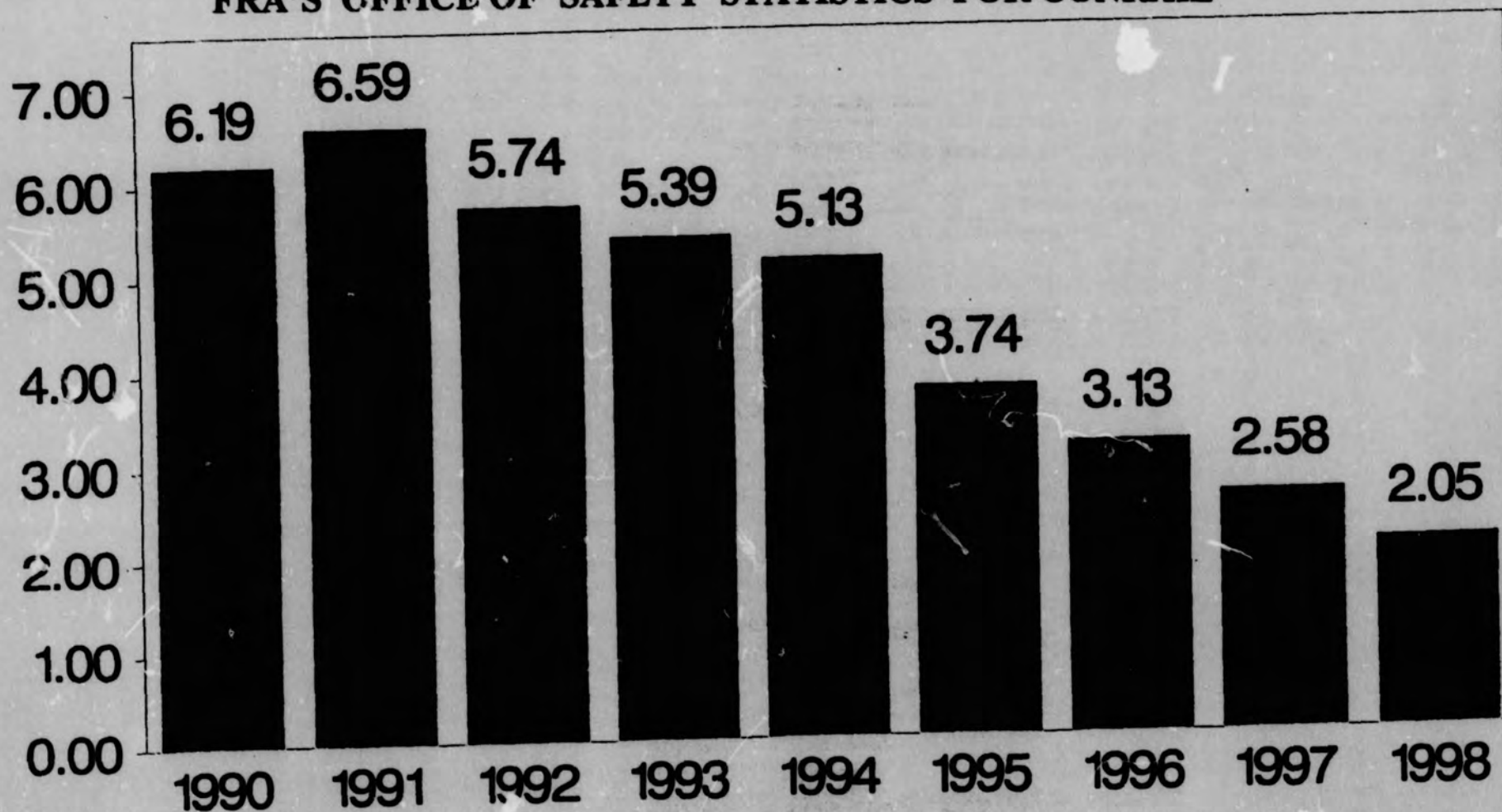
— Serious

Serious — amputations, fractures, hernias, concussions,

EMPLOYEE CASUALTY RATE

JAN — DEC (1998 Preliminary)

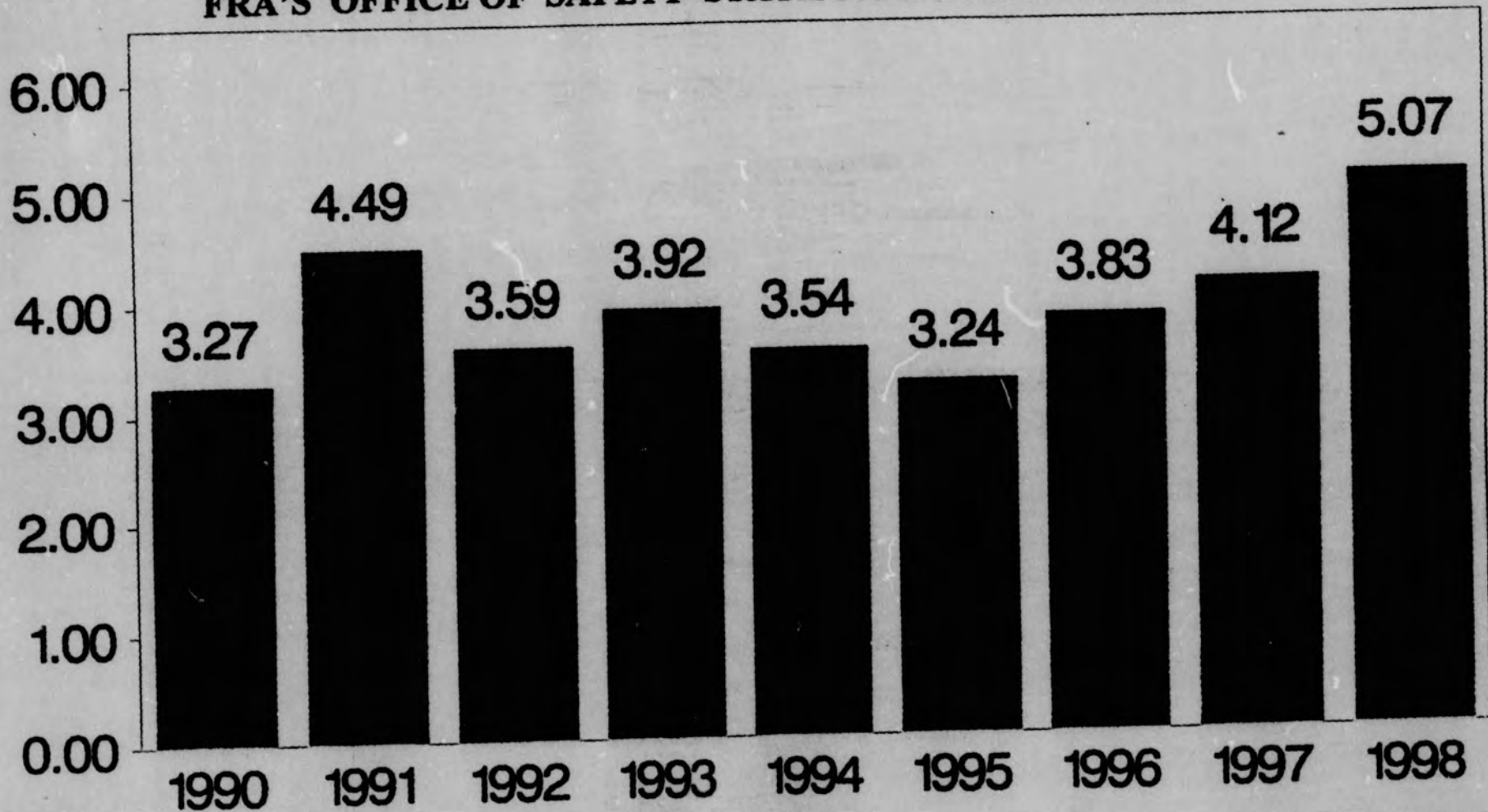
FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL



**Number of FATALITIES and nonfatal
conditions per 200.000 hours**

TRAIN ACCIDENT RATE
JAN — DEC (1998 Preliminary)

FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL



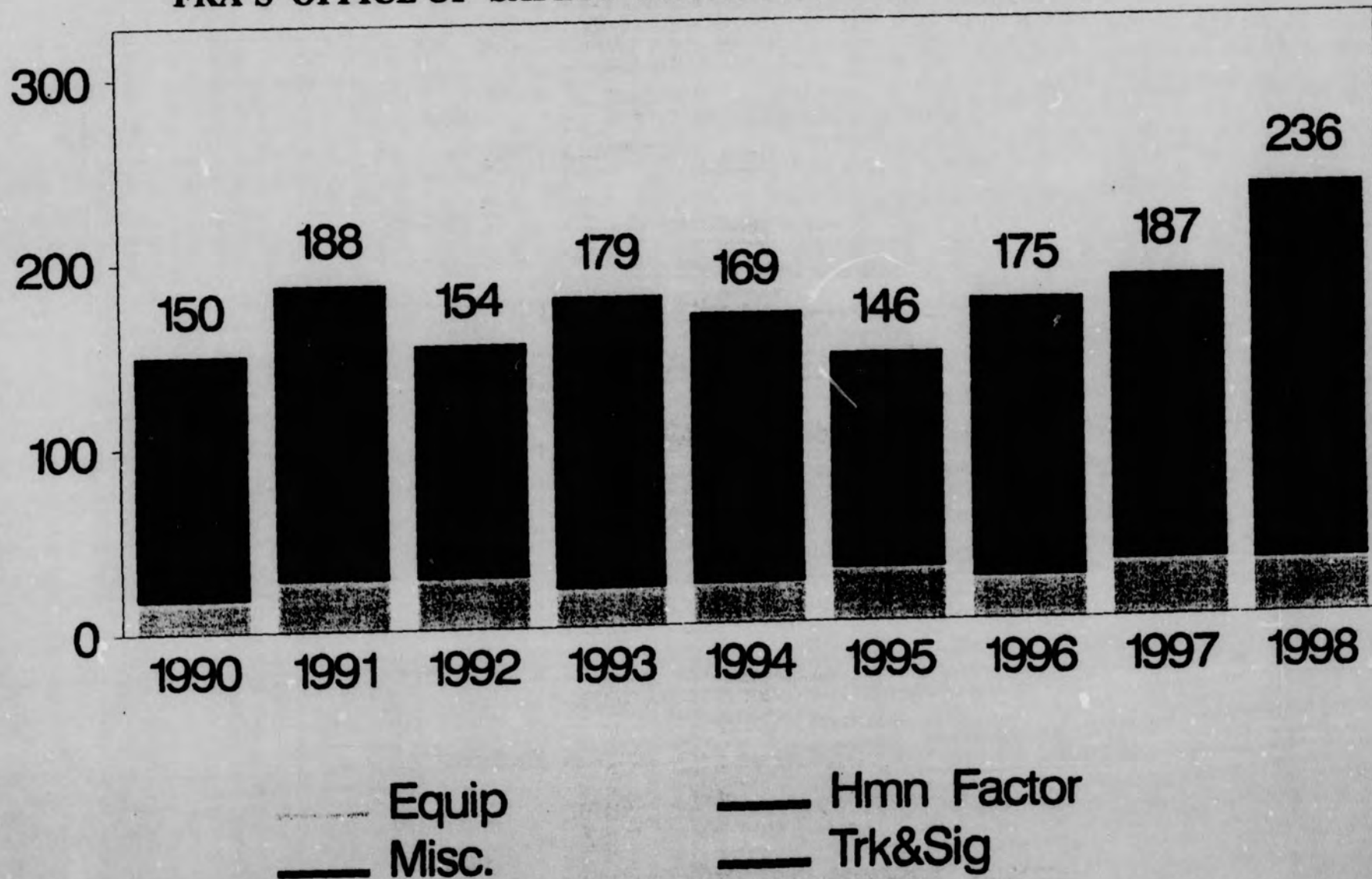
Excludes highway—rail

Number of accidents per 1,000,000 train miles

TRAIN ACCIDENTS BY PRIMARY CAUSE

JAN – DEC (1998 Preliminary)

FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL

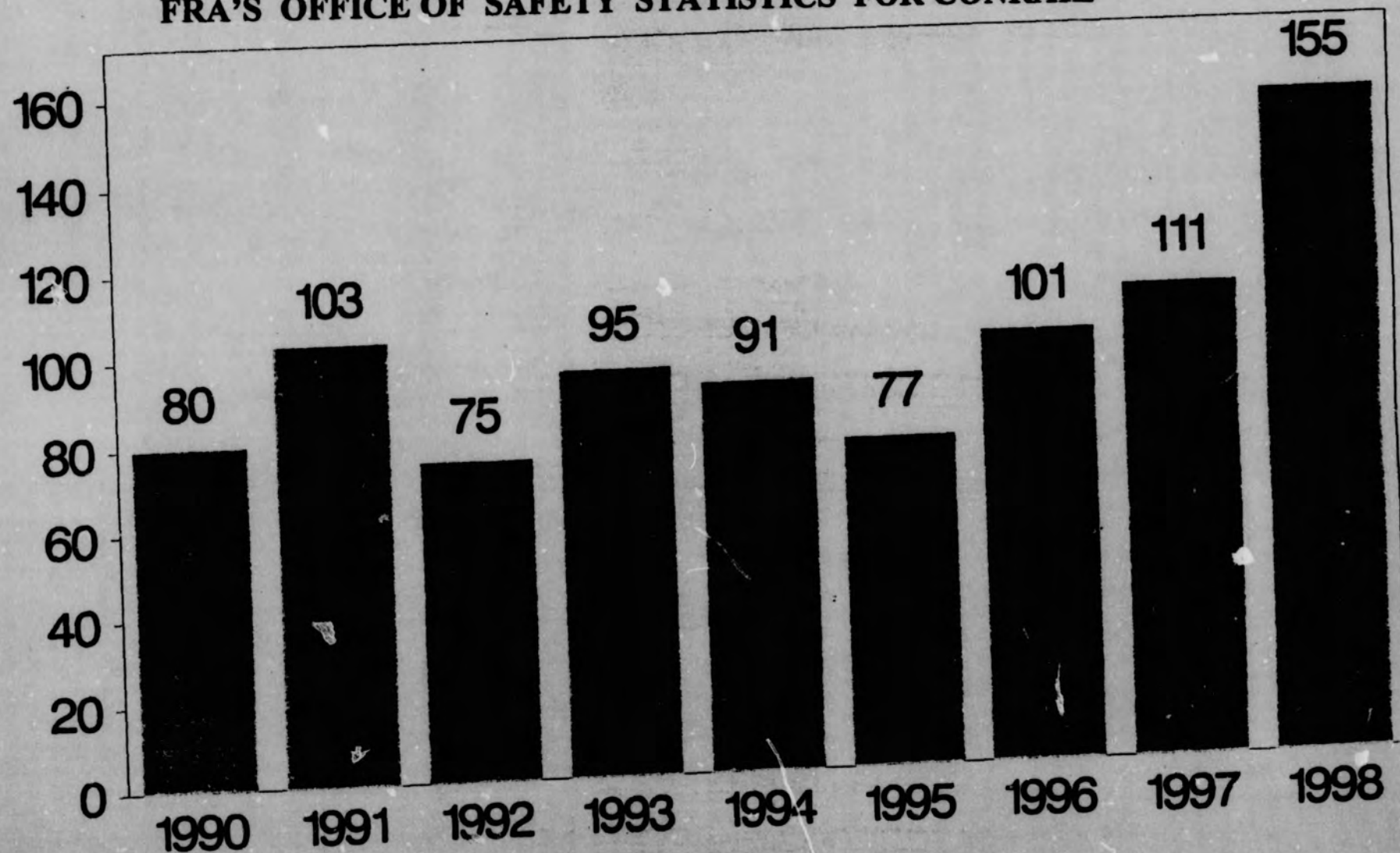


Excludes highway—rail

YARD ACCIDENTS

JAN — DEC (1998 Preliminary)

FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL

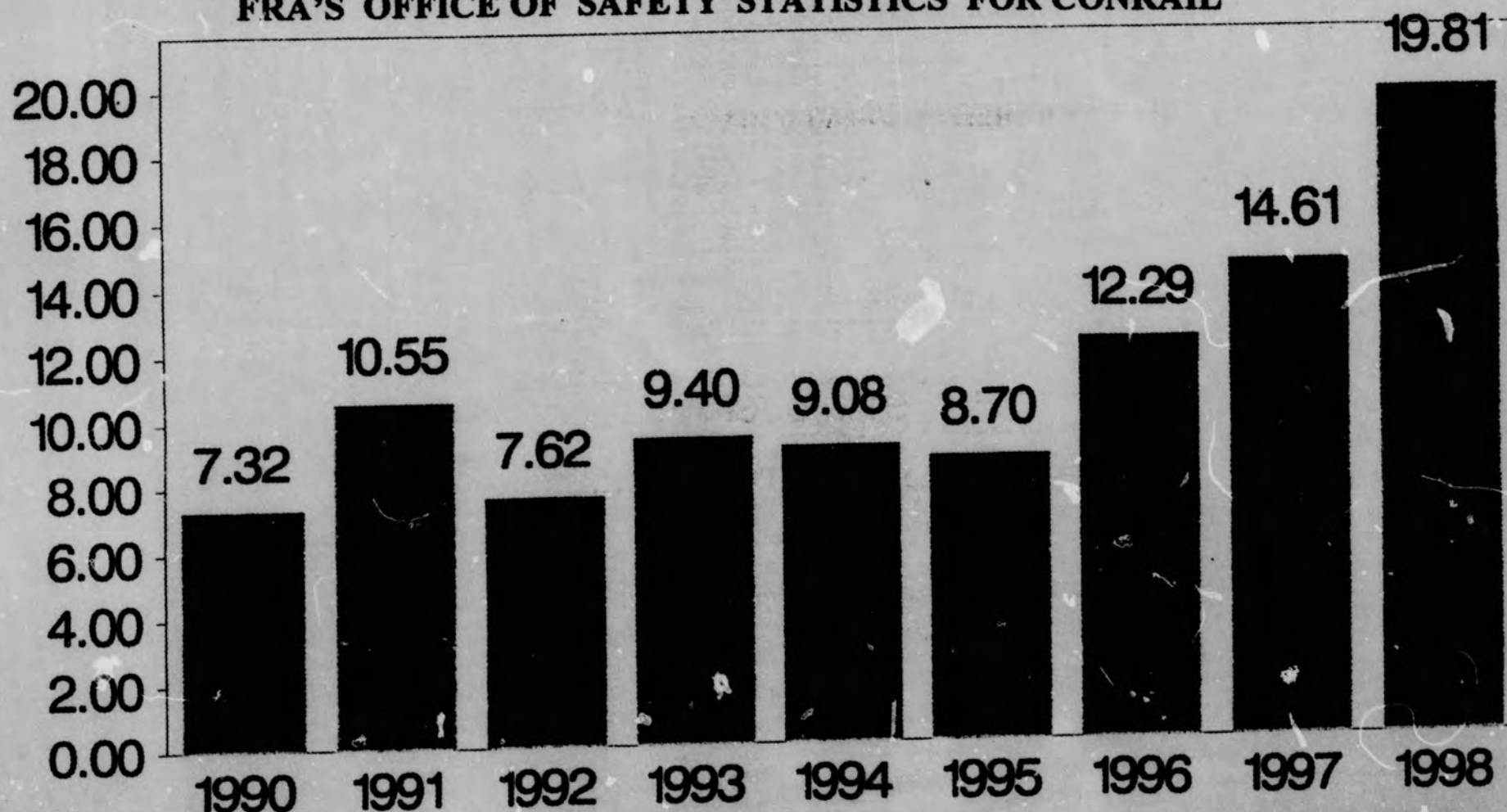


Excludes highway-rail.

YARD ACCIDENT RATE

JAN — DEC (1998 Preliminary)

FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL

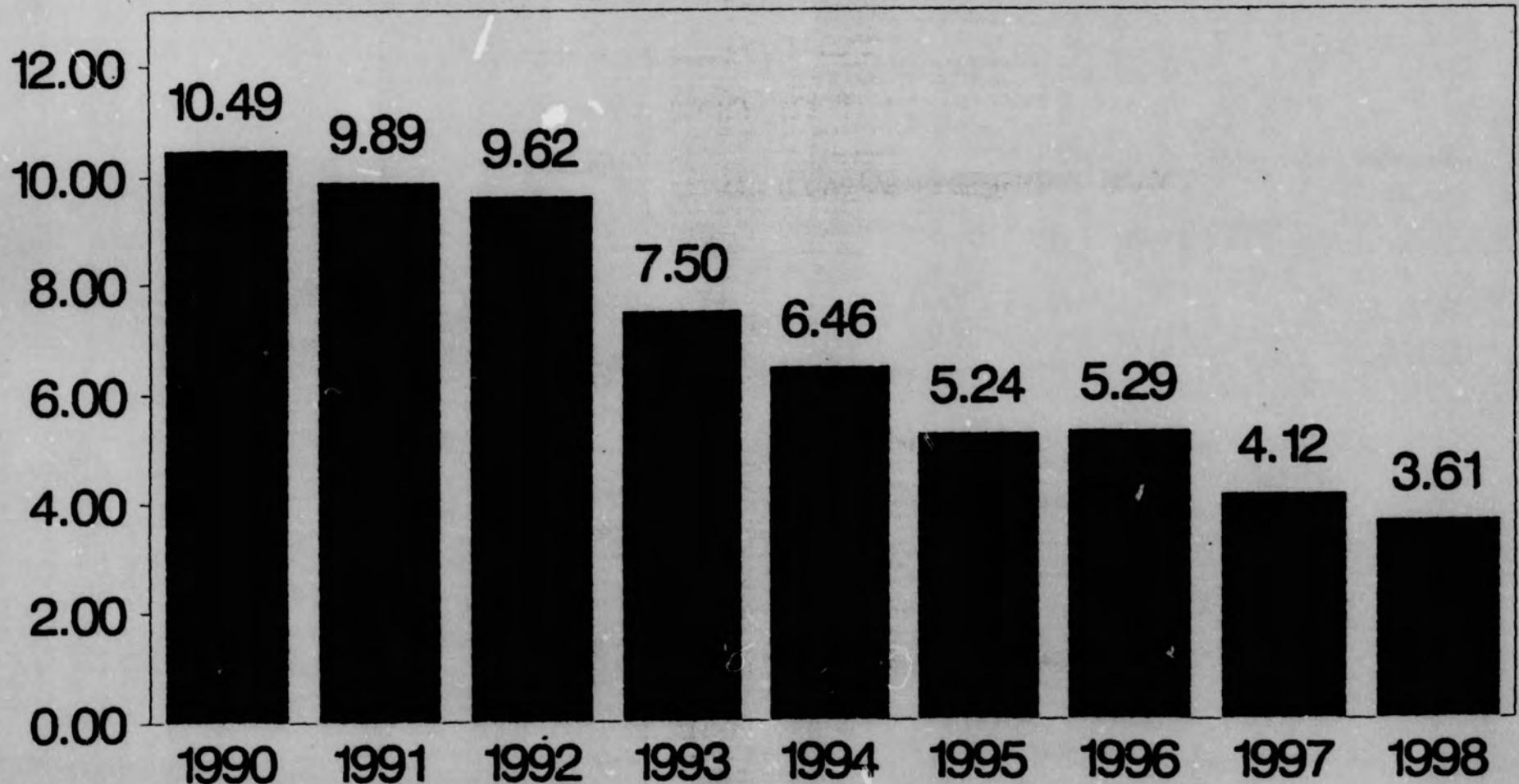


Excludes highway—rail. Number of yard accidents
per 1,000,000 yard switching train miles

HIGHWAY—RAIL INCIDENT RATE

JAN — DEC (1998 Preliminary)

FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL

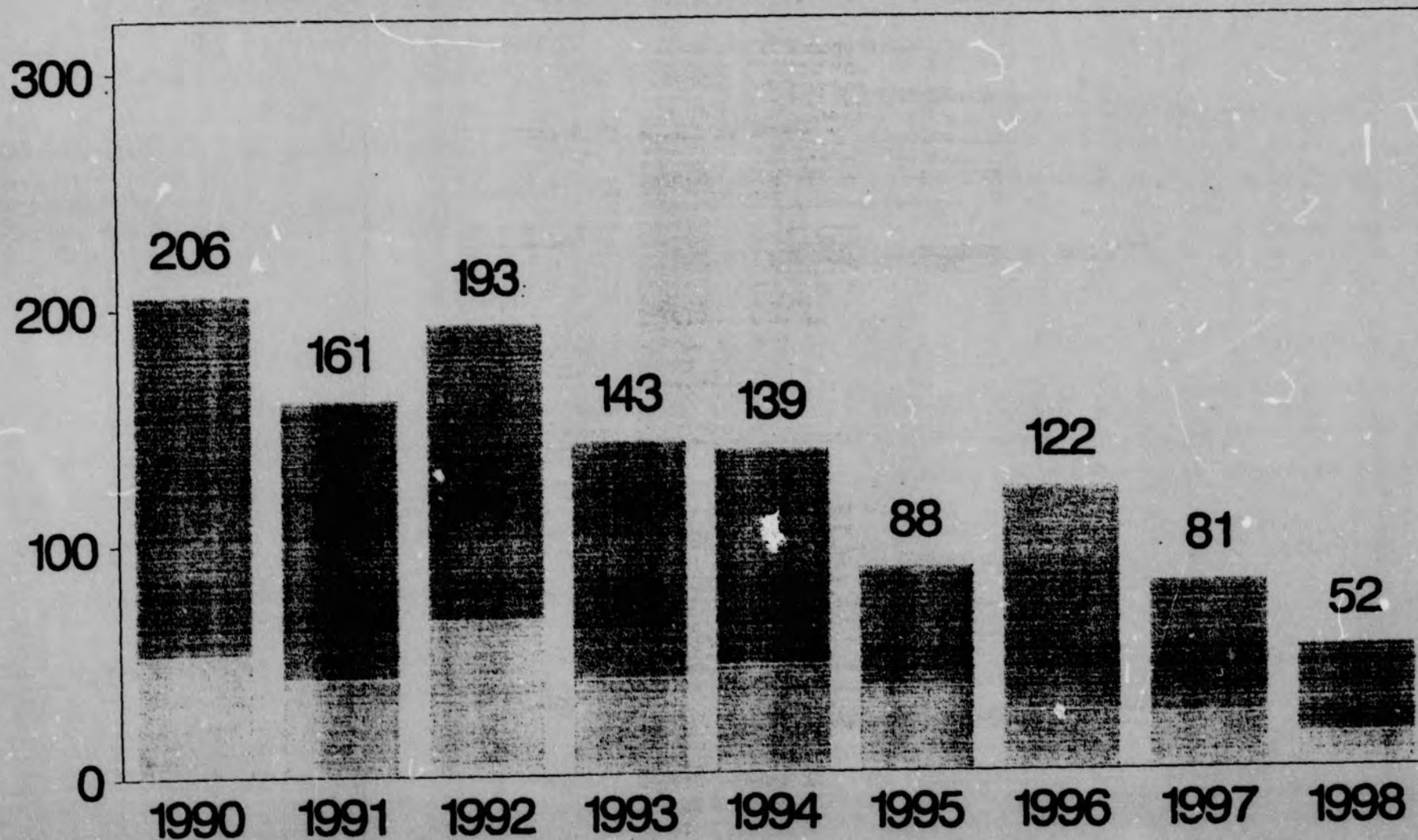


Number of accidents per 1,000,000 train miles

HIGHWAY—RAIL CASUALTIES

JAN — DEC (1998 Preliminary)

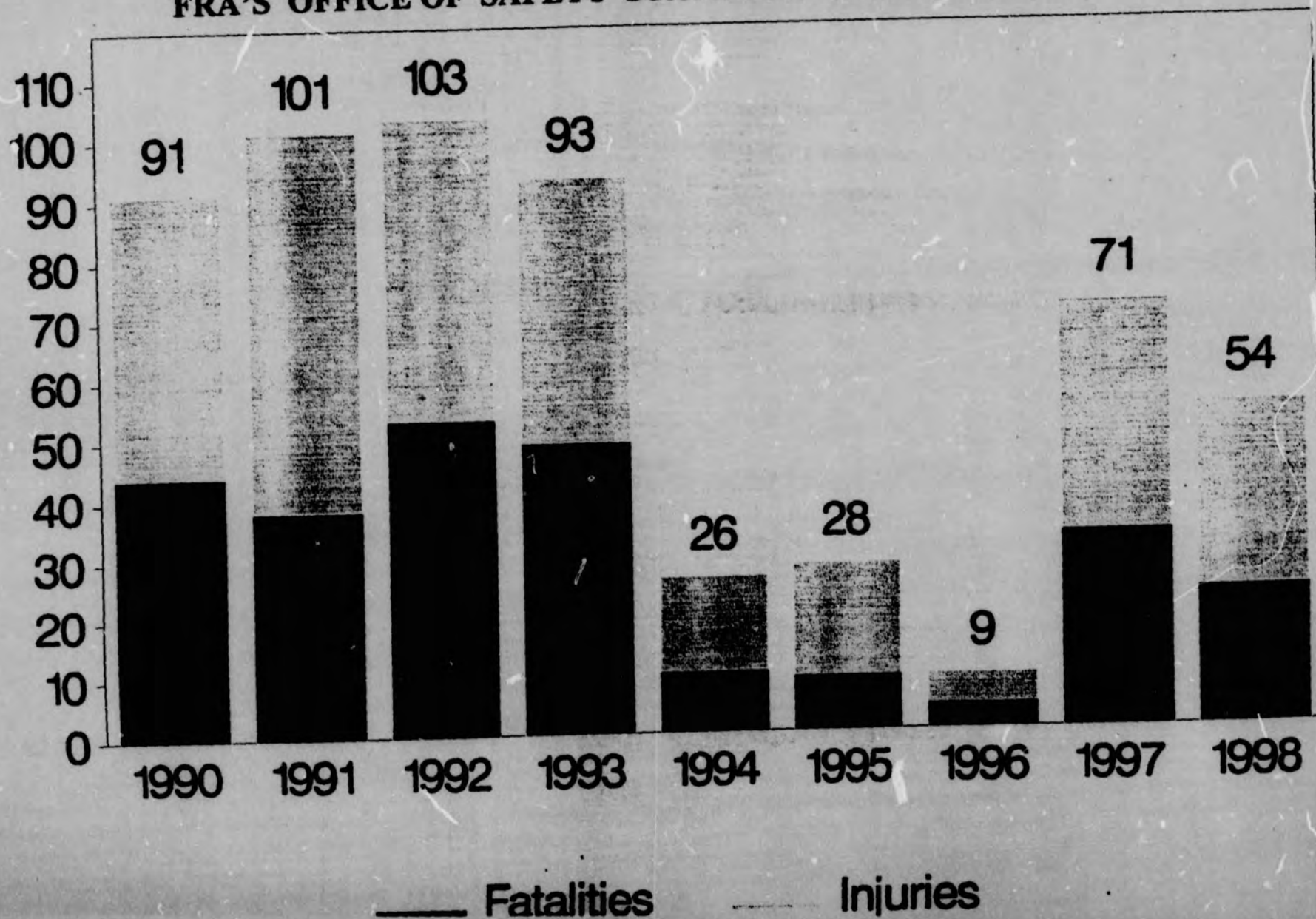
FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL



Fatal

Nonfatal

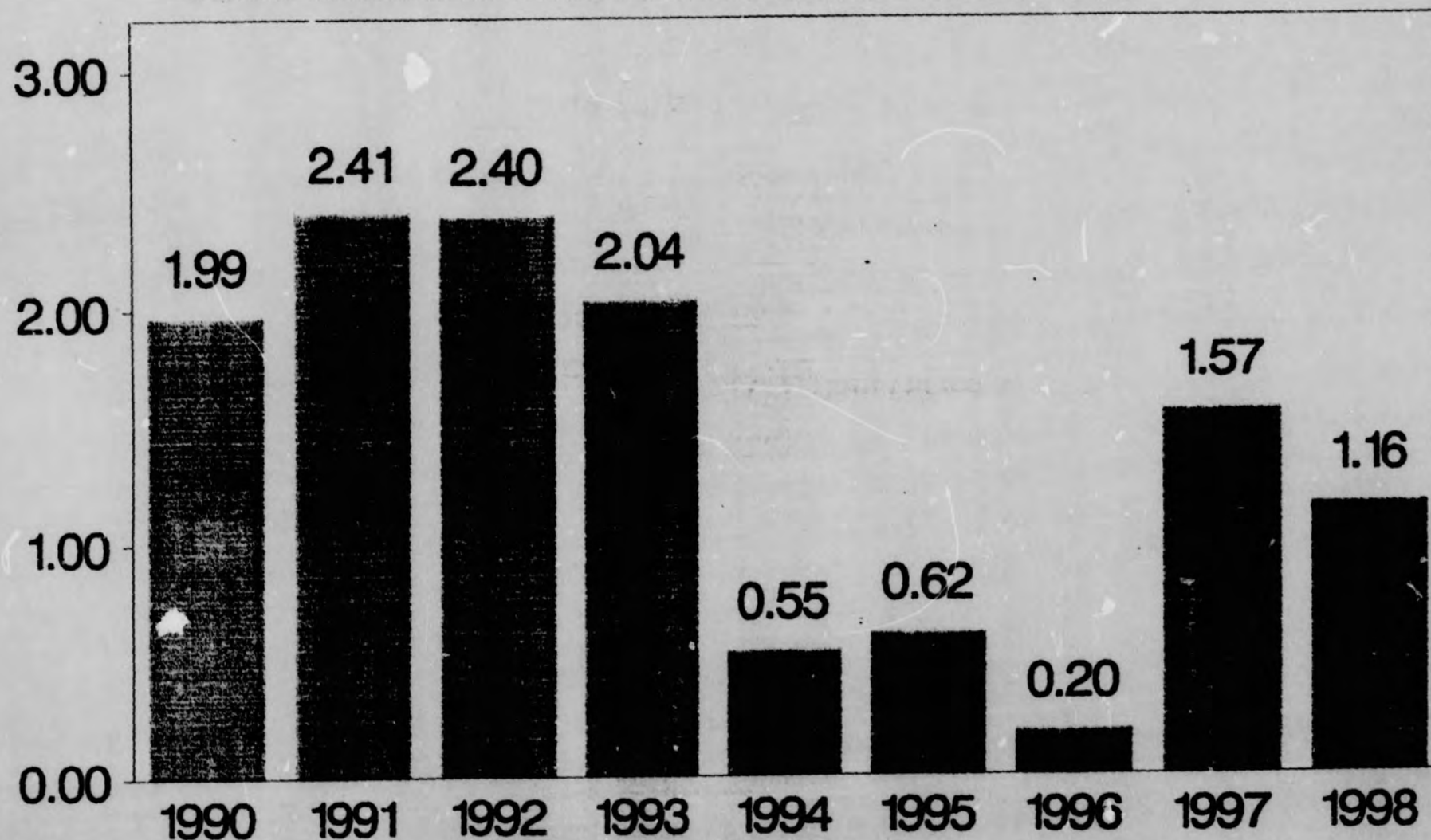
TRESPASSING CASUALTIES
JAN — DEC (1998 Preliminary)
FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL



TRESPASSER CASUALTY RATE

JAN — DEC (1998 Preliminary)

FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL

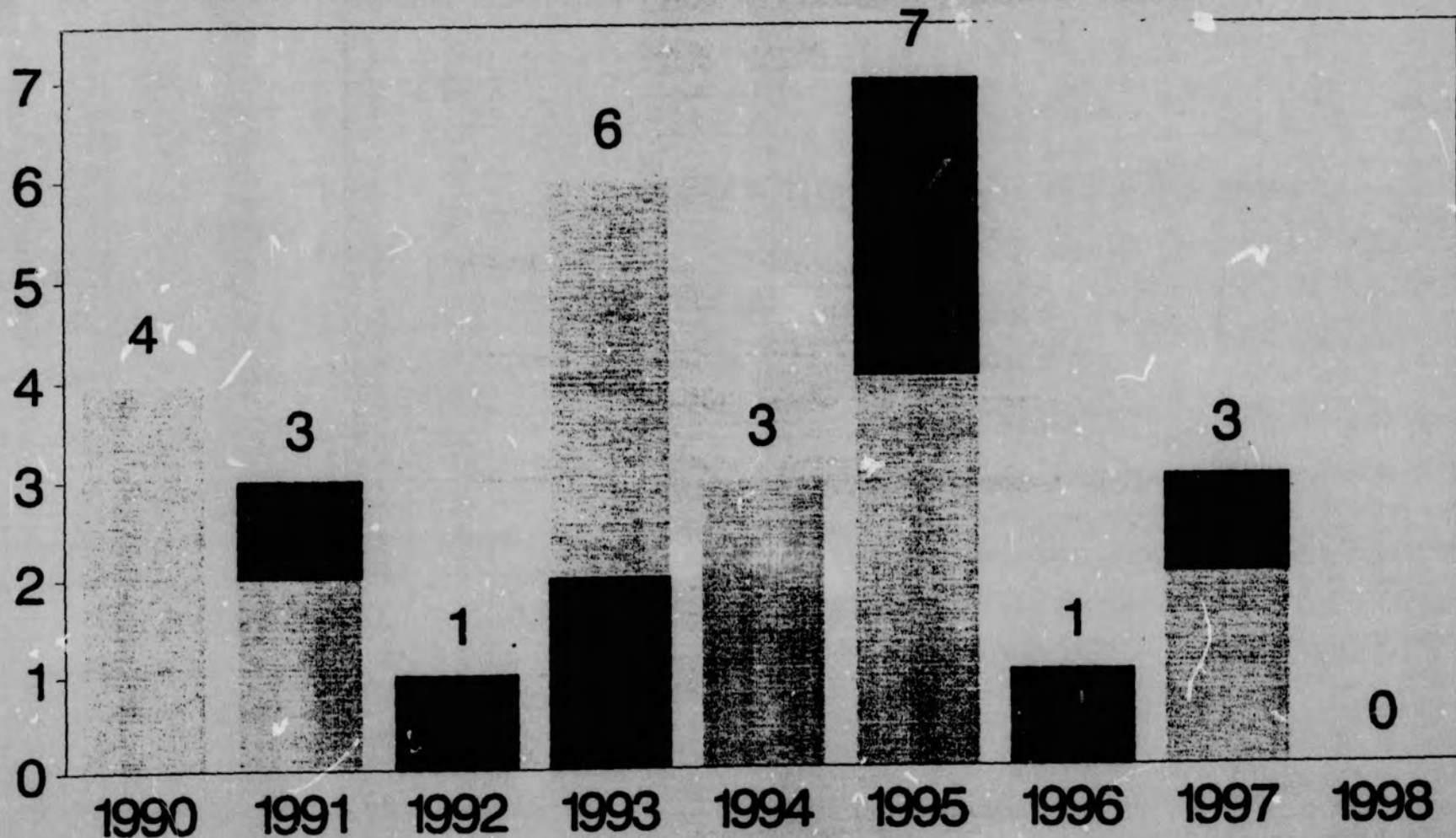


Total fatalities and injuries per 1,000,000 train miles

EMPLOYEE FATALITIES

JAN — DEC (1998 Preliminary)

FRA'S OFFICE OF SAFETY STATISTICS FOR CONRAIL



— Highway-rail
— Train accident

Other incident

Safety Update

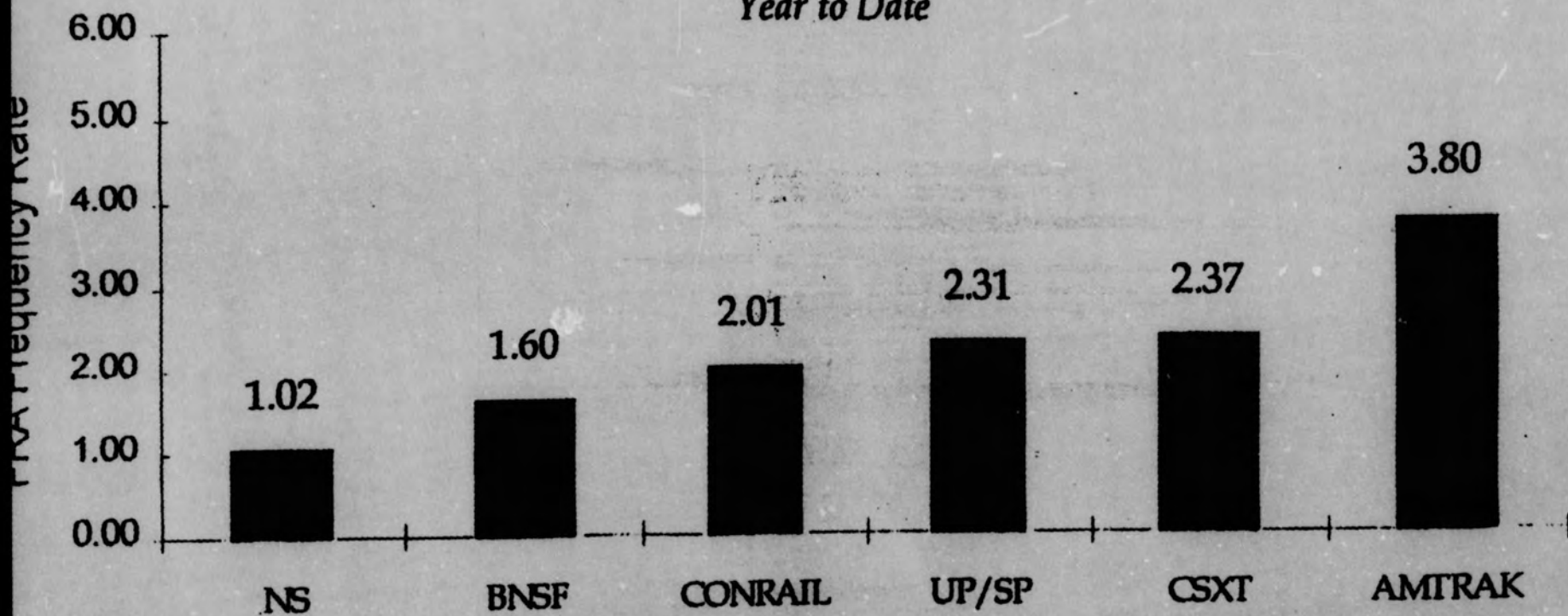
Presentation to the FRA

November 20, 1998



Appendix Item IV B.

FRA Reportable Rate
AAR GROUP A Railroads
October 1998
Year to Date



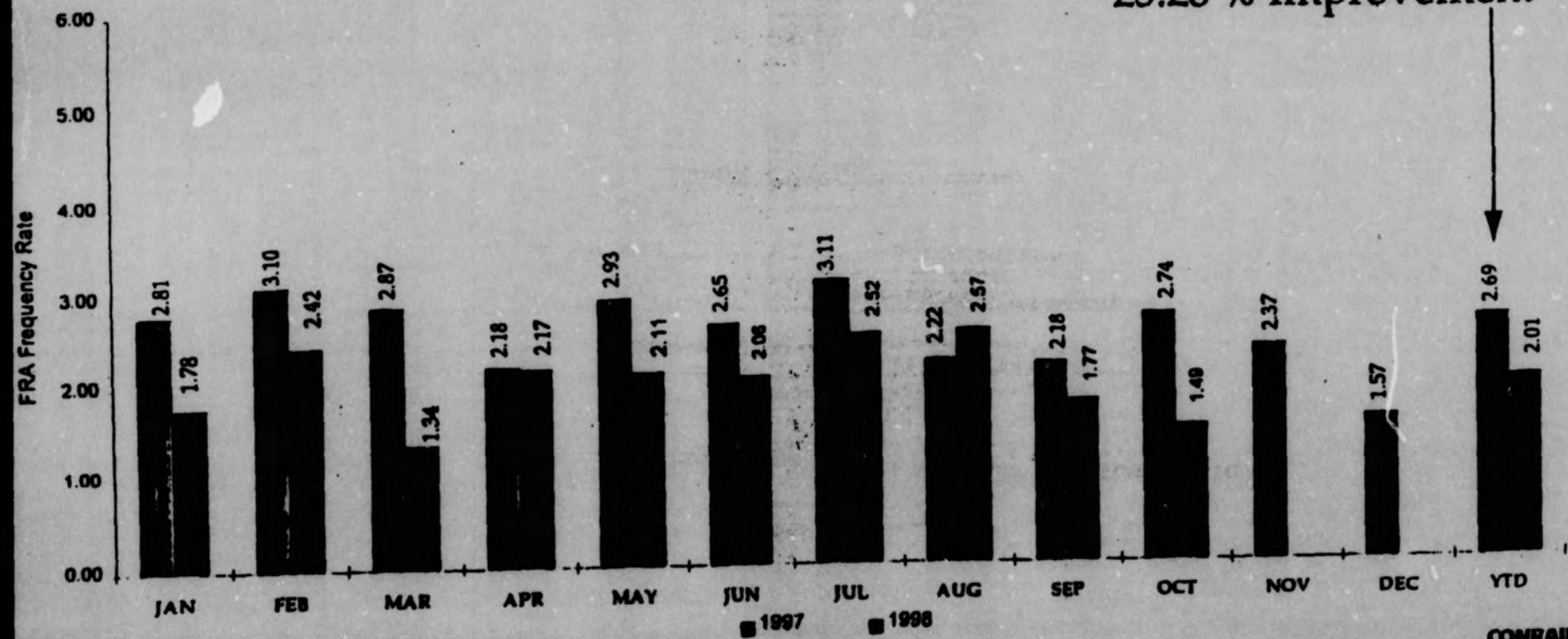
Source: AAR Monthly Frequency Report, 10/98 estimate

CONRAIL



Conrail System FRA Reportable Rate 1997 Vs. 1998

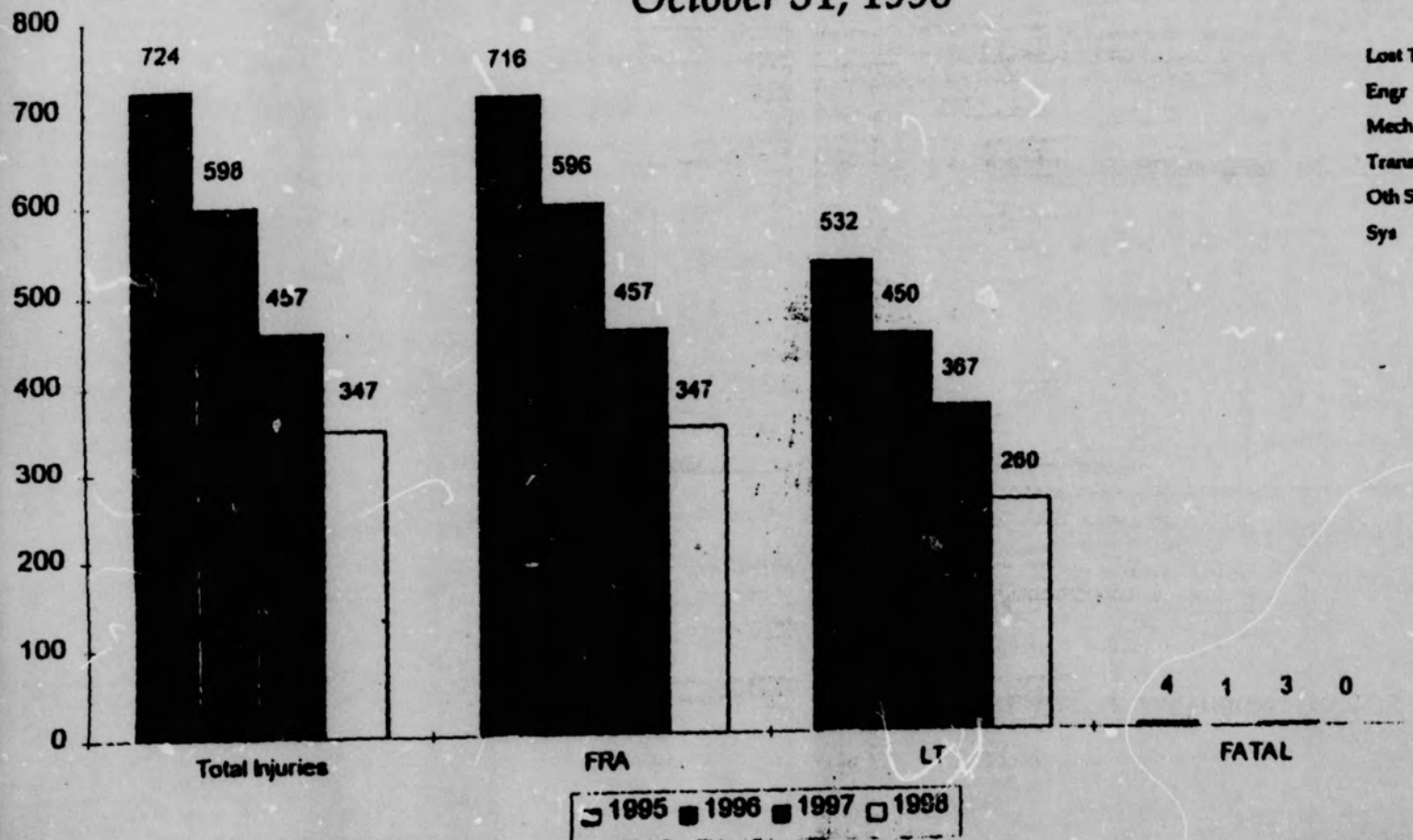
25.28 % Improvement



CONRAIL



On-Duty Employee Injuries *Year to Date* *October 31, 1998*



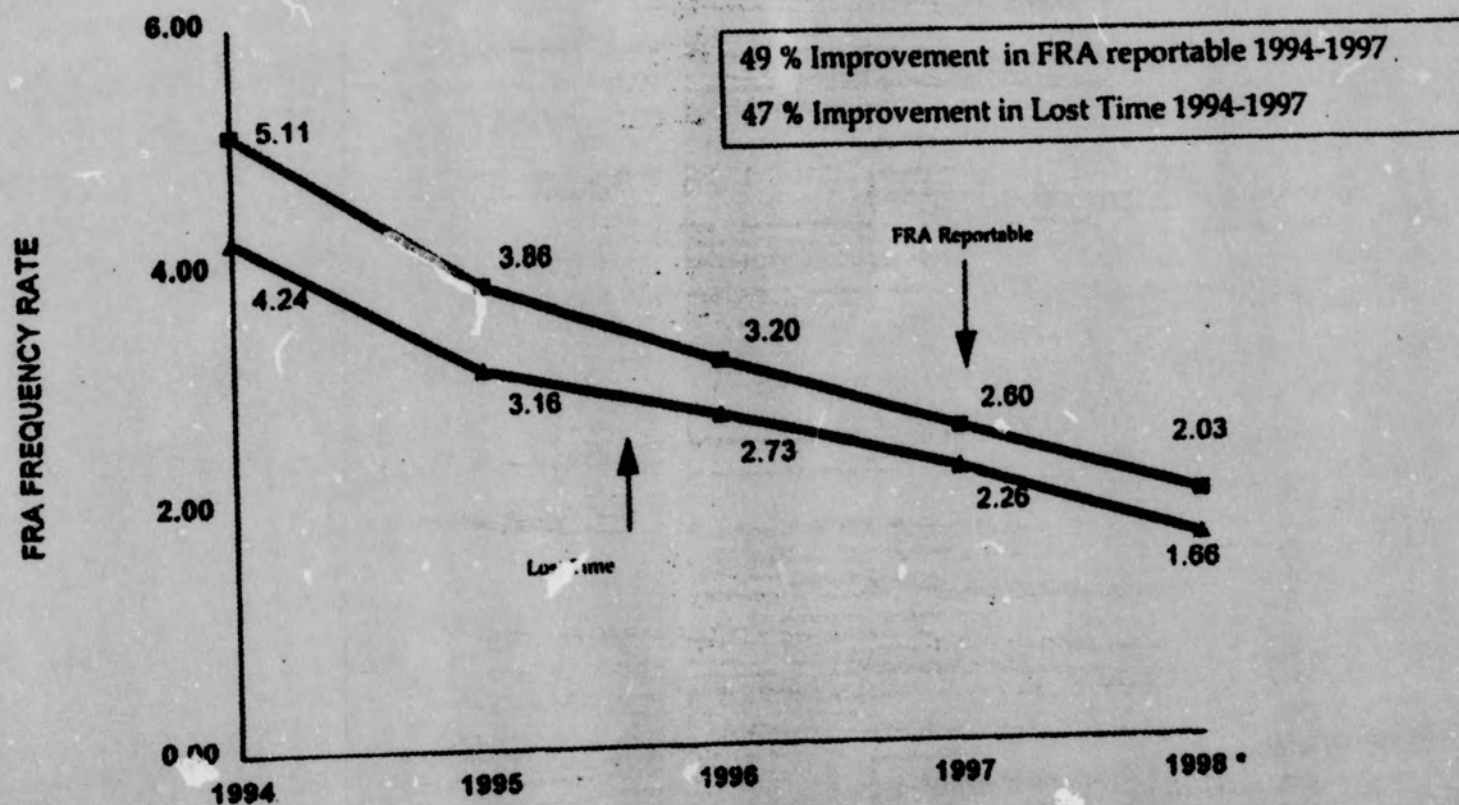
Lost Time Injuries 98

Engr	58
Mech	38
Trans	154
Oth Sys	10
Sys	260

CONRAIL



Conrail Safety Performance 1994 - 1998

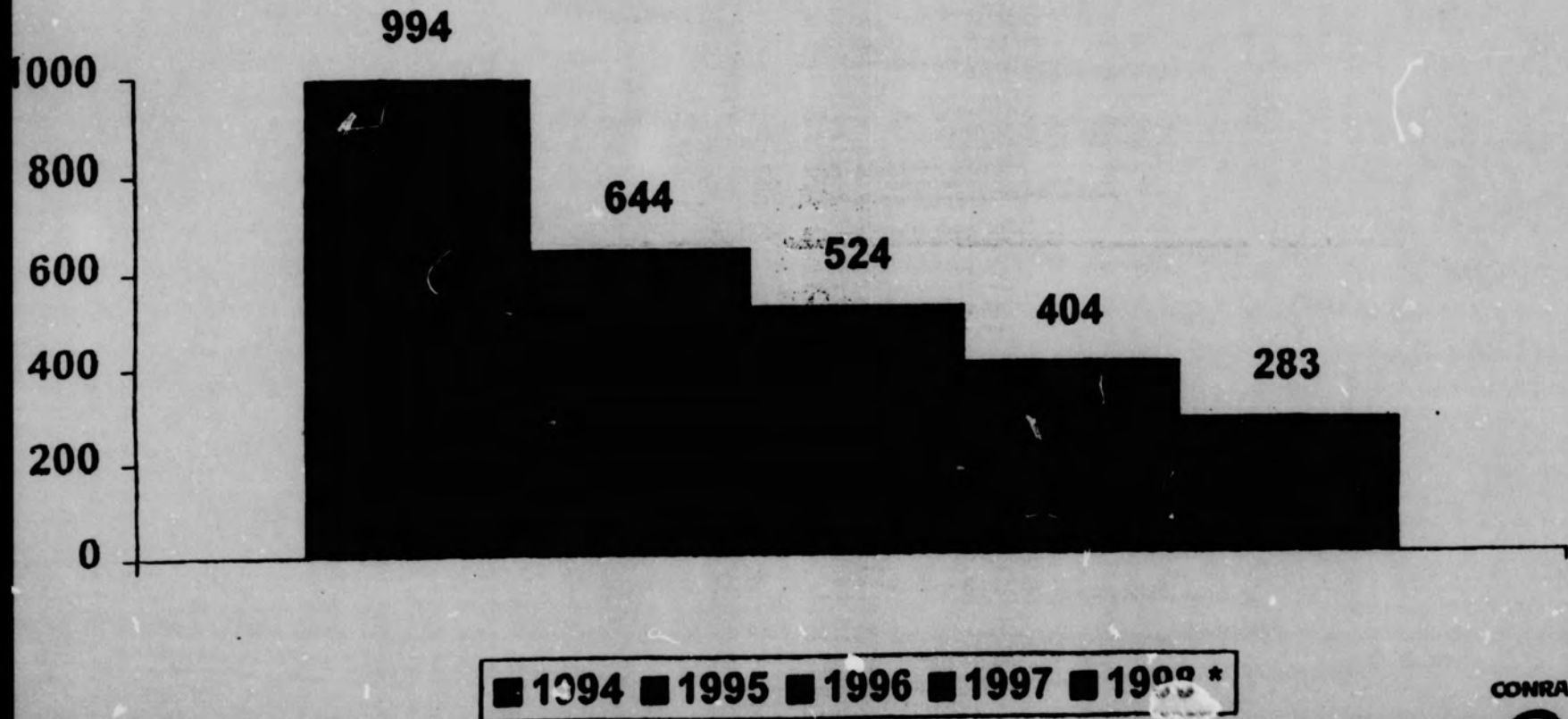


CONRAIL



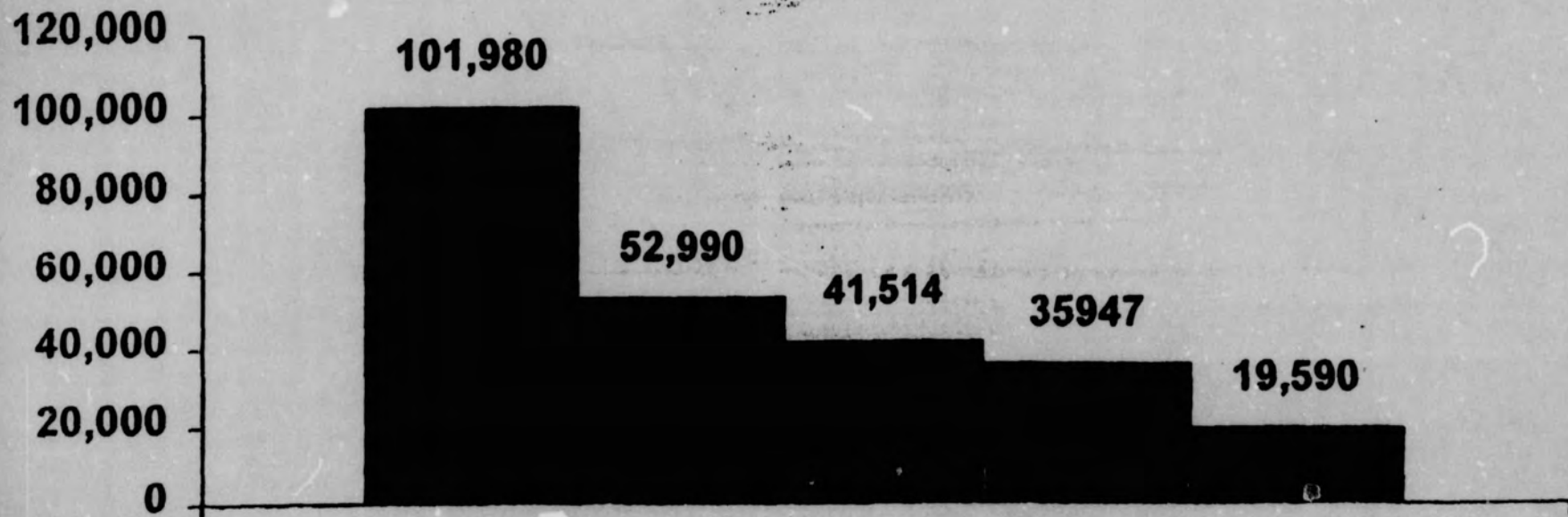
Conrail Lost Time Injuries **1994 - 1998**

Total Number Lost Time Injuries



Conrail Lost Work Days **1994 - 1998**

Lost Time Days for Current year Injuries



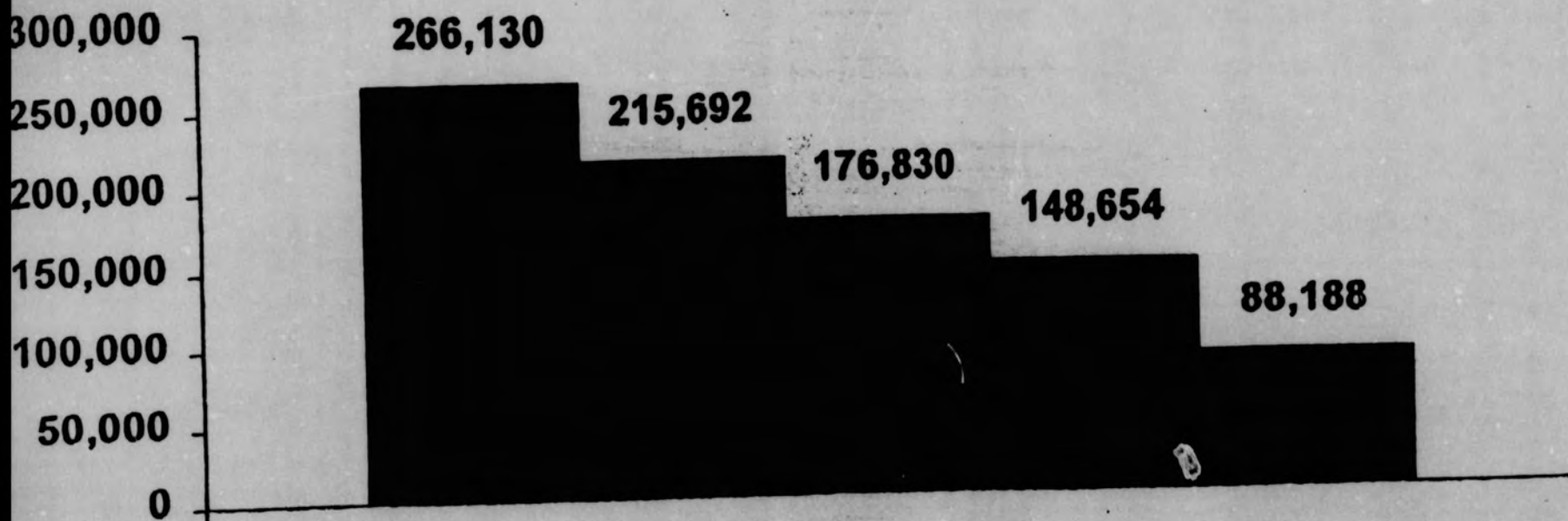
■ 1994 ■ 1995 ■ 1996 ■ 1997 ■ 1998*

CONRAIL



Conrail Lost Work Days *1994 - 1998*

Lost Time Days for Current and Prior Year Injuries

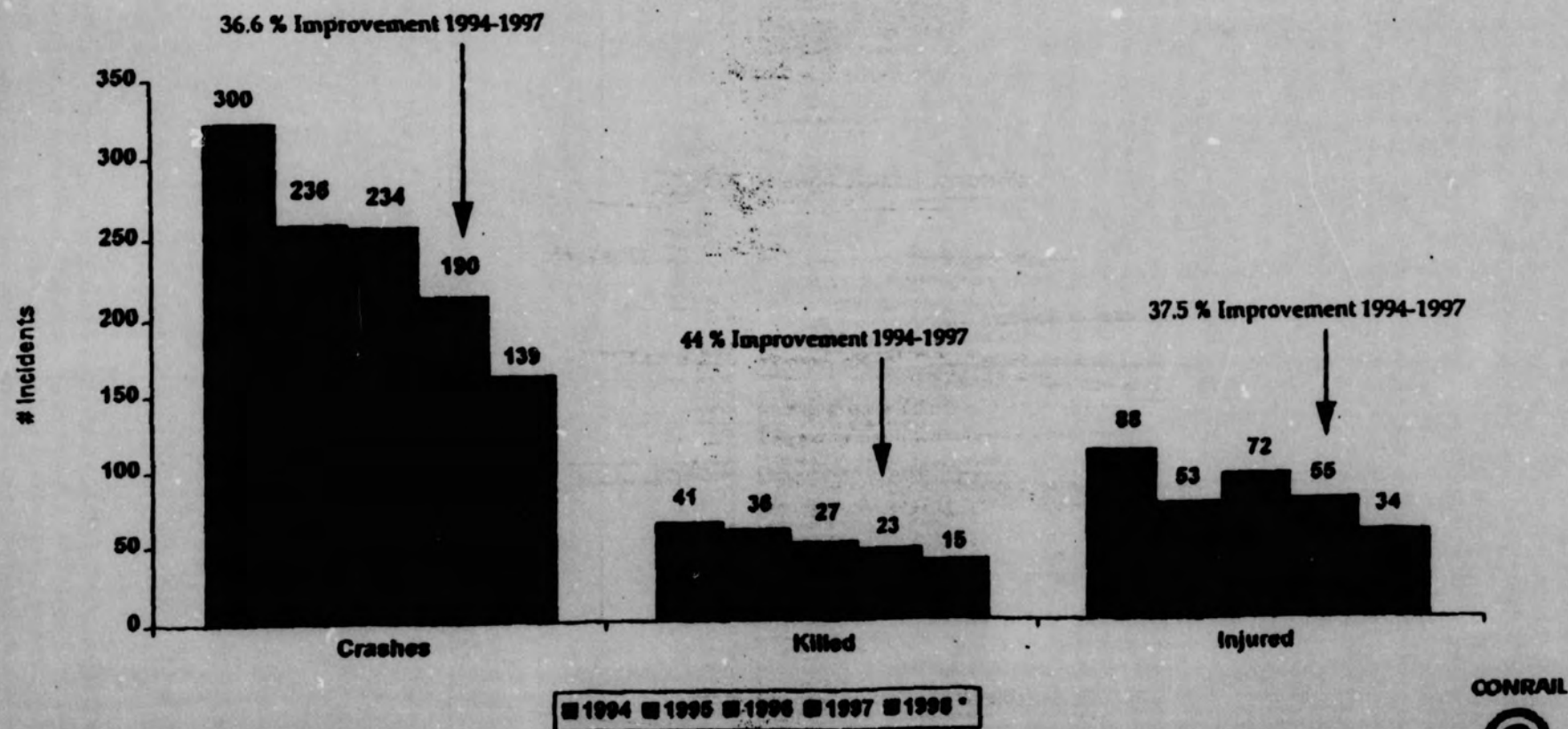


■ 1994 ■ 1995 ■ 1996 ■ 1997 ■ 1998*

CONRAIL



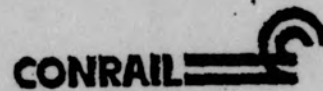
Conrail Grade Crossing Accidents 1994 - 1998



* 1998 10 months

CONRAIL





SAFETY INTEGRATION PLAN REVIEW

SHARED ASSETS OPERATIONS

JANUARY 29, 1999

- Organization/Service Planning Overview
 - Detroit
 - South Jersey
 - North Jersey
- Motive Power Allocation Plan
- Process Integration Plan
 - Tactical
 - Strategic

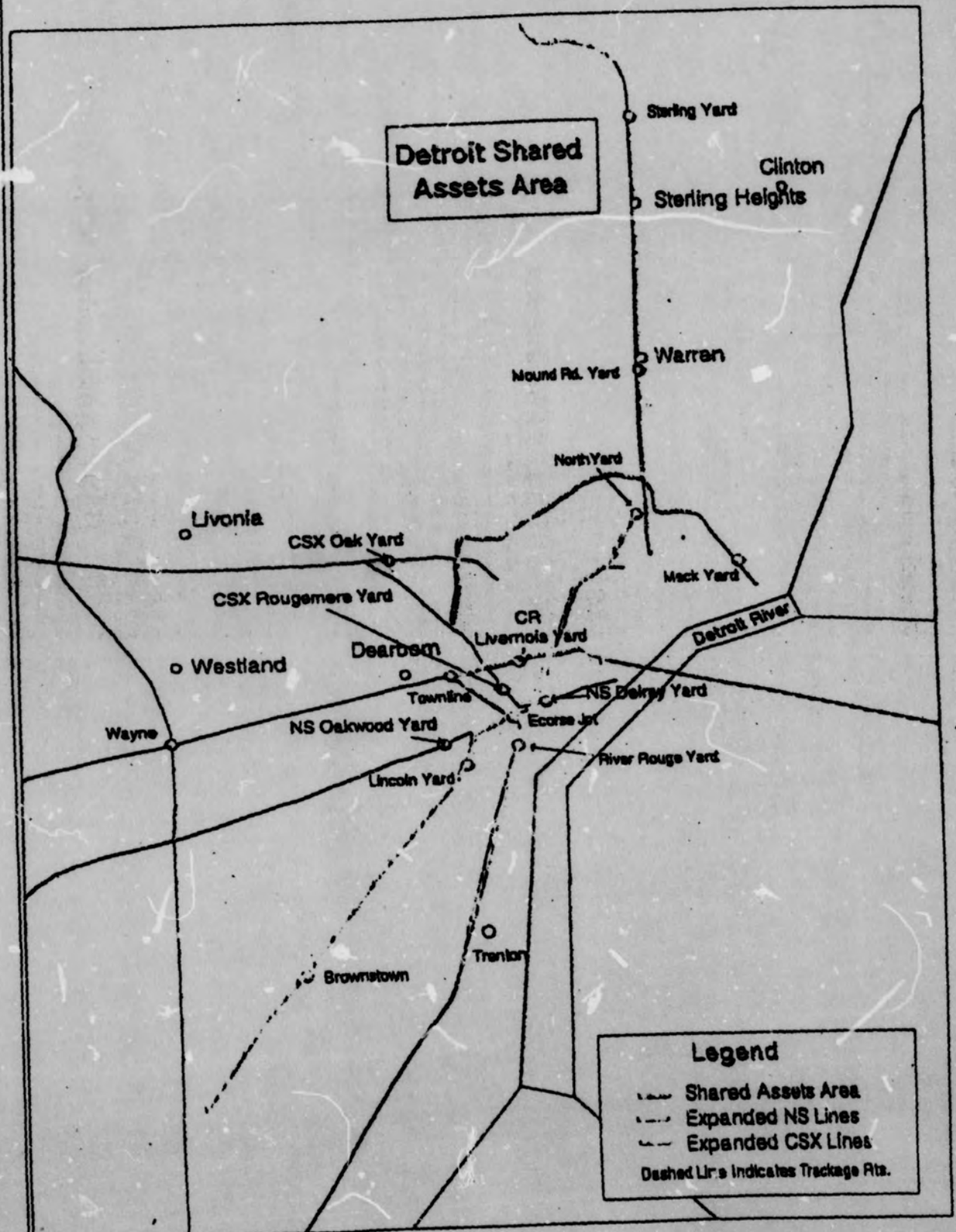
Terminal Operations in Detroit Area

Current Operation			Proposed Operation	
Yard or facility	Current Operator	Current facility use	Proposed Operator	Proposed facility use
North	Conrail	Major classification facility. Also automotive	CSAO	Same as at present Focal point for Detroit CSAO
River Rouge	Conrail	Major industrial support facility	CSAO	Same as at present
Livernois	Conrail	Large industrial support yard with intermodal facility	CSAO	Same as at present
Sterling	Conrail	Large industrial support yard also automotive	CSAO	Same as at present
Mound Road	Conrail	Primarily Chrysler support	CSAO	Same as at present
Mack	Conrail	Industry support principally for Chrysler	CSAO	Same as at present
Lincoln	Conrail	Primarily supports Ford at Brownstown	CSAO	Same as at present
Trenton	Conrail	Support Trenton area	CSAO	Same as at present

CONSOLIDATED RAIL CORPORATION
CY & E MINIMUM STAFFING REQUIREMENTS
DETROIT TERMINAL - SHARED ASSETS AREA

REPORT LOCATION	JOB SYMBOL	TIME	E	C&Y	TOTAL	SUN	MON	TUE	WED	THU	FRI	SAT
DE												
LIVERNOIS	YDLV04	1100	1	1	2	B	X	X	X	X	X	YDLVR
LIVERNOIS	YDLV06	705	1	1	2	YDLVR	YDLVR	X	X	X	X	X
LIVERNOIS	YDLV09	759	1	2	3	B	B	X	X	X	X	B
LIVERNOIS	YDLV15	1430	1	1	2	B	X	X	X	X	X	B
LIVERNOIS	YDLV33	1559	1	2	3	B	X	X	X	X	X	B
LIVERNOIS	YDLVR3	VAR	1	1	2	YDLV06	YDLV06	B	B	YDRR	YDRRSI	YDLV
LIVERNOIS	YULV01	705	0	1	1	B	B	X	X	X	X	X
SUB TOTAL			6	9	15							
MACK YD	YDMY02	630	1	2	3	B	X	X	X	X	X	B
MACK YD	YDMY06	730	1	1	2	B	X	X	X	X	X	YDNYR
MACK YD	YDMY31	1430	1	2	3	YDNYR	X	X	X	X	X	B
MACK YD	YDMY79	2300	1	2	3	B	X	X	X	X	X	B
SUB TOTAL			4	7	11							
MOUND ROAD	YDMR21	600	1	2	3	B	YDNYR	X	X	X	X	X
MOUND ROAD	YDMR22	800	1	2	3	X	X	X	X	X	X	B
MOUND ROAD	YDMR50	1559	1	1	2	B	X	X	X	X	X	B
MOUND ROAD	YDMR51	1445	1	2	3	YDNYR	YDNYR	X	X	X	X	B
MOUND ROAD	YDMR70	2300	1	1	2	B	X	X	X	X	X	B
SUB TOTAL			5	8	14							
NORTH YARD	YDNY01	705	1	2	3	YDNYR	X	X	X	X	X	YDNYRS
NORTH YARD	YDNY03	631	1	1	2	B	X	X	X	X	X	B
NORTH YARD	YDNY04	705	1	1	2	B	X	X	X	X	X	B
NORTH YARD	YDNY05	700	1	1	2	B	X	X	X	X	X	B
NORTH YARD	YDNY4	1559	1	2	3	X	X	X	X	YDNY	YDNYR	X
NORTH YARD	YDNY61	2300	1	1	2	X	X	YDNYR1	YDNYR	X	X	X
NORTH YARD	YDNYR1	VAR	1	2	3	YDNY3	YDLV3	YDNY61	YDNY6	B	B	YDNY3
NORTH YARD	YDNYR5	VAR	1	2	3	YDNY0	YDMR2	B	B	YDNY	YDNY4	YDNY0
NORTH YARD	YEXC1	1201	1	1	2	B	X	X	X	X	X	B
NORTH YARD	YUNY01	700	0	1	1	B	X	X	X	X	X	B
SUB TOTAL			9	14	24							
RIVER ROUGE	YDRR01	700	1	2	3	X	X	X	X	DRRR	YDRR	X
RIVER ROUGE	YDRR02	630	1	1	2	X	X	X	YDRR	B	X	X
RIVER ROUGE	YDRR20	759	1	1	2	B	X	X	X	X	X	B
RIVER ROUGE	YDRR23	630	1	1	2	YDRR	X	X	X	X	B	YDRR
RIVER ROUGE	YDRR30	2245	1	1	2	X	X	X	X	X	X	B
RIVER ROUGE	YDRR32	1430	1	2	3	B	X	X	X	X	X	X
RIVER ROUGE	YDRR40	1430	1	2	3	B	YDRR	X	X	X	X	YDRR
RIVER ROUGE	YDRR50	1559	1	2	3	YDRR	X	X	X	X	X	B
RIVER ROUGE	YDRR61	2315	1	1	2	B	X	X	X	X	X	B

REPORT LOCATION	JOB SYMBOL	TIME	E	C&Y	TOTAL	SUN	MON	TUE	WED	THU	FRI	SAT
RIVER ROUGE	YDRR7	VAR	1	2	3	YDRR5	YDRR4	YDRR51	YDRR5	B	B	YDRR5
RIVER ROUGE	YDRR9	VAR	1	1	2	YDRR2	B	B	YDRR0	YDRR0	YDRR2	YDRR2
RIVER ROUGE	YURR01	700	0	1	1	B	X	X	X	X	B	B
RIVER ROUGE	YURR03	2245	0	1	1	X	X	X	X	X	B	B
SUB TOTAL			11	18	29							
STERLING YARD	WDW501	530	1	1	2	X	X	X	X	X	X	X
STERLING YARD	WDW504	1101	1	1	2	B	X	X	X	X	X	X
STERLING YARD	WDW505	1430	1	1	2	B	X	X	X	X	X	X
STERLING YARD	WUBS01	730	0	1	1	X	X	X	X	X	X	X
STERLING YARD	WUBS02	1330	0	1	1	B	X	X	X	X	X	X
SUB TOTAL			3	5	8							
TRENTON YARD	WDTR01	1230	1	1	2	B	X	X	X	X	X	X
SUB TOTAL			1	1	2							
XTRA	XTRA LOCAL		1	2	3							
XTRA	XTRA YARD		12	18	30							
SUB TOTAL			13	20	33							
GRAND TOTAL			52	82	136							



Terminal Operations in South Jersey/Philadelphia Area

Current Operation			Proposed Operation	
Yard or Facility	Current Operator	Current Facility Use	Proposed Operator	Proposed Facility Use
Morrisville	Conrail	Industrial support and intermodal	CSAO and NS	CSAO for carload; NS for intermodal
Greenwich	Conrail	Coal, ore, intermodal and industrial support	CSX	Except NS will retain bulk and intermodal access to Ameriport
Stoney Creek	Conrail	Industrial support	CSAO	Same as at present
Midvale	Conrail	Industrial support for Chestnut Hill branch	CSAO	Same as at present
Frankford Jct	Conrail	Industrial yard on the Delair Branch	CSAO	Same as at present
West Falls Yard	Conrail	Industrial support and block transfer	NS	NS facility, CSAO will have limited use
Pavonia	Conrail	In Camden, major support facility for Trenton and surrounding area	CSAO	Will become the focal point control center for CSAO
Millville	Conrail	Industrial support for the Vineland area	CSAO	Same as at present
Paulsboro	Conrail	On the Penns Grove secondary. Serves Woodbury	CSAO	Same as at present

**CONSOLIDATED RAIL CORPORATION
CY & E MINIMUM STAFFING REQUIREMENTS
PHILADELPHIA TERMINAL - SHARED ASSETS AREA**

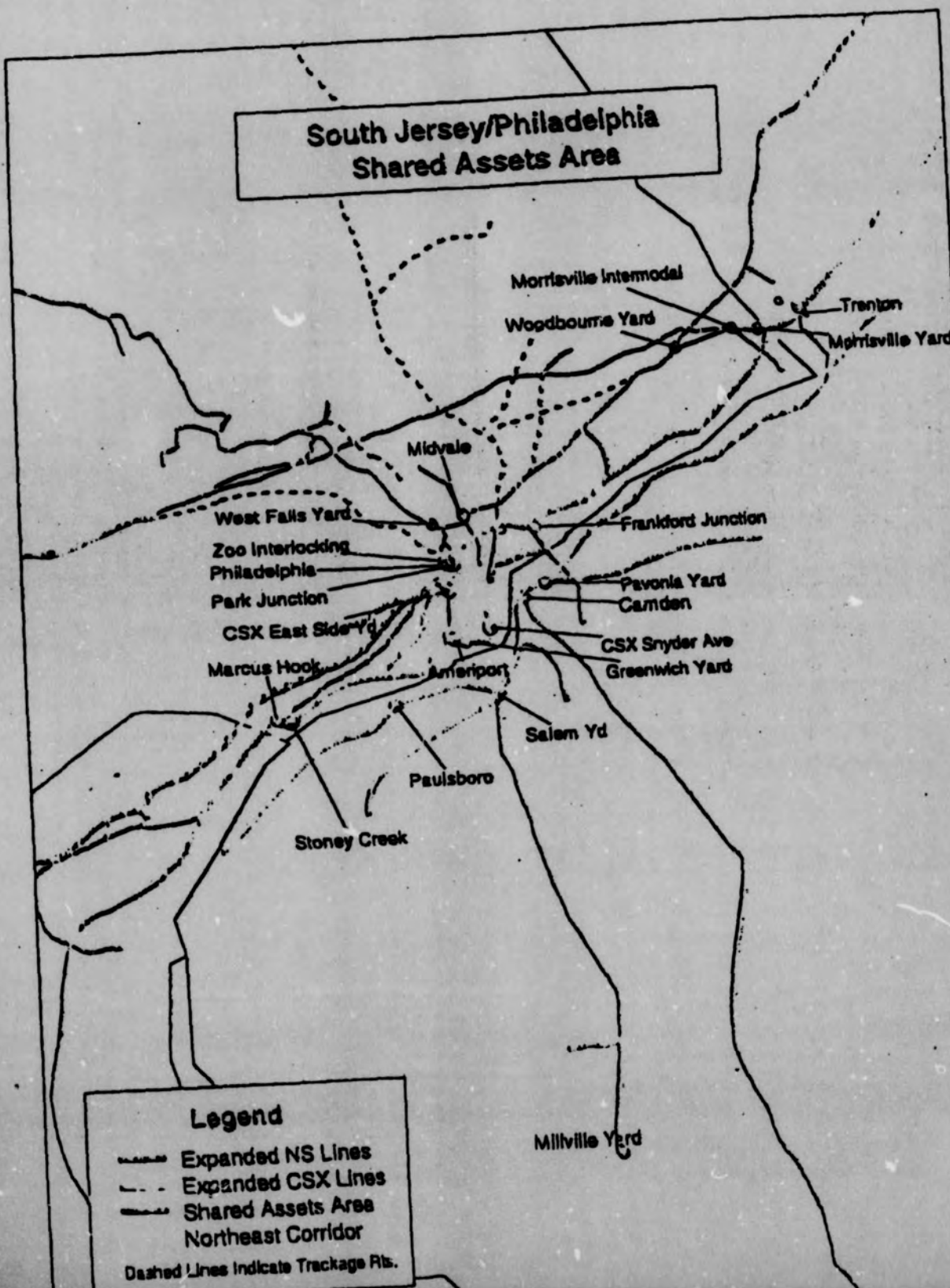
Report Location	Job Symbol	Time	ENG	C&Y	Total	SUN	MON	TUE	WED	THU	FRI	SAT
PH												
BURLINGT	WPBU29	630	1	2	3	B	X	X	X	X	X	B
	SUB TOTAL		1	2	3							
FRK JCT	YPFJ02	715	1	1	2		X	X	X	X	X	
FRK JCT	YPFJ03	730	1	1	2	X	X	X	X	X	X	
FRK JCT	YPFJ04	630	1	1	2		X	X	X	X	X	
FRK JCT	YPFJ22	1556	1	1	2		X	X	X	X	X	
FRK JCT	YPFJ33	1500	1	2	3		X	X	X	X	X	
	SUB TOTAL		5	6	11							
MIDVALE	YPMV01	630	1	1	2	B	X	X	X	X	X	B
MIDVALE	YPMV02	730	1	1	2	B	X	X	X	X	X	B
MIDVALE	YPMV05	800	1	1	2	WILD	X	X	X	X	X	WILD
MIDVALE	YPMV30	1500	1	1	2	B	X	X	X	X	X	B
MIDVALE	YPMV31	1530	1	2	3	B	X	X	X	X	X	B
MIDVALE	YPMV62	2300	1	1	2	B	X	X	X	X	X	B
	SUB TOTAL		6	7	13							
MILLVILLE	WPMI21	800	1	1	2	B	X	X	X	X	X	B
MILLVILLE	WPMI61	2200	1	1	2	B	X	X	X	X	X	B
	SUB TOTAL		2	2	4							
MORRIS	WPBS02	730	1	2	3	B	X	X	X	X	X	X
MORRIS	WPFJ10	600	1	1	2	B	X	X	X	X	X	B
MORRIS	WPMO01	1000	1	1	2	X	X	X	X	X	X	B
MORRIS	WPMO20	700	1	1	2	B	X	X	X	X	X	B
MORRIS	YPMO01	630	1	1	2	YPMO	X	X	X	X	X	YPMO
MORRIS	YPMO02	800	1	1	2	X	X	X	X	X	B	B
MORRIS	YPMO03	700	1	1	2	B	X	X	X	X	X	B
MORRIS	YPMO33	1500	1	2	3	X	YPMO	YPMOR	X	X	X	B
MORRIS	YPMO60	2300	1	1	2	X	X	X	X	X	B	B
MORRIS	YPMO61	2359	1	1	2	B	X	X	X	X	X	B
MORRIS	YPMOR1	VAR	1	1	2	YPMO0	YPMO3	YPMO33	B	B	YPMO	YPMO0
MORRIS	YUB01	700	0	1	1	B	X	X	X	X	X	B
MORRIS	YUB03	2300	0	1	1	X	X	X	X	X	B	B
	SUB TOTAL		11	15	26							
PAULSBO	WPPA10	700	1	2	3	WPPA	WPPA	X	X	X	X	X
PAULSBO	WPPA21	1400	1	1	2		X	X	X	X	X	
PAULSBO	WPPA33	1800	1	2	3	X	X	X	X	X	X	WPPA WPPA
PAULSBO	WPPA40	1600	1	1	2		X	X	X	X	X	
PAULSBO	WPPA70	2359	1	1	2	X	X	X	X	X	X	WPPA3 WPPA3

Report Location	Job Symbol	Time	ENG	C&Y	Total	SUN	MON	TUE	WED	THU	FRI	SAT
PAULSBO	WPUBP1	900	0	1	1	B	X	X	X	X	X	B
	SUB TOTAL		6	9	15							
PAVONIA	CRO1P	800	0	1	1	B	B	X	X	X	X	X
PAVONIA	CRO1PR	VAR	0	1	1	CRO1P	CRO1P	YUB1P2	B	B	YUB1P	YUB1P
PAVONIA	MWPC01	700	0	1	1	B	X	X	X	X	X	B
PAVONIA	WPCA11	200	1	1	2		X	X	X	X	X	X
PAVONIA	WPCA20	1100	1	2	3		X	X	X	X	WPPA	
PAVONIA	WPCA29	2200	1	1	2	X	X	X	X	X	X	B
PAVONIA	WPCA51	630	1	1	2	B	X	X	X	X	X	X
PAVONIA	YPCA03	700	1	2	3	X	B	B	X	X	X	WLD
PAVONIA	YPCA04	715	1	1	2	X	X	X	X	X	WLD	WLD
PAVONIA	YPCA20	1530	1	1	2	X	X	X	X	X	B	B
PAVONIA	YPCA24	1515	1	1	2	X	X	X	X	X	B	B
PAVONIA	YPCA60	2259	1	1	2	X	X	X	X	X	B	B
PAVONIA	YPCA69	2345	1	2	3	X	X	X	X	X	B	B
PAVONIA	YPCAR1	VAR	1	1	2	B	YPCA0	YPCA03	YPCA2	YPCA	YPCA2	B
PAVONIA	YUB1P1	700	0	1	1	X	X	X	X	X	YUBPR	YUBPR
PAVONIA	YUB1P2	730	0	1	1	B	YUBP	CRO1P	X	X	X	X
PAVONIA	YUB2P1	1559	0	1	1	WLD	X	X	X	X	X	WLD
PAVONIA	YUB3P1	2230	0	1	1	X	X	X	X	X		
	SUB TOTAL		11	21	32							
S PHIL	YMWPC1	700	0	1	1	B	X	X	X	X	X	B
S PHIL	YPSP11	700	1	1	2	YPSPR	X	X	X	X	X	YPSPR
S PHIL	YPSP13	758	1	1	2	X	YPSPR	YPSPR1	X	X	X	X
S PHIL	YPSP21	1530	1	1	2	B	X	X	X	X	X	B
S PHIL	YPSP22	1559	1	1	2	B	X	X	X	X	X	B
S PHIL	YPSP23	2230	1	1	2	X	X	X	X	X	B	B
S PHIL	YPSP33	2230	1	1	2	YPSP1	YPSP1	YPSP13	YPSP3	B	B	YPSP1
S PHIL	YPSPR1	VAR	1	1	2	B	X	X	X	X	X	B
S PHIL	YUBSP1	1530	0	1	1							
	SUB TOTAL		6	8	14							
ST CREEK	WPSC08	1130	1	1	2	B	B	X	X	X	X	X
ST CREEK	YPSC01	659	1	1	2	B	X	X	X	X	X	B
ST CREEK	YPSC02	730	1	2	3	YPSCR	X	X	X	X	X	YPSCR
ST CREEK	YPSC31	1559	1	1	2	X	YPSCR	YPSCR1	X	X	X	X
ST CREEK	YPSC32	1430	1	2	3	B	X	X	X	X	X	B
ST CREEK	YPSC33	1500	1	2	3	B	X	X	X	X	X	B
ST CREEK	YPSC81	2230	1	1	2	B	X	X	X	X	X	B
ST CREEK	YPSCR1	VAR	1	1	2	YPSC0	YPSC3	YPSC31	B	B	YPSCR	YPSC0
	SUB TOTAL		8	11	19							
XTRA	XTRA MO		4	5	9							
XTRA	XTRA PHIL		13	18	31							
XTRA	XTRA ST C		3	4	7							
	SUB TOTAL		20	27	47							

Report	Job											
Location	Symbol	Time	ENG	C&Y	Total	SUN	MON	TUE	WED	THU	FRI	SAT

SAC TOTAL			76	108	184							
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South Jersey/Philadelphia Shared Assets Area



Legend

- Expanded NS Lines
- Expanded CSX Lines
- Shared Assets Area
Northeast Corridor
- Dashed Lines Indicate Trackage Rts.

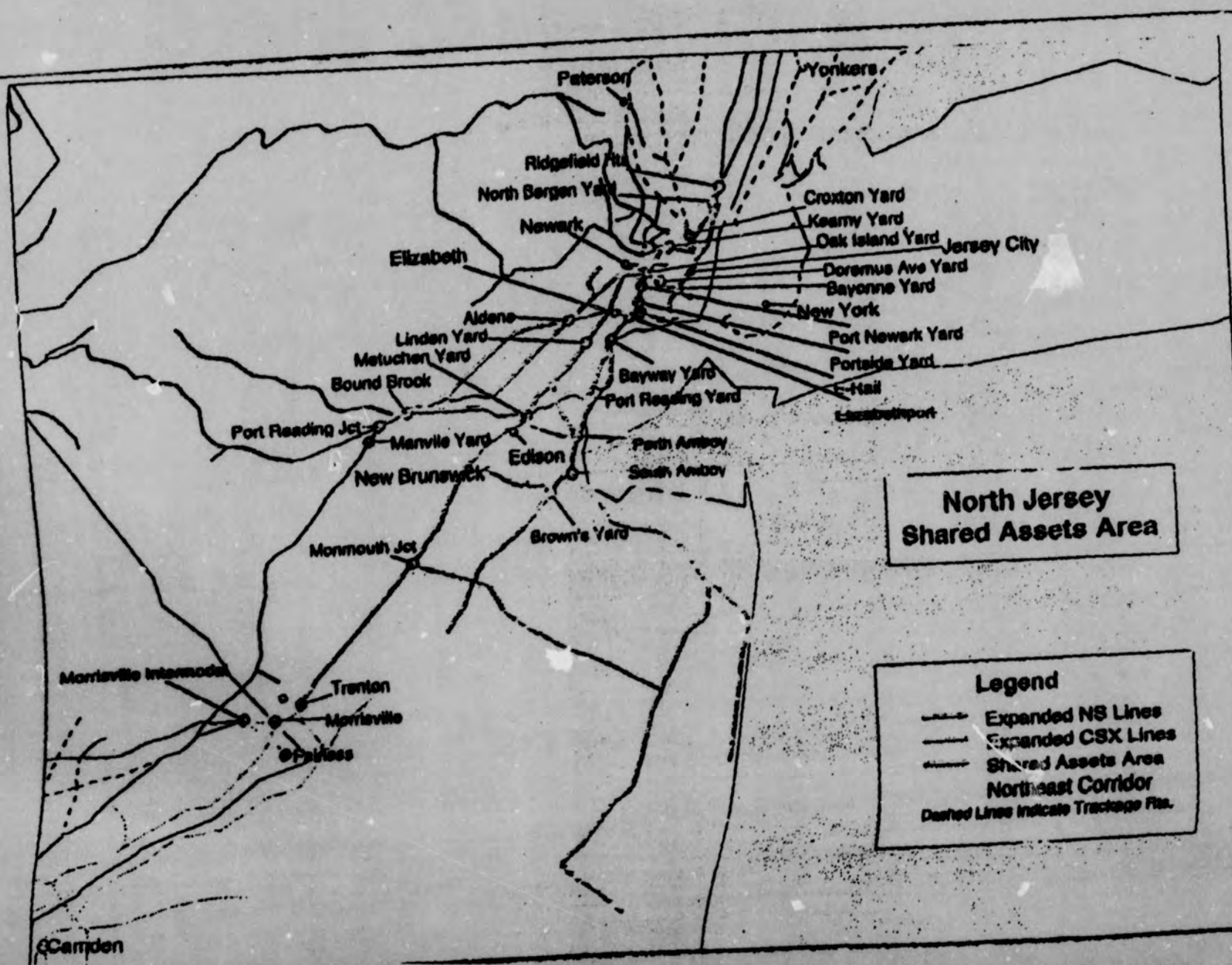
Terminal Operations in North Jersey

Current Operation			Proposed Operation	
Yard or Facility	Current Operator	Current Facility Use	Proposed Operator	Proposed Facility Use
Ridgefield Heights	Conrail	Automotive support	CSAO	Same as at present
North Bergen	Conrail	Intermodal and some local carload traffic	CSX	CSX Intermodal; Southern Tier locals to NS move to Crotona
Crotona	Conrail	Intermodal and bulk transfer	NS	Intermodal and NS Southern Tier Locals
South Kearny	Conrail	Carload support and intermodal	CSX	Same as at present, but used by CSX
South Kearny (APL)	Conrail	APL Intermodal	CSX and NS	Joint service by CSX and NS
Oak Island	Conrail	Major classification yard	CSAO	Use will increase; re-opening hump yard will be considered
Doremus Ave	Conrail	Two units, both for automobile unloading	CSAO	Same as at present
Bayonne	Conrail	Includes Mullery Yard. Industrial support principally for petrochemical industry	CSAO	Same as at present
Port Newark	Conrail	Intermodal, automotive and carload	CSAO	Same as at present
Elizabethport	Conrail	Industrial and intermodal support	CSAO	Two tracks will be assigned to NS to support E-Rail
Portside	Conrail TCS	Triple Crown Services RoadRailer® facility	CSAO and TCS	TCS will operate RoadRailer® operation
Port Reading	Conrail	Secondary classification and support for petrochemical traffic, and other carload	CSAO	Same as at present
Manville	Conrail	Industrial support for the area, including Raritan Line	CSX	Same use, but NS and CSAO will have operating rights in this yard
Bayway	Conrail	Storage for petrochemical industry	CSAO	Same as at present
Brown's	Conrail	Industrial support for Amboy secondary	CSAO	Same as at present
Linden	Conrail	Serves GM assembly plant. Auto loading ramp.	CSAO	Same as at present
Menuchen	Conrail	Serves Ford assembly plant and other industrial customers	CSAO	Same as at present
E-Rail	Conrail	Intermodal	NS	Expanded Intermodal

**CONSOLIDATED RAIL CORPORATION
CY & E MINIMUM STAFFING REQUIREMENTS
NEW JERSEY TERMINAL - SHARED ASSETS AREA**

Report Location	Job Symbol	Time	ENG	C&Y	Total	SUN	MON	TUE	WED	THU	FRI	SAT
NJ												
BAYONNE	YFLG2B	800	0	1	1	B	X	X	X	X	X	B
BAYONNE	YPBA01	630	1	2	3	B	X	X	X	X	X	B
BAYONNE	YPBA02	630	1	1	2	B	X	X	X	X	X	B
BAYONNE	YPBA03	730	1	1	2	B	X	X	X	X	X	B
	SUB TOTAL		3	5	8							
BAYWAY	YBBY01	700	1	1	2	B	X	X	X	X	X	B
	SUB TOTAL		1	1	2							
BROWNS	WPSA31	900	1	1	2	B	X	X	X	X	X	B
BROWNS	WPSA33	1700	1	1	2	B	X	X	X	X	X	B
BROWNS	WPSA35	2300	1	1	2	B	X	X	X	X	X	B
BROWNS	YPSA02	700	1	1	2	B	X	X	X	X	X	B
BROWNS	YPSA03	800	1	2	3	X	X	X	X	X	X	B
BROWNS	YPSA22	1600	1	1	2	B	X	X	X	X	X	B
	SUB TOTAL		6	7	13							
LINDEN	WPLI28	800	1	1	2	B	X	X	X	X	X	B
LINDEN	WPLI68	2000	1	1	2	B	X	X	X	X	X	B
LINDEN	YPLI10	730	1	2	3	B	X	X	X	X	X	B
LINDEN	YPLI20	1529	1	1	2	X	X	X	X	X	X	B
LINDEN	YPLI30	2329	1	2	3	X	X	X	X	X	X	B
	SUB TOTAL		5	7	12							
MANVILLE	WPMA20	2000	1	1	2	B	X	X	X	X	X	B
MANVILLE	WPMA01	1	1	1	2							
	SUB TOTAL		2	2	4							
METUCH	WPME10	730	1	1	2	B	B	X	X	X	X	X
METUCH	WPME70	1900	1	1	2	X	X	X	X	X	X	B
METUCH	YPME02	800	1	2	3	B	X	X	X	X	X	B
METUCH	YPME04	759	1	1	2	B	X	X	X	X	X	B
METUCH	YPME05	630	1	2	3	B	X	X	X	X	X	B
METUCH	YPME34	1430	1	1	2	B	X	X	X	X	X	B
METUCH	YPME36	1430	1	2	3	B	X	X	X	X	X	B
METUCH	YPME37	1430	1	1	2	X	X	X	X	X	X	B
METUCH	YPME61	2230	1	1	2	B	X	X	X	X	X	B
METUCH	YPME62	2330	1	2	3	X	X	X	X	X	X	B
METUCH	YUBME2	1159	0	1	1	X	X	X	X	X	X	B
	SUB TOTAL		10	15	25							

MANVILLE	WPMA20	2000	1	1	2	X	X	X	X	X	B	B
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**CSXT / FRA SACP
C&O BUSINESS UNIT
LISTENING POST SCHEDULE**

Team of Jon Kowalsky and Kim DeFazio

Monday	March 8 - Fostoria, OH	1:30 PM	{ Ohio State Inspector Bill Mitchell attending
Tuesday	March 9 - Columbus, OH Chillicothe, OH	8:00 AM 2:00 PM	{State Inspector Bill Mitchell attending
Wednesday	March 10 - Maysville, KY Russell, KY	8:00 AM 1:30 PM	{State Inspector Bill Mitchell attending
Thursday	March 11 - Shelby, KY Paintsville, KY	8:00 AM 1:30 PM	
Friday	March 12 - Huntington, WV	8:00 AM	{FRA Inspector Paul Smailes attending}

Team of Joe Lydick and Allen Ludwig

Monday	March 22 - Newport News, VA	1:30 PM
Tuesday	March 23 - Richmond, VA Charlotte, VA	8:00 AM 1:30 PM

Team of Joe Lydick and Quenton Ratliff

Wednesday	March 24 - Clifton Forge, VA	8:00 AM
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Team of Joe Lydick and Paul Smailes

Wednesday	March 24 - Beckley, WV	1:30 PM
Thursday	March 25 - Logan, WV Danville, WV	8:00 AM 1:30 PM
Friday	March 26 - Charleston, WV	8:00 AM

FILE IN DOCKET

Conrail Operational ReviewI. Overview

Due to a series of derailments and accidents, the Federal Railroad Administration (FRA) became concerned that there may be a decline in oversight on safety issues resulting from Consolidated Rail Corporation (CR) employees anxieties over the impending merger with Norfolk Southern (NS) and CSXT (CSX) railroads on June 1, 1999. It is anticipated that many of these changes will affect management, agreement and non-agreement employees.

In an effort to assess the impact of these changes on safety oversight, FRA conducted a multi regional team effort during a two-week period which included inspectors from Regions 1, 2, 3, 4 and 6. The effort commenced on March 25, and ended on April 9, 1999 (Region 4 could not begin its participation until the following week due to a regional conference). The purpose of this review was to conduct one week of train-riding activities and one week of operational testing on various divisions in an effort to determine if any degradation of safety has occurred.

Region 1, conducted an operational review of on board train inspections of the Albany Division, Region 2, conducted an operational review of the Philadelphia and Pittsburgh Divisions, and Region 4 conducted an operational review of the Dearborn and Indianapolis Divisions. All of the inspections were conducted around the clock.

Staffing consisted of thirty-four 34 Federal and State Operating Practices inspectors in addition to the Operating Practices Specialist from the three regions involved.

The reviews consisted of on-board inspections of road-freights, locals, and yard and hump trains. Interviews were conducted with train and engineer service employees, and with CR supervisors.

II. Summary of On Board Inspections

The on board portion of the review involved riding a total of one hundred ninety-eight (198) trains operating over approximately 10,000 miles of track. A break down by type is as follows; one hundred twenty five (125) were road trains, forty-seven (47) were yard trains, eighteen (18) were local trains and eight (8) were hump track operations.

Regions	Road Trains	Yard Trains	Local Trains	Hump Trains	Total Trains	Total Miles
1	26	15	9		50	3360
2	68	16	9	8	101	5050
4	31	16	0		47	1267
Grand Totals	125	47	18	8	198	9677

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During the on board train riding inspections, Federal and state inspectors noted approximately one hundred forty-two (142) deficiencies. A major portions of the deficiencies were related to radio procedures, forty-eight (48), involving crafts other than train service employees, and, thirty-seven (37), were related to operational testing records. See Appendix "A."

III. Summary of Interviews

A. Conrail Train and Engine Employees

An overwhelming majority of employees felt that CR is a safe workplace. Most of the employees felt that CR management is very serious about safety. Several employees expressed that in the past they were of the opinion that CR was only paying lip service to the idea of safety, but now believe that management is sincere in their effort to promote a safe working environment.

A majority of the employees felt that most of CR's officers were knowledgeable and competent managers. An overwhelming majority reported there was no change regarding how responsive carrier officials were in the last 6-8 months. One issue, which was mentioned by several employees relates to the amount of time new hires and conductor trainees are being allowed to qualify. It appears that employees are qualifying with less time in service than was the case in previous years. It was also mentioned that standards appear to vary between supervisors for qualifying employees on physical characteristics and that training is interrupted for employees when manpower is short. However, most of the inspectors were impressed with the new employees, as they appeared to be knowledgeable and very conscious of safety. During the review, an Inspector attended a rule's class at Dewitt Yard for newly hired trainmen. He examined class materials and observed the skills and techniques of the instructors and took no exceptions.

B. Conrail Management

The majority of supervisors interviewed have more than twenty (20) years of railroad experience. CR provides its managers with various types of training, depending on the position. Some of the training given, includes management awareness, drug/alcohol, HazMat, air brakes, train the trainer, computer skills, and various seminars. All of the supervisors received on-the-job training, in fact, many stated that this was the main training tool. In the past two (2) years, CR has done away with leadership/supervisory training and there were comments regarding the lack of quality of accident investigation training. All of the supervisors are qualified on the rules, as each of them attended a rule's class in 1998. Most supervisors responded that they work between 60-70 hours per week and that these numbers haven't changed over the past 6 or 8 months. Half of the supervisors stated that they have a regular day off and that they do not have a problem getting time off when requested. The geographical area covered by most supervisors includes the entire division and others stated that they cover between 50 -150 miles, this varied depending on position. Most managers supervised between 10 and 50 employees.

There has been no noticeable drop in the number or quality of efficiency tests over the past 6-8 months, as a matter of fact, the system requirements changed in 1998 to allow for quality as opposed to quantity, therefore, most supervisors reported an increase in quality of efficiency testing. CR recently began a new safety program called "B-Safe Program." This program is designed to produce positive reinforcement among the employees. Three operating/safety rules are selected by the Division Superintendent to be observed on a weekly basis. The Superintendent reviews the rules and the compliance rate for each. CR's goal is to reach a 95% compliance rate for each of the three rules being observed. When that goal is achieved, the division will sponsor some type of ceremony for that particular location. A time frame to observe these three specific rules is determined by local supervision. Most managers and supervisors were pleased with the training they received, and their attitudes regarding training were positive.

IV. Results of Operational Testing Reviews

FRA encountered many test numbers with synonymous and repetitive content for applicable operating rules used for efficiency tests of employees. This policy manifests the end result and an inflation of "total number" of efficiency tests conducted by supervisors.

A large number of total operational tests by individual supervisors or radar team members may show an extensive quantity of tests performed, that in turn, masks the integrity of quality tests, i.e., in some cases two supervisors, or more, recorded the same test number for the same employee. Examination of System and Division Quotas for Supervisors for 1998 disclosed a number of failures by supervisors to maintain the required System quotas set by CR's CORP manual and Division quotas set by CR Memorandum dated April 3, 1998.

A. Program of Operational Tests and Inspections Audit (217:9)

Albany Division:

During 1998, system wide, CR conducted 615,521 CORPS observations with 9,363 failures, which is approximately 1.5%. On the Albany Division, CR conducted 96,835 CORPS observations with 1,306 failures, which is approximately 1.3%. This is an approximate 0.3% decrease in observations over 1997. Obviously, low failure rates should be commended, and these rates vary from railroad to railroad. CR's Albany Division rate is lower than the average, which may suggest that their decision to concentrate on quality as opposed to quantity is a valid decision.

On the Albany Division, radar teams are assembled each year. In 1998, 209 radar teams observed 1361 trains and 2839 employees. They stopped 457 trains, which is approximately 38% over the number of trains stopped in 1997. They also conducted banner checks on 354 trains, which is an approximate 23% increase over 1997.

In 1998, CR had approximately 98 Train Dispatchers and Operators. Approximately 580 observations were conducted on these employees during the year, which averages out to approximately 50 tests per month. This is not in compliance with their program, as STO's are required to conduct 100 observations per month. The FRA would suggest that this be an area where CR should concentrate their efforts.

Philadelphia Division

The CORPS system requires that each supervisor conduct a minimum of 25 tests per month. For 1998 the Philadelphia Division had 84 transportation, 14 engineering, and 11 mechanical department supervisors conducting tests. A total of 129,418 checks were performed and of those total checks 1,490 deficiencies were noted, a 1.15% defect ratio.

Overall Transportation conducted 91.4% of all testing with Engineering conducting 3.4% and Mechanical conducting 5.2% of the total testing. For the year 1998 a total of 3,101 employees were tested on the Philadelphia Division.

Tests conducted on "Critical Operating Rules", were 58,223 tests, of which there were 569 failures (.97%). The "Critical Operating Rules" accounted for 45% of all tests and 38% of all failures.

Contained within the "Critical Operating rules" was test # 0012, "employee properly signs register." This rule check had 4,030 tests performed making this the 6th most popular rules check. Since a train register is no longer used as part of a movement authority, and conveys no safety function, FRA questions whether this rule should be considered a "Critical" rule. This rule's test alone accounted for 7% of all "Critical" rule's tests in 1998.

Another concern on the Philadelphia Division is "Critical" rule # 2903, banner testing. Conrail only conducts banner tests on main line tracks. Analysis of testing showed that each time a banner test was performed on a crew all members of the crew are credited with compliance. Certainly rule # 2903 is applicable in all operational circumstances and should be tested on other than main track situations.

A particular concern revealed that 33% of field transportation officers reported no rule's defects for 1998. These officers accounted for 24,160 tests or 20% of the total Transportation department rule's checks on all rules. An additional 17% of field officers reported only 1 to 3 total defects for 1998. These officers accounted for an additional 18% of the total Transportation department rule's checks. All told 50% of the transportation officers reported zero defects, or less than four defects for the year. One FRA inspector observed a CR Efficiency Testing Team in the Cleveland area during the week of March 29 for three nights. The team tested a full range of operating rules during the three-day period. Radar and Banner Tests were performed on both through and yard trains. FRA inspector noted no deficiencies in the way the testing team performed.

Pittsburgh Division

As part of the project Region 2 inspectors conducted a review of Conrail's Operating Rules Testing Policy (CORPS) to ensure compliance with Federal regulations and railroad operating rules. During the operational review, inspectors took a number of deficiencies with the carriers procedures with regard to radio rules testing. Since radio rules dominate the top ten list, it would appear that there is something lacking in this area. FRA would suggest that CR perform a review on the procedures used to identify non compliance with radio procedures and the actions taken when a failure occurs. These assumption is based on the numerous radio rules deficiencies disclosed by FRA during a two week period (48). FRA continues to encourage CR to concentrate their efforts on quality tests and inspections and conduct these tests under the various operating conditions on the railroad.

Recommendation: The FRA recommends that CR focus their attention on accident/incident causes and encourage supervisors to spend more time conducting tests on second and third shifts and weekends.

Dearborn and Indianapolis Divisions

The sudden requirement to conduct this project did not permit region-4 the opportunity to schedule efficiency testing sessions with CR managers, and was compounded by conflicts in inspector work schedules with other training, projects and approved annual leave.

An audit of two divisions of CR was conducted by inspectors of Region 4. The Dearborn and Indianapolis Divisions underwent audits of Operational Testing records. The audits determined that the CORPS system of operational testing is not in compliance with federal regulations. However, the data reviewed was inconclusive to determine the effectiveness of the program in the field among employees and whether or not the officers conducting testing had altered their testing styles and frequencies over the last several months in light of the upcoming merger.

- The CORPS program does not clearly describe each type test and the means and procedures to carry out the test (217.9[b][3]).
- The program does not state, according to each operating division, the frequency with which each type of operational test and inspection is conducted. (217.9 [b][2]).

Records indicate that several officers improperly recorded test results in non compliance with the written program. These noncompliance include failures to specify the location of tests conducted, the utilization of test numbers that were not part of the CORPS program, improper location codes, test records that did not contain the name(s) of employees being tested.

Efficiency tests conducted on train dispatchers indicate that the testing was accomplished within the territories assigned to the dispatchers. In reality, however, the testing was accomplished by an officer who was physically present at the dispatching office located in Dearborn, Michigan. This is misleading and tends to indicate that testing is done in the field.

It was noted that some officers were consistent in their testing methods, by establishing very predictable patterns of testing (i.e., officers tested only during the last two weeks of the month, some officers tested on only one or two days of the month). In addition, some officers were conducting 98 percent of their tests in the same location and certain officer's records indicate their physical presence at two different locations concurrently. Some managers are not meeting division averages for testing. Six managers on one division were found to be performing 10 percent less testing at night and weekends than their peers.

On both divisions, the number of test records inspected equaled 152,460 records, of that total there were 2,310 failures noted by carrier officials for a failure rate of one and one half percent.

V. Conclusions:

As a result of this extensive review, it has been concluded that supervisory oversight has not deteriorated as a result of the impending NS/CSX acquisition on June 1, 1999. Although some issues were raised, none of these issues appear to be related to the merger. FRA will continue to monitor operations throughout this process and will concentrate on the specific issues that were noted throughout this report.

It appears that supervisor quotas are not being enforced by the company on the Philadelphia Division. Region 2 specifically addressed concerns with division supervisors at both Greentree and Philadelphia, PA during close out meetings at the conclusion of the reviews.

A major concern was brought forth by inspectors concerning the location of each operational test performed. The computer system now used by Conrail does not allow for the specific location to be noted in the computer and it is nearly impossible to determine the locations of specific tests performed.

Conrail's computer tracking system only allows for listing tests on a line. Meaning multiple tests could be performed at any location on a line of track and the tests will be recorded as taken on that particular line of track, no matter what the length (could be many miles). There was no way to definitely determine where a test was made by Conrail's computer system.

VI. Additional Concerns

The single biggest item that could be improved in train operations was Radio Communications. Given the fact that every Conrail employee should have known that FRA inspectors were on the property. Many continued to use poor radio procedures. Other deficiencies noted were single incidents and were handled as such by the inspectors. Another area of concern raised by train crews during the project was the issue of fatigue. Although not governed by Federal regulation, this issue has become the largest concern of train crews. Train service employee concerns about fatigue appears to wide spread. Careful crew management, additional employee hiring and more regular schedules for trains could help solve this problem through the merger process.

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Appendix "A"

Total Number of Units Inspected During the Conrail Operational Review:

<u>Part 217 - Railroad Operating Rules</u>		<u>Units</u>	<u>Defects</u>
▶	217R - Freight Train Riding (Main) = 198	4	
▶	217O - Other Operations Observations =	107	18
	<u>Deficiencies:</u>		
	ROR = 10,		
	RSI = 6		
	RSR = 2		
▶	217P - Program & Records =	27	37
	<u>Deficiencies:</u>		
	Records inspection disclosed that more than one officers was taking credit for same test.		
▶	217T - OP Testing Sessions =	5	1
	<u>Deficiency:</u>		
	Engineer failed to inform dispatch of delay		
▶	217D - Dispatcher/Operator =	2	2
Total = 339 -			62
<u>Part 218 - Railroad Operating Practices</u>		<u>Units</u>	<u>Defects</u>
▶	218T - Tampering =	98	1
▶	218F - Flag Protection Rule =	78	0
▶	218S - Blue Signal (Locomotive Area) =	27	1
	<u>Deficiency:</u>		
	Blue signal missing on controlling locomotive		
▶	218M - Blue Signal (Main) =	23	0
▶	218Y - Yard Limits =	8	0
▶	218U - Utility Employee =	9	1
	<u>Deficiency:</u>		
	Utility Employee working with more than one train		
Total = 243 -			3
<u>Part 219 - Control of Alcohol and Drug Use</u>		<u>Units</u>	<u>Defects</u>
▶	219O - Alcohol & Drug (Other) =	4	1
	<u>Deficiency:</u>		
	MRO review not timely = 1		
Total = 4 -			1

<u>Part 220 - Radio Standards and Procedures</u>	<u>Units</u>	<u>Defects</u>
▶ 220 - Radio Standards Defects	244	48
<u>Deficiencies:</u>		
Initiating Transmission = 11		
Failure to Instruct = 1		
Identification = 17		
Ending Transmission = 16		
Transmission not in compliance with ROR = 1		
Transmission of Train Orders = 2		
Total = 244		48

<u>Part 221 - Rear End Marking Devices</u>	<u>Units</u>	<u>Defects</u>
▶ 221 - Rear End Markers =	140	1
Total = 140		1

<u>Part 225 - Railroad Acc/Inc Reporting</u>	<u>Units</u>	<u>Defects</u>
▶ 225C- Injury/Illness Reporting Defects	12	0
▶ 225R- Internal Control - Injury/illness =	2	0
Total = 14		0

<u>Part 228 - Hour of Service</u>	<u>Units</u>	<u>Defects</u>
▶ 228 - HOS Act =	33	1
<u>Deficiency:</u>		
Excess Service		
Total = 33 -		1

<u>Part 229 - Locomotive Safety Standards</u>	<u>Units</u>	<u>Defects</u>
▶ 229D - Diesel Locomotive =	11	7
<u>Deficiencies:</u>		
Rear unit tag info incomplete = 6		
Fusee/torpedo box missing = 1		
Total = 11		7

<u>Part 232 - Railroad Power Brakes and Drawbars</u>	<u>Units</u>	<u>Defects</u>
▶ 232T - Initial Brake Test =	9	0
▶ 232E - End of Train Device =	15	1
Total = 24		1

Part 240 - Locomotive Engineers**Units****Defects**

▶ 240 - Locomotive Engineer Certification = 235 3

Deficiencies:

Date of last check ride missing = 2

Engineer not familiar with territory = 1

Total = 235 - 3

Miscellaneous**Units****Defects**

▶ STRM - Train Riding =	3	0
▶ MREC - MP&E Records =	15	2
▶ ROR See 217O	9	9
▶ RSI See 217O	3	3
▶ RWP	9	0
▶ HAZMAT	1	1

Total = 40 - 15

Grand Total**Units****Defects**

1,327 142

U.S. Department
of Transportation
**Federal Railroad
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

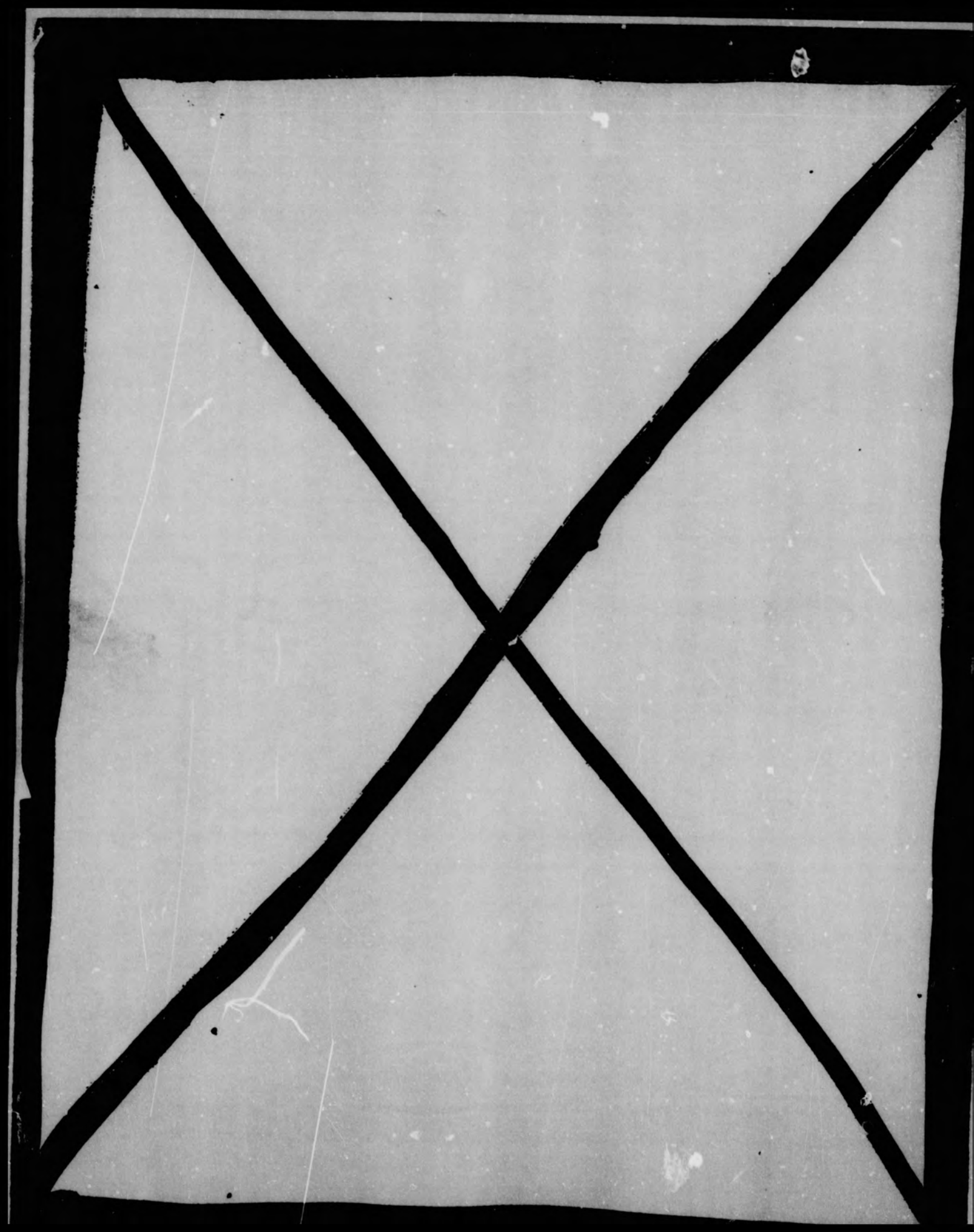
Official Business
Penalty for Private Use \$300

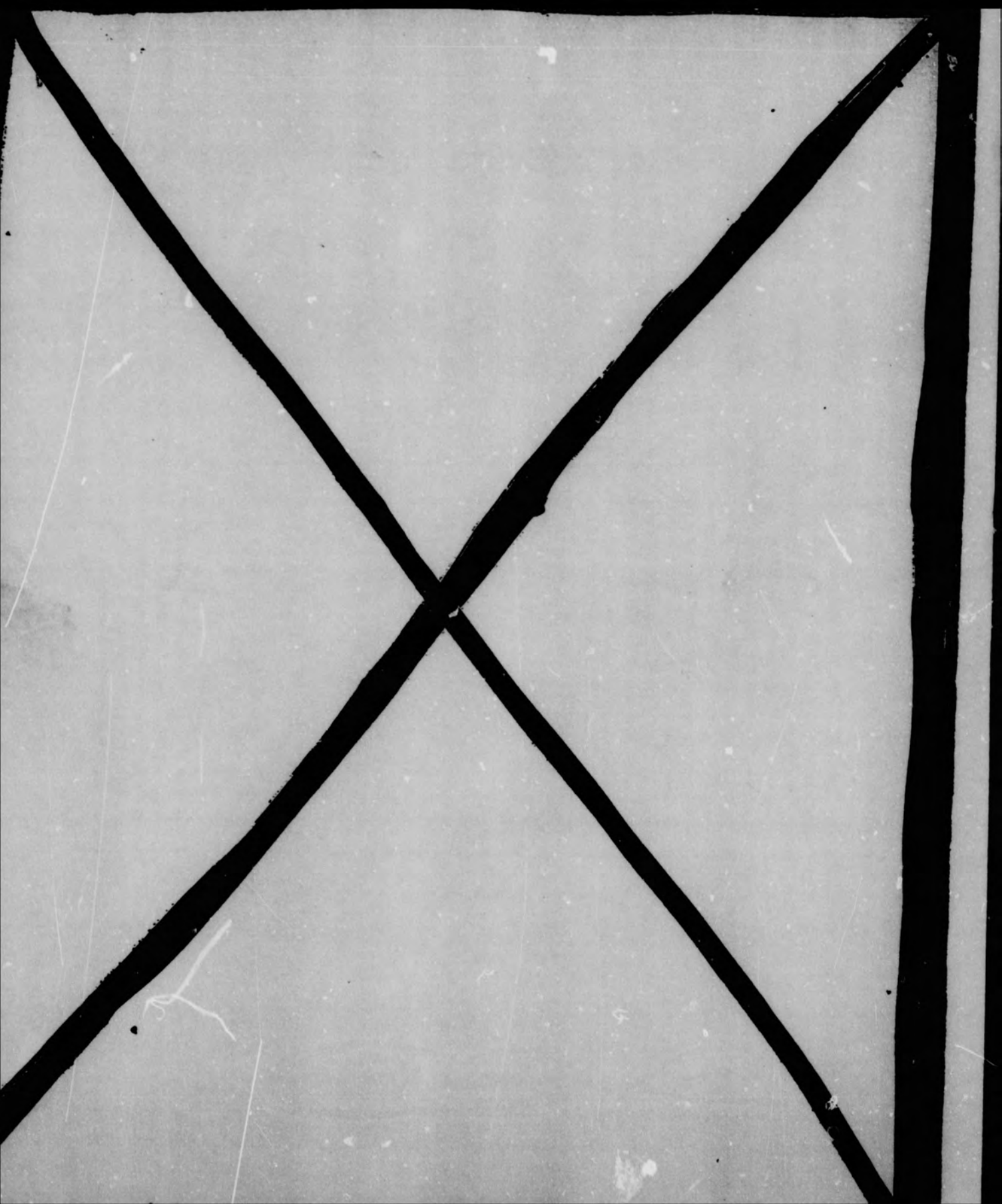


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THE HONORABLE LINDA J MORGAN
CHAIRMAN
SURFACE TRANSPORTATION BOARD
1925 K STREET NW
WASHINGTON DC 20423-0001

Form FRA F29 (3/92)





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ORIGINAL

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-0738

October 21, 1997

Mr. Vernon A. Williams
Secretary
Surface Transp. Board
Washington DC 20423

Re: F.D. No. 33388, CSX/NS-Conrail

Dear Mr. Williams:

This is a letter-petition for leave to file the attached verified statement of Charles D. Bolam (CDB-1). The statement was due today, but due to a misunderstanding of the time zone, was not received by me for filing prior to 5:00PM today.

The statement, and this accompanying letter-petition, were served upon all persons required to be served and listed in decisions 21, 27, and 43, by first class mail postage-prepaid, on October 21, 1997.

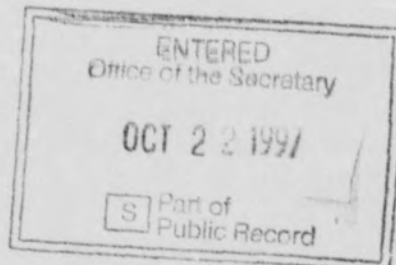
Accordingly, acceptance of Mr. Bolam's statement for filing would not prejudice any party.

The Board is requested to grant this petition to file the verified statement of Charles D. Bolam.

Very truly yours,

Gordon P. MacDougall

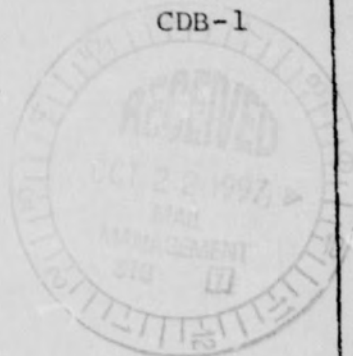
cc: ALJ Leventhal
All parties of record



PAGE 1

ORIGINAL

CDB-1



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

VERIFIED STATEMENT OF CHARLES D. BOLAM

PAGE 2

1 MY NAME IS CHARLES D. BOLAM I AM VICE PRESIDENT OF THE ST. LOUIS RAIL LABOR
2 COALITION REPRESENTING MEMBERS OF VARIOUS CRAFTS AND CLASSES OF RAILROAD
3 EMPLOYEES IN ST. LOUIS AND ENTERING ST. LOUIS WITHIN A RADIUS OF ABOUT TWO
4 HUNDRED FORTY MILES. I AM ALSO GENERAL CHAIRMAN OF THE UNITED TRANSPORTATION
5 UNION, REPRESENTING TRAINMEN AND ENGINEERS ON THE ALTON & SOUTHERN WITH SUB-
6 LODGES ON UNION PACIFIC AND GATEWAY WESTERN. JERRY LAUDERDALE WORKS OUT OF
7 THIS OFFICE AND IS MY COUNTERPART AS UNITED TRANSPORTATION UNION GENERAL
8 CHAIRMAN REPRESENTING TRAINMEN AND ENGINEERS ON THE TERMINAL RAILROAD
9 ASSOCIATION OF ST. LOUIS AND THE MANUFACTURERS RAILROAD. MY BUSINESS ADDRESS IS
10 1400 TWENTIETH STREET, GRANITE CITY, ILLINOIS 62040.
11 I BEGAN WORKING FOR THE RAILROAD IN 1961 AS A SECTION HAND ON THE CB&Q. I HELD
12 VARIOUS JOBS ON THE BURLINGTON AS A SIGNALMAN, ENGINEMAN, SWITCHMAN AND
13 BRAKEMAN ON SEVERAL DIVISIONS IN IOWA, NEBRASKA AND MISSOURI.
14 I BEGAN WORK AS A SWITCHMAN ON THE ALTON & SOUTHERN IN 1968 AND HAVE WORKED
15 AS A YARDMASTER AND TERMINAL YARD SWITCHMAN AND CONDUCTOR ON THE A & S SINCE.
16 I HAVE HELD VARIOUS UNION OFFICES SINCE 1963 IN UTU PREDECESSOR UNIONS,
17 BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN AND BROTHERHOOD OF RAILROAD
18 TRAINMEN, AS WELL AS THE UNITED TRANSPORTATION UNION. FROM 1964 'TIL 1968 I WAS
19 TRAFFIC MANAGER FOR A PRIVATE LABEL APPLIANCE MANUFACTURER MAKING LARGE
20 APPLIANCES FOR GSA, SEARS, WESTERN AUTO, WARDS, GRANTS, GAMBLES, AND A
21 NUMBER OF LARGE EXPORT ACCOUNTS.
22
23 UNITED TRANSPORTATION UNION DISTRICT OFFICE IN GRANITE CITY, ILLINOIS REPRESENTS
24 THE OPERATING TERMINAL SWITCHING COMPANY EMPLOYEES IN THE ST. LOUIS GATEWAY
25 SWITCHING DISTRICT.
26
27 TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS (TRRA) FORMS AN INNER BELT ON BOTH
28 SIDES OF THE MISSISSIPPI RIVER AND SERVICES MUCH HEAVY INDUSTRY. ALTON & SOUTHERN
29 AND GATEWAY WESTERN FORM THE OUTER BELT ^{and} SERVES AS AN INTERCHANGE CLEARING
HOUSE FOR ALL THE RAILROADS ENTERING ST. LOUIS. ALL OF THE TERMINAL SWITCHING

PAGE 3

1 COMPANIES IN ST. LOUIS ¹¹⁰⁶ PROVIDE THE WIDEST POSSIBLE CHOICE OF SHIPPING
2 ALTERNATIVES. IN FORMER YEARS WHEN ALTON & SOUTHERN WAS SHIPPER OWNED IT
3 INCLUDED IT'S OWN BARGE TERMINAL FACILITIES ON THE MISSISSIPPI.
4
5 TERMINAL SWITCHING COMPANIES HAVE A CLOSER RELATIONSHIP WITH THEIR FREIGHT
6 CUSTOMERS AND A BROADER RELATIONSHIP WITH TRUNK LINE RAILROAD EMPLOYEES THAN
7 RAILROAD EMPLOYEES WHO SELDOM SEE EITHER THE SHIPPERS OF EMPLOYEES OF ANOTHER
8 RAILROAD. EACH ITERATION OF RAILROAD MERGER HAS RESULTED IN A REDUCED RAILROAD
9 INFRASTRUCTURE AND REDUCED THE SHIPPER CUSTOMER BASE WITH RAILROAD SERVICE
10 AVAILABLE TO THEM. IN 1961 ST. LOUIS TERMINAL COMPANIES SERVED A CUSTOMER BASE
11 OF 3000 SHIPPERS AND WERE ABLE TO INTERCHANGE FREIGHT SHIPMENTS 22 RAILROADS
12 AND A RIVER BARGE TERMINAL. IN 1968 FOLLOWING A WAVE OF MERGER AND ACQUISITION
13 ABOUT 2500 SHIPPERS CONNECTED DIRECTLY TO TERMINAL SWITCHING COMPANY LINES IN
14 THE ST. LOUIS GATEWAY SWITCHING DISTRICT INTERCHANGING WITH THE REMAINING 16 THE
15 BARGE FACILITY WAS INACTIVE AND IN DISREPAIR.
16
17 EACH MERGER HAS BEEN FOLLOWED BY THE CLOSING OF TRUNKLINE YARD FACILITIES WHICH
18 PROVIDED DISTRIBUTED INTERMEDIATE CLASSIFICATION OF RAILCARS. THE CONNECTION
19 WITH CERTAIN LOCAL SHIPPERS IS ABANDONED AS A RESULT.
20
21 LOCAL SHIPPERS FORMERLY SERVICED WITH A DAILY ASSIGNED SWITCH ENGINE PRIOR TO
22 1972 MUST BE CONTENT WITH WAY FREIGHT AND ROAD SWITCHERS. ROAD FREIGHT TRAINS
23 MAY OR MAY NOT HAVE ENOUGH TIME UNDER HOURS OF SERVICE CONSTRAINTS TO GIVE THEM
24 SERVICE.
25
26 DEPARTURE OF TRAINS FROM TERMINAL FACILITIES IS CONDITIONED MORE ON A THRESHOLD
27 NUMBER OF REVENUE CARS AND LESS ON A SCHEDULED DEPARTURE TIME. THIS CAR COUNT
28 THRESHOLD MAKES RAIL SERVICE UNPREDICTABLE FOR THE SHIPPER, THEREFORE
29 UNRELIABLE. WITH EACH MERGER CLOSING OF YARDS AND ABANDONMENT OF LINES MAKE
RAIL SERVICE UNAVAILABLE TO MORE AND MORE SHIPPERS.
THE REMAINING YARD FACILITIES BECOME CONGESTED BECAUSE EACH CLASSIFICATION
DESTINATION REQUIRES TRACK SPACE FORMERLY PROVIDED IN ANOTHER YARD AND THE

PAGE 4

1 RAILROADS HAVE CLOSED MANY OF THEIR YARD FACILITIES. LOCAL FREIGHT IS ASSEMBLED IN
2 LARGE TERMINAL SWITCHING YARDS. THE FEW REMAINING TERMINAL ARE SEVERE /
3 CONGESTED IN THE WEST AND THE PROBLEM WILL NOT YIELD TO TEMPORARY MEASURES.
4 UNDER THE PROPOSED TRANSACTION F. D. (33388) WE WILL FACE THE SAME CONDITIONS AS
5 WE EXPERIENCED IN THE EAST DURING THE "WRECK OF THE PENN CENTRAL" FOLLOWING
6 1972.

7 THE CSX, NS, CR TRANSACTION THREATENS TO FURTHER ERODE THE RAILROAD SERVICE
8 AND FURTHER REDUCE THE INFRASTRUCTURE, AND EXACERBATE THE LACK OF RAILROAD
9 CAPACITY, FORCING MORE OF OUR FREIGHT ON THE HIGHWAYS.

10 RAILROAD EMPLOYEES LOSE GOOD JOBS WITH EACH LOSS OF RAIL BUSINESS UP/SP AND
11 BN/SF CUSTOMERS ARE SUFFERING DEVASTATION LOSSES, HUNDREDS OF RAILROAD
12 FAMILIES AND THEIR CHILDREN HAVE BEEN UPROOTED FROM THEIR TRADITIONAL FAMILY
13 HOMES TO SATISFY IMPOSED LABOR AGREEMENTS.

14 THE WORK HOURS REQUIRED OF OF REMAINING EMPLOYEES HAVE BECOME INTOLERABLY
15 LONG. MORE AND MORE OF OUR WORKERS ARE BEING KILLED AND INJURED BECAUSE
16 SAFETY REGULATIONS ARE IGNORED TO EXPEDITE MOVEMENT OF THE RAIL CARS IN THE
17 CONGESTED CORRIDORS.


18
19
20
21 WE OPPOSED APPROVAL OF THE UNION PACIFIC-SOUTHERN PACIFIC TRANSACTION
22 (FINANCE DOCKET NO. 32760) AND WE OPPOSE THIS TRANSACTION (F. D. 33388) AS
23 DETRIMENTAL THE RAILROAD EMPLOYEES WE SERVE AND THE SHIPPERS THEY SERVE.

24 WE ASK THAT THE APPLICATION BE DENIED
25
26
27
28
29

PAGE 5

VERIFICATION

Under penalty of perjury, I affirm the foregoing is true and correct as stated



CHARLES D. BOLAM

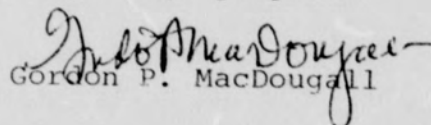
DATED AT GRANITE CITY, IL

OCTOBER 21, 1997

Certificate of Service

I hereby certify I have served a copy of the foregoing
upon all persons required by the list and Decisions Nos.
21, 27, 43, by first class mail postage-prepaid.

October 21, 1997


Gordon P. MacDougall

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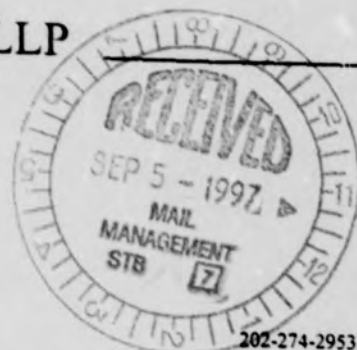
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TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

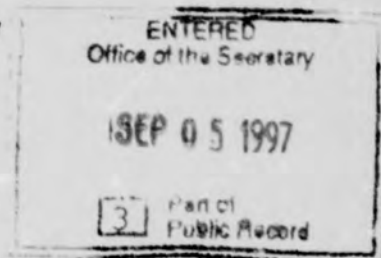
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William A. Mullins

September 5, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Room 711
Washington, D.C. 20423



RE: Finance Docket No. 33388. *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation*

Dear Secretary Williams:

Enclosed for filing in the above captioned docket are the original and twenty-five copies of The Petition for Clarification of Decision No. 1 (NYSEG-8). Attachments Numbers 1 and 2 are labeled as Highly Confidential and will therefore only be served on those parties listed on the Highly Confidential Restricted Service List.

Also enclosed is 3.5-inch diskette containing the text of these pleadings. Please date stamp the enclosed extra copies of the pleadings and return it to the messenger for our files.

Sincerely yours,

William A. Mullins
Attorney for New York State Electric & Gas

Enclosures

cc: The Honorable Jacob Leventhal
Paul A. Cunningham, Esq.
Richard A. Allen, Esq.
Dennis G. Lyons, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



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

**PETITION FOR CLARIFICATION OF DECISION NO. 1;
REQUEST FOR IMMEDIATE HANDLING**

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ATTORNEYS FOR NEW YORK STATE ELECTRIC AND GAS

September 5, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

**PETITION FOR CLARIFICATION OF DECISION NO. 1;
REQUEST FOR IMMEDIATE HANDLING**

Petitioner, New York State Electric & Gas ("NYSEG"), urgently requests the Surface Transportation Board ("Board") to clarify its Decision No. 1 in this proceeding¹ to stop the refusal by Applicants² to reveal discoverable, non-privileged Highly Confidential information to outside counsel and consultants. NYSEG requests that the Board act on this petition immediately to prevent Applicants' dilatory tactics from permanently crippling legitimate discovery efforts.

¹ CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation, Finance Docket No. 33388, Decision No. 1 (STB served April 16, 1997).

² "Applicants" shall refer to CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC). CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRI and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as "Applicants."

Need for Immediate Action

It has become common practice for Applicants, after being ordered to answer certain interrogatories or to produce certain documents, to then produce those documents, to mark them Highly Confidential, but, notwithstanding the Highly Confidential designation, to continue to redact certain rate and volume information - the precise information that was being sought and which Applicants had been ordered to produce.³ By such actions, Applicants are seeking to create a fourth category of information not created by the Protective Order--information claimed to be so confidential that even outside counsel and consultants who have signed the Highly Confidential undertaking mandated by the Board may not review it without seeking it through a separate, special motion before Judge Leventhal.

This blockade of legitimate discovery must be removed by the Board immediately through clarification of Decision No. 1, wherein the Board adopted the Protective Order. Applicants' refusals to disclose information under the provisions of the Protective Order are delaying production and review of documents needed to prepare comments, requests for conditions, and responsive/inconsistent applications. Applicants' continued refusals will have

³ In addition, as shown by comparison of Attachments 1 and 2 hereto, Applicants are placing in their document depository copies of documents which are redacted differently from the version of like-numbered Highly Confidential documents produced to parties seeking those documents in discovery. Attachment 1 hereto contains copies of 2 of the 3 pages which were Exhibit B to the August 25, 1997 appeal of American Electric Power, et al. (ACE, et al. - 8). Attachment 2 contains copies of the two like-numbered documents, CSX 28 HC 000101 and CSX 28 HC 000216 copied from Applicants' document depository on August 29, 1997. As the Board can see, more information is redacted from the version of the documents obtained from the document depository than from the documents produced to American Electric Power, et al., contained in Attachment 1.

⁴ The actual Protective Order adopted in this proceeding is attached as Appendix A to Decision No. 1.

crippling effects downstream in instances where a second round of discovery was to be developed from answers received to an initial set of requests. With the October 6 to October 21 discovery hiatus ordered by Judge Leventhal⁵ looming on the horizon, the effects of Applicants' dilatory tactics are already becoming critical to some parties' discovery efforts.

Background

Applicants have refused, on grounds of commercial sensitivity or commercial confidentiality, to produce to NYSEG and to many other parties otherwise legitimate discoverable information. For example, Applicants' objections to NYSEG-3's Discovery Requests Nos. 1, 2, 5, 8, 9, 12, 15 and 16⁶ were each based in part on assertions that information sought was too confidential to be produced. For example, Applicants' objection to Discovery Request No. 5 stated in part:

Applicants object to Discovery Request No. 5 because communications responsive to the request include sensitive commercial information from the carrier or the shipper, information which is irrelevant to this proceeding.

See Attachment 3, page 4.⁷ Similarly, Applicants' objection to Discovery Request No. 2 stated in part:

⁵ See Discovery Guidelines, Decision No. 10 at 10, ¶ 19, served June 27, 1997.

⁶ On August 13, 1997, NYSEG served on Applicants NYSEG's First Discovery Requests, designated NYSEG-3. On August 20, NYSEG received Applicants' initial objections to those requests. A copy of pages 1 through 4 of those objections is labeled as Attachment 3 hereto.

⁷ The Board's regulations state that "(1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding (2) It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 49 C.F.R. § 1114.21(a)(1 and 2) (1996). Accordingly, the assertion that information NYSEG sought is not relevant to the proceeding is not a valid objection to NYSEG's discovery requests because irrelevant information may lead to the discovery of admissible evidence.

[I]f production of all such information is even possible, these communications include sensitive commercial information from the carrier (or, indeed, the shipper), all of which is information irrelevant to this proceeding.

See Attachment 3, page 3.

Furthermore, in responding to those NYSEG-3 discovery requests that Applicants did not initially object to, Applicants stated flatly that they will not produce sensitive information, despite the existence of the Protective Order:

Applicants object to the production of, and are not producing, information or documents that contain, confidential or sensitive commercial information, including information subject to disclosure restrictions imposed by law, in other proceedings, or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

See Attachment 4 hereto, page 4 of CSX/NS-53, ¶ 6.

Following unfruitful consultations with Applicants' counsel to resolve Applicants' initial objections to NYSEG-3, which were served on August 20, NYSEG appeared on August 28, 1997, at a discovery conference before Judge Leventhal concerning Applicants' initial objections to NYSEG-3. That conference, however, did not resolve the issue of Applicants' redactions of information from documents sought by NYSEG, but only the issue of whether Applicants would be required in the first instance, to answer the discovery request. Judge Leventhal deferred ruling on the issue of redactions from Highly Confidential documents until documents were actually produced to NYSEG.

Other parties have met with similar frustration in attempting to obtain unredacted copies of documents from Applicants. American Electric Power, et al., ("AEP") reportedly have been waiting since August 20, 1997, for Applicants to produce unredacted copies of certain documents which Judge Leventhal ordered them to produce. Applicants apparently have claimed that they do not presently have time to unredact information which they redacted from copies of the

documents previously produced, leaving AEP to wait indefinitely for Applicants to produce information which they should have produced long ago.

Clarification of the Board's Decision No. 1 in this proceeding is essential to force Applicants to desist from this pattern of obstruction. Otherwise, Applicants' efforts to frustrate, delay and increase the expense of legitimate discovery by withholding Highly Confidential information from persons qualified to review it will prevent parties like NYSEG, AEP and others from presenting to the Board the full information the Board needs to evaluate Applicants' proposal.

Argument

The Board must clearly articulate that its Decision No. 1 does not permit withholding from outside counsel or outside consultants who have signed the Highly Confidential undertaking any part of any requested documents or information that is not shielded by a recognized privilege.⁸ Quite simply, the confidentiality or commercial sensitivity of information sought is not relevant to whether that information must be produced to properly qualified parties. If Judge Leventhal orders documents to be produced, or if Applicants agree to produce them, Applicants must produce those documents under the provisions of the Protective Order, and if

⁸ NYSEG seeks this clarification from the Board rather than from Judge Leventhal because the Board, not Judge Leventhal, issued Decision No. 1 and because Decision No. 1 assigned Judge Leventhal to handle specific discovery disputes within the context of the Board's Protective Order. This petition does not seek to affect Judge Leventhal's authority to rule in the first instance on whether Applicants must produce documents or answers to disputed discovery requests, but only seeks clarification of the Protective Order and Decision No. 1 in order to provide guidance to the Applicants and others as to whether or not information contained within a Highly Confidential document may be redacted simply because it is "confidential or sensitive commercial information." As stated previously, Judge Leventhal on August 28 declined to rule on NYSEG's request that Applicants be directed to produce non-redacted versions of the documents which the Judge ordered Applicants to produce to NYSEG.

Applicants designate the document as Highly Confidential, there should be no further redactions of information, except under standard privileges, such as the attorney-client privilege or the work product privilege.

It is not grounds to redact commercially sensitive information from Highly Confidential documents simply because the information is "commercially sensitive." Indeed, Decision No. 1 specifically provides for the production of such highly confidential commercial information. In Decision No. 1, the Board stated that the Protective Order was needed in part to:

facilitate any necessary discovery . . . by protecting the confidentiality of materials reflecting the terms of contracts, shipper-specific traffic data, and other confidential and/or proprietary information in the event that parties seek or produce such materials.

See Decision No. 1, served April 16, 1997, at 1. That statement mirrored the Applicants' statement on page 2 of their petition for a protective order, CSX/NS-3, about why the Protective Order was needed and it was precisely because such "terms of contracts [and] shipper-specific traffic data" would be disclosed in discovery that the Board adopted the Protective Order in the first instance.

By their actions, Applicants have taken the position that such shipper-specific traffic data is so sensitive that it cannot be disclosed, even in a "Highly Confidential" document. But such shipper-specific data goes directly to the issue of whether a shipper, such as NYSEG, can establish that it will be harmed by the transaction. One might ask how a shipper could establish that it is going to suffer competitive harm due to the transaction unless its outside counsel and consultants are allowed to conduct discovery and obtain information on prices, rates, volumes, traffic flows, marketing information, and other such "commercially sensitive" information. It is that exact information which must be analyzed, studied and presented to the Board to prove that "the merging parties [will] gain sufficient market power to raise rates or reduce service (or

both).” See Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760, Decision No. 44 at 100 (STB served Aug. 12, 1996)(“UPSP”).

Indeed, such shipper specific rate and price information is the precise type of information that the Board, and all parties signing the protective order in UPSP, only recently received and reviewed during the most recent UPSP Oversight Proceeding. See UPSP-304, July 1, 1997 Progress Report, Confidential Appendix. This “commercially sensitive” information was produced in that proceeding because this is precisely the type of information that the Board and the public needs in order to determine the presence or absence of competition, pre and post merger. This is the same sort of analysis that NYSEG must conduct in the context of this proceeding, but is being prevented from conducting due to the redaction of this information from Highly Confidential documents.

The Applicants appear to misunderstand the purpose of the Protective Order. The Protective Order restricts unlimited disclosure of, rather than outright preventing disclosure of, Highly Confidential information. In Decision No. 1, the Board stated, “Unrestricted disclosure of confidential, proprietary or commercially sensitive information and data could cause serious competitive harm.” (Emphasis added.) Decision No. 1, at 1. Accordingly, the Board limited disclosure of sensitive information by allowing a party producing such information to designate it “Highly Confidential.” Paragraph 8 of the Protective Order states,

Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside

consultant to a party to these Proceedings [or an employee thereof who first reads and signs the confidentiality undertaking provided by the Protective Order and Decision No. 1].

Id., at page 4. Thus, while the "Highly Confidential" designation prevents disclosure of commercially sensitive information to in-house counsel and personnel, it does not, in contrast, prevent outside counsel and consultants from viewing such materials.⁹ The Protective Order makes no provision for Applicants' attempts at non-disclosure of confidential information that is reasonably expected to lead to the discovery of admissible evidence. Instead, the order provides for isolating competitively sensitive information from employees of the shippers and carriers involved in this proceeding by marking such information as "Highly Confidential." Contrary to Applicants' practice, the order does not justify non-disclosure to outside counsel and consultants.

The Board's April 9, 1997, decision in Indiana & Ohio Railway Company—Acquisition Exemption—Lines of the Grand Trunk Western Railroad Inc., Finance Docket No. 33180, makes clear that protective orders do not justify redactions or other efforts by applicants to hide Highly Confidential information from properly qualified outside representatives of parties to STB proceedings. Paragraph 2 of the protective order issued January 6, 1997, in Indiana & Ohio (see

⁹ Applicants have muddied this issue before Judge Leventhal on occasion. See, e.g., ACE, et al., 8, filed with the Board on August 25, 1997 at pages 2 and 3 and Exhibit A, transcript pages 39 and 40. There, in discussion concerning information redacted by Applicants from documents produced and marked Highly Confidential, NS counsel Richard Allen stated "if the utility knew [facts such as those redacted] . . . it is of enormous value to the utility as a negotiating point." Because the material was designated Highly Confidential, however, "the utility" would not know the information or be able to use it in negotiations with the railroad. Indeed, it would have been a direct violation of the Protective Order for such a "utility" to use the information "as a negotiating point." The Board clearly understood this point when it only recently ruled that certain attorneys representing a party in this case could not use Highly Confidential information gained in this proceeding in another case where the same attorneys represented that same party. See Potomac Electric Power Co. v. CSX Transportation, Inc., Docket No. 41989 (STB served May 27, 1997).

Attachment 5) in all material respects parallels the provisions of Paragraphs 6, 8 and 10 of the Protective Order in this case with respect to the treatment of Highly Confidential material. In that case, the Brotherhood of Locomotive Engineers (BLE) requested the applicants to produce a copy of a "Commercial Haulage and Operating Agreement" relating to their proposed acquisition. The applicants in that proceeding, much as the Applicants have done in this proceeding, produced an incomplete and redacted copy of the agreement on grounds that the excluded information was irrelevant to BLE's arguments and was "proprietary and commercially sensitive information."

BLE moved to compel production of the agreement. The Board wasted few words in granting BLE's motion:

BLE's motion to compel will be granted. Apparently, the applicants consider the agreement to be highly confidential. As noted above, the Board issued a protective order on January 9, 1997, to protect against disclosure of highly confidential material. BLE executed the prescribed understanding relating to highly confidential material when it requested permission to inspect the agreement. There is nothing of record indicating that BLE would improperly disclose any confidential material contained in the agreement. In these circumstances, applicants must produce the full agreement, with attachments.

See Attachment 6, pages 1-2.

The Board needs to speak just as forcefully about the Protective Order in this case. As the Board stated on page 2 of Decision No. 1, "Issuance of the protective order ensures that such [confidential] information and data produced by any party in response to a discovery request or otherwise will be used solely for purposes of this proceeding and not for any other business or commercial use." (Emphasis added.) In short, the Protective Order, requested by Applicants, contains all the protections to which any information available to Applicants is entitled.

The Board must clarify Decision No. 1 by stating that any document or other information that the Applicants produce, whether by agreement or under order from Judge Leventhal, must be

produced without any redactions other than those based on accepted privileges, such as the attorney-client and work product privileges. Applicants must be clearly told that the alleged confidentiality or commercial sensitivity of any information available to them is not an issue in whether or not the information is produced in response to discovery, but only in whether the information is designated Public, Confidential or Highly Confidential under the Protective Order.

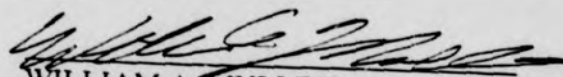
By continually redacting commercially sensitive information from Highly Confidential documents, even after Judge Leventhal has ordered production of the documents, Applicants are trying surreptitiously to broaden the protection that they asked for and that the Board already granted them. They are, in effect, trying to create a fourth category of protected information - Highly, Highly Confidential information that will only be produced through an *in camera* inspection by the Judge and only under certain conditions. This practice creates an endless round of appearances and arguments as the parties first argue over whether or not the Applicants should be required to respond to discovery requests at all; then, once ordered to respond, Applicants, only after a certain time period has elapsed, produce the documents but redact certain shipper specific information; this then necessitates another round of arguments and delays over whether or not the Applicants should be required to unredact the information. By the time these issues are resolved, it is not uncommon for 45-60 days to have elapsed. Of course, the longer these endless rounds of argument go, the closer the October 6 "no discovery" deadline looms and the less time shippers have to review, analyze, and file meaningful comments that would be based upon the documents that should have been produced on day 15. The Board should view Applicants' redaction tactics for precisely what they are-- attempts to delay the production of meaningful information.

Conclusion

By redacting and otherwise refusing to disclose "commercially sensitive" information sought in discovery, Applicants are impeding discovery of information on prices, marketing information and like data which are essential to enabling parties opposing the application to present their case to the Board. The fundamental purpose of the Protective Order, as stated by the Applicants themselves, was to allow production of such commercially sensitive information by restricting its disclosure to outside counsel and consultants and preventing dissemination of that information.

Now, apparently dissatisfied with having received what they asked for in this regard, Applicants are seeking to completely prevent disclosure of some confidential information. Because the Board in Decision No. 1 granted Applicants the protection they requested, the Board should clearly state that the Protective Order alone resolves all issues relating to discovery of commercially sensitive information and Applicants should no longer be allowed to redact information from Highly Confidential documents and object to discovery requests on the grounds of the commercial sensitivity of the information sought.

Submitted this 5th day of September, 1997.

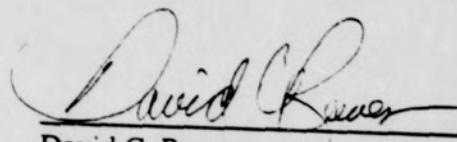


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ATTORNEYS FOR NEW YORK STATE
ELECTRIC AND GAS

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing "Petition for Clarification of Decision No. 1; Request for Immediate Handling" (NYSEG-8) was served this 5th day of September, 1997, by facsimile transmission to Applicants' representatives and to Judge Leventhal, and by first class mail or by facsimile transmission to all other persons on the Highly Confidential service list in this proceeding, and that a true copy (except Attachments 1 and 2) was served by first class mail on all other persons listed on the Board's service list served August 19, 1997, in this proceeding.

A handwritten signature in cursive script, appearing to read "David C. Reeves", is written over a horizontal line.

David C. Reeves

Attorney for New York State Electric & Gas

ATTACHMENTS 1 AND 2
HIGHLY CONFIDENTIAL
SERVED ON HIGHLY CONFIDENTIAL
RESTRICTED SERVICE LIST ONLY

CSX/NS-45

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

APPLICANTS' INITIAL OBJECTIONS TO
NEW YORK STATE ELECTRIC AND GAS'S
FIRST DISCOVERY REQUESTS
TO APPLICANTS (NYSEG-3)

Pursuant to Paragraph 16 of the Discovery Guidelines adopted in Decision No. 10 on June 26, 1997, Applicants¹ submit their initial objections to NYSEG's First Discovery Requests to Applicants (NYSEG-3). Thus far in the proceeding, Applicants have used the five-day objection procedure outlined in the Discovery Guidelines very sparingly. In this instance, however, Applicants are compelled in response to this set of Discovery Requests to submit objections to numerous requests (specifically, Discovery Request Nos. 1-5, 8-9, 12, and 14-16). As detailed below on an objection-by-objection basis, the NYSEG discovery requests to which Applicants

¹ "Applicants" refers to CSX Corporation, CSX Transportation, Inc. (collectively, "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively, "Conrail").

now submit objections are extremely burdensome, overbroad and seek the production of information completely irrelevant to any matter in this proceeding. In several instances, answering the discovery requests would require burdensome special studies, the completion of which may not even be possible.

With respect to NYSEG's remaining discovery requests not objected to below, Applicants will answer or object as appropriate within the 15-day period set forth in Paragraph 16 of the Discovery Guidelines. By service of these specific objections, Applicants do not waive their other objections to the Definitions, Instructions, and Interrogatories and Document Requests contained in NYSEG's discovery requests.

INTERROGATORIES AND DISCOVERY REQUESTS

1. Identify and produce all contracts between or among any of the Applicants for delivery of coal to any shipper whereby the amount of coal delivered exceeded or is expected to exceed 100,000 tons per year.

Applicants are in the process of searching for documents responsive to NYSEG's informal discovery request of August 7. To the extent that Request No. 1 calls for the production of documents covered by that informal request, Applicants object to the request as duplicative. To the extent that Request No. 1 seeks the production of contracts not relating to NYSEG, Applicants object to the request as overbroad and seeking the production of contracts irrelevant to NYSEG

and containing sensitive commercial information between Applicants and NYSEG's competitors located on CSX's or Norfolk Southern's lines.

2. As to each contract described in your response to Request No. 1, identify all communications, whether written or oral, that discuss or deal with the reason or reasons the railroads entered into such contract, including for each, the names of the participants to the communication, the date, the substance of the matters discussed, and, if there are documents evidencing such communication, produce all such documents.

Applicants object to Discovery Request No. 2 for the reasons identified in the objections to Request No.

1. Applicants further object to Request No. 2 as requiring the disclosure of information concerning every oral or written communication that discusses or deals with the reasons the parties entered into such contracts. Aside from the tremendous burden associated with producing this information, if production of all such information is even possible, these communications include sensitive commercial information from the carrier (or, indeed, the shipper), all of which is information irrelevant to this proceeding.

3. Identify each shipper whose rates have been decreased by any of the Applicants during the time period applicable to these requests. Each Applicant may limit its response to this request to shippers transporting over \$1 million dollars per year or its 50 largest shippers.

Applicants object to Discovery Request 3 because answering the request would require a burdensome special study, the completion of which may not even be possible. Applicants also object to Request No. 3 as overbroad,

because the request seeks information concerning shippers of every commodity carried by Applicants, information which is not relevant to NYSEG. Applicants further object to Request No. 3 as ambiguous because the terms "decreased" and "largest" are vague and susceptible of more than one meaning.

4. Identify each Shipper whose contract allows for an increase in rate during the time period applicable to these requests, but whose rates have not in fact increased. Each Applicant may limit its response to this request to shippers transporting over \$1 million dollars per year or its 50 largest shippers.

Applicants to Request No. 4 for the reasons identified in the objections to Response No. 3. Applicants further object to the request as ambiguous, because the term "increase" is vague and susceptible of more than one meaning.

5. As to the decisions to decrease or maintain rates described in your responses to Request Nos. 3 and 4, identify all communications, whether written or oral, that discuss or deal with the reason or reasons the Applicant railroad made the decision to decrease or maintain rates, including for each, the names of the participants to the communication, the date, the substance of the matters discussed, and, if there are documents evidencing such communications, produce all such documents.

Applicants object to Discovery Request No. 5 because communications responsive to the request include sensitive commercial information from the carrier or the shipper, information which is irrelevant to this proceeding. In addition, Applicants object to Request No. 5 for the reasons identified in the objections to Request Nos. 3 and 4.

- 4 -

5. Applicants object to the production of, and are not producing, information or documents that is as readily obtainable by the requester from its own files.

6. Applicants object to the production of, and are not producing, information or documents that contain, confidential or sensitive commercial information, including information subject to disclosure restrictions imposed by law, in other proceedings, or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

7. Applicants object to the requests to the extent that they seek documents or information in a form not maintained by Applicants in the regular course of business or not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which Applicants object to performing.

8. Applicants object to the interrogatories and requests as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1995.

9. Applicants object to the extent the discovery requests seek to impose requirements that exceed those

SERVICE DATE - JANUARY 9, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33180

INDIANA & OHIO RAILWAY COMPANY--ACQUISITION EXEMPTION--
LINES OF THE GRAND TRUNK WESTERN RAILROAD INC.

PETITION FOR PROTECTIVE ORDER

Decided: January 6, 1997

On December 6, 1996, the Indiana & Ohio Railway Company (IORY), a Class III rail carrier, filed a notice of exemption under 49 CFR 1150, subpart E, which applies to qualifying transactions under 49 U.S.C. 10902, to acquire from the Grand Trunk Western Railroad Inc. (GTW) rail lines totaling approximately 146.1 miles between Diann, MI, and Springfield, OH. The lines are located between: (1) milepost 39.7 at Diann, MI, and milepost 107.29 at XN Station near Leipsic, OH; (2) milepost 128.3 at DT&I Junction near Lima, OH, and milepost 202.7 at Springfield, OH; and (3) the Ottawa Loop between mileposts 110.8 and 114.88, south of XN Station.

As part of the acquisition, IORY will be assigned GTW's overhead trackage rights totaling 107.6 miles over: (1) 20.7 miles of CSX Transportation, Inc. (CSXT) line between CSXT Milepost 155.2 at XN Station and CSXT Milepost 134.5 at DT&I Junction; (2) 3.5 miles of Indiana & Ohio Central Railroad, Inc. (IOCR) line between IOCR Milepost 129.1 at Maitland Junction and IOCR Milepost 132.6 at Cold Springs, OH; and (3) 83.4 miles of Consolidated Rail Corporation (Conrail) line between CR Milepost 16.3 at Springfield and CR Milepost 119.7 at Cincinnati, OH. IORY will also acquire incidental overhead trackage rights over 22.5 miles of GTW's rail line between GTW milepost 39.7 at Diann and GTW milepost 17.2 at Flat Rock, MI.

The United Transportation Union (UTU) filed a petition to stay and/or revoke the exemption claiming that the transaction is not subject to section 10902. Similar objections were filed by the Brotherhood of Locomotive Engineers (BLE), the Brotherhood of Maintenance of Way Employees (BMWE), and the Transportation Communications International Union (TCU).¹ A decision served December 20, 1996, stayed the effective date of the exemption and directed the parties to submit additional evidence and argument to enable the Board to make an informed decision on the issues in this proceeding.

On January 3, 1997, GTW petitioned for approval of a protective order pursuant to 49 CFR 1104.14 to protect confidential and proprietary information in materials sought by discovery, including the terms of contracts and shipper-specific traffic data.² GTW asserts that public disclosure of those materials is not required to dispose of the issues set forth in the Board's December 20, 1996 decision. Paragraph 2 of the protective order governs the production of material designated as highly confidential.

Good cause exists to grant the petition. Unrestricted disclosure of confidential, proprietary or commercially sensitive

¹ BLE, TCU and BMWE will be granted leave to intervene in this proceeding.

² On January 3, 1997, GTW states that it produced redacted versions of documents that BMWE had requested on December 30, 1996, subject to the execution of a Highly Confidential Undertaking form.

information and data could cause serious competitive injury to the parties. Issuance of the requested protective order ensures that such information and data produced by any party in response to a discovery request or otherwise will be used solely for purposes of this proceeding and not for any other business or commercial use. The requested protective order will facilitate the prompt and efficient resolution of this proceeding.

It is ordered:

1. BLE, BMW and TCU are granted leave to intervene.
2. The petition for a protective order is granted and the parties to this proceeding must comply with the protective order in the Appendix.
3. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

PROTECTIVE ORDER

1. To the extent that materials reflecting the terms of contracts, shipper-specific traffic data, other traffic data or other confidential or proprietary information are produced pursuant to a request for discovery by any party to this or any related proceedings, or are submitted in pleadings or other documents filed with the Board, such materials must be treated as confidential. Such materials, any copies, and any data derived therefrom:

a. Shall be designated and stamped as "CONFIDENTIAL" and shall be used solely for the purpose of this or any related proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.

b. Shall not be disclosed in any way or to any person without the written consent of the party producing the materials or an order of the Board or the Administrative Law Judge presiding in this or any related proceedings, except: (1) to employees, counsel or agents of the party requesting such materials, solely for use in connection with this or any related proceedings, or any judicial review proceeding arising therefrom, provided that such employee, counsel or agent has been given and has read a copy of this Protective Order and agrees to be bound by its terms prior to receiving access to such materials; and (2) to any participant in this or any related proceedings who is not an employee, counsel or agent of the requesting party only in the course of public hearings, if any, in such proceedings.

c. If produced through discovery, must be destroyed, and notice of such destruction served on the Board and the presiding Administrative Law Judge and the party producing the materials, at such time as the party receiving the materials either withdraws from this or any related proceedings, or at the completion of this and any related proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

d. If submitted in any pleadings or documents filed with the Board, may not be submitted unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order" in accordance with the procedure set forth at 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket except by order of the Board.

2. Any party producing material in response to requests for discovery by a party to this or any related proceedings, or submitting such material in a pleading or other document filed with the Board, may in good faith designate and stamp particular competitively sensitive material as "HIGHLY CONFIDENTIAL: OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY." If any party wishes to challenge such designation, the party may bring such matter to the attention of the Board or of the Administrative Law Judge presiding in this or any related proceeding. Material that is so designated shall not be disclosed except to outside counsel or outside consultants of the party requesting such materials, solely for use in connection with this or any related proceedings, or any judicial review proceeding arising therefrom,

provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order, agree to be bound by its terms prior to receiving access to such materials, and are legally able to receive such materials. Material designated as "HIGHLY CONFIDENTIAL" under this provision shall be subject to all of the other provisions of this Protective Order, including without limitation paragraph 1.

3. If any party intends to use "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material at hearings, if any, in this or in any related proceedings, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material to the Administrative Law Judge, the Board, or the reviewing court, as appropriate, under seal, and shall accompany such submission with a written request to the Administrative Law Judge, the Board or the court to (i) restrict attendance at the hearings during discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material, and (ii) restrict access to the portion of the record or pleadings reflecting discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with this Protective Order.

4. If any party intends to use "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in the course of any deposition in this or in any related proceedings, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent and all other counsel attending the deposition, and all portions of the deposition at which any "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material is used shall be restricted to persons who may review that material under this Protective Order. All portions of deposition transcripts or exhibits that consist of or disclose "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material shall be kept under seal and treated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.

5. To the extent that materials reflecting the terms of contracts, shipper-specific traffic data, other traffic data, or other proprietary information are produced by a party in this or any related proceedings and held and used by the receiving person in compliance with paragraph 1 of this Protective Order, such production, disclosure, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this or any related proceedings and will not be deemed a violation of 49 U.S.C. 11323 or 11904.

U N D E R T A K I N G

I, _____, have read the Protective Order governing the production of confidential documents in STB Finance Docket No. 33180, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in STB Finance Docket No. 33180 or any judicial review proceedings taken or filed in connection therewith ("the Proceedings"). I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of the Order and has executed an Undertaking in the form hereof.

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

Dated: _____

U N D E R T A K I N G

[HIGHLY CONFIDENTIAL MATERIAL]

As outside counsel [outside consultant] for
 whom I represent in [by whom I
 have been retained for purposes of] this proceeding, I have read
 the Protective Order governing the production of confidential
 documents in STB Finance Docket No. 33180, understand the same,
 and agree to be bound by its terms. I also understand and agree
 that, as a condition precedent to my receiving, reviewing, or
 using copies of any documents designated "HIGHLY CONFIDENTIAL --
 OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY," I will limit my use of
 those documents and the information they contain to this
 proceeding and any judicial review thereof, that I will take all
 necessary steps to assure that said documents and information
 will be kept on a confidential basis by any outside counsel or
 outside consultants working with me, that under no circumstances
 will I permit access to said documents or information by
 personnel of my client, its subsidiaries, affiliates, or owners,
 that at the conclusion of this proceeding, I will promptly return
 or destroy any copies of such designated documents obtained or
 made by me or by any outside counsel or outside consultants
 working with me to counsel for the originating party, provided,
 however, that outside counsel may retain file copies of pleadings
 filed with the Board. I further understand that I must destroy
 all other notes or other documents containing such highly
 confidential information in compliance with the terms of the
 Protective Order. Under no circumstances will I permit access to
 documents designated "HIGHLY CONFIDENTIAL--OUTSIDE
 COUNSEL/OUTSIDE CONSULTANTS ONLY" by, or disclose any information
 contained therein to, any persons or entities that I do not
 represent in [by which I have not been retained for purposes of]
 this proceeding.

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

COUNSEL [OUTSIDE CONSULTANT]

Dated: _____

21758
SEC

SERVICE DATE - APRIL 10, 1997
SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33180

INDIANA & OHIO RAILWAY COMPANY--ACQUISITION EXEMPTION--
LINES OF THE GRAND TRUNK WESTERN RAILROAD INC.

PETITION TO COMPEL DISCOVERY

Decided: April 9, 1997

The Brotherhood of Locomotive Engineers (BLE) filed a petition to compel Indiana & Ohio Railway Company and Grand Trunk Western Railroad Inc. (jointly: applicants) to produce a copy of a "Commercial, Haulage and Operating Agreement" dated February 14, 1997 (agreement). BLE asserts that, pursuant to 49 CFR 1114.30, its counsel requested permission from applicants to inspect and copy the complete agreement. However, BLE alleges that it was furnished a heavily redacted copy of the agreement which, it claims, prevents a full understanding of its contents.

BLE notes that the Board served a protective order under 49 CFR 1114.14 on January 9, 1997, to protect confidential and proprietary information in materials sought by discovery. BLE indicates that it signed the undertaking prescribed by the protective order and thus should be furnished with the full agreement.

BLE further states that the full agreement is necessary to determine the scope of the haulage arrangement entered into by the parties. BLE views the agreement as a "train" haulage arrangement comparable to trackage rights or joint use which requires Board approval.

Applicants reply that they provided BLE with a redacted copy of the agreement under the terms of the protective order. The copy provided BLE blacked out rate, traffic routing, and shipper specific information. Applicants also did not produce attachments to the agreement identified as Tab D, Locomotive/Telemetry Caboose Run Through Agreement, and Tab F, a Contingent Trackage Rights Agreement, claiming that BLE did not request copies of the attachments.

Applicants contend that the redacted information is irrelevant to BLE's argument that the agreement was a trackage rights or joint use arrangement. Applicants further assert that they would be seriously harmed if the redacted proprietary and commercially sensitive information were disclosed. Applicants are concerned that the excised information could be inadvertently disclosed. They claim that BLE has already disclosed sensitive information by comparing "car" and "train" haulage arrangements. Applicants also submitted to the Board, under seal, a full copy of the agreement, but did not include the attached agreements identified as Tab D or Tab F.

BLE replied¹ to clarify that it also requested access to the agreements in Tab D and Tab F. BLE further disputes applicants claim that it disclosed any confidential information and claims that this argument is a subterfuge to avoid discovery.

DISCUSSION AND CONCLUSIONS

BLE's motion to compel will be granted. Apparently, the applicants consider the agreement to be highly confidential. As noted above, the Board issued a protective order on January 9, 1997, to protect against disclosure of highly confidential material. BLE executed the prescribed understanding relating to highly confidential material when it requested permission to

¹ BLE's reply to applicants' replies will be accepted in the interest of a more complete record.

inspect the agreement. There is nothing of record indicating that BLE would improperly disclose any confidential material contained in the agreement. In these circumstances, applicants must produce the full agreement, with attachments.

It is ordered:

1. BLE's motion to compel discovery is granted.
2. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

STB

FD-33388

ID-181721

9-5-97

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ULMER & BERNE LLP
ATTORNEYS AT LAW

Internet Address
<http://www.ulmer.com>
E-mail Address
ichappell@ulmer.com

INAJO DAVIS CHAPPELL
Direct Dial (216) 902-8930

Bond Court Building
1300 East Ninth Street, Suite 900
Cleveland, Ohio 44114-1583
Fax (216) 621-7488

(216) 621-8400

Columbus Office
88 East Broad Street, Suite 1980
Columbus, Ohio 43215-3506
Fax (614) 228-8561
Telephone (614) 228-8400

September 4, 1997



VIA FEDERAL EXPRESS

Secretary Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Case Control Branch
Attn: STB Finance Docket No. 33388
1925 "K" Street N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 33388

Dear Secretary Williams:

Enclosed for filing please find an original and twenty-six (26) copies of Ashta Chemicals Inc. Request For Leave to Late-File Certificate of Service (ASHT-6) together with an original, ten (10) copies and a 3.5 diskette of ASHTA Chemicals Inc. Certificate of Service designated ASHT-7. Both the Certificate of Service and Request For Leave To Late-File Certificate of Service are saved on the disk in WordPerfect 5.2.

Please file the enclosed and return a date-stamped copy to our office in the enclosed self-addressed stamped envelope. I apologize for any inconvenience caused by our late filing.

Very truly yours,

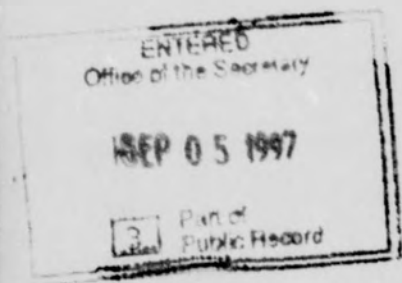
Inajo Davis Chappell
Inajo Davis Chappell

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49/hjk
Enclosures

181721

181721

ASHT-6



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388

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

**ASHTA CHEMICALS INC.
REQUEST FOR LEAVE TO LATE-FILE
CERTIFICATE OF SERVICE**

**By: Christopher C. McCracken, Esq.
Inajo Davis Chappell, Esq.
Ulmer & Berne
1300 East Ninth Street, Suite 900
Cleveland, Ohio 44114-1583
(216) 621-8400**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388



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

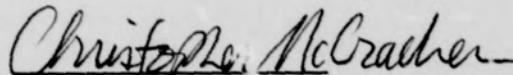
**ASHTA CHEMICALS INC.
REQUEST FOR LEAVE TO LATE-FILE
CERTIFICATE OF SERVICE**

ASHTA Chemicals Inc. hereby requests leave to late file its ASHTA Chemicals Inc. Certificate of Service (ASHT-7). As a result of an oversight and problems with our internal mail, we were unable to comply timely with Decision No. 21 by attending to filing and serving the pleadings on or before the Friday, August 29, 1997 deadline.

We have corrected the internal problem with receipt of mail and should have no future problem with timely filings. This late filing was not intended to cause any delay and does not operate to prejudice any of the parties in this proceeding. All parties of record should have now received copies of all pleadings previously filed by Ashta Chemicals Inc. in this proceeding.

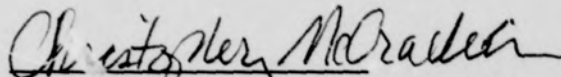
Based on the foregoing, we would ask that our Request For Leave To Late-File Certificate of Service (ASHT-7) be granted, and that the same, having been duly served on all parties of record, be accepted for filing by the Board.

Respectfully submitted,


CHRISTOPHER C. McCRACKEN, ESQ.
INAJO DAVIS CHAPPELL, ESQ.
Ulmer & Berne
1300 East Ninth Street, Suite 900
Cleveland, Ohio 44114-1583

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Ashta Chemicals Inc. Request For Leave To Late-File Certificate of Service have been served this 5th day of September, 1997, by first-class mail, postage prepaid on the Honorable Jacob Leventhal and on all Parties of Record in Finance Docket No. 33388.


CHRISTOPHER C. McCRACKEN, ESQ.
One of the Attorneys for Ashta Chemicals Inc.

STB

FD-33388

ID-181679

9-3-97

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LA ROE, WINN, MOERMAN & DONOVAN

ATTORNEYS AT LAW

3506 IDAHO AVENUE, N. W.

WASHINGTON, D. C. 20018

TELEPHONE (202) 362-3010

FAX (202) 362 3050



September 3, 1997

Vernon A. Williams, Secretary
Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: CSX Corporation and CSX Transportation Inc., Norfolk
Southern Corporation and Norfolk Southern Railway
Company - Control and Operating Leases/Agreements -
Conrail Inc., and Consolidated Rail Corporation,
Finance Docket No. 33388

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the Motion of the Port Authority of New York and New Jersey for Modification of the Protective Order (NYNJ-8) for filing in the above-captioned proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

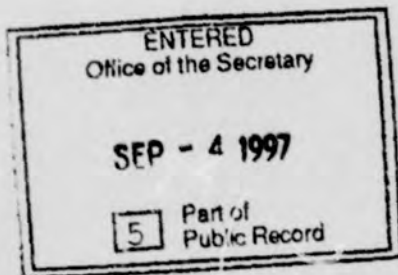
Very truly yours,

Paul M. Donovan

Enclosure

cc: The Honorable Jacob Leventhal
All Parties of Record

ENTERED	
Office of the Secretary	
SEP - 4 1997	
5	Part of Public Record



BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 33388

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

MOTION OF THE PORT AUTHORITY OF NEW YORK AND
NEW JERSEY FOR MODIFICATION OF THE PROTECTIVE ORDER

The Port Authority of New York and New Jersey (the Port Authority) hereby moves the Board to modify the Protective Order issued in this proceeding to permit Hugh H. Welsh, Deputy General Counsel of the Port Authority to review "Highly Confidential" information to the same extent as outside counsel and under the same restrictions as apply to outside counsel. In support of this motion, the Port Authority says:

1. Mr. Welsh is a member of the New Jersey and District of Columbia bars. He has over 30 years experience; he has presented testimony before the United States Congress; he has been involved in proceedings before several federal agencies including the former Interstate Commerce Commission; and he has argued numerous cases before the federal courts including the United States Supreme Court.

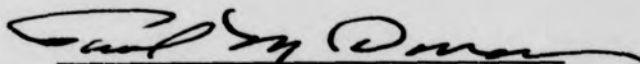
2. Mr. Welsh is an attorney of unquestioned integrity.

3. The Port Authority appears in this proceeding not as a commercial party but as a bi-state agency of the States of New York and New Jersey whose charge is to protect the public interest of those states. Accordingly, the commercial harm that could befall applicants as a result of information disclosure to commercial parties is not applicable in Mr. Welsh's case.

4. As Deputy General Counsel of the Port Authority it is Mr. Welsh's responsibility to report to the Board of Commissioners of the Port Authority and make recommendations to that Board with respect to the position of the Port Authority in this matter. To fulfill his responsibilities, Mr. Welsh must be able actively to participate in these proceedings and to review all portions of the record not merely portions of the record.

WHEREFORE, in view of the foregoing, the Port Authority submits that the Protective Order be modified to permit Mr. Welsh to sign the appropriate undertaking and review "Highly Confidential" materials and information.

Respectfully submitted,

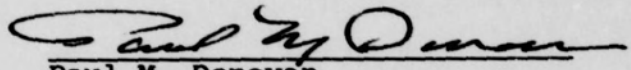


Paul M. Donovan
LaRoe, Winn, Moerman & Donovan
3506 Idaho Avenue, N.W.
Washington, DC 20016
(202) 362-3010

Attorney for
The Port Authority of New York
and New Jersey

CERTIFICATE OF SERVICE

I, Paul M. Donovan, certify that on September 3, 1997, I caused to be served by Facsimile on Applicants' counsel, and by first class mail, postage prepaid, upon all other parties copies of the foregoing Motion of the Port Authority of New York and New Jersey for Modification of the Protective Order.


Paul M. Donovan

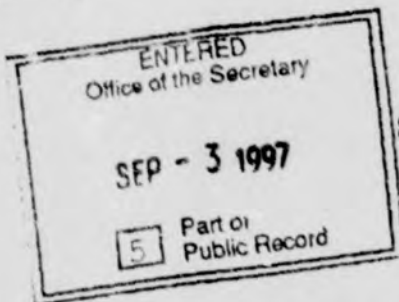
STB

FD-33388

ID-181673

9-3-97

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181673

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 33288



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

**MOTION OF THE UNITED TRANSPORTATION UNION GO-851 FOR
LEAVE TO LATE-FILE A NOTICE OF INTENT TO PARTICIPATE**

United Transportation Union GO-851 ("UTU GO-851") hereby requests that it be added to the service list which was compiled by the Surface Transportation Board ("STB") and published in Decision No. 21 in this proceeding, served August 19, 1997.

Other UTU entities filed their Notices of Intent to Participate in this proceeding with the STB prior to the filing deadline of August 7, 1997. However, GO-851 may have an independent interest in this proceeding from those of the other UTU entities. As a result, UTU GO-851 inadvertently failed as required to file a notice of appearance.

UTU GO-851 wishes to participate in this proceeding in order to possibly file Comments on behalf of its members by the due date of October 21, 1997. The proposed transaction will have a significant effect upon UTU GO-851's membership.

Adding UTU GO-851 to the service list at this time will not unduly complicate or delay this proceeding or its procedural schedule. UTU GO-851's Comments will provide the important perspective of the employees who will be affected by this proposed transaction in a significant way, for the STB's consideration.

For these reasons, UTU-GO 851 hereby files this motion for leave to late-file its notice of intent to participate, and requests that the STB add the following to the service list in this proceeding as Party of Record:

M. W. Currie
UTU GO-851, General Chairperson
3035 Powers Avenue, Suite 2
Jacksonville, FL 32250

Represents: United Transportation Union GO-851

Respectfully submitted,

M. W. Currie ^{DRE}

M. W. Currie
UTU GO-851, General Chairperson
3035 Powers Avenue, Suite 2
Jacksonville, FL 32250

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's GO-851's Leave to Late-File a Notice of Intent to Participate has been served this 2nd day of September, 1997 upon applicants' representatives and all known parties of record in Finance Docket No. 33388, and on Hon. Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, D.C. 20426.

M. W. Currie JRE
Mitchell W. Currie

STB

FD

33388

8-26-97

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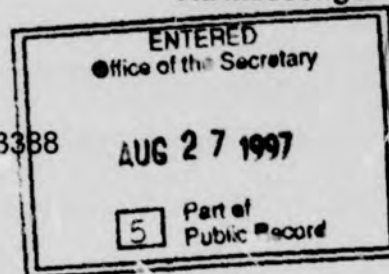
THE AMERICAN SHORT LINE RAILROAD ASSOCIATION

Alice C. Saylor
Vice President & General Counsel

1120 G Street, N.W., Suite 520
Washington, D.C. 20005-3809
(202) 628-4500
Fax: (202) 628-6430

August 26, 1997
Via Messenger

Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K. Street, N.W.
Washington, D.C. 20423-0001



Re: STB Finance Docket No. 33388, CSX CORPORATION AND CSX
TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING
LEASES/AGREEMENTS -- CONRAIL, INC. AND CONSOLIDATED RAIL
CORPORATION

**MOTION OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION FOR LEAVE
TO LATE-FILE A NOTICE OF INTENT TO PARTICIPATE**

Dear Sir:

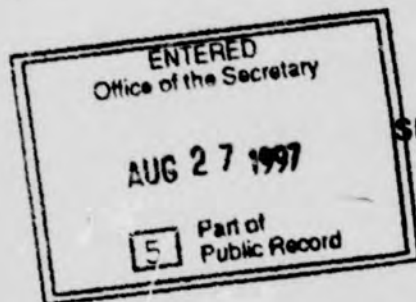
Attached for filing with the Surface Transportation Board in the above-captioned proceeding are the original and 25 copies of the Motion of the American Short Line Railroad Association for Leave to Late-File a Notice of Intent to Participate.

A copy is being served today on all Parties of Record, including applicants' representatives.

Please date-stamp the copy of this transmittal letter to indicate receipt and return it to the messenger. Thank you.

Sincerely,

Alice C. Saylor
Alice C. Saylor



Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.

STB Finance Docket No. 33388



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

MOTION OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION FOR LEAVE TO LATE-FILE A NOTICE OF INTENT TO PARTICIPATE

The American Short Line Railroad Association (ASLRA) hereby requests that it be added to the service list which was compiled by the Surface Transportation Board (STB) and published in Decision No. 21 in this proceeding, served August 19, 1997.

ASLRA filed its Notice of Intent to Participate in this proceeding with the STB prior to the filing deadline of August 7, 1997. However, ASLRA inadvertently failed to provide a copy, as required, to Administrative Law Judge Leventhal and to each of the applicants' representatives. ASLRA's representative was not included on the service list issued on August 19, 1997.

ASLRA wishes to participate in this proceeding in order to file Comments on behalf of its 420 short line and regional railroad members by the due date of October 21, 1997. The proposed transaction will have a significant effect upon ASLRA's membership. A total of more than 270 short line and regional railroad members of ASLRA connect with one or more of the parties (CSX, Norfolk Southern, and/or Conrail).

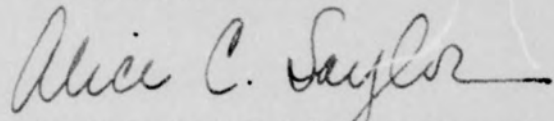
Adding ASLRA to the service list at this time will not unduly complicate or delay this proceeding or its procedural schedule. ASLRA's Comments will provide the important perspective of small railroads, which will be affected by this proposed transaction in a significant way, for the STB's consideration.

For these reasons, ASLRA hereby files this motion for leave to late-file its notice of intent to participate, and requests that the STB add the following to the service list in this proceeding as a Party of Record:

Alice C. Saylor, VP & General Counsel
1120 G. Street, N.W.; Suite 520
Washington, D.C. 20005-3889

Represents: American Short Line Railroad Association

Respectfully submitted,

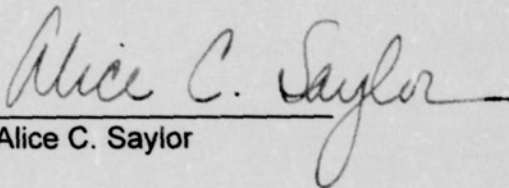
A handwritten signature in cursive script that reads "Alice C. Saylor". The signature is written in dark ink and is positioned above the printed name and contact information.

Alice C. Saylor, VP & General Counsel
American Short Line Railroad Assn.
1120 G. Street, N.W., Suite 520
Washington, D.C. 20005-3889
(202) 628-4500; Fax (202) 628-6430

Date: August 26, 1997

Certificate of Service

I hereby certify that I have today served a copy of this Motion of the American Short Line Railroad Association for Leave to Late-File a Notice of Intent to Participate on all Parties of Record on the service list in this proceeding, including applicants' representatives, by first class U.S. mail, postage prepaid.



Alice C. Saylor

Date: August 26, 1997

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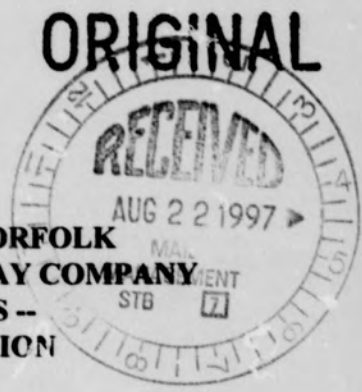
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NYSEG-5

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

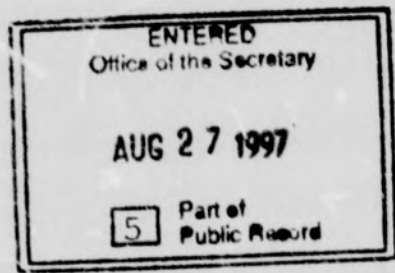
FINANCE DOCKET NO. 33388 (Sub. No. 38)

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



PETITION OF NYSEG FOR WAIVER AND/OR CLARIFICATION

[Handwritten signature]



**WILLIAM A. MULLINS
SANDRA L. BROWN
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
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WASHINGTON, D.C. 20005-3314
202 274-2950 (PHONE)
202-274-2994 (FAX)**

ATTORNEYS FOR NEW YORK STATE ELECTRIC AND GAS

August 22, 1997

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33388 (Sub. No. 35)

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

PETITION OF NYSEG FOR WAIVER AND/OR CLARIFICATION

As explained in its Description of Anticipated Responsive Application, filed concurrently herewith (NYSEG-6), New York State Electric and Gas ("NYSEG") is seeking trackage rights over certain lines currently owned by Conrail in order to preserve the benefits and efficiencies that NYSEG presently enjoys due to the fact that Conrail has the ability to serve all of NYSEG's origins and all of its destinations. As explained in NYSEG-6, these efficiencies and single-line benefits will be eliminated by the proposed transaction without any corresponding benefit to NYSEG. Pursuant to the procedures adopted by the Surface Transportation Board ("Board") in Decision No. 6 (STB served May 30, 1997), NYSEG hereby submits this Petition for Waiver and/or Clarification of certain Board requirements applicable to NYSEG's proposed responsive application.

1. NYSEG requests clarification that a responsive applicant seeking only trackage rights as a condition does not require historical documentation (*see* 49 C.F.R. § 1105.8(b)(3)).

The regulations (49 C.F.R. § 1105.6(c)(4) and 1105.8(b)(3)) expressly exclude trackage rights applications from the class of transactions that normally require environmental and/or historical documentation. Notwithstanding the regulations, it is NYSEG's understanding that

¹ Finance Docket 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation*, Decision No. 6 (STB served May 30, 1997).

Decision No. 6 requires a responsive applicant who seeks trackage rights to file either a responsive environmental report or a verified statement of no significant impact, even if the responsive trackage rights request will be based upon information already contained within the overlying Railroad Control Application and the corresponding environmental documentation contained therein. Nothing contained within Decision No. 6, however, refers to whether or not the requirement to file an environmental report or a verified statement of no significant impact also requires a responsive applicant to comply with the historical documentation requirements contained at 49 C.F.R. § 1105.8(b)(3). Accordingly, in order to avoid uncertainty, NYSEG requests the Board to clarify that responsive applicants seeking only trackage rights are exempt from the requirement of filing historical documentation.

2. Finally, NYSEG seeks waiver of all requirements contained in 49 C.F.R. § 1180 for the inclusion of information from "applicant carriers" in its responsive application.

49 C.F.R. § 1180 requires that responsive applications include, among other things, certain information respecting "applicant carriers," a term which includes "[a]pplicant, all carriers related to the applicant, and all other carriers involved in the transaction." 49 C.F.R. § 1180.3(b). Responsive applicant, NYSEG, is not a carrier. Accordingly, a waiver from the provisions of 49 C.F.R. § 1180 is necessary because NYSEG is a non-carrier seeking a trackage rights condition on behalf of a suitable third-party carrier for the purpose of preserving the single-line benefits we now experience. NYSEG would prefer that such trackage rights be exercised by a Class I carrier, such as either CSX or NS.² However, depending on the positions

² In the event the Board grants NYSEG's responsive application and NYSEG selects either CSX or NS to be its rail service provider, a waiver of the requirements contained within 49 C.F.R. Part 1180 would be especially appropriate because all of the required information would have already been provided by CSX and NS in the Railroad Control Application.

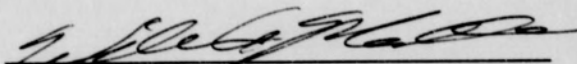
taken by the rail carriers during settlement negotiations (assuming Applicants are willing to enter into such negotiations) or the conditions imposed by the Board with respect to any grant of merger authority, NYSEG, if its responsive application is granted by the Board, may find it necessary to enlist the services of a suitable new carrier to operate the trackage rights requested. Because the identity of the trackage rights operator/recipient is thus presently uncertain and may not be resolved when responsive applications are due, NYSEG may be unable to supply the information normally expected from applicant carriers in trackage rights proceedings, as specified in e.g., § § 1180.6(a)(5) and 1180.6(b)(1)-(6).

Rather than requiring "applicant carrier" information as part of NYSEG's responsive trackage rights application, the Board should require such information to be filed only if and when the Board grants NYSEG's responsive application and the selected carrier nominee is objected to by Applicants, at which point the suitability of the nominee could be determined by the Board in subsequent proceedings. If either CSX or NS is selected as the successful carrier, the Board could address any necessary information at the time a trackage rights petition or notice of exemption was submitted to the Board.

NYSEG's waiver request is identical to similar waiver requests sought by other non-carrier entities who filed responsive applications in previous merger proceedings and granted by the Board. *See* Finance Docket 32760, *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Decision No. 12 (STB served Feb. 12, 1996)(decision granting waiver requests filed by IBP, Inc., Wisconsin Electric Power Company, Commonwealth Edison Company, Entergy Services, Inc,

Arkansas Power & Light Company, and Gulf States Utility Company). The decision in F.D. No. 32760 constitutes strong precedent for granting the relief requested herein.

Respectfully submitted, this 22nd day of August, 1997.

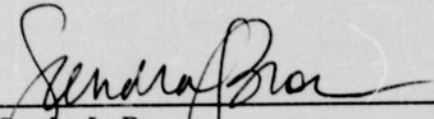


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ATTORNEYS FOR NEW YORK STATE
ELECTRIC AND GAS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Petition for Waiver and/or Clarification of New York State Electric and Gas" (NYSEG-5) was served this 22nd day of August, 1997, by facsimile transmission to Applicants' representatives, to all other persons on the Restricted Service List in this proceeding and to Judge Leventhal.



Sandra L. Brown
Attorney for New York State Electric & Gas

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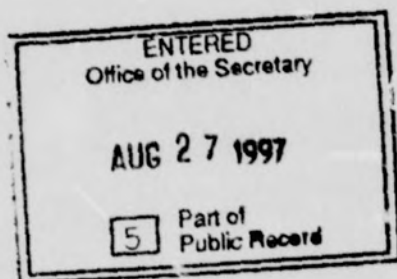
BEFORE THE
SURFACE TRANSPORTATION BOARD



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

Finance Docket No. 33388

PETITION OF THE
STATE OF NEW YORK
FOR WAIVER



THE STATE OF NEW YORK BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, NW.
Washington, D.C. 20036

Dated: August 22, 1997

By: William L. Slover
Kelvin J. Dowd
Jean M. Cunningham
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 341-7170

Attorneys and Practitioners

CSX CORPORATION AND CSX)
TRANSPORTATION, INC., NORFOLK)
SOUTHERN CORPORATION AND) Finance Docket No. 33388
NORFOLK SOUTHERN RAILWAY)
COMPANY -- CONTROL AND OPERATING)
LEASES/AGREEMENTS -- CONRAIL, INC.)
AND CONSOLIDATED RAIL CORPORATION)

Pursuant to Decision No. 12 in this proceeding, served July 23, 1997, the State of New York, acting by and through its Department of Transportation ("New York"), hereby submits this Petition for Waiver of certain Federal regulations otherwise applicable to the submission of responsive applications.

1. First, New York requests waiver of all requirements of 49 C.F.R. Part 1180 which call for the inclusion of information from "applicant carriers" in its responsive application.

As explained in the Description of Anticipated Responsive Application filed contemporaneously herewith, New York expects to seek trackage rights over certain line segments owned by Conrail, and concurrent trackage rights over others currently operated by Conrail that also are subjects of the Application, on behalf of a rail carrier other than Applicants. New York itself

is not a carrier, and likely will not be in a position to identify the trackage rights operator/recipient at least until the positions of other railroad parties are finalized and/or the Board renders a final decision on the merits of the Application and any related conditions. Because the prospective tenant carrier is not yet known, and may not be known when responsive applications are due on October 21, 1997,¹ New York is and may remain unable to supply the information normally expected from applicant carriers in trackage rights proceedings. See, e.g. 49 C.F.R. Part 1180.6(a)(5) and (b)(1)-(6).

Rather than requiring "applicant carrier" information as part of New York's responsive application, the Board should require such information to be filed only if and when New York's carrier nominee is objected to by Applicants, at which point the suitability of the nominee could be determined by the Board in subsequent proceedings. The Board and its predecessor have granted similar relief in analogous circumstances in prior railroad mergers, and likewise should do so here. See F.D. No. 32760, Union Pacific Corporation, Et Al. -- Control and Merger -- Southern Pacific Rail Corporation, Et Al., Decision No. 12 served February 15, 1996 at 4; F.D. No. 32549, Burlington Northern Inc, and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa

¹Nothing in the Board's regulations prevents the Board from conditioning approval of the primary application on the Applicants' agreement to grant trackage rights to any suitable rail carrier designated by New York, rather than to a specific railroad.

Fe Railway Company, Decision No. 15 served April 20, 1995.

2. Second, New York requests waiver of the six-month pre-notification requirement for applications requiring preparation of an environmental impact statement. 49 C.F.R. Part 1105.10(a)(1).

In the ordinary course, trackage rights applications are wholly exempt from environmental and historic impact requirements. See 49 C.F.R. Part 1105.6(c)(4) and 1105.8(b)(3). While in this case the Board has provided for the possibility that a responsive environmental report may be necessary under certain circumstances,² application of the six-month pre-notification rule is so inconsistent with the structure of the procedural schedule that compliance effectively would be impossible. In anticipation of the actual filing of its responsive application, and consistent with the Board's directive,³ New York will consult with the Board's Section of Environmental Analysis in order to determine whether the trackage rights to be sought raise any prospect of a significant environmental impact. In accordance with analogous precedent, these consultations should be deemed to satisfy the erstwhile requirements of 49 C.F.R. Part 1105.10(a)(1). See F.D. No. 32760, supra Decision No. 12 at 4.

²See Decision No. 12 served July 23, 1997 at 20.

³Id.

WHEREFORE, for good cause shown, New York requests that the Board grant the waivers described herein.

Respectfully submitted,

THE STATE OF NEW YORK BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, NW.
Washington, D.C. 20036

Dated: August 22, 1997

By: William L. Slover
Kelvin J. Dowd
Jean M. Cunningham
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorneys and Practioners

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997,
I caused copies of the foregoing petition to be served by hand
upon the following:

The Honorable Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, N.E.
Suite 11F
Washington, D.C. 20426

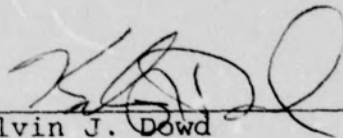
Dennis G. Lyons, Esq.
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1300 19th Street, N.W.
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1330 Connecticut Ave., N.W.
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Zuckert, Scoutt & Rasenberger, L.L.P.
888 17th Street, N.W.
Washington, D.C. 20006-3939

and by first class U.S. mail, postage prepaid, on all other
parties of record.


Kelvin J. Dowd

STB

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BEFORE THE
SURFACE TRANSPORTATION BOARD

VRE-5

I

Finance Docket No. 33388

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

Finance Docket No. 33388 (Sub-No. 37)

NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND
POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION
-- OPERATING RIGHTS --
LINES OF CSX TRANSPORTATION, INC., NORFOLK SOUTHERN
RAILWAY COMPANY AND CONSOLIDATED RAIL CORPORATION

**PETITION FOR CLARIFICATION OR WAIVER OF NORTHERN VIRGINIA
TRANSPORTATION COMMISSION AND POTOMAC AND
RAPPAHANNOCK TRANSPORTATION COMMISSION**

Stephen A. MacIsaac
Deputy County Attorney
Prince William County
One County Complex Court
Prince William, VA 22192
(703) 792-6620

Kevin M. Sheys
Thomas Lawrence III
Thomas J. Litwiler
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Counsel for Northern Virginia Transportation
Commission and Potomac and Pappahannock
Transportation Commission

Dated: August 22, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

Finance Docket No. 33388 (Sub-No. 37)

NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND
POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION
-- OPERATING RIGHTS --
LINES OF CSX TRANSPORTATION, INC., NORFOLK SOUTHERN
RAILWAY COMPANY AND CONSOLIDATED RAIL CORPORATION

**PETITION FOR CLARIFICATION OR WAIVER OF NORTHERN VIRGINIA
TRANSPORTATION COMMISSION AND POTOMAC AND
RAPPAHANNOCK TRANSPORTATION COMMISSION**

Pursuant to 49 C.F.R. § 1180.4(f) and Decision Nos. 6 and 12 herein, served on May 30, 1997 and July 23, 1997, respectively, Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (collectively, the "Commissions"), co-owners of Virginia Railway Express ("VRE"), hereby submit this petition for clarification that certain conditions to be sought by the Commissions in connection with any Surface Transportation Board approval of the Primary Application herein do not require the filing of a responsive application under 49 C.F.R. § 1180.4(d)(4). Alternatively, the Commissions request clarification or waiver of certain informational requirements contained in the Board's Railroad Consolidation Procedures, 49 C.F.R. § 1180, which would otherwise govern the responsive application filed in this proceeding by the Commissions.

VRE is a commuter railroad which operates 26 passenger trains per weekday between Washington, DC and Fredericksburg and Manassas, Virginia over approximately 90 route miles of rail line owned by CSX Transportation, Inc. ("CSXT"), Norfolk Southern Railway Company ("NSR") and Consolidated Rail Corporation ("Conrail"), all Primary Applicants herein. As is explained more fully in the Description of Anticipated Responsive Application (VRE-4) filed concurrently herewith, the Commissions intend to seek operating rights for VRE commuter trains on certain CSXT, NSR and Conrail rail lines as a condition to any approval of the Primary Application.

Because the commuter rail operating rights which the Commissions will seek would not normally require Board authorization or approval, the Commissions do not believe that a responsive application is required to seek those rights as conditions in this proceeding. The Commissions request that the Board confirm this understanding. If a responsive application is required, the Commissions believe that certain information and data required by the Board's Railroad Consolidation Procedures would not materially assist the Board or other parties in evaluating such an application and would be an undue burden to prepare. The Commissions would thus request that the Board waive or clarify those information requirements in the manner suggested below.

1. Need for Responsive Application

The Board's Railroad Consolidation Procedures provide that a responsive application is necessary where the relief or condition sought in response to a Primary Application would require Board authorization if accomplished voluntarily outside of a control or merger context:

Responsive applications include inconsistent applications inclusion applications, and any other affirmative relief that requires an application, petition, notice, or any other filing to be submitted to

the Board (such as trackage rights, purchases, constructions, operation, pooling, terminal operations, abandonments, and other types of proceedings not otherwise covered).

49 C.F.R. § 1180.3(h) (as revised by Railroad Consolidation Procedures -- Modification of Fee Policy, Ex Parte No. 556 (STB served March 4, 1997 and May 5, 1997)). Decision No. 12 in this proceeding likewise provides that descriptions of responsive applications "must state that the commenting railroad intends to file an application seeking affirmative relief that requires an application to be filed with the Board (e.g., divestiture, purchase, trackage rights, inclusion, construction or abandonment)" Decision No. 12 (STB served July 23, 1997) at 20.¹ Phrased differently, where the Board would not otherwise have jurisdiction over the transaction encompassed within a proposed condition, a responsive application is not necessary.

Here, the Commissions will seek operating rights on rail lines of CSXT, NSR and Conrail for purposes of conducting commuter rail operations. Under the ICC Termination Act of 1995 ("ICCTA"), Pub. L. No 104-88, 109 Stat. 803, the Board "does not have jurisdiction under this part over mass transportation provided by a local governmental authority." 49 U.S.C. § 10501(c)(2). The terms "local governmental authority" and "mass transportation" are defined in Section 10501(c)(1)(A) and (B), respectively, largely by cross-reference to 49 U.S.C. § 5302(a). The definitions in Section 5302(a), in turn, plainly encompass the Commissions as "local

¹ The recent revisions to the railroad consolidation fee policy confirm this relationship between responsive applications and transactions normally requiring Board approval by providing that "[t]he fee for any other types of responsive applications [i.e., that are not inconsistent applications] is the fee for the particular type of proceeding set forth in 49 CFR 1002.2(f)." 49 C.F.R. § 1180.4(d)(4)(ii).

governmental authorities" and encompass the commuter rail service provided by VRE as "mass transportation."²

The Conference Report accompanying the ICCTA explained that Congress "change[d] the statement of agency jurisdiction [in new Section 10501] to reflect curtailment of regulatory jurisdiction in areas such as passenger transportation," and further explained that "local governmental authorities are to be excluded from economic regulation (rates, fares, entry and exit) under the amended statute." H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 167, 184.³ In decisions issued since enactment of the ICCTA, the Board has acknowledged the absence of jurisdiction under Section 10501 over commuter rail operations. See Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois, d/b/a Metra -- Exemption -- Tariff Filing Requirements, No. 41506 (STB served March 29, 1996).

Even before ICCTA's passage, the Interstate Commerce Commission had consistently held that grants of "trackage rights" to governmental transportation authorities for commuter rail operations were not subject to the agency's jurisdiction and did not require ICC approval. Orange County Transp. -- Exempt. -- Atchison, T. & S.F. Ry. Co., 10 I.C.C.2d 78, 90 (1994); Southern

² 49 U.S.C. § 5302(a)(6) provides that "local governmental authority" includes a political subdivision of a state, an authority of at least one state and a public corporation, board, or commission established under the laws of a state. 49 U.S.C. § 5302(a)(7) defines "mass transportation" as "transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter or sightseeing transportation."

³ In describing the Senate's prior, similar version of the legislation, the Conference Report stated that "[t]he Board's rail jurisdiction would be limited to freight transportation, because rail passenger transportation today [other than Amtrak] is now purely local or regional in nature and should be regulated (if at all) at that level." H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 167.

Pac. Transp. Co. -- Aban. -- L.A. County, CA, 9 I.C.C.2d 385, 391-392 (1993); see also Los Angeles County Transportation Commission -- Petition for Exemption -- Acquisition from Union Pacific Railroad Company, Finance Docket No 32374, et al. (STB served July 23, 1996).⁴

Particularly given the reinforcement of this law by the ICCTA, the Commissions believe that their request for commuter rail operating rights on rail lines of CSXT, NSR and Conrail would not otherwise require Board authorization and therefore need not be the subject of a responsive application herein.

The Commissions thus respectfully request that the Board clarify that the Commissions are not required to file a responsive application in this proceeding. If this request is granted, the Commissions will pursue their anticipated request for conditions in their comments and evidentiary submission due on October 21, 1997.

2. Market Impact Analyses

If the Board denies the foregoing request and requires the Commissions to file a responsive application, the Commissions alternatively seek waiver of the informational requirements of 49 C.F.R. § 1180.7, so that they will not need to provide market impact analyses in connection with their responsive application. As the regulation itself makes clear, these analyses relate to freight traffic and competitive considerations, and would not be relevant to the commuter rail operating conditions that the Commissions intend to seek.⁵ A requirement that the

⁴ These decisions relied in part on the intrastate nature of the particular commuter rail operations at issue. Any distinction between intrastate and interstate rail passenger services was eliminated by the ICCTA.

⁵ See 49 C.F.R. § 1180.7 ("[A]pplicants shall submit analyses of the impacts of the proposed transaction -- both adverse and beneficial -- on inter- and intramodal competition for freight surface transportation in the regions affected by the transaction . . .").

Commissions provide such information would be burdensome and confusing, and would not assist the Board and other parties in evaluating the merits of the Commissions' responsive application. Waiver of the information specified in Section 1180.7 is reasonable and appropriate under the circumstances.

3. Definition of "Applicant Carriers"

49 C.F.R. § 1180.3(b) defines "applicant carriers" to include the "[a]pplicant, all carriers related to the applicant, and all other carriers involved in the transaction" (emphasis omitted). VRE seeks clarification or waiver of Section 1180.3(b) to exclude the Primary Applicants from the definition of "applicant carriers," so that the Commissions will not need to provide separate information on the Primary Applicants in connection with the responsive application. Provision of such information would be burdensome to the Commissions and would not materially assist the evaluation of the responsive application. Furthermore, sufficient information regarding the Primary Applicants should already be available in the Primary Application.

The Board and its predecessor have consistently granted prior requests for similar waiver or clarification. E.g., Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760, Decision No. 14 (STB served February 15, 1996) at 3; Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control -- Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Company, Finance

Docket No. 32133, Decision No. 7 (ICC served June 8, 1993) at 1. Such relief is warranted here as well.

WHEREFORE, the Commissions respectfully request that the Board determine that a responsive application is not required for the commuter rail operating conditions which the Commissions anticipate seeking here, or alternatively that the Board grant waiver or clarification of its Railroad Consolidation Procedures as specified above.

Respectfully submitted,



Stephen A. MacIsaac
Deputy County Attorney
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One County Complex Court
Prince William, VA 22192
(703) 792-6620

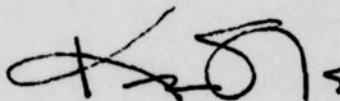
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Counsel for Northern Virginia Transportation
Commission and Potomac and Rappahannock
Transportation Commission

Dated: August 22, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, a copy of the foregoing **Petition for Clarification or Waiver of Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (VRE-5)** was served by first class mail, postage prepaid, upon Administrative Law Judge Jacob Leventhal and all Parties of Record on the Service List.

A handwritten signature in black ink, appearing to read 'K. Sheys', is written over a horizontal line.

Kevin M. Sheys

STB

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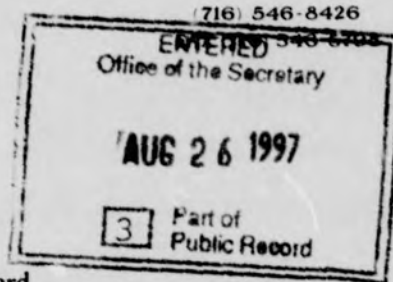
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BRANCH, WISE, DEWART & COOPER
ATTORNEYS AND COUNSELORS AT LAW
65 WEST BROAD STREET
ROCHESTER, NEW YORK 146.4-2293

SERGEANT W. WISE
WILLIAM F. DEWART, JR.
AUDREY COOPER



August 21, 1997



Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K. Street, NW
Washington, DC 20423-0001

RE: **STB Finance Docket No. 33388 (Sub - No. 39) CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation (Livonia, Avon & Lakeville Railroad Corporation) (LAL File No. 9957)**

Dear Secretary Williams:

For filing in your office we enclose the original and twenty-five (25) copies of the following both dated August 21, 1997 on behalf of the LAL:

1. LAL - 2: DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF LAL
2. LAL - 3: PETITION OF LAL FOR CLARIFICATION OR WAIVER

Kindly arrange to have the enclosed extra copy of this letter stamped as "Received" and returned to me in the return envelope attached. Should you have any further questions with respect to the foregoing or the enclosures please contact me.

Sincerely,

Sergeant W. Wise

Sergeant W. Wise, Counsel
LALRR

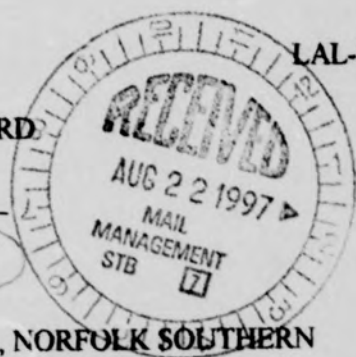
SWW/ds

ORIGINAL

181444

LAL-3

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33388

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

Finance Docket No. 33388 (Sub No. 39)

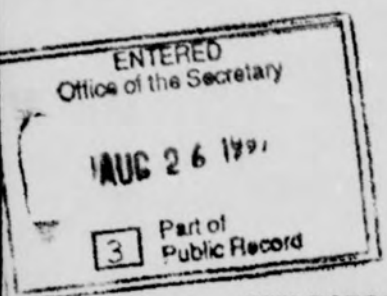
LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION -
PURCHASE - LINE OF CONSOLIDATED RAIL CORPORATION

**PETITION OF LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
FOR CLARIFICATION OR WAIVER**

Sergeant W. Wise, Esq.
Livonia, Avon & Lakeville Railroad Corporation
5769 Sweeteners Boulevard
P.O. Box 190-B
Lakeville, NY 14480
(716) 346-2090

Counsel for Livonia, Avon & Lakeville
Railroad Corporation

Dated: August 21, 1997



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY
– CONTROL AND OPERATION LEASES/AGREEMENTS –
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Finance Docket No. 33388 (Sub-No. 39)

LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION –
PURCHASE – LINE OF CONSOLIDATED RAIL CORPORATION

**PETITION OF LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
FOR CLARIFICATION OR WAIVER**

Pursuant to 49 C.F.R. § 1180.4(f) and Decision Nos. 6 and 12 herein, served on May 30, 1997 and July 23, 1997, respectively, Livonia, Avon & Lakeville Railroad Corporation ("LAL") hereby submits this petition for clarification or waiver of certain requirements of the Board's Railroad Consolidation Procedures, 49 C.F.R. § 1180, which might otherwise apply to the responsive application which LAL expects to file in this proceeding on or before October 21, 1997.

LAL is a class III railroad which owns and operates approximately 30 miles of rail line between Chili, New York, immediately south of Rochester, and Lakeville, New York. LAL also separately operates approximately 35 miles of trackage between Hammondsport, Bath and Wayland, New York owned by the Steuben County Industrial Development Authority. As is more fully explained in LAL's Description of Anticipated Responsive Application (LAL-2), filed concurrently herewith, LAL expects that it will file a responsive application seeking to acquire from Consolidated Rail Corporation ("Conrail") approximately three-quarters of a route mile of trackage constituting Conrail's Genesee

Junction yard in Chili, New York. That yard is composed of three tracks and is utilized to interchange traffic between LAL and Conrail.

LAL believes that certain information and data required by the Board's Railroad consolidation procedures would not materially assist the Board or other parties in evaluating LAL's responsive application, and that preparation of such information would be unduly burdensome on LAL. LAL thus respectfully requests that the Board waive or clarify those information requirements in the following manner:

1. Minor Transaction. LAL seeks clarification that its anticipated responsive application involves a "minor" transaction as defined in 49 C.F.R. § 1180.2(c). The Board's regulations previously provided a rebuttable presumption that responsive applications which were not major transactions were considered significant transactions. Former 40 C.F.R. § 1180.4(d)(4)(ii) (1996); see also 49 C.F.R. § 1180.4(d)(4)(iv). The Board recently eliminated that presumption, specifically noting that "under current Board practice, responsive applications may also be found to be minor transactions." Railroad Consolidation Procedures - Modification of Fee Policy, Ex Parte No. 556 (STB served March 4, 1997) at 3. A responsive application proposing a minor transaction must contain the information specified in 49 C.F.R. § 1180.6(a) and the operational data required by 49 C.F.R. § 1180.8(b). Significant transactions require additional information, including market analyses (49 C.F.R. § 1180.7), more detailed operational data (49 C.F.R. § 1180.8(a)) and information relating to corporate ownership, function and relationships (49 C.F.R. § 1180.6(c)).

The responsive application that LAL anticipates filing clearly is not a major transaction, because it does not involve the control or merger of two or more Class I railroads. It is therefore necessarily either a significant transaction or a minor transaction. 49 C.F.R. § 1180.2(a), (b) and (c). Section 1180.2(h) provides that a significant transaction is one of national or regional transportation

significance, and that a transaction is not significant if it clearly will not have any anticompetitive effects. Here, LAL seeks to acquire less than one mile of yard trackage from Conrail. That trackage is used today solely to conduct interchange between LAL and Conrail, and has no on-line shippers. The proposed acquisition will allow LAL to interchange traffic with a second rail carrier, and thus clearly will have no anticompetitive effect. Given the limited scope of the relief which it intends to seek LAL believes its anticipated responsive application should be considered a minor transaction.

The Board has previously granted similar requests involving more extensive responsive applications than that contemplated by LAL here. Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760 (“UP/SP”), Decision No. 13 (STB served February 15, 1996) at 3 (responsive applications involving requests for trackage rights on 375 miles and 178 miles of line found to be “minor”); UP/SP, Decision No. 14 (STB served February 15, 1996) at 5 (responsive application involving request for approximately 350 miles of trackage rights found to be “minor”). The Board should make a similar finding with respect to LAL’s anticipated responsive application herein.

2. Definition of “Applicant carriers”

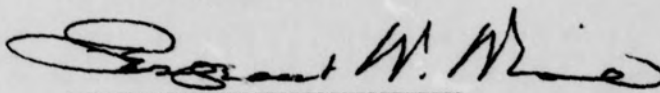
49 C.F.R. § 1180.3(b) defines “applicant carriers” to include the “[a]pplicant, all carriers related to the applicant, and all other carriers involved in the transaction” (emphasis omitted). LAL seeks clarification or waiver of Section 1180.3(b) to exclude the Primary Applicants from the definition of “applicant carriers,” so that LAL will not need to provide separate information on the Primary Applicants in connection with its responsive application. Provision of such information would be burdensome to LAL and would not materially assist the evaluation of LAL’s responsive application.

Furthermore, sufficient information regarding the Primary Applicants should already be available in the Primary Application.

The Board and its predecessor have consistently granted prior requests for similar waivers or clarification. E.g. UP/SP, Decision No. 14 at 3; Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company – Control – Chicago and North Western Holdings Corp. and Chicago and North Eastern Transportation Company, Finance Docket No. 32133, Decision No. 7 (ICC served June 8, 1993) at 1. Such relief is warranted here as well.

WHEREFORE, LAL respectfully requests that the Board grant waiver or clarification of its Railroad Consolidation Procedures to the extent specified above.

Respectfully submitted,



Sergeant W. Wise, Esq.
Livonia, Avon & Lakeville Railroad Corporation
5769 Sweeteners Boulevard
P.O. Box 190-B
Lakeville, NY 14480
(716) 346-2090

Counsel for Livonia, Avon & Lakeville
Railroad Corporation

Dated: August 21, 1997

CERTIFICATE OF SERVICE

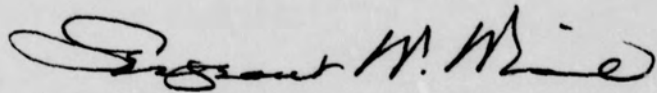
I hereby certify that on this 21st day of August, 1997, a copy of the foregoing **Petition of Livonia, Avon & Lakeville Railroad Corporation for Clarification or Waiver (LAL-3)** was served by first class mail, postage prepaid, upon:

Dennis G. Lyons, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3939

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, DC 20036

Hon. Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E., Suite 11F
Washington, DC 20426



Sergeant W. Wise

STB

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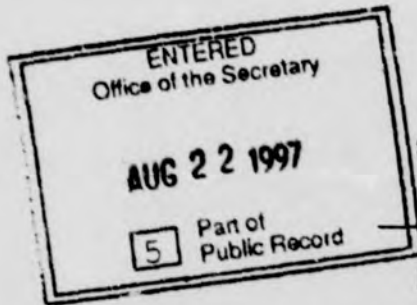
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Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (~~Sub No 54~~)



CSX Corporation and CSX Transportation Inc.,
Norfolk Southern Corporation and
Norfolk Southern Railway Company
-- Control and Operating Leases/Agreements --
Conrail Inc. and Consolidated Rail Corporation

**Petition for Waiver and Clarification of
Railroad Consolidation Procedures, Submitted by
the New York City Economic Development Corporation**

The New York City Economic Development Corporation ("NYCEDC"), pursuant to 49 C.F.R. §§ 1110.9 and 1180.4(f), petitions the Surface Transportation Board for an Order waiving and clarifying certain requirements of the Railroad Consolidation Procedures (49 C.F.R. Part 1180) which are applicable to the responsive application that NYCEDC intends to file in this proceeding.

Discussion

NYCEDC seeks relief similar to the relief granted to the Applicants¹ in the Board's Decision No. 7 in this proceeding, served on May 30, 1997 ("Decision No. 7").

¹ CSX Corporation and CSX Transportation, Inc., and their wholly owned subsidiaries, are referred to collectively as CSX. Norfolk Southern Corporation and Norfolk Southern Railway Company, and their wholly owned subsidiaries, are referred to collectively as NS. Conrail, Inc. and Consolidated Rail Corporation, and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as the Applicants. See Finance Docket No. 33388, Decision No. 7, slip op. at 1 & n.1 (served May 30, 1997).

In that Decision, the Board granted the request of the Applicants for waiver and clarification of certain requirements of the Railroad Consolidation Procedures. As was true under the circumstances described by the Applicants, the information with respect to which NYCEDC seeks a waiver and clarification of the filing requirements is not necessary to enable the Board to reach a decision on the relief that NYCEDC seeks.

(1) Definition of "Applicant" The Railroad Consolidation Procedures define "applicants" as "[t]he parties initiating a transaction." 49 C.F.R. § 1180.3(a). In its responsive application, NYCEDC will seek to acquire trackage rights over one or more of Applicants' lines of railroad and assignment of the rights of Conrail over the lines of Metro-North Commuter Railroad Company ("Metro-North"), with the right to interchange with all carriers that access Albany, New York. See Description of Responsive Application to be Filed by the New York City Economic Development Corporation (NYC-2), filed concurrently with this Petition. NYCEDC seeks these trackage rights and interchange rights on behalf of a neutral third party rail carrier that it anticipates will operate the lines. NYCEDC seeks waiver and clarification that only NYCEDC will be the "applicant" for purposes of its responsive application. NYCEDC specifically seeks to exclude other agencies, departments, or instrumentalities of the City of New York from this definition, because the City will not be providing the rail services over the subject lines through such other agencies, departments, or instrumentalities. This request is similar to relief granted to the primary Applicants in this case. See Decision No. 7 at 5.

(2) Definition of "Applicant Carriers" The Railroad Consolidation Procedures define "applicant carriers" as including "applicant, all carriers related to the applicant, and all other carriers involved in the transaction." 49 C.F.R. § 1180.3(b).

NYCEDC requests that the Board exclude the Applicants from this definition, because information about the Applicants' plans is already available from the Applicants themselves in the Primary Application, and NYCEDC's provision of this information would be burdensome and unnecessary for full evaluation of its responsive application. NYCEDC also requests that the Board exclude Metro-North from this definition, because NYCEDC is not in a position to reasonably obtain information about Metro-North.

(3) Information Regarding the Applicants Under 49 C.F.R. § 1180.3(j)(6), the definition of "transferor" applies to the Applicants and Metro-North, from whom trackage rights over one or more lines of railroad will be sought in NYCEDC's responsive application. NYCEDC requests clarification of the requirements of 49 C.F.R. § 1180.9, specifically that this regulation does not require NYCEDC to submit financial information regarding the Applicants and Metro-North as "transferors." The Applicants have already provided the Board with substantial financial information about themselves, and inclusion of the same information in NYCEDC's application would burden the record with duplicative information. In addition, NYCEDC is not in a position to reasonably obtain such information about Metro-North.

(4) Supporting Information: Corporate Chart The Railroad Consolidation Procedures require an applicant in a significant transaction to provide a corporate chart showing the relationships between applicant carriers and their affiliates. 49 C.F.R. § 1180.6(c), (b)(6). NYCEDC requests a waiver of this regulation -- in accordance with its request above about the definition of "Applicant Carriers" -- to the extent that it would require NYCEDC to present information about the Applicants' and Metro-North's corporate relationships. The Applicants have themselves provided their corporate charts (or have received a waiver of the requirement to do so, see Decision No. 7 at 11),

thus requiring NYCEDC to do so as well would be duplicative and burdensome, and is unnecessary for the Board's evaluation of the relief that NYCEDC seeks. Furthermore, NYCEDC is not in a position to reasonably obtain corporate chart information about Metro-North.

(5) Supporting Information: Corporate/Financial Relationships T h e Railroad Consolidation Procedures require an applicant in a significant transaction to disclose certain intercorporate and financial relationships not elsewhere disclosed. 49 C.F.R. § 1180.6(c), (b)(8). NYCEDC requests a waiver of this regulation -- in accordance with its request above about the definition of "Applicant Carriers" -- to the extent that it would require NYCEDC to present information about the Applicants' relationships, because the Applicants have themselves provided this information (or have received a waiver of the requirement to do so, see Decision No. 7 at 11). Requiring NYCEDC to provide information on the Applicants' intercorporate and financial relationships would be duplicative and burdensome for NYCEDC, and is unnecessary for the Board's evaluation of the relief that NYCEDC seeks. NYCEDC also requests a waiver of this regulation to the extent that it would require NYCEDC to present information about Metro-North's intercorporate and financial relationships because NYCEDC is not in a position to reasonably obtain such information about Metro-North.

Furthermore, because the Applicants have obtained waiver or clarification that they are only required to describe such relationships involving ownership of more than 5% of stock, see *id.*, NYCEDC need not request a similar waiver or clarification in order to avail itself of this same limitation on the requirements of § 1180.6(b)(8). See 49 C.F.R. § 1180.4(f)(4).

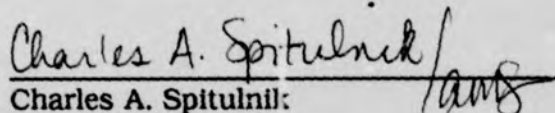
(6) Operational Data: Density Charts The Railroad Consolidation Procedures require an applicant in a significant transaction to provide density charts for applicant carriers. 49 C.F.R. § 1180.8(a)(5). NYCEDC requests a waiver of this regulation -- in accordance with its request above about the definition of "Applicant Carriers" -- to the extent that it would require NYCEDC to present density charts for the Applicants, because the Applicants have themselves provided this information in the Primary Application, and requiring NYCEDC to do so as well would be duplicative and burdensome. NYCEDC also requests a waiver of this regulation to the extent that it would require NYCEDC to present density charts for Metro-North, because NYCEDC is not in a position to reasonably obtain such information about Metro-North.

Conclusion

Because NYCEDC does not wish to burden the Board with duplicative or unnecessary information, and because in certain instances, NYCEDC is unable to provide the Board with the information required under the Railroad Consolidation Procedures, NYCEDC respectfully requests that the Board grant the waivers and clarifications requested in this petition.

Dated: August 22, 1997

Respectfully submitted,



Charles A. Spitulnik
Alicia M. Serfaty
Jamie Palter Rennert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for New York City Economic
Development Corporation,
acting on behalf of the City of New York

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 1997, a copy of the foregoing Petition for Waiver and Clarification of Railroad Consolidation Procedures, Submitted by the New York City Economic Development Corporation (NYC-3) was served by hand delivery upon the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E.
Suite 11F
Washington, D.C. 20426

John M. Nannes
Skadden, Arps, Slate, Meagher
& Flom L.L.P.
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111


Samuel M. Sipe, Jr.
Steptoe & Johnson L.L.P.
1330 Connecticut Avenue, N.W.
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John V. Edwards
Zuckert, Scoutt & Rasenberger, L.L.P.
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Dennis G. Lyons
Drew A. Harker
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202

Paul A. Cunningham
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036

and by first class mail, postage pre-paid upon all other Parties of Record in this proceeding.


Jamie Palter Rennert

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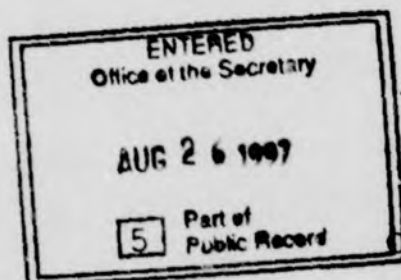
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PBL-3



Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (Sub-No. 53)

CSX Corporation and CSX Transportation Inc.,
Norfolk Southern Corporation and
Norfolk Southern Railway Company
-- Control and Operating Leases/Agreements --
Conrail Inc. and Consolidated Rail Corporation



**Petition for Waiver and Clarification of
Railroad Consolidation Procedures, Submitted by
the Philadelphia Belt Line Railroad Company**

The Philadelphia Belt Line Railroad Company ("PBL" or the "Belt Line"), pursuant to 49 C.F.R. §§ 1110.9 and 1180.4(f), petitions the Surface Transportation Board for an Order waiving and clarifying certain requirements of the Railroad Consolidation Procedures (49 C.F.R. Part 1180) which are applicable to the responsive application that PBL intends to file in this proceeding.

Discussion

PBL seeks relief similar to the relief granted to the Applicants¹ in the Board's Decision No. 7 in this proceeding, served on May 30, 1997 ("Decision No. 7").

¹ CSX Corporation and CSX Transportation, Inc., and their wholly owned subsidiaries, are referred to collectively as CSX. Norfolk Southern Corporation and Norfolk Southern Railway Company, and their wholly owned subsidiaries, are referred to collectively as NS. Conrail, Inc. and Consolidated Rail Corporation, and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as the Applicants. See Finance Docket No. 33388, Decision No. 7, slip op. at 1 & n.1 (served May 30, 1997).

In that Decision, the Board granted the request of the Applicants for waiver and clarification of certain requirements of the Railroad Consolidation Procedures. As was true under the circumstances described by the Applicants, the information with respect to which PBL seeks a waiver and clarification of the filing requirements is not necessary to enable the Board to reach a decision on the relief that PBL seeks.

(1) Definition of "Applicant" The Railroad Consolidation Procedures define "applicants" as "[t]he parties initiating a transaction." 49 C.F.R. § 1180.3(a). In its responsive application, PBL will seek to acquire trackage rights over one or more of Applicants' lines of railroad. PBL seeks waiver and clarification that only PBL will be the "applicant" for purposes of its responsive application. PBL specifically seeks to exclude the Greater Philadelphia Chamber of Commerce, which has a controlling interest in PBL, because it provides no rail services or operations, nor will provide such services or operations during the pendency of this proceeding. Characterizing the Greater Philadelphia Chamber of Commerce as initiating the proposed transaction would impose substantial burdens upon PBL and the Chamber without improving the Board's ability to evaluate the competitive and financial impacts of these transactions, since PBL operates as a wholly separate corporate entity with its own Board of Directors. PBL is the only party in interest in its forthcoming responsive application. This request is similar to relief granted to the primary Applicants in this case. See Decision No. 7 at 5.

(2) Definition of "Applicant Carriers" The Railroad Consolidation Procedures define "applicant carriers" to include "applicant, all carriers related to the applicant, and all other carriers involved in the transaction." 49 C.F.R. § 1180.3(b). PBL requests that the Board exclude the Applicants from this definition, even though they are "involved

in the transaction." Information about the Applicants' plans is already available from the Applicants themselves in the Primary Application, and PBL's provision of this information would be burdensome and unnecessary for full evaluation of its responsive application.

(3) Information Regarding the Applicants Under 49 C.F.R. §1180.3(j)(6), the definition of "transferor" applies to the Applicants, from whom trackage rights over one or more lines of railroad will be sought in PBL's responsive application. PBL requests clarification of the requirements of 49 C.F.R. § 1180.9, specifically that this regulation does not require PBL to submit financial information regarding the Applicants as "transferors," because the Applicants have already provided the Board with substantial financial information, and inclusion of the same information in PBL's application would burden the record with duplicative information.

(4) Supporting Information: Relevant Markets The Railroad Consolidation Procedures require an applicant to discuss the effect of the proposed transaction on inter- and intramodal competition, "including a description of the relevant markets." 49 C.F.R. § 1180.6(a)(2)(i). The Applicants have already provided extensive information about the Philadelphia market, and therefore, PBL requests clarification that it is not required to provide any further information about this market.

(5) Supporting Information: Corporate Chart The Railroad Consolidation Procedures require an applicant in a significant transaction to provide a corporate chart showing the relationships between applicant carriers and their affiliates. 49 C.F.R. § 1180.6(c), (b)(6). PBL requests a waiver of this regulation -- in accordance with its request above about the definition of "Applicant Carriers" -- to the extent that it would require PBL to present information about the Applicants' corporate relationships,

because the Applicants have themselves provided this information (or have received a waiver of the requirement to do so, *see* Decision No. 7 at 11). Requiring PBL to provide corporate charts on the Applicants' relationships would be duplicative and burdensome for PBL, and is unnecessary for the Board's evaluation of the relief that PBL seeks.

(6) Supporting Information: Corporate/Financial Relationships The Railroad Consolidation Procedures require an applicant in a significant transaction to disclose certain intercorporate and financial relationships not elsewhere disclosed. 49 C.F.R. § 1180.6(c), (b)(8). PBL requests a waiver of this regulation -- in accordance with its request above about the definition of "Applicant Carriers" -- to the extent that it would require PBL to present information about the Applicants' relationships, because the Applicants have themselves provided this information (or have received a waiver of the requirement to do so, *see* Decision No. 7 at 11). Requiring PBL to provide information on the Applicants' intercorporate and financial relationships would be duplicative and burdensome for PBL, and is unnecessary for the Board's evaluation of the relief that PBL seeks. Furthermore, because the Applicants have obtained waiver or clarification that they are only required to describe such relationships involving ownership of more than 5% of stock, *see id.*, PBL need not request a similar waiver or clarification in order to avail itself of this same limitation on the requirements of § 1180.6(b)(8). *See* 49 C.F.R. § 1180.4(f)(4).

(7) Operational Data: Density Charts The Railroad Consolidation Procedures require an applicant in a significant transaction to provide density charts for applicant carriers. 49 C.F.R. § 1180.8(a)(5). PBL requests a waiver of this regulation -- in accordance with its request above about the definition of "Applicant Carriers" -- to the extent that it would require PBL to present density charts for the Applicants, because

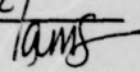
the Applicants have themselves provided this information in the Primary Application, and requiring PBL to do so as well would be duplicative and burdensome.

Conclusion

Because PBL does not wish to burden the Board with duplicative or unnecessary information, and because in certain instances, PBL is unable to provide the Board with the information required under the Railroad Consolidation Procedures, PBL respectfully requests that the Board grant the waivers and clarifications requested in this petition.

Dated: August 22, 1997

Respectfully submitted,

Charles A. Spitulnik / 
Charles A. Spitulnik
Alicia M. Serfaty
Jamie Palter Rennert
HOPKINS & SUTTER
988 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for Philadelphia Belt Line
Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 1997, a copy of the foregoing Petition for Waiver and Clarification of Railroad Consolidation Procedures, Submitted by the Philadelphia Belt Line Railroad Company (PBL-3) was served by hand delivery upon the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E.
Suite 11F
Washington, D.C. 20426

John M. Nannes
Skadden, Arps, Slate, Meagher
& Flom L.L.P.
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

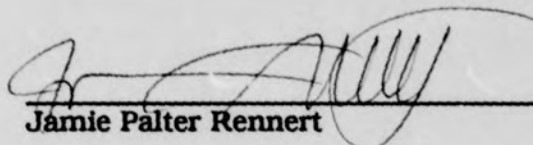
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Steptoe & Johnson L.L.P.
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555 12th Street, N.W.
Washington, D.C. 20004-1202

Paul A. Cunningham
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036

and by first class mail, postage pre-paid upon all other Parties of Record in this Proceeding.



Jamie Palter Rennert

STB

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ATA LITIGATION CENTER

Chairman
J. Kirk Thompson
J. B. Hunt Transport Services, Inc.
Vice Chairman
John E. Wren
Lakeville Motor Express
President
Thomas J. Donohue
American Trucking Associations, Inc.
Treasurer
Patrick E. Quinn
U.S. Xpress Enterprises, Inc.

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Writer's Direct Dial:

August 22, 1997

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Vice Presidents and Deputy
Chief Counsels
Robert Digges, Jr.
Lynda S. Mounts
Kenneth E. Siegel

Director of Development
Adrienne R. Lewis

VIA MESSENGER

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

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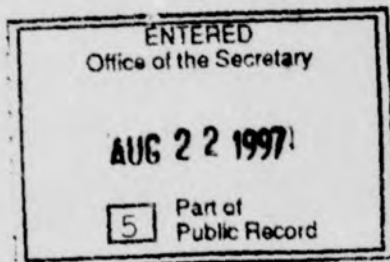


*Re: Finance Docket No. 33388, CSX Corporation et al.--
Control and Operating Leases/Agreements -- Conrail
Inc. and Consolidated Rail Corp.*

Dear Mr. Williams:

Enclosed are a duly signed original and twenty-five copies of the responsive petition of the American Trucking Associations, Inc. and petition for clarification in the above captioned proceeding along with a 3.5 inch floppy diskette in WordPerfect format.

Please date stamp the File Copy of this pleading and return it with the messenger in the enclosed self-addressed envelope.



Sincerely yours,

Kenneth E. Siegel

Kenneth E. Siegel
Counsel for
American Trucking Associations, Inc.

Enclosures



ATA LITIGATION CENTER

Chairman
J. Kirk Thompson
 J. L. Hunt Transport Services, Inc.

Vice Chairman
John E. Wren
 Lakeville Motor Express

President
Thomas J. Donohue
 American Trucking Associations, Inc.

Treasurer
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 Writer's Direct Dial:

August 22, 1997

Senior Vice President and
 Chief Counsel
Daniel R. Barney

Vice Presidents and Deputy
 Chief Counsels
Robert Digges, Jr.
Lynda S. Mounts
Kenneth E. Siegel

Director of Development
Ashlene B. Lewis



The Honorable Vernon A. Williams
 Secretary
 Surface Transportation Board
 1925 K Street, NW
 Washington, DC 20423-0001

Re: *Finance Docket No. 33388, CSX Corporation et al.--Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corp. Description of anticipated responsive application and petition for clarification*

Dear Mr. Williams:

The American Trucking Association, Inc. submits the following list of conditions that it anticipates requesting be placed on the surviving rail entities with respect to the acquisition under consideration in this proceeding and a request for clarification as to the applicability of the Board's Railroad Consolidation Procedures, 49 C.F.R. Part 1180 to that request.

The anticipated conditions will come under three categories:

- Conditions intended to protect competition in intermodal operations in the territories affected by the acquisitions including: guaranteed trackage rights; protection for independent motor carriers against discrimination in rates and services favoring rail-affiliated entities or others; competitive access; and protection against threatened retaliation by applicants to those opposing or not supporting the acquisition.

The Honorable Vernon A. Williams
August 22, 1997
Page 2

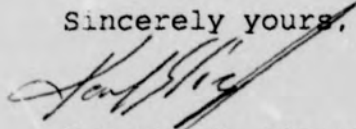
- Conditions intended to ensure efficiency in operations by reducing the number of delays and defaults in rail intermodal operations arising from rail accidents occurring at rail/highway grade crossings and elsewhere.
- Protection of the public interest in highway safety by requiring rail carriers to better maintain the intermodal equipment which is under their control.

The determination as to which if any such conditions are necessary and the specifics of such conditions will be developed through the discovery process and further analysis of applicants' submissions in support of the acquisitions.

ATA requests clarification as to whether such conditions, if requested, must be in the form of a responsive petition or as comments on the applications for approval of the acquisition.

If the anticipated request for the conditions described above are required in the form of a responsive petition, ATA requests clarification as to what portions of the Board's Railroad Consolidation Procedures, 49 C.F.R. Part 1180, with respect to the contents of a responsive petition must be complied with at the time of the formal submission of such an application.

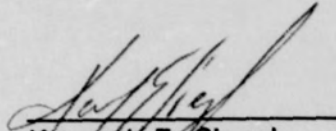
Sincerely yours,



Kenneth E. Siegel
Counsel for the American
Trucking Associations, Inc.

CERTIFICATE OF SERVICE

I, Kenneth E. Siegel, hereby certify that a copy of the Responsive Petition and Request for Clarification of the American Trucking Associations has been served on this date, by first class, postage prepaid, U.S. mail, on the attached service list.


Kenneth E. Siegel

August 22, 1997

Attachment

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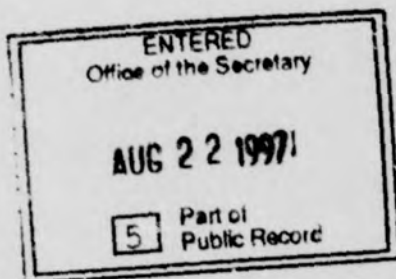
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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33338

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

HOUSATONIC RAILROAD COMPANY, INC.
PETITION FOR DETERMINATION - MINOR TRANSACTION

Housatonic Railroad Company, Inc. (HRRRC) has, together with this Petition, filed a Notice that HRRRC intends to file a responsive application in the above entitled proceeding. Housatonic Railroad Company, Inc. hereby requests a determination that its responsive application constitutes a minor transaction under the provisions of 49 CFR part 1180.

HRRRC represents that it is a Class III carrier and that the relief which will be requested in the responsive application will consist of limited overhead trackage rights. In addition, HRRRC may request protective conditions, including haulage arrangements, which protective conditions do not require the filing of a responsive application.

Under the provisions of 49 CFR section 1180.4(d)(4)(ii), a responsive application which is not major is presumed to be a significant transaction. However, 49 CFR section 1180.4(d)(4)(iv) establishes that the presumption is rebuttable.

49 CFR 1180.2(c) defines a minor transaction as "one which involves more than one railroad and which is not a major, significant, or exempt transaction." The responsive application can not be a major transaction since it is filed by a class III carrier. It would be an exempt trackage rights transaction under 49 CFR 1180.2(d)(7) but for the fact that the trackage rights are sought in a responsive application. However, because of that fact, it is not an exempt transaction.

A transaction not involving the merger of two or more class I railroads is significant only if it is of regional or national transportation significance. The planned HRRC responsive application involves limited overhead trackage rights of a Class III carrier which will not constitute a major market extension. Clearly, it is not of regional or national transportation significance as that phrase is used in 49 U.S.C. 11345(a)(2).

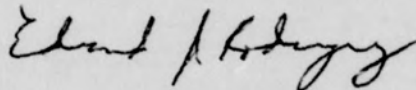
49 CFR 1180.2(b) further provides that "[a] transaction not involving the control or merger of two or more Class I railroads is not significant if a determination can be made either: (1) That the transaction clearly will not have any anticompetitive effects, or (2) That any anticompetitive effects of the

transaction will clearly be outweighed by the transportation's anticipated contribution to the public interest in meeting significant transportation needs."

The trackage rights sought by HRRC are sought to attempt to mitigate anticompetitive effects of the primary application. The trackage rights will promote competition and will have no anticompetitive effects whatsoever.

Since the responsive application is not a major, significant or exempt transaction, it is a minor transaction and the Board is requested to so determine.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Edward J. Rodriguez".

Edward J. Rodriguez
Attorney for Housatonic Railroad
P.O. Box 298
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(860) 767-9629

Dated: August 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 1997, I served a copy of the foregoing Petition for Determination - Minor Transaction by first class mail, postage prepaid, upon the following parties and will serve copies upon all other parties of record upon receipt from the Surface Transportation Board of a service list thereof.

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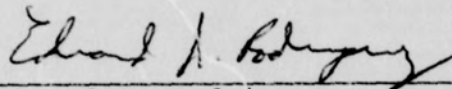
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