STB FD 33388 2-4-98 K 185532

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185532

Committees:
Government Oversight
Education and the Workforce

Congress of the United States
House of Representatives

February 4, 1998

Ms. Elaine Kaiser
Chief, Environmental Analysis
Surface Transportation Board
1925 K Street NW
Suite 500
Washington, D.C. 20423-0001

RE: Finance Docket No. 33388

Dear Ms. Kaiser:

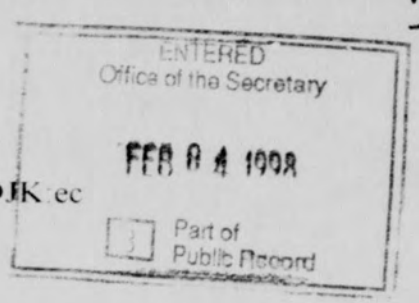
As Member of Congress representing Ohio's 10th district, and as a Party of Record to this proceeding, I hereby submit an original and twenty-five copies of an Addendum to Comments on the Draft Environmental Impact Statement as issued by the Surface Transportation Board's Section on Environmental Analysis for Finance Docket No. 33388.

Please accept this addendum in order to evaluate the effect that the proposed Conrail merger will have on the City of Brooklyn, Ohio. Thank you for your consideration.

Sincerely,

Dennis J. Kucinich

Dennis J. Kucinich
Member of Congress



DJK:ec

185532

[PUBLIC]

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

ADDENDUM TO COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT AS ISSUED BY THE SURFACE TRANSPORTATION BOARD'S SECTION ON ENVIRONMENTAL ANALYSIS FILED BY CONGRESSMAN DENNIS J. KUCINICH

Dated February 4, 1998

[PUBLIC]

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

ADDENDUM TO
COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT
AS ISSUED BY THE SURFACE TRANSPORTATION BOARD'S
SECTION ON ENVIRONMENTAL ANALYSIS
FILED BY CONGRESSMAN DENNIS J. KUCINICH

Congressman Dennis J. Kucinich, representing the 10th Congressional District of Ohio, hereby submits this addendum to his comments in response to the Draft Environmental Impact Statement (DEIS) as issued by the Surface Transportation Board's Section on Environmental Analysis (SEA)for the purpose of relaying newly acquired information about the City of Brooklyn, Ohio.

Brooklyn, Ohio, is a west-side residential and industrial suburb bordering Cleveland at Brooklyn's west, northwest, and east sides, and bordering Parma, Ohio, at its south side. Three sets of railroad tracks currently traverse Brooklyn. A Conrail line, formerly Cleveland's Short Line, crosses Brooklyn parallel to Brookpark Road near Brooklyn's southern border. Another Conrail line abuts Brooklyn's northwest border with a spur crossing Ridge Road just south of the

northernmost tip of Brooklyn. And a CSX line from Cleveland to Medina crosses Brooklyn from the northeast edge to the southwest edge.

The Draft Environmental Impact Statement did not address the environmental effects that the proposed Conrail merger will have on the City of Brooklyn. This office requests that the SEA investigate the effects that the proposed rail merger will have on the City of Brooklyn and include the results of that investigation in its Final Environmental Impact Statement.

An analysis of the effects on the City of Brooklyn should include the following:

- If the Conrail merger is approved, what noise and safety mitigation will be offered to the residents living adjacent to the Conrail line parallel to Brookpark Road? Residents on Idlewood Drive, Summer Lane, Kennedy Drive, Southwood Drive, Autumn Lane, Springwood Drive, and Melody Lane live in homes abutted by the Conrail tracks to the south and Interstate 480 to the north. The only evacuation routes in the event of a hazardous material spill at that segment of the rail line are Idlewood Drive at the eastern edge of the neighborhood, and Southwood Drive at the western edge of the neighborhood. A derailment along this section of track would pose a clear and immediate threat to public safety. An increase in trains will increase the risk of a hazardous waste spill in the event of a derailment. Furthermore, an increase in trains will increase the noise levels experienced residents living adjacent to the tracks on Idlewood Drive. Noise mitigation may be necessary.

- The Cleveland-Medina CSX route crosses American Road in Brooklyn. American Road is the access road for employees of American Greetings, Brooklyn's largest employer, employing approximately 3,000 workers. An increase in train traffic along this line will result in an increase in delays for American Greetings's workers and could result in traffic queues as far as Tiedeman Road. The SEA should investigate whether mitigation against the effects of traffic delays on American Road would be warranted.

- The Cleveland-Medina CSX route also abuts the Spring Crest-Pepper Ridge Drive neighborhood, which is already subject to significant noise from train traffic. Sixty-three homes are located there. The SEA should investigate whether noise mitigation is warranted if there is an increase in train traffic as a result of the merger.

- The Conrail line abutting the northwest edge of Brooklyn crosses Ridge Road at an at-grade crossing. Ridge Road is a major north-south commuter route between Cleveland and the southwestern suburbs. The SEA should investigate the effect that an increase in train traffic along this Conrail route would have on commuter traffic on Ridge Road, and recommend mitigation as appropriate.

The aforementioned investigations should be conducted by the SEA in preparation for its Final Environmental Impact Statement. This office, in conjunction with the Office of the Mayor of Brooklyn, Ohio, will provide additional assistance as necessary in order to help the SEA investigate these important environmental issues.

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185488

LAW OFFICES

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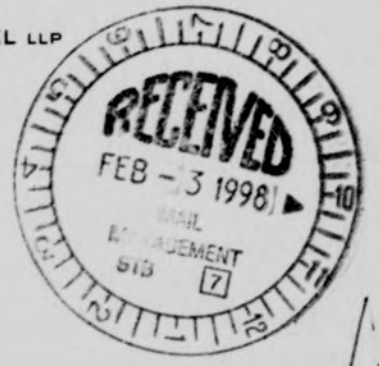
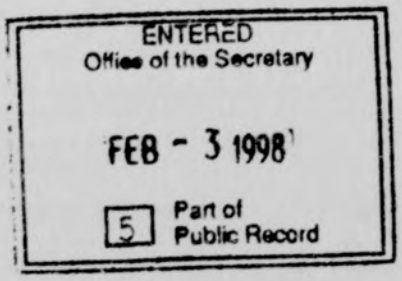
ENVIRONMENTAL DOCUMENT



Thomas E. Hanson, Jr.
Direct Dial No. (215) 665-3280

February 2, 1998

VIA FEDERAL EXPRESS



Office of the Secretary
Case Control Unit
Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Attn: Elaine K. Kaiser

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 Ms. Kaiser:

Enclosed please find one original and eleven copies of Part X of the Southeastern Pennsylvania Transportation Authority's Comments to the Draft Environmental Impact Statement and Safety Integration Plans. Pursuant to my telephone conversation with your office earlier today, I was informed that the enclosed would be accepted as an addition to SEPTA's January 30, 1998 filing (SPTA-6). Kindly accept these Comments for filing and time stamp and return the extra copy in the enclosed self-addressed, postage prepaid envelope.

Very truly yours,

Thomas E. Hanson, Jr.
For: Obermayer Rebmann Maxwell & Hippel LLP

185488

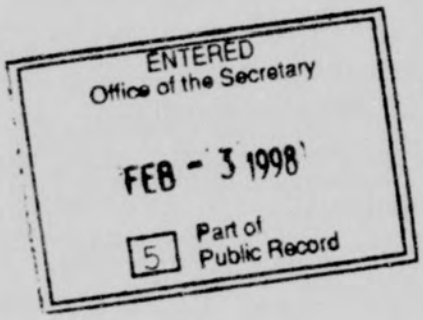
SPJA-7

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

COMMENTS OF THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT AND SAFETY INTEGRATION PLANS



ENVIRONMENTAL
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G. ROGER BOWERS
General Counsel
EUGENE N. CIPRIANI
Assistant Deputy Counsel
Southeastern Pennsylvania Transportation Authority
1234 Market Street, Fifth Floor
Philadelphia, PA 19107-3780

JOHN J. EHLINGER, JR.
THOMAS E. HANSON, JR.
Obermayer Rebmann Maxwell & Hippel LLP
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103

Counsel for Southeastern Pennsylvania Transportation Authority

Dated: February 2, 1998

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

COMMENTS OF THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT AND SAFETY INTEGRATION PLANS

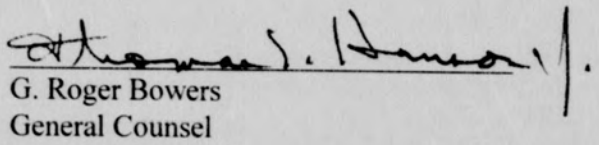
The Southeastern Pennsylvania Transportation Authority ("SEPTA") hereby submits Part X of its comments on the Draft Environmental Impact Statement ("DEIS") prepared by the Surface Transportation Board Section of Environmental Analysis ("SEA") and the Safety Integration Plans ("SIPs") prepared by the Applicants, CSX Corporation ("CSX") and Norfolk Southern ("NS").

X. TIME SPACING BETWEEN FREIGHT AND PASSENGER TRAINS

According to pages 4-12 and 4-13 of Volume 1 of the DEIS, the SEA has proposed greater time spacing between freight and passenger trains as a safety measure on nine rail line segments situated in the states of Georgia, Maryland, Michigan, New York, North Carolina, Indiana, Virginia and the District of Columbia. A more detailed description of the time spacing is provided at page 7-12 of Volume 4, where it is stated that "... trains moving in the same or opposite direction on the same track would be clear of the track at least 15 minutes before and 15

minutes after the expected arrival of a passenger train at any point." To propose time spacing on train segments or territories already protected by signals is totally contrary to accepted safety practices. The signals regulate the flow of rail traffic on signalized lines and properly maintain safety for passenger trains. SEPTA asserts that there is no need for the proposed time spacing, and objects to this mitigation measure to avoid the imposition of time spacing on SEPTA's current or future signalized lines or any lines over which SEPTA operates.

Respectfully submitted,



G. Roger Bowers
General Counsel
Eugene N. Cipriani
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Southeastern Pennsylvania Transportation Authority
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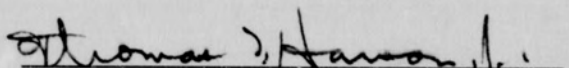
John J. Ehlinger, Jr.
Thomas E. Hanson, Jr.
Obermayer Rebmann Maxwell & Hippel LLP
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103

Counsel for Southeastern Pennsylvania Transportation Authority

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Part X of Comments Of The Southeastern Pennsylvania Transportation Authority To The Draft Environmental Impact Statement And Safety Integration Plans was served upon those listed on the service list, via first-class mail, postage prepaid on the 2nd day of February, 1998.



THOMAS E. HANSON, JR., ESQUIRE

STB FD 33388 2-2-98 K 185486

185486

1007 Market Street
Wilmington, DE 19898

DUPONT

ENVIRONMENTAL
DOCUMENT

February 2, 1998

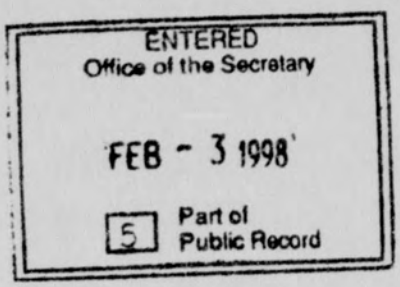
Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit
1925 K Street
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

In accordance with Decision 52 in connection with the above, DuPont encloses for filing the original and 25 copies of our comments with respect to the Safety Integration Plans. Also enclosed is a 3.5-inch IBM compatible diskette containing this document.

Respectfully submitted,



C N Beinkampen

Charles N. Beinkampen
Director, Global Logistics

cc: All Parties of Record on the Decision No. 12 Service List

ENVIRONMENTAL
DOCUMENT

February 2, 1998

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388
CSX CORPORATION ET AL - CONTROL AND OPERATING
LEASES/AGREEMENTS - CONRAIL, INC. ET AL

COMMENTS

E. I. DU PONT DE NEMOURS & COMPANY, INC.

DuPont is a $43 Billion diversified chemical manufacturer with over 200 manufacturing sites and almost 100,000 employees worldwide. DuPont has long been recognized as a leader in safety, with close to a 200 year heritage of commitment to safe manufacture, handling and distribution of its products. DuPont's corporate policy is to ship only materials which can be handled, transported and used safely.

DuPont is also a major U.S. rail shipper, with over 50,000 shipments annually, including a significant portion which are hazardous materials. DuPont also has six major plants as well as numerous customer and transloading or terminal facilities in the Northeast. Thus, DuPont has a vital interest in the safe and seamless implementation of the Conrail acquisition.

DuPont commends the Board for its concern about the safety aspects of this transaction and for its foresight in Decision 52 of requiring Safety Integration Plans (SIP's) to be filed by the two acquiring railroads, as part of the Environmental Impact Statement.

DuPont further suggests that the content of the SIP's be incorporated in any future Board oversight process. Recent experience in the West only serves to underscore the importance of having well conceived and comprehensive plans for integrating the various operations, processes, and cultures related to safety. Implementation of the Conrail acquisition will be even more complex than those in the West, since it involves a unique division of an efficiently operating rail network. DuPont also believes that systemically including similar SIP's in other future rail transactions would be constructive.

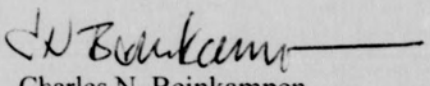
DuPont feels so strongly about safety that we have already met individually with both CSX and Norfolk Southern to discuss the details of their respective SIP's. Additional follow-up meetings are planned. Both railroads have an outstanding safety record, and have made a good faith effort to plan for the safe integration of Conrail into their operations. The draft SIP's contain an excellent overview of their plans for a seamless transition. As would be expected at this point, many specific implementation details are not yet included and/or have yet to be developed.

DuPont, for these and other reasons, does not wish to comment on the specifics of the Plans at this time, but encourages the Applicants to continue development of them so that all safety processes are clearly defined, in place, and understood prior to "Day 1". DuPont further encourages the Applicants to consider adopting where possible Best Practices already in place at Conrail.

One excellent example of such a Best Practice in Conrail's Five Year Plan is for implementation of the Chemical Manufacturers Association (CMA) Responsible Care® Partnership Program.

In summary, DuPont has high value for the Board's incorporation of safety planning and execution into the approved process for the Conrail acquisition. DuPont also supports inclusion of the SIP requirement in any further mergers, divestitures, or acquisitions which come before the Board.

Respectfully submitted,



Charles N. Beinkampen
Director Global Distribution

185485

Norfolk Southern Corporation
1500 K Street, NW, Suite 375
Washington, D.C., 20005
202 383-4416
202 383-4425 (Direct)
202 383-4013 (Fax)

Bruno Maestri
System Director
Environmental Protection

Washington D.C. - February 2, 1998

BY HAND

Elaine K. Kaiser
Chief
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-001

Re: Finance Docket No. 33388: CSX and NS—Control and Acquisition of Conrail

Subject: Norfolk Southern Comments on Draft Environmental Impact Statement

Dear Ms. Kaiser:

Enclosed are the comments of Norfolk Southern Corporation and Norfolk Southern Railway Company ("Norfolk Southern") on the December 12, 1997 Draft Environmental Impact Statement ("DEIS") for the "Proposed Conrail Acquisition" prepared by the Section of Environmental Analysis of the Surface Transportation Board.

In accordance with the directions in the DEIS, Norfolk Southern is submitting herewith the original and ten copies of its comments. One additional "clipped" copy is provided for your convenience.

Sincerely,

Bruno Maestri
System Director
Environmental Protection

185485

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

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY'S COMMENTS

ON THE

DRAFT ENVIRONMENTAL IMPACT STATEMENT

FEBRUARY 2, 1998

NS NORFOLK SOUTHERN

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1.0 INTRODUCTION AND SUMMARY

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS" or "Norfolk Southern") hereby submit their comments on the December 12, 1997 Draft Environmental Impact Statement ("DEIS") prepared by the Surface Transportation Board's ("STB" or the "Board") Section of Environmental Analysis ("SEA") in Docket No. 33388. SEA has served the DEIS on over 2,000 persons and has provided a 45-day period for the submission of comments from all interested persons.

The six-volume DEIS documents the results of an exhaustive environmental analysis by SEA of the potential environmental impacts of the proposed Conrail Transaction ("Transaction"), involving the operation of rail service across 44,000 miles of the eastern United States. The DEIS addresses in comprehensive fashion every environmental issue which the Board is required to analyze independently in satisfaction of its obligations under the National Environmental Policy Act, 42 U.S.C. 4321, and the Board's own implementing regulations, 49 CFR 1105. The Board determined at the outset of this Transaction that it would prepare an Environmental Impact Statement ("EIS") to evaluate the potential impacts of the Transaction to ensure that the full range of environmental issues would be taken into consideration as the Board evaluated the application filed jointly by NS, CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Conrail, Inc. and Consolidated Rail Corporation (collectively, "Conrail"). The Board tasked SEA, and the third-party environmental consultants retained by SEA, with preparing an EIS for the Board's consideration in conjunction with the Board's analysis of the various transportation and competitive issues presented by the Transaction.

The overall conclusion of the DEIS is that the proposed Transaction will produce substantial system-wide environmental benefits in several respects, and will not create any system-wide significant adverse environmental impacts. For example, as noted in the DEIS, on a system-wide basis the Transaction:

- "[W]ould reduce emissions for most air pollutants" (DEIS at ES-23);
- "[W]ould result in net annual reduction in fuel consumption of approximately 80 million gallons of diesel fuel" (DEIS at ES-22);
- "[I]s expected to benefit the national and regional highway systems by reducing truck traffic on major state, regional and U.S. highways" (DEIS at ES-21); and
- "[S]hould result in a slight safety improvement for rail transportation of hazardous materials" (DEIS at ES-19).

NS not only concurs with these important conclusions by SEA, it believes that the true benefits of the proposed Transaction--which must be balanced against its adverse impacts--are much greater than indicated in the DEIS. A discussion by NS of the significant environmental, safety, and other benefits of the Transaction follows at Section 3 of these comments.

Notwithstanding its acknowledgment of the correctness of the DEIS's overall conclusion of net system-wide environmental benefits, NS is concerned that the approach to implementation of the Board's obligations under NEPA, as demonstrated by some portions of the DEIS, indicates a potential misapplication of the principles of NEPA and may go beyond the limitations on the Board's legal authority in deciding railroad control applications. NS provides its analysis of these issues at Section 2 of these comments. In addition, NS believes that SEA's analysis of potential environmental impacts has, in certain instances, applied unduly conservative or flawed approaches or assumptions and thereby overestimated the predicted impacts. In those instances where NS takes issue with the approach, the analysis or other aspects of the DEIS's assessment of a particular environmental impact, NS sets out the basis for its conclusions at Section 4 of these comments. Through the DEIS, SEA has directed NS to "consult" with cities with unique circumstances and other specific local communities to seek to negotiate mutually-acceptable agreements to address potential environmental impacts. NS' response to this direction is provided in Sections 5 and 6. In addition, NS has identified a number of minor corrections to the DEIS which are primarily editorial in nature. These comments are provided in Section 7 and are for the purposes of clarification.

As discussed in detail in these comments, the following are the principal areas of NS concern with the analysis and recommendations of the DEIS:

The DEIS Unnecessarily Seeks to Mitigate All Environmental Impacts: Since an EIS, rather than an EA, is being prepared in this case, there is no requirement that all identified adverse environmental impacts be mitigated. The DEIS blurs this important distinction, however, with a variety of mitigation proposals that appear designed to deal with virtually every potential localized adverse impact, and without adequate balancing of the potential adverse impacts against the positive benefits of the Transaction, including its environmental benefits.

Proposed Passenger Rail Safety Mitigation: The DEIS identifies certain line segments over which both freight and passenger operations are conducted as warranting special safety mitigation consisting of establishing passenger trains as "superior" and requiring freight trains to clear the line 15 minutes before and, in some instances, 15 minutes after a passenger train passes. This proposal is unprecedented and would involve outdated, cumbersome procedures that would

seriously impact rail line efficiency. As demonstrated in these comments, no passenger safety mitigation is in fact warranted. The statistical analysis presented in the DEIS overstates the Transaction-related impacts of freight traffic increases and utilizes data not directly applicable to the safety concern for which the proposed mitigation is purportedly designed. Moreover, the question of passenger rail safety is most properly left to the jurisdiction of the Federal Railroad Administration (FRA). Assuming that any mitigation is appropriate, it should be in the form of railroad consultations with the FRA and the affected passenger rail agencies.

Proposed Interim Two-Train Per Day Limitation on Traffic Increases at Erie, PA: The DEIS proposes that traffic increases over NS' main line through Erie, PA be limited to two trains per day until completion of NS' proposed track relocation project (which project will move all NS operations through Erie to new trackage on the grade-separated Conrail right-of-way). In view of the substantial benefits (including environmental benefits) associated with the Transaction, this type of localized service limitation is not warranted in Erie (nor would such limitations be warranted in other localities), and it would have serious adverse ramifications for NS' proposed operating plan, particularly in the crucial Midwest to New York/New Jersey market. Moreover, there appears to be no analytical basis for the DEIS' selection of two trains per day as the number for such a limitation on traffic increases. This proposed limitation is particularly unjustified in view of the temporary nature of anticipated traffic increases through downtown Erie and the significant long-term environmental benefits that Erie will experience once the track relocation project is completed.

Proposed Mitigation for Highway/Rail At-Grade Crossings: The DEIS proposes that NS upgrade protection devices at 44 highway/rail at-grade crossings in order to mitigate perceived grade crossing safety issues, and the DEIS further proposes mitigation for certain crossings based on purported vehicle delay impacts. In both the safety and delay areas as respects grade crossings, the DEIS' proposed approach would displace the well-established authority of state transportation departments to conduct final analysis of and to prioritize grade crossing projects. Additionally, the methodology by which the DEIS identifies crossings requiring such mitigation is flawed. In the grade crossing safety context, the DEIS improperly utilizes a formula designed for ranking grade crossings according to a perceived need for crossing protection upgrade as the sole basis for determining the need for, and type of, crossing protection upgrades. In the grade crossing delay context, the DEIS improperly uses a method developed for assessing delay at signalized vehicular highway intersections for determining highway/rail at-grade crossings actually requiring mitigation. Finally, the DEIS recommendations threaten to disrupt well-established policies and practices regarding cost allocation for grade crossing improvements and grade separations.

Environmental Justice Analysis and Recommendations: The DEIS includes an unprecedented effort to apply an environmental justice analysis to consolidations of long-established transportation systems of broad geographical reach. In an attempt to work within the framework of an Executive Order that was principally designed for and is most logically applied to the localized siting of a new facility (as opposed to changed utilization of an existing infrastructure over a broad geographic area), SEA is sailing in uncharted waters. The substantial difficulties in attempting to apply to a transaction of this kind the Executive Order and the guidance and methodologies developed thereunder to date by other agencies, should counsel caution. Nevertheless, in the DEIS, SEA has utilized new processes and untested analytic methodologies for environmental justice, and has recommended consideration of untried mitigation strategies. The resulting environmental justice discussion in the DEIS fails to reflect any assessment of whether adverse impacts would be predominantly borne by minority or low-income populations or whether potential adverse impacts on minority or low-income communities would be more severe or greater in magnitude than among other affected populations. NS' analysis confirms that, in fact, the potential environmental impacts of the Transaction are not borne disproportionately by minority or low-income communities. There are other serious flaws in the environmental justice analysis of the DEIS. Moreover, for reasons described in Section 4.16 of these comments, application of environmental justice principles to this Transaction may, at most, lead to enhanced outreach and consultations with certain local communities, not to the imposition of mitigation measures beyond those that might otherwise be recommended to mitigate significant adverse impacts upon full consideration of the substantial environmental, safety and other benefits of the Transaction.

Noise Analysis and Potential Mitigation: While much of the treatment of noise in the DEIS is correct, the analysis significantly overstates potential noise levels on NS lines. This results from a combination of overly conservative methodology, application of noise models developed for CSX trains to the quieter NS trains, and failure to recommend or conduct site-specific measurements and analysis. There is, moreover, no analytic or other support in the DEIS for the suggestion that noise barriers be deemed the "preferred" method of mitigating noise.

In sum, NS believes that SEA has conducted a comprehensive assessment of the environmental aspects of the proposed Transaction that satisfies and exceeds the mandate of NEPA and the Board's implementing regulations. SEA has clearly taken a "hard look" at all the attendant issues and its DEIS provides a good foundation for a comprehensive Final Environmental Impact Statement ("FEIS") in full compliance with the Board's obligations under NEPA. For publication of the FEIS in May, SEA should now in light of these comments consider what recommendations for mitigation are factually warranted, within the lawful purview

of the Board and consistent with the appropriate balance of public benefits and interests related to this Transaction.

SECTION 2

2.0 APPLICABLE LEGAL PRINCIPLES

2.1 Scope of Environmental Impact Analysis and Standards Governing Proposed Mitigation Conditions

As the Board knows, this is the first railroad consolidation proceeding in which it has undertaken to prepare an Environmental Impact Statement ("EIS") pursuant to the requirements of NEPA. In all previous cases, the Board and the ICC only performed Environmental Assessments ("EA"), because in each case the EA was able to conclude that the consolidations would have no significant environmental impacts if the parties complied with various mitigation conditions prescribed in the agency's final decisions. As a result of the decision to prepare an EIS in this case, the Board's SEA staff and the Applicants have been required to engage in a far more intensive and comprehensive analysis of the potential environmental impacts of the Transaction than in any previous case.

The DEIS represents SEA's preliminary conclusions based on its comprehensive and exhaustive environmental review of the proposed Transaction. Its six volumes contain a detailed and wide-ranging analysis of the potential environmental effects of the Transaction. The DEIS also contains a lengthy list of proposed conditions recommended to be imposed on Applicants; these are proposed for the purpose of mitigating virtually every adverse environmental effect of the Transaction identified in the DEIS.

The FEIS issued by the Board in this case must conform to the requirements both of NEPA and the Board's governing statute, the ICC Termination Act of 1995, 49 U.S.C. §§ 10101 et seq. ("ICCTA"). As discussed below, NS respectfully submits that a number of the mitigation conditions proposed in the DEIS, some of which are unprecedented and address far more than the impacts asserted, are not consistent with the Board's basic function and responsibilities under NEPA and the ICCTA in several critical respects.

2.2 NEPA Only Requires the Board to Consider Environmental Effects. Imposition of Conditions Must Be Based on a Balancing of All Relevant Factors, Which the DEIS Does Not Do.

The proposed conditions appear to be based on the assumption that NEPA and/or the ICCTA require all adverse environmental effects to be mitigated before the Transaction can be approved. That assumption is not correct.

The fundamental command of NEPA is that federal agencies must consider -- or take a "hard look" at -- potential environmental impacts associated with the exercise of federal regulatory functions. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989). The obligations that it imposes on federal agencies are procedural in nature. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 588 (1978) ("NEPA does set forth significant substantive goals for the Nation, but its mandate to the agencies is essentially procedural"). When, as the Board has determined to be the case here, a federal agency concludes that a proposed federal action may have significant impacts on the quality of the environment or the conservation of energy resources, the agency must prepare an Environmental Impact Statement assessing those impacts, and must consider the identified impacts in deciding upon its course of action. 42 U.S.C. § 4332 (2)(C). However, neither NEPA nor an EIS prepared in accordance with NEPA *requires* the agency to do more than consider the potential environmental impacts of its actions. They do not require the agency to take any measures to eliminate or mitigate *any* -- let alone *all* -- of those impacts. What mitigation measures to impose, if any, is a matter of the agency's discretion as defined and limited by its responsibilities and authority under its governing statute, as the Board's environmental regulations expressly recognize. 49 CFR 1105.10 (f). See also Strycker's Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223, 227-28 (1980).

Under the ICCTA, the Board has broad, but not unlimited, authority to impose conditions on a transaction to ensure that it is consistent with the public interest. 49 U.S.C. § 11324(c). In deciding whether to impose any conditions, including environmental mitigation conditions, the Board must weigh and balance *all* considerations relevant to the ultimate public interest determination. These include not only specific adverse environmental effects, but also the positive environmental effects and the positive economic and other public benefits of the transaction. The Supreme Court has clearly ruled that there is a fundamental distinction between the process of considering the environmental impacts of a particular federal action under NEPA and a requirement that those impacts be mitigated. NEPA mandates only that environmental impacts be considered, *not* mitigated. Robertson, 490 U.S. at 352-53. In choosing a course of action, the agency properly must weigh positive environmental effects against adverse environmental effects and, even more importantly, must balance environmental factors against other relevant legal or policy considerations bearing on the propriety of the proposed action. Id. at 350. Indeed, the basic purpose of NEPA is to require a federal agency to "balance a project's economic benefits against its adverse environmental impacts," Hughes River Watershed Conservancy v. Glickman, 81 F.3d 437, 446 (4th Cir. 1996); the intent of NEPA is not to "elevate environmental concerns over other appropriate considerations" before the agency. Baltimore Gas and Electric Co. v. Natural Resources Defense Council, 462 U.S. 87, 97 (1983).

In this sense, the purpose of an EIS is fundamentally different from an EA, the form of environmental analysis that has been employed by the Board and the ICC in prior rail consolidation proceedings. The purpose of an EA is simply to assess whether the proposed federal action would have significant environmental effects warranting the preparation of an EIS. For this reason, any significant adverse environmental impacts identified in an EA *must* be fully mitigated as a condition to the proposed federal action, or else the agency would be required to perform a complete EIS *before* undertaking the proposed action. E.g., 46 Fed. Reg. 18026, 18037 (1981) (Agencies can include enforceable mitigation measures to conclude that an action does not require preparation of an EIS); Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson, 685 F.2d 678 (D.C. Cir. 1982) (upholding Forest Service's use of mitigation measure to conclude no EIS was necessary). When, as here, a full EIS is prepared, there is *no* corresponding requirement that all identified adverse impacts be mitigated, but only the essentially *procedural* requirement that all environmental impacts be taken into consideration by the agency in deciding upon a course of action. Robertson, 490 U.S. at 352-53. In this case, the DEIS blurs this important distinction, as it proposes a plethora of mitigation measures that appear designed to alleviate or eliminate virtually every potential adverse impact of the Transaction, without regard to the impact of those measures upon other aspects of the Transaction or the costs to the transportation industry and shipping public. The Board is obligated by NEPA and the ICCTA to balance adverse environmental effects against offsetting positive environmental effects and, importantly, non-environmental public benefits of the Transaction.

In deciding this case, the Board must consider the very substantial benefits this Transaction will provide, benefits not only to the U.S. transportation system and the economies of the regions that NS and CSX will serve but also to the environment. Because NS believes that it is critical that the Board consider all of those benefits as part of its environmental review as well as in its decision on the merits, those benefits are summarized in Section 3 of these comments.

2.3 Several Proposed Mitigation Conditions Exceed Basic Limitations on the Board's Conditioning Power Long Recognized By the Board and the ICC.

The measures proposed in the DEIS to mitigate identified potential adverse environmental effects of the Transaction are also governed by the limitations on the Board's authority to impose conditions to its approval of a proposed rail consolidation. *See generally* CSX/NS-176 at 36-43. Any condition imposed by the Board must be directly related to the transaction at issue. As such, the proposed condition may appropriately address and ameliorate *only* those identified impacts that are directly attributable to the proposed transaction, and may not be designed to remedy pre-

existing conditions or effects unrelated to the transaction at issue. Indeed, SEA has acknowledged the clear-cut limitations on the Board's ability to impose mitigation to remedy environmental conditions that arise prior to the transaction or that would address circumstances that are not directly related to the Board's action. DEIS at 1-10. Accordingly, proposed conditions are justified *only* if they are narrowly tailored to remedy specific transaction-related harms. Proposed conditions are not warranted if other alternative remedies are available or if the proposed condition would improve the pre-transaction condition of third parties, would be operationally infeasible, or would disproportionately undermine the other public benefits of the proposed transaction. *See, e.g.*, BN/Santa Fe at 55-56; UP/SP at 144.

Although the DEIS at several places makes reference to these established limitations on the Board's authority to impose environmental conditions (*e.g.*, DEIS at 7-31), it fails to apply these standards in critical respects. The DEIS identifies various adverse environmental effects that are claimed to be traceable to the Transaction but, in proposing measures to mitigate these identified harms, fails to assess whether the proposed mitigation is narrowly tailored to remedying *only* the Transaction-related harm, whether alternative remedies are available, and whether the proposed mitigation would be operationally feasible and preserve the other public benefits of the Transaction.

For example, the DEIS proposes that Applicants be required to (1) comply with various laws, regulations and private agreements that would be independently binding on them (measures that, by definition, are not necessary and for which alternative remedies exist), (2) install, with or without otherwise required state and federal funding, costly upgrades in highway/rail at-grade crossings that would more than rectify the claimed Transaction-related adverse impacts on accident rates and traffic delays (measures that, by definition, would improve pre-Transaction conditions), and (3) commit enormous funds to the installation of new rail facilities, limit the number of trains moving over certain line segments and implement new operating procedures and other measures that would disproportionately undermine the public benefits of the Transaction. In all of these respects, such proposed mitigation measures should be rejected.

In addition, the NEPA process and the Board's conditioning power should not be used to re-write industry-wide regulations and operating practices related to railway safety and operations. Just as the Board has recognized that its conditioning power may not be used to effectuate broad restructuring of the rail industry and the competitive balance among carriers (see, e.g., BN/Santa Fe at 55-56), so too it would be an inappropriate exercise of the Board's responsibility to consider environmental impacts of the Transaction to impose conditions that

fashion broad new safety and operating rules to which other major railroads are not subject and that fall within the regulatory responsibility of other federal and/or state agencies.[1]

Such "de facto" rulemaking -- resulting in the selective imposition of new standards upon only a portion of the railroad industry -- is neither legally sound nor a prudent exercise in implementing federal transportation policy. SEA recognized this limitation in the DEIS in its proposal not to impose noise-impact abatement measures falling within the FRA's regulatory jurisdiction over train horn signals (DEIS at 3-36), but it strayed from this standard in several respects, including its proposals to require Applicants to (1) comply with a *proposed* industry-wide FRA regulation governing rail inspections, (2) alter the existing regulatory scheme governing selection and funding of grade crossing improvements, (3) maintain 15 and 30-minute separations between passenger and freight trains on certain line segments, without regard to FRA's passenger train safety role, prevailing industry standards and operating practices on similar rail lines, and (4) comply with various newly fashioned operating requirements and procedures governing transportation of hazardous materials, again without regard to the established FRA role in regulating the safe transport of hazardous materials, prevailing industry guidelines and operating practices in the handling of such traffic.

2.4 The DEIS's Recommended Mitigation to Impose Grade Crossing Protection Device Upgrades Conflicts with the Traditional Role of State DOTs.

SEA has recommended in the DEIS that 118 NS and CSX at-grade crossings be upgraded based on SEA's analysis of the predicted impact of the proposed Transaction upon safety conditions at those locations. NS will address the specific results of SEA's safety analysis at Section 4.3 below. A more fundamental issue, however, is raised by SEA's proposal to impose upon NS and CSX a requirement that they upgrade the 118 at-grade crossings in accordance with SEA's judgment, without state involvement, as to the need for additional protection devices, the priority of need, the design of such devices for individual locations and the funding of the cost of installing and maintaining such devices.

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[1] The ICC recognized the wisdom and propriety of leaving to state and industry expertise decisions concerning industry practices that have traditionally been addressed through cooperative state/industry relationships. See, e.g., Yellow Freight System, Inc. of Indiana, Petition For Declaratory Order -- Weighing Shipments MCC Dkt. No. 40853 (served January 20, 1995). (ICC declined to regulate motor common carrier weighing practices where traditional mechanisms are in place for state/industry cooperative effort.)

It is important to understand that this issue is not tied only to a determination as to how the cost of SEA's recommendations for upgrading the 118 grade-crossings will be borne. Of greater concern is the undermining of a role assigned by federal statute and duly promulgated administrative regulations to state DOTs and other relevant state transportation agencies. The DEIS proposal to impose as mitigation requirements that NS and CSX install the specified protection devices at each location as indicated at Table 7-4 ("Preliminary Recommended Highway/Rail At-Grade Crossings That May Warrant Safety Improvements") would contravene the statutory authority granted to the state DOTs and other state bodies. It would also ignore and override the states' expertise necessary to assess the appropriate levels of crossing protection within their jurisdictions. Federal law assigns the determination of the need for, and priority to be assigned, the upgrading of a particular grade crossing to the state transportation agency charged with ensuring the road safety of its citizens. Federal law assigns to that state agency the right to determine the type of warning device that is most appropriate for the location in question. Traditionally, the state agency has worked with the railroads in a cooperative effort to allocate the costs of installing and maintaining the protection devices.

Many considerations are taken into account by the state agency in making its grade crossing determinations, and there is no one set of factors that is required to be considered universally to derive a common answer. Rather, a determination as to the need for, priority of, design, and funding for a grade crossing upgrade project is typically based on specific factors assigned degrees of importance by the state agency. These decisions are based on criteria as appropriate in each state. These decisions are not made in a vacuum, but instead take into appropriate account the different priorities that may be expressed within the state or a local community.

SEA's approach removes this very site-specific prioritization duty from the appropriate state regulatory body. It also attempts to apply a set formula for determining what design of protection device is to be installed at each of the 118 locations, without regard to site-specific conditions and variables. This approach is inconsistent with established practices and is simply unworkable. For example, in the DEIS SEA would require NS to install four-quadrant gates or median barriers at seven crossings in Indiana, Ohio, Pennsylvania and Virginia, based solely on SEA's significance criteria without required consideration of site-specific factors, and despite the fact that such devices are still experimental. These devices have not received FRA approval to date. Indeed, they are currently being installed and tested at limited, controlled locations with case-by-case state and local approval. In addition, these warning devices are <u>not</u> appropriate for any and all sites. States typically rely upon the Manual for Uniform Traffic Control Devices ("MUTCD") for guidance on warning devices; notably, the MUTCD has not approved the

installation and use of four-quadrant gates or median barriers. Obviously, NS cannot lawfully implement SEA's recommended mitigation without the express approval by the state, for the very same reason that one cannot unilaterally install a stoplight at a chosen location on a state roadway without first obtaining authorization from the state to do so.

As the above comments indicate, the only feasible way to determine how and when individual grade crossings in a state should be upgraded is through consultation by NS with the responsible state transportation agency. NS would provide the relevant state agencies with the necessary information it has developed to predict changes in NS train traffic as a result of the Transaction. Armed with that information, the state entities can assess the need for particular upgrades at individual locations. They can then determine, in consultation with NS, the desired timing and funding of the upgrade projects consistent with their other priorities.

2.5 Localized Service Limitations Should Not Be Imposed as Environmental Mitigation in This Case.

The significant economic and environmental benefits that can be expected to result from this Transaction can only be fully realized if the Applicants are permitted to implement the operating plans upon which such benefits are predicated. Among other things, the operating plans were designed to maximize the efficiency of each Applicant's expanded system, to improve service times, to satisfy the service needs of all existing shippers, to make rail transportation more attractive as compared to other modes of transportation to current and potential shippers, and to ensure that each Applicant can fully and effectively compete with the other. If artificial limitations are imposed upon NS' train operations in any particular locality, the above-mentioned goals of the operating plan will be impaired. Among the preliminary mitigation possibilities recommended by the DEIS (in Erie, Vol. 3B at PA-56), and which may be suggested for certain other locations by other parties, are restrictions on the number of trains which may be operated over a particular section of track or other routing or operating restrictions. Such restrictions are

not appropriate in this case.[2] They would: (1) create operational bottlenecks or clogs which will inhibit service and infect the network with congestion and delay, (2) preclude realization of transportation benefits of the Transaction, (3) reduce the environmental benefits of the Transaction, and (4) impose long-term rigidity on railroad operating decisions which would otherwise be entirely discretionary.

2.5.1 Operating Restrictions Would Create Bottlenecks and Clogs.

The parties and, indeed, many commentors in this proceeding have recognized the enormous challenge of allocating the assets of a single, integrated rail network between two operators, NS and CSX. The division is fundamental to the competitive benefits of the Transaction, but it is a mammoth and at the same time a delicate operation. The parties worked diligently to allocate routes so as to provide both competitive balance and operational integrity. Getting the physical plant right assures that the transition from single railroad to dual railroad service will occur safely and smoothly, with the fewest possible disruptions for shippers.

Among the most difficult allocations were those in urban areas, and urban geography consumed a large share of the effort for both NS and CSX. Making the transition from lines on a map to a determination of actual rail capacity presented an array of complex operational challenges. The roadbed, track structure, signaling, connections, and access to yards and sidings all go into the equation governing what traffic a line can actually handle.

The resulting plan for achieving division, transition, and balanced competitive capability is too fine to admit artificial adjustments. It has been reported, for example, that many operating problems experienced in the West by UP/SP rippled out from the closure of a single yard in Houston. A railroad is like a hydraulic line; a kink in one place can drastically affect the whole system.

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[2] NS urges SEA to undertake a thorough examination of any mitigation options it might consider that have the potential to interfere with Applicants' Operating Plans. All potential adverse effects related to such mitigation proposals should be carefully analyzed before selection for recommendation. Even should SEA determine that a specific measure that could have other ripple effects on the railroad system is potentially available to address a significant local impact, SEA should, at a minimum, provide the Board with several alternatives to that measure so the Board can properly weigh all of the environmental, commercial and other benefits that would be disturbed and other adverse impacts that would flow from any tinkering by the Board with an Applicant's Operating Plan.

Arbitrary train limits or other operating restrictions (such as a directive to use one route in preference to another) are a particularly dangerous form of mitigation. For example, the two-train-increase ceiling proposed for Erie could mean the traffic will not be handled (see Transportation Benefits at Section 2.5.2 below), or trains will be held, combined, or otherwise handled in a less than optimal manner. As the experience of the West shows so well, sub-optimization of personnel and equipment use quickly balloons into train crew and motive power shortages with impacts on the adjoining parts of the network.

Similarly, train limits or routing directives in Cleveland or northern Ohio would risk upsetting a carefully planned equilibrium. Northern Ohio is where the "X" of the Conrail system crosses, and where the major lines of the New York Central and Pennsylvania intersected before the merger of those railroads. (Friedmann VS, Rebuttal Vol. 2A, pp. 165-66). Moreover, Conrail's announced strategy over the past decade was to concentrate rail traffic through Cleveland. Id. The disaggregation of these properties was particularly challenging, yet central to the competitive thrust of the undertaking. Applicants' solution puts CSX traffic through Cleveland on the so-called "Short Line," a wide, grade-separated route with excellent safety characteristics.

Adjustment and restrictions that have been proposed, and which are not acceptable, would make less use of the Short Line and more use of the Lakefront line. One suggestion would require construction of a two-mile long flyover, dividing and shadowing the city of Berea (southwest of Cleveland). The same proposal complicates access to Norfolk Southern's Rockport Yard, hurting service to shippers such as Ford Motor Company (Friedmann VS, Rebuttal Vol. 2A, p. 168), eliminates NS' access to its major ore dock at Whiskey Island, and entails increased train traffic and the construction of an embankment by a waterfall which Cleveland had desired to protect. The crimping of the operation again poses the strong probability of congestion.

The purpose of these general comments is not to provide an engineering assessment of each proposal. Rather, it is to point out that the introduction of arbitrary restrictions into a carefully engineered system will necessarily constrain the capacity of the system, and that congestion, delay, and attendant power and crew shortages and service failures are the predictable consequence.

2.5.2 Operating Restrictions Would Impair Transportation Benefits.

The EIS process involves balancing Transaction benefits (including environmental benefits) against environmental costs. Consequently, proposed mitigation must be evaluated in light of the price it exacts in lost Transaction benefits. Train limits and operating restrictions threaten the fundamental transportation benefits of the Transaction.

For example, a major commercial objective of NS in this Transaction is to use the Southern Tier route for its only access to New England and for an important second mainline to the Port of New York/New Jersey through New York State (Application, Vol. 1, pp. 528-30; Vol. 2B, p. 249; Vol. 3B, pp. 14-15, 38). The Southern Tier route, not the favored route today, needs every possible flexibility to compete with CSX's Water Level Route and to provide service comparable to that on NS' Pennsylvania Route, the routes which today have most of the East-West traffic.

Long-haul traffic which NS is projecting for the Southern Tier will move over Buffalo and Erie. The two-train-increase limit in Erie would prevent NS from handling traffic that is projected for Day 1 in competitive train service. Particularly since Erie will ultimately receive major environmental benefits from the Transaction through the construction of a bypass, an interim punitive restriction on NS' ability to use the Southern Tier effectively and to compete with CSX in the critical startup period is wholly unwarranted.

In northern Ohio, traffic from the former PRR lines to be operated by NS crosses to the former NYC line for movement to and from Chicago (Application, Vol. 1, p. 522). Train limits or operating restrictions here at the epicenter have the potential for major disruption to the fluidity of the system. The routes have been put together with attention to signals, curvature, grade, capacity and service. Even so, NS is not simply standing on its plans. For example, in order to avoid increased traffic at Lakewood, NS has volunteered, subject to funding, to work with local governments to build a connection to move some of the traffic through a more industrial corridor. However, any imposition of unilateral solutions would come at a cost to the Transaction which is always greater than appears on the surface. Ultimately, a wrench in the works at Cleveland would cripple the ability of one or both parties to provide efficient, competitive service along the critical East-West routes to Chicago. It would be highly unfortunate if the Applicants, who are making the greatest investment in new capacity the East has seen in decades, would find themselves hobbled by arbitrary limits on train operations.

2.5.3 Operating Restrictions Would Reduce Environmental Benefits.

The traffic which causes train increases in Erie, in and around Cleveland, and elsewhere on the network is either being removed from other routes or diverted from trucks or other modes of transportation. The environmental benefits of the Transaction are not independent of these traffic changes. On the contrary, traffic changes resulting in train increases in a real sense are the consequence and measure of the undisputed environmental benefits of the Transaction.

The substantial highway safety, energy efficiency, and pollution reduction improvements of the Transaction account for the preponderance of the net environmental benefits identified by the DEIS (see Section 3 below). These benefits come from diverting truck traffic, and to a lesser extent from handling rail traffic more efficiently, with fewer switches and interchanges.

Over half the train increases in the northern Ohio region are accounted for by the capture of business now moving by highway. Because northern Ohio is an interstate highway as well as a rail hub, with Interstate Highways 80, 90 and 77 criss-crossing the region, it will be among the major beneficiaries of the diversion of truck traffic. Train limits or other restrictions will keep much of the additional traffic from moving by rail, with adverse emissions, safety, fuel efficiency and highway congestion and maintenance consequences. Such limits and restrictions could also result in rerouting of rail traffic and resulting increases in adverse environmental impacts for different localities. The DEIS does not attempt to weigh these adverse consequences against the benefit of restrictions. The required balancing would be difficult, and reemphasizes the impropriety of using arbitrary train limits to try to reform the predicted but changeable downstream impacts of the Transaction.

2.5.4 Operating Restrictions Would Unduly Limit Operating Discretion.

Under normal circumstances, decisions about numbers of trains and routing of trains rest with railroad management. For example, in recent years, through voluntary coordination agreements with Conrail, NS has rerouted substantial volumes of north-south interchange from Potomac Yard (Washington) to Hagerstown, Maryland to take advantage of the more efficient interior route via Harrisburg (Application, Vol. 1, p. 510). Without this route, no carrier would be able to offer Northeast/Southeast doublestack service. Similarly, NS has agreed with Conrail to concentrate the interchange of auto traffic moving to and from the East at Cleveland, rather than leaving it dispersed among several other points.

Commercial initiatives, laudable in the context of coordinations, should not be stymied when they happen to surface in a control case. These operating and marketing adjustments go on continually in the railroad industry and do not require federal approval. In the context of a control proceeding, the Board should be very cautious about imposing restrictions that would disable an applicant railroad's ability to achieve efficient and commercially attractive operations.

In northern Ohio, traffic has varied among the involved routes as the economics of the industry, the demands of customers and the operating imperatives of the time have required. For example, the Cleveland Short Line corridor from Collinwood through East Cleveland handled well over 50 trains per day from the time of its completion in 1912 through the late 1950's, then still over 40 trains per day through the early 1960's. Thus, for about 50 years this corridor had train volumes greater than or equal to the volume that CSX now expects to operate over it. Now some interested parties would freeze the discretion which has permitted these adjustments.

The Transaction that is proposed facilitates routing and traffic changes, but as the history of train movements through Cleveland shows, such changes would go on in any event. Authorization of control does not cause trains to move on different routes in the same sense that construction of an interstate causes trees to be destroyed or farmland consumed. Because of the contingent and downstream connection between the financial transaction proposed and the train movements which give concern, the Board should be especially reluctant to impose operating restrictions on the Applicants.[3]

As explained above in Section 2.1, the Board is not required in this Transaction, as it was in the UP/SP merger, to mitigate every (or indeed, any) environmental impact it anticipates. In UP/SP, the Board was faced with no option other than to proceed, upon completion of its EA, with a full EIS *unless* it determined that no significant adverse environmental impacts would remain following Board-imposed mitigation. Hence, SEA had no viable option other than to recommend that the Board impose a restriction on the increase in train traffic at Reno and

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[3] Indeed, a recent search by NS of the Federal Register found *no* other merger, in *any* industry, regulated or unregulated, in 1997 for which an EIS was required. This is probably due to the fact that mergers per se are financial transactions which do not have automatic environmental consequences. The Federal Energy Regulatory Commission, for example, has "categorically excluded" merger approvals from the actions requiring either an EA or an EIS except where scenic rivers, wilderness areas or other unique resources are affected. 18 C.F.R. § 380.4. See also 61 Fed. Reg. 68595, 68605 (Dec. 30, 1996) (reaffirming categorical exclusion rule). No other sector of the American economy undergoes this kind of merger scrutiny, a fact which argues for extreme restraint in imposing burdensome conditions with unpredictable consequences.

Wichita pending selection and completion of mitigation to eliminate the adverse environmental impacts of the merger. Here, the Board faces no similar NEPA restriction or other legal impediments to the fulfillment of its task of balancing any localized environmental impacts with the system-wide environmental and other public benefits to be derived from the Conrail Transaction. Thus, the rationale applied by the Board for imposing traffic restrictions in UP/SP is neither relevant nor appropriate in this proceeding.

In view of the fact that the DEIS recognizes a number of system-wide environmental benefits associated with the proposed Transaction and does not identify any system-wide significant adverse environmental impacts, and the fact that restricting traffic on one line segment can have adverse effects on operating capacity, efficiency and the net benefits of the Transaction, localized environmental impacts should not be allowed to disrupt the overall operating plans developed by the railroads.

2.6 Opposition to STB Imposition of Negotiated Agreements as Conditions to STB Approval

SEA has indicated in the DEIS that it intends to impose as a condition of its approval of the Transaction any negotiated settlement agreements or other mutually-acceptable binding agreements pertaining to the Transaction that NS and CSX enter into with non-Applicants. SEA apparently intends to take all such agreements completed prior to the publication of the FEIS and recommend to the Board that it impose the terms of the agreements as environmental conditions to any decision approving the Transaction. DEIS at 7-4. SEA and the Board should, however, give serious consideration to whether this proposed action to impose conditions is in fact within the Board's authority and whether it is a prudent and necessary step.

While it is true that the Board and the ICC have in several instances involving railroad mergers and other consolidations conditioned agency approval upon the parties' compliance with various environmental mitigation measures, there is no basis in NEPA for requiring in all instances that negotiated agreements pertaining to mitigation be made formal conditions of Board approval. As explained at Section 2.1 above, NEPA mandates a process, not a result. Moreover, the present application by CSX, NS and Conrail is the first instance in which the Board has prepared an EIS to evaluate fully the range of potential environmental impacts associated with a proposed consolidation. Because of the fundamental differences between the process and end result of the preparation of an EIS versus the completion of an EA, as explained at Section 2.1 above, it is not necessary in this instance that the Board resolve each and every potential environmental impact that can be identified. Yet this is precisely what SEA suggests it would do

by requiring that all solutions to potential environmental impacts that the Applicants negotiate be imposed as formal conditions. Not only is this standard for imposing conditions unnecessarily stringent in the context of an EIS, which requires that the Board balance the identified adverse environmental impacts with the identified system-wide environmental, commercial, and other public benefits of the proposed Transaction, it fails to heed clear limits on the Board's authority to impose conditions.

Because of the amorphous nature of some of the perceived environmental impacts that may become the subject of negotiations between NS and affected entities, it can be expected that some of the negotiated solutions to the impacts will fall outside the limited authority of the Board to impose as mitigation measures. Moreover, any insistence by SEA that the terms of a negotiated agreement be converted into a Board-imposed condition would have an obvious dampening effect on the ability of NS to consider and agree to innovative, creative solutions to community concerns. The Applicants would likely be less willing to negotiate such agreements with the prospect hanging over their heads of the Board turning a voluntary, uniquely-tailored solution in a specific instance into a formal condition that could later be argued to have precedential effect because of the Board's imposition of the agreement as a condition of approval.

NS is actively seeking bilateral agreements with third parties where feasible and appropriate to address environmental concerns. The recognition in the FEIS of voluntary stipulated agreements between an Applicant and a third party is an appropriate alternative mechanism for addressing identified environmental issues related to the proposed Transaction. Such voluntary third-party agreements should be recognized as stipulations, not conditions of Board approval. The Board's ability to carry out its responsibilities does not require that such voluntary agreements become formal conditions of approval -- the Board will have continuing oversight following any decision to approve the Application. This oversight function will fully enable the Board to determine whether the Applicants are satisfying the terms of their voluntary agreements and to take appropriate steps in the event that intervention is required.

Moreover, SEA and the Board should not presume that the lack of a voluntary agreement between an Applicant and a third-party at the time of issuance of the FEIS and/or at the time of the Board's voting conference necessitates the imposition of a formal condition. As the DEIS itself recognizes, the consultative process is a far superior means for developing and implementing creative, mutually-beneficial solutions to local environmental impacts than is the formal conditioning process. The consultation process allows the parties to share responsibilities and costs in a manner that the Board could not impose unilaterally. However, the consultative process cannot be expected to produce across-the-board agreements over the course of a mere

few months. Creative solutions with public entities require many levels of review and approval before the public entity can commit itself to a binding agreement. Given these realities, SEA and the Board should allow the consultative process to continue beyond issuance of the FEIS, the voting conference or the implementation of the Transaction, in order to allow the process a full opportunity to produce optimal results. Applicants propose that they report the outcome of the consultations to the Board as consultations are concluded or as otherwise appropriate.

SECTION 3

3.0 BENEFITS OF THE CONRAIL TRANSACTION

The proposed Conrail Transaction will provide substantial environmental, safety and socioeconomic benefits. NEPA requires that the Board, in choosing a course of action, properly weigh positive effects against adverse effects, and balance environmental factors against other relevant legal or policy considerations bearing on the merits of the proposed Transaction. The following sections summarize the environmental, safety and socioeconomic benefits of the proposed Transaction. These benefits should be properly recognized within the FEIS, and taken into account by the Board in reaching a decision and determining what, if any, mitigation is required.

3.1 Environmental Benefits

The Transaction's benefits start from the basic fact that railroads are the least polluting, most energy efficient, and safest freight transportation mode on land in the United States. Railroads' environmental advantages are especially pronounced when railroads are compared with trucks:

- **Railroads are more fuel efficient than trucks** — using the same amount of fuel, trains can move the same amount of freight three times farther than trucks.

- **Railroads pollute less than trucks** - because of their superior fuel efficiency, trains emit less air pollution than trucks hauling the same freight the same distance.

- **Transportation of hazardous materials (hazmat) is safer by rail than by highway** — Railroads have less than one-tenth the hazmat incidents of trucks when compared on an equal ton-mileage basis.

- **Railroads provide lower accident risk than trucks** — Significantly more truck collisions than train accidents occur on a per ton-mile basis.

The Transaction's environmental benefits derive mainly from diverting freight from trucks to railroads. These truck-to-rail diversions will be substantial over the entire Transaction; for NS' portion alone, there will be a reduction of an estimated 589,000 truck trips annually. This will result in system-wide energy savings, fewer air emissions, reduced wear and tear on highways, and less highway congestion, as well as safety and socioeconomic benefits.

3.1.1 Air Emissions Benefits

Air pollutant emissions will decrease notably as a direct result of the Transaction. In particular, hydrocarbons, carbon monoxide, nitrogen oxides, particulates and lead emissions will substantially decrease. The DEIS correctly recognizes that the Transaction will result in "...an overall improvement in air quality." DEIS at 4-70.

Railroads are more fuel efficient than trucks, and this efficiency translates into fewer pollution emissions from trains than from trucks hauling the same freight the same distance. The system-wide decreases in air pollutant emissions will result primarily from the substantial truck-to-rail diversions that will occur due to the Transaction, but will also result from more efficient rail routings that will be available through the expanded CSX and NS systems.

The DEIS also notes another air quality benefit, "...a reduction in the potential for accidental release of ozone-depleting materials..." DEIS at 4-62. This benefit is due to the reduction in car-miles and freight-handling in rail yards for these shipments as a result of the Transaction.

3.1.2 Energy Benefits

The combination of truck-to-rail diversions and more efficient rail routings will result in very significant reductions in fuel consumption. Various models and estimates by the Applicants and the Board project a range of savings in net annual reduction in diesel fuel consumption. Estimates range from a high of 133.6 million gallons of diesel fuel, to the most conservative estimate used in the DEIS (at 3-1) of approximately 80 million gallons of diesel fuel saved annually. Thus, the DEIS concludes that "there would be no significant environmental impacts on energy consumption...as a result of the proposed Conrail Acquisition" (DEIS at 4-49), although this actually represents a significant benefit.

3.1.3 Safer Hazardous Materials Transportation

Transportation of hazardous materials is safer by rail than by road. Railroads in the United States carry almost 2 million freight cars of hazardous materials annually; this is equivalent to almost 6 million trucks on U.S. roads. Yet, railroads have less than one-tenth the number of hazardous material incidents of trucks, despite equal ton-mileage. (Whenever a hazardous material leaks or spills from its container, it is considered an "incident" no matter how small the amount or minor the effect.) NS, in particular, has an excellent safety record. Of the 225,000

shipments of hazardous materials transported in 1996, less than one-tenth of one percent involved incidents, most of which were minor in nature and were shipper or tankcar owner-related.

The DEIS concludes, correctly, that "[o]verall, the proposed Acquisition should result in a slight safety improvement for rail transportation of hazardous materials and no significant system-wide adverse impacts related to hazardous materials transport." DEIS at ES-19. This improvement results from a decrease in rail car-miles of hazardous materials associated with more efficient routings and from a reduction in hazardous materials freight-handling in rail yards due to expansion of single-line service and reduction of interchanges. The expansion of single-line service and reduction of interchange (switching) is particularly important in improving hazardous materials transportation safety. Single-line service decreases the amount of rail car switching between tracks and carriers — and it is during switching that accidents are most likely to occur.

3.1.4 Enhancement of Long-Term Productivity

As required by NEPA, the DEIS considers the extent to which the Transaction would result in long-term productivity gains at the expense of short-term use of the environment and environmental impacts. The DEIS concludes that the short-term impacts would be more than offset by long-term gains in productivity, including increased productivity and efficiency of rail operations in the eastern United States. DEIS at 4-76. The long-term positive effects also include improved service and system-wide reductions in energy consumption, highway traffic congestion, highway accidents, and air pollutant emissions. NS concurs with this conclusion - the Transaction will have a net positive benefit for the environment and the economy.

3.1.5 Commitment of Resources

The DEIS evaluates the irreversible and irretrievable commitment of resources, including natural, physical, human, and fiscal resources; it concludes that the benefits of the proposed Transaction would outweigh the commitment of resources. DEIS at 4-77. NS agrees with this important conclusion in the DEIS.

3.1.6 Norfolk Southern's Environmental Policy

Another benefit of the Transaction will be the expansion of the best practices of NS' environmental commitment as selected Conrail operations and activities become part of the

expanded NS rail system. NS' environmental policy requires every employee to understand and comply with environmental requirements on the job. Government agencies are informed of any spill or hazardous materials incident regardless of the potential to cause environmental harm. Wastes are minimized through recycling, reduced consumption, and use of environmentally preferred materials and nonpolluting technologies. Cooperation is given to all governmental/environmental authorities. All laws and regulations related to protecting the environment and transporting environmentally sensitive materials are complied with in full. NS is committed to implement the best environmental practices of Conrail and NS after the Transaction.

Long-standing conservation practices at NS include collecting and recycling crossties, tires, paper, metal, aluminum, and rail car parts. Used rail is rewelded and reused. Lubricating oil and cleaning solvents are rejuvenated and reused. Tens of thousands of aging rail cars have been rebodied. NS works hard to be a sound environmental caretaker, and will utilize its proven environmental protection practices and programs to improve environmental management throughout its expanded system.

3.2 Safety Benefits

In addition to environmental benefits, the Transaction will bring about significant safety benefits which the Board should take into account as part of the NEPA balancing process. The most significant of these will result from the integration of Norfolk Southern's safety culture with that of Conrail. As SEA has noted (DEIS at B8-1), both NS and CSX had the lowest accident rates of all Class I railroads for the 1994 through 1996 period. Their rates have been lower than the Class I railroads as a whole. While Conrail's accident rate is higher than both NS and CSX, Conrail has been below or at the Class I accident rate average for the same period. DEIS at B8-1. The railroads' commitment to safety is reflected by these records and by their submission of detailed Safety Integration Plans to the Board in close coordination with the FRA.

3.2.1 Fewer Accidents

The greatest safety benefit from the Transaction will come from diverting freight from trucks to railroads. With an estimated reduction of 589,000 truck trips annually on the NS portion, there will be approximately 800 fewer truck crashes. This includes approximately 15 fewer fatal truck crashes involving one or more fatalities. DEIS, Volume 5A at B-14.

3.2.2 Reduced Switching

The expansion of single-line service (e.g., service via one railroad) that will result from the Transaction will also improve rail safety. Single-line service decreases the amount of rail car switching, where there is the greatest potential for collisions, derailments and employee injuries. The post-Transaction NS system will provide single-line service to an additional 245,000 freight units annually. Integration of some existing NS and Conrail terminals should reduce switching and improve safety as well.

3.2.3 Norfolk Southern Safety Program

One of the most important factors contributing to the environmental and safety benefits of the Transaction is NS' proven performance and commitment to safety. Within the railroad industry, NS is a safety leader, having recently earned the prestigious E.H. Harriman Memorial Gold Award for employee safety for the eighth straight year. NS strongly believes that safety is good business; its low number of injuries is proof its commitment is working. In 1996, NS employee injuries were one-fifth of what they were just eight years before. Since 1988, Norfolk Southern's train accident rate has dropped 31 percent, and is currently less than half that of the rail industry as a whole. Applying either NS or CSX's accident rate to the new lines will eliminate, even after accounting for new traffic, a net of approximately 50 rail accidents per year (Application, Vol. 6A, at 75).

Safely integrating NS' operations and activities with those of Conrail will be a key factor in maintaining and improving the safety of railroad operations. NS will accomplish this safe integration through, among other things, implementation of a comprehensive Safety Integration Plan (SIP) and by retaining key Conrail employees.

Safety Integration Planning. NS has been planning since the spring of 1997 how to integrate its part of Conrail in the safest and smoothest manner possible. In December 1997, NS submitted a comprehensive Safety Integration Plan to the Board, which documents all anticipated safety elements of the Transaction. NS has been and continues to consult with the FRA regarding the SIP and related planning for safe integration of operations.

Retaining Sufficient Employees. NS is committed to retaining sufficient numbers of Conrail employees (as well as Norfolk Southern's own valued workforce), particularly train crews and dispatchers. NS knows that a well-trained, skilled workforce is critical to safety. To underscore its commitment to retaining Conrail's institutional knowledge, NS has recently hired

several high-ranking Conrail employees knowledgeable about that carrier's operations and safety practices. For example, NS has already appointed Conrail's Director of Safety, William L. Barringer, to Director of Safety for NS, to capitalize on Conrail's own safety expertise and to meld smoothly the railroads' respective safety efforts. NS also plans to keep the same regional dispatching system in place to minimize the potential for disruption or disorientation, thereby ensuring that dispatchers are familiar with their territories.

3.3 Socioeconomic Benefits

The Transaction, and the resultant increased productivity and efficiency of rail operations in the eastern United States, will stimulate economic growth and deliver nearly $1 billion in public benefits to the nation as well as significant unquantified benefits. CSX/NS-18, Volume 1 at 16. The Board should give proper weight to these benefits, as well as environmental and safety benefits, as part of the NEPA balancing process.

3.3.1 Economic Benefits to the Public

CSX and NS have documented in submissions to the Board that the Transaction will generate nearly $1 billion in quantifiable public benefits. These benefits will result from the following:

- The proposed construction projects would increase transportation operation efficiency and improve service capabilities (shorter, more direct transportation routes), resulting in reduced transportation cost to shippers and consumers.

- These enhanced efficiencies would also facilitate the diversion of traffic from highways to rail. Over one million truck-to-rail diversions are predicted by NS and CSX, and NS alone anticipates approximately 589,000 diverted truckloads (Environmental Report at 2-2).

- In addition, truck-to-rail diversions would reduce fuel consumption by an estimated 133.6 million gallons of diesel fuel annually. DEIS at 4-47.

- Truck-to-rail diversions would also extend the life of the national highway system, and significantly reduce highway maintenance costs borne by federal, state and local agencies. The net savings from the Transaction to highway maintenance costs is approximately $93 million per year (Environmental Report at 2-6).

- In addition to the normal capital expenditures the railroads' would spend to operate Conrail, NS and CSX plan to spend a combined $1.3 billion for major capital improvements and equipment purchases. *[This $1.3 billion is the largest expenditure for new capacity on a railroad in at least four decades.]* NS alone anticipates spending $729 million in the first three years for projects such as rail corridor upgrades ($130 million), improvements to existing Conrail routes ($70 million) and new automobile facilities ($30 million).

- Other important public economic benefits will include reduced highway congestion and new opportunities for industrial development.

3.3.2 Benefits to Shippers from Increased Competition and Access

The Transaction will bring about a dramatic increase in competition between railroads, and will strengthen rail as a competitor with trucks for freight movements. The shift of traffic from the highways to NS will save shippers $92 million in annual logistics costs.

Conrail is presently the only Class I U.S. rail carrier operating throughout the Northeast section of the country. Shippers who are located in the Northeast thus lack the competitive and service benefits that come from having two strong rail networks serve them. The Transaction will introduce competitive Class I rail service for the first time since before the creation of Conrail for a substantial portion of the Northeast. The establishment of Shared Assets Areas for North Jersey, South Jersey/Philadelphia and Detroit and the restoration of rail competition for shippers served by the former Monongahela Railway will bring shippers in those areas the benefits of head-to-head competition between CSX and NS.

The expansion of CSX and NS's rail networks will also markedly improve rail service by creating new single-line service. Through the operation and use of Conrail's lines, CSX and NS will operate a number of new single-line routes, particularly between the Northeast and the Midwest and the Northeast and the Southeast. Shippers will benefit from the advantages of single-line service as compared to joint-line service in terms of timeliness, reliability and cost-effectiveness. There will be fewer interchanges, and more traffic will be able to bypass terminals, reducing delays and inefficiencies.

3.3.3 Industrial Development

Over the past seven years, NS' industrial development efforts have led the industry in creating economic growth and jobs in the Southeast and Midwest regions of the country. Just as NS' efforts have fueled growth in the areas it currently serves, so will the application of NS' proven industrial development strategy create substantial benefits for communities now served by Conrail. In 1997, 62 new industries located along NS' tracks, and 43 industries expanded existing facilities. Investments by these industries amounted to $2.6 billion, and 7,300 new jobs were created in the communities NS serves. Eight of the last 12 automobile plants built in the U.S. were built along NS lines.

4.0 PRINCIPAL COMMENTS ON ENVIRONMENTAL ISSUES

The following presents Norfolk Southern's comments on the scope, approach, methodology, technical analyses, conclusions, and recommended mitigation measures within the DEIS. These principal comments affect the DEIS conclusions and recommended mitigation measures. Overall, the DEIS provides a comprehensive assessment of the system-wide environmental effects of the proposed Transaction, and correctly concludes that the Transaction will have a net positive benefit on the environment and the economy. The DEIS analyses and conclusions regarding local impacts are equally comprehensive. However, there are several areas where NS has identified inappropriate analytical methods, technical inaccuracies, or other substantive errors in the DEIS which have led to erroneous conclusions and inappropriate recommendations for mitigation. Comments offered below support the DEIS where the analyses and conclusions are appropriate and accurate, and identify areas where the analysis or conclusions are inaccurate and mitigation inappropriate. In several areas where it appears improvements could be made to the DEIS, NS has offered a discussion of improvements or corrections and the results of their application, including the necessary technical justification for SEA's consideration.

4.1 Safety: Freight Rail Operations

For the freight rail operations safety analysis, the DEIS undertook both a system-wide and localized (rail line segment specific) safety analysis. The analyses estimated the probability of occurrence of freight train accidents that would result from the proposed Transaction.

4.1.1 Safety: Freight Rail Operations, System-Wide Analysis

The DEIS examined the system-wide freight operations accident risk for both pre- and post-Transaction configurations on all 1,022 rail line segments and 375 rail yards associated with the Transaction. To assess potential system-wide safety effects, the DEIS calculated the system-wide probability of an accident occurring based on the projected train activity data provided by NS and CSX in their Operating Plans. The DEIS concludes that the combined changes in freight traffic on rail line segments and freight activity in rail yards would result in a small overall decrease in the likelihood of freight rail accidents and derailments. DEIS at 4-10. Based on this analysis, the DEIS' findings are that the Transaction would not result in significantly adverse system-wide safety effects for freight rail operations and therefore, no system-wide mitigation measures are proposed.

NS believes the DEIS presents a well-founded, comprehensive analysis of the potential system-wide safety impacts from freight rail operations on the expanded NS and CSX systems. NS completely concurs with the DEIS conclusion of no significantly **adverse** system-wide safety effects from freight rail operations. Additionally, the Transaction will result in notably significant system-wide positive impacts on safety when the reduction in truck crashes resulting from truck-to-rail diversions is considered. The DEIS at 4-10 notes that the estimated reduction in truck-miles due to the Transaction could result in 1,600 fewer annual highway accidents. In addition, it should be noted that the latest statistics project a reduction of 31 fatal truck crashes, each involving one or more fatalities. DEIS at B-14. Significant environmental benefits such as this must be acknowledged and properly weighed against any adverse environmental effects when considering mitigation, as discussed in Section 2.2 above.

4.1.2 Safety: Freight Rail Operations, Segment-Specific Analysis

The DEIS performed segment-specific analyses of accidents on rail line segments where estimated increases in freight train traffic would exceed the Board's environmental thresholds for air quality and noise analysis. The DEIS estimates the average annual accident rate for freight operations on each specific segment and adjusts these estimates based on the track condition and on whether or not the segment has a train control signal system (which reduces the potential for accidents). The DEIS then applies inappropriate significance criteria to the line segment predicted accident frequencies to recommend unwarranted mitigation.

NS does not believe the Transaction will have adverse impacts on freight rail operations, and opposes any mitigation for freight rail operations safety for numerous reasons. First, the Transaction is expected to result in substantially significant system-wide safety benefits primarily as a result of truck-to-rail diversions. Additionally, NS currently has numerous programs, the details of which can be found in the ER (Part 1, Section 3.3 and 7.2) and the SIP (DEIS, Volume 2), to effectively manage freight rail operations safety as evidenced by its consistently low accident rate. These safety benefits of the Transaction should be taken into consideration when evaluating the need to mitigate segment-specific safety concerns. Finally, the significance criteria of a predicted accident frequency greater than one every 100 years actually addresses pre-existing conditions rather than Transaction-related changes as well as being based on erroneous data.

The DEIS identifies four NS line segments which SEA has calculated will exceed the significance criteria defined in the DEIS. The significance criteria as described in the DEIS at B-13 to evaluate the significance for safety effects of freight rail operations are as follows.

"First, SEA compared the Acquisition-related change in accident rate for a rail segment to the normal fluctuation in the state-wide accident rate. Second, SEA determined if the rail segment is predicted to experience an accident more frequently than once every 100 years per route mile. If a rail line segment is predicted to have an increase in accident rate greater than the normal variations in state-wide accident rates and to have an accident more frequently than once every 100 years per route mile, SEA considered mitigation for safety impacts."

The criterion of more than one accident predicted every 100 years is not an appropriate threshold to determine significance of safety effects from Transaction-related changes in freight rail operations. Any condition imposed by the Board must be directly related to the Transaction's impacts and may not be designed to remedy pre-existing conditions. The criterion of a predicted post-Transaction accident rate greater than one accident in 100 years would actually address existing conditions rather than just the Transaction-related change in traffic on the line segment.

This is verified by the calculations provided in Attachment B-1 of Appendix B of the DEIS. For example, the NS line segment Miami to Airline (N-086) exceeds the DEIS so-called significance criterion with a predicted post-Transaction accident rate of one accident every 78 years. However, this is not a Transaction-related impact, because the pre-Transaction predicted accident rate for the same segment is one every 88 years which is already greater than the DEIS significance threshold. This significance criteria encompasses pre-existing conditions and neither restricts its focus to changes related to the Transaction nor results in recommendations narrowly tailored to mitigate the potential changes in such impacts.

Additionally, this significance criterion appears to have been based on incorrect data. The DEIS at B-13 states that a criterion of one accident every 100 years was based on the national frequency of railroad accidents calculated from the 1996 FRA Accident/Incident Bulletins. The DEIS uses the values 1,078 total freight and passenger accidents and 126,682 miles of main line railroad tracks operated in the U.S. to calculate that a freight train accident can be expected to occur once every 117 years per route mile.

However, there is no reference to 1,078 total freight and passenger accidents in the 1996 FRA Accident/Incident Bulletins. In fact, on page 14 of the Accident/Incident Bulletin, No. 165 for the Calendar Year 1996, a total of 2,584 train accidents were reported. These statistics suggest that a freight rail accident can be expected to occur once every 49 years, not once every 117 years. There are **no** NS line segments with pre- or post-Transaction predicted accident rates

exceeding one every 49 years. *For this reason and the reason described above, no mitigation related to freight rail operation safety is justified or warranted.*

There is, moreover, no analytical basis for the mitigation the DEIS proposes for the four NS line segments that are purportedly above the DEIS significance criteria for freight rail operations safety. Recommended mitigation in the DEIS includes annual training of mechanical and track inspectors and compliance with a proposed FRA rule requiring certain frequencies of rail inspection. *NS opposes imposition of any mitigation that would constrain its ability to adopt equally or even more effective alternative inspection and training programs.*

The DEIS proposes for line segments identified as having a significant impact for freight rail operations safety that NS comply with a proposed FRA rule which could require certain frequencies of rail inspection based on ton-miles of traffic on a line. The current proposal would require such inspections at least once every 40 million gross ton-miles, or annually, whichever is more frequent. NS' already conducts such inspections on an equal or more frequent basis and stipulates it would continue to do so. NS believes, however, that it would be inappropriate for the FEIS to recommend such a requirement as it would encroach upon the jurisdiction of FRA regarding freight rail safety operating rules, and have the effect of prematurely adopting a proposed rule which is currently subject to the proper FRA rulemaking process.

Additional mitigation the DEIS recommends for the four NS line segments above the significance criteria includes annual training of mechanical and track inspectors for these locations. No justification is provided for this mitigation. The existing NS safety program is proven effective - the NS overall safety record is second to none. All NS inspectors receive extensive training and are fully qualified to provide inspections per NS standards. NS has systems in place to continually monitor and review the performance of its inspectors and to provide additional training when traffic or other condition changes warrant such training. The DEIS fails to provide a reasonable basis for implementing this specific annual training requirement. *For these reasons, NS believes there is no justification for any proposal to require annual training for these inspectors in the FEIS.*

4.2 Safety: Passenger Rail Operations

The DEIS correctly reports that the Transaction will not result in any system-wide degradation in the safety of passenger rail operations that are conducted on the expanded NS and CSX systems following the proposed Transaction. NS and CSX are both experienced in safely handling passenger operations on their systems and in working cooperatively with Amtrak and

other passenger rail agencies to enhance safety. NS and CSX have achieved outstanding safety records in this area.

Nonetheless, on the basis of a statistical analysis of passenger and freight operations on the 197 rail line segments over which both freight and passenger operations are conducted, the DEIS (Chapter 7 at 7.2.2) concludes that a total of ten NS and CSX segments may warrant special safety mitigation measures. The DEIS therefore proposes that NS establish passenger trains as "superior," and maintain 30-minute windows around passenger trains, on four NS line segments and possibly one additional route over which there are both freight and passenger operations.[4] Identical mitigation is proposed for five CSX line segments. The NS segments are:

- Kalamazoo, MI to Porter, IN (N-497)
- Campbell Hall, NY to Port Jervis, NY (N-063)
- Jackson, MI to Kalamazoo, MI (N-120)
- West Detroit, MI to Jackson, MI (N-121)
- Porter, IN to Chicago, IL route (if the Canadian Pacific (CP) is granted or given haulage or trackage rights over any segment on this route.) This route consists of the following four segments: Porter, IN to Control Pt. 501, IN (N-308); Control Pt.

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[4] The DEIS is not internally consistent in its description of the proposed mitigation. Chapter 3, which identifies potential mitigation measures, does not even mention a separation rule among the options for consideration. See DEIS Sections 3.2.3 and 3.3.3. Further, Chapters 5 and 7 are not consistent in their description of the proposed mitigation. The proposed "superior" passenger train/freight train separation mitigation described in Chapter 7 of the DEIS contemplates that freight trains moving in the same or opposite direction on the same track on any of these line segments would need to be clear of the track at least 15 minutes before and 15 minutes after the expected arrival of a passenger train at any point. This proposed measure would thereby establish a 30-minute separation window around passenger trains moving on that track. See DEIS Section 7.2.2 at 7-12.

By contrast, the discussion of mitigation of the individual line segments found in the state-by-state sections of Chapter 5 of the DEIS does not use the term "superior trains." Rather, Chapter 5 contemplates a proposed separation window under which freight trains, both opposing and moving in the same direction, would need to be clear of a point on the same track at least 15 minutes prior to the estimated arrival of a passenger train; no 15 minute window after a passenger train is proposed in Chapter 5. See DEIS at IL11-13, IN11-13, MI-7 through MI-9 and NY-8 through NY-10. Further, whereas the mitigation proposed in Chapter 7 contemplates that the separation requirements would not apply when the freight train is moving in the opposite direction away from the passenger train, there is no similar qualification in the Chapter 5 description of the proposed mitigation.

501, IN to Indiana Harbor, IN (N-042); Indiana Harbor, IN to South Chicago, IL (N-047); and South Chicago to Ashland Avenue, Chicago, IL (N-309).

Amtrak operates on segments N-497, N-120, N-121 and the Porter to Chicago route. On segment N-063, New Jersey Transit operates commuter train service for Metro North. Segment N-497 is owned by Amtrak, and Conrail currently operates a local train about twice a week on this segment. CP has haulage rights only over the Porter, IN to Control Pt. 501, IN (N-308) segment, a portion of the Porter to Chicago route. The CP traffic on this segment is now being hauled by CSX under CSX's trackage rights with Conrail over this segment.[5] While NS anticipates that CP traffic will stay on the line post-Transaction and be hauled by NS, the net result is that there will be no increase in CP traffic - just a shift as to which railroad will carry that traffic. No final agreement has been reached by NS with CP regarding possible CP haulage rights over segments N-497, N-120 and N-121, as is more fully discussed in Section 4.22.1.

Norfolk Southern does not believe there are any adverse safety impacts to passenger rail operations as a result of this Transaction for the following reasons:

First, no passenger safety mitigation is warranted because, by any standard, operations on these line segments -- which are already subject to FRA safety oversight -- are demonstrably safe and will remain equally as safe following the Transaction. The statistical analysis conducted by SEA to ascertain whether mitigation is warranted relied on data and assumptions that overstated the Transaction-related impacts of modestly increased freight traffic. For example, in conducting its statistical review of passenger/freight train collisions, the DEIS utilized a collision rate that was based on collisions of a type that are unrelated to increased freight operations and that would not be addressed by the proposed mitigation, i.e., collisions resulting from freight trains and passenger trains operating on different tracks or from passenger trains hitting parked freight cars. The actual rate of passenger trains being hit from behind by freight trains operating on the same track, or vice-versa, is closer to zero, a fact that underscores the mitigation proposal addresses an unlikely safety risk.

Second, even assuming that some mitigation might be warranted on certain line segments, modern signaling systems and other safety controls offer the highest levels of safety without the cumbersome procedures and efficiency sacrifices inherent in the proposed mitigation

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[5] Presently CSX has trackage rights on this Conrail line from Porter to Pine Jct., Indiana, east of Gary. All CSX trains on their way to Michigan use this line, including the CP haulage traffic.

procedures. Train superiority and temporal separation practices of the type proposed in the DEIS, which are not even listed among the potential safety mitigation measures identified in Chapter 3 of the DEIS, have been outdated for decades, and their re-introduction on NS now could well detract from safety.

Third, the proposed 15/30 minute separations would disrupt freight service on all five identified line segments, particularly the Porter to Chicago route. This would impose a substantial burden on commerce and attract more freight to trucks, reversing the significant environmental and other public benefits of the Transaction. The DEIS gives no consideration to possible adverse impacts and the overall balance of effects that would result from its proposed mitigations.

Fourth, to the extent that any mitigation might be appropriate, such mitigation should be in the form of a requirement that NS consult with the FRA and the passenger rail agencies concerning safety enhancements that might be considered for these line segments. A consultation requirement would fully comport with the Board's obligation under NEPA to identify matters that other federal and state agencies might more appropriately address.

4.2.1 The Board Should Not Adopt Mitigation Measures That Interfere with the FRA's Exclusive Authority to Regulate the Safety of Passenger Operations.

The Board should tread cautiously before imposing any special safety condition applicable to train operations, particularly passenger train operations. While NS does not question the Board's right to address legitimate Transaction-related safety concerns through the NEPA process, the propriety of any proposed condition in the passenger safety area must be measured against the FRA's "plenary authority over the safety of the railroad industry."[6] Section 202 of the Federal Railroad Safety Act of 1970, 49 U.S.C. §20101, grants the FRA the power to regulate "every area of railroad safety." The FRA has exercised that authority extensively, and as discussed further below is currently reviewing a variety of passenger train safety issues.

Congress has made clear that the FRA's role in regulating passenger train safety is exclusive. In explaining the 1973 deletion of language from section 801 of the Rail Passenger Service Act of 1970 that allowed the ICC to prescribe regulations "necessary to provide safe...service," the Conference Report on the Amtrak Improvement Act of 1973 stated as follows:

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[6] DEIS, Volume 5 at B-2.

> The Conference substitute rewrites Sections 801 of existing law to clarify the jurisdiction of the Department of Transportation and the Interstate Commerce Commission over safety related and service related issues. First, this provision resolves a possible legislative inconsistency which results from the fact that Section 801 of existing law, as presently worded, authorizes the ICC to "prescribe such regulations as it considers necessary to provide safe and adequate service, equipment, and facilities for intercity rail passenger service." The Federal Railroad Safety Act of 1970, enacted only two weeks prior to the rail passenger Service Act, defined the Secretary of Transportation's jurisdiction to include "all areas of railroad safety." It is the intent of the committee of conference to make clear that the Secretary's jurisdiction over railroad safety is exclusive. The ICC, in prescribing its own regulations with respect to the adequacy of service, should take account of safety regulations prescribed by the Secretary of Transportation.

H.R. Conf. Rep. No. 93-587, at 12 (1973), reprinted in 1973 U.S.C.C.A.N. 2331, 2342 (emphasis added).

Congress's message was unambiguous - the FRA has the sole authority to regulate rail safety. Moreover, nothing in the ICC Termination Act changes that fact. To the contrary, that statute curtailed the Board's limited authority with respect to commuter operations. See 49 U.S.C. §10501(c) (2) (providing that the Board does not have jurisdiction over commuter agencies other than with respect to access to facilities).[7] In view of the Board's absence of authority to regulate with respect to passenger carrier safety matters, and FRA's exclusive jurisdiction and ongoing activity in the area of passenger carrier safety, the Board should defer to its sister agency before adopting any passenger safety conditions, particularly a condition as far reaching as that proposed in DEIS Mitigation Measure 2(A) and (B).[8]

The FRA in fact has several pending rulemaking proceedings and other projects underway in connection with passenger safety. These include Passenger Equipment Safety Standards (FRA Docket No. PCSS-1), 62 Fed. Reg. 49730 (Sept. 23, 1997) and Passenger Train Emergency Preparedness (FRA Docket No. PTEP-1), 62 Fed. Reg. 8330 (Feb. 24, 1997). It is noteworthy that FRA has acknowledged the breadth of its interest in this area in its rulemaking notice at 62 Fed. Reg. 49732 (September 23, 1997) in the Passenger Equipment proceeding.

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[7] See H. Rep. 104-422, 104th Cong. 1st Sess. 167 (statement of Board jurisdiction modified to "reflect curtailment of regulatory jurisdiction in areas such as passenger transportation.")

[8] In fact, were the STB to impose the type of superiority/temporal separation proposed in the DEIS, such a condition could conflict with NS' statutory right under section 402(e) to petition for relief from the preference rule for Amtrak operations.

> ...rail passenger safety does involve the safety of the railroad system as a whole, including the track structure, signal and train control systems, operating procedures, and station -- and platform-to-train interface design -- in addition to passenger equipment safety. To that end, FRA has active rulemaking and research projects in a variety of contexts that address non-equipment aspects of passenger railroad safety, including signal and train control systems.

The proposed separation measure could well intrude upon, or conflict with, FRA pending future proposals or plans to address passenger safety issues. Suffice it to say that any potential for conflict arising from the activities of more than one safety regulator should be scrupulously avoided.

The Board should also take note of the fact that neither the FRA nor any participant in the rail safety community known to NS has proposed a temporal separation rule as a means of enhancing passenger train safety. Neither Amtrak, New Jersey Transit or Metro North (nor any other commuter agency) have requested the proposed mitigation -- or any safety mitigation on any line segments -- in their filings with the Board. NS works closely with these agencies on safety issues, and at no point in its safety-related dealings with any of these agencies have the notions of passenger train superiority or mandated temporal separations of trains as a means of ensuring safety been raised by any of these parties.[9]

Notably, neither Amtrak nor any commuter agency has claimed that the Transaction will have any detrimental impact on the safety of their operations on any NS lines. Nor have any

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[9] Chapter 5 of the DEIS states that the potential for freight/passenger train conflicts could be reduced "by reinforcing passenger trains' priority over freight trains." This language is, at best, confusing, because there is no existing passenger train priority of the type contemplated in the proposed mitigation, and thus there is no rule to reinforce. It is possible that the DEIS is referring to the "preference" for Amtrak trains provided under section 402(e) of the Rail Passenger Service Act of 1970, 49 U.S.C. 24308(c). The proposed freight passenger train separation condition is entirely unlike the preference for Amtrak trains that is contemplated by that statute. Section 402(e) provides that except in an emergency, "Amtrak has preference over freight transportation in using a rail line, junction or crossing unless the Secretary of Transportation orders otherwise under this subsection." This statute does not require any temporal separation between Amtrak and freight trains, and does not apply to commuter operations at all. The purpose of the statutory preference for Amtrak, in fact, has nothing to do with safety, but rather was designed to address on-time performance issues that arose in the 1970's. See Hearings before the Senate Committee on Commerce on S. 1763, 93rd Cong., 1st Session at 46, 105 (1973).

passenger groups claimed that the Transaction will impair in any way the safe operations of passenger trains on any NS lines, including the five lines identified by SEA for mitigation. The proposed mitigation thus not only addresses a problem that does not (and will not following the Transaction) exist, but it lacks any safety constituency.

As a matter of sound public policy and respect for its sister agency, the Board should not intrude into a passenger safety area reserved for another agency that is already active in these matters. Nothing in NEPA requires that it do so. Rather, in addressing passenger safety mitigation, the Board would appropriately fulfill its NEPA role by identifying potential safety issues for FRA, leaving it to the agency to address those issues as it best sees fit. See Robertson v. Methow Valley Citizens Council, supra, 490 U.S. at 352-353 (1989) (NEPA "imposes no substantive requirement that mitigation measures actually be taken"; agency preparing NEPA document fulfills its duty by identifying and evaluating environmental consequences that can be addressed only by another agency).

4.2.2 The DEIS Fails to Justify the Conclusion That Any Mitigation is Warranted on the Identified NS Line Segments.

In determining the significance of impacts on passenger train safety, SEA first identified an annual rate at which passenger/freight train accidents occur. SEA then identified the line segments shared by passenger and freight trains on which there would be an increase of at least one freight train/day as a result of the Transaction. Using the accident rate data, SEA then determined for each of the identified line segments: (a) whether the proposed Transaction-related change in the projected accident rate on each line segment was greater than an annual increase of 25%, and (b) whether the accident frequency was less than one accident in 150 years. NS has several comments to offer on the SEA methodology and the significance factors used by SEA, as follows.

Appendix B of the DEIS explains that one element of the calculation of accident potential on the line segments that were reviewed in connection with the DEIS was a factor that assumed a passenger/freight train collision rate of 1.25 annually for Amtrak trains and 0.25 annually for commuter trains. See DEIS Appendix B at B-16. These accident rates were determined based on a review of freight/passenger train collisions over a four-year period, 1993 through 1996, inclusive. The collisions on which the DEIS accident rate was based are discussed below.

The list of collisions on which the DEIS relies is informative in several respects. First, it shows that there have been very few passenger/freight "collisions" in recent years (and in fact

fewer than identified by SEA as discussed below). Second, an analysis of the collisions identified by SEA also shows that the proposed mitigation addresses a "problem" of passenger/freight train separation distances that does not in fact exist.

Passenger/freight train collisions are very rare. Six passenger/freight collisions were used to calculate the accident rates used in the DEIS analysis. (Collisions involving passenger trains are identified on the list with the number "1" in either the Amtrak collision column or the commuter collision column.) There have in fact been only five such collisions during that four-year period, all but two of which occurred on the lines of Western railroads.

The list includes five Amtrak/freight train collisions and one commuter/freight train collision during the four year period studied, thus explaining the 1.25 and 0.25 annual accident rates. However, the one collision involving a commuter train was improperly included because it was not a commuter/freight train collision. Rather, that one accident was an Amtrak/MARC collision in Silver Spring in February 1996. Since this was a collision between two passenger trains, with no freight train involved, it should not have been counted in determining the rate of freight/passenger collisions. Accordingly, the actual annual rate of commuter/freight collisions during the four-year study period was **zero**, not 0.25 as applied in the DEIS.

Further, a closer analysis of the Amtrak accidents shows that the proposed separation rules are designed to address a situation that experience shows is highly improbable. At least four of the five Amtrak collisions on the list occurred in circumstances that would not be addressed by the proposed mitigation measure, i.e., circumstances other than passenger and freight trains sharing the same track and traveling under power too closely to one another. The September 1993 collision occurred when an Amtrak train hit parked freight cars in a siding that was not long enough to accommodate the freight and passenger cars. The May 16, 1994 accident involving a CSX and Amtrak train occurred when the Amtrak train was struck by a trailer that had become unfastened from its mooring on a CSX train on an adjacent track and protruded over the track on which the Amtrak train was moving.[10] Similarly, the February 1995 accident involving an Amtrak and a UP train occurred when the Amtrak train struck a load of steel that was projecting from a UP train located on an adjacent siding. A fourth collision on the list, which occurred on BN's lines in March 1995, was caused when the brakes on several parked BN

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[10] The CSX train was located on a passing track on a single-track route, and because it was on a different track would not have been subject to a separation rule. Improved securement of intermodal trailers will help avoid the recurrence of this type of accident.

cars failed, causing those cars to hit an Amtrak train. The freight cars were not connected to a locomotive at the time of the accident.

This review shows that at least four of the five collisions from which the 1.25 annual accident rate involving Amtrak trains was calculated occurred in circumstances that the proposed train separation mitigation rule would not have addressed, i.e., circumstances that are unrelated to the level of freight train traffic on the same track as the passenger train traffic. These accidents did not involve freight and passenger trains moving under power and operating on the same track, and thus a separation rule designed to address freight and passenger trains sharing the same track would not have prevented the accidents.[11]

In fact, the proposed mitigation also would not address the causes of any of the major collisions involving passenger trains colliding with other trains over the last several years. A summary of these collisions is set forth in an FRA rulemaking notice on Passenger Equipment Safety Standards, 62 Fed. Reg. at 49730 (Sept. 23, 1997). Not one of the major collisions involved a passenger train colliding with a freight train operating on the same track. The one collision involving a freight and passenger train that ended up on the same track was the 1987 collision in Chase, MD between a Conrail and an Amtrak train. However, that collision resulted when the Conrail engineer, who was operating a freight train on another track, ignored signals and entered the track being used by the passenger train without permission. A separation rule of the sort proposed here would not have prevented a collision resulting from such actions by an engineer, who may have been impaired by drug use.[12]

The rate of passenger/freight collisions involving freight trains hitting passenger trains from behind or vice-versa on the same track is thus near or at zero, even on line segments where the level of passenger and freight train activity (pre and post-Transaction) is much higher than that on the segments identified in the DEIS for mitigation. (The projected level of increased freight train activity on the NS line segments identified for mitigation ranges between 4.1 trains and 9.2 trains on rail line segments N-497, N-063, N-120 and N-121 and 16.2 on rail line

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[11] The remaining collision on the list was a March 1995 accident involving an Amtrak train operating on the BN system. NS is unable to find any reports concerning this accident, which suggests that the accident did not involve any loss of life, injuries or major property damage.

[12] The DOT/FRA drug testing rules were not in effect at the time. Neither were the rules regarding engineer certification, which impose penalties for abuse of prohibited substances.

segment N-042, which is part of the Porter to Chicago route. This route is double and triple track. Each of the line segments at issue can easily and safely accommodate these train increases). The facts thus show that the passenger train safety mitigation designed to address an increase in the level of freight train operations is simply not warranted.

In addition, SEA has applied an overly conservative threshold of 25% annual fluctuation in passenger train accident rate and a second tier criterion of an accident prediction value that would exceed one accident every 150 years. These factors appear to have been arbitrarily chosen, and their use would overstate any potential impact.

NS believes that the DEIS methodology for passenger rail line safety is too conservative and does not reflect NS' excellent safety history. NS has not had any accidents involving passenger/freight train collisions in over 30 years -- which is as far back as records and memory permit. By applying the national average passenger train accident rates instead of individual railroad accident statistics, the DEIS significantly overestimates the potential for any adverse post-Transaction safety impacts. This is demonstrated by considering the FRA train accident database, a much larger database with greater statistical confidence. Conrail has an accident rate that is close to the national average while the accident rate of NS is considerably lower. NS' average accident rate over the past three years is approximately 40% below the national average. Applying such a factor to the passenger rail safety analysis would more accurately predict accident probabilities on NS. Such a correction would show that rail line segments N-120, N-121, N-497, and N-063 will have a predicted post-Transaction interval between passenger collisions of over 150 years.

NS has reviewed the NS rail line segments where DEIS recommended "superior" trains. Dispatching for the segment Campbell Hall, NY to Port Jervis, NY (N-063) will be the responsibility of New Jersey Transit, and thus imposing mitigation under the EIS would be inappropriate. The segment Kalamazoo, MI to Porter, IN (N-497) is owned and dispatched by Amtrak and is neither the responsibility of NS, nor a suitable candidate for the imposition of mitigation under the FEIS.

NS also believes that the Porter, IN to Chicago, IL mitigation is unsubstantiated. The route consists of four segments: N-308, N-309, N-042 and N-047. Two of these segments (N-308 and N-309) are not even found in the DEIS analysis in Attachment B-2 (Appendix B, Volume 5-A) since they either have a predicted decrease in traffic or a negligible increase of 0.1 trains. For the segments N-042 and N-047, the DEIS itself indicates accident intervals of 3,970 years and 604 years, respectively. These rates are substantially less frequent than the 150-year interval

established by the DEIS for being significant, and thus these two segments should not have been included for mitigation. SEA should also refrain from imposing DEIS Mitigation No. 2(B) on this route because, as indicated earlier, there will be **no increase** in CP traffic on line segment (N-308) but only retention of the **same CP traffic** on the line if CP is given haulage rights by NS. This route is double and triple track with bi-directional CTC. Therefore, the entire route from Porter, IN to Chicago, IL should be deleted in the FEIS as requiring mitigation.[13]

4.2.3 The Proposed Mitigation Relies on Archaic Notions of Train Operation That Overlook the Existence of Modern Signaling.

Even assuming that some passenger safety mitigation were warranted, the proposed assignment of "superior" status to one type of train over another, and the proposed temporal separation of trains (e.g., the 15/30 minute separation rule proposed in the DEIS) would re-introduce into railroading outmoded and outdated operating procedures. The proposed mitigation is outdated in concept, would distract from safety, and would cause huge disruptions to NS' operations (especially on the Porter to Chicago route), impairing NS' ability to achieve significant Transaction-related safety and efficiency benefits.

While train superiority and temporal separation rules played a role in ordering train operations in the era prior to the introduction of modern train signals and communications, these procedures were rendered obsolete beginning in the early 20th century, with the advent of modern signals. Today, neither FRA rules nor rail operational rulebooks utilize the concepts of train superiority or temporal separation. Even when such rules were in effect -- decades ago and prior to the advent of modern signals -- rail rulebooks provided for a train to clear five minutes ahead of a passenger train schedule. On non-signaled main tracks, trains followed with a ten-minute interval. Trains were never required to remain clear of the track after passage of a train, merely to follow according to signal rules or the "dark territory" (no signals) separation prescribed. A 30-minute "balloon" around each passenger train was unheard of, even in the 1940's. Further, in the era when separation rules were in effect, such "superiority" rules were not

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[13] Also, the Board generally does not regulate haulage, which is a private contractual arrangement among carriers. The DEIS seems to equate haulage with trackage rights, but trackage rights are a Board-recorded legal right to use a rail line that may not be begun or terminated without Board approval. NS has no intention of granting CP trackage rights between Porter and Chicago. Finally, if any such mitigation is imposed on this particular route, at a minimum it should be tied to "commencement of haulage rights," not the granting of such rights.

designed as a safety measure at all, but as a means of enhancing the opportunity for trains to maintain on-time schedules.

Each of the five NS line segments identified for mitigation is fully signaled with modern signals. Each line has Automatic Block Signals that provide the engineer with information about other trains or broken rails within the block covered by the signal. Each line is also equipped with Train Control System signals ("TCS"). This is a remote dispatcher-controlled centralized train control system that provides the train engineer with additional information about authority for movement including route and speed at control points, in addition to the "train or broken rail in block" information provided by Automatic Block Signals.

These signals and train control systems will allow NS trains and passenger trains to operate over the same track with safe headways of approximately four to five minutes between the trains. Such signals and systems provide tolerances that allow all trains, both freight and passenger, to safely share the same tracks. These systems are designed to prevent train collisions, while enhancing track capacity and service efficiency. The systems are recognized as safe by the FRA and are in use throughout the rail industry. The analysis of the collisions discussed above underscores the fact that signals are in fact working to prevent trains from being struck from the rear.

Modern signals and centralized train control provide a uniform and proven method of achieving the safe separation of trains that the DEIS seeks. By contrast, the temporal separation that is envisioned in the DEIS would not enhance safety beyond the levels achieved through these modern signal and train control systems, but could well detract from the safety of rail operations. The proposed mitigation measures would effectively undermine the utility and consistency of these safety systems on the five line segments, in favor of an unconventional, non-technological approach for those segments of the type that pre-dates modern railroad operations. The introduction of this type of unusual operating rule on the five line segments would undermine the safety that is achieved through the use of the uniform rules now in effect, introducing a "wild card" into NS train operations. From a safety perspective, the introduction of such non-uniform rules enhances the possibility of confusion and human error -- thereby resulting in the potential for a net reduction in safety.

4.2.4 The Proposed Mitigation is Inconsistent with the DEIS Description of Appropriate Passenger Train Safety Mitigation Set Forth in Sections 3.2.3 and 3.3.3 of the DEIS.

As noted above, the proposed mitigation is also not consistent with the DEIS description of appropriate passenger train safety mitigation. Beginning at DEIS, 3-7, Section 3.2.3 lists a series of potential passenger/freight train safety mitigation measures that the DEIS deemed appropriate to consider in connection with its analysis of Transaction-related safety impacts, but does not include passenger train superiority or temporal separations on the list.

The measures that are identified in the DEIS at Section 3.2.3 (and incorporated for passenger trains by Section 3.3.3) offer a more appropriate series of potential approaches to the enhancement of operating safety on lines over which both freight and passenger operations are conducted. As described in Appendix NS-1, NS already adheres to each of the pertinent safety mitigation measures that are identified in Chapter 3 of the DEIS and will do so with the line segments NS will operate. These measures provide a formidable, uniform and consistent measure of safety for the identified line segments, consistent with modern procedures and technologies. *The Transaction will not undermine, or change in any way, the utility of any of these safety measures, and thus no mitigation is required.*

4.2.5 The Proposed Mitigation Would Effectively Confiscate NS Lines, Lead to More Truck Traffic and Eliminate Important Transaction-Related Benefits.

Were the proposed mitigation rule adopted, it would cause huge disruptions to NS' east-west operations, effectively confiscating NS' ability to use the Porter, IN to Chicago, IL route and achieve significant Transaction-related safety and transportation benefits. In these circumstances, the absence of any demonstrable safety benefit offered by the proposal, and the absence of any evidence that the increased level of freight operations poses a risk to passenger safety, strongly argues against adoption of the proposed mitigation. Nothing in NEPA requires a different result.

A 15/30 minute separation rule on the NS system would, on at least some of the line segments identified for such mitigation, make it impossible for freight trains and passenger trains to share the same tracks during periods of significant passenger use of the tracks. The problem would be particularly acute on the Porter to Chicago route, over which significant Amtrak operations are conducted.

The 30-minute separation balloon would have the effect of terminating virtually all freight service on the Porter to Chicago route and thus on NS' Chicago to New York area main line during daytime hours. The effective confiscation of NS' major east-west line for the benefit of passenger service would not only terminate efficient rail operations, but would disable NS' efforts to divert time-sensitive intermodal freight from less safe, and less environmentally friendly, highway carriage to the national rail system.

Further, the availability of passenger transportation could also suffer. If 30 or 15 minute separation windows were adopted, NS would be unable to entertain any proposals from Amtrak to expand its services on this route, with additional frequencies without major investments, on Amtrak's part, in additional capacity. *The proposed mitigation would effectively destroy the operational basis on which NS is able to accommodate extensive Amtrak service on its lines, and hinder NS' ability to work cooperatively with Amtrak with respect to future passenger service enhancements.*

4.2.6 Any Additional Safety Measures Should Be Carefully Considered in Coordination with FRA and the Passenger Agencies.

For all of the reasons stated above, NS does not believe that any special mitigation measures are called for in connection with the line segments identified for mitigation in the DEIS. However, if any mitigation were to be imposed, the Board could appropriately consider a provision for consultations by NS with FRA and other relevant parties over possible further passenger train safety enhancements that may be appropriate for these line segments. Such a mitigation approach would be consistent with the settled proposition that where other governmental agencies have jurisdiction over matters that might warrant mitigation, the Board, lacking such jurisdiction, satisfies its NEPA obligations by identifying the issues that those agencies might address. See Robertson, 490 U.S. at 352-353; CEQ Release, 46 Fed. Reg. 18031-32 (an EIS can appropriately identify matters outside the lead agency's jurisdiction so as to alert appropriate officials of other agencies).

NS already retains an open dialogue on safety issues with the FRA and Amtrak. It is prepared to engage in careful and considered deliberation and study of safety issues on these line segments. Such considered rail industry and FRA safety consultations offer the appropriate response to any legitimate safety concerns involving passenger operations.

4.3 Safety: Highway/Rail At-Grade Crossings

The DEIS treatment of grade crossing safety provides some useful information for consideration by state Departments of Transportation (DOTs) but is otherwise seriously flawed. Most importantly, the DEIS is in direct conflict with federal statutes and duly promulgated regulations assigning the state DOTs the primary responsibility for highway railroad crossing warning systems. In doing so, the DEIS would displace States' authority and well-established methods and processes for mitigating any potential grade crossing safety impacts. *Rather than requiring mitigation based on flawed analysis, the more appropriate and readily available alternative is to require NS to provide information on expected train traffic levels and to consult with the state DOTs.* This would assure any significant impacts are properly mitigated based on the substantial expertise and established practices of those with the necessary expertise and the duly assigned responsibility for grade crossing safety.

The DEIS treatment would preempt states' discretion to select the best method for ranking crossings in their state for further analysis. The DEIS then prematurely leaps directly from what is designed and intended to serve only as a preliminary ranking method to a mitigation requirement, ignoring the critically important analysis by state DOTs of state, local and site-specific considerations. Such state analysis is critical to determine whether any upgrade to warning devices is in order and, if so, the best type and design of the upgrade. The DEIS has specified installation of some devices which have not been sanctioned by the Manual of Uniform Traffic Control Devices and which are being used only on an experimental or limited basis in carefully selected locations. These DEIS recommendations were apparently made without any site evaluation to assure the upgrade would be a safe alternative or is even feasible at the specified crossings. The DEIS also recommends upgrades at numerous grade crossings where the specified upgrades have already been made and at others where the specified upgrades have already been funded and scheduled. This reinforces the need for these issues to be addressed by the state DOTs' experts in consultation with the railroads.

The DEIS applied the U.S. DOT Accident and Severity Prediction Formula to identify crossings which it believes should be upgraded. NS believes that SEA has misused the formula for an unintended purpose. The primary role of the formula is to help state DOTs rank crossings and to identify crossings that potentially need safety improvements. In short, the formula simply identifies crossings for further evaluation. The formula is not intended to be used, as the DEIS has done, as the sole basis for determining the need to upgrade the warning device at a crossing. Application of the formula is just part of the processes used by state DOTs, which take into account many other factors (including completion of field investigations) that may influence

accident rates. Only after the full process is completed can an informed judgment be made on whether the warning device at a crossing should be upgraded. The DEIS does not indicate that field investigations were completed, that FRA data were verified, or that the appropriateness of proposed upgrade measures was evaluated. Because these steps were not conducted as part of the analysis, the conclusions and recommendations for mitigation are largely unsubstantiated.

After careful review and analysis, NS believes that 34 of the 44 crossings recommended by SEA for permanent upgrade should be dropped from consideration for such upgrades based on one or more of the following reasons:

- They do not meet the DEIS Category A or Category B significance criteria using 1991-1995 accident histories.

- They do not meet the DEIS Category A or Category B significance criteria using 1992-1996 accident histories.

- The upgrade device has already been installed or is already scheduled and funded for construction.

4.3.1 Display of a Toll-Free Number

The DEIS recommends that NS install emergency information signs that prominently display a toll-free telephone number and a unique crossing number at all grade crossings with active warning devices. In addition, SEA recommends that NS provide 24-hour, seven-day-a-week staffing to respond to calls to the toll-free telephone number. NS has already, independently of the proposed Transaction, equipped all of its public crossings and certain private crossings with such signs. All crossings, public or private, with active warning devices are equipped with signs asking the public to report signal malfunctions to a toll free number. These signs are located on the signal mast, and, where applicable, on the gate. Passive crossings (including marked private crossings) have a sign, mounted on each crossbuck pole, urging motorists to report a stalled vehicle blocking a crossing or other emergency to the same toll-free telephone number. All calls are received by personnel at NS' Police Communications Center, which is staffed 24-hours a day, seven-days-a-week.

NS concurs that this is a prudent action. Upon approval of the proposed Transaction, NS will install signs that display a toll-free number and a unique crossing number on all Conrail public at-grade crossings allocated to NS within two years following the control date. Further,

NS and CSX will coordinate with the Conrail Shared Assets Operator to ensure that a similar program is implemented within the Shared Assets Areas, within the same time frame.

4.3.2 Discussion of Analysis Method

For individual grade crossings, SEA has proposed mitigation for upgraded warning devices at highway/rail crossings based solely on the outcome of an analytical method used to model potential risk of safety impacts. The analytical method is part of a procedure developed by the U.S. Department of Transportation and published in a document titled "Rail-Highway Crossing Resource Allocation Procedure - User's Guide, Third Edition, August 1987." The part of the procedure used by SEA is called the DOT Accident and Severity Prediction Formula. The formula predicts the number of accidents and casualties at a crossing based on data on the characteristics of and the reported collision history for the crossing which is obtained from FRA's crossing grade inventory and collision files. The data is prepared on an annual basis after all information from the previous year has been incorporated in the files.

The DEIS has used the DOT Accident and Severity Prediction formula for a non-intended purpose. The Rail-Highway Crossing Resource Allocation Procedure clearly states that the primary role of the formula is to rank crossings by number of predicted accidents in order to identify crossings that potentially qualify for safety improvements appropriate to state-wide needs. The procedure is not intended to single out crossings on a national basis without considering the many other factors, including criteria appropriate to the individual state, which may influence accident rates.

Further, the federal regulations do not dictate a particular hazard ranking formula, but instead leave it to each state to select a formula best suited to its needs. Thus, decisions as to grade crossing improvements are made by each state applying its own criteria, which may differ from criteria used in other states. This is consistent with the federal scheme calling for state highway authorities to utilize their expertise to improve crossing safety within their borders.

The Federal Grade Crossing Program is based on the premise that a state's traffic engineers, who have been making similar judgments on signalization of intersections throughout the state for many years, have a much higher degree of expertise in traffic control than does the railroad. Only in this manner can it be ensured that the crossings which the state deems most hazardous are upgraded before crossings which are deemed less hazardous, and that the state's determination of relative hazard is based on a hazard ranking formula chosen by the state.

The formula used in the DEIS is part of a DOT procedure referenced in the "Rail-Highway Crossing Resource Allocation Procedure Users's Guide, Third Edition" which states:

> "Results of the DOT Procedure, findings of the diagnostic team, inclusion of any state warrants, and the judgment of state and local officials **should all be considered** before final improvement decisions are made" (emphasis added).

There is no indication in the DEIS that a diagnostic team evaluated the crossing sites and the proposed mitigation or that the appropriate state agencies were invoived in the decision-making process.

A diagnostic team, consisting of experts with knowledge of local and state-wide needs, must conduct a field investigation to ensure the accuracy of the input data. (The FRA acknowledges that its grade crossing inventory database contains errors due to keypunch and submission errors.) The diagnostic team also needs to examine other critical factors that are not taken into consideration with the DOT Accident Prediction and Severity Formula, and which can only be examined by a field investigation. Examples of these factors include sight-distance, roadway geometrics, highway congestion, local topography, frequency of high-occupancy vehicles, and frequency of hazardous materials transport vehicles. Diagnostic teams can determine revised cost-effective improvement decisions for particular crossings where data from FRA files is found to be incorrect. The revised results obtained by the diagnostic team can then form a useful basis upon which state and local officials can finalize crossing improvement programs.

4.3.3 Four-Quadrant Gates and Median Barriers

The DEIS has proposed mitigation including the installation of four-quadrant gates and median barriers for certain NS crossings in Indiana, Pennsylvania, Virginia and Ohio. SEA's mitigation proposal appears to be based solely on the outcome of the DOT Accident and Severity Prediction Formula, without involvement of state and local officials or diagnostic review by such officials.

Four-quadrant gates and median barriers are not presently approved by the FRA or the Manual of Uniform Traffic Control Devices (MUTCD). The MUTCD places the responsibility for the design, placement, operation and maintenance of traffic control devices with the governmental body or official having jurisdiction. In virtually all states, traffic control devices are required by statute to substantially conform to the MUTCD. Experimental devices such as

four-quadrant gates and median barriers require a request for permission of experiment from the governmental agency or private toll facility responsible for the operation of the road or street on which the experiment is to take place.

Furthermore, in those instances in which four-quadrant gates and median barriers have been installed on an experimental basis, preliminary studies have been conducted first. Each such preliminary study involved an evaluation of the geometric features, road width, and other local conditions on a case-by-case basis. The study first identified if a need existed, and if so, what device was best suited to fulfill the need at each particular location. For instance, four-quadrant gates were found best suited for roadway facilities over 45-feet wide and median barriers were only deemed appropriate where there was no road or driveway connections within 70 to 100-feet of the crossing.

4.3.4 Funding of Grade Crossing Warning Upgrades

The DEIS is silent on funding for grade crossing upgrades and leaves unclear the mechanism for assuring the requisite and customary funding participation by state stakeholders. The proposed mitigation may thus be inconsistent with the message and the spirit of the national grade crossing safety program and with FHWA's requirements.

The assignment of the responsibility for grade crossing safety to governmental agencies has carefully evolved over many years. In the early 1960s, the Interstate Commerce Commission concluded:

> Highway users are the principal recipients of the benefits following from rail-highway grade separations and from special protections at rail-highway grade crossings. For this reason the cost of installing and maintaining such separations and protective devices is a public responsibility and should be financed with public funds the same as highway traffic devices.

These general approaches were adopted by the U.S. Congress in 1973 when it enacted 23 U.S.C. § 130(d). The congressional mandate was implemented by FHWA's requirements in 23 C.F.R. § 924.9 and in 23 C.F.R. § 646.210 (1), which reads as follows:

> (1) Projects for grade crossing improvements are deemed to be of no ascertainable net benefit to the railroads and there shall be no required railroad share of the costs.

The DEIS has failed to acknowledge the process which state authorities might follow to evaluate a hierarchy of options on a cost effective basis. The foremost option is to close the crossing if it is deemed redundant and/or unsafe. A closed crossing eliminates the possibility of collision; however, closing a crossing is not always possible because of high traffic volumes or a lack of alternative routes. The second option is the installation of additional passive devices such as stop or yield signs. The third option is the addition of flashing lights or flashing lights and gates. The fourth option, and by far the most costly, is to grade separate the crossing.

4.3.5 Suggested Revisions and Corrections to Table 7-4

The following inconsistencies illustrate the weakness of the DEIS' use of the FRA formula to require specific mitigations.

NS reviewed the proposed mitigation in DEIS Table 7-4 at 7-26 to 7-33, and has identified thirteen crossings apparently inadvertently included as requiring mitigation. These 13 crossings as reported in Attachment B-7 of the DEIS do not have accident prediction values that meet the DEIS' proposed significance criteria of an increase of one accident every 100 years for a Category A crossing or an increase of one accident every 20 years for a Category B crossing (see Tables 4.3.1, 4.3.2 and 4.3.3). These crossings are as follows:

IN 484248X	NY 471825F	OH 473726P	MD 534887F
IN 484209G	PA 471940M	OH 473668W	
IN 484246J	PA 592290T	OH 473673T	
IN 478240E	PA 592320H	OH 473680D	

There are also several NS crossings included in DEIS Table 7-4 that already have upgrades completed. The installed devices meet or exceed the mitigation recommended by the DEIS. Also, the appropriate public agency with jurisdictional authority has scheduled improvements at several other locations that have been included in Table 7-4. These crossings are already funded and are due to be constructed within the next ten months, under the respective agency's grade crossing program. *These crossings should be removed from Table 7-4.*

NS locations where upgrades are already installed:

AAR/DOT #	Type Device Installed	In-Service Date
IL 479848P	Installed Flashing Lights With Gates	7/1/93
IN 478314U	Installed Flashing Lights With Gates	6/4/97
MD 469321F	Installed Flashing Lights With Gates	1/3/96
OH 472012W	Installed Flashing Lights With Gates	5/13/97
OH 481584W	Installed Flashing Lights With Gates	8/13/97
OH 481490V	Installed Flashing Lights With Gates	7/2/97

NS locations currently scheduled and funded:

IN 478216D	Project #05.0241	Add Gates
IN 478270W	Project #05.1062	Add Gates
OH 481546M	Project #10.0317	Add Flashing Lights with Gates
VA 468634S	Project #13.0458	Add Flashing Lights with Gates
IN 484282E	Project #05.0243	Add Gates

When SEA performed its highway/rail at-grade crossing analysis, the most recent five-years of accident history available was the 1991 through 1995 period. Accident history data for the period 1992 through 1996 subsequently became available. Applying the DOT Accident Prediction and Severity Formula to this most recent data, several crossings in Table 7-4 do not exceed the DEIS Category A or DEIS Category B significance criteria (see Tables 4.3.1, 4.3.2 and 4.3.3). *Based on analysis using the most recent accident history, the requirement to provide upgraded warning devices at the following crossings to mitigate safety impacts should be deleted.*

IN 474598M	OH 481547U	PA 535146X	PA 592295C
IN 484216S	OH 503133H	VA 468599F	OH 481660M
IN 484229T	OH 472284J	IN 484269R	

It is possible that utilizing the most recent accident history data for this analysis will result in additional crossings exceeding the significance criteria. In that event, such additional crossings would be added to those being brought to the attention of the state DOTs.

TABLE 4.3.1
Norfolk Southern Analysis
DOT Accident Prediction Summary
1992 - 1996 Accident History

ST	TRN CO.	COUNTY	STREET	FRA ID	Estimated Annual Accident Frequency		CATEGORY	INCREASE IN FREQUENCY	TRIP THRESHOLD	STATE TOP 50
					Pre-Transaction	Post-Transaction				
IN	NS	MADISON	CO RD 100 E	474598M	0.023	0.044	B	0.021	NO	NO
IN	NS	CASS	CEDAR ST.	484216S	0.115	0.142	B	0.027	NO	NO
IN	NS	CASS	18TH STREET	484229T	0.111	0.135	B	0.036	NO	NO
IN	NS	TIPPECANOE	CR 900 N	484267C	0.390	0.462	A	0.072	YES	YES
IN	NS	TIPPECANOE	CR 700 N	484269R	0.106	0.132	B	0.026	NO	NO
IN	NS	TIPPECANOE	8TH STREET	484302N	0.103	0.120	B	0.017	NO	NO
IN	NS	TIPPECANOE	7TH STREET	484303V	0.175	0.199	A	0.024	YES	NO
IN	NS	TIPPECANOE	ROMIG ST	484306R	0.225	0.255	A	0.030	YES	NO
IN	NS	TIPPECANOE	5TH STREET	484308E	0.158	0.182	A	0.024	YES	NO
IN	NS	TIPPECANOE	4TH ST U.S. 231	484309L	0.102	0.116	B	0.014	NO	NO
IN	NS	TIPPECANOE	SMITH ST	484311M	0.103	0.118	B	0.016	NO	NO
IN	NS	TIPPECANOE	CO 172/ TURNER RD	484323G	0.169	0.194	A	0.025	YES	NO
IN	NS	ALLEN	NOTESTINE RD	478188C	0.196	0.233	A	0.037	YES	NO
IN	NS	ALLEN	ANTHONY BLVD	478226J	0.163	0.189	A	0.026	YES	NO
IN	NS	WABASH	OLIVE STREET	478313M	0.179	0.209	A	0.030	YES	NO
IN	NS	CARROLL	MERIDIAN LINE	484248X	0.090	0.112	B	0.022	NO	NO
IN	NS	MIAMI	CO RD 250 W	484209G	0.098	0.122	B	0.024	NO	NO
IN	NS	CARROLL	WASHING ST/ CR 100E	484246J	0.090	0.112	B	0.022	NO	NO
IN	NS	ALLEN	ENGLE ROAD	478240E	0.145	0.165	B	0.020	NO	NO
NY	NS	CHAUTAUQUA	LOOMIS STREET	471825F	0.068	0.081	B	0.013	NO	NO
PA	CR	CUMBERLAND	CRISWALL	592295C	0.117	0.137	B	0.020	NO	NO
PA	CR	FRANKLIN	GUILFRD SPRNGS RD	535146X	0.039	0.048	B	0.010	NO	NO
PA	CR	FRANKLIN	HAYES RD	535163N	0.242	0.274	A	0.032	YES	YES
PA	NS	ERIE	LUCAS	471940M	0.110	0.127	B	0.016	NO	NO
PA	CR	CUMBERLAND	SR74/ BRANDTSVILLE	592290T	0.120	0.135	A	0.025	YES	NO
PA	CR	CUMBERLAND	MILL	592320H	0.084	0.098	B	0.014	NO	NO
VA	NS	CLARKE	SR 7/ BERRYVILLE	468599F	0.025	0.031	B	0.006	NO	NO
OH	NS	LORAIN	KANSAS AVE	472284J	0.032	0.043	B	0.012	NO	NO
OH	NS	MARION	190/ TOBIAS RD	481547U	0.107	0.116	B	0.009	NO	NO
OH	NS	TRUMBULL	BRADLEY-BROWNLEE	503133H	0.014	0.018	B	0.005	NO	NO
OH	CR	TRUMBULL	WARREN-SHARON RD	544729H	0.157	0.186	A	0.029	YES	YES
OH	NS	ERIE	SKADDEN/ CR 42	481660M	0.064	0.111	B	0.047	NO	NO
OH	NS	SANDUSKY	UNKNOWN	473726P	0.026	0.044	B	0.018	NO	NO
OH	NS	SANDUSKY	KILBOURNE	473668W	0.117	0.153	B	0.047	NO	NO
OH	NS	SANDUSKY	CR292	473673T	0.088	0.125	B	0.037	NO	NO
OH	NS	SANDUSKY	CR175	473680D	0.012	0.021	B	0.008	NO	NO
MI	CR	WAYNE	PENNSYLVANIA RD	511027V	0.133	0.200	B	0.083	YES	NO
MD	CR	WASHINGTON	REIFF CHURCH RD	534883D	0.088	0.104	A	0.015	YES	YES
MD	CR	WASHINGTON	SHAWLEY DR	534887F	0.027	0.034	B	0.008	NO	NO

TABLE 4.3.2
Norfolk Southern Analysis
DOT Accident Prediction Pre-Transaction Case
1992 - 1996 Accident History

ST	TRN CO.	COUNTY	STREET	FRA ID	EXISTING DEVICE	ADT	PRE TRNS PER DAY	EXPOSURE INDEX	DAY THRU TRNS FACTOR	MAX. TT SPEED FACTOR	MAIN TRKS FACTOR	HWY PAVED FACTOR	HWY LANES FACTOR	BASIC FORMULA INITIAL (ACCIDENTS/YR)	WEIGHTING FACTOR	NO. OBSERVED ACCIDENTS 1992-1996	PREDICTED ACCIDENTS PER YR	NORMALIZING CONSTANTS (ACCIDENTS/YR)		
																		PASSIVE	FLASHING LIGHTS	GATES
						c	t	EI	DT	MS	MT	HP	HL	a	T0	N	B	A(0.824)	A(0.694)	A(0.671)
IN	NS	MADISON	CO RD 100 E	474598M	PASSIVE	619	2.6	27.868	1.347	1.587	1.000	1.000	1.000	0.041	10.949	0	0.028	0.023		
IN	NS	CASS	CEDAR ST	484216S	PASSIVE	351	18.4	46.598	1.849	1.587	1.000	1.000	1.000	0.095	6.901	1	0.139	0.115		
IN	NS	CASS	18TH STREET	484229T	FLASHING LIGHTS	3000	18.4	171.411	1.492	1.000	1.211	1.000	1.200	0.125	5.726	1	0.160		0.111	
IN	NS	TIPPECANOE	CR 900 N	484267C	PASSIVE	1188	18.4	73.162	1.849	1.587	1.000	1.000	1.000	0.149	5.025	4	0.474	0.390		
IN	NS	TIPPECANOE	CR 700 N	484269R	PASSIVE	237	18.4	40.296	1.849	1.587	1.000	1.000	1.000	0.082	7.572	1	0.129	0.106		
IN	NS	TIPPECANOE	8TH STREET	484302N	PASSIVE	289	23.6	47.548	1.931	1.212	1.000	1.000	1.000	0.077	7.861	1	0.125	0.103		
IN	NS	TIPPECANOE	7TH STREET	484303V	FLASHING LIGHTS	1375	23.6	137.817	1.519	1.000	1.467	1.000	1.200	0.124	5.762	2	0.252		0.175	
IN	NS	TIPPECANOE	ROMIG ST	484306R	FLASHING LIGHTS	982	23.6	120.027	1.519	1.000	1.467	1.000	1.200	0.108	6.345	3	0.325		0.225	
IN	NS	TIPPECANOE	5TH STREET	484308E	PASSIVE	209	23.6	42.175	1.931	1.212	1.000	1.000	1.000	0.068	8.440	2	0.192	0.158		
IN	NS	TIPPECANOE	4TH ST U.S. 231	484309L	GATES	12060	23.6	64.607	1.931	1.000	1.353	1.000	1.153	0.112	6.180	1	0.151			0.102
IN	NS	TIPPECANOE	SMITH ST	484311M	FLASHING LIGHTS	966	23.6	119.220	1.519	1.000	1.467	1.000	1.200	0.107	6.374	1	0.148		0.103	
IN	NS	TIPPECANOE	CO 172/ TURNER RD	484323G	PASSIVE	127	23.6	35.076	2.044	1.587	1.000	1.000	1.000	0.079	7.754	2	0.205	0.169		
IN	NS	ALLEN	NOTESTINE RD	478188C	PASSIVE	800	13.6	56.516	1.756	1.587	1.000	1.000	1.000	0.109	6.278	2	0.238	0.196		
IN	NS	ALLEN	ANTHONY BLVD	478226J	GATES	16330	13.6	60.060	1.845	1.000	1.353	1.000	1.328	0.114	6.081	2	0.243			0.163
IN	NS	WABASH	OLIVE STREET	478313M	PASSIVE	250	19	41.591	1.965	1.587	1.000	1.000	1.000	0.090	7.142	2	0.218	0.179		
IN	NS	CARROLL	MERIDIAN LINE	484248X	PASSIVE	100	18.4	29.283	1.849	1.587	1.000	1.000	1.000	0.060	9.121	1	0.109	0.090		
IN	NS	MIAMI	CO RD 250 W	484209G	PASSIVE	165	18.4	35.244	1.821	1.587	1.000	1.000	1.000	0.071	8.288	1	0.119	0.098		
IN	NS	CARROLL	WASHING ST/ CR 100E	484246J	PASSIVE	100	18.4	29.283	1.849	1.587	1.000	1.000	1.000	0.060	9.121	1	0.109	0.090		
IN	NS	ALLEN	ENGLE ROAD	478240E	FLASHING LIGHTS	11000	19	296.[illegible]7	1.531	1.000	1.211	1.000	1.200	0.221	3.692	1	0.209		0.145	
NY	NS	CHAUTAUQUA	LOOMIS STREET	471825F	PASSIVE	154	13	30.212	1.843	1.587	1.000	0.551	1.000	0.034	11.938	1	0.083	0.068		
PA	CR	CUMBERLAND	CRISWALL	592295C	PASSIVE	1070	11.1	58.380	1.789	1.361	1.000	1.000	1.000	0.099	6.730	1	0.142	0.117		
PA	CR	FRANKLIN	GUILFRD SPRNGS RD	535-46A	PASSIVE	770	11.1	51.688	1.696	1.260	1.000	1.000	1.000	0.077	7.896	0	0.047	0.039		
PA	CR	FRANKLIN	HAYES RD	535163N	PASSIVE	160	11.1	28.902	1.876	1.260	1.000	1.000	1.000	0.047	10.267	4	0.294	0.242		
PA	NS	ERIE	LUCAS	471940M	PASSIVE	100	13	25.752	1.846	1.587	1.000	0.551	1.000	0.029	12.685	2	0.134	0.110		
PA	CR	CUMBERLAND	SR74/ BRANDTSVILLE	592290T	GATES	3684	11.1	36.508	1.790	1.000	1.353	1.000	1.153	0.059	9.213	2	0.179			0.120
PA	CR	CUMBERLAND	MILL	592320H	PASSIVE	190	11.1	30.799	1.789	1.361	1.000	1.000	1.000	0.052	9.802	1	0.102	0.084		
VA	NS	CLARKE	SR 7/ BERRYVILLE	468599F	GATES	5315	11.1	40.664	1.819	1.000	1.163	1.000	1.153	0.057	9.349	0	0.037			0.025
OH	NS	LORAIN	KANSAS AVE	472284J	GATES	3483	13.5	38.039	1.969	1.000	1.163	1.000	1.531	0.077	7.897	0	0.047			0.032
OH	NS	MARION	190/ TOBIAS RD	481547U	PASSIVE	130	26	36.671	2.065	1.587	1.000	1.000	1.000	0.083	7.498	1	0.130	0.107		
OH	NS	TRUMBULL	BRADLEY-BROWNLEE	503133H	GATES	530	11.7	20.960	1.758	1.000	1.163	1.000	1.153	0.028	12.758	0	0.020			0.014
OH	CR	TRUMBULL	WARREN-SHARON RD	544729H	FLASHING LIGHTS	2925	11.7	140.860	1.431	1.000	1.211	1.000	1.200	0.098	6.748	2	0.227		0.157	
OH	NS	ERIE	SKADDEN CR 42	481660M	PASSIVE	800	1.4	24.370	1.307	1.309	1.000	1.000	1.000	0.029	12.669	1	0.077	0.064		
OH	NS	SANDUSKY	UNKNOWN	473726P	PASSIVE	210	7.7	27.917	1.628	1.470	1.000	1.000	1.000	0.046	10.381	0	0.031	0.026		
OH	NS	SANDUSKY	KILBOURNE	473668W	GATES	9330	7.7	43.091	1.669	1.000	1.163	1.000	1.153	0.055	9.488	2	0.174			0.117
OH	NS	SANDUSKY	CR292	473673T	PASSIVE	330	7.7	32.998	1.628	1.527	1.000	1.000	1.000	0.057	9.353	1	0.107	0.088		
OH	NS	SANDUSKY	CR175	473680D	GATES	710	7.7	20.197	1.628	1.000	1.163	1.000	1.153	0.025	13.275	0	0.018			0.012
MI	CR	WAYNE	PENNSYLVANIA RD	511027V	FLASHING LIGHTS	10568	2	115.572	1.225	1.000	1.211	1.000	1.200	0.069	8.406	2	0.192		0.133	
MD	CR	WASHINGTON	REIFF CHURCH RD	534883D	PASSIVE	325	11.1	37.566	1.750	1.260	1.000	1.000	1.000	0.057	9.305	1	0.107	0.088		
MD	CR	WASHINGTON	SHAWLEY DR	534887F	PASSIVE	200	11.1	31.389	1.750	1.260	1.000	1.000	1.000	0.048	10.202	0	0.032	0.027		

TABLE 4.3.3
Norfolk Southern Analysis
DOT Accident Prediction Post-Transaction Case
1992 - 1996 Accident History

ST	TRN CO	COUNTY	STREET	FRA ID	EXISTING DEVICE	ADT	POST TRNS PER DAY	EXPOSURE INDEX	DAY THRU TRNS FACTOR	MAX. TT SPEED FACTOR	MAIN TRKS FACTOR	HWY PAVED FACTOR	HWY LANES FACTOR	BASIC FORMULA INITIAL (ACCIDENTS/YR)	WEIGHTING FACTOR	NO. YRS	NO. OBSERVED ACCIDENTS 1992-1996	PREDICTED ACCIDENTS PER YR	NORMALIZING CONSTANTS (ACCIDENTS/YR) PASSIVE	FLASHING LIGHTS	GATES
						c	t	EI	DT	MS	MT	HP	HL	a	T0	T	N	B	A(0.824)	A(0.894)	A(0.671)
IN	NS	MADISON	CO RD 100 E	474598M	PASSIVE	619	11.8	48.769	1.714	1.587	1.000	1.000	1.000	0.092	7.039	5	0	0.054	0.044		
IN	NS	CASS	CEDAR ST	484216S	PASSIVE	351	40.2	62.223	2.119	1.587	1.000	1.000	1.000	0.145	5.123	5	1	0.172	0.142		
IN	NS	CASS	18TH STREET	484229T	FLASHING LIGHTS	3000	40.2	236.265	1.627	1.000	1.211	1.000	1.200	0.187	4.213	5	1	0.194		0.135	
IN	NS	TIPPECANOE	CR 900 N	484267C	PASSIVE	1188	40.2	97.693	2.119	1.587	1.000	1.000	1.000	0.228	3.598	5	4	0.561	0.462		
IN	NS	TIPPECANOE	CR 700 N	484269R	PASSIVE	237	40.2	53.807	2.119	1.587	1.000	1.000	1.000	0.126	5.696	5	1	0.160	0.132		
IN	NS	TIPPECANOE	8TH STREET	484302N	PASSIVE	289	41	58.329	2.126	1.212	1.000	1.000	1.000	0.104	6.480	5	1	0.146	0.120		
IN	NS	TIPPECANOE	7TH STREET	484303V	FLASHING LIGHTS	1375	41	172.900	1.615	1.000	1.467	1.000	1.200	0.165	4.656	5	2	0.287		0.199	
IN	NS	TIPPECANOE	ROMIG ST	484306R	FLASHING LIGHTS	982	41	150.580	1.615	1.000	1.467	1.000	1.200	0.144	5.167	5	3	0.368		0.255	
IN	NS	TIPPECANOE	5TH STREET	484308E	PASSIVE	209	41	51.738	2.126	1.212	1.000	1.000	1.000	0.093	7.016	5	2	0.220	0.182		
IN	NS	TIPPECANOE	4TH ST U.S. 231	484309L	GATES	12060	41	76.006	2.127	1.000	1.353	1.000	1.153	0.145	5.132	5	1	0.172			0.116
IN	NS	TIPPECANOE	SMITH ST	484311M	FLASHING LIGHTS	966	41	149.568	1.615	1.000	1.467	1.000	1.200	0.143	5.193	5	1	0.171		0.118	
IN	NS	TIPPECANOE	CO 172/ TURNER RD	484323G	PASSIVE	127	41	43.029	2.252	1.587	1.000	1.000	1.000	0.107	6.381	5	2	0.236	0.194		
IN	NS	ALLEN	NOTESTINE RD	478188C	PASSIVE	800	27.3	73.138	1.980	1.587	1.000	1.000	1.000	0.159	4.773	5	2	0.283	0.233		
IN	NS	ALLEN	ANTHONY BLVD	478226J	GATES	16330	27.3	73.725	2.083	1.000	1.353	1.000	1.328	0.159	4.794	5	2	0.282			0.189
IN	NS	WABASH	OLIVE STREET	478313M	PASSIVE	250	34.9	52.084	2.186	1.587	1.000	1.000	1.000	0.125	5.702	5	2	0.254	0.209		
IN	NS	CARROLL	MERIDIAN LINE	484248X	PASSIVE	100	40.2	39.101	2.119	1.587	1.000	1.000	1.000	0.091	7.080	5	1	0.136	0.112		
IN	NS	MIAMI	CO RD 250 W	484209G	PASSIVE	165	40.2	47.060	2.085	1.587	1.000	1.000	1.000	0.108	6.326	5	1	0.149	0.122		
IN	NS	CARROLL	WASHING ST/ CR 100E	484246J	PASSIVE	100	40.2	39.101	2.119	1.587	1.000	1.000	1.000	0.091	7.080	5	1	0.136	0.112		
IN	NS	ALLEN	ENGLE ROAD	478240E	FLASHING LIGHTS	11000	34.9	380.082	1.638	1.000	1.211	1.000	1.200	0.303	2.830	5	1	0.237		0.165	
NY	NS	CHAUTAUQUA	LOOMIS STREET	471825F	PASSIVE	154	25.1	38.538	2.066	1.587	1.000	0.551	1.000	0.048	10.174	5	1	0.098	0.081		
PA	CR	CUMBERLAND	CRISWALL	592295C	PASSIVE	1070	19.6	72.049	1.974	1.361	1.000	1.000	1.000	0.134	5.428	5	1	0.166	0.137		
PA	CR	FRANKLIN	GUILFRD SPRNGS RD	535146X	PASSIVE	770	19.6	63.791	1.870	1.260	1.000	1.000	1.000	0.104	6.483	5	0	0.059	0.048		
PA	CR	FRANKLIN	HAYES RD	535163N	PASSIVE	160	19.6	35.869	2.071	1.260	1.000	1.000	1.000	0.065	8.728	5	4	0.332	0.274		
PA	NS	ERIE	LUCAS	471940M	PASSIVE	100	25.1	32.848	2.070	1.587	1.000	0.551	1.000	0.041	10.960	5	2	0.154	0.127		
PA	CR	CUMBERLAND	SR74/ BRANDTSVILLE	592290T	GATES	3684	19.6	43.155	1.974	1.000	1.353	1.000	1.153	0.076	7.915	5	2	0.202			0.135
PA	CR	CUMBERLAND	MILL	592320H	PASSIVE	190	19.6	38.010	1.974	1.361	1.000	1.000	1.000	0.071	8.277	5	1	0.119	0.098		
VA	NS	CLARKE	SR 7/ BERRYVILLE	468599F	GATES	5315	19.6	48.069	2.007	1.000	1.163	1.000	1.153	0.074	6.044	5	0	0.046			0.031
OH	NS	LORAIN	KANSAS AVE	472284J	GATES	3483	34.1	49.959	2.317	1.000	1.163	1.000	1.531	0.118	5.938	5	0	0.064			0.043
OH	NS	MARION	190/ TOBIAS RD	481547U	PASSIVE	130	34.3	40.630	2.167	1.587	1.000	1.000	1.000	0.097	6.804	5	1	0.141	0.116		
OH	NS	TRUMBULL	BRADLEY-BROWN, LEE	503133H	GATES	530	23.8	25.829	1.987	1.000	1.163	1.000	1.153	0.040	11.168	5	0	0.027			0.018
OH	CR	TRUMBULL	WARREN-SHARON RD	544729H	FLASHING LIGHTS	2925	23.8	188.543	1.547	1.000	1.211	1.000	1.200	0.142	5.206	5	2	0.268		0.186	
OH	NS	ERIE	SKADDEN/ CR 42	481660M	PASSIVE	800	11.7	53.456	1.835	1.309	1.000	1.000	1.000	0.089	7.189	5	1	0.135	0.111		
OH	NS	SANDUSKY	UNKNOWN	473726P	PASSIVE	210	27.2	44.528	2.020	1.470	1.000	1.000	1.000	0.092	7.056	5	0	0.054	0.044		
OH	NS	SANDUSKY	KILBOURNE	473668W	GATES	9330	27.2	62.464	2.074	1.000	1.163	1.000	1.153	0.100	6.675	5	2	0.228			0.153
OH	NS	SANDUSKY	CR292	473673T	PASSIVE	330	27.2	52.634	2.020	1.527	1.000	1.000	1.000	0.113	6.147	5	1	0.152	0.125		
OH	NS	SANDUSKY	CR175	473680D	GATES	710	27.2	29.277	2.021	1.000	1.163	1.000	1.153	0.046	10.462	5	0	0.031			0.021
MI	CR	WAYNE	PENNSYLVANIA RD	511027V	FLASHING LIGHTS	10568	11.2	234.454	1.464	1.000	1.211	1.000	1.200	0.167	4.604	5	2	0.288		0.200	
MD	CR	WASHINGTON	REIFF CHURCH RD	534883D	PASSIVE	325	19.6	46.361	1.930	1.260	1.000	1.000	1.000	0.078	7.800	5	1	0.126	0.104		
MD	CR	WASHINGTON	SHAWLEY DR	534887F	PASSIVE	200	19.6	38.739	1.930	1.260	1.000	1.000	1.000	0.065	8.669	5	0	0.041	0.034		

In sum, a review of the 44 NS highway/rail at-grade crossings where the DEIS proposed permanent warning device upgrades shows that 34 of them should not be included in Table 7-4 because of one or more of the following reasons:

- They do not exceed DEIS Category A or Category B significance criteria using the 1991 through 1995 accident histories;
- They do not exceed DEIS Category A or Category B significance criteria using 1992 through 1996 accident histories;
- The upgraded device has already been installed; or
- The upgraded device is already scheduled for construction.

4.3.6 Responsibilities and Jurisdiction for Upgrading Grade Crossing Safety Devices

The DEIS specifically states in Section 7.2.3.8 at 7-15 and Table 7-4 at 7-26 to 7-33, "CSX and NS shall upgrade warning devices at 118 highway/rail at-grade crossings in the States of Illinois, Indiana, Kentucky, Maryland, Michigan, New York, Ohio, Pennsylvania, and Virginia as listed and specified in Table 7-4." This statement implies that NS has the authority to determine need and selection of traffic control devices. The *Manual of Uniform Traffic Control Devices* (MUTCD) Section 1A-3 and Section 8A-1 places this responsibility on the public agency with jurisdictional authority. While NS should report crossings that have the potential of increased accident probabilities due to a change in operational or physical characteristics, and NS may recommend a particular warning device, it is ultimately the responsibility of the public agency to confirm the need and select the type of device. Under most circumstances, the public agency will fund the project and maintain the devices. The railroad's role is normally to coordinate the design and construction of the project. Therefore, the DEIS statement in Volume 4, Chapter 7, Section 7.2.3.8 at 7-15 should be revised to say:

> *"SEA has identified grade crossings in the States of Illinois, Indiana, Kentucky, Maryland, Michigan, New York, Ohio, Pennsylvania, and Virginia as listed in Table 7-4, that have been ranked using the DOT Accident and Severity Prediction Formula. CSX and NS should notify the appropriate State agency with jurisdictional authority of the potential of increased accident probabilities for these crossings due to a change in operational characteristics so these crossings can be evaluated to determine if closing of the crossing or upgrade of the warning device is needed."*

4.4 Safety: Rail Transport of Hazardous Materials

The DEIS concludes that "[o]verall, the proposed Transaction should result in a slight safety improvement for rail transportation of hazardous materials and no significant system-wide adverse impacts related to hazardous materials transport." DEIS at ES-19. NS concurs and expects the improvements to be greater than described in the DEIS as the best of NS' and Conrail's practices are implemented system-wide. The DEIS recommends mitigations on 29 NS and 4 Shared Assets Areas rail line segments based on expected increases in hazardous materials traffic.

NS concurs with the large majority of these recommendations as prudent, but has concluded that certain aspects of the analysis and certain recommendations are unreasonable or impractical and should be amended. Recommendations that could postpone implementation of the Operating Plan, such as requiring implementation of OT-55B guidelines prior to increasing hazardous materials traffic on a rail line segment, are neither justified nor reasonable. The Board is obligated, as discussed in Section 2, to balance adverse environmental effects against offsetting positive environmental effects and, importantly, non-environmental public benefits to the Transaction. The recommendation that would establish a permanent new "rule" requiring drills or desk-top simulations on some line segments should have a sunset provision to allow those lines to be treated consistently with other similarly situated rail line segments after the first three years. The recommended adoption of a Failure Mode and Effects Analysis (FMEA) is aimed at pre-existing conditions and contradicted by the DEIS conclusion that yard activity is expected to decrease as a result of the Transaction. Each of these topics is discussed in more detail below.

Safety, including safe transport of hazardous materials, is Norfolk Southern's highest priority. This unflagging commitment, which goes far beyond simply complying with existing regulations and accepted industry practices, has resulted in NS' industry-leading safety performance. NS is dedicated to being a responsible member of the communities it serves and is also motivated by the tenet that safety is good business. Simply put, accidents are both damaging and expensive, and NS is devoted to preventing them. NS participates in many voluntary programs such as the guidelines of AAR Circular No. OT-55B - "Recommended Railroad Operating Practices for Transportation of Hazardous Materials," Responsible Care®, and the North American Non-Accident Release (NAR) Program. The intention of such programs is to voluntarily reduce risks, improve railroad performance, and thus to alleviate the need for even more government regulation. These programs have been very effective at reducing risks through innovative approaches. It is important that these efforts be encouraged and that Applicants retain

the flexibility to continue to seek improvements. Recommendations in the DEIS should be considered in this context.

NS is committed to improvements it expects to be effective and concurs with a number of the recommendations presented in the DEIS. Many of these recommendations relate to practices which have already been voluntarily implemented by NS, and therefore are not required as a mitigation condition. In some cases, there are established, cooperative mechanisms in place for developing new rules or standards. These mechanisms involve the participation of NS and other railroads and effective use of their tremendous reservoir of experience and talent. NS only objects to DEIS recommended requirements that may create burdens without commensurate safety benefits and recommended requirements where existing industry practices already address the issue.

4.4.1 Key Route Requirements

The DEIS applies the definition of a "key route" from OT-55B as a significance criterion: when hazardous materials traffic has increased from below to above 10,000 hazardous materials car loads per year, a line segment becomes a key route. NS concurs that this is an appropriate threshold and has itself adopted a stricter threshold of 9,000 car loads. NS supports the intent of the DEIS recommendation that NS should meet "key route" requirements on new key routes and that these existing standards and practices mitigate potential risks. However, as these industry standards are revised and improved, NS should retain the flexibility to adopt updated practices.

In addition to the OT-55B standards, which NS is committed to fulfill regardless of the Transaction, the DEIS recommends four additional requirements for "new key routes". The first is that, if NS has more stringent requirements than the provisions of the AAR "Key Route" and "Key Train" guidelines, NS shall comply with its own requirements. NS does have more stringent requirements and will comply with these. However, NS objects to its proactive responsibility being established as a condition by the STB. The actions required would not apply to other railroads and thus would create an inappropriate double-standard. Further, it could inhibit changes to NS practices aimed at further improving safety performance. *The recommendation to require Applicants, as a condition, to comply with their own more stringent key route requirements is neither necessary nor appropriate. NS recommends it not be included in the FEIS other than to acknowledge that NS has more stringent requirements with which it will voluntarily apply.*

The second additional DEIS recommendation is that NS implement the OT-55B requirements prior to increasing hazardous materials traffic on these lines. NS does not believe that such a condition is warranted because it adheres as a matter of practice to the industry-standard key route safety procedures set forth in the AAR circular. Thus, to the extent that any line segments meet the key route volume thresholds, NS would as a matter of long-standing practice apply the key route safety measures. In the event that such a condition were imposed, however, NS recommends that the condition be worded so that NS may retain the flexibility to adhere to any new industry standard that replaces, modifies or supplements the existing requirements in OT-55B. Those standards were developed in 1993, and could well be revised in future years. NS should be able to adhere to any future revised version of these standards without the need to seek Board approval.

As to the timing of implementation of any condition that may be adopted, NS notes that a determination of whether a route is a key route or not is made based on an assessment of the level of hazardous materials traffic on the route during the previous twelve months. Further, there will be no immediate overall change in traffic levels on these routes on Day One. Rather, the projected traffic increases are based on a growth of traffic over a three year period.

While NS is nonetheless prepared to comply with existing key route requirements in OT-55B for the identified line segments as of Day One, NS submits that any condition that might be imposed should allow for a one-year period following Day One before such a requirement would become effective. Also, any such condition should expire at the end of three years following Day One, after which time the determination of whether a line segment should be treated as a key route should be made in the same manner that it is made throughout the rest of the NS system (and the national rail system generally), i.e, on the basis of the actual level of hazardous materials carried. If the key route criteria are met, the key route obligations would attach.

A three-year time frame for any mitigation measure concerning these line segments is appropriate because the traffic projections on which the mitigation has been proposed are three year projections. If the projections prove accurate with respect to these line segments, then the key route test will have been met and NS would apply the key route measures identified in the AAR Circular. On the other hand, NS should not be bound to adhere to the key route obligations on line segments as to which projections for increased hazardous material traffic in excess of the key route criteria are not met.

The third additional DEIS recommendation is that NS "prepare a Hazardous Materials Emergency Response Plan for each local emergency response organization along these ['new key

route' and 'major key route'] rail line segments." This recommendation would appear to apply for each such organization in 63 counties in 10 states. Such an interpretation is too burdensome and unwieldy to implement. NS is prepared to provide plans for each county for distribution to Local Emergency Planning Committees (LEPCs) within that county. The plans would provide information about NS' hazardous materials emergency response practices and plans and instructions on railroad and other emergency contacts for the county. The NS-provided information will supplement each LEPC's own emergency response plans. NS concurs this is a prudent recommendation to help ensure emergency response organizations are prepared should an incident occur involving NS operations and activities.

It is obviously impractical and inappropriate for a railroad to prepare a detailed and customized plan to manage how a particular local emergency response organization would respond to an incident. NS is confident SEA did not intend its recommendation to be interpreted in this way, since it is to be expected that communities already have emergency response plans prepared by LEPCs as required by Section 303 of the Emergency Planning and Community Right-to-Know Act 41986 (SARA Title III). Notably, when Congress enacted SARA Title III, it did not require transporters to participate in the emergency planning process through the designation of facility emergency coordinators.[14] Nonetheless, NS routinely cooperates with LEPCs in the planning process. The DEIS should not be interpreted to shift a responsibility already assigned by federal law. NS recommends this issue be clarified in the FEIS - *that the railroads will provide planning information to designated counties for distribution to the LEPCs about the railroads' plans and practices, and information on railroad and railroad-related emergency contacts that apply within the county.*

The fourth additional DEIS recommendation for new key routes is that NS shall provide a 24-hour toll-free telephone number to all emergency response organizations for each community located along "new key route" and "major key route" line segments. *NS concurs this is a prudent recommendation and will provide to each county, for distribution to LEPCs, a toll-free number for the NS Police Communications Center in Roanoke which can immediately access all NS dispatch centers.* Local emergency response personnel could quickly obtain information regarding the transport of hazardous materials on a given train and appropriate emergency response procedures in the event of a train accident or train-related hazardous materials release.

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[14] Section 327 of SARA Title III exempts transporters from all provisions of the statute, including the requirement to coordinate with the LEPCs, except for the emergency notification requirement for spills set forth in Section 304.

4.4.2 Key Train Requirements

The DEIS recommends that, before increasing the number of rail cars carrying hazardous materials on any train, NS shall comply with the AAR "Key Train" guidelines ("Recommended Railroad Operating Practices for Transportation of Hazardous Materials," AAR Circular No. OT-55B). *NS already complies with key train guidelines as a standard practice but urges that the FEIS not include such compliance as a condition for the reasons discussed in Section 4.4.1.*

4.4.3 Rail Line Segments on Which Hazardous Materials Traffic Doubles and Exceeds 20,000 Cars Per Year

The DEIS recommends certain requirements for rail line segments on which hazardous materials rail car traffic would double and exceed an annual volume of 20,000 cars per year as a result of the Transaction. NS concurs with the DEIS that this represents a significant change in hazardous materials traffic and that additional efforts are reasonable to increase the preparedness of local emergency response organizations. *NS concurs with the recommendation to provide emergency response planning information to affected counties as described above in Section 4.4.1 for new key routes.*

The DEIS also recommends that for line segments which exceed this higher threshold, NS shall implement a real time or desktop simulation emergency response drill with voluntary participation of local emergency response teams at least once every two years. NS concurs that it is reasonable to conduct one such drill within two years of Day One for rail line segments which exceed the threshold in order to orient and improve the preparedness of emergency response organizations. However, the recommendation in the DEIS would appear to be a permanent condition not having any "sunset" provision. It would also create a double-standard because the requirement would not apply to other rail line segments on NS or on other railroads which currently have as much or even more hazardous materials traffic. It would thus have the effect of rulemaking without the benefit of the cooperative and established rulemaking or standards setting process. The fact is, NS conducts drills already and should continue to be allowed to prioritize and schedule such drills as it does now in cooperation with state and local emergency response organizations. This recommendation should be modified for NS to *conduct one such drill for each line segment exceeding the threshold within two years of Day One.* This will appropriately "bring up to speed" local emergency response teams on these line segments, after which time these routes would be subject to the same NS management practices as other routes with similar hazardous materials traffic levels.

NS also recommends that the FEIS not utilize the term "Major Key Route." The term "key route" was established and defined by the Inter-Industry Task Force in OT-55B. While NS agrees that the DEIS threshold of a doubling of hazardous materials traffic plus an annual volume of 20,000 cars is reasonable, NS believes that the term "Major Key Route" would be confusing. The "key route" terminology should be reserved for the voluntary, proactive and effective industry efforts to provide safe transport of shippers' hazardous materials. *NS concurs with the threshold for routes that would double in hazardous materials traffic and exceed 20,000 hazardous materials car loads per year to trigger certain efforts (as modified above) but recommends the elimination of any and all use of the term "Major Key Route" in the FEIS.*

4.4.4 Failure Mode and Effects Analysis (FMEA) Program

The DEIS directs NS to establish a formal Failure Mode and Effects Analysis (FMEA) program for NS and Shared Assets Areas rail yards and intermodal facilities as mitigation to address the sources and consequences of spills of both stored hazardous materials and hazardous materials in transportation. This mitigation is without justification. The DEIS at 4-21 states that on a system-wide basis, the proposed Transaction "...should result in a modest, but virtually unmeasurable, decrease in hazardous material releases from derailments." The DEIS also states that, system-wide, the Transaction would result in fewer car miles per day of cars carrying hazardous material and a decrease in freight car handling in rail yards. *The DEIS also concludes, significantly, that the Applicants have the proper general measures in place to handle any potential increase in hazardous materials accidents.* DEIS at 4-21.

As an example of cooperative and proactive efforts by NS to improve safety of hazardous materials transport, NS is a member of Responsible Care® (a voluntary program) which includes management practices that address risk assessment issues. As noted at 2-152 in the DEIS in NS' Safety Integration Plan, NS intends to adopt the Conrail framework (including the Transportation Incident Severity Index process used by Conrail) for systematic categorization of shipper-caused releases. NS also participates in industry programs such as the North American Non-Accident Release (NAR) Program, as outlined in the NS SIP. This is another existing voluntary initiative for the purpose of reducing hazardous material incidents. The program is based on a four-phase effort: (1) data collection; (2) data analysis; (3) communication of results; and (4) follow-up with shippers.

These and other programs, such as the Railroad Tank Car Safety Research and Test Project and OT-55B, were established for the industry to manage risks responsibly and effectively (to be self-regulating) and thus avoid the need for government regulation.

Government regulation of existing voluntary industry programs is redundant and unnecessary and eliminates the incentive for companies to participate in voluntary industry programs. The DEIS recommendation for FMEA clearly targets existing conditions, which are already properly managed. This recommendation also circumvents the established rule-making process. *For the foregoing reasons, the FMEA requirement should not be included in the FEIS.*

4.4.5 NS Rail Line Segment Alexandria, VA to Manassas, VA (N-315)

The DEIS at VA-14 erroneously displays 16,000 for the number of post-Transaction hazardous materials cars per year on NS rail line segment Alexandria, VA to Manassas, VA (N-315). Consequently, the DEIS recommends new key route mitigation for this line segment. The correct projected post-Transaction hazardous materials shipments on this line is 6,000 cars per year and, therefore, this rail line segment is **not** expected to be a new key route. *NS recommends the FEIS correct the 16,000 post-Transaction value to 6,000 car loads of hazardous materials and remove this line segment from all recommended hazardous materials transportation safety mitigation discussions.*

4.5 Transportation: Passenger Rail Service Capability

The DEIS presents a comprehensive analysis of the expected effects of the Transaction on passenger train service. NS' review indicates that the analysis was thorough and reasonable, albeit conservative. NS concurs with the DEIS findings that no adverse impacts on passenger train service capability will occur and there is no need for mitigation.

4.6 Transportation: Highway/Rail At-Grade Crossing Delay

The DEIS evaluates the potential impact of the Transaction on grade crossing delays, both on a system-wide and local (e.g., crossing-specific) basis. NS concurs with the DEIS that, on a system-wide basis, it is impossible to predict actual delays that would occur as a result of Transaction-related changes in train traffic. However, NS believes the DEIS analysis of local effects should be amended. Specifically:

- The DEIS uses the wrong equation to determine traffic delays.
- The DEIS consideration of level of service exceeds SEA's regulatory scope.
- The DEIS displaces the authority of state and local agencies responsible for grade separation issues.

- The DEIS determination of where grade separations would be necessary is without critical site-specific considerations.
- The DEIS suggests the possibility of mandated negotiated agreements, which NS believes would be an improper requirement (See Section 2.6 of these comments).

NS believes that there are few, if any, crossings with significant delays as a result of the Transaction. However, if the DEIS concludes any crossings exceed a justifiable significance criteria for delays, NS recommends that Applicants be directed to consult with the appropriate state and local authorities. This established alternative is readily available and would allow prioritization and handling of such crossings in a manner consistent with other crossings in a particular state which may merit consideration of grade separation, including crossings not affected by the Transaction which could be of higher priority.

NS' observations on the DEIS treatment of grade crossing delays are discussed in more detail below. Additional technical details are presented in Appendix NS-2 of these comments.

The DEIS conducted emergency vehicle response delay analysis to determine the effect on response time of emergency vehicles from a crossing blocked by a passing train. The DEIS evaluated potential delay in two ways: delay per stopped vehicle; and total daily crossing blockage time. However, on a system-wide basis, the DEIS acknowledges that it is impossible to predict actual delays that would occur as a result of Transaction-related changes in train traffic. There are no national standards for measuring emergency response vehicle delay or the significance of any delay impacts. The preliminary conclusion of the DEIS is that no system-wide mitigation is recommended. NS concurs with this conclusion.

In Mitigation Measure No. 11 at 7-16, the DEIS recommends delay-related mitigation on NS crossings IN 474600L and IN 474601T due to an increase in average delay per stopped vehicle greater than 30 seconds. The DEIS has also made specific recommended mitigation on ten Lafayette, Indiana crossings and five Erie, Pennsylvania crossings[15] in Mitigation Measures No. 22 and 23 due to changes in the level of service from Pre-Transaction to Post-Transaction which meet the DEIS proposed significance criteria. NS officials are instructed by the DEIS to

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[15] In SEA's January 21, 1998 Supplemental Errata, the DEIS was corrected to indicate that two of the five at-grade crossings at Erie would no longer meet SEA's threshold for mitigation due to a discovered error in SEA's calculations. Nonetheless, SEA states the correction should be ignored and the two crossings be included for mitigation because of their "close proximity." There is no justification for adoption of this new and arbitrary position.

consult with local officials and appropriate state DOTs to negotiate traditional separated grade crossing agreements or identify other mutually-acceptable approaches to address Transaction-related traffic delay impacts. In addition, SEA in its January 12, 1998 Errata to the DEIS directed NS to consult with the City of Cleveland to reach an agreement on measures to minimize or mitigate the effects of increased emergency vehicle delay. Possible mitigation measures suggested by SEA include increasing train speeds, upgrading communication between NS and the emergency dispatch center, or constructing grade separation. *NS does not believe that mandated negotiated-agreements are a proper mitigation approach.* (See Section 2.6 of these comments.)

The DEIS analysis of grade crossing delay finds no crossings in Cleveland are significantly impacted. No Transaction-related impact is mentioned that would suggest justification for the proposed mitigation. In like manner, there is no justification for SEA's recommended limitation of a two train increase in traffic through Erie, Pennsylvania for the reasons discussed at length in Section 5.6.

The DEIS has misused procedures contained within the Transportation Research Board's "Highway Capacity Manual" for a non-intended purpose. The DEIS defines level of service (LOS) as "... a measure of the operational efficiency of the highway/rail at-grade crossing using procedures contained in the Highway Capacity Manual (HCM)." In fact, the HCM does not address the operational efficiency of highway/rail at-grade crossings, and procedures do not exist to measure grade crossing efficiency in terms of LOS. A more detailed discussion of this issue is in Appendix NS-2. Moreover, the HCM does not contain the table shown at C-14 of the DEIS, which is purported to draw a correlation between LOS and delay at highway/rail at-grade crossings.

The DEIS does not explain the relationship between LOS and delay, but appears to have mischaracterized at-grade crossings as signalized intersections. The table presented in the DEIS purporting to correlate LOS and <u>average delay per vehicle</u> resembles, but in critical respects is not identical to, a table in the "Highway Capacity Manual" on page 9-6, titled "Table 9-1. Level-of-Service Criteria For Signalized Intersections." That table draws a correlation between LOS and stopped delay per vehicle, not LOS and <u>average delay per vehicle</u> as presented in the DEIS. It appears the DEIS has improperly modified this table to imply the same relationship between LOS and <u>average delay per vehicles</u> at a grade crossing.

In modifying the HCM, the DEIS has failed to acknowledge the fundamental differences in operational characteristics between signalized road intersections and highway/rail at-grade

crossings. The HCM defines level of service criteria for signalized intersections in terms of the average stopped delay per vehicle for a 15-minute analysis period. Delay at signalized intersections can be measured in the field or estimated using procedures contained in the HCM. These HCM procedures are complex empirical equations that are dependent upon a number of variables such as the quality of progression, the cycle length, the "green ratio", and the volume to capacity ratio that are unique characteristics to signalized road intersections, and have little or no relevance to highway/rail at-grade crossings. These procedures are inappropriate to estimate delay impacts of grade crossings.

Traffic signals and highway/rail at-grade crossings differ because traffic signals continuously operate in uniform cycles (red-green phase changes) throughout the majority of the day as opposed to intermittent crossing events at highway/rail at-grade crossings. Also, drivers do not have the same expectations from different types of warning devices. For instance, the HCM recognizes different LOS thresholds between signalized road intersections and road intersections only protected by stop signs. Drivers would reasonably expect longer intermittent delays at highway/rail at-grade crossings than for signalized intersections. Therefore, LOS as defined in the HCM for signalized road intersections cannot be directly applied to highway/rail at-grade crossings.

The equation used in the DEIS to decide LOS at highway/rail at-grade crossings is found in DEIS, Appendix-C at C-13 as Average Delay for All Vehicles. The equation over-simplifies a very complex traffic operation by making several general assumptions. For instance, the equation assumes that the period of critical delay at a crossing occurs during the peak hour of vehicular delay (i.e., during rush hour), the arrival rate of trains is spread evenly throughout the day, and vehicles arrive uniformly throughout the train blockage period. The equation also assumes that all trains are the same length and travel at the same speed through the crossing.

The flawed equation used by the DEIS to calculate at-grade crossing delays has resulted in overestimation of projected increases in average delay per vehicle at crossings. At two crossings (474600L and 474601T in Alexandria, IN) for which the DEIS recommends that NS consult with the community because the delay exceeds the significance criteria of 30 seconds, NS has used a more appropriate equation to recalculate the delay increase. The DEIS reports the delay increases to be 2.16 minutes and 1.68 minutes, respectively. NS' alternative equation shows a much lower delay increase of 0.73 minutes for each crossing. While NS acknowledges this would still exceed the 30 second criterion proposed in the DEIS, this demonstrates *the DEIS calculations overestimated these potential delays by over 100 percent. NS recommends use of the correct equation in the FEIS. Use of the incorrect equation has overstated potential delays.*

SEA relied on these overestimates of delays when proposing that delays be mitigated in Lafayette, Indiana; Erie, Pennsylvania; and Alexandria, Indiana.

System-wide, the assumptions made within the correct equation may be acceptable and the results may provide some useful screening of potential delay impacts. However, before recommending a final mitigation, a site-specific analysis should be done. Such an analysis would use more accurate data and would take into consideration actual site-specific characteristics and train/vehicular traffic patterns.

Generic modeled calculations may be revealed to be too conservative if a site-specific analysis determines, for example, that during the most congested period of vehicular traffic, no trains block the crossing. Conversely, actual conditions may show that during the peak train interval, very few vehicles use the roadway. At the site-specific level, various combinations of train length, train speed, vehicle arrival frequencies, and train frequencies should be considered based on actual conditions to decide the critical delay period.

Therefore, SEA should only use the results of this equation to "rank" the crossings in terms of delay severity, similar to the way the DOT Accident Prediction Formula is used to rank crossings for further evaluation of the need for warning device upgrades. After the crossings are ranked, state authorities should be notified that a change in the operational characteristics has taken place that may influence delay. The state authorities can then make their own determination regarding the need and method for mitigation. The state authorities are in a better position to consider all the other factors that influence a grade separation project, such as evaluating whether adequate alternative routes exist or determining the impact of purchasing additional right-of-way on adjacent land uses. *NS recommends that the FEIS direct Applicants to consult with state DOTs about any potential grade crossing delay impacts rather than directing NS to participate in implementation of specific mitigation measures.*

4.7 Transportation: Roadway Effects from Rail Facility Modifications

The DEIS considered the impact on local transportation systems of changes in truck activity at intermodal facilities, construction projects and abandonments. *NS concurs that the methods, analysis and results are reasonable and appropriate. In the following discussion, NS is providing updated information for SEA to use in the final analysis for the FEIS.*

The DEIS reports a new at-grade crossing would be constructed in Vermilion, Ohio. The DEIS recommends that NS fully fund the cost of raising Coen Road in order to create a level

highway/rail crossing. (See Volume 4, Chapter 7, Section 7.2.6, page 7-23; Volume 3A and 3B, Table 5-2, page 5-39; and Volume 3B, Chapter 5, Section 5-OH.10, page OH-40 and OH-41). NS has revised the proposed Vermilion, Ohio project since SEA evaluated the site. The new rail alignment will reuse the existing crossing in lieu of constructing a new at-grade crossing at Coen Road, as presented in the DEIS. *Therefore, no adjustment to the profile of Coen Road is needed.*

The DEIS reports a new at-grade crossing would be constructed in Oak Harbor, Ohio. The DEIS recommends that NS fully fund the cost of raising Toussaint-Portage Road in order to create a level highway/rail crossing. (See Volume 4, Chapter 7, Section 7.2.6, page 7-23 and 7-24; Volume 3A & 3B, Table 5-2, page 5-39; and Volume 3B, Chapter 5, Section 5-OH.10, page OH-39 and OH-40). The Oak Harbor, Ohio project involves the installation of connection track to be constructed between Conrail and Norfolk Southern lines. The proposed track is approximately 4,835 feet in length and will intersect Toussaint-Portage Road (Township Road #92) by means of an at-grade crossing. The proposed connection track will cross Toussaint-Portage Road at approximately 1,200-feet north of the existing Conrail crossing and approximately 950-feet south of the existing NS crossing. If approved by the state agency with jurisdictional authority, the proposed crossing will be equipped with mast-mounted flashing light signals with gates, activated by constant warning time circuitry.

The new connection track profile will descend to the proposed crossing at a rate of -0.30% from the existing NS track. The proposed track will remain level throughout the crossing before ascending at a rate of 0.24% to tie into the Conrail track. The proposed vertical alignment for the connection track will require that Toussaint-Portage Road be raised approximately 12-inches higher than the existing surface at the crossing. A smooth transition in the roadway profile will be made by constructing approximately 100-feet of run-off approaches on each side of the new at-grade crossings. *Therefore, the resulting crossing will not contribute to a "roller coaster"-type safety hazard for vehicles on Toussaint-Portage Road, and raising the road is not necessary.*

4.8 Transportation: Navigation

The DEIS evaluated a total of 13 movable bridges on NS and CSX line segments system-wide where Transaction-related increases in rail traffic are projected to meet or exceed the Board's thresholds for evaluation. SEA determined that the U.S. Coast Guard has jurisdiction over these movable bridges, and that, in accordance with U.S. Coast Guard regulations, navigation use (e.g., ships) has priority over trains. Therefore, the DEIS concludes that there are no system-wide or site-specific adverse impacts on navigation, including service to coastal and

inland ports. Norfolk Southern concurs with this conclusion. Conrail, CSX, and Norfolk Southern together serve a combined total of 17 ports on the Atlantic and Gulf coasts, and 27 ports on the Great Lakes and inland waterways. Service to these ports will be maintained and enhanced by the Conrail Transaction.

4.9 Energy

The DEIS concludes that there will be a large annual reduction in diesel fuel consumption and no significant adverse environmental impacts on transportation of energy resources or recyclable commodities as a result of the Transaction. DEIS at 4-49. NS concurs with this observation but, as with other benefits of the Transaction, the substantial environmental benefits from the savings in energy consumption are undervalued in the DEIS. *The net reduction in fuel consumption is a notably significant positive impact compared to other significance criteria in the DEIS. The fact that it is a positive impact does not diminish its significance; rather, the value of this benefit should be given appropriate emphasis in the Board's decision.*

The overriding impact of the Transaction on energy consumption is the decrease in annual diesel fuel consumption resulting from truck-to-rail diversions - *a net annual decrease for NS and CSX combined of approximately 133.6 million gallons*, according to the DEIS. Both the methodology employed in the DEIS for evaluating fuel savings and the application of that methodology are reasonable and appropriate. Fuel consumption is the most dependable indicator of the net positive impact expected from the Transaction on energy resources.

The DEIS further projects a total Transaction-related net annual reduction in fuel consumption of 80.1 million gallons. This is clearly a significant environmental benefit and should be stated as such in the DEIS. Nevertheless, that figure grossly understates the actual amount of benefit which NS believes is more accurately reflected by the truck-to-rail diversion impacts discussed above. The DEIS arrives at the 80.1 million gallon decrease after a confusing and misleading discussion which concludes by erroneously subtracting 53.5 million gallons from the 133.6 million gallon net decrease associated with truck-to-rail diversions. DEIS at 4-47. The DEIS incorrectly calculates that an annual increase of 53.5 million gallons is the net change in fuel consumption from factors other than truck-to-rail diversions. The DEIS bases this calculation on the rail traffic data provided by NS and CSX that projects increases in rail traffic greater than those associated with truck-to-rail diversions. The error occurs when the DEIS makes a faulty assumption that projected rail traffic increases not associated with truck-to-rail diversions have no off-setting decreases on other railroads or other modes of transport.

The fact is that essentially all Transaction-related increases in rail traffic on NS and CSX lines segments beyond those associated with truck-to-rail diversions would, but for the Transaction, be shipped on other railroads or by other transport modes. The resulting decreases on other railroads or other modes of transport have not proven feasible to model. However, it is obvious they will result at worst in no net change in fuel consumption since railroads are the most fuel efficient land-based method of transporting freight in the United States. Therefore, a conservative estimate would be to assume that Transaction-related net fuel changes associated with NS and CSX rail traffic increases other than truck-to-rail diversions would be zero.

NS recommends the FEIS adopt this reasoning and acknowledge that the Transaction-related net impact on fuel consumption is a net annual decrease of approximately 133.6 million gallons - a much larger benefit than the 80.1 million gallons stated in the DEIS.

The DEIS also analyzes proposed changes in operations at rail yards and intermodal facilities that could affect energy resources. Additionally, the DEIS considered the proposed Transaction's effect on the transportation of energy resources and recyclable commodities, and also considered the consumption of energy resulting from vehicular traffic delays at highway/rail at-grade crossings. The DEIS concluded that there would be no significant adverse environmental impacts on energy consumption, transportation of energy resources, or recyclable commodities as a result of the proposed Transaction.

NS concurs that no significant adverse impacts are expected on transportation of energy resources or recyclable commodities from the Transaction, but urges SEA to recognize the projected greater decrease in fuel consumption as a notably significant positive impact.

4.10 Air Quality

The analysis of air quality impacts in the DEIS is thorough and comprehensive. NS agrees that some of the details where the DEIS methods depart from Applicants' analysis in the ER represent improvements in methodology. NS concurs with the DEIS adoption and application of recent EPA Ozone Transport Assessment Group (OTAG) conclusions. These recent conclusions confirm that air impact issues are system-wide or regional; analysis and significance criteria related to local emissions are now moot. NS concurs with the results of the DEIS analysis that there are no significant local impacts, and that system-wide reductions in air emissions is a net positive impact resulting from the Transaction. *On the other hand, NS believes the DEIS, with its focus on local increases in emissions, both understates and undervalues the*

positive overall impact of the Transaction on air quality. The positive impact of the Transaction on air quality should be considered significant.

4.10.1 Methodology

The DEIS evaluated both system and county-wide emission increases and decreases from each rail line segment, rail yard, and intermodal facility, as well as emission changes due to truck-to-rail diversions, rail-to-rail diversions, and emissions from idling vehicles at grade crossings. SEA's independent analysis deviated from Applicants' method in selection of certain emission factors. *NS' review indicates the factors and methods used in the DEIS are sound. This is consistent with the October 24, 1997 letter from SEA to EPA which discusses SEA's methodology and EPA's view that the methodology used is reasonable and conservative.*

The DEIS analysis does, however, suffer from the same bias discussed above in Section 4.9. That is, except for the truck-to-rail diversions, the air quality analysis includes all the expected NS and CSX rail traffic increases but does not include offsetting traffic decreases for other railroads and transportation modes that currently carry that freight. This exclusion is not through oversight, but because it has not proven feasible to model these reductions in detail. Common sense concludes, however, that the offsetting air emissions benefits from decreased traffic on other railroads or modes can be expected to be of approximately the same magnitude as the air emissions increases from the shift of traffic to NS and CSX. As with energy impacts, analysis of the truck-to-rail diversions most accurately reflects the net impact on air quality that can be expected from the Transaction.

4.10.2 System and Regional Impacts vs. Local Impacts

The DEIS points out that the Ozone Transport Assessment Group (OTAG) found that because ozone problems are a regional concern, local control of NO_x is less productive than control of NO_x emissions on a regional level. Mitigation on a local level for the Northeast Ozone Transport Region (OTR) was therefore considered unnecessary by SEA since NO_x emissions in this region are expected to decrease. Therefore, it is obvious the projected net system-wide decrease in emissions expected to result from the Transaction is more relevant than local increases and decreases. NS concurs that ozone is largely a regional concern rather than a local concern and suggests that this observation be emphasized in the FEIS by stating that *no local mitigation options for NO_x are indicated because NO_x emissions will decrease at the system-wide level over the Northeast Ozone Transport Region (OTR) and will decrease further in the future due to the newly promulgated EPA locomotive standards.*

4.10.3 Significance Criteria

The DEIS looked at overall air emission increases in terms of system-wide emission changes and county-by-county emission changes. System-wide, the Transaction would result in a net decrease in emissions. Local impacts of projected increases in activity were compared to the stationary source thresholds as a screening method, then compared to one percent of the existing county emissions. If the emission change from the Transaction was less than one percent of the existing county emissions, the change was considered insignificant. If the increase in emissions exceeded one percent of the existing county emissions, the emissions were then analyzed in terms of regional or multi-county emission changes. In some cases the emissions in a particular county exceed the one percent threshold. However, in no cases did SEA find that a particular county would be significantly affected by the Transaction.

NS concurs with this conclusion, noting however that establishment of local significance criteria, a practice reasonably employed by SEA for prior transactions, is inconsistent with OTAG's cited conclusions. *NS recommends further consideration of the implications of the recent OTAG conclusions and suggests that local air analysis and significance criteria is no longer relevant since it is a system and regional issue.*

4.10.4 Conclusions

The DEIS concludes there will not be a significant adverse impact on air quality resulting from the proposed Transaction either locally or system-wide. In fact, the DEIS finds there will be net system-wide reductions each year for five of the six pollutants analyzed, including reductions of over 4,500 tons of nitrogen oxides, over 6,000 tons of carbon monoxide and over 1,000 tons of volatile organic compounds and an "insignificant" net increase of 521 tons per year of sulfur dioxide (DEIS at 4-56) For nitrogen oxides, these reductions are equivalent to elimination of 180 major stationary sources (sources with nitrogen oxides emissions of 25 tons per year for severe ozone nonattainment areas), or to removing 300,000 passenger cars from the road. *The overall reductions in air emissions, particularly the reductions in ozone-related pollutants, represent the major impact of the Transaction on air quality and are a significant benefit.*

As mentioned above in the discussion of methodology, the DEIS presents a conservative analysis which does not account for all of the expected reductions in air emissions. *A more representative analysis of net system-wide air emissions impacts would be based on the truck-to-rail diversions which are expected to dominate the air and fuel impacts of the Transaction.*

Based on the same reasoning discussed above in Section 4.9 on fuel consumption, *such an analysis would result in estimated reductions in emissions over 60% higher than the DEIS has projected.*

New locomotive emissions standards were promulgated by EPA on December 17, 1997 and are discussed in the DEIS. The new standards will provide further substantial emissions reductions in the future. According to a U.S. EPA fact sheet on the new standards, the new emission standards will reduce nitrogen oxides emissions from locomotives by nearly two-thirds and hydrocarbons and particulates by half. This would result in an additional 304,000 tons per year reduction of nitrogen oxides emissions expected in 2005, and would be the equivalent of removing nearly 20 million passenger cars from the road.

4.10.5 Mitigation

The DEIS recommends that the railroads should use "best management practices" to minimize fugitive dust emissions that result from construction projects and associated activities. *NS already employs standard best management practices during construction activities to minimize fugitive dust, and is committed to using such practices to minimize dust during Transaction-related construction and associated activities.*

4.11 Noise

The DEIS provides a comprehensive, albeit highly conservative, analysis of potential noise impacts, and concludes that only a few rail line segments are likely to have significant adverse noise impacts. NS concurs with the noise impact significance criteria applied in the DEIS and the safety considerations recognized for horn noise by the DEIS. The general approach for modeling noise is appropriate for use as a screening tool. However, the DEIS applies a CSX noise model based on CSX noise measurements of CSX and Conrail trains and ignores equivalent data on noise measurements of NS trains. This information on measured NS train noise levels was supplied to SEA in Applicants' ER. The data demonstrates that NS trains, which are typically shorter and operate at slower average speeds, are quieter than the DEIS suggests. SEA's exclusive use of the CSX model and measurements significantly overstates noise levels on NS lines, as has been demonstrated by recent field measurements. Further, since all of the noise assessment models were intentionally developed to be conservative, the models should only be used as a screening tool to identify areas of potential concern for site-specific analysis. The DEIS also inappropriately and unnecessarily defines a "preferred" recommended mitigation approach. Appropriate mitigation, if warranted, should only be determined following

site-specific analyses of noise impacts, location and type of receptors, and other local conditions. These issues are discussed below and in Appendix NS-3.

The DEIS presents a noise analysis of local adverse impacts where railroad operations are expected to increase on rail line segments, intermodal facilities and rail yards. The DEIS only considers potential adverse local noise impacts. Noticeably absent is any discussion of the positive benefits in reduced noise level that will be experienced by communities and sensitive receptors along those lines and roads where train and truck traffic would decrease, and those lines proposed for abandonment. In order to provide some semblance of balance, *NS recommends the FEIS at least acknowledge that noise benefits will accrue wherever train or truck traffic will decrease as a consequence of shifts in traffic expected to result from the Transaction.*

The DEIS appropriately concludes that safety considerations necessitate the sounding of locomotive horns for crossings and take precedence over noise effects. This is consistent with FRA regulations which specify horn loudness and laws which require horns to be sounded at grade crossings to provide for public safety. Therefore, for areas near grade crossings, the DEIS does not consider noise mitigation to be feasible. *NS concurs with the conclusion that safety considerations necessitate the sounding of horns and with the precedence of public safety considerations and the existing FRA regulation.*

NS concurs that the significance criteria of 70 dBA and an increase of 5 dBA, applied in the DEIS for wayside and facility noise, is reasonable and appropriate.

4.11.1 The DEIS Fails to Apply NS Train Noise Data to NS Traffic.

The DEIS analysis of noise levels and contours related to NS rail operations purports to be based on noise levels which were based on measurements of NS trains. In fact, the DEIS impact analysis is consistent with use of a CSX noise model based on measurements of CSX and Conrail trains. As demonstrated by field measurements, this results in a significant overstatement of noise impacts on NS lines.

NS recognizes the validity of the general approach applied within the DEIS - applying noise models to project potential increases in noise levels as a screening tool to determine where there might be a significant noise impact. *NS also agrees that it is appropriate to be conservative in applying such a tool to screen for potential impacted areas.* This is the reason NS applied a conservative model in the Applicants' Environmental Report (ER) - to avoid underestimating potential noise impacts. As discussed in Appendix NS-3 of these comments, NS

used a model developed by Thornton Acoustics based on actual field measurements of NS trains. These measurements determined that the wayside SEL (the average Sound Exposure Level 100 feet from the track while the train passes) was 98.4 dBA for the representative NS train.

The train noise model used in the DEIS is apparently the CSX model from the ER. This CSX model is based on CSX field measurements of CSX and Conrail trains. As documented in the ER, Volume 6A, Appendix B, field measurements found CSX trains to be louder than either NS or Conrail trains.

Although the DEIS states that SELs of 98.4 dBA wayside noise and 108.5 dBA crossing noise were used to determine contours for NS trains (DEIS, Appendix F, page F-5), in fact the contours presented in the DEIS are consistent with SELs of 100 dBA (wayside noise) and 109.1 dBA (grade crossing noise). *Although this difference appears small, the CSX model represents approximately 50 percent higher noise energy from wayside noise than the Thornton Acoustics model due to the logarithmic nature of dBA.* The wayside noise level of 100 dBA in the DEIS was apparently derived by applying a model based on CSX measurements of CSX and Conrail trains to NS trains, which operate at slower speed and shorter train lengths than CSX trains. The noise at grade crossings (109.1 dBA) in the DEIS was apparently determined by adding the train noise (100 dBA) to the horn noise only (108.5 dBA).

Application of the incorrect SEL for NS trains in the DEIS results in significantly overstated L_{dn} 65 contour distances from the rail line over the already conservative model results based on noise measurements of NS trains. The measurements of NS trains and the Thornton Acoustics model were presented in detail in the noise methodology in Appendix B of Applicants' ER. The CSX model was presented in the same Appendix. The data on NS trains was apparently neither applied by the DEIS nor incorporated into a unified model for use in the DEIS. The DEIS does not indicate any attempt to validate the assumption that the CSX model is a better predictor of NS wayside noise than are the NS measurements and model.

4.11.2 The NS Model is Conservative.

NS and its consultant Thornton Acoustics recognized the need for a conservative model to avoid any possibility of understating potential noise impacts. The model was based on real-world measurements of NS trains, but conservative assumptions were made concerning shielding and background noise, effects which reduce the actual impact of a noise source. *Subsequent field measurements have confirmed that the Thornton Acoustics model is conservative and*

appropriate as a screening tool for NS trains since it consistently overstates actual noise impacts from passing trains.

The Thornton Acoustics noise model was based on noise measurements made in an open, flat field area in North Carolina adjacent to NS track over a four-day period. There were no structures present to shield (absorb or deflect) noise. There were essentially no noticeable sources of background or non-railroad noise. The model included a factor for background noise inputs, but for all modeling runs it was assumed that the background noise levels would be very low (50 dBA during daytime hours and 40 dBA during nighttime hours). Although standard shielding equations predict shielding of up to 10 dBA from structures between the noise source and the receptor, the Thornton Acoustics model restricted the maximum shielding attenuation in the model to 5 dBA and only if structures parallel to the track occupied at least 65 percent of the total frontage along the track. This very restrictive shielding assumption ensures the model provides a conservative, i.e., louder, estimate of noise levels. In addition, the quiet flat field noise measurements made in North Carolina accentuate the effects of train noise when compared to urban or town areas where the model is applied to determine impacts on receptors. The Thornton Acoustics model was intentionally made to be conservative.

4.11.3 Validation of the NS Model as a Conservative Screening Method

Some models are better than others, but a model is only a model and only predicts potential noise levels. By using a conservative model, NS recognized that any areas identified through modeling as having potential significant impacts could then be measured to determine the site specific sound levels from trains. *Additional field measurements recently conducted by Wyle Laboratories, a consultant to NS, confirm that the Thornton Acoustics model is both conservative and more accurate for NS trains than the model applied by the DEIS. The Thornton Acoustics model consistently overestimated noise levels when compared to actual measured noise levels, confirming that, as is the general case with models, this model is only appropriate as a screening tool.* The results are presented in more detail in Appendix NS-3 and summarized below.

In December 1997 and January 1998, noise measurements were performed by Wyle Laboratories on Norfolk Southern rail segments in Cleveland, Bellevue, and Clyde, Ohio and Fort Wayne and Lafayette, Indiana. The measurements were made in order to: (1) determine if the existing Norfolk Southern noise model was conservative or if it underestimated noise impacts, and (2) perform site-specific modeling in areas on NS line segments where the DEIS identified a noise concern. Several of the measurements include horn and/or bell noise, which

SEA has acknowledged should not be considered for purposes of determining significance of impact or mitigation. Results are shown below and in Table 4.11.1.

TABLE 4.11.1

COMPARISON BETWEEN MEASURED AND MODELED NOISE VALUES

Location	Distance (ft.)	Grade Crossing	Highest Measured SEL[a]	Thornton Predicted SEL	Percentage Over-Predictions[b]
Bellevue					
Site 1	100	Yes	106.2	108.5	69%
Site 2	230	Yes	98.4	102.7	170%
Site 3	650	Yes	88.9	95.5	356%
Clyde					
Site 1	100	Yes	106.0	108.5	78%
Site 2	330	Yes	95.0	100.2	231%
Site 3	545	Yes	93.4	96.7	115%
Ft. Wayne					
Site 1	130	No	88.4	96.6	561%
Site 2	200	No	89.6	93.6	151%
Lafayette					
Site 1	100	No	93.8	98.4	188%
Site 2	250	No	86.8	92.0	231%
Cleveland					
Site 1	300	Yes	63.2[c]	67.7[c]	182%
Site 2	200	No	56.8[c]	62.7[c]	289%
Site 3[d]	235	No	60.8[c]	63.0[c]	65%

[a]The measured SEL includes horn and/or bell noise for Bellevue, Clyde and Lafayette.
[b]The percentage the Thornton model over-predicted the sound energy level over and above the actual measured level.
[c]All Cleveland measurements and model estimates are L_{dn} values.
[d]At this site, Conrail train noise was measured, and the predicted SEL is also based on Conrail train noise as predicted by the Thornton model.

- Cleveland, Ohio - Noise measurements were made for 24 hour periods in each of three areas in Cleveland. In each case, a comparison was made between the measured L_{dn} noise value and the calculated L_{dn} noise value using the Thornton

Acoustics train noise model. In each case, the noise levels measured were lower than the NS model predicted. The Thornton Acoustics model overstated noise levels at the three locations between 2.2 dBA (66 % too high) to 6.1 dBA (307% too high); the DEIS values would overstate the actual values by approximately 3.6 dBA (129% too high) to 7.7 dBA (489% too high).

- Bellevue, Ohio - In Bellevue, Ohio, Wyle Laboratories performed noise measurements at three locations on an existing NS rail line segment. The Bellevue noise measurements were taken over a three-hour period. Three train pass-by noise measurements were made and subsequently compared to the Thornton Acoustics noise model predictions. For each site and train pass-by, the measured noise levels were lower, i.e., quieter, than the levels predicted by the Thornton Acoustics model.

- Clyde, Ohio - Wyle Laboratories performed SEL noise measurements at three locations in Clyde, Ohio along NS' Oak Harbor to Bellevue line segment. Two train pass-by noise measurements were made. The measured noise values were lower than the Thornton Acoustics model predicted for each site and train pass-by.

- Fort Wayne, Indiana - Wyle Laboratories performed SEL noise measurements at two locations in Fort Wayne, Indiana along an existing Norfolk Southern line segment. Three train pass-by noise measurements were made. The measured noise values were lower than the Thornton Acoustics model predicted for each site and train pass-by.

- Lafayette, Indiana - Wyle Laboratories performed SEL noise measurements at two locations in Lafayette, Indiana along an existing NS line segment. One train pass-by noise measurement was made at each location. The measured noise values were lower than the Thornton Acoustics model predicted for each site and train pass-by.

The comparison between Wyle Laboratories noise measurements and the predictions of the Thornton Acoustics noise model show that, in all cases, the Thornton Acoustics noise model overestimates the L_{dn} 65 dBA contour both at grade crossings and for wayside noise. *This conclusively confirms that the FEIS analysis should apply no higher noise levels than those predicted by the Thornton Acoustics model for NS trains and that modeled levels should be used only as a screening tool to determine where additional site-specific measurements are indicated.*

Only with this level of noise analysis can an accurate determination be made as to whether noise impacts are potentially significant.

4.11.4 Acoustic Shielding and Ba ':ground Noise

The Thornton Acoustics and DEIS (CSX) models were all intentionally designed with conservative assumptions concerning acoustic shielding and background (non-railroad) noise. The modeling only applied a fraction of the shielding recommended by a Federal Highway Administration (FHWA) noise model. The recent measurements by Wyle Laboratories suggest *the full range of shielding from the FHWA model would provide a more accurate prediction of actual noise levels*. Also, urban areas and areas with other noise sources have higher background noise levels that reduce the impact of train noise. Therefore, potential noise impacts are overstated throughout the DEIS. Details are discussed in Appendix NS-3.

4.11.5 Exclusive Use of CSX Train Noise Levels for Shared Assets Areas

For the Shared Assets Areas, the DEIS apparently based noise projections solely on CSX model calculations for CSX's average train length and speed (102 dBA for wayside noise and 112.8 dBA for grade crossings [see DEIS Appendix F, Attachment F-1.]). This not only ignores the NS model for NS trains, it also ignores that the typical NS train operates at lower speeds and shorter length. *NS recommends the FEIS apply a weighted average SEL between CSX and NS trains for Shared Assets Area line segments since the Shared Assets Areas will have both NS and CSX trains.*

4.11.6 Arbitrary Inclusion of Noise as a Potential Environmental Justice Impact

The DEIS applies a dual-standard for consideration of noise impacts in the discussion of Environmental Justice on three levels:

1. An arbitrarily restrictive noise contour is established and used to define the affected area wherein the DEIS will address potential population characteristics for inclusion within the Environmental Justice category.

2. The DEIS identifies three line segments with DEIS-designated environmental justice communities as potentially warranting noise mitigation; *however, the three segments fail to meet the DEIS established noise criteria for significance.*

3. Although the DEIS analysis of noise finds no environmental justice communities with significant noise impacts warranting mitigation, the DEIS suggests continued evaluation is necessary to ensure there are no cumulative impacts which include noise - however, the same suggested analysis for potential cumulative impacts involving noise is not provided for other communities throughout the system.

The DEIS defines the "area of potential effect" for Environmental Justice analysis as the maximum area potentially exposed to the Board's noise threshold of 65 dBA. The justification offered within the DEIS is that the 65 dBA threshold offers a practical, uniform approach to identifying an outer boundary where communities could be reasonably expected to experience localized environmental impacts. Norfolk Southern agrees this is a reasonable approach, given the available guidelines. However, as has been conclusively demonstrated, the use of either the DEIS (CSX) noise model, or the Thornton Acoustics (NS) noise model, overstates the actual measured level of noise associated with NS trains, and would therefore provide an exaggerated area for analysis. The DEIS approach to noise for environmental justice further overstates the extent of actual noise impacts by applying two arbitrary assumptions *solely* to environmental justice analysis: (1) assuming an increase of three to seven trains per day generates as much noise as an increase of eight trains per day - effectively lowering the analysis threshold for environmental justice communities from an increase of eight trains per day to three; and (2) assuming that horn noise occurs along the entire line segment, not just at crossings. No justification is provided for this unfounded double-standard.

On page 3-51, Environmental Justice Analysis, the DEIS states, "SEA used the criteria for "significance" described in the preceding sections of this chapter." Preceding DEIS Section 3.12.2, at 3-35, provides the mitigation criteria for noise and states, "SEA considered noise impacts . . .to warrant potential mitigation if any sensitive receptors are exposed to noise levels above 70 dBA L_{dn} and have a 5 dBA L_{dn} increase." However, the NS line segments listed as having potential noise impacts at DEIS 7-48, Table 7-9 "Preliminary Communities that May Warrant Environmental Justice Mitigation," do not meet the criteria SEA has defined as warranting noise mitigation. These line segments are: Cleveland to Ashtabula (N-075), White to Cleveland (N-081), and Youngstown to Ashtabula (N-082). In DEIS, Appendix F, Attachment F-1, the change in dBA for these three line segments is 4.5, 3.4, and 4.2, respectively. All three of the changes are well below the significant impact criterion.

The DEIS indicates that the Board is still considering the possibility that "cumulative" impacts on environmental justice communities could result from noise and from other unspecified factors, and that further study is required. However, the DEIS does not identify

significant potential noise effects in any of the environmental justice communities, and based on NS analyses presented here and in Section 4.16 below, NS does not believe that these communities will see significant adverse impacts of any kind. A finding of cumulative impact is based on the idea that synergies between multiple insignificant effects can create a significant effect. However, the DEIS contains no discussion of a link between insignificant noise effects and other insignificant effects, and provides no evidence that such a link exists. Similarly, the DEIS provides no justification for why further noise studies are warranted if it is already established that these communities do not have significant noise impacts, nor what these additional noise studies might consist of. The continued review of noise, and the consideration of insignificant noise as a potential cumulative effect for environmental justice communities where there is no significant noise impact, represents an unsupportable double-standard. *Environmental justice communities should be subject to the same noise thresholds and criteria contained in the DEIS and applied to other communities.*

NS recommends that a double-standard not be employed in the FEIS. The significance criteria established for the noise analysis elsewhere is reasonable, appropriate and sufficient, without creation of a second more stringent standard for particular communities based on demographic composition.

4.11.7 Practical Problems with DEIS Preferred Noise Mitigation

The DEIS recommends that, if and where noise mitigation is warranted, "noise barriers would be the preferred type of noise mitigation for substantially impacted areas." NS believes this is an arbitrary statement, and fails to consider site-specific variables and local considerations. *If noise mitigation is considered for any line segment, the consideration of potential alternatives should be based on a site-specific analysis of the noise impact, receptors, site conditions, and desires of the affected community, not with an arbitrary "one size fits all" mitigation measure.*

4.12 Cultural Resources

The DEIS, in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, evaluated each proposed abandonment and construction action associated with the Transaction to determine whether cultural resources (e.g., historic properties) were adversely affected, and if so, what mitigation would be warranted. The DEIS applied the "Criteria of Effect and Adverse Effect" (36 CFR 800.9) developed by the Advisory Council on Historic Preservation as the criteria for determining whether there would be an adverse impact on cultural resources. In addition to SEA's own analysis of potential impacts to cultural resources,

each proposed abandonment and construction action was coordinated with the State Historic Preservation Officer (SHPO) for additional review. The DEIS (as amended by the January 12, 1998 Errata and the January 21, 1998 Supplemental Errata) concluded there are no adverse impacts to cultural resources along NS rail line segments from the Transaction.

NS concurs with the cultural resources evaluation approach and conclusions as presented in the DEIS (as amended by the two Errata). During the implementation of the proposed abandonment and construction activities, NS will continue to coordinate as required with the appropriate SHPOs to ensure that significant cultural resources are not adversely impacted by the Transaction-related activities.

During recent engineering studies on Conrail's Buffalo-Binghamton rail line (which will be operated by NS post-Transaction), a Conrail Bridge (No. 361.66) over the Genesee River near Portageville, New York, was found to be near the end of its useful life. The bridge is an 819-feet long steel viaduct carrying a single railroad track, and is currently rated for 263k (load rating) traffic at 10 mph due to its condition. The viaduct rests on six steel towers that were constructed in 1875. The design and age of the current structure preclude repair or renovation without replacing the entire bridge. NS is conducting further studies and working with federal state and local authorities, including consultation with the State Historic Preservation Officer, to evaluate alternatives to replace the existing bridge. The anticipated bridge replacement is in response to an existing condition, and is not related to the Transaction. NS will replace the bridge in full compliance with all applicable federal, state and local laws and regulations.

4.13 Hazardous Materials and Waste Sites

The DEIS evaluated the potential for the Transaction to affect existing hazardous waste sites within 500 feet of the Transaction-related rail line construction or abandonment activities. Investigation and cleanup of hazardous waste sites during construction or abandonment activities is controlled by several federal and state statutes and regulations. The DEIS therefore concluded that no further evaluation was necessary, and that additional mitigation measures were not warranted. *NS concurs with this conclusion. NS routinely coordinates with federal and state agencies as appropriate to ensure all hazardous waste sites where NS has responsibility are addressed in compliance with applicable laws and regulations, and in a manner protective of human health and safety and the environment. It will continue to do so.* NS does point out that, as a general rule, some sites only require the involvement of the appropriate state agency(ies) while others may require the involvement of U. S. EPA alone or, at times, joint State and EPA involvement - depending on the constituent or amount of contamination discovered. Applicants

should be given the flexibility they currently have to involve the most appropriate authority(ies) in cleanup matters consistent with legal requirements.

4.14 Natural Resources

The DEIS addresses natural resources (water and biological) for site-specific Transaction-related activities at rail line segment constructions and abandonments. SEA evaluated the site for the construction of the proposed NS connection at Vermilion, Ohio for its potential to impact natural resources. The DEIS at OH-105 indicated that a site visit determined the woodland area located south of the proposed Vermilion construction site may contain habitat for the endangered Indiana bat. However, a subsequent Errata to the DEIS (dated January 9, 1998, at page 13) indicated the Indiana bat is not historically documented in Erie County. The DEIS indicated the Vermilion construction site visit did not identify any potential habitat for other threatened or endangered species. No other potentially significant natural resource impacts were identified, although the bald eagle was identified in the DEIS as a threatened species known to occur in Erie County.

Although the wooded area south of the Vermilion construction site will not be directly affected by the construction, the DEIS recommends that NS consult with the U.S. Fish and Wildlife Service (USFWS) and the Ohio Department of Natural Resources to determine the potential effects to any federally-listed threatened or endangered species. Prior to initiating construction at the site, the DEIS at OH-105 directs NS to conduct a survey to determine the potential presence of the Indiana bat and the bald eagle.

NS does not concur with the DEIS proposed mitigation. NS believes that since the wooded area will not be directly affected by the construction, a survey for the Indiana bat is not necessary. According to NS' preliminary correspondence with the USFWS, dated January 12, 1998, a survey for the Indiana bat may not be needed even if the wooded area were to be affected by the construction. Also, based on the same preliminary correspondence, the USFWS believes a survey for the bald eagle would not be necessary because the Ohio Department of Natural Resources maintains good records of the nesting locations obviating the need for a survey. *Therefore, the proposed mitigation should be revised as follows: "NS should coordinate with the U. S. Fish and Wildlife Service and Ohio Department of Natural Resources prior to construction."*

NS concurs with the DEIS's three-step process for evaluating water resources (map review and analysis, field reviews, and evaluation of impacts) and for evaluating biological

resources (data collection, field review, and evaluation of impacts). The methodologies are applied appropriately and the findings in the DEIS are well-founded except for the unclear methodology for the distances used to identify biological resources described in Section 7.7 and the survey recommendation at Vermilion discussed above.

NS concurs that the proposed Transaction will not result in significant impacts to natural resources.

4.15 Land Use/Socioeconomics

The DEIS addresses land use and socioeconomic issues directly related to changes in the physical environment from the proposed Transaction-related rail line segment constructions and abandonments. The DEIS concludes there are no significant adverse effects on land use or socioeconomics resulting from the proposed Transaction. NS supports this conclusion. The DEIS conducted a thorough review of the proposed rail line segment constructions and abandonments for:

- consistency with local land use plans;
- effects on Prime Farmlands;
- consistency with State Coastal Zone Management Plans;
- need for relocation/demolition of any business or residence;
- consistency with local land use plans and other requirements if within Native American reservations; and
- effects on jobs as a direct result of or related to changes in the physical environment.

Proposed abandonments were also evaluated for suitability for alternative public uses and/or trail uses, and identification of alternative transportation modes for goods and services affected by the abandonment.

A few comments below offer clarification to the DEIS methodology and state-specific conclusions related to the Tolono, Illinois rail line segment construction and the Seneca Indian Nation/Cattaraugus Reservation in New York.

Tolono, Illinois The proposed Tolono Connection involves the construction and operation of a new rail line connection between the existing Illinois Central (IC) and NS lines. The City of Tolono, Illinois identified a potential concern that the proposed NS construction

activity would disturb Daggy Street and adjacent residential properties. This concern, expressed in comments by the City on the scope of the DEIS, was based on information within the Environmental Report which was misconstrued. *In a public meeting held to address the City's concerns, NS clarified that the construction of the Tolono Connection would occur entirely within the existing IC and NS rights-of-way and no additional land would be acquired for this construction.*

The DEIS concludes:

- "Because the proposed construction would not require the acquisition of land outside the existing railroad right-of-way, this activity would be consistent with the local land use plan."
- "...the land use within the existing right-of-way is railroad. Therefore, there would be no effect on prime farmlands in the area."
- "Based on the findings described above, SEA has determined that there would be no significant impacts to land use associated with the proposed action at Tolono so long as construction remains within existing railroad right-of-way. Because there are no significant impacts, SEA does not recommend mitigation."

However, in the next paragraph, the DEIS goes on to contradict itself and recommend mitigation. Specifically, the DEIS provides a preliminary recommendation which states "...that the Board state, as a condition for approval of the Transaction, that Norfolk Southern does not disturb Daggy Street or residential properties at this location." DEIS at IL-68 through 69.

NS does not believe this recommendation is necessary nor in keeping with the conclusions of the DEIS. In effect, the recommendation seeks to mitigate a potential effect that is not projected to happen and which SEA has determined is not an issue of concern. NS' proposed construction activity at Tolono would occur entirely within the existing IC and NS railroad rights-of-way and no additional land would be acquired for this construction. Further, NS has met with local officials to clear up the misunderstanding. *Therefore, there is no impact to Daggy Street, and there is no need for a mitigation requirement.*

Seneca Indian Nation, Cattaraugus Reservation, New York The DEIS departs from its stated methodology for land use and socioeconomic analyses in addressing Native American issues on the NS Ashtabula - Buffalo (N-070) rail line segment. The DEIS concludes that the N-070 rail line segment is projected to increase the transportation of hazardous materials from 7,000 carloads to 26,000 carloads per year. The DEIS recommends the following mitigation:

- Adhere to the provisions of the AAR for transport of hazardous materials, including: (1) restricting train speeds to 50 mph; (2) upgrading the track to Class 2 or better; (3) installation of wayside defect detectors; and (4) establishing a Hazardous Materials Response Plan, including accident simulations with local emergency response providers.

- Coordinate the preparation of the Plan with the Reservation, and assist the Reservation with emergency response preparedness as requested.

The DEIS also notes that SEA will conduct additional public outreach among the Seneca Indian Nation and the Cattaraugus Reservation. DEIS at NY-38.

NS has several concerns regarding the DEIS approach on this issue:

- *This rail line segment is neither a construction nor an abandonment, and thus does not meet the DEIS criteria for evaluation for land use and socioeconomic issues. Therefore, this line segment should not be addressed within this section of the DEIS.*

- The potential issue identified, hazardous materials transportation, is already addressed for this rail line segment in the appropriate sections of the DEIS (e.g., DEIS Table 5-2). *Since recommended mitigation for increased hazardous materials transportation would eliminate the potential for a significant impact, there is no need to repeat the issue under land use and socioeconomic issues, and it should not be addressed in this section of the FEIS.*

- NS has raised several issues in Section 4.4 addressing the DEIS evaluation of hazardous materials transportation, including offering well-established mitigation measures (e.g., approaches to transportation of hazardous materials reflecting NS' excellent safety record) to address significant increases in hazardous materials rail traffic. These mitigation measures should be applied to the Cattaraugus Reservation in the same manner as they will be applied to other communities along rail lines projected to experience similar increases in hazardous materials transportation.

- The mitigation recommendation that NS "...assist the Reservation with emergency response preparedness as may be requested" is ambiguous and unsupported. This

requirement for additional, open-ended assistance is not specified for other non-Native American communities. *There is no justification for treating the Cattaraugus Reservation differently than any other community on the issue of increased hazardous materials transportation. This recommendation should not be included in the FEIS.*

- The DEIS does not state why the Seneca Indian Nation requires additional outreach. However, NS supports community outreach efforts with the Seneca Indian Nation (and all communities) to ensure information on the Transaction is available to the affected public and the community is informed so that it may participate in the EIS process.

4.16 Environmental Justice

NS strongly supports the objectives of inclusiveness and non-discrimination. However, the DEIS analysis of potential environmental justice effects of the Transaction is flawed and reflects a misapplication of sound environmental justice concepts. The analysis does not support additional mitigation and mitigation requirements predicated on it would exceed the legal authority of the Board. Specifically, NS believes:

- *There are substantial difficulties in attempting to apply the Executive Order on environmental justice and the guidance and methodologies developed thereunder by other agencies, to a transaction of this kind, which counsels caution.*

- *The Transaction will not have <u>disproportionate</u> effects on minority and low-income populations.*

  - *Potential impacts would not be borne predominantly by minority or low-income populations.*

  - *Effects on minority and low-income populations would not be more serious or greater in magnitude than on other populations.*

- *The Transaction will not have high and adverse effects on the "Environmental Justice communities" identified in the DEIS, disproportionately or otherwise.*

- *Communities identified as "Environmental Justice" communities in the DEIS are not predominantly minority or low-income.*

- *The environmental justice mitigation measures proposed in the DEIS are unjustified and impractical.*

4.16.1 Attempting to Apply to This Kind of Transaction the Executive Order on Environmental Justice and the Guidance and Methodologies Developed Thereunder by Other Agencies Presents Difficulties and Risks of Unforeseen Consequences, Which Counsels Caution.

The Executive Order on environmental justice defines its substantive standard as follows:

"Each federal agency shall conduct its programs, policies and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies and activities do not have the effect of excluding persons (including populations) from participation in, deny persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies and activities because of their race, color, or national origin."[16]

To achieve its objectives, the Executive Order urges Federal Agencies to conduct elaborate population demographic analysis for, "identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects" on minority and low-income populations.[17] While the Executive Order requests that independent agencies such as the Surface Transportation Board comply with the terms of the Order,[18] the DEIS recognizes (at 3-46, note 4) that the Board is not bound to conduct environmental justice analyses, or to require mitigation on the basis of such analyses.

NS believes that the Board has always met the substantive standard of the Executive Order and can continue to do so through existing processes.[19] However, the guidance and

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[16] Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, February 11, 1994, paragraph 2-2.
[17] Id., Sec. 1-101.
[18] Id., paragraph 6-604.
[19] NS notes that the Board elected not to specifically address the terms of the Executive Order in the Burlington Northern / Santa Fe and Union Pacific / Southern Pacific railroad control proceedings, both of which post-dated the Executive Order.

methodologies developed to date by other agencies, applying the Executive Order to very different types of proposed actions, were not designed for, and are not well suited to, a rail consolidation of this kind. Attempting to apply such guidance and methodologies in this context, moreover, risks far-reaching and unforeseen consequences contrary to those intended.

First, the proposed action at issue – the Board's decision whether to approve this Transaction – does not present the potential for discrimination that the Executive Order was designed to protect against. This is not a situation in which certain communities might be excluded from participating in the environmental review process or otherwise receive less environmental protection. Notice of the proceedings and relevant information have been widely circulated every place where there could be potential environmental impacts from the proposed Transaction. SEA has undertaken a comprehensive analysis of potential environmental impacts system-wide and at each point in the 44,000-mile system controlled by the Applicants. Minority and low-income communities have not been overlooked. Potential impacts in these communities have not been dismissed or treated less seriously than potential impacts in other communities, because the DEIS evaluations of potential impacts and the criteria for analysis and for recommended mitigation have been applied evenly and neutrally system-wide. Population demographics have not been a factor in determining potential impacts or mitigation measures. Rather, the driving factors have been increases in rail traffic projected across the entire 44,000-mile system based on operational capacity and market demand. *Where neutral criteria are plainly applied across the system, as in this case, additional demographic analysis is not necessary to ensure nondiscrimination.*

Application of the Executive Order to this proceeding is not necessary to protect against discrimination by NS or CSX. The DEIS does not suggest that NS and CSX, in deciding how to route their trains, had any intent to disfavor minority or low-income populations. Nor could such a claim plausibly be made. The numerous complex factors which were taken into account in deciding how to route trains are discussed in the Operating Plans.[20] The demographics of communities along the rail lines is not among them.

Moreover, orders or conditions based on incomplete or technically flawed environmental justice analysis could inadvertently create preferential treatment on the basis of minority status or income level. Nothing in the Executive Order requires or suggests preferential or unique

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[20] The primary factors are the origin and destination points for the expected freight shipments, geographic factors such as route distance and terrain, and the capacity of the tracks, yards and intermodal facilities.

mitigation for impacts in a minority or low-income community compared to a non-minority or non-low-income community similarly situated with respect to the impacts. *The recommendation in the DEIS for NS to enter into binding agreements for additional mitigation with certain communities but not with non-minority or non-low-income communities similarly situated with respect to impacts is an example of preferential treatment not warranted under the Executive Order and is a violation of its directive and spirit.*

In its attempt to work within the framework of an Executive Order aimed at different kinds of transactions, the DEIS unavoidably dealt with new processes, untested analytic methodologies and untried mitigation strategies. The Board has never issued guidance or proposed rules that address the application of environmental justice concepts to the types of issues typically reviewed by the Board. Virtually all of the academic literature and guidance from other federal agencies with respect to environmental justice describes analysis of localized facility siting or construction decisions (e.g., where to locate an industrial facility, or whether to expand an airport). NS can find no precedent for environmental justice assessment of a financial transaction like the Transaction here, the principal environmental effect of which is to cause interrelated system-wide shifts in train and truck traffic throughout the eastern United States. The railroad rights-of-way at issue in the proposed action were established beginning in the mid-nineteenth century and were largely determined by the early twentieth century. Nearby land was developed with the full knowledge that freight trains moved along the tracks, in most cases with much greater frequency than they do today (e.g., in Cleveland, see Section 2.5.4) or would following the consummation of the proposed Transaction. Neither the Executive Order, nor any other guidance promulgated to implement the Order, directly addresses the type of action proposed here. NS believes that the DEIS environmental justice analysis is technically flawed, due in large part to the conceptual incompatibility of a facility siting model with the very different nature of this Transaction. Given that the Board is not required to conduct such analysis and that such analysis is not necessary to ensure inclusiveness and non-discrimination, a better approach is to review environmental analytic procedures to ensure non-discrimination, or to limit additional demographic analysis to new construction, as was proposed in the draft scoping notice for the EIS.

However, if the Board believes that environmental justice considerations in the future should become a distinct part of its processes, NS urges the Board to follow the lead of DOT and other agencies. The Board (like DOT and other agencies) should issue proposed rules or guidance on environmental justice analysis and seek input from community organizations, state and local governmental agencies, and other stakeholders before issuing final rules. The EIS

process is not the appropriate place for the Board to establish for the first time its policy and approach to environmental justice.

4.16.2 The Proposed Action Will Not Have Disproportionate Effects on Minority and Low-Income Populations.

The President's Executive Order on Environmental Justice directs Federal Agencies to identify and address "*disproportionately* high and adverse human health or environmental effects" on minority and low-income populations (emphasis added).[21] The Applicants' Operating Plans have been devised to route freight traffic so as to provide the quickest, safest and most cost-effective rail transportation possible, to the benefit of persons of every racial and income group. Some lines will experience increased traffic and some will experience decreased traffic. Analysis of the minority and income status of populations adjacent to the rail lines, shown in Tables 4.16.1 and 4.16.2, discussed below, clearly shows that the increases and decreases in traffic over the 44,000 miles of rail lines at issue will not be borne by minority and low-income persons disproportionate to their presence along the rail lines. Since train routing decisions are not based on the status of the populations adjacent to the lines, this finding should come as no surprise.

The U.S. Department of Transportation's Order on Environmental Justice (as well as the literature in the field of environmental justice impact assessment) defines two tests to determine whether impacts are disproportionate: "Disproportionately high and adverse effect on minority and low-income populations means an adverse effect that:

- is predominantly borne by a minority population and/or a low-income population, or
- will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low income population."[22]

Neither test is met in this Transaction.

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[21] Executive Order 12898, Sec. 1-101.

[22] U.S. Department of Transportation, *Order to Address Environmental Justice in Minority Populations and Low-Income Populations*, February 3, 1997, page 25.

Potential impacts are not borne disproportionately by minority or low-income communities. Table 4.16.1 compares the minority and low income concentrations of populations that would experience increases in train traffic post-Transaction with the minority and low-income concentrations of populations residing adjacent to all of the rail lines to be controlled by the Applicants.[23] Table 4.16.1 clearly shows that the demographic makeup of communities that would see increases in train traffic is virtually identical to that of the system as a whole. It shows, additionally, that about 75 percent of the population adjacent to the rail lines involved in this Transaction that will experience train traffic increases is non-minority, and about 85 percent of the population so impacted is non-low-income. Potential impacts would therefore not be "predominantly borne" by minority or low-income communities on a system-wide basis.

Table 4.16.1: Comparison of Communities Where Train Traffic will Increase and Decrease Across the Expanded NS, CSX and Shared Assets Areas Systems

		Communities where:		
	Entire systems (NS, CSX and Shared Assets Areas)	Train traffic would increase above SEA threshold for analysis (8 trains per day)	Train traffic would increase by any amount	Train traffic would be unchanged or would decrease
Share of population with minority status	25%	22%	26%	24%
Share of population in poverty	15%	15%	15%	15%

On a system-wide basis, potential effects on minority and low-income populations would not "appreciably exceed," or be "more severe" or "greater in magnitude" than among other adversely populations effected. Table 4.16.1 shows that communities that would see increased train traffic at or above the Board's analytic threshold of eight trains per day are virtually identical in low-income concentration and, if anything, slightly lower in minority concentration

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[23] Demographic data were gathered for populations adjacent to each rail line in the expanded NS, CSX and Shared Assets Areas systems using procedures similar to those described in the DEIS (Appendix K). Because NS' analysis is system-wide, and, by contrast, the DEIS includes demographic data for only a small number of segments, there are two important differences in methodology. First, data were collected for this analysis at the postal zip code level instead of the census block group level used in the DEIS. Second, NS' analysis does not isolate the portion of each zip code potentially affected by the Transaction. The DEIS provides no methodology for defining area of potential effect where the Transaction would result in benefits or in insignificant impact. This analysis is based solely on expected increases in traffic, as a surrogate for environmental impacts, and does not consider the mitigating effects of actions recommended by the DEIS.

than the system as a whole. Table 4.16.2 below focuses in on those segments where train traffic would increase. The table compares increases on segments with adjacent populations in the highest 20 percent in terms of minority and low-income concentration, with increases on other segments.[24] Table 4.16.2 clearly shows that, among communities adjacent to segments where train traffic would increase, those communities with the highest minority and low-income concentrations would not see bigger increases than the rest of the communities adjacent to such segments.

Table 4.16.2 Comparison of Rail Segments Where Train Traffic Would Increase (High Minority and Low-Income Concentration Segments Versus Other Rail Segments)

	Minority Concentration		Low-Income Concentration	
	Highest 20%	Other	Highest 20%	Other
Increase in train traffic (trains per day)	4.38	4.9	4.66	4.76

In the prevailing literature, statistical tests called "difference of means" tests are used to determine whether comparisons such as those made in Table 4.16.1 or Table 4.16.2 are "statistically significant," i.e., whether differences in the demographic data are real or random 'noise' in the data. These tests - conducted on all the comparisons made in Tables 4.16.1 and 4.16.2 - confirm that differences in the average demographics of communities that will see various effects are not statistically significant.[25]

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[24] To construct the 'highest 20%' and 'other segment' groups, segments were ranked by minority or low-income concentration of adjacent populations from highest to lowest. Segments were then divided into five groups (quintiles). The sum of the populations in any quintile equals 20% of the total population adjacent to the entire system. The exercise was done separately for analysis of minority and low-income effects. The 'highest 20%' is the quintile with the highest minority or low-income concentration. The 'other segments' group includes the other four quintiles.

[25] As the literature suggests, difference of means tests are used to determine whether observed differences in minority and low-income concentrations are "statistically significant" at a 95% confidence level. See Vicki Been and Francis Gupta, "Coming to the Nuisance or Going to the Barrios? A Longitudinal Analysis of Environmental Justice Claims," *Ecology Law Quarterly* v24 (1997) n1:1-56; Paul Mohai and Bunyan Bryant, "Environmental Injustice: Weighing Race and Class as Factors in the Distribution of Environmental Hazards," *University of Colorado Law Review* v63 (1992) n4:921-932; and Andrew Szasz, Michael Meuser, Hal Aronson, and Hiroshi Fukurai, "The Demographics of Proximity to Toxic Releases: The Case of Los Angeles County," Paper presented at the Annual Meetings of the American Sociological Association, Miami, FL, 1993.

Nowhere in the DEIS is there an assessment of whether impacts would be disproportionate, predominantly borne by minority or low-income populations, or whether potential impacts in low income communities would be more severe or greater in magnitude than among other affected populations. The only explanation of the DEIS methodology for determining whether effects on minority or low-income communities are disproportionate is as follows:

> "SEA used a qualitative analysis approach which included review of several different factual circumstances, including cumulative effects of exposure to health and environmental impacts from many sources, to determine the significance levels on a local case-by-case basis. A determination of a significant environmental justice impact specifically included SEA's consultation with affected communities."[26]

Such analysis can provide useful information, but it is not determinative of the question of whether impacts are predominantly borne by, or are more severe among, minority and low-income populations than among other populations on a system-wide basis. Members of communities consulted in such analysis would have limited knowledge of how other communities are being affected by the proposed action. Consultation might help to identify hypothetical cumulative effects (e.g., situations where individuals are more susceptibie to effects because of site-specific circumstances) but the DEIS puts forward no reason why such consultation is needed only in minority or low-income communities, or why a community's demographics could affect the potential for cumulative effects.

4.16.3 The Proposed Action Will Not Have High and Adverse Effects on the "Environmental Justice Communities" Identified in the DEIS.

The DEIS identifies seven rail segments along the expanded NS system that "may warrant environmental justice mitigation"[27] (see Table 4.16.3). The list is composed of rail segments that (1) exceed DEIS significance criteria for one or more environmental effects and (2) also exceed a DEIS threshold for minority or low-income concentration in the surrounding population.[28] The potential adverse effects identified on these segments include at-grade crossing safety (2 segments), freight rail safety (2 segments), and increased hazardous materials transport (5

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[26] DEIS, Appendix K at 10-11.
[27] DEIS, Table 7-9, at 7-47 to 7-48.
[28] DEIS at 3-48 to 3-49.

segments). The DEIS also suggests that otherwise insignificant noise effects, in combination with other factors, could pose a "cumulative impact" on five of the seven segments.

TABLE 4.16.3
NS RAIL SEGMENTS IDENTIFIED IN DEIS FOR ENVIRONMENTAL JUSTICE MITIGATION

Segment	At-Grade Crossings	Freight Rail Safety	Hazmat Transport	Noise*
N-041	X		X	X
N-045	X		X	X
N-075			X	X
N-081			X	X
N-082			X	X
N-086		X		
N-090		X		

*Potential cumulative impact concern.

These rail segments, like all areas that could potentially experience effects, were appropriately subject to SEA assessment. NS is prioritizing outreach activities in minority and low-income communities near these segments as the DEIS directs. However, a closer look reveals that these communities will not experience significant impacts from the Transaction, much less impacts that are "disproportionately high and adverse."

The initial step in the environmental justice methodology described in the DEIS is identification of health and environmental effects of the proposed Transaction.[29] The DEIS proposes system-wide and site-specific mitigation measures that SEA generally believes will "ensure" that no significant effects occur. Given these measures, NS sees no grounds for further environmental justice analysis. *There can be no disproportionately high and adverse effect on minority or low-income populations if there is no significant adverse effect at all, or if mitigation is in place to ameliorate the potential adverse condition.*

The failure to consider the benefits of proposed measures to promote at-grade crossing safety, freight rail safety, and safe hazardous materials transport is a major flaw in the DEIS environmental justice analysis. In this respect, the DEIS deviates from federal guidance and

[29] DEIS at 3-48.

accepted practice.[30] SEA proposes that its criteria-based at-grade crossing safety, freight rail safety, and safe hazardous materials transport measures be implemented in the identified environmental justice communities.[31] The DEIS states that these measures would "address environmental impacts for these [environmental justice] communities."[32] The DEIS states that proposed mitigation measures are of the type that the Surface Transportation Board typically considers and imposes to "ensure freight safety"[33] and to "ensure safety at specific grade crossings."[34] With respect to hazardous materials transport, the DEIS proposes system-wide measures to "prevent and quickly, efficiently and effectively respond to hazardous materials releases."[35] The DEIS also proposes measures on these specific segments that "reduce potentially significant Acquisition related impacts resulting from the increased transportation of hazardous materials."[36] Yet, the ameliorative effects of these mitigation measures are not taken into account by the DEIS' environmental justice analysis.

Even in its consideration of potential impacts (i.e., those that could potentially occur absent measures to address them), the DEIS fails to demonstrate any reasonable connection to minority or low-income populations. The U.S. Environmental Protection Agency's *Guidance on Incorporating Environmental Justice into EPA's NEPA Compliance Analyses* notes that "the effects of proposed actions will often vary depending on the distance of the affected community from the action and the type of effect created by the action. Effects on the community should be

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[30] The U.S. Department of Transportation's Order on Environmental Justice states that, "in making determinations regarding disproportionately high and adverse effects on minority and low-income populations, mitigation and enhancements measures that will be taken and all offsetting benefits to the affected minority and low-income populations may be taken into account, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas." U.S. DOT, *Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, paragraph 8.b.

[31] DEIS recommended Mitigation Number 1 for at-grade crossing safety, at 7-11 to 7-12; DEIS recommended Mitigation Numbers 3(A), 3(B), 3(C), 4(A), 4(B), 5 and 6 for hazardous materials transport, at 7-12 to 7-14; DEIS recommended Mitigation Numbers 7(A) and 7(B) for freight rail safety, at 7-14 to 7-15. Table 7-4, at 7-26 to 7-33 for at-grade crossing safety; Table 7-5 and 7-6, at 7-34 to 7-42 for hazardous materials transport; Table 7-2, at 7-25 for freight rail safety.

[32] DEIS at 7-18.

[33] DEIS at 3-7.

[34] DEIS at 3-11.

[35] DEIS at 3-14.

[36] DEIS at 3-14.

discussed in terms of *reasonable* increments from the site"[37] (emphasis in original). In fact, the DEIS identifies minority and low-income populations based on areas that would hypothetically be affected by an exaggerated 65 dBA noise contour.[38] But the DEIS identifies no significant adverse noise impact in any of the seven environmental justice communities.

Two of the segments identified in the DEIS, N-086 (Toledo, Ohio) and N-090 (Harrisburg, Pennsylvania), are singled out for environmental justice analysis solely because of potential freight rail safety effects. The DEIS analysis of freight rail safety focuses on freight train collisions, derailments, and collisions with train service vehicles.[39] Freight rail safety effects are considered significant in the DEIS if, absent mitigation, they were projected to produce at least one accident in 100 years.[40] Freight rail incidents are almost always confined to the tracks themselves and, as the DEIS points out, are infrequent in any case.[41] Freight rail incidents are rarely noticeable to the neighboring community. NS submits that the very low risk of a freight rail incident, the effects of which are usually confined to the tracks themselves, does not create a "high and adverse effect" on surrounding populations.[42] In addition, measures taken to improve freight rail safety are determined by regulatory requirements, industry practice, available technology, and the railroad operating plan. Freight rail safety measures must be implemented system-wide, not on a community-by-community basis.

Two of the segments identified in the DEIS, N-045 (Ft. Wayne, Indiana) and N-041 (Danville, Illinois), are singled out for environmental justice analysis in part because of potential at-grade crossing safety effects. The potential effects are related to incidents involving highway vehicles, not residences. The DEIS provides no evidence linking the highway traffic at these crossings to the relevant populations, i.e., there is no evidence that a potential at-grade crossing safety issue has a significant adverse effect on an environmental justice community located elsewhere along the line segment.

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[37] U.S. EPA, *Interim Final Guidance on Incorporating Environmental Justice into EPA's NEPA Compliance Analyses*, September 30, 1997, page 5. (Emphasis added)

[38] DEIS at 3-48 to 3-50.

[39] In the DEIS, freight rail safety issues are analyzed separately from hazardous materials transportation and at-grade crossing safety. The DEIS identifies no significant hazardous materials transport effect or at-grade crossing safety effect on either of these two segments.

[40] DEIS at 3-8.

[41] DEIS at 3-4.

[42] See Section 4.1 above for further discussion of freight rail safety.

These two segments, along with three others, N-081 (Ashtabula and Cleveland, Ohio), N-082 (Ashtabula and Youngstown, Ohio), and N-075 (Ashtabula and Cleveland, Ohio), are also singled out because of projected increases in hazardous materials transport. Rail transport of hazardous materials does not create a "high and adverse" effect in these communities. In 1996, 99.96 percent of all hazmat shipments through the NS system arrived without incident.[43] That figure has steadily improved from 99.90 percent a decade ago.[44] Like freight rail safety, measures taken to ensure safe transport of hazardous materials must be applied system-wide, not community by community. In similar fashion, the DOT has issued comprehensive hazardous materials regulations at 49 CFR Parts 171-174, which are intended to make the possibility of a hazardous materials incident unlikely. Compliance with the DOT rules on a system-wide basis, coupled with NS' voluntary proactive risk management efforts (see Sections 4.4 and 4.4.4 of these comments), means the possibility of an incident occurring is remote, further supporting NS' position that the projected increased hazmat traffic on those two line segments will have no high or adverse effect on the communities along those lines.

The additional safety benefits of the proposed Transaction should also be recognized in the environmental justice analysis. Between 1994 and 1996, the NS system experienced 2.15 incidents per million train miles, 41 percent better than Conrail's record of 3.63 incidents per million train miles. According to the DEIS, hazardous materials incidents on the NS system caused no injuries between 1992 and 1996, while incidents on the Conrail system caused nine injuries.[45] The DEIS recognizes that the proposed action will create fewer incidents and "an overall safety improvement for rail transportation of hazardous materials."[46] These findings should be reflected in any environmental justice analysis.

Finally, the DEIS indicates that the Board is still considering the possibility that "cumulative" impacts on environmental justice communities could result from noise and from other unspecified factors. However, the DEIS does not find "cumulative" impacts in other non-minority, non-low-income communities. The DEIS does not identify significant potential noise effects in any of the environmental justice communities. And, based on the analysis presented here, NS believes that these communities will not see significant adverse impacts of any kind. A finding of cumulative exposure is based on the idea that the whole is sometimes bigger than the

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[43] As explained previously, an "incident" involving hazardous materials transportation refers to any leak or spill of material from its original container, without regard to the amount released or its effect. The loss of one drop of material is labeled an "incident."

[44] This represents a 60% improvement in the rate of hazmat incidents.

[45] DEIS at B8-1 – B8-4.

[46] DEIS at ES-19.

sum of its parts, e.g., that synergies between multiple insignificant effects create a significant effect. Neither the DEIS, nor the scoping documents that preceded it, discuss a link between insignificant noise effects and other effects. The DEIS provides no evidence that such a link exists. The DEIS contains no discussion of how the hypothetical cumulative effects are borne disproportionately in minority and low-income populations. A finding of cumulative effects must be based on sound science that is clearly explained.

NS supports the Board's efforts to reach out to these communities and all the communities affected by the Transaction. These efforts complement NS's own ongoing activities in community outreach. NS reiterates its intent, wherever mitigation measures are appropriate, to address significant human health and environmental impacts to implement such measures regardless of the race, color, national origin or socioeconomic status of the affected communities. *However, NS does not believe that conditions in these seven locations (or any other community along NS' expanded system) warrant additional environmental justice mitigation beyond what may otherwise be appropriate to ensure adequate opportunity to participate in the EIS process.*

4.16.4 "Environmental Justice" Communities in the DEIS Are Not Predominantly Low-Income or Minority.

According to the DEIS, in none of the seven communities is a majority of the potentially affected population classified as low-income. And in only one community, along NS line segment N-041, does the share of minority persons in the potentially affected population top 50 percent.[47]

Six of the seven communities were identified as "environmental justice" communities within the DEIS because they exceeded by ten percentage points the minority or low-income concentration in the surrounding counties. NS could find no applicable precedent for the use of this standard. Presumably, the DEIS meant to identify those communities that might be disempowered relative to wealthier or otherwise demographically different neighbors. The standard may be appropriate for examining the siting of a waste station, an industrial facility or a power plant. In such cases, plausible alternatives might shift the distribution of impacts among two neighboring communities. But the DEIS threshold of 10 percent greater minority or low-income population than the surrounding county makes no sense in the context of the proposed

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[47] Segment N-041, in which 63.7% of the population are minority persons. Demographic information for each community is contained in Appendix K of the DEIS.

Transaction. The DEIS identifies locality in which a decision on the proposed Transaction will redistribute burdens among neighboring communities not located adjacent to the railroad.

The potential effects identified in the DEIS for these seven communities result from interdependent changes in rail traffic patterns across a 44,000-mile system that crosses county, state and even national borders, changes that are central to the benefits of the proposed Transaction. Therefore, NS urges that this standard for defining a community as minority or low-income be dropped from the FEIS.

4.16.5 The Environmental Justice Mitigation Measures Proposed in the DEIS Are Unjustified and Impractical.

Notwithstanding the acknowledgment that other proposed mitigation measures address all of the relevant environmental impacts in the seven environmental justice communities, the DEIS directs the applicants to "meet with these communities *to identify and agree on any further appropriate measures* to address the specific environmental impacts that may disproportionately impact these communities."[48] The DEIS states further that, absent such agreement prior to issuance of the FEIS, "SEA may recommend that the Board, as a condition of the approval of the Application, direct CSX and NS to implement appropriate mitigation measures."[49]

It should be reiterated that the proposed Transaction will not have a disproportionate impact on minority and low-income communities in general, that the proposed Transaction will not have a high and adverse impact on the seven environmental justice communities identified in the DEIS, and that only one of these communities is predominantly made up of low-income or minority persons. For all these reasons, negotiation of further mitigation solely on the basis of population demographics would be inappropriate.

The Board is limited by its own regulations to condition approval of a proposed action on environmental mitigation only when that mitigation is directly related to the environmental impact of the proposed action.[50] Imposing mitigation based on the environmental justice analysis reflected in the DEIS, would, contrary to these regulations, be based not on evidence of additional human health or environmental impact on these communities, but rather solely on the

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[48] DEIS at 7-18. (emphasis added)

[49] Id.

[50] 49 CFR 1180.1(d). The point is also made in the DEIS at 3-3.

minority or socioeconomic status of these communities. The additional mitigation proposed is not connected to any significant environmental impact of the proposed Transaction.

For example, consider the N-090 segment (Harrisburg, Pennsylvania) and the N-086 segment (Toledo, Ohio) that could see potential freight rail safety effects according to the DEIS. Based on the demographics of the surrounding populations, the DEIS characterizes these as environmental justice "communities" and recommends that NS consult and reach agreements with these "communities" for additional mitigation. There are two other segments in the NS system (N-047 (Indiana Harbor, Indiana) and N-077 (Oak Harbor, Ohio) that could see the same potential freight rail safety effects, according to the DEIS. The populations surrounding these segments do not exceed the DEIS environmental justice thresholds for minority or low-income concentration, so the DEIS does not call for additional mitigation. The DEIS does not claim that Harrisburg and Toledo would experience greater freight rail safety effects than would Indiana Harbor or Oak Harbor. In fact, freight traffic will increase by less than 10 percent in the Harrisburg and Toledo segments as contrasted with increases of 20 percent and 22 percent in the Oak Harbor and Indiana Harbor segments respectively.[51] The DEIS does not identify a technical basis for the additional mitigation, and mitigation is not justified based on population demographics alone. *An order made on this basis would clearly be contrary to the Board's regulations and the intent of the Executive Order.*

Furthermore, the method proposed in the DEIS for developing additional mitigation for DEIS-designated environmental justice communities -- negotiation of binding agreements with minority and low-income populations -- is impractical and inconsistent with existing guidance. Who has the authority to speak for "affected populations"? How are parties to be excluded from or included in the negotiation? Must there be unanimous agreement among all interested parties? If not, who must agree? Are the terms of the negotiation limited by the Board's authority to impose mitigation, or are all issues on the table? Given that these negotiations are to be based on or are the basis for an order of the Board, are they governed by the Federal Advisory Committee Act? How would the terms of an agreement be enforceable against any party other than the Applicants?

Similar concerns were raised when the U.S. Department of Transportation proposed the notion of developing environmental justice mitigation through binding agreements with affected

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[51] DEIS at ES-8.

populations in its draft Order on Environmental Justice.[52] The State of Colorado called the proposal "far too expensive and time consuming." The National Association for the Advancement of Colored People (NAACP) argued that the option sent the "wrong message and should be removed" because it would create "powerful incentives for project sponsors and unrepresentative factions within a community to reach 'agreements' that are not truly representative of community sentiment."[53] The NAACP pointed out that parties to such an agreement might unknowingly compromise their rights to settle environmental justice complaints through other means.[54] The State of California asked how it would determine, "when there really is community 'buy in'?"[55] California pointed to the West Cypress Expressway reconstruction in Oakland, where successful negotiations with one community group prompted a lawsuit from another. "A significant amount of resources had to be expended in defending the suit."[56] The New York City Bar Association, commenting generally in favor of environmental justice measures, called the proposal for negotiations with affected populations, "fraught with risk and unworkable. In particular, the identification of the appropriately representative group to enter into an agreement... which, in effect, waives the whole community's environmental justice protections does not appear to be a task that a government agency is suited to undertake."[57] Finally, the State of Illinois commented that mitigation measures likely to be of interest to affected populations would be "impractical" because funding of those measures would be beyond the authority of state or federal public works and transportation agencies.[58]

In its Final Order, U.S. DOT noted that comments expressed "concern and uncertainty as to the implementation" of the negotiated agreement approach: "DOT agreed with the comments

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[52] DOT proposed three options (A – C) for developing mitigation for environmental justice impacts (paragraph 6 of the draft order). Option B included a requirement that "an agreement is reached with the potentially affected populations to proceed with the program, policy or activity." U.S. DOT, *Proposed Order to Address Environmental Justice in Minority Populations and Low-Income Populations*, June 29, 1995, Option 'B', paragraph 6.b(1).

[53] Letter from Norman Chachkin, NAACP Legal Defense and Educational Fund, Inc., to Docket 50125, September 26, 1995, page 6.

[54] Id., page 7.

[55] Letter from Howard Sarasohn, Program Manager, California Department of Transportation, to Docket 50125, August 24, 1995, page 2.

[56] Id.

[57] Letter from the Association of the Bar of the City of New York, Committee on Environment and Committee on Civil Rights, to Docket 50125, February 13, 1996, page 6.

[58] Letter from Kirk Brown, Secretary of Transportation, State of Illinois, to docket 50125, September 6, 1995, page 3.

and, accordingly, that paragraph has been deleted from the final order."[59] NS recognizes that the Board is not bound by the DOT Order, but urges the Board to come to the same conclusion as DOT and public commentors on this matter.

NS is not opposed to additional consultation with individual communities. Our own outreach efforts to date are described in Sections 5 and 6 of these comments. Additional consultation may be useful, for example, in determining whether a particular at-grade crossing safety, freight rail safety or hazardous materials transportation mitigation strategy recommended by the DEIS can be tailored to address local concerns. Consultation may open the EIS process to input from a wider spectrum of interests. NS supports efforts to achieve these objectives. ***But NS is opposed to binding negotiations of the type proposed in the DEIS, and to practices that might create preferential treatment on the basis of minority status or income.***

4.17 Cumulative Impacts

The DEIS evaluated system-wide cumulative effects of the Conrail Transaction, considering the scale and dimensions of the overall Transaction, including the effects on energy, air quality and transportation. Based on this evaluation, the DEIS concludes that the Transaction will result in a net positive cumulative effect. Norfolk Southern concurs with this conclusion - as stated in Section 3 herein, NS strongly believes that this Transaction will have a net positive benefit for the environment and the economy.

The DEIS also discusses evaluating cumulative impacts on identified environmental justice communities, but not, however, on other communities with similar potential impacts. The DEIS provides no supporting justification, analytical approach, or evidence supporting potential adverse cumulative effects at the local level. The DEIS includes no methodology for weighting and then combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delays, noise, etc.). And of course, there is no quantification of the benefits of the Transaction on a localized basis. Further, there is apparently no consideration of the mitigation effects of measures SEA plans to require. NS believes this approach is flawed as discussed in detail in Section 4.16 above.

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[59] U.S. Department of Transportation, *Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, preamble, page 7.

4.18 Relationship Between Short-Term Uses of the Environment and Enhancement of Long-Term Productivity

The DEIS considers the extent to which the Transaction would result in long-term productivity gains at the expense of short-term use of the environment and environmental impacts. Potential short-term impacts result from construction activities for new rail line connections. The short-term impacts identified by the DEIS are typically very limited in geographic scope, and readily mitigated by the railroad's existing Best Management Practices employed at construction sites. The DEIS concludes that the short-term impacts would be offset by long-term gains in productivity, including increased productivity and efficiency of rail operations in the eastern U. S. Long-term positive effects include system-wide reductions in energy consumption, highway traffic congestion, highway safety and air pollutant emissions. *Norfolk Southern concurs with this conclusion - the Conrail Transaction will have a net positive benefit for the environment and the economy.*

4.19 Irreversible and Irretrievable Commitment of Resources

The DEIS evaluates the irreversible and irretrievable commitment of resources, including natural, physical, human and fiscal resources. The evaluation addresses resources committed to both operational changes and construction of new and/or modified intermodal facilities, rail yards and line segments. Operational changes on existing rail lines redistribute resources, but do not increase the use of irreversible and irretrievable resources. New construction activities typically involve use of land and construction materials, labor, and minor amounts of fossil fuels. Land use is an irretrievable commitment only for the period of use by the railroad; the land can later be converted to another use. The use of construction materials, labor, and fossil fuels represents a minor irretrievable use of resources; use of these materials will not have an adverse effect upon continued availability of these resources. Therefore, the DEIS concludes that the benefits of the proposed Transaction would outweigh the commitment of the described resources. The long-term positive effects include system-wide reductions in energy consumption, highway traffic congestion, and air pollutant emissions. Norfolk Southern concurs with this conclusion - the Conrail Transaction will have a net positive benefit for the environment and the economy.

4.20 Abandonments

SEA evaluated the potential for abandonment-related impacts on land use and socioeconomics, natural resources (water and biological), air quality, noise, cultural resources (historic and archeological), hazardous waste sites, transportation, and energy. The DEIS found that no significant impacts would result from the proposed abandonments. The findings in the DEIS are well-founded and the methodologies are appropriate for evaluating the potential for abandonment impacts.

In general, abandonments are expected to have a positive impact; therefore, mitigation measures were recommended on a system-wide basis. SEA recommended using "best management practices" to minimize soil erosion and sedimentation, restoring any adjacent properties that are disturbed during right-of-way salvage activities, controlling temporary noise caused by salvage equipment, restoring roads disturbed during removal activities, and contacting and coordinating activities with the State SHPO if any previously unknown archaeological remains are found. SEA also recommended that NS comply with all applicable federal, state, and local regulations regarding the control of fugitive dust and the handling and disposal of any waste materials. NS is committed to fulfill these requirements.

4.21 Construction

SEA evaluated proposed NS construction projects for 11 new connections and 1 bridge rehabilitation. The DEIS sets forth SEA's criteria for determining which constructions require environmental review (DEIS at 1-14). Normally, SEA does not evaluate the impacts of constructions and other activities that take place wholly within existing right-of-way. However, to ensure a thorough environmental review of the proposed merger, certain activities, even if they would occur solely within the existing railroad right-of-way, were reviewed in the DEIS. Specifically, SEA reviewed such projects if (1) they were major undertakings; (2) they would not be undertaken but for the proposed Conrail Transaction; and (3) they had the potential for environmental impacts outside the existing right-of-way (DEIS at 1-15).

NS concurs with the findings in the DEIS. The findings are well-founded and the methodologies are appropriate for evaluating the potential construction-related impacts.

During engineering studies on Conrail's Buffalo-Binghamton rail line, a Conrail Bridge (No. 361.66) over the Genesee River near Portageville, New York, was found to be near the end of its useful life. The bridge is an 819-feet long steel viaduct carrying a single railroad track, and is currently rated for 263k (load rating) traffic at 10 mph due to its design, age and condition. The viaduct rests on six steel towers that were constructed in 1875. The design and age of the current structure preclude repair or renovation of its load-handling capability without essentially replacing the entire bridge. NS is conducting further studies to evaluate alternatives to replace the existing bridge. The anticipated bridge replacement is in response to an existing condition, and is not related to the Transaction. NS will replace the bridge in full compliance with all applicable federal, state and local laws and regulations.

4.22 Other Miscellaneous Issues

4.22.1 Train Traffic Correction for CP Trains on the Michigan Line Segments

The presence in the DEIS of the W. Detroit to Jackson, Michigan (N-121) and Jackson to Kalamazoo, Michigan (N-120) line segments fails to consider important information provided by NS to SEA in October 30, 1997 correspondence. In that correspondence, NS clarified that the Canadian Pacific (CP) traffic that was included in the Operating Plan for these segments was not correct. As the October 30 letter specified, a final agreement with CP has not been reached. For the agreement to become final, CP would have to commit capital on the NS line and on the Amtrak line from Kalmazoo, Michigan to Porter, Indiana, including specialized locomotive equipment for the Amtrak line. No CP trains would be hauled on the NS or Amtrak lines until a final agreement has been reached. Further, by agreement with CSX, CP is required to send a minimum number of trains on the CSX line (from Detroit, MI to Grand Rapids, MI to Porter, IN). The specified minimum number of trains is confidential but would decrease the number of trains it would send on the NS line if a final agreement should be reached and if CP should choose to use its haulage rights with NS. With this understanding, the letter stated that the CP traffic should not have been added to these line segments. *The CP traffic should be deleted; as a result, the two line segments would not meet STB thresholds and, therefore, no longer need to be analyzed for environmental impacts.* Additionally, the CP trains should not have been added to the Amtrak line from Kalamazoo to Porter. The correct train data is included in Section 7.11 of these comments and should be used for these line segments for the FEIS.

4.22.2 Train Traffic Correction for Kankakee Connection

The Errata issued by SEA (January 12, 1998 Errata at 10, row 3, Subject - Construction) proposes to correct the DEIS at Chapter 5, page IL-22 by making the following correction: "according to the Application, approximately six trains per day will run over the new connection." This statement is only technically correct and is misleading. The ER did indicate this level of traffic, but in error. To correct this, October 2, 1997 correspondence from NS to SEA stated:

> Traffic on the new connection would be zero trains per day after the Transaction but could increase later if the market for transportation services grows.

and;

> The proposed project would allow NS to provide more consistent service for customers on these routes in anticipation of the growing future markets for transportation services in these areas.

Even though growth in the market for transportation services is anticipated, future traffic levels cannot be known at this time, and consideration of future market growth does not meet the Board's criteria for relation to the Transaction.

The DEIS was correct at Chapter 5, page IL-22. The DEIS was incorrect, however, in its discussion of the Kankakee connection at IL-74. The latter discussion and recommendations were based on outdated and incorrect information. (The initial error in the DEIS was compounded in SEA's January 12, 1998 Errata which proposed to eliminate the correct information and let the incorrect information stand.)

In summary, the correct information was properly reflected in the initial DEIS at IL-22. The January 12, 1998 Errata was incorrect. The discussion and references at Volume 3A, page IL-74 are incorrect. *Applying the correct information of zero trains per day, there is no potential impact in Kankakee. The FEIS should consistently reflect the correct information in its analysis.*

4.22.3 Miscellaneous Comments Addressed by CSX

NS concurs with CSX's comments on the DEIS regarding the Stark Development Board, Cross-Harbor Car Float Service, New Jersey Department of Transportation and New Jersey Transit Corporation and the Southeastern Pennsylvania Transportation Authority.

5.0 NORFOLK SOUTHERN RESPONSE TO DEIS DISCUSSION REGARDING COMMUNITIES WITH UNIQUE CIRCUMSTANCES

The DEIS identifies several communities with "unique circumstances" as areas of special concern. SEA conducted additional analyses and site visits to assess potential environmental impacts and public concerns in these communities. The DEIS identifies the following as communities with unique circumstances potentially affected by NS' operations and activities following the Transaction:

- Lafayette, Indiana
- Muncie, Indiana
- Four Cities Consortium (Gary, East Chicago, Hammond, and Whiting, Indiana)
- Cleveland, Ohio
- Western Cleveland Suburbs, Ohio
- Erie, Pennsylvania

The DEIS directs NS to resolve potential environmental impacts in these communities through negotiation of binding agreements between and among the locally affected community, NS and the appropriate government agencies. SEA is also planning and implementing an expanded public outreach program in these (and other) communities to ensure adequate public access to information about the Transaction and the EIS process.

NS believes SEA's approach of requesting binding agreements with the intent of imposing the agreements as conditions, as described within the DEIS, to be inappropriate. NS strongly opposes the imposition of negotiated agreements as a condition of approval of the Transaction (see Section 2.6). Agreements reached between the railroad and local communities should be recognized as stipulations by the Board, not made a condition of the Transaction approval.

Although NS does not believe negotiated settlements should be mandated as a mitigation measure, it does recognize the importance of ensuring the public's access to information on the Transaction, and in working with affected communities to address specific issues wherever possible. Accordingly, NS has initiated a community coordination and outreach program with the communities identified above. The purpose of NS' community outreach is to identify

community concerns relating to the Transaction, and provide information to the communities regarding NS operations and activities, including environmental and safety management programs. Where potential environmental impacts are identified and require mitigation, NS will coordinate potential mitigation strategies in an attempt to resolve the community concerns and potentially enter into memoranda of understanding (MOU's) with the affected parties.

NS' coordination efforts with the above communities are designed to be flexible and responsive to the needs of each community. Community-specific coordination and outreach efforts are summarized in the following sections. NS is willing to work with these communities to the extent practicable to mitigate the effects of increased train traffic. However, because these communities are located in or near long-standing major rail line routes and hubs, it is commercially and operationally infeasible to reroute large amounts of traffic away from these areas. Nonetheless, NS remains open to all constructive dialogues related to the Transaction and the potential impacts it may have on selected communities.

5.1 Lafayette, Indiana

The DEIS identifies potential environmental impacts for noise, transportation safety (eight at-grade crossings) and traffic delay (ten at-grade crossings) at Lafayette, which has a long-standing concern about the local impacts of railroad operations. The ongoing Lafayette Railroad Relocation Project, involving the relocation of the NS line and the removal of the existing NS tracks through Lafayette, was initiated to address existing conditions. The project will also offer mitigation for the transportation, noise, and air quality impacts of the Transaction, according to the DEIS. The Lafayette Railroad Relocation Project has been ongoing since the 1970's; completion is anticipated by 2001, pending final funding. The DEIS also includes additional mitigation requirements for Lafayette, including: directing NS to upgrade the at-grade crossing warning devices to mitigate the potential safety issues; and directing NS to meet with the City of Lafayette, Indiana DOT, and other appropriate parties to negotiate an interim mitigation plan to address potential vehicle delay at the ten crossings until the relocation project is completed.

There are several inconsistencies within the DEIS approach for Lafayette which overstate the need for special treatment:

- The DEIS concludes that Tippecanoe County is designated as attainment for all pollutants (DEIS at IN-46), and the Transaction-related air emissions would not

adversely affect air quality (DEIS at W-49). No need for air quality impact mitigation has been identified for Lafayette in the DEIS. However, in the Preliminary Recommended Mitigation section (DEIS at IN-89) for Lafayette, the completion of the Lafayette Railroad Relocation Project would reportedly mitigate air quality impacts. This is an inconsistent application in the DEIS of the basis for mitigation.

- The DEIS calculated the 65 dBA L_{dn} noise contours for pre- and post-Transaction conditions at the NS line segments Peru - Lafayette Junction and Lafayette - Tilton. These line segments exceed this DEIS threshold for evaluation, but do not exceed the 70 dBA L_{dn} and 5 dBA increase threshold as a significant impact. "SEA considered rail line segments eligible for noise mitigation for noise sensitive receptors exposed to at least 70 dBA L_{dn} and an increase of at least 5 dBA L_{dn} due to increased rail activity." DEIS at 3-35. Since noise levels at these rail line segments do not qualify as significant impacts, no mitigation is necessary for noise.

- The DEIS directs NS to upgrade safety warning devices at several crossings. However, as stated in Sections 2.4 and 4.3, of these comments, NS believes this requirement conflicts with state DOT authority to determine crossing upgrade priorities, and fails to consider site-specific variables.

- Traffic delay impacts identified at the ten NS at-grade crossings at Lafayette no longer meet the DEIS threshold for a significant impact resulting from the Transaction, as calculated within the January 21, 1998 Supplemental Errata. Nonetheless, the Supplemental Errata concludes that mitigation is required for the 10 crossings "...due to the unique conditions in this community with close proximity of these crossings to each other within an urban setting and the resultant effect on traffic delay along these roadways." Supplemental Errata, Table 1, at 3 of 4. Thus, the DEIS applies a more restrictive and arbitrary threshold for significance of traffic delays to Lafayette than to other communities. There is no supporting rationale for this more restrictive threshold, nor any supporting studies projecting "...the resultant effect on traffic delay along these roadways." In addition, the Lafayette Railroad Relocation Project will eliminate all highway/rail at-grade crossings, thus eliminating the projected vehicle delays.

The City of Lafayette is not significantly adversely impacted by the Transaction, as defined by the DEIS thresholds for significance. *The existence of multiple at-grade crossings is a pre-existing condition, with a plan to address the existing condition (the Lafayette Railroad Relocation Project) in place for the past several years, and now undergoing the final phase of construction. The additional temporary traffic delay related to the Transaction does not meet the DEIS requirements for significance, and therefore does not warrant special mitigation.*

Regardless of these inconsistencies, NS recognizes the importance of ensuring the public's access to information on the Transaction, and in working with affected communities to address specific issues and public concern wherever possible. Accordingly, NS has initiated a coordination and outreach program with the City of Lafayette and the Indiana DOT.

5.2 Muncie, Indiana

The DEIS notes that residents of Muncie have expressed concerns regarding traffic delays, including potential delays of emergency vehicles, that may result from increased train traffic on NS' line between Alexandria and Muncie. The DEIS directs NS to negotiate with the City of Muncie, Indiana DOT, and other appropriate parties to develop a binding agreement for the implementation and funding of measures to address safety and traffic concerns at seven highway/rail at-grade crossings in Muncie on the Alexandria to Muncie line.

There are several inconsistencies with this approach. In addition to NS' previously stated objection to mandated negotiations concerning grade crossings and Board imposition of stipulated agreements as conditions of approval (see Sections 2.4 and 2.6), the requirement for mitigation at Muncie is not based on any determination of potentially significant environmental impacts within the DEIS. The crossings at Muncie do not exceed the DEIS impact thresholds for significance for delay or safety, and therefore do not require mitigation. The sole reason for identifying Muncie as a community with unique circumstances appears to be the existence of public comments unsupported by technical analyses of impact.

Nonetheless, NS recognizes the importance of ensuring the public's access to information on the Transaction, and in working with affected communities to address specific issues and public concern wherever possible. Accordingly, NS has initiated a coordination and outreach program with the City of Muncie and the Indiana DOT. NS has also proposed to work with the Indiana DOT and other relevant governmental agencies to seek support and public funding for

upgrading seven existing grade crossings from Council Street to Morrison to include both automatic flashing lights and gates. NS submitted this proposal to SEA on November 25, 1997. A copy of the letter proposal is included in Volume 5B of the DEIS.

5.3 Four Cities Consortium, Indiana

The Four Cities Consortium is an association of East Chicago, Gary, Hammond, and Whiting, Indiana, formed to assess regional effects of the proposed Transaction. Its concerns focus on localized issues of safety and traffic delays at crossings. The DEIS identified potential significant safety impacts at four CSX at-grade crossings, but none for at-grade crossings on NS rail line segments. Traffic delay impacts were evaluated for 15 crossings (both CSX and NS), and the DEIS determined that levels of service remained unchanged and therefore no mitigation was warranted. However, recognizing the Four Cities Consortium's expressed concerns regarding potential delays for emergency vehicles, the DEIS recommends that NS and CSX negotiate with the Four Cities Consortium and the Indiana DOT to address potential traffic delay and safety concerns at nine at-grade crossings. Potential noise impacts were also addressed by the DEIS, but no significant noise impacts requiring mitigation were identified. The DEIS does not identify any disproportionate or specific impacts affecting low income or minority populations within the Four Cities Consortium area. Nonetheless, additional public outreach efforts are being conducted by SEA.

There are several inconsistencies with this approach to mitigation. In addition to NS' previously stated objection to mandated negotiations (see Section 2.6), the requirement for negotiated mitigation at the Four Cities is not based on any determination of potentially significant environmental impacts within the DEIS. The crossings within the Four Cities do not exceed the DEIS impact thresholds for significance for delay, and therefore do not require mitigation. The sole reason for identifying the Four Cities as a community with unique circumstances appears to be the existence of public comments unsupported by the DEIS technical analyses.

The Four Cities Consortium proposed two alternative plans, aimed principally at rerouting CSX train traffic. Implementation of the Consortium's Alternative 2 would compel NS to grant CSX trackage rights over the NS Fort Wayne - Chicago main line between Hobart and Van Loon, and construct new connections at Van Loon between NS and the Elgin, Joliet and Eastern Line at Pine Junction between the post-Transaction NS lines and CSX. *The proposed*

operations over NS' lines are not feasible, and, moreover, would significantly undermine NS' service from Chicago to the Southeast.

The Hobart-Van Loon trackage rights would burden an important NS main line that represents NS' only route between Chicago and Cincinnati, Atlanta, Jacksonville, New Orleans, the Virginias, and the Carolinas. This additional burden would be placed on the NS line at the same time that NS would be losing the use of a second main line route in this corridor (the former Conrail Fort Wayne - Hobart line, which NS only recently acquired and which will be assigned to CSX as part of the Transaction). Following the Transaction, NS would be left without a viable alternative routing for time-sensitive and other high priority trains between Chicago and the Southeast. The unanticipated addition of CSX trains to NS' line between Hobart - Van Loon would aggravate congestion problems on the line and would threaten NS' ability to maintain schedules for time-sensitive traffic, including passenger trains. Currently, there are 16 Amtrak passenger trains per day using the line east of Pine Junction.

With respect to the two new connections that would have to be constructed under the Four Cities Consortium Plan, the Pine Junction connection would be especially problematic for NS. Due to the track arrangement east of Pine Junction, this "connection" would actually involve the crossing (via two intermediate crossovers) of a line that will be allocated to NS - the extremely busy Conrail Chicago - Toledo mainline. A crossing at that location would cause severe disruption, at substantial costs, to NS' planned operations.

Although NS' analyses clearly show the Four Cities Consortium's proposed alternatives to be unworkable, and the DEIS determined there are little if any adverse environmental effects on the area from the Transaction, NS is committed to working with the Four Cities Consortium to address its concerns. NS and CSX have established a series of working groups with representatives of the Four Cities. These groups are scheduled to meet January 30 and February 11, 1998 to continue discussions of alternative routings and train traffic flows.

5.4 Cleveland, Ohio

After careful review of the DEIS, NS believes that, notwithstanding SEA's designation of the City of Cleveland as a community with "Unique Circumstances" warranting mitigation, the public concern that has been expressed with regard to post-Transaction train traffic increases in Cleveland, and the reality of fairly substantial traffic increases on some lines, **there are few**

significant adverse impacts expected. Indeed, the overall objective analysis of the environmental impacts presented in the DEIS for the Cleveland area shows that, on the whole, there are relatively few significant impacts expected, and that these are addressed by mitigation measures applied on a larger scale. The only potentially significant environmental effects identified in the Cleveland area are as follows:

- Noise impacts on portions of three CSX line segments (CSX has proposed a noise abatement plan).
- Four CSX and one NS line segments have been classified as Key Routes for Hazardous Materials (mitigation measures proposed for key routes ameliorate the potential significant impact from hazmat transport).
- Grade crossing delays at two crossings on CSX line segment (C-070).
- "Environmental justice" communities as defined by SEA have been identified along two CSX and two NS lines. (NS' analyses, presented in Section 4.16, show there are no disproportionate high and adverse impacts on low-income and minority communities.)

Although there were no NS grade crossings that exceeded the DEIS threshold for significance for traffic delay, nonetheless, the January 12, 1998 Errata recommends that NS consult with the City of Cleveland to reach agreement on measures to minimize or mitigate the effects of "increased" emergency response vehicle delay. (London Road and Dillie Road crossings on the Cleveland to Ashtabula line segment [N-075]. DEIS at OH-146).

For the City of Cleveland as a whole, the DEIS directs CSX and NS to jointly and/or separately continue to consult with the City of Cleveland, the City of East Cleveland, the Ohio Department of Transportation, elected officials and others to address concerns about train traffic increases on the following line segments:

CSX - Quaker to Mayfield line segment

CSX - Mayfield to Marcy line segment

NS - Cleveland to White line segment

NS - Cleveland to Ashtabula line segment

The DEIS directs CSX and NS to negotiate a mutually-acceptable binding agreement on train routing through Cleveland and mitigation measures for those routes that could experience potentially significant environmental impacts. As stated previously, NS does not believe that negotiated settlements should be mandated as a mitigation measure, and Cleveland is no exception. Nonetheless, the Applicants have been meeting with City representatives and others in an attempt to fully address local concerns regarding the Transaction.

In December 1997, the City proposed that the Applicants "flip" ownership of selected lines traversing the City. Both railroads conducted an exhaustive operational, engineering, and environmental analysis of the proposal and reported back to Cleveland in mid-January 1998 that the flip proposal would not be feasible.

The alternative routings now proposed by the City (released publicly by the City of Cleveland on January 27, 1998), would result in NS traffic moving over the portion of the Short Line between Berea and Harvard/University Circle toward connections with its own Buffalo and acquired Pittsburgh lines. It would further result in all present and future CSX traffic moving between Berea and Collinwood over the Lakefront Line in order to connect with the newly acquired CSX route via Buffalo and upstate New York to the Northeast. This is essentially the same flip proposal examined by the railroad in December 1997. In the recent news release, dated January 27, 1998, from the office of Mayor White, the cost of the City's alternative was estimated by City consultants to be in the range of $148 to $171 million, with the need for a massive "fly-over" and other improvements in Berea at significant cost. The costs of the mitigation alternative proposed by the City are substantially disproportionate to the adverse environmental impacts identified within the DEIS.

Applicants' analysis confirmed that the routing alternative proposed by Cleveland would not be practical for several reasons. First, the alternate routing would adversely affect the primary mainlines of NS and CSX and would have these competing rail traffic flows intersecting at the town of Berea. This would create a massive bottleneck or "traffic jam," with resultant inefficiencies and delays in train traffic throughout this part of the system for both NS and CSX. Eliminating the "bottleneck" at the crossing would require construction of a massive "fly-over" at Berea to enable the unrestricted crossover of CSX and NS trains to and from their primary main lines. An unrestricted fly-over with the necessary 0.5 percent gradient and clearances for future improvements would be over two miles long, and would essentially cut the town of Berea in two. Construction would require almost two years, and could only begin after an exhaustive study and design period, including an assessment of environmental impacts, which would require

an additional one to two years (this assumes that the necessary federal, state, and local approvals were obtained in a timely manner). Construction would necessitate the disturbance and perhaps condemnation of existing residential and commercial structures, and would dramatically alter the existing character of the affected area. Of particular concern, but requiring further analysis, is the prospective impact of the construction on Berea's existing infrastructure, including highways, sewer lines, water lines, and utility and communication lines.

Applicants' analysis also indicated additional impracticalities in the proposed alternate route. A second track would be required at the Harvard Connection in order for NS to operate. The construction of this track would necessitate the building of a bulkhead in the adjacent creek basin and can be expected to adversely affect the environmentally sensitive waterfall located in Mill Creek which Cleveland had desired to protect. Also, in order for NS to maintain its critical operating base at Rockport Yard, substantial additional track construction would be required to be able to access Rockport Yard and the Ford Motor Company. The proposed alternate route would also adversely impact NS' efficient access to its major ore dock at Whiskey Island. **For these and other reasons, NS continues to oppose the flip of ownership of rail lines in Cleveland.**

Other responsive applications were filed by several parties for Cleveland expressing concern about the impact of increased train operations in the community. These included the City (Mayor White) and Congressmen Louis Stokes and Dennis Kucinich. A theme of all of these responsive applications has been to ask CSX and NS to reroute all rail traffic -- existing and future changes in trains -- away from Cleveland and consider reallocating rail lines within Cleveland.

Applicants stated in their rebuttal to these responsive applications that, while NS and CSX acknowledge that they are willing to work with Cleveland to the extent possible to mitigate impacts of increased traffic, the fact remains that the City of Cleveland has long served as a rail hub, and Conrail has concentrated its traffic flows through the city. In fact, historical train count data going back to the early 1900's show train traffic levels exceeding those anticipated by this Transaction.

NS and CSX presented to the City and other officials a set of detailed reasons why rerouting traffic flows away from Cleveland is neither commercially nor operationally feasible. Moreover, the potential alternatives for reallocating routes and rerouting rail traffic within

Cleveland entail disproportionate expense and/or pose operating problems that would create fundamental disruptions in the CSX and NS rail systems. It should be further emphasized that NS and CSX, in developing their Operating Plans, made efforts to mitigate the impact of increased rail traffic, for example CSX's routing traffic over the Short Line Subdivision. Without any additional mitigation, CSX is reportedly planning to invest over $60 million in the Cleveland area for system improvements and upgrades, while NS is anticipating spending over $48 million on new and expanded facilities in Ohio in addition to necessary system improvements and upgrades. Because of Cleveland's key position as an important rail hub, both carriers (NS and CSX) will offer assistance to Cleveland from Applicants' industrial development staffs to assist the greater Cleveland area in attracting new industry and expanding existing developments with rail access.

NS urges the Board to review the information presented by Applicants regarding the City of Cleveland in the rebuttal. NS also urges the Board to give proper weight to the substantial benefits of the Transaction as compared to the relatively minor impacts predicted by the DEIS when evaluating the need for and extent of any mitigation and/or "binding agreements" in Cleveland. A recent editorial in the Cleveland "Plain Dealer," a local newspaper, offers support for this rational position (see Figure 5.1). Key information provided to the Board by Applicants regarding the City of Cleveland's concerns include:

- Applicants' Rebuttal, Volume 1: Section X (pages X-1 thru X-4)
- Applicants' Rebuttal, Volume 2A: Verified Statement of John Orrison (pages 546-556)
- Applicants' Rebuttal, Volume 2A: Verified Statement of John Friedman (pages 164-171)

NS remains open to addressing identified significant impacts and in dealing with issues raised by the community in a constructive fashion. However, localized solutions that appear to potentially substantially impact the overriding public and environmental benefits of the Transaction may make certain negotiations challenging.

White drives the train

Cleveland's effort to reconfigure major rail deal could damage others' interests – and its own

AGENDA '98

THE REGION

To his roles as airport master planner and stadium construction boss, Cleveland Mayor Michael R. White this week added an even more ambitious one: architect of a major railroad make-over.

To the consternation of professional railroad planners, White proposed to resolve concerns arising from the sale of Conrail by requiring CSX and Norfolk Southern to swap routes they would operate when the Conrail deal gets regulatory approval.

Such a move would spare Cleveland neighborhoods the adverse affects of increased train traffic but could also transfer them to Berea, where Norfolk Southern and CSX tracks would come together.

To lighten the burden on that suburb, already a busy freight rail center, the White plan would call for construction of a 2-mile-long, double-deck flyover to carry tracks above the streets. The price tag is estimated at up to $171 million, presumably to be paid by the railroads.

White, like Rep. Dennis J. Kucinich ahead of him, has embraced an issue that is loaded with populist appeal. The proposed Conrail carve-up sprung a few surprises on Greater Cleveland, beginning with Norfolk Southern's announcement that it would triple the number of trains it operates through the west shore suburbs and into Cleveland.

Then, CSX said it would run 44 trains a day on a loop from Collinwood through the East Side, Cuyahoga Heights and Brooklyn Heights to W. 150th St. and beyond. Interestingly, CSX intends to shift many freight trains from the Lakefront route, which area transportation planners covet for commuter services.

On Tuesday, the mayor said city officials had concluded that CSX-Norfolk Southern proposals would harm Cleveland and that if a resolution could not be negotiated, the city would take legal action to stop Conrail's dismemberment.

White seems to believe the damaging effects would outweigh economic benefits to the city, which promise to be substantial. New routings would provide direct connections between Cleveland and major markets in all directions. CSX alone has promised to expand the Collinwood yards as an intermodal hub, substantially increasing the work force at what once was a major facility on the city's railway network.

Nobody is faulting White, Kucinich or other political leaders for acting on constituents' genuine concerns. In Lakewood, for instance, Norfolk Southern should have anticipated that residents might worry, rightly, that most cross-city connections would be cut many more times a day, hindering emergency vehicles. Residents of the less affluent inner-city likewise have valid questions about the new setup.

But the rails were not laid yesterday. The fortunes of Greater Cleveland in many ways were shaped by its proximity to the tracks. The re-emergence of freight trains as a vital component of the nation's transportation system carries economic and environmental benefits that should be acknowledged.

It seems reasonable to demand that the railroads take measures against increased noise, as CSX has told Cleveland it would do. Issues like that and the prospect of traffic tie-ups in the suburbs could be resolved through negotiation. White, however, appears to have raised the stakes in a way that could throw the matter into court, where the city's long-term best interests might not be served.

Figure 5.1: Editorial from the *Plain Dealer*, a local newspaper in Cleveland, Ohio January 30, 1998

5.5 Western Cleveland Suburbs

For the Western Suburbs of Cleveland, the DEIS directs NS to continue to consult with appropriate parties to address concerns about train traffic increases on the NS Cleveland to Vermilion rail line segment. NS has proposed a preliminary alternative routing plan (as set forth in Appendix S of the DEIS) to balance NS rail post-Transaction traffic on the Cleveland to Vermilion line segment and the Lakeshore Line through Berea. NS has stated from the beginning, however that implementation of this plan (estimated to cost nearly $50 million) would require public funding. NS' view on this has not changed. The DEIS directs NS to negotiate a mutually-acceptable binding agreement on the construction and funding allocation for this plan prior to issuing the FEIS. NS is continuing consultations with parties from the Western Suburbs of Cleveland, as well as the State and other stakeholders, and those negotiations are on-going. Since October, 1997, NS has met with representatives of the Western Suburbs, as well as the Ohio Rail Development Commission and Public Utility Commission to discuss related issues. NS continues to meet and consult with representatives from these communities and agencies. Progress has been slowed due to the following factors: (1) uncertainty of public funding initiatives; (2) potential impacts of changes that the City of Cleveland seeks to make that could affect the Western Suburbs; and (3) environmental impacts that could result from the rerouting proposal for the Western Suburbs of Cleveland. No agreement has been reached to date.

5.6 Erie, Pennsylvania

The DEIS identifies potential significant environmental impacts involving pedestrian safety, emergency response, transportation safety (four at-grade crossings) and traffic delay (five at-grade crossings) as a result of NS' proposal to increase by 12 trains per day the number of freight trains on the NS main line that has run through the 19th Street corridor in Erie since 1882. The DEIS states that "the presence of the tracks results in the disruption delay and the potential for accidents involving roadway traffic along 19th Street." DEIS at PA-55.

NS and CSX included in their joint Application an agreement that would enable NS to reroute rail traffic from 19th Street to a new portion of NS track running parallel to the existing Conrail line north of downtown Erie that is to be operated by CSX post-Transaction. The new NS track would be constructed nearly exclusively on existing Conrail right-of-way. A description of the proposal by NS to reroute traffic to new track along the Conrail right-of-way

was submitted by NS in a letter to SEA, and is referenced in the DEIS at PA-55, and provided in Appendix S.

An important benefit of the rerouting proposal would be the elimination of long-present freight rail traffic, as well as post-Transaction increases in rail traffic that is now required to be routed along 19th Street. The Transaction would provide an opportunity to utilize the pedestrian and emergency vehicle crossing and road congestion advantages of the largely grade-separated Conrail corridor, following construction of the portion of the NS main line that would be rerouted off of 19th Street. However, because of the substantial infrastructure work required to accomplish the NS rerouting proposal, as well as the legal impediments to commencing construction on Conrail property prior to CSX control of the right-of-way and Board approval of the construction project, on Day One and for some time to come, NS will need to be able to continue operating freight trains on the existing route. NS estimates that the rerouting construction would require about 1.5 to 2 years to complete.

The DEIS originally indicated that a total of five existing at-grade crossings along the NS 19th Street corridor would exceed SEA thresholds for recommended mitigation due to potential traffic delay impacts. However, SEA subsequently discovered that an error had been made in its crossing delay calculations which resulted in the incorrect doubling of estimated traffic impacts. In SEA's January 21, 1998 Supplemental Errata, the DEIS was corrected to indicate, *inter alia*, that two of the five NS Erie at-grade crossings (Peach Street and Raspberry Street) along the 19th Street corridor included in Table 7-7 of the DEIS ("Preliminary Highway/Rail At-Grade Crossings That May Warrant Traffic Delay Mitigation") would no longer meet SEA's threshold criteria for mitigation. Despite having acknowledged that the DEIS erroneously identified those two crossings as meeting mitigation threshold criteria, SEA recommended in the Supplemental Errata that the error simply be ignored in favor of leaving the two Erie crossings on the DEIS' list of crossings recommended for mitigation. The rationale provided in the Errata suggests that SEA devised a new, heretofore unheard of, category for "measuring" impact -- a notion of "close proximity" to grade crossings that do meet SEA's threshold criteria. *There is no analytical support for such a deviation in the application of mitigation criteria and NS urges SEA to remove the two Erie crossings from its list of crossings recommended for mitigation.*

As to the appropriateness of the DEIS recommendation for mitigation of the other three at-grade crossings listed in Table 7-7 of the DEIS, NS has raised several substantive objections to

the DEIS approach and conclusions regarding safety of at-grade crossings (see Section 4.3).[60] In addition, as set out above at Section 2.3, it is not appropriate for the Board to displace the well-established role of state DOTs in determining the selection, priority and funding of grade crossing upgrades in communities within their jurisdiction. NS recommends that this important safety task be properly left to the state transportation agencies and the well-founded practices and procedures already in place for railroad/state cooperative resolution of grade crossing safety issues.

Moreover, the DEIS recommendation of a limit of two additional trains per day on the existing NS main line through the 19th Street corridor in Erie is without sound basis -- localized service limitations should not be imposed as environmental mitigation in this case (see Section 2.4). Having determined that certain of the NS grade crossings along 19th Street would meet the threshold criteria for mitigation consideration, the DEIS did not take into account several crucial facts.

First, the limit of a two-train per day increase in rail traffic pending completion of the proposed NS rerouting appears to have been taken from SEA's preliminary mitigation recommendations at Reno and Wichita in UP/SP. In that instance, SEA recommended that UP/SP be limited to running an additional two trains per day through Reno, Nevada and Wichita, Kansas pending completion of a post-EA mitigation study. The two-train limit was selected due to a desire to avoid SEA's threshold for air impact analysis in a non-attainment area, 49 CFR 1105.7(e)(5)(ii). This was necessitated by the fact that the environmental analysis of the UP/SP merger was being pursued by SEA through means of an EA, rather than an EIS, and therefore all significant impacts required mitigation. As described at Section 2.1 above, by choosing to prepare an EIS for the Transaction, the Board has eliminated the need to eliminate or mitigate all potentially significant environmental impacts--a fundamental distinction from the UP/SP scenario. Also, the DEIS acknowledges that, unlike the issue presented for further consideration in UP/SP, the Transaction would not have any significant air impact at Erie and that no mitigation is needed. DEIS at PA-43. Thus the reason for applying the train increase limit recommended in UP/SP at Reno and Wichita is simply not transferable to the circumstances of the Board's consideration of potential environmental impacts at Erie.

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[60] It should be noted that the construction of the Erie rerouting proposal will completely negate any need for grade separation along the 19th street corridor.

Second, the increase in NS traffic along the 19th Street corridor will be only temporary, until completion of the physical improvements to reroute traffic to the Conrail right-of-way. Once completed, rail safety in Erie will benefit far more than just the removal of the post-Transaction increase in train traffic along 19th Street. Because NS plans to remove all freight traffic to the new route, existing as well as increased traffic will be taken out of downtown Erie. Extraneous grade crossings along 19th Street will be able to be closed. *This is a substantial benefit to Erie that NS believes far exceeds the temporary increase in traffic until the rerouting construction work is completed.*

Third, the DEIS fails to recognize that, as of Day One, there will be freight traffic waiting to be carried by NS along its Cleveland to Buffalo main line. This represents carloads of freight traffic that will, up until Day One, have been carried over the Conrail system. In order to be competitive, and in order to provide vital, timely service to shippers, NS must be able on Day One to assume its share of the Conrail traffic. The only feasible way for NS to do so is to move trains over its existing main line route through Erie pending completion of the relocation. *This is a critical aspect of the commercial benefits and viability of the Transaction.*

An arbitrary and artificial limit of two additional trains per day in Erie, because of the much broader ripple effects, would have catastrophic consequences to the ability of NS and CSX to create a smooth transition for eastern United States rail service on Day One and thereafter. NS urges SEA to eliminate from further consideration any recommendation to the Board of "temporary" limits to the proposed increase in NS train traffic at Erie on Day One.

SECTION 6

6.0 NORFOLK SOUTHERN COMMUNITY OUTREACH PROGRAM

The DEIS identifies several areas and communities where consultation and coordination with a local community or agency is recommended in order to resolve various potential environmental impacts or potential public concerns. The DEIS further recommends that NS negotiate binding agreements with affected communities to resolve potential environmental impacts. NS opposes the imposition of negotiated agreements as conditions to Board approval (see Section 2). Any negotiated agreements between NS and affected communities or agencies should be viewed as stipulations, not conditions, within the context of the Transaction. NS supports public outreach and coordination with neighboring communities. This section presents NS' response to the DEIS-directed community outreach for specific communities, other community outreach issues, and the need for consultation with state Departments of Transportation (state DOTs).

NS regularly meets with and hears the concerns of local citizens and government officials, in an effort to tailor its approach to doing business to community-specific needs wherever practicable. Examples of NS' current outreach efforts independent of the Transaction include:

- Operation Lifesaver, a program designed to reduce grade-crossing accidents and save lives by educating local communities and children.

- Working with state and local transportation agencies to improve grade crossing safety, including closing unnecessary grade crossings.

- Conducting Grade Crossing Collision Investigation courses for state and local agencies to assure proper investigative techniques, identify causes of collisions and improve safety.

- Meeting with interested communities to discuss railroad operations.

6.1 DEIS-Required Community Outreach

The DEIS recognizes that the recommended mitigation measures within the DEIS ameliorate the potential significant impacts. Nonetheless, the DEIS directs NS to resolve potential environmental impacts in several communities identified by the DEIS as "Environmental Justice Communities," as well as other communities, through negotiation of binding agreements between the locally affected community, NS, and the appropriate government agencies. At page 7-18, the DEIS says:

> "SEA's Recommended Mitigation Nos. 1-18, and 28-41 would address potential significant environmental impacts for these communities, which may experience disproportionately high adverse effects as a result of the proposed Conrail Acquisition. Nevertheless, CSX and NS shall meet with these communities to identify and agree on any further appropriate measures to address the specific environmental impacts that may disproportionately impact these communities, or to develop other mitigation measures that might offset these disproportionate impacts. If the parties have not reach mutually-acceptable binding agreement on the implementation of appropriate mitigation measures to address environmental impacts resulting from the proposed Acquisition prior to issuing the Final EIS, SEA may recommend that the Board, as a condition of the approval of the Application, direct CSX and NS to implement appropriate mitigation measures."

The DEIS directs NS to consult with the following communities:

- Fort Wayne, Indiana
- Alexandria, Indiana
- Tilton, Illinois
- Danville, Illinois
- Youngstown and Ashtabula, Ohio
- Toledo, Ohio
- Harrisburg, Pennsylvania
- Oak Harbor - Bellevue, Ohio.

SEA is also planning an expanded public outreach program in these (and other) communities to ensure adequate public access to information about the Conrail Transaction and the EIS process.

NS believes the requirement to negotiate binding agreements with these communities, and subsequent inclusion of such agreements as conditions of the Transaction, as described within the DEIS, to be flawed and inappropriate for the following reasons:

1. The potential environmental impacts to be resolved through negotiation are not identified within the DEIS. The Oak Harbor - Bellevue, Ohio NS line segment is the only exception, where a potential for a noise impact has been identified.

2. The DEIS also fails to identify the specific portion of the community (e.g., the actual people, neighborhood, or group) significantly affected by the Transaction. In most cases, the affected "community" described within the DEIS is based on the DEIS environmental justice analysis, and is not representative of actual social or political boundaries or local communities. This makes it difficult to properly focus outreach, and, if appropriate, mitigation.

3. The DEIS does not provide any rationale for treating these communities differently than any other communities throughout the system (see Section 4.16, Environmental Justice). Those communities labeled as "environmental justice" within the DEIS do not suffer any disproportionate or high and adverse impacts as a result of the Transaction.

4. NS strongly opposes the imposition of a requirement to negotiate agreements as a condition of approval of the Transaction (see Section 2.6). CEQ and DOT guidance on considering environmental justice issues during the EIS process suggest outreach, but do <u>not</u> suggest negotiations with the community.

Although NS does not believe negotiated settlements should be mandated as a mitigation measure, it does recognize the importance of ensuring the public's access to information on the Transaction. Accordingly, NS has initiated a community outreach program within the communities identified above. The purpose of NS' community outreach is to identify community concerns relating to the Transaction, and provide information to the communities

regarding NS operations and activities, including environmental and safety management programs. Resolution of concerns, by agreement or otherwise, is the ultimate goal of these efforts.

NS' community outreach program is designed to be flexible and responsive to the needs of each community. NS' community outreach program includes some combination of the following, tailored to the needs of the individual community and the identified issues (if any):

- Contact with local government officials and agencies
- Contact with local community leaders
- Contact with local newspapers and/or other media
- Meetings with local organizations and groups.

To date, NS has completed the initial planning phases of its community outreach program in response to the DEIS mandate. A kick-off meeting was held on January 15, 1998, to brief NS resident vice presidents, strategic planning, public affairs, and legal departments on the purpose and scope of the NS outreach efforts. Community-specific updates are provided below.

6.1.1 Fort Wayne, Indiana

Background - The DEIS has identified the NS Butler - Fort Wayne line segment (N-041) as having potential environmental justice impacts in Fort Wayne, Indiana, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any rationale for this. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS' concerns with this requirement at this community include:

- An at-grade crossing safety potential impact is identified at Estella Road and Anthony Boulevard in Fort Wayne near Sunnymeade Woods. At-grade crossing safety issues are addressed and resolved at the direction of the Indiana DOT, not derived from negotiation with the local community (see Section 4.3 for additional NS comments on traffic safety). Therefore, there is no need to negotiate with the community outside the normal cooperative process addressing grade crossing safety.

- The segment is identified as a "major key route" for hazardous materials transportation. However, mitigation of increased hazardous materials transportation does not warrant providing special treatment to any single community (see Section 4.4 for additional NS comments on transportation of hazardous materials).

- The DEIS also identifies noise as a potential cumulative environmental impact, presumably due solely to the demographics of the population affected, as the projected noise levels on the rail segment do not meet the DEIS criteria for a significant impact (see Section 4.11 for additional NS comments on evaluation of noise, and Section 4.16 for additional NS comments on environmental justice). Further, the DEIS states that SEA is conducting additional studies to determine if the environmental justice population is impacted by noise. However, noise impacts are not determined by the minority status or income level of a community. Also, beyond the simple fact that these issues all spring from an increase in train traffic, there is no methodology specified in the DEIS for weighting and combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delay, noise, etc.) into a determination of cumulative impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefits of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

Status of Community Outreach - NS has initiated community outreach efforts with Fort Wayne, Indiana. Discussions with local officials and other outreach efforts are ongoing.

6.1.2 Alexandria, Indiana

Background - Alexandria is the hub of the NS Alexandria - Muncie line segment (N-040). Alexandria (Madison County) includes one at-grade crossing identified by the DEIS as requiring mitigation for safety (CR 100 E). The DEIS recommends upgrading the crossing safety warning devices from passive to flashing lights. The DEIS also identifies two crossings in Madison County which are projected to exceed the significance thresholds for traffic delay. The increased delays at these crossings are due to slower moving trains through the new Alexandria connection.

The DEIS recommends that NS coordinate with the City of Alexandria, the Indiana DOT, and other appropriate agencies to agree on mitigation measures to address the potential traffic delay impact.

Status of Community Outreach - NS has been engaged in discussions with City officials since early 1997 concerning plans for addressing traffic delays. NS has scheduled additional community outreach efforts in February 1998.

6.1.3 Tilton, Illinois

Background - The DEIS has identified NS' Lafayette, Indiana - Tilton, Illinois line (N-045) as having potential environmental justice impacts in Tilton, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any rationale for this. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS's concerns with this requirement at this community include:

- The segment is identified as a "major key route" for hazardous materials transportation. However, mitigation of increased hazardous materials transportation does not warrant providing special treatment to any single community (see Section 4.4 for additional NS comments on transportation of hazardous materials). Therefore, there is no need to negotiate with the community on this issue.

- The DEIS also identifies noise as a potential cumulative environmental impact, presumably due solely to the demographics of the population affected, as the projected noise levels on the rail segment do not meet the DEIS criteria for a significant impact (see Section 4.11 for additional NS comments on evaluation of noise, and Section 4.16 for additional NS comments on environmental justice). Further, the DEIS states that SEA is conducting additional studies to determine if the environmental justice population is impacted by noise. However, noise impacts are not determined by the minority status, or income level of a community. Also, beyond the simple fact that these issues all spring from an increase in train traffic, there is no methodology specified in the DEIS for weighting and combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delay, noise, etc.) into a determination of cumulative

impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefits of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

Status of Community Outreach - NS has initiated contacts with local officials in an effort to provide information on the proposed Transaction. NS will conduct additional outreach and hold informational meetings if they are requested.

6.1.4 Danville, Illinois

Background - The DEIS has identified the NS Lafayette, Indiana - Tilton, Illinois line segment (N-045) as having potential environmental justice impacts in Danville, Illinois, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any rationale for this. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS' concerns with this requirement at this community include:

- At-grade crossing safety potential impacts are identified at Campbell Crossing, City of Danville (described in the DEIS as "proximal to minority and low-income communities"). The DEIS reviewed demographics and traffic grade-crossing potential impacts along this rail line segment, and found that traffic grade-crossing delay and traffic accident potential impacts would not be disproportionate for minority or low-income populations along this segment. The DEIS specifically concludes for this rail segment that "...no environmental justice impacts exist for grade crossing." The DEIS further recommends that NS mitigate the potential traffic safety impact for this segment by upgrading the existing warning devices (see Section 4. 3 for NS comments on traffic safety). At-grade crossing safety issues are addressed and resolved at the direction of the Illinois Department of Transportation, not derived from negotiation with the local community (see Section 4.3 for additional NS comments on traffic safety). Therefore, there is no need to negotiate with the community outside the normal cooperative process addressing grade crossing safety.

- The segment is identified as a "major key route" for hazardous materials transportation. However, mitigation of increased hazardous materials transportation does not warrant providing special treatment to any single community (see Section 4.4 for additional NS comments on transportation of hazardous materials).

- The DEIS also identifies noise as a potential cumulative environmental impact, presumably due solely to the demographics of the population affected, as the projected noise levels on the rail segment do not meet the DEIS criteria for a significant impact (see Section 4.11 for additional NS comments on evaluation of noise, and Section 4.16 for additional NS comments on environmental justice). Further, the DEIS states that SEA is conducting additional studies to determine if the environmental justice population is impacted by noise. However, noise impacts are not determined by the minority status or income level of a community. Also, beyond the simple fact that these issues all spring from an increase in train traffic, there is no methodology specified in the DEIS for weighting and combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delay, noise, etc.) into a determination of cumulative impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefits of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

Status of Community Outreach - NS has initiated contacts with local officials in an effort to provide information on the proposed Transaction. NS will conduct additional outreach and hold information meetings if they are requested.

6.1.5 Youngstown and Ashtabula, Ohio

Background - The DEIS has identified NS Youngstown - Ashtabula line segment (N-082) as having potential environmental justice impacts in both Youngstown and Ashtabula, requiring outreach and a negotiated settlement. However, the DEIS fails to provide any rationale for this. In addition to the previous issues noted in Sections 2.6 and 4.16, and above, NS' concerns with this requirement at this community include:

- At-grade crossing potential safety impacts are identified by the DEIS at Bradley-Brownlee Road and Warren Sharon Road, several miles north of Youngstown and away from environmental justice populations. At-grade crossing safety issues are addressed and resolved at the direction of the Ohio Department of Transportation, not derived from negotiation with the local community (see Section 4.3 for additional NS comments on traffic safety). Therefore, there is no need to negotiate with the community outside the normal cooperative process addressing grade crossing safety. Moreover, due to the distance of several miles between the grade crossings in issue and the environmental justice populations in Youngstown designated by the DEIS, there is no evidence of high and disproportionate impacts on environmental justice populations.

- The segment is identified as a "key route" for hazardous materials transportation. However, mitigation of increased hazardous materials transportation does not warrant providing special treatment to any single community (see Section 4.4 for additional NS comments on transportation of hazardous materials).

- The DEIS also identifies noise as a potential cumulative environmental impact, presumably due solely to the demographics of the population affected, as the projected noise levels on the rail segment do not meet the DEIS criteria for a significant impact (see Section 4.11 for additional NS comments on evaluation of noise, and Section 4.16 for additional NS comments on environmental justice). Further, the DEIS states that SEA is conducting additional studies to determine if the environmental justice population is impacted by noise. However, noise impacts are not determined by the minority status or income level of a community. Also, beyond the simple fact that these issues all spring from an increase in train traffic, there is no methodology specified in the DEIS for weighting and combining the various potential adverse effects of rail traffic (grade crossing safety, traffic delay, noise, etc.) into a determination of cumulative impact. Similarly, there is no methodology specified in the DEIS for defining and evaluating the benefits of the Transaction on a local basis.

The DEIS does not identify any specific environmental impacts which require mitigation through negotiation with the local community.

Status of Community Outreach - NS has initiated contacts with local officials in an effort to provide information on the proposed Transaction. NS will conduct additional outreach and hold informational meetings if they are requested.

6.1.6 Toledo, Ohio

Background - The DEIS has identified the NS Miami - Airline line segment (N-086) as having potential environmental justice impacts in Toledo, Ohio, requiring outreach and a negotiated settlement. The rationale for this is not clear. The only potential environmental impact identified in the DEIS is freight safety, calculated by the DEIS for this segment as an 88-year interval between train accidents per mile. (The DEIS threshold for freight safety is a 100-year interval). However, freight safety is not an issue directly affecting the community, nor is it an issue which is readily mitigated through negotiation with the local community. See Section 4.1 for additional NS comments on freight rail safety and Section 4.16 for additional comments on environmental justice issues.

Status of Community Outreach - NS has scheduled community outreach efforts to begin in February 1998.

6.1.7 Harrisburg, Pennsylvania

Background - The DEIS has identified the NS Harrisburg - Rutherford line segment (N-090) as having potential environmental justice impacts in Harrisburg, Pennsylvania, requiring outreach and a negotiated settlement. The rationale for this is not at all clear. The only potential environmental impact identified in the DEIS is freight safety, calculated by the DEIS for this segment as an 88-year interval between train accidents per mile. (The DEIS threshold for freight safety is a 100-year interval). However, freight safety is not an issue directly affecting the community, nor is it an issue which is readily mitigated through negotiation with the local community. See Section 4.1 for additional NS comments on freight rail safety and Section 4.16 for additional comments on environmental justice issues.

Status of Community Outreach - NS has scheduled a series of meetings with the Mayor of Harrisburg and other local officials. In these meetings, NS will ensure that information on the Transaction is available to the public.

6.1.8 Oak Harbor - Bellevue, Ohio

Background - The DEIS identifies the NS line segment Oak Harbor - Bellevue, Ohio (N-079) as having potential significant adverse noise impacts requiring mitigation. The DEIS directs NS to meet with communities along the rail line segment to negotiate an agreement to implement measures to reduce the wayside noise for sensitive receptors experiencing noise levels above 70 dBA L_{dn} and with an increase of 5 dBA or more. The DEIS does not, however, provide specifics on which receptors are potentially significantly impacted by increased noise levels related to the Transaction.

Status of Community Outreach - NS will conduct additional community outreach efforts along the Oak Harbor - Bellevue line segment to ensure information on the Transaction is available to the public. NS will also conduct further technical reviews, including noise level measurements, on the potential for significant noise impacts along this line segment, to identify specific receptors where there may be a significant adverse effect from increased noise, and to assess the feasibility and effectiveness of mitigation alternatives.

6.2 Additional Community Outreach

The DEIS describes a program of expanded public outreach by SEA in specific communities, including several low income and minority communities, to ensure full opportunity to participate in the review of the proposed Transaction. These communities are:

- Seneca Indian Nation, Cattaraugus Reservation, New York
- Bellevue - Sandusky, Ohio
- Kankakee, Illinois
- Chicago, Illinois
- Delaware County, Indiana
- Detroit, Michigan
- Ontario & Seneca Counties, New York
- Cloggsville Junction, Ohio.

The DEIS does not direct NS to conduct any community outreach within these communities, nor to negotiate any agreements to mitigate potential environmental justice or other impacts. However, NS recognizes the importance of community outreach and public participation in the EIS process. Therefore, NS will also conduct additional outreach efforts in these communities to ensure the public has access to information regarding the Transaction, if directed by SEA.

6.2.1 Seneca Indian Nation, Cattaraugus Reservation, New York

The DEIS identifies the NS line segment Ashtabula, Ohio - Buffalo, New York (N-070) as meeting the threshold for a "major key" route for hazardous materials transportation. According to the DEIS, the rail line segment traverses the federally-designated Seneca Indian Nation, Cattaraugus Reservation. The DEIS proposes to mitigate the potential impact of increased hazardous materials transportation through the Reservation through implementation (by NS) of the AAR guidelines on hazardous materials transportation, emergency response planning and assistance (to be coordinated between NS and the Seneca Indian Nation), and additional outreach by SEA to the Seneca Indian Nation within the Cattaraugus Reservation.

The mitigation recommendation that NS "...assist the Reservation with emergency response preparedness as may be requested" is ambiguous and unsupported. This requirement for additional, open-ended assistance is not specified for other non-Native American communities. There is no justification for treating the Cattaraugus Reservation differently than any other community on the issue of increased hazardous materials transportation. This recommendation should be deleted.

NS has also raised several issues in Section 4.4 addressing the DEIS evaluation of hazardous materials transportation, including offering well-established mitigation measures (e.g., safe approaches to transportation of hazardous materials reflecting NS' excellent safety record) to address significant increases in rail traffic. These mitigation measures should be applied to the Cattaraugus Reservation in the same manner as they will be applied to other communities along rail lines projected to experience similar increases in hazardous materials transportation.

6.2.2 Bellevue - Sandusky Docks, Ohio

The Bellevue - Sandusky Docks NS line segment (N-085) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due solely to the demographics of the population along the line segment. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community. The January 12, 1998 Errata to the DEIS also identifies this line segment as having a potential traffic safety issue. NS comments on at-grade crossing safety are provided in Section 4.3.

6.2.3 Kankakee, Illinois

The planned new NS connection at Kankakee (line segment NC -01), is identified in the DEIS as having potential environmental justice effects from increased noise. This is based both on incorrect train traffic information and on unsupported reasoning. The correct information, supplied to SEA in October 2, 1997 correspondence from NS, is that traffic on this new connection would be zero trains per day after the Transaction. (The reason for the connection is anticipation of a growing need for transportation services, traffic which cannot be predicted and does not meet the Board's criteria for being related to the Transaction.) The initial DEIS provided the correct information at Chapter 5, page IL-22, although the information and discussion on page IL-74 was based on outdated and incorrect information. (As described in Section 4.22.2, herein, this error was compounded in SEA's January 12, 1998 Errata which proposed to eliminate the correct information and let the incorrect information stand.) Applying the correct information, there is no potential noise impact on environmental justice communities (or other populations) in Kankakee. *The FEIS should reflect the correct information for analysis of this connection.*

The DEIS discussion of potential impacts from increased noise on this connection is presumably due solely to the demographics of the population within Kankakee County. The DEIS noise impact evaluation does not identify this proposed new line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to

determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.4 Delaware County, Indiana

The Alexandria - Muncie NS line segment (N-040) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due solely to the demographics of the population within Delaware County. The DEIS noise impact evaluation does not identify this proposed line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.5 Detroit, Michigan

The Detroit - N. Yard Shared Assets Areas line segment (S-021) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due solely to the demographics of the population within the affected section of Detroit. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further reviews to determine if environmental justice populations are impacted by noise. These further reviews will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.6 Ontario and Seneca Counties, New York

The Corning - Geneva NS line segment (N-060) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due solely to the demographics of the population within Ontario and Seneca Counties. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further studies to determine if environmental justice populations are impacted by noise. These further studies will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impact on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.2.7 Cloggsville Junction (Cleveland), Ohio

The Cleveland - Shortline Junction NS line segment (N-074) is identified in the DEIS as having potential environmental justice effects from increased noise, presumably due solely to the demographics of the population adjacent to the line in Cleveland. The DEIS noise impact evaluation does not identify this line segment as having significant noise impacts. Nonetheless, the DEIS has identified a need to conduct further studies to determine if environmental justice populations (21 sensitive receptors) are impacted by noise. These further studies will include community outreach by SEA. Given the DEIS conclusion that there are no significant adverse noise impacts along the entire line segment, there is no basis for conducting further investigation of noise impacts on environmental justice populations. Noise impacts are not determined by the minority status or income level of a community.

6.3 Consultation with State Departments of Transportation

The DEIS directs NS to consult with state DOTs (and appropriate local agencies) to address potential safety and traffic delay issues related to the Transaction, and to negotiate "traditional" separated crossing agreements or identify other mutually-acceptable approaches to mitigate potential impacts. The DEIS, as corrected by the January 12, 1998 Errata and the January 21, 1998 Supplemental Errata, identifies for NS 44 at-grade crossings as requiring mitigation for safety and 18 NS at-grade crossings requiring mitigation for traffic delays. Further, the DEIS specifies mitigation measures and types of crossing upgrades for each crossing.

NS concurs with the DEIS recommendation for consultation with state DOTs and other appropriate agencies to address potential safety and traffic delay issues. NS recognizes the importance of ensuring that issues affecting highway traffic safety and delay are dealt with under the direction of state DOTs and other appropriate agencies. Accordingly, NS has initiated a program of consultation with state DOTs and other appropriate agencies, following NS' standard practice in coordinating highway/rail crossing issues with state DOTs and other appropriate agencies. The purpose of NS's consultation with the state DOTs and other appropriate agencies is to ensure that the Transaction-related changes in traffic safety and delay at highway/rail at-grade crossings are understood by the state DOTs, and become part of the state DOTs planning process for crossing upgrades and/or closures according to state priorities.

NS is conducting a consultation with the state DOTs listed below, in accordance with the potential impacts identified by the DEIS. This consultation includes describing the Transaction, describing the projected effects on highway/rail at-grade crossings as determined within the DEIS (plus Errata) and by NS's calculations, and requesting the state DOT enter the crossing in question into the state crossing safety planning process as appropriate. NS will then work with the state DOT as appropriate to identify and implement those mitigation measures considered warranted by the state crossing safety planning process.

State DOTs*	Crossings With Potential Safety Issue	Crossings With Potential Delay Issue
IL	1	
IN	27	13
MD	3	
MI	1	
NY	1	
OH	13	
PA	9	5
VA	2	

*State Departments of Transportation or similar agencies.

NS will also discuss with the state DOTs all crossings affected by significant increases in traffic volume or train speed and those subject to physical change resulting from Transaction-related construction. The state DOTs will then be able to evaluate fully and prioritize all crossings affected by the Transaction, based on each state's unique criteria.

SECTION 7

7.0 ADDITIONAL COMMENTS ON ENVIRONMENTAL ISSUES

Norfolk Southern's principal, substantive comments on the DEIS analysis of environmental and safety topic areas are contained in Section 4.0 of this document. Additional comments provided in this section are for the purpose of clarification or improving accuracy, and mainly note minor typographical or factual errors and inconsistencies and discrepancies. The comments and clarifications offered by NS in this section are not expected to substantively affect the conclusions or recommendations of the EIS.

7.1 Safety: Freight Rail Operations

Comment No. 1

NS has noted several inconsistencies in accident rates (accidents per million train miles) used in several locations in the DEIS as follows.

Accidents Per Million Train Miles

	Page 3-7 Second Paragraph, Fourth Sentence	Page 4-9, Figure 4-2	Page B8-1, Table B8-1, Appendix B
Year 1978	15.0	14.5	--
Year 1995	4.0	3.71	3.71
Year 1996	--	3.69	3.69

In order to remain consistent with the second sentence in the second paragraph on page 3-7, the accident rate value for 1996 should be used instead of the 1995 value that was used, and the period 1978-1996 should be analyzed in the fourth sentence of that paragraph using the values of *14.5* for 1978 and *3.7* for 1996. With this change, the fourth sentence should be revised to say, "In the last 20 years, the accident rate has decreased from *14.5* accidents per million train miles (in 1978) to *3.7* accidents per million train miles (in *1996*), an overall decrease of *75* percent in the accident rate." This revision results in the overall decrease changing from 73 percent to 75 percent.

Comment No. 2

The third sentence of the third paragraph on page 4-8 (Chapter 4, Volume 1, Section 4.4.2) says, "From 1970 until 1996, the national average accident rate has decreased from 15.0 to 3.7 accidents per million train-miles." In order to remain consistent with Section 3.2.2 on page 3-7 (Chapter 3), SEA should report the value over the last 20 years: 1978 to 1996. The accident rate in 1978 was 14.5 accidents per million train-miles as reported in Figure 4-2. SEA should revise the third sentence to say, "From *1978* until 1996, the national average accident rate has decreased from *14.5* to 3.7 accidents per million train-miles." However, if SEA's intent was to report the 1970 statistic, the correct value is 10.5 in lieu of 15.0 accidents per million train-miles.

Comment No. 3

The DEIS at 3-6 states the system-wide analysis examined accident risk for "all 119 rail line segments." It appears to NS that this sentence should read "all 1,022 rail line segments."

7.2 Safety: Highway/Rail At-Grade Crossings

Comment No. 1

NS has noted the following inconsistency on page B-5, (Volume 5A, Appendix B, Section B.3.2). The DEIS states, "SEA used the latest version of the FRA database to compile accident data for all crossings with at least one accident in the last five years." According to the grade-crossing tables located in Volume 3A & 3B, the analysis also includes grade crossings with zero accidents in the last five years. This should be corrected.

Comment No. 2

NS suggests a change to the title of Table B-7 on pages B-19 through B-21 (Volume 5A, Appendix B, Section B.4.3). The table is currently titled "Highway/Rail At-Grade Crossing Accident Index Roadway ADT More Than 15,000." Since Table B-7 also includes two other ranges of ADT's, the title should only read "Highway/ Rail At-Grade Crossing Accident Index."

Comment No. 3

NS suggests revisions to the definition of two factors in a formula presented in Section B.4.3, page B-22 (Volume 5A, Appendix B). The formula is presented under the heading "Segment-Specific Safety Effects Analysis:"

$$a = K \times EI \times DT \times MS \times MT \times HP \times HL$$

The definition for "a" should be revised to read, "a is the *unnormalized* initial predicted number of accidents per year," and the definition for "EI" should be revised to read "EI is the exposure index factor based on the product of the number of *average daily* roadway vehicles and *average* trains per day."

Comment No. 4

On page B-23 (Volume 5A, Appendix B, Section B.4.3), the second sentence of the second paragraph states, "FRA recommends that actual accident experience be limited to the 1991 through 1995 period, as..." NS suggests that this sentence be revised, replacing the portion of the sentence "1991 through 1995" with "*data for the most recent 5 years of history.*" NS notes that the period 1991 through 1995 was the most recent interval available at the time the DEIS analysis was conducted. However, more recent data (1992 through 1996) has since been released.

7.3 Safety: Rail Transport of Hazardous Materials

Comment No. 1

NS has noted that the definition of a "Key Train" as presented in the following sections of the DEIS is incorrect (Executive Summary, Glossary; Volume 1, Glossary; Volume 1, Chapter 4, Page 4-15; Volume 3A, Glossary; Volume 3B, Glossary; and Volume 5A, Glossary). The definition described in those DEIS sections is as follows: "The Association of American Railroads (AAR) defines a key train as any train handling five or more carloads of poison inhalation hazard (PIH) materials or a combination of 20 or more carloads containing hazardous materials."

This definition is incorrect because PIH Zone A or B materials are not specified, and because the definition implies that any train that contains 20 or more hazardous material

loads regardless of hazard classification are defined as "Key Trains." The correct definition should be: " 'Key Trains' are any trains with five or more tank car loads of chemicals classified as Poison Inhalation Hazard (PIH) **Zone A or B**; or any train with a combination of 20 or more car loads or intermodal tank loads of PIH (Hazard A or B), Division 2.1 Flammable Gas; Division 1.1 or 1.2 Explosives, and Environmentally Sensitive Chemicals (ESCs) as defined in Appendix A to the Circular." (Bold added).

Comment No. 2

NS notes that one of the requirements for key routes as stated on page ES-19 under the Hazardous Materials Transportation section is incorrect. The DEIS states "These AAR [key route] guidelines include **visual** rail defect inspections at least twice per week..." The correct definition, which includes neither visual inspections nor twice weekly inspections, is referenced at DEIS, Volume 5A, Appendix B-10, page 2 of AAR Circular No. OT-55B: *"2. Main Track on "Key Routes" must be inspected by rail defect detection and track geometry inspection cars or any equivalent level of inspection no less than two times each year; and sidings must be similarly inspected no less than one time per year."* As a further note, FRA regulations specify weekly track inspections.

Comment No. 3

NS notes the following typographical error on page 4-61, Table 4-18 of the DEIS. The total number of rail cars should be 2,430 not 24,30.

Comment No. 4

NS notes the following misspelling on DEIS, Page 5-32, Table 5-2, Summary of Impacts Warranting Mitigation by State, for rail segment N-360: Berke County should be spelled Burke County.

Comment No. 5

NS suggests modifying Table 9-1 in Volume 5A, Appendix B, Page B9-4 and B9-5. For Conrail, the table includes "Key Routes" columns for 5,000-8,000 and 8,000-10,000 cars. These reflect tabulations of feeder routes to Conrail's "key routes". Neither OT-55B nor the criteria in the DEIS would consider routes with less than 10,000 carloads of hazmat to be "key routes". NS recommends the tables be modified to eliminate these columns to avoid confusion.

Comment No. 6

Table B9-2 on page B9-5 of the DEIS is persuasive in demonstrating that most reported hazardous materials incidents are of very small quantities very unlikely to have any noticeable impact for communities. However, the phrase "[t]he primary reason for most of the releases in the HMIRS database being non-reportable is their small size" is misleading, because all incidents regardless of their size must be reported, and is inconsistent with the fact that all releases have been reported in the HMIRS database.

7.4 Energy

Comment No. 1

As part of the system-wide analysis of energy consumption, the DEIS estimated changes in fuel consumption from increased delays at highway/rail at-grade crossings. (DEIS at 4-49.) This analysis considered this effect at crossings with average daily traffic (ADT) greater than 5,000 vehicles on rail line segments that met the Board's thresholds for environmental analysis. (See Energy Consumption Changes from Highway/Rail At-Grade Crossing Delays, DEIS, Appendix D, Page D-7.) These were the same at-grade crossings analyzed for air quality impacts.

This analysis arbitrarily excludes at-grade crossings with ADT greater than 5,000 projected to experience decreases in train traffic. This analysis thereby overestimates fuel consumption and fails to assess the benefits (e.g., decrease in fuel consumption) associated with the Transaction.

7.5 Air Quality

Comment No. 1

NS notes that there appears to be some inconsistency in the impacts reported in DEIS Appendix E, Attachments E-2 and E-4. If the differences are intentional, perhaps an explanation of why the impacts are different should be supplied in the FEIS. For example, if the difference in the two sets of data is a result of Attachment E-2 presenting emissions increases while Attachment E-4 presents net emission changes, this could be stated clearly in Appendix E. Otherwise, if the differences were in error, they should be corrected in the FEIS.

Comment No. 2

NS suggests a correction to the title of Figure 4-6 on page 4-52 of the DEIS. Figure 4-6 does not indicate the specific pollutant(s) for which each of the shaded areas is designated nonattainment. It is logical therefore to infer that the shaded areas are non-attainment for SO_2, CO, Pb, and particulate matter. This is not correct. At a minimum the title could be modified to say *"Areas of Non-Attainment for SO_2, CO, Lead(Pb)* ***and/or*** *Particulate Matter."* Also, it would be appropriate to add a reference to Attachment E-1 in Appendix E where the pollutant(s) for which a county is nonattainment are specified.

Comment No. 3

NS suggests the following correction to the first sentence of the first full paragraph on page 4-54 of the DEIS which currently reads: ". . . EPA's proposed new NO_x emission control requirements for 25 eastern states . . ." The sentence should be modified to read, *". . . EPA's proposed new NO_x emission control requirements for* ***22 eastern states and the District of Columbia*** *. . ."*

Comment No. 4

NS suggests that the third sentence of the third paragraph on page 4-63, which currently reads, ". . . EPA has determined that NO_x is not . . ." be modified to read, *". . . EPA has determined that NO_x* ***emissions locally are*** *not . . ."*

Comment No. 5

NS suggests the following modification to the fourth sentence of the last paragraph on page E-7. The sentence currently reads, "These lengths were multiplied by the corresponding annual gross tons, and then by a fuel efficiency (gross ton miles/gallon, or GTM/gal.), and by an emission factor (lb/gallon) to obtain emissions estimates for each segment (see Section E.7.1)." The sentence should be reworded to read *"These lengths were multiplied by the corresponding annual gross tons,* ***divided*** *by a fuel efficiency (gross ton miles/gallon, or GTM/gal), and* ***multiplied*** *by an emission factor (lb/gal) to obtain emissions estimates for each segment (see Section E.7.1)."*

Comment No. 6

The emission factor for NO_x, is listed as 566.4 lb/Kgal on Table E-3, page E-9. The correct factor is **564.2 lb/Kgal.**

Comment No. 7

NS notes corrections to two emission factors used in Table E-4 on page E-10 of the DEIS. The emission factor for NO_x, is listed as 830.7 lb/Kgal, but should be **827.5 lb/Kgal**. The emission factor for VOC is listed as 46.2 lb/Kgal, but should be **46.0 lb/Kgal**.

7.6 Noise

Comment No. 1

In Appendix F, Attachment F-1, the DEIS indicates receptors along the Riverton Jct. to Roanoke line segment will experience a 5.0 dBA increase in noise level from the pre-Transaction to post-Transaction conditions. In the Applicants' Environmental Report (ER), noise receptors were expected to experience a 4.7 dBA increase along this line segment. Even applying the DEIS model, which we recommend be adjusted to accurately reflect NS train noise, it appears projected traffic changes would result in a 4.9 dBA increase. The equations used for this calculation follow:

- 10 * log (# of Pre-Transaction trains/# of Post-Transaction trains) = Change in dBA

where: # of Pre-Transaction trains = 3.9 and # of Post-Transaction trains = 12.1.

Comments No. 2

With reference to DEIS Appendix F, Attachment F-2, the following table identifies inconsistencies between the DEIS and information on operations submitted to SEA by NS in the ER and thereafter. The table below lists discrepancies in number of trucks, change in decibels (dBA) and distance to the 65 dBA Ldn contours at the intermodal facilities. NS requests that SEA verify the numbers presented in the DEIS for Luther. Also, the EIS should use the information for a proposed intermodal facility in Sandusky, OH and delete information for a proposed intermodal facility in Bellevue, OH since NS is no longer planning to construct a facility there.

Discrepancies in Number of Trucks, Change in Decibels and Distance to the 65 dBA Ldn Contours at Intermodal Facilities								
Location	**ER Change in Trucks**	**DEIS Change in Trucks**	**ER Post-Act. Trucks/ Day**	**DEIS Post-Act. Trucks/ Day**	**ER Change in dBA**	**DEIS Change in dBA**	**ER Distance to 65 Ldn**	**DEIS Distance to 65 Ldn**
Luther	63	194	251	382	<2	3	N/A	223
Sandusky*	71		71				73	
Bellevue*		65		65				69

*In a letter dated October 31, 1997 from NS to SEA, NS explained that the proposed new facility would be built at Sandusky rather than at Bellevue as had been indicated in the ER. In the same letter, a change in the projected number of trucks per day post-Transaction was provided.

Comment No. 3

The following table also lists discrepancies in the change in dBA and distances to the 65 Ldn contours at the intermodal facilities from DEIS, Appendix F, Attachment F-2. *NS requests that SEA verify that the latest information provided by NS has been used in the DEIS.* SEA may also wish to consider verifying the calculations for the intermodal facilities.

Discrepancies in Change in dBA and Distance to the 65 dBA Ldn Contour at Intermodal Facilities				
Location	**ER Change in dBA**	**DEIS Change in dBA**	**ER Distance to 65 Ldn**	**DEIS Distance to 65 Ldn**
Baltimore	2.7	3.0	83	145
E-Rail, Portside	6.9	7.0	not different	
Allentown	5.5	6.0	57	113
Rutherford	7.7	N/A	229	250
Pitcairn	not different		100	250

NS' consultant Burns & McDonnell, calculated the change in dBA using the formula below:

10 * log (# of pre-Transaction trucks/# of post Transaction trucks) = Change in dBA

For example, at the Baltimore facility, the pre-Transaction number of trucks is 108; the post-Transaction number of trucks is 200. Using the equation above, the change in dBA was calculated to be 2.7 dBA. However, the DEIS lists 3.0 dBA.

The distance to the Ldn 65 contour was calculated using the equation from the ER (page B-39). The equation is shown below:

$$L_{dn} = 28.2 - 15 \log(D/450) + 10 \log [(H_d + 10 H_n)N_{total}/(H_d + H_n)]$$

where:

H_d = number of hours of operation during the daytime (7 am to 10 pm)
H_n = number of hours of operation during the night (10 pm to 7 am)
N_{total} = average number of daily operations
D = distance in feet to Ldn 65 contour

For example, at the Baltimore facility the number of daytime hours is 9, the number of nighttime hours is 1 and the average number of operations is 200. Using the above mentioned equation, the distance to the Ldn 65 contour is 83 feet. The DEIS lists 145 feet.

7.7 Natural Resources

Comment No. 1

The methodology for natural resources (DEIS at 3-41 and I-7) states, "The biological resources assessment included identifying and analyzing potential impacts to Federally listed threatened and endangered species, protected wildlife habitats and migration corridors, wildlife refuges and sanctuaries, national, state and/or local parks or forests, and protected unique or critical habitats." This methodology does not provide a specific distance from the construction or abandonment that was used for identifying biological resources, such as a parks or refuges, for inclusion in the analysis of potential impacts. However, varying distances to specific biological resources are provided in the following instances:

- The DEIS at IN-62 states, "SEA determined that there are no Federal or state parks, forests, preserves, refuges, or sanctuaries located **within or adjacent to** the proposed construction site at Tolleston."

- The DEIS at IN-62 also states, ". . . there are no Federal or state parks, forests, preserves, refuges and sanctuaries that exist within **one mile** of the Tolleston site..."

- The discussion of the South Bend to Dillon Junction abandonment (DEIS at IN-68) states, "Kingsbury State Fish and Wildlife area is located approximately **one mile** southwest of Dillon Junction; and the Potato Creek Recreation Area is located less than **one mile** north of the proposed abandonment area. There are no sanctuaries, refuges, national, state, or local forest/parks within **500 feet** of the existing rail line for the proposed NS abandonment from South Bend to Dillon Junction."

The FEIS should clarify the natural resources methodology regarding distances to wildlife refuges and sanctuaries; national, state and/or local parks or forests. Also, if none are within the specified distance, this should be clearly stated under the Existing Conditions section.

Comment No. 2

Under the column, Preliminary Recommended Mitigation for the Alexandria, IN Construction (DEIS at Volume 3A, Page 5-24, Table 5-2 and Volume 3B, Page 5-24, Table 5-2), the following text appears "NS shall use only EPA-approved herbicides during right-of-way maintenance." The apparent error is that this statement is referenced under Environmental Justice in the technical area column, rather than the technical area for Natural Resources.

Comment No. 3

Under the Preliminary Recommended Mitigation heading for Tolono, Illinois Construction (DEIS at IL-62), there is an incorrect reference to CSX in the following sentence, "...SEA would require CSX to conform to its standard specifications during construction." *The FEIS should contain the corrected reference to NS not CSX.*

7.8 Land Use/Socioeconomics

Comments No. 1

The reference to Native American Issues (DEIS at NY-38) appears to be associated with the Gardenville Junction construction because the text follows directly under the discussion of prime farmland at this construction. Separating the discussion of Native American Issues with a bolded heading similar to those used for constructions or abandonments could reduce the potential for confusion.

7.9 Abandonments

Comment No. 1

The Summary of Potential Effects and Preliminary Recommended Mitigation section (DEIS at IN-30) states, "Tables 5-IN-10 and 5-IN-11, presented at the end of this state discussion how..." There is no Table 5-IN-10 at the end of the Indiana State discussion. The reference actually appears to refer to Tables 5-IN-11 and 5-IN-12. If this is the case the sentence in question should be revised to say, "*Tables 5-IN-11 and 5-IN-12*, presented at the end of this state discussion, *show*..."

Comment No. 2

In both Figure 5-IN-4a (Volume 3A, Chapter 5) and Figure 2a (Volume 6) of the DEIS, the east end point for the South Bend to Dillon Junction Abandonment is in South Bend. The east abandonment end point on the figures should be moved to a point on the rail line approximately 200 feet northeast of U.S. Highway 20/31, southwest of South Bend. The correct end point is approximately 2 miles closer to Dillon Junction.

Comment No. 3

The Hazardous Waste Sites section (DEIS at Volume 6 Page 30) states, "...the EDR database report identified 13 sites including one NPL/CERCLIS site, four Indiana SPILLS sites, six LUST sites, and two RCRIS-TSD sites located within 500 feet of the proposed abandonment corridor." As discussed in Comment No. 2 above, the South Bend to Dillon Junction abandonment end point is located approximately 2 miles closer to Dillon Junction. Therefore, the hazardous spills sites located in South Bend are not within 500 feet of the proposed abandonment corridor. Therefore, this statement should be revised to

say, *"...the EDR database report identified 2 sites (one LUST site and one RCRIS-TSD site) located within 500 feet of the proposed abandonment corridor."*

Comment No. 4

The last sentence of the first paragraph (DEIS at Volume 6 page 25) Proposed Action section states, "Dillon is a rail crossing..." The sentence should be revised to say, "Dillon *Junction* is a rail crossing..."

Comment No. 5

The DEIS at Volume 6, page 67 states, "NS would also dispose of all materials that **could** be reused in accordance with state and local solid waste management regulations." NS believes the DEIS intended to say and therefore should be modified to, "NS would also dispose of all materials that **cannot** be reused in accordance with state and local solid waste management regulations."

7.10 Construction

Comment No. 1

The DEIS at IL-67 states, "The construction of the new connection at Kankakee, would convert approximately 2.3 acres to rail line right-of-way." *The correct acreage is 1.0 acre* as provided in a letter from NS to SEA dated October 16, 1997. The correct acreage should be used in the FEIS.

Comment No. 2

The DEIS at IN-69 states, "The proposed construction would require that NS acquire and convert approximately 3.9 acres of currently undeveloped land to rail line right-of-way." *The correct acreage is 0.4 acre* as provided in a letter from NS to SEA dated October 16, 1997. The correct acreage should be used in the FEIS.

Comment No. 3

The DEIS at IN-29 states, "The connection . . . would be approximately 1,750 feet long." *The correct length is 1,700 feet* as provided in a letter from NS to SEA dated October 16, 1997. The correct length should be used in the FEIS.

Comment No. 4

The Summary of Sites Mapped by EDR, Table H-1 (DEIS at H-10) contains a reference to a LUST site 317 feet east of the proposed site for the Butler, Indiana construction. However, under the Indiana Hazardous Materials and Waste Sites, Existing Environment at the Butler construction (DEIS at IN-54 and IN-55), the text states, "The Environmental Data Resources, Inc. (EDR, 1997) report identified no hazardous waste sites or related environmental concerns within 500 feet of the proposed connection." The inconsistency should be corrected in the FEIS.

7.11 Data Differences Between the DEIS and Information Provided SEA by NS

7.11.1 Train Traffic Data

Comment No. 1

Some of the traffic data included in the DEIS differs from what was provided by NS to SEA in the ER, the Operating Plan or in supplemental submissions. The following table presents discrepancies noted by NS of plus or minus 2 trains or greater, or discrepancies of plus or minus ten percentage points or greater. Explanations which follow the table address apparent errors which should be corrected in the FEIS. The reason for other discrepancies is unclear, and the discrepancies are pointed out here for SEA's consideration and appropriate use.

Segment Name	SEA #	Type of Data	DEIS*	Correct	Source
Indiana Hbr to S. Chicago	N-047	Percent change in MGT	22	40	Revised Table 1-4, submitted on 10/17/97
W. Detroit to Jackson	N-121	Post freight	12.1	3.7	See explanation below
		Change in trains	9.2	0.8	See explanation below
		Percent change in MGT	313	-25	See explanation below
Jackson to Kalamazoo	N-120	Post freight	12	3.4	See explanation below
		Change in trains	6.6	-2.0	See explanation below
		Percent change in MGT	162	-49	See explanation below
Burstall to Meridian	N-343	Post freight trains	16.2	18.2	See explanation below

Segment Name	SEA #	Type of Data	DEIS*	Correct	Source
Calumet to Landers	N-499	Percent change in MGT	-99	40.3	Operating Plan Errata, page 18
Ridgewood to Suffern	N-064	Percent change in MGT/GTM	123	32	Revised Table 1-4, submitted on 10/17/97

* As listed in DEIS Attachments B-1 through B-3

The differences in tonnage on the **Indiana Harbor to South Chicago** segment are likely a result of the exclusion of 14.6 million gross tons per year of CSX post-Transaction trackage rights trains. Neither these trains nor their tonnage were included in the Operating Plan and it appears their tonnage was not included in the DEIS either. The tonnage should have been included in the DEIS and should be reflected in the percent change in tonnage.

As discussed in Section 4.22 in these comments, the expected change in traffic on the **W. Detroit to Jackson** and **Jackson to Kalamazoo** line segments was modified by NS based on new information on the status of the potential for haulage of CP trains across these line segments (addressed in a correspondence to SEA on 10/30/97). The FEIS should be edited to reflect these modifications.

In the Operating Plan, the post-Transaction train numbers for the **Burstall, Alabama to Meridian, Mississippi** line segment were listed as 2 passenger trains per day, 18.2 freight trains per day and 18.2 total trains per day. The total trains per day column was incorrect; it should have read 20.2 trains per day. Thus, 18.2 freight trains per day post-Transaction is correct.

The reason for the other data discrepancies is unclear. This information is supplied for SEA's consideration.

7.11.2 Other Data

The DEIS at GA-21 in Table 5-GA-16 incorrectly states NS is currently constructing a new intermodal facility in Fulton County, Georgia which is related to the proposed Transaction. This is not the case. NS is currently in the process of seeking permits for a

new intermodal facility in Austell, Georgia which is located in Cobb County. However, this action is completely unrelated to the Transaction and therefore, all references to it should be removed from the FEIS.

SECTION 8

APPENDIX NS-1

DESCRIPTION OF NS COMPLIANCE WITH POTENTIAL PASSENGER TRAIN SAFETY MITIGATION MEASURES DESCRIBED IN CHAPTER 3 OF THE DEIS

APPENDIX NS-1

DESCRIPTION OF NS COMPLIANCE WITH POTENTIAL PASSENGER TRAIN SAFETY MITIGATION MEASURES DESCRIBED IN CHAPTER 3 OF THE DEIS

Chapter 3 of the DEIS, Sections 3.2.3 and 3.3.3, describe a variety of potential mitigation measures for passenger rail safety as follows:

- Enhanced rail-safety programs, such as closer spacing of rail car defect detectors along rail lines.
- Increased frequency of track inspections, tank car inspections, and highway/rail at-grade crossing signal inspections.
- Toll-free numbers for use by emergency response forces in communities to contact railroad authorities.
- Training programs for community and emergency response personnel to enhance their abilities to respond to rail-related emergency incidents.
- Head-hardened rail-on-track curves in mountainous territory to reduce the risk of track breakage and serious derailments.
- Centralized train traffic control systems for safer rail operations.
- Replacement of old rails to reduce the risk of derailment.
- New track installation to increase the capacity of the rail line segment, which reduces the potential for train collisions.
- Improved rail signal system to make more efficient and safer use of track.

In this appendix, NS will describe its existing compliance programs with each of the nine measures described above. These measures will be employed by NS on each of the line segments operated by NS.[1]

1. **Rail Safety Programs/Defect Detectors** - NS will maintain rail safety programs appropriate to the classification of the track on each of the four NS (now Conrail) involved line segments. With respect to defect detectors, Conrail's standard spacing for hot bearing detectors is 20 miles. Conrail presently has an approved

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[1] N-063; N-120; N-121 and the Porter, IN to Chicago, IL route which consists of N-308, N-042, N-047, and N-309. Line segment N-497 is owned by Amtrak.

capital AFE to install 41 detectors to achieve nominal 20-mile spacing on lines where spacing presently exceeds this standard. Upon completion of this AFE, 20-mile nominal spacing will be achieved on these four line segments.

2(a). **Inspection of Track** - NS already has in place an inspection program which features twice weekly inspections (twice as frequent as the FRA requirements). In addition to these regular inspections, NS will perform more frequent inspections when: (a) ambient temperature conditions and/or temperature changes along the involved line segments create stresses in the track structure which produce the potential for track problems (such as kinks and pull aparts); and (b) weather conditions produce potential risks associated with the possibility of derailments caused by uncontrolled water flows or other weather phenomena as addressed in FRA Safety Advisory 97.

In addition, current NS standards require all main line rail to be tested at least once per year. Frequency of testing can be up to four times per year. NS testing frequency is based on density, traffic type, defect history, rail type and age. The NS track testing policy is more stringent in most cases than STB's proposed "at least once every 40 million gross ton-miles of rail traffic, or to inspect annually, whichever is more frequent."

2(b). **Inspection of Tank Cars** - Tank cars are inspected before acceptance at originating point, when received in interchange, and at any point where a train is required to be inspected (i.e., in yards where the car is put into a train). The cars may continue in transit only when the inspection indicates that the cars are in safe condition for transportation as required by 49 CFR 174.8 and NS Hazardous Materials Timetable Rule F.1 and F.2. The inspection is made from the ground and verifies that the car has no visible leaks and that all valves and openings are properly secured. Additional inspections in passenger corridors by railroads is not practical or necessary to ensure safety.

2(c). **Inspections of Highway/Rail At-Grade Crossing Warning Devices** - NS conducts monthly, quarterly and bi-annual tests and inspections of grade crossing warning devices in accordance with FRA and company standards and instructions. Such tests and inspections will continue to be done on the four lines.

3. **Toll Free Telephone Number** - The NS Police Communications Center has two toll free numbers (one is used for general emergencies and the other is displayed on railroad crossing devices). The general number is published in the phone books in all locations which NS operates. It has also been broadcast on the law enforcement network. Additionally, it is distributed at all Grade Crossing Collision Classes conducted by the NS police Department (approximately 30 classes per year).

4. **Emergency Response Training** - The NS Police Department conducts approximately 30 Grade Crossing Collision Courses each year. As part of that instruction, unique problems associated with passenger train collisions are

discussed. Passenger train locomotive and car schematics are included in the Operation Respond software NS donates to local communities. For more information on the Operation Respond program refer to the SIP at DEIS 2-159. Schematics for Amtrak, VRE, MARC and NJT will be included in version 3.2 of the OREIS software which will be available by January 1998.

5. **Head-hardened Rail** - None of the segments are located in mountainous territory. Application of head-hardened rail on these segments will be initiated in cases where this type of rail is justified by overall traffic levels and track curvature.

6. **Centralized Train Control** - Each of the four line segments mentioned is already equipped with centralized traffic control (CTC) signaling. When signal indications are complied with, these systems enhance safety by providing protection for opposing and following train movements on the same track, and allow for positive protection of roadway workers. In addition, these systems enable more efficient and fluid train operation.

   In addition, Amtrak, Michigan DOT and CR (later NS) have a FRA grant for $9 million to install and test a positive train separation system called Incremental Train Control System (ITCS) on the Kalamazoo to Porter line. The grant will equip 40 locomotives, and 10 wayside servers along 70 miles of track. Imposition of the 15/30 minute rule would nullify the value of this system.

   On the Campbell Hall to Port Jervis line New Jersey Transit (NJT) is installing a similar system. The objective of the NJT project is to implement technology to make the railroad safer. It consists of two systems for enforcing civil speed restrictions, signal indications, and positive stops at "Stop" or "Stop and Proceed" signals. The complementary system, using wayside transponders at interlockings and automatic signals interfaced to signal aspects, is called PTS or Positive Train Separation. It will be integrated into the remaining existing wayside signal systems and operate in conjunction with and enhance the capabilities of the existing and future Continuous Cab Signal Systems and Automatic Train Control.

7. **Rail Replacement** - NS will replace rail on the involved segments based on wear and defects detected in accordance with applicable FRA requirements.

8. **Enhancement of Track Capacity** - NS believes that existing track capacity on the five involved line segments is sufficient to safely accommodate existing and foreseeable future traffic levels. Should future traffic levels develop where additional track capacity is needed to safely and efficiently accommodate train operations, NS is prepared to initiate necessary track construction projects. There appears to be sufficient space in the rights-of-way on the Kalamazoo - Jackson; Jackson - West Detroit; and Campbell Hall - Port Jervis segments to add track if necessary.

   In addition, the lines at issue are projected to experience only modest fright train

frequency increase of 4.1 for the Campbell Hall to Port Jervis line; between 6.7 and 9.2 on the two segments between West Detroit and Kalamazoo and 6 on the Amtrak line between Kalamazoo and Porter, IN. The line between Porter, IN and Ashland Avenue, Chicago is divided into four segments with an increase of 0.1 train per day between Porter and CP 501; an increase of 16.9 trains between CP 501 and Indiana Harbor; and an increase of 4.1 trains between Indiana Harbor and South Chicago and a decrease of 16.2 trains between South Chicago and Ashland Avenue. This 38-mile line is double and triple track with bi-directional CTC and is not going to be taxed with the train frequency shifts listed above.

9. **Rail Signal Systems**- Improvements have been approved for the Campbell Hall - Port Jervis segment. Conrail presently has an approved capital AFE to eliminate the signal pole line on the Campbell Hall to Port Jervis line segment. This project will enhance signal system reliability and consequently improve passenger train safety. On the other three mentioned lines to be allocated to NS, pole lines have been eliminated, and the signal systems in use are both safe and reliable.

Also, see response to 6 above. In addition, NJT is adding wayside 4-aspect coded 100 hz Continuous Cab Signal Systems (CCSC) to an additional 214 track miles in 131 route miles of existing signaled territory, increasing ATC to about 76 percent of its system. The ATC portion of the project is expected to be completed by the end of 1998. Subsequent to installation of ATC all locomotives operating over such signal territory will be required to have ATC equipment. Imposition of the 15/30 rule would make the investment in these high-tech systems a waste of time and money as the railroad would be running as if the territory was dark, i.e., no signals at all.

APPENDIX NS-2

HIGHWAY/RAIL AT-GRADE CROSSING DELAYS

APPENDIX NS-2

HIGHWAY/RAIL AT-GRADE CROSSING DELAYS

In Volume 5A, Appendix C, Section C.4.3, pages C-11, C-12 of the DEIS, SEA has calculated the crossing delay per stopped vehicle by use of the following equation which the DEIS describes as "from" the Institute of Transportation Engineers, "Transportation and Traffic Engineering Handbook," Second Edition, 1982:

$$D_A = \frac{D_C \times (Sc/Sc-Sq)}{2}$$

This equation does not appear in the "Transportation and Traffic Engineering Handbook" in this form to represent a relationship of delay per stopped vehicle. Also, the equation is not semantically correct (i.e. Sc/Sc is equal to one). The equation SEA used to calculate crossing delay per stopped vehicle resembles the equation in the "Transportation and Traffic Engineering Handbook," for calculating the duration of the queue. The correct equation found in the publication that calculates the average minutes of vehicle delay is presented on the same page as the above equation in the ITE "Transportation and Traffic Engineering Handbook." The equation is expressed as follows,

$$d = r/2 \ (1 - s_r/q)$$

where,

d = average minutes of vehicle delay
r = duration of blockade, minutes
s_r = flow rate (vehicles per minute) at bottlenecks during blockade
q = average arrival rate of traffic (vehicle per minute) upstream of bottleneck

The value of s_r is zero when the roadway is completely blocked as in the case of an at-grade railroad crossing. Therefore, the equation reduces to,

$$d = r/2$$

When an additional 0.30 minutes is added to allow for the waiting line of vehicles to dissipate, the equation resembles the average delay time equation presented in the Applicants' ER, Volume 6A, Appendix D, page 246. This equation was developed by the Stanford Research Institute "Guidebook for Planning to Alleviate Urban Railroad Problems," prepared for the Federal Railroad Administration and Federal Highway Administration, August 1974, RP-31, Volume 3, Appendix C and has been used previously in the Environmental Assessment prepared by SEA for the UP/SP merger. (STB, SEA. 1996. EA, Finance Docket No. 32760, Union Pacific Corporation, et. al. Control and Merger Southern Pacific Rail Corporation et. al.)

Therefore, the final form of the equation to calculate average delay per vehicle using the DEIS notation should be expressed as,

$$D_A = D_C/2 + 0.3$$

This equation will more accurately reflect the crossing delay per stopped vehicle definition as described in the DEIS Volume 1, Chapter 3, Section 3.7.1, page 3-17, that says SEA assumed that vehicles arrive at a crossing at a uniform rate and that the average delay for any particular roadway is half the time the crossing is activated ($D_C/2$), plus the time required for vehicles to disperse (0.3) after the train has passed.

In Volume 5A, Appendix C, Section C.4.3, the last paragraph on page C-16 describes Table C-5 as the variation of average delay per stopped vehicle with changes in train length and train speed for various roadway ADT volumes and number of roadway travel lanes. However, Table C-5 is titled "Blocked Crossing Times (in minutes)" which SEA defines differently than average delay per stopped vehicles. Furthermore, the ITE "Traffic Engineering Handbook" does not directly associate blocked crossing time and delay per stopped vehicle as functions of the number of lanes and ADT during a blocked crossing event. If it is SEA's intent to generate a table of average delay per stopped vehicle as defined int the ITE handbook, the table should contain the values generated by using the equation,

$$D_A = D_C/2 + 0.3$$

and the proposed table would be as follows:

Table C-5
Average Delay per Stopped Vehicle (minutes)

Train Speed	Train Length (in feet)				
	4,869	5,000	5,600	6,000	6,200
10	3.32	3.39	3.73	3.96	4.07
20	1.93	1.97	2.14	2.25	2.31
30	1.47	1.50	1.61	1.69	1.72
40	1.24	1.26	1.35	1.40	1.43
50	1.10	1.12	1.19	1.23	1.25

In Volume 5A, Appendix C, page C-14, the third paragraph says, "For crossing delay per vehicle, SEA determined that a significant impact would occur if vehicle delay at highway/rail at-grade crossings increased by 30 seconds. This figure represents a driver tolerance threshold above which the driver perceives added delay for an intermittent blocked crossing event."

The DEIS does not explain how the 30-second significance criteria was established. If this value is based on past research, it would be appropriate to cite the source. If SEA has performed their own study to derive at this value, details of that study should be included in the methodology. Furthermore, the 30-second criteria appears to be inconsistent with the statement in the DEIS Volume 1, Chapter 4, Section 4.9, page 4-44 that says, "There are no national standards for measuring emergency response vehicle delay or the significance of any delay impacts."

APPENDIX NS-3

ADDITIONAL NOISE MEASUREMENTS

APPENDIX NS-3

ADDITIONAL NOISE MEASUREMENTS

Noise measurements were performed on Norfolk Southern rail segments by Wyle Laboratories in Cleveland, Bellevue and Clyde, Ohio and Fort Wayne and Lafayette, Indiana. The measurements were performed in December, 1997 and January, 1998. The measurements were performed in order to: (1) determine if the existing Norfolk Southern noise model was conservative or underestimated noise impacts, and (2) perform site-specific modeling in areas where the STB identified a noise concern.

The noise model used in the Environmental Report (ER) was developed by Thornton Acoustics. The noise model was based on noise measurements made in a flat open field area in North Carolina over a four-day period. Wayside noise measurements were made at four locations perpendicular to the track at distances of 50, 100, 150 and 200 feet from track centerline. The train speed was measured by a radar gun and number of locomotives and rail cars were counted for each train pass-by. Thirty-six trains were measured for noise. The measurements were made without any horn soundings. Based on these noise measurements, SEL's were determined for trains traveling at 20 mph, 35 mph and 50 mph. For each train speed, train length was determined. For the model, trains were divided into three size categories (15 to 50 rail cars, 51 to 99 rail cars and 100 and greater rail cars). From evaluation of its system-wide operations, Norfolk Southern determined that the typical NS train travels at 35 mph and contains approximately 75 rail cars. For the representative NS train, the wayside noise SEL at a distance 100 feet from the track centerline was determined to be 98.4 dBA. The average attenuation rate of the noise was determined to be 4.8 dBA per doubling distance. A separate set of measurements were made of the locomotive with the horns soundings. The SEL noise level at 100 feet from a grade crossing was determined to be 108.5 dBA. The noise model was developed based on the measured data. Also included in the model was the option for background noise inputs. For all modeling runs it was assumed that the background noise levels would be relatively low. The background levels were set to 50 dBA during daytime hours (7 am to 10 pm) and 40 dBA during nighttime hours (10 pm to 7 am). The noise model allows for input runs used a shielding attenuation of 5 dB only if the structures parallel to the track occupied at least 65 percent of the total area parallel to the track. Further details of Norfolk Southern's noise model is contained in the Environmental Report, Volume 6A, Appendix B.

Wyle Laboratories performed noise measurements in Cleveland, Bellevue, and Clyde, Ohio and Fort Wayne and Lafayette, Indiana. The noise measurements in Cleveland were made in three areas for a 24 hour period. Two sites (Site 1 and 2) were on the NS Cloggsville to Ashtabula line segment and one site (Site #3) was on Conrail's Cloggsville to Short Line line segment. A comparison was made between the measured L_{dn} noise value and the calculated L_{dn} noise value using Thornton Acoustics' noise model. Thornton Acoustics' noise model predicted noise values 2.2 to 6.1 dBA higher than the measured noise values. The train noise levels were subtracted out of the 24 hour L_{dn} noise measurement to obtain the background noise levels. Background noise values from non-railroad sources ranged from 58 to 61.5 dBA.

In Bellevue, Wyle Laboratories performed noise measurements for three sites on an existing Norfolk Southern rail segment. The Bellevue noise measurements were taken over a three hour period. Three train pass-by noise measurements were made. A comparison was made between the measured noise value and the calculated noise values using the Thornton Acoustics' noise model. It is evident from the train pass-by noise measurements that horn noise affects the noise SEL values. Thornton Acoustics measured a noise SEL for a standard train at grade crossings to be 108.5 dBA at 100 feet from the track centerline. The highest measured SEL value at 100 feet from the track centerline was 106.2 dB. The lowest measured SEL value was 90 dBA. Thornton Acoustics determined a 4.8 dB spreading rate. At location 2,230 feet from the track, the highest measured SEL was 98.4 dBA. Thornton Acoustics' model predicts a 102.9 dBA SEL. At the third location, 650 feet from the track, the highest measured SEL was 88.9 dBA SEL while the modeled SEL value was 95.5 dBA. Thornton Acoustics' noise model over-predicts the noise values for each site and train pass-by.

Noise measurements were performed in Clyde, Ohio, along Norfolk Southern's Oak Harbor to Bellevue line segment. Wyle Laboratories performed SEL noise measurements at three locations. Two train pass-by noise measurements were made. A comparison was made between the measured noise value and the calculated noise value using Thornton Acoustics' noise model. It is evident from the train pass-by noise measurements that horn noise affects the noise SEL values. Thornton Acoustics' measured a noise SEL for a standard train at 108.5 dBA at 100 feet from the track centerline. The highest measured SEL value at 100 feet from the track centerline was 106.0 dB. The lowest measured SEL value was 97.4 dBA. Thornton Acoustic determined a 4.8 dB spreading rate. At location 2,330 feet from the track, the highest measured SEL was 95.0 dBA. Thornton Acoustics' model predicts a 100.2 dBA SEL. At the third location, 545 feet from the track , the highest measured SEL was 93.4 dBA SEL while the modeled SEL value was 96.7 dBA. Thornton Acoustics' noise model over-predicts the noise values for each site and train pass-by.

Noise measurements were performed in Fort Wayne along an existing Norfolk Southern line segment. Wyle Laboratories performed SEL noise measurements for two locations. Two train pass-by noise measurements were made. A comparison was made between the measured noise value and the calculated noise value using Thornton Acoustics' noise model. All crossings within the measurement area are separated. Thornton Acoustics measured a noise SEL for a standard train at 98.4 dBA at 100 feet from the track centerline. Thornton Acoustics determined a 4.8 dB spreading rate. For a location 200 feet from the track centerline, Thornton Acoustics' model predicts a 93.6 dBA SEL. The highest measured SEL value at 200 feet from the track centerline was 89.6 dB. The lowest measured SEL value was 75.8 dBA. At location 2,130 feet from the track, the highest measured SEL was 88.4 dBA. Thornton Acoustics' model predicts a 96.6 dBA SEL. Thornton Acoustics' noise model over-predicts the noise values for each site and train pass-by.

Noise measurements were performed in Lafayette along an existing Norfolk Southern line segment. Wyle Laboratories performed SEL noise measurements for two locations. One train pass-by noise measurement was made. A comparison was made between the measured noise value and the calculated noise value using Thornton Acoustics' noise model. All crossings within the measurement area are at grade. However, horn noise was not heard during the train

pass-by. It was noted that bell noise was heard during the pass-by. Thornton Acoustics measured a noise SEL for a standard train at 98.4 dBA at 100 feet from the track centerline. The highest measured SEL value at 100 feet from the track centerline was 93.8 dBA. Thornton Acoustics determined a 4.8 dB spreading rate. At location 2,250 feet from the track, the highest measured SEL was 86.8 dBA. Thornton Acoustics' model predicts a 92.0 dBA SEL. Thornton Acoustics' noise model over predicts the noise values for each site and train pass-by.

The comparisons between Wyle Laboratories noise measurements and Thornton Acoustics' noise model predictions show that in all cases, the Thornton Acoustics' noise model overestimates the L_{dn} 65 dBA contour at grade crossings and for wayside noise. It is evident in areas with a significant amount of structures, that shielding is an important consideration to determine actual noise impacts. The data consistently shows that the difference between Wyle Laboratories noise measurements and Thornton Acoustics' noise model is greatest where the building structure are most densely populated. Also, in areas with high background noise , the change in the total noise level is not necessarily equal to the change in the rail traffic only due to the logarithmic nature of the dB. For example, at Cleveland site #1, the background noise level is 61.5 dB. The measured L_{dn} from the rail traffic is 63.2 dB. The total measured L_{dn} was 65.4 dB. Assuming a 181 percent increase in rail traffic along this line as a result of the acquisition, the rail L_{dn} will increase by 4.5 dB. The post-acquisition rail L_{dn} will then be 67.7 dB and the total L_{dn} will be 68.6 dB. The total L_{dn} will increase by 3.2 dB due to the acquisition, not the 4.5 dB increase predicted by the noise model.

The Thornton Acoustics' noise model used in the ER is conservative compared to all noise measurements made by Wyle Laboratories. The model used to predict noise contours and levels in the DEIS further overestimates noise impacts and should be amended to adopt the Thornton Acoustics' predicted SELs for NS trains. The model would also be improved by application of additional acoustic shielding where justified by the presence of structures. Finally, it is apparent that noise models should be used only as a screening tool and that further local analysis needs to performed in areas where the STB is considering mitigation.

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SPTA 6

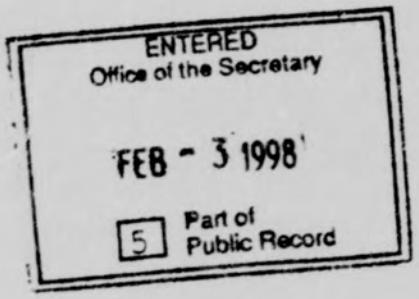
ENVIRONMENTAL DOCUMENT

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

COMMENTS OF THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT AND SAFETY INTEGRATION PLANS



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Dated: January 30 , 1998

SPTA-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

COMMENTS OF THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT AND SAFETY INTEGRATION PLANS

The Southeastern Pennsylvania Transportation Authority ("SEPTA") hereby submits the following comments to the Draft Environmental Impact Statement ("DEIS") prepared by the Surface Transportation Board Section of Environmental Analysis ("SEA") and the Safety Integration Plans ("SIPs") prepared by the Applicants, CSX Corporation ("CSX") and Norfolk Southern ("NS").

I. INTRODUCTION

SEPTA operates an extensive integrated mass transportation system, consisting of trolley, motorbus, subway, elevated and regional commuter rail routes throughout the Philadelphia metropolitan area. SEPTA is a body corporate and politic which exercises the public powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof. SEPTA's commuter system is conducted pursuant to the Pennsylvania Public Transportation Law, Act 26 of 1991, as amended by Act 4 of 1994, 74 Pa. C.S.A. §§ 1701 et seq. SEPTA operates one of the

oldest and most extensive commuter rail and transit systems in the country. It carries an average of 90,000 passenger trips per day on its Regional Rail Division alone, and provides a significant and essential component of the daily movement of the population of Southeastern Pennsylvania.

SEPTA operates, on a daily basis, over 500 commuter trains in the Philadelphia area and is charged with providing safe, efficient and reliable commuter service to its public transit passengers. SEPTA's regional rail system currently operates in close coordination with significant freight lines which are currently operated by Conrail in the densely populated Philadelphia area. A portion of SEPTA's regional rail system, involving two commuter lines, operates on track segments owned by Conrail, while Conrail's freight operations utilize all or portions of eleven SEPTA commuter lines. SEPTA's operations on lines shared with Conrail are a key component of SEPTA's passenger services.

Pursuant to their Primary Application and Joint Operating Plan, the Applicants propose to each acquire certain of Conrail's trackage rights to operate freight service on lines Conrail currently shares with SEPTA. The Applicants also propose to increase the volume and type of freight traffic on certain lines to be acquired from Conrail to the potential detriment of SEPTA's public transit service. SEPTA is particularly concerned with the impact the proposed Merger and Acquisition ("Acquisition") will have on its ability to provide safe and reliable commuter services and to expand those operations to meet the growing needs of the region. It is of utmost importance that the Applicants provide sufficient information with regard to its proposed post-Acquisition routing of freight traffic in and through Southeastern Pennsylvania to permit assessment of the environmental and safety risks and to allow for appropriate mitigation of any

detrimental safety, environmental or operational impacts. The following comments address factors identified in the DEIS and SIPs which concern SEPTA and pose a threat to SEPTA's current operations and ability to meet the public transit needs of Southeastern Pennsylvania.

II. ROUTING OF LOCAL FREIGHT TRAFFIC TO THE LANSDALE CLUSTER

Of great concern to SEPTA, from both a safety and operational standpoint, is the route by which the Applicants plan to move local freight traffic to the Lansdale Cluster[1] following Acquisition. According to the Joint Operating Plan, freight operations on SEPTA lines centered around Lansdale will be allocated to CSX. Today, Conrail serves that territory from Abrams Yard via the Stoney Creek Branch, yet the Applicants propose to split the allocation of the Stoney Creek Branch between NS and CSX, while Abrams yard, the local yard by which CSX could access the Lansdale Cluster, is to be allocated exclusively to NS. Therefore, the only logical route by which CSX's Lansdale Cluster could be connected to other lines assigned to CSX is through SEPTA's Main Line route via Wayne Junction, where all but two of SEPTA's rail routes and several hundred commuter trains operate on a daily basis. The use of SEPTA's Main Line to route local freight traffic to the Lansdale Cluster is absolutely unacceptable to SEPTA and would undoubtedly cause significant adverse operational, safety and environmental impacts to SEPTA's passenger transit service in the Southeastern Pennsylvania region.

Precisely for the purpose of removing local freight traffic from SEPTA's Main Line and avoiding the associated hazards, Conrail and PADOT extensively renovated the Stoney Creek

[1] Consists of the SEPTA owned lines of the former Reading Railroad in the northern suburbs of Philadelphia.

Branch so that Conrail's local freight traffic could access the Lansdale Cluster via Abrams Yard in Norristown. By proposing to divide the Stoney Creek Branch between the Applicants, while allocating the Lansdale Cluster to CSX and Abrams Yard to NS, the Applicants would appear to revert to using a route which was long ago discontinued by Conrail and would disrupt the present freight and commuter operations in the Southeastern Pennsylvania region.

Despite the significant ramifications of routing freight traffic through SEPTA's heavily utilized Main Line, and altering the present freight operations in the region, the Applicants have completely failed to address this issue in either their operating plans or SIPs. Page 223 of CSX's SIP reads as follows:

> Conrail operates over a one-mile SEPTA-owned segment on Norristown, PA. The trackage rights on that segment will be allocated to NS with CSXT also retaining limited overhead trackage rights for dimensional traffic. Conrail also operates local service over several other routes in the Philadelphia area owned by SEPTA, NJT or AMTRAK. These routes would become part of the South Jersey/Philadelphia Shared Assets Area, and thus the safety aspects of operations on those routes will be addressed in the Shared Assets SIP. (emphasis supplied).

This statement by CSX is simply incorrect. Most of the SEPTA-owned lines in the Lansdale Cluster are to be allocated to CSX, not to the Conrail Shared Assets Operations ("CSAO"). In fact, the CSAO SIP neither lists these lines nor addresses the safety or environmental effects of routing traffic to the Lansdale Cluster via SEPTA's Main Line. In addition, NS' SIP exhibits confusion as to SEPTA's concerns with regard to this issue. At page 200, NS states: "The Norristown concern involved SEPTA's perception that CSXT trains, in order to serve the Stoney Creek Branch, would have to execute a reverse movement over tracks shared with SEPTA trains in downtown Norristown." As discussed at Part III. infra, SEPTA is concerned that CSX will

route dimensional, doublestack freight traffic through Norristown using a "wye" movement, but this in no way concerns the issue of CSX's routing of local freight traffic to the Lansdale Cluster via SEPTA's Main Line.

Although it is not stated, it may in fact be the Applicants' intention to in fact route local freight traffic to the Lansdale Cluster from either West Falls or Woodbourne via Abrams Yard. This would require NS to grant CSX overhead trackage rights for local freight destined for the Lansdale Cluster, assuming that NS has any right to assign to CSX, on a non-exclusive basis, without SEPTA's consent, the rights to operate over SEPTA lines between Norris Interlocking and a portion of SEPTA's Stoney Creek Branch.[2] If CSX does not intend to use Abrams Yard, SEPTA asserts that the environmental and safety impacts of the alternative route through SEPTA's Main Line have not been addressed. A thorough analysis of this issue would yield the conclusion that routing freight traffic through SEPTA's Main Line is unworkable.

III. ROUTING OF DIMENSIONAL FREIGHT TRAFFIC THROUGH NORRISTOWN, PENNSYLVANIA

According to NS' Operating Plan, NS proposes to grant CSX permanent overhead trackage rights to operate excess dimensional traffic (which it is assumed could mean doublestack freight trains, as well as multi-level and high-and-wide), including doublestack freight trains, over (1) the Norristown Connector (owned by SEPTA), (2) the track between CP

[2] In fact, it is unclear whether the Applicants have the ability to assign Conrail's trackage rights over SEPTA owned lines to both parties simultaneously without SEPTA's consent. Conrail has maintained that its trackage rights under the 1979 sales agreement are exclusive. For NS and CSX each to retain those rights (or in one instance, potentially NS, CSX and CSAO) belies Conrail's long-standing argument that the trackage rights over SEPTA-owned lines are exclusive.

River (West Falls) and Abrams, Pennsylvania and (3) Conrail's Morrisville Line between CP-King and Woodburne (CP-Wood), Pennsylvania, plus run-around rights on a short portion of SEPTA's Norristown Line. See NS Operating Plan, volume 3B at page 108. The Applicants provide no information as to the volume and frequency of freight traffic CSX plans to operate pursuant to this grant of permanent trackage rights or the environmental and safety impacts to the Norristown area. At page 4-37 of the DEIS, it is stated that the proposed transaction would have no adverse effect on SEPTA's passenger service on the Norristown, Pennsylvania Connector due to NS' proposed increase of only 2.6 freight trains per day in that area. The DEIS nowhere addresses NS' proposed grant of permanent trackage rights to CSX, the environmental impact of increased doublestack freight traffic in the Norristown area or the potential threat CSX's dimensional freight traffic poses to SEPTA's maintenance of safe and reliable passenger service on its existing Route R6 Norristown Line.

Based on the description of the proposed grant, SEPTA anticipates that CSX dimensional freight traffic will execute a run-around or "wye" movement as it proceeds from West Falls to Abrams (Norris Interlocking) and through to Conrail's Morrisville Line. See SEPTA diagrams A and B. CSX's run-around move will interfere with SEPTA's Route R6 trains for lengthy periods of time, block heavily traveled grade crossings and require the raising of catenary not cleared for dimensional traffic. Moreover, the grant of "permanent" trackage rights to CSX could adversely affect SEPTA's ability to convert its own track and right of way on the Norristown Line to any mode not compatible with CSX's operations. Despite the significance of

this proposed grant to CSX, the Applicants have failed to address the adverse effects likely to flow from increased doublestack freight traffic through the Norristown area.

Operationally, it is anticipated that in order for a CSX doublestack freight train to execute the run-around movement from Abrams (Norris Interlocking), it would likely move slowly backwards through both the trailing point switch at Norris Interlocking and the facing point switch at Island Interlocking, until it reaches the trailing point switch at Bridge Interlocking. At Bridge Interlocking, the CSX train would intercept SEPTA's Route R6 Norristown Line on an electrified single track. On weekdays, SEPTA's Route R6 operates over 50 trains in this area from 5 A.M. to 12:20 P.M., and runs continuously during the peak periods (6:30 A.M. to 9:30 P.M.) and approximately every 30 to 60 minutes during off peak hours. The CSX doublestack train would continue backing from Bridge Interlocking onto the Stoney Creek Branch through Elm Interlocking. Between Bridge Interlocking and Elm Interlocking, there are two heavily used grade crossings at Main Street and Marshall Street and the Route R6 Main Street passenger station. Beyond Elm Interlocking on the Stoney Creek Branch, there are two more grade crossings at Elm Street and Sterigere Street.

Once the CSX doublestack train reaches the Stoney Creek Branch and receives a signal to reverse, it would retrace its path to Bridge Interlocking, once again intercepting SEPTA's Route R6, this time at Elm Interlocking. From Bridge Interlocking, the CSX doublestack train would proceed to Kalb Interlocking using a sharply curved electrified single track used by SEPTA's Route R6 trains. Presently, the catenary lines at Bridge Interlocking are not cleared for movement of doublestack freight traffic, making the track segment from Bridge Interlocking to

Kalb Interlocking inaccessible by doublestack trains. Next, proceeding against the flow of SEPTA's outbound Route R6 trains, the CSX doublestack train would continue through Kalb interlocking for approximately 0.5 miles until it reached Ford Interlocking. At Ford Interlocking, the CSX train would access the Conrail Morrisville Line on a single track connection to the main route to Morrisville. The overhead trackage rights granted to CSX by NS extend to Wood Interlocking on Conrail's Trenton Line, where such dimensional trains would interface with SEPTA's Route R3 West Trenton Line operations.

The movement of CSX doublestack trains from West Falls, through the highly congested Norristown area, to the Morrisville and Trenton Lines, adversely impacts SEPTA's operation of both its Route R6 Norristown and Route R3 West Trenton Lines. Freight traffic in Norristown is limited to a speed of 10 miles per hour. While the CSX doublestack trains make the cumbersome wye and reverse movement from Abrams (Norris Interlocking) to the Stoney Creek Branch, presumably at speeds below 10 miles per hour, they would block SEPTA's Route R6 commuter service. After completing the reverse movement, the CSX doublestack trains, as they make their way to Conrail's Morrisville Line, would again intercept SEPTA's Route R6 at speeds of 10 miles per hour or less, further hindering the safe and reliable service SEPTA currently provides on the Norristown Line.

In addition to the delays likely to result from the wye and reverse movement of long doublestack freight trains on the Norristown Line, SEPTA is fearful that CSX's undisclosed use of the trackage rights to be granted by NS will cause an increase in freight traffic not addressed by the DEIS. The DEIS considers NS' proposed 2.6 train per day increase in freight traffic to be

minimal. However, the proposed increase by NS in combination with CSX's utilization of the trackage rights to be granted by NS, threatens to worsen SEPTA's passenger service and the coordination of freight and transit operations in the already constrained and congested Norristown area. Even if and when NS completes its planned Pattenburg Tunnel Clearance Project, the uncertain impact of CSX's infusion of dimensional freight traffic could serve to diminish or even negate any benefit to be derived on the Norristown Line. Additionally, due to the present growth in passenger demand, SEPTA has plans to increase passenger service on the Norristown Line, and is studying the feasibility of conversion from commuter rail to a more cost effective rail mode. The grant of "permanent" trackage rights to CSX to operate doublestack freight traffic could preclude SEPTA from converting its track to meet the transit needs of the region.

NS' proposed grant of permanent doublestack freight trackage rights to CSX would likely have detrimental effects on SEPTA's Route R3 West Trenton Line as well. CSX's freight traffic which would be routed through Norristown, as discussed above, will meet SEPTA's Route R3 West Trenton Line between Wood Interlocking and Trent Interlocking, presenting a real possibility for delays and unreliable service. In addition, the Pennsylvania Department of Transportation ("PADOT") will renovate I-95 beginning in 2000, in areas currently served by SEPTA's Routes R3 and R7. As part of a mitigation plan, SEPTA's Routes R3 and R7 will serve as an alternate means of travel for drivers displaced by the PADOT renovations. Depending on the volume of freight traffic CSX plans to operate through Norristown and through the Wood and Trent Interlockings, SEPTA's Route R3 West Trenton Line will be faced with

increased freight traffic and possible delays and unreliable passenger service at a time when its ridership is likely to increase dramatically.

NS should be precluded from granting ***permanent*** trackage rights which would hinder SEPTA's ability to operate over its own lines in accordance with the needs of the Norristown area. In order to assess properly the environmental, safety and operational consequences of NS' grant of permanent trackage rights to CSX, the Applicants, and in particular CSX, must provide a detailed explanation of their planned freight operations in this region. It is clear that CSX must commit to operating its doublestack freight traffic via the Conrail line it has been assigned, from West Falls to Woodburne. Applicants have failed to determine the adverse impacts to SEPTA should CSX operate their dimensional traffic via Norristown. However, if it is concluded that the impacts to SEPTA are acceptable in the short term (and thus far that has not occurred), then as applicants have demonstrated elsewhere in their plans, a 3 year time period should be ample for CSX to clear its own route between Philadelphia and North Jersey.

IV. DISPATCHING ON LINES TO BE ALLOCATED TO CSX

At page 48 of the CSAO SIP, the Applicants state that under the proposed Acquisition communication in the Shared Assets Area ("SAA") will be enhanced by the consolidation of the dispatching function into a single facility located in Mt. Laurel, New Jersey. Conrail currently dispatches its Philadelphia region rail lines from Mt. Laurel using a number of different dispatching assignments. While the Applicants' proposed change to the dispatching function appears beneficial on its face, it fails to account for the right CSX would have as a successor to

the 1990 Trackage Rights Agreement between Conrail and SEPTA to revoke, upon sixty days notice, the dispatching rights currently held by SEPTA for its Route R8 Fox Chase Line over a 3.5 mile section of the Conrail Trenton Line between Newtown Junction (NX) and Cheltenham Junction Interlockings. Should CSX exercise the right to revoke, the dispatching function would likely move to CSX's central dispatch location in Jacksonville, Florida. Instead of the relatively close dispatching point in Mt. Laurel, where Conrail currently controls the trackage adjacent to SEPTA dispatched territory owned by both SEPTA and Conrail, SEPTA's Route R8 commuter service could be conceivably placed at the mercy of a dispatcher located nearly 900 hundred miles away in the state of Florida.

SEPTA is faced with the same situation between Wood and Trent Interlockings where its Route R3 West Trenton Line, as discussed at Part II. above, interconnects with CSX doublestack traffic emanating from the Norristown area, as well as CSX manifest trains using the Trenton Line. SEPTA currently dispatches this territory, but CSX would have the right to revoke SEPTA's dispatching function and move it to Jacksonville, Florida to the detriment of SEPTA's ability to continue its provision of reliable commuter service. The problems associated with CSX's right to revoke and move the dispatching function are exacerbated by the PADOT's planned renovation of I-95 in areas where SEPTA's Routes R3 West Trenton and R7 Trenton Lines presently operate. As discussed above, SEPTA's Route R3 will become an alternate means of travel for drivers displaced by the PADOT renovations. Therefore, the ridership on SEPTA's Route R3 is expected to greatly increase over the next four years at the same time CSX would have the right to move the dispatching function out of the region. PADOT has committed

over $57 million to improve facilities on these two lines to handle increased ridership. Specific to SEPTA's Route R3, signal improvements, overnight commuter car storage, station parking expansion and station improvements are funded.

It should be noted that SEPTA and Conrail separated passenger and freight operations along the Trenton Line between Neshaminy Falls and Woodburne. SEPTA believes that similar arrangements can be made between Woodburne and West Trenton, thereby alleviating the potential negative impacts associated with this dispatching function issue.

V. CUMULATIVE EFFECT ANALYSIS OF THE PROPOSED ACQUISITION'S IMPACT ON SEPTA'S EXPANSION OVER THE MORRISVILLE AND HARRISBURG LINES

As asserted in SEPTA's Comments and Request for Conditions, in order to properly meet the expanding transit service needs of its ridership in the Southeastern Pennsylvania region and beyond, SEPTA is currently studying the feasibility of utilizing a portion of Conrail's Harrisburg Main Line from Norristown to Reading and Conrail's Morrisville Line from Glen Loch to Morrisville. It is identified in the DEIS that a cumulative effects analysis is appropriate to determine whether SEPTA's planned expansion can be carried out in conjunction with the Applicants' increase in freight traffic in Montgomery County. At Table 5-PA-35, it is stated that "Freight traffic may limit potential for passenger service to expand." To mitigate this harm to expanded commuter rail service, it is stated in the DEIS that the SEA has encouraged the Applicants to meet with SEPTA "to ensure that the proposed Acquisition can be accomplished without adversely affecting commuter rail plans." It is respectfully submitted that SEPTA has

met with the Applicants regarding expanded passenger service on the Harrisburg and Morrisville Lines to no avail.

Prior to the proposed Acquisition, SEPTA was in a position to complete its studies of the Harrisburg and Morrisville Lines, obtain funding for the expansion of its commuter rail service and undertake the necessary steps to meet the public need for expanded passenger service to Reading and from Glen Loch to Morrisville. If there is a likelihood, as stated in the DEIS, that the proposed Acquisition will block SEPTA's efforts to expand over the Harrisburg and Morrisville Lines, SEPTA and the commuting public will be detrimentally effected by the proposed Acquisition and SEPTA will be unable to meet the expanding needs of the region. It is clear by the language of the DEIS that the SEA recognizes the need for expansion in the region and seeks to avoid activity by the Applicants that would thwart such expansion. Accordingly, SEPTA requests that the SEA further consider this issue and propose a mitigation measure that will protect SEPTA's ability to expand its commuter rail service over the Harrisburg and Morrisville Lines.

VI. CONRAIL TRAIN DENSITIES

Figure D.6-1 of the DEIS indicates that train densities from Eastwick, Pennsylvania to Marcus Hook, Pennsylvania will undergo a daily increase from 3.0 freight trains to 7.8 freight trains. SEPTA was told verbally by the Applicants that this significant increase is incorrect, but no errata sheet correcting these figures has been provided. If the Applicants do not intend to correct these figures, they would be proposing an increase of over 260% on lines between these

two points. Such an increase is of great significance and has the potential of adversely impacting SEPTA's existing plans to increase the frequency of its Route R1 Airport Line service from 30 minute headways to 20 minute headways.

VII. SIGNIFICANT INCREASES IN ANNUAL HAZARDOUS MATERIAL CAR LOADS ON SEPTA'S ROUTE R8 FOX CHASE LINE

Table 5-PA-8 of the DEIS notes an estimated increase of 15,000 cars per year of hazardous material at Newtown Junction on SEPTA's Route R8 Fox Chase Line. This constitutes a 300% increase in hazardous material cars on SEPTA's Route R8. However, no mitigation measures regarding this potentially adverse impact have been proposed.

VIII. SEPTA'S 1982 OPERATING AGREEMENT WITH AMTRAK

The last sentence of the fourth paragraph on page PA-20 of the DEIS states: "SEPTA's 1987 operating agreement with AMTRAK expires in 2016." The operating agreement to which this sentence refers is actually SEPTA's 1982 agreement with AMTRAK which remains in effect unless either party provides 120 days notice of termination. The referenced 1987 agreement is the 47 station lease agreement between SEPTA and AMTRAK which expires December 31, 2016.

IX. CONCLUSION

In summary, the conclusion reached at page 4-31 of the DEIS that commuter operations in the Philadelphia metropolitan area would be "unaffected by the proposed Acquisition" is false, due to the incomplete, unclear and unintentionally perhaps incorrect statements of the Applicants. The routing of local freight traffic to the Lansdale Cluster via SEPTA's Main Line, the proposed grant of permanent trackage rights for dimensional freight traffic through Norristown, the negative impacts of moving the dispatching on CSX lines to Jacksonville, Florida and the blocking of SEPTA's planned expansion along the Harrisburg and Morrisville Lines are all issues with significant implications for the future of the Philadelphia metropolitan area. Furthermore, the substantial increases in train densities from Eastwick to Marcus Hook and hazardous waste cars along SEPTA's Route R8 Fox Chase Line pose significant, unexplained threats to SEPTA's operations. Substantial adverse impacts to the Southeastern Pennsylvania region are likely to result from the proposed Acquisition should the Applicants fail to address the issues herein raised and thoroughly analyze and ameliorate their potential adverse effects.

Respectfully submitted,

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DIAGRAM "A"

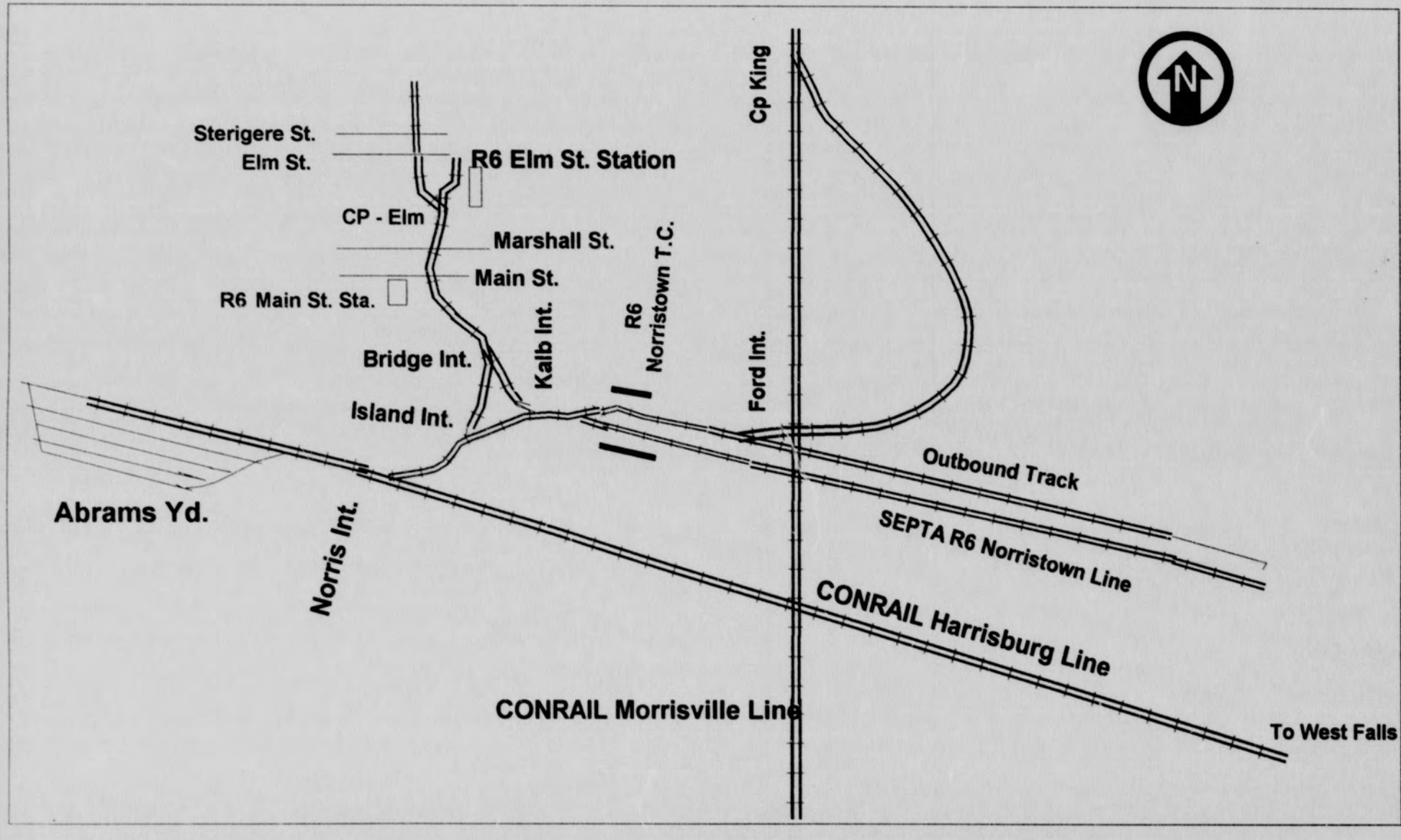
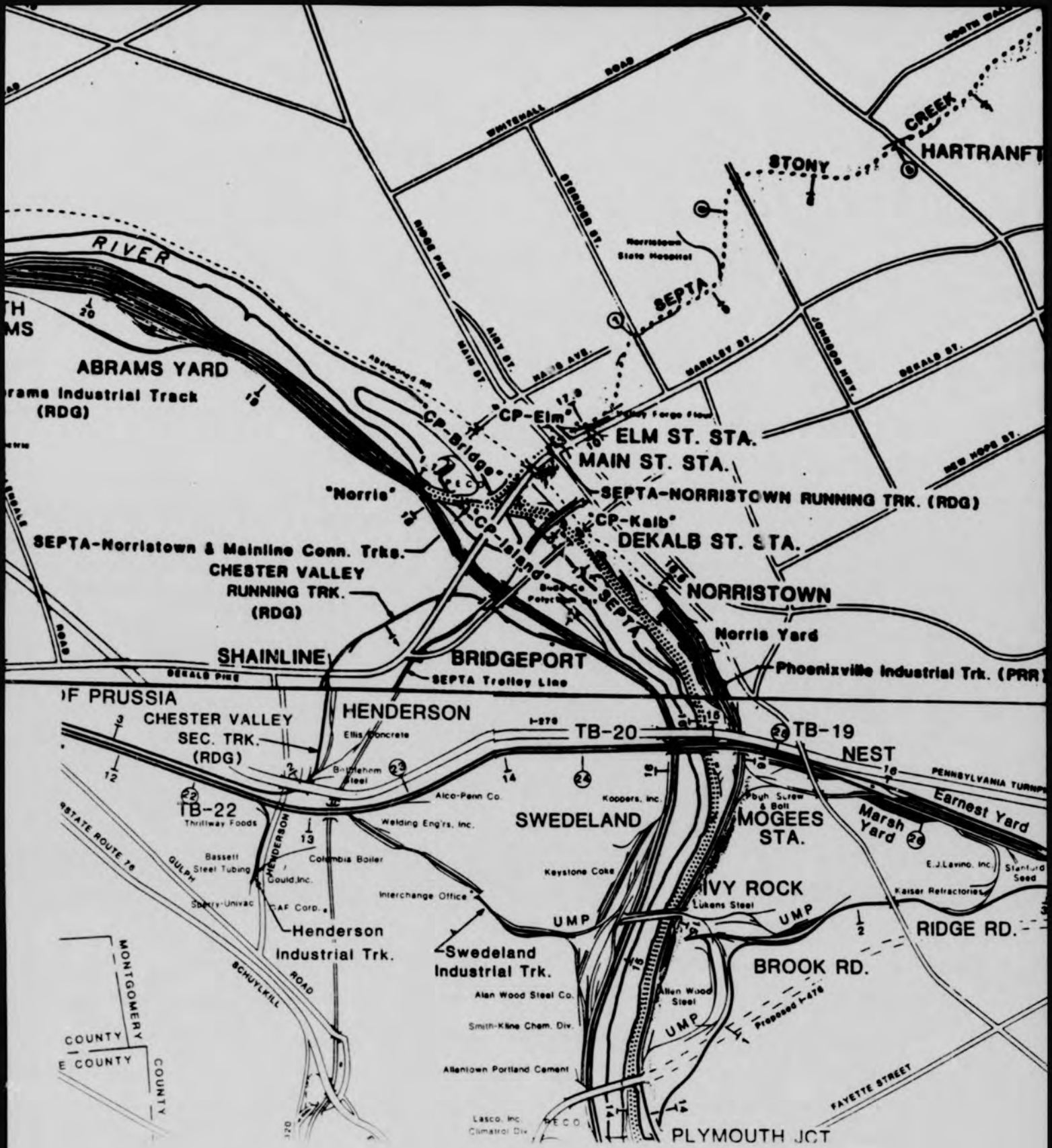

Sterigere St.
Elm St.
R6 Elm St. Station
CP - Elm
Marshall St.
Main St.
R6 Main St. Sta.
Bridge Int.
Island Int.
Kalb Int.
R6 Norristown T.C.
Cp King
Ford Int.
Abrams Yd.
Norris Int.
Outbound Track
SEPTA R6 Norristown Line
CONRAIL Harrisburg Line
CONRAIL Morrisville Line
To West Falls
N

DIAGRAM "B"


RIVER
ABRAMS YARD
rams Industrial Track
(RDG)
CP-Bridge
CP-Elm
ELM ST. STA.
MAIN ST. STA.
SEPTA-NORRISTOWN RUNNING TRK. (RDG)
"Norris"
CP-Island
CP-Kalb"
DEKALB ST. STA.
SEPTA-Norristown & Mainline Conn. Trks.
CHESTER VALLEY
RUNNING TRK.
(RDG)
NORRISTOWN
Norris Yard
SHAINLINE
BRIDGEPORT
SEPTA Trolley Line
Phoenixville Industrial Trk. (PRR)
HENDERSON
CHESTER VALLEY
SEC. TRK.
(RDG)
TB-20
TB-19
TB-22
Thriftway Foods
SWEDELAND
MOGEES
STA.
NEST
Earnest Yard
Marsh
Yard
Alco-Penn Co.
Koppers, Inc.
Welding Eng'rs, Inc.
Columbia Boiler
Keystone Coke
Interchange Office
IVY ROCK
Lukens Steel
RIDGE RD.
BROOK RD.
Henderson
Industrial Trk.
Swedeland
Industrial Trk.
Alan Wood Steel Co.
Smith-Kline Chem. Div.
Allentown Portland Cement
Lasco, Inc.
Climatrol Div.
Allen Wood
Steel
PLYMOUTH JCT
FAYETTE STREET
SCHUYLKILL
ROAD
MONTGOMERY
COUNTY
STONY
CREEK
HARTRANFT
SEPTA
Norristown
State Hospital
Abandoned RR
DEKALB PIKE
MAIN ST.
ARMY ST.
HARLEY ST.
DEKALB ST.
WHITEHALL
ROAD
Proposed I-476
UMP

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments Of The Southeastern Pennsylvania Transportation Authority To The Draft Environmental Impact Statement And Safety Integration Plans was served upon those listed on the service list, via first-class mail, postage prepaid on the 30th day of January, 1998.

Thomas E. Hanson, Jr.

THOMAS E. HANSON, JR., ESQUIRE

STB FD 33388 2-2-98 K 185472

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Education and the Workforce

Congress of the United States
House of Representatives

185472

February 2, 1998

Ms. Elaine Kaiser
Chief, Environmental Analysis
Surface Transportation Board
1925 K Street NW
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Washington, D.C. 20423-0001

RE: Finance Docket No. 33388

Dear Ms. Kaiser:

As Member of Congress representing Ohio's 10th district, and as a Party of Record to this proceeding, I hereby submit an original and twenty-five copies of Comments on the Draft Environmental Impact Statement as issued by the Surface Transportation Board's Section on Environmental Analysis for Finance Docket No. 33388.

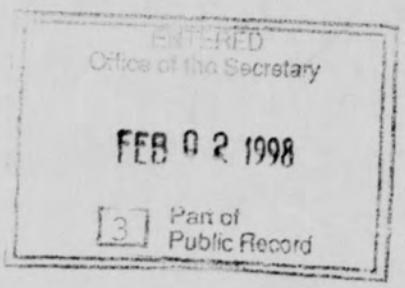
Thank you for your consideration.

Sincerely,

Dennis J. Kucinich

Dennis J. Kucinich
Member of Congress

DJK:ec



[PUBLIC]

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

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT AS ISSUED BY THE SURFACE TRANSPORTATION BOARD'S SECTION ON ENVIRONMENTAL ANALYSIS FILED BY CONGRESSMAN DENNIS J. KUCINICH

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Dated February 2, 1998

[PUBLIC]

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

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT AS ISSUED BY THE SURFACE TRANSPORTATION BOARD'S SECTION ON ENVIRONMENTAL ANALYSIS
FILED BY CONGRESSMAN DENNIS J. KUCINICH

Congressman Dennis J. Kucinich, representing the 10th Congressional District of Ohio, hereby submits these comments in response to the Draft Environmental Impact Statement (DEIS) as issued by the Surface Transportation Board's Section on Environmental Analysis.

The finding by SEA that Norfolk Southern's Cleveland-Vermilion rail line segment — traversing the west side of Cleveland, Lakewood, Rocky River, Bay Village and Westlake — meets or exceeds the Board's thresholds for further analysis is encouraging. It is also encouraging that a considerable amount of attention (Section 5-OH-20) was devoted to the effects of nearly tripling freight train traffic through these densely populated, residential areas.

However, upon closely reading SEA's findings, there are contradictions. SEA

recommends that Norfolk Southern and the affected communities "shall meet" to "negotiate a mutually-accepted binding agreement" in Section 5-OH.20 (Ohio Areas of Concern). However, several of SEA's findings prior to this section apply statistical analyses to conclude that mitigation for most specific safety and environmental measures are not needed — conclusions that disregard the unique character of the West Shore communities. The DEIS is therefore ambiguous when it finds that the Cleveland-Vermilion line does not meet most criteria for mitigation, but later singles out the west side of Cleveland and West Shore communities as an area of particular concern.

Should a "mutually-accepted binding agreement" be unobtainable, recommended mitigation on the part of SEA becomes all the more crucial. Specifically, if an agreement is not reached before the STB considers the final merger agreement, it is not clear which conclusions will be given more weight — that mitigation in most safety and environmental areas is not needed, or that Cleveland and the West Shore communities are of particular concern. Contradictions in SEA's Final Environmental Impact Statement (FEIS) could become grounds for the applicants to argue that no mitigation is needed, and should not be imposed as a condition of the merger. Clearly, these contradictions need to be reconciled — or at the very least addressed — in the Final Environmental Impact Statement.

Finally, no increase in rail traffic in the Cleveland area will be acceptable as a result of the Conrail acquisition unless it is mitigated by adequate and appropriate grade separations in the Cities of Berea and Olmsted Falls. Those two communities in the southwest corner of Cuyahoga County, and the 10th Congressional District, will bear a disproportionate burden as a result of the Conrail acquisition. The needs of those communities' residential and commercial transportation require adequate and appropriate grade separation.

I. SECTION 5-OH.2 PROPOSED CONRAIL ACQUISITION ACTIVITIES IN OHIO

SEA finds that the NS Cleveland-Vermilion line is one rail line segment that meets or exceeds the Board's environmental thresholds (Table 5-OH-1, pg. OH-6).

The DEIS states, "Both CSX and NS plan to undertake extensive activities in Ohio as part of the proposed Conrail Acquisition. The proposed Conrail Acquisition-related activities that meet or exceed the Board's thresholds for environmental analysis in Ohio include increased train operations on a total of 36 rail line segments" (pg. OH-3).

As stated above, it is encouraging that SEA finds the Cleveland-Vermilion line to be one of the 36 rail line segments that meets or exceeds the Board's thresholds for analysis. Specifically, SEA found that the proposed increase in freight train traffic met the Board's requirements for further analysis in the following six areas: rail operation safety, at-grade crossing safety, hazardous material transport, roadway crossing delays, air pollution emissions, and noise pollution.

However, of these areas that exceed the Board's thresholds for further analysis, only one — hazardous material transport — warranted SEA to recommend mitigation (Table 5-OH-10, pg. OH-30). As stated above, these conclusions are ambiguous when coupled with SEA's later conclusion that the area affected by NS's proposal to nearly triple freight train traffic on its Cleveland-Vermilion line is concerning enough to merit special consideration.

II. 5-OH.4 OHIO SAFETY: FREIGHT RAIL OPERATIONS

SEA finds that the increase in freight train traffic on the Cleveland-Vermilion line will not cause a significant enough number of freight train accidents to warrant mitigation (Table 5-OH-6, pg. OH-15).

SEA evaluated the potential change in safety on all rail line segments where the proposed Conrail Acquisition would result in eight or more additional freight trains per day. Clearly, with

an increase (using the numbers that Norfolk Southern submitted in its application) from 13.5 to 37.8 trains per day, that criterion is met.

The DEIS states, "While increased freight train activity would increase the probability of a freight train accident, SEA did not consider an increase significant unless the predicted accident rate shortened the duration between accidents to one every 100 years or less per mile" (pg. OH-14). SEA's predicted accident rate for the Cleveland-Vermilion line drops from one accident per mile every 336 years to one accident per mile every 127 years (Table 5-OH-6, pg. OH-15).

The Federal Railroad Administration (FRA) does not require railroads to report rail operation accidents in a form that will reveal the number of accidents that have occurred on a particular rail segment. Thus, it is not possible to know if the NS Cleveland-Vermilion line has experienced more accidents than the "predicted accident rate." However, while applying an imprecise "predicted accident rate" may be acceptable when dealing with sparsely populated and/or highly industrialized areas, it is not acceptable when dealing with densely populated, residential areas where accidents can be far more devastating. A different calculation is needed when determining if mitigation is needed for densely populated, residential areas.

Using a strict "predicted accident rate" to determine if mitigation is warranted without looking at the unique character of the West Shore communities could endanger citizens. As stated in the Responsive Environmental Report, filed with the Board on October 1, 1997, Lakewood is the most densely populated area between New York and Chicago. It has 27 at-grade railroad crossings within 2.7 miles, more than any other city in the country. Much of the population resides on one side of the tracks while major emergency services are on the other side of the tracks. An accident in Lakewood could not only cause harm within the immediate vicinity, but would have a multiplying factor if emergency vehicles are not able to cross the tracks because a derailed train is blocking the way.

While SEA predicts an accident every 127 years per mile, the damage done to citizens because of the geography of this densely populated, residential area could be catastrophic when

compared to most other areas. Mitigation that reduces the likelihood of accidents is most assuredly needed in this densely populated, residential area that is literally bisected into north and south segments by Norfolk Southern's railroad tracks. However, mitigation that closes off grade crossings along the West Shore line would not be acceptable because it would have the effect of closing those roads off to emergency vehicles permanently. Street closings, therefore, would not be an approriate form of mitigation.

III. 5-OH.6 OHIO SAFETY: HIGHWAY/RAIL AT-GRADE CROSSINGS

SEA finds that additional freight train traffic on the Cleveland-Vermilion line that would cause an increase in highway/rail at-grade crossing accidents to be "below the criteria for significance" (pg. OH-20).

SEA used two different calculations to predict if increased freight traffic would cause significantly more at-grade crossing accidents. The Cleveland-Vermilion line was not specifically mentioned in this section. In fact, despite two different calculations, SEA determined that every single at-grade crossing in Cuyahoga County did not meet the "criteria for significance". Thus SEA does not recommend mitigation for at-grade crossing safety in the entire region.

Again, predicted accident rates may be appropriate for areas where at-grade crossings are few and far between. However, as stated above and in the Responsive Environmental Report filed on October 1, 1997, the west side of Cleveland and the West Shore communities are densely populated, residential areas. Lakewood is particularly vulnerable in this area as it has 27 at-grade crossings within 2.7 miles. Clearly, imprecise "predicted accident rates" are not reliable enough under these circumstances.

Actual experience reveals that accidents in this area exceed STB's criteria. According to Table 5-OH-8 in the DEIS (pg. 5, 6), there were fourteen at-grade crossing accidents in Cuyahoga County along the Cleveland-Vermilion line between 1991-1995. Two at-grade

crossings (Cook Avenue and Andrews Avenue) experienced two accidents between 1991 and 1995. Two accidents in four years not only exceeds the predicted accident rate, but also meets the Board's "criteria for significance". Furthermore, both of these crossings have only gates and no flashers.

At a minimum, these two crossings should warrant mitigation. The fact that the DEIS does not find mitigation warranted indicates a shortcoming in the SEA's universal application of "predicted accident rates" for all areas despite wide variations in population density, community composition, geography, traffic patterns, etc. Nevertheless, closing of grade crossings along the West Shore line would be inappropriate because to do so would block off needed emergency services. Therefore, the only appropriate mitigation is to not allow an increase in freight train traffic along the West Shore line.

IV. 5-OH.7 RAIL TRANSPORT OF HAZARDOUS MATERIAL

SEA finds that an increase in hazardous material transport on the Cleveland-Vermilion line as a result of additional freight train traffic is potentially significant, and mitigation is recommended (Table 5-OH-10, pg. OH-30).

The DEIS states, "SEA applied two different criteria to determine if the effects of rerouting hazardous material car loads are potentially significant: 1) The volume of hazardous materials transported on a rail line would be 10,000 or more car loads per year. The Acquisition-related change in volume of hazardous material car loads would upgrade a rail line segment to a key route designation. 2) The volume of hazardous material car loads doubles, and exceeds 20,000 or more carloads per year. SEA has termed rail line segments which meet these criteria a 'major key route'" (pg. OH-29).

The Cleveland-Vermilion line, post-Acquisition, is one of ten rail line segments in all of Ohio that will become a New Key Route as well as a Major Key Route in the transportation of hazardous materials (hazmats). SEA recommendations include requiring CSX and NS to bring

the rail line segments into compliance with the Association of American Railroad's key route standards and practices ("base level"), and that CSX and NS develop a Hazardous Materials Emergency Response Plan to contain and minimize the potential effects of any accidents or incidents ("expanded mitigation").

Because hazmat transportation through the west side of Cleveland and the West Shore communities will increase by 255 percent (from 9,000 to 32,000 car loads per year), the recommended mitigation is wholly inadequate. STB should simply not allow 32,000 car loads of hazmats per year to traverse any densely populated, residential areas, much less a densely populated, residential area which has more at-grade crossings than anywhere else in the nation.

Furthermore — assuming railroads use appropriate containers — hazardous material transport is not dangerous in and of itself, and is only dangerous when an accident occurs. This being tautological, it begs the question: how can SEA justify its finding that the potential increase in rail operation and at-grade crossing accident rates are not significant? Given the circumstances of a 255 percent increase in hazardous materials being transported through a densely populated, residential area — in conjunction with the geographic and traffic patterns of the area — application of an imprecise "predicted accident rate" is rendered all the more inappropriate for the west side of Cleveland and the West Shore communities.

V. 5-OH.9 ROADWAY CROSSING DELAY

SEA finds that the additional freight train traffic will not cause significant roadway crossing delays, and does not recommend mitigation (pg. OH-33).

The DEIS states for Cuyahoga County, "Of the 12 crossings analyzed in Cuyahoga County, 10 would have a minimal increase in crossing delay per stopped vehicle." The two crossings that SEA determines will have more than a minimal increase in crossing delays were not along NS's Cleveland-Vermilion rail line segment.

SEA analyzed six at-grade railroad crossings along NS's Cleveland-Vermilion line in Cuyahoga County: West 110th St., West 117th St., Bunts Rd., Columbia Rd., Dover Center Rd., and Bradley Rd. All six of these at-grade crossings meet the Board's criteria for having 5,000 or more Average Daily Traffic (ADT). Three of these crossings have 10,000 or more ADT.

Despite ten pages of calculation formulas and explanations, it defies logic that the SEA could determine that tripling the freight train traffic in an area with more at-grade crossings than anywhere else in the country will have only "minimal" effects. For example, West 117th has more than 15,000 ADT. At the current level of 13.5 trains per day, vehicular delays as trains pass results in a maximum number of vehicles in a queue per lane of 16. Yet SEA calculates that all things remaining equal except an increase of freight train traffic to 37.8 trains per day will result in only one additional vehicle in a queue per lane (17).

Furthermore, in Table 5-OH-11, SEA determines that there will be significant increases in the numbers of vehicles that will experience delays, but does not consider it to be enough to warrant mitigation. For example, at West 110th Street, currently 116 vehicles are delayed per day. Post-Acquisition, 300 vehicles will experience delays at West 110th Street (158 percent increase). At West 117th Street, 305 vehicles experience delays, but post-Acquisition, 785 vehicles will experience delays. Clearly, the increased number of vehicles experiencing delays is more than "minimal".

Despite SEA's finding in this section that traffic delays do not warrant mitigation, SEA states in Section 5-OH.20.1 that

> Between the west side of Cleveland and Vermilion, there are 88 crossings (public and private) along the NS line, including 67 highway/rail at-grade crossings. These numerous crossings influence highway traffic patterns on the west side of Cleveland and in the West Shore communities, causing traffic delays while trains pass. Safety concerns raised by all the affected communities include delays in emergency response, vehicular crossings, and pedestrian access....
>
> SEA observed during site visits that train traffic causes delays at the 27 Lakewood crossings, potentially affecting emergency response time. A substantial

> portion of the Lakewood population, including many elderly citizens, resides north of the rail line, while the major emergency medical facilities and fire rescue services are located south of the tracks. Emergency response delays could also affect the Cudell-Edgewater neighborhood in west Cleveland, Rocky River, Bay Village, Westlake, and communities extending into Lorain County" (pg. OH-134).

The issue of traffic delay is perhaps the most contradictory of the findings by SEA. As SEA noted in Section 5-OH.20.1, emergency response time is the most critical issue facing the west side of Cleveland and the West Shore communities. SEA calculated that significantly more vehicles will experience traffic delays, and saw for itself that delays occur at the current level of freight train traffic. Despite these overarching factors, SEA still did not recommend mitigation. These contradictory findings need to be resolved in the Final Environmental Impact Statement. And again, because of the need for emergency vehicle access, road closings are not appropriation mitigation. The only appropriate mitigation for the West Shore is to keep freight traffic at or below current levels.

VII. 5-OH.12 OHIO AIR QUALITY

SEA finds that the net NOx emissions is above the emissions screening threshold of 100 tons/year, and thus found the net emissions increase to be potentially significant; however, SEA finds that mitigation is not needed.

The DEIS states, "While there are localized increases in emissions in some counties, the increases are not likely to affect compliance with air quality standards. Therefore, SEA has determined that air quality will not be significantly affected and no mitigation is necessary" (pg. OH-70).

According to the applicants' own filing with STB, NOx pollution emissions will increase in Cuyahoga County by 1,500 tons/year. This is 1,400 tons/year above the Board's screening threshold for NOx. As stated in the Responsive Environmental Report filed with STB on October 1, 1997, using the Environmental Protection Agency's own calculations, an additional 1,500

tons/per of NOx air pollution emissions will be an increase of approximately 3.5 percent.

Under the Clean Air Act, areas that do not meet the ozone standards are required to achieve a 3 percent reduction per year in NOx emissions. A 3.5 percent increase in NOx means that significant additional reductions of NOx from local businesses or vehicles would be needed to offset this increase to meet the ozone standard. Specifically, since 3 percent reductions are already required, and the additional freight train traffic is going to add another 3.5 percent, the additional freight train traffic more than doubles the amount of NOx reductions needed in order for Cuyahoga County to be in compliance.

These facts — that the applicants admit NOx emissions will be 1,400 tons/year above the Board's own screening threshold, and this increase will require Cuyahoga County to more than double its reductions in order to be in compliance — stand in clear opposition to SEA's conclusion that "While there are localized increases in emissions in some counties, the increases are not likely to affect compliance with air quality standards" (pg. OH-70).

Furthermore, to justify a determination that no mitigation is necessary based on the fact that the increases are not likely to affect "compliance" with air quality standards is highly dubious. In fact, more emissions won't affect Cuyahoga County's compliance with air quality standards because Cuyahoga County already is not in compliance with air quality standards. Is SEA arguing that because Cuyahoga County already has too much air pollution that a little more won't hurt? Clearly, a little more will hurt. Mitigation is absolutely required for air pollution emissions, which are a direct result of increased (as well as present) train traffic.

VIII. 5-OH.13 OHIO NOISE

SEA finds that the Cleveland-Vermilion line would experience increased noise levels that meet the Board's analysis threshold, but does not find it eligible for mitigation.

The DEIS states, "Train noise sources include diesel locomotive engine and wheel-rail interaction noise (or wayside noise) and horn noise. ... SEA performed an analysis to identify ...

where the proposed changes in operations meet or exceed the Board's environmental analysis thresholds. ... SEA counted sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) within the noise contours for both pre-Acquisition and post-Acquisition operating conditions" (pg. OH-71).

For NS's Cleveland-Vermilion, SEA found that the additional freight train traffic would increase noise levels by 81 percent. SEA then counted sensitive receptors along the Cleveland-Vermilion line (e.g. schools, libraries, etc.), and found the number of sensitive receptors would jump from 2,194 to 4,439. According to Table 5-OH-42, NS's Cleveland-Vermilion line will have more than twice the number of sensitive receptors than any other rail line in Ohio.

However, NS's Cleveland-Vermilion line is not on the list of rail segments that SEA finds eligible for noise mitigation. Even if mitigation had been recommended, the methods proposed by SEA to reduce noise are wholly inadequate. Noise barriers are not feasible along the track through Cleveland, Lakewood, Rocky River, Bay Village and Westlake; traffic would be seriously disrupted. Sound insulation for these densely populated communities would be economically infeasible, and rail lubrication is not adequate. Further, SEA says that for horn sounding, "mitigation is not currently feasible."

That SEA could determine mitigation is not needed for a densely populated, residential area — which will experience an 81 percent increase in noise and will have more than twice the number of sensitive receptors than anywhere else in the state — illustrates the profound shortcomings of these analyses. As SEA itself noted in Section 5-OH-20.1, "A post-Acquisition increase of rail traffic on the NS Cleveland-Vermilion corridor would increase noise levels from both mechanical wheel/rail noise and horn soundings. ... For instance, locomotives must sound their horns through much of Lakewood because its 27 highway/rail at-grade crossings are spaced only hundreds of feet apart" (pg. OH-137). A steady stream of horn blasts 37 times a day would severely disrupt the peace of these residential communities.

Furthermore, according to *Environmental Health Perspectives*, studies have shown that

noise can hinder the ability of children to learn, harm a population's health, and cause major annoyance. In a study of children who attended a school situated beside some railroad tracks, it was found that students who spent the entire six years of elementary school on the side of the school closest to the tracks were a full year behind students who had spent the entire six years on the quieter side facing away from the tracks. The author was later able to get a noise abatement system on the tracks, and after retesting the children, found that the reading level had become identical on both sides of the building. A recent study by the same author shows that those who say they are bothered by local noise levels rate their general health more poorly than those who say they are not bothered by local noise. And a study of the effects of noise on people found that people's expectations of noise level are most predictive of annoyance. "In fact, mere loudness accounts for less than 50 percent of annoyance from noise."[1]

Similar to the misapplication of "predicted accident rates" to densely populated, residential areas, SEA has misapplied noise measurements to west side of Cleveland and the West Shore communities. Densely populated, residential areas are simply not appropriate places for a steady stream of norn blasts 37 times a day. SEA noted this in a later section of the DEIS, but it is contradicted by SEA's earlier finding that this segment of railroad is not even eligible for mitigation. This contradiction needs to be resolved in the Final Environmental Impact Statement.

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[1]Environmental Health Perspectives, Plane Pollution; Vol. 105, No. 12, Dec. 1997.

IX. 5-OH.20 OHIO AREAS OF CONCERN

SEA's recommendation that Cleveland area communities negotiate a settlement with the railroads is ambiguous, does not address the environmental and commercial impact of Berea, Olmsted Falls, and southwestern Cuyahoga County.

A. SEA recognizes the west side of Cleveland and the West Shore communities as an area of particular concern, and recommends that local officials meet with NS to reach an agreement, but SEA ambiguities diminish the value of this recommendation.

A considerable amount of discussion about the effects of tripling freight train traffic in these communities is afforded in the DEIS. Some statements by SEA are encouraging. For example, "SEA observed during site visits that an increase in rail traffic on the NS rail line may affect traffic patterns at the numerous highway/rail at-grade crossings .... The proposed increase in rail traffic may cause significant impacts to vehicular movement and travel times, including emergency response services. In addition, SEA has determined that vehicular delays on cross-street traffic would occur more often under post-Acquisition conditions, particularly if such rail operations coincided with peak highway traffic hours" (pg. OH-136). However, when these statements are compared with SEA's previous finding that mitigation for traffic delays along the Cleveland-Vermilion line is not needed, SEA's conclusions are ambiguous, and should be clarified in the Final EIS.

After covering nearly all the issues raised in the Responsive Environmental Report — including grade crossing safety, emergency response, hazardous material transport, noise, air quality, and commuter rail — SEA recommends the following: the Board should retain jurisdiction to impose additional environmental mitigation for a period of no less than ten years; NS should be required to improve its highway/rail at-grade crossings on this rail line segment; if train speeds can be increased without increasing safety problem, NS should be required, at its sole expense, to improve the rail line segment to permit its trains to operate at faster speeds; to

mitigate noise problems, NS should be required to follow the best practices permitted by FRA" (5-OH-140). SEA further recommends that NS and local officials meet to reach a "mutually-accepted binding agreement". Those are seemingly clear recommendations, but their clarity is lessened by other contradictory statements in the DEIS.

SEA also references NS's mitigation proposal that was submitted to the Board on October 29, 1997. The mitigation proposal would re-route all additional freight train traffic through Berea on the Flats Industrial Track. SEA notes that the alternate routing is not currently available, and would require the completion of substantial improvements and construction of track and ancillary facilities. This mitigation includes grade separations at Front Street in Berea, and Fitch Street in Olmsted Township. The approximate cost of the mitigation is $50,000,000. Furthermore, the cities of Berea and Olmsted Falls have indicated that they require additional grade separations at Bagley Road and Columbia Road, respectively, on the Cleveland-Indianapolis route.

This alternative plan has potential, but it also has several problems. First and foremost, it is unclear where funding in excess of $50,000,000 is going to come from. Secondly, NS has stated that it cannot possibly finish all necessary construction before the STB rules on the final merger agreement. NS admits that the day the merger is approved, the west side of Cleveland and the West Shore communities will see an immediate increase in traffic by ten additional trains per day. This is unacceptable, and in itself is deserving of separate comment in the final EIS for purposes of protecting communities from the adverse consequences of a possible "phase-in" mitigation plan which reroutes increased traffic out of the West Shore area but only after mitigation-related construction is completed. No community should suffer the consequences of the railroads' lack of immediate alternatives. Thirdly, rather than merely diverting the additional freight train traffic, all of the freight traffic should be taken off this single-track rail line segment that cuts through densely populated, residential areas. Some of the freight train traffic should be shifted out of the area completely, and the rest should be shifted onto tracks that serve shippers

who need rail service for their businesses. The rail line segment could then be made available for commuter rail.

B. The DEIS does not adequately address Berea's and Olmsted Falls's environmental concerns and the needs of those communities for mitigation against the effects of the proposed Conrail acquisition.

The Ohio Cities of Berea and Olmsted Falls would be disproportionately affected by the proposed Conrail acquisition. As part of the Railroad Control Application, NS and CSX have proposed increasing freight traffic on the Berea-Greenwich and Short-Berea routes from 27.9 trains per day to 101.5 trains per day. NS and CSX have also proposed decreasing the freight traffic along the Cleveland-Vermillion route through Berea from 52.4 trains per day to 28.4 trains per day. The net post acquisition increase in trains per day through Berea, if the merger were to be approved as originally proposed, would be from 80.3 trains per day, to 129.9 trains per day, an increase of 49.6 trains per day, or a 61.8 percent increase.

Under the aforementioned plan, NS proposed increasing freight traffic along NS's Cleveland-Lakewood-Vermillion route from 16.4 trains per day to 34.1 trains per day, an increase of 17.7 trains per day. On November 25, 1997, NS amended its application to reroute the additional 17.7 trains originally proposed for Cleveland-Lakewood-Vermillion, to the Cleveland-Berea-Vermillion route. The additional 17.7 trains per day under the amended proposal would increase Berea's train traffic from 129.9 trains per day to 147.6 trains per day. This represents an 83.8 percent increase in train traffic through Berea above the pre-acquisition baseline of 80.3 trains per day.

The Berea-Greenwich route is an northeast-southwest line southwest of Cleveland, Ohio, originates in the southwest corner of Cuyahoga County, traverses the southern half of Lorain County, and approaches Greenwich from the southeast corner of Huron County. The Short-Berea route traverses the southwestern quarter of Cuyahoga County from downtown Cleveland to Berea, Ohio. These two routes constitute the local segment of the Cleveland-Indianapolis route.

The Conrail mainline along the Cleveland-Berea-Vermillion route traverses the southwest quarter of Cuyahoga County from downtown Cleveland through Berea, Ohio, and across the northern half of Lorain County to Vermillion.

All these routes, with respect to Berea and Olmsted Falls, traverse heavily populated urban/suburban residential neighborhoods. They are also situated within an important commercial district of Cuyahoga County which makes heavy use of intermodal transportation, including rail and truck transportation, and air traffic at the adjacent Cleveland Hopkins International Airport.

An 83.8 percent increase in train traffic will cause local and commercial transportation along Ohio Route 237 (Front Street), Sheldon Road, West Street, and Bagley Road in Berea, Ohio Route 252 (Columbia Road) and Maple Way in Olmsted Falls, and Fitch Street in Olmsted Township, causing the surrounding communities to bear a disproportionate burden of inconvenience due to heavy train traffic along the Conrail mainline and the Cleveland-Indianapolis route. This burden includes interference with police and fire crews reaching emergency situations; ambulances and other emergency medical services reaching injured and sick individuals and transporting them to the hospital; school buses attempting transportation of schoolchildren to and from schools; access of residents of these communities to their homes and other destinations; and access of trucks and other commercial vehicles to their pickup and delivery destinations. Grade separations on each of the aforementioned routes would be an appropriate mitigation against the effects of an 83.8 percent increase in rail traffic the proposed merger will cause.

X. CONCLUSION

SEA should reconcile the contradictory conclusions reached in the DEIS, clarify its recommendations about a "mutually-accepted binding agreement," and recommend adequate and appropriate mitigation in the form of grade separations for Berea and Olmsted Falls.

As outlined above, there are contradictory conclusions reached by SEA. These contradictions should be reconciled, or at the very least addressed, in the Final EIS. SEA should also detail what actions it recommends to the Board if an agreement between NS and representatives of the west side of Cleveland and the West Shore communities is not obtained. In particular, the Final EIS should indicate which of SEA's conclusions should be given more weight in the final decision of STB; namely, the conclusion that in most instances, the SEA has determined that the effects of tripling freight train traffic on the NS Cleveland-Vermilion line do not need mitigation, or SEA's conclusion that the west side of Cleveland and the West Shore communities are areas of special concern, and STB should impose conditions on the merger with respect to the Cleveland-Vermilion line.

SEA's recommendations in Section 5-OH.20 are encouraging because they reflect a recognition on the part of SEA that this is an area of concern. However, the recommended mitigation in this section presumes that STB could approve NS's proposal to triple freight train traffic on the Cleveland-Vermilion line under certain circumstances. Mitigation that includes closing grade crossings along the West Shore would present a danger to the affected communities because it would permanently block emergency vehicle access. It is the position of Congressman Kucinich, local officials and residents that tripling freight train traffic through the west side of Cleveland and the West Shore communities is not acceptable under any circumstances. Furthermore, any viable alternative must include grade adequate and appropriate grade separations in Berea and Olmsted Falls that would enable those communities' local and commercial traffic to bear the burden of an increase in train traffic along the Conrail mainline and the Cleveland-Indianapolis route.