

LAW OFFICES OF
LOUIS E. GITOMER, LLC

LOUIS E. GITOMER
Lou@lgraillaw.com

MELANIE B. YASBIN
Melanie@lgraillaw.com

600 BALTIMORE AVENUE, SUITE 301
TOWSON, MARYLAND 21204-4022
(410)296-2250
FAX (410) 332-0885

February 15, 2022

Ms. Danielle Gosselin
Acting Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: **Docket No. AB-55 (Sub-No. 806X), CSX Transportation, Inc.—Abandonment
Exemption—in Erie County, PA**

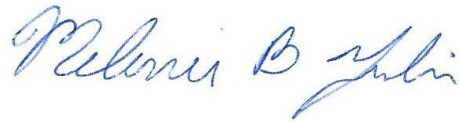
Dear Ms. Gosselin:

Attached are the comments of the Pennsylvania Department of Environmental Protection (“Department”), in the above proceeding. In its comments, the Department states that if CSX Transportation, Inc.’s (“CSXT”) activities qualify as earth disturbance, then CSXT must implement and maintain erosion and sediment controls in accordance with 25 Pa. Code 102.4(b)(1). CSXT does not believe that its activities, including the removal of rail, crossties, and possibly the upper layer of ballast, fall within the definition of earth disturbance.

Due to the line’s location in the Lake Erie Coastal Zone, the Department states that CSXT needs a Federal Consistency concurrence from the Pennsylvania Coastal Resources Management Program. CSXT sent a copy of the Combined Environmental and Historic Report to the Coastal Resources Management Program on January 13, 2022. CSXT has also filled out the submission form for federal consistency review as requested by the Department. CSXT believes that abandonment of the Line is fully consistent with enforceable policies of the Pennsylvania Coastal Resources Management Program.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

A handwritten signature in blue ink, reading "Melanie B. Yasbin". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Melanie B. Yasbin
Attorney for CSX Transportation, Inc.

Enclosure



February 14, 2022

Mr. Gene Payne
Manager Strategic Planning
CSX Transportation, Inc.
500 Water Street, J801
Jacksonville, FL 32202

RE: STB Docket No. AB-55 (Sub-No. 806X), CSX Transportation, Inc. – Abandonment
Exemption
City of Erie, Erie County

Dear Mr. Payne:

The Pennsylvania Department of Environmental Protection ("Department") received a request from CSX Transportation, Inc. ("CSXT") dated January 13, 2022 for comment on the proposed abandonment of approximately 0.5-miles of rail line adjacent to the Bayfront Highway in the City of Erie, Erie County. Specifically, CSXT is inquiring whether the activities proposed require permitting under Pennsylvania's Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 ("Clean Streams Law"); Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, as amended, 32 P.S. §§693.1-693.27 ("Dam Safety Act"); and the rules and regulations promulgated thereunder ("Regulations").

The Department understands that the abandonment of the rail line will result in the removal of the rail, crossties, and possibly the upper layer of ballast, CSXT states that it does not intend to disturb any sub grade or sub grade structures, and removal of material will be accomplished by use of the right-of-way for access. Additionally, CSXT states that it does not intend to disturb any of the underlying roadbed or perform any activities that would cause sedimentation or erosion of the soil and does not anticipate any dredging or use of fill in the removal of the track material. CSXT states that it does not intend to transport crossties and/or other debris away from the rail line and discard them along the right-of-way or place or leave them in streams or wetlands, or along the banks of such waterways.

The Department's Chapter 102 Regulations define "earth disturbance activity" as a construction or other human activity which disturbs the surface of the land, including land clearing and grubbing, grading, excavations, embankments, land development, agricultural plowing or tilling, operation of animal heavy use areas, timber harvesting activities, road maintenance activities, oil and gas activities, well drilling, mineral extraction, and the moving, depositing, stockpiling, or storing of soil, rock or earth materials (25 Pa. Code §102.1). If the activities undertaken by CXST qualify as earth disturbance, then CSXT must implement and maintain erosion and sediment controls (25 Pa. Code § 102.4(b)(1)). If CSXT's activities result in greater than one acre of earth disturbance activity, then a National Pollutant Discharge Elimination System Permit for Stormwater Discharges Associated with Construction Activities is required (25 Pa. Code § 102.5).

The Department's Chapter 105 Regulations require a permit for the construction, operation, maintenance, modification, enlargement, or abandonment of a dam, water obstruction, or encroachment (25 Pa. Code §105.11). Based strictly upon the information provided and without further field investigation by the Department, there do not appear to be any water obstructions or encroachments within the area of the rail line abandonment or impacts to water courses or wetlands. The Department reserves its right to change that determination if further field inspection or other additional information identifies any water obstructions, encroachments, or other impacts to water courses or wetlands within the area of the rail line abandonment.

If the United States Army Corps of Engineers determines that authorization under Section 404 of the Federal Clean Water Act is required, the Department may need to provide Water Quality Certification under Section 401 of the Federal Clean Water Act.

Due to the location of the rail line within the Lake Erie Coastal Zone and the proposed activities, CSXT needs a Federal Consistency concurrence from the Pennsylvania Coastal Resources Management Program under Section 307 of the Coastal Zone Management Act (16 U.S.C. § 1456) and the National Oceanic and Atmospheric Administration regulations at 15 C.F.R. Part 930. The consistency review includes notice of the project in the *Pennsylvania Bulletin* and a 15-day public comment period. The submission form for the federal consistency review is available at: <https://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=33233> Please contact Matthew Walderon (717.772.2196 or mwalderon@pa.gov).

If you have any questions regarding the permitting of rail line abandonment, please contact Karl Gross, Permitting Section Chief in the Waterways in Wetlands Program at 814.332.6138 or kagross@pa.gov.

Sincerely,



Lori A. Boughton
Regional Manager
Waterways and Wetlands Program

cc: C. Ballard
M. Yasbin, The Law Offices of Louis E. Gitomer, LLC
File