

From: [Marks, Justin J.](#)
To: [Gosselin, Danielle](#)
Subject: Filing a Request for an EA
Date: Friday, August 26, 2022 3:46:37 PM
Attachments: [A Guide to the STB's Environmental Review in Construction Cases \(002\)\(223774657.1\).doc](#)
[EO-3273 Response to Port of KC's 6 month prefiling waiver request \(002\)\(223944897.1\).pdf](#)
[OEA Letter Granting Townline 6 month waiver 020722\(265714276.1\).pdf](#)
[Port KC 6 month waiver request 5 29 2020\(223920962.1\).pdf](#)
[Townline Letter 6 month waiver request.pdf](#)

Good afternoon Danielle:

I am writing to determine when an applicant for construction authority is to make a request to OEA for an EA in lieu of an EIS. Specifically, this is in reference to two different petitions for exemption for construction authority 1) Port KC and 2) Townline.

Under the Board's regulations at 49 CFR 1105.6(d), a party seeking a determination that the OEA evaluate a construction project under an EA is to make this request at the time an applicant files the notice of a construction petition or when the applicant files a six month waiver request. However, OEA's *Guide to the Surface Transportation Board's Environmental Review Process for Rail Line Construction and Operation Cases* states that the appropriate time for an EA v. EIS determination is after the site visit.

For both Port KC and Townline, out of an abundance of caution (I did not want to waive my client's rights to request an EA since it is in the regulations), I requested an EA when I filed the 6-month notice. For Port KC, I included a footnote to OEA's *Guide* acknowledging that OEA's practice is not to grant the EA until after the site visit. For Port KC, Vicki Ruston responded that an EA determination was premature. For Townline, you granted my six-month waiver and did not respond to the EA request.

In both matters, OEA has now had a chance to conduct site visits (the Port KC site visit was delayed due to Covid).

Is now the appropriate time to request an EA? For Port KC, my impression is that Adam is progressing along presuming the environmental analysis will be an EA, but I haven't received anything from OEA formally that an EA is sufficient. Townline isn't as far along in the process, but a site visit has been completed.

Alternatively, since I have the two requests outstanding, should I reference back to those requests in a letter to OEA seeking a determination?

I appreciate your thoughts and the referenced *Guide* and letters are attached for your convenience.

Justin

Justin J. Marks

Attorney at Law

Clark Hill

1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004
+1 202.772.0916 (office) | +1 703.215.6938 (cell) | +1 202.772.0930 (fax)
jmarks@clarkhill.com | www.clarkhill.com