

E0-1163



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis and Administration

March 16, 2009

Ronald A. Lane, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

Re: STB Finance Docket No. 35116, R.J. Corman Railroad Company/Pennsylvania Lines, Inc. (RJCP) – Petition for Exemption to Construct and Operate a Rail Line between Wallacetown (Clearfield County) and Gorton (Centre County), Pennsylvania

Dear Mr. Lane:

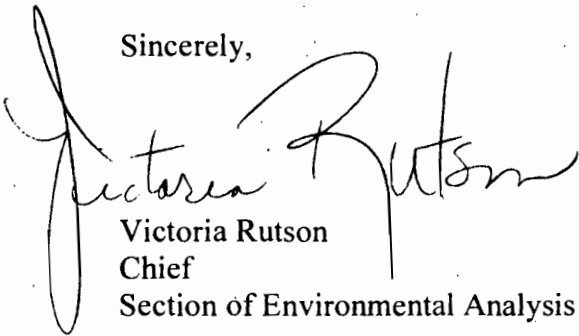
Pursuant to 40 C.F.R. 1506.5(a), the Section of Environmental Analysis (SEA) requests additional information in connection with the on-going environmental review of the above-referenced proceeding. Attached are several comments received on the draft Scope of Study for the Environmental Impact Statement (EIS) requesting that the Board expand the scope of the EIS to include the landfill, quarry and industrial park. The commenters argue that the proposed rail line and the landfill, quarry and industrial park should be considered connected actions under 40 C.F.R. 1508.25.

Specifically, various commenters maintain that the rail line is not commercially feasible without the landfill. Based on RJCP's petition for exemption filed May 20, 2008, SEA understands that the quarry would produce 2,000 tons of sand and stone per day, keeping 90 trucks per day from the local roads and highways. However, SEA has learned that the quarry has only been permitted for a maximum production of 10,000 tons of stone annually, less than two truckloads per day.

SEA requests that RJCP review the attached comments and address the issue of whether the proposed rail line and the landfill project should be treated as connected actions, as well as the discrepancy in rail traffic projections from the quarry.

Thank you for your assistance in this matter. Please provide a copy of your response as soon as possible and no later than March 30, 2009, to Danielle Gosselin of my staff and to our independent third-party consultant, Kevin Starner, at Skelly & Loy, Inc., 449 Eisenhower Boulevard, Suite 300, Harrisburg, PA 17111-2302. If you have any questions, please feel free to contact me or Ms. Gosselin at (202) 245-0300.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with a large loop at the end of the last name.

Victoria Rutson
Chief
Section of Environmental Analysis

Attachments

cc: Kevin Starner, Skelly & Loy, Inc.



PEOPLE PROTECTING COMMUNITIES

PO Box 38 • Clarence, PA 16829

www.stoplandfill.com

February 23, 2009

Danielle Gosselin
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Attention: Environmental Filing STB Finance Docket No. 35116

Dear Ms. Gosselin:

We appreciate the opportunity to participate in the Environmental Impact Statement (EIS) scoping process for STB Finance Docket No. 35116. People Protecting Communities (PPC) has been involved with the proposed development of the landfill, the railroad and the other activities supporting the landfill, and all its variations since March 2004. Most recently, in June 2008 we filed a Petition to Hold Proceedings in Abeyance with regards to certain actions requested by R. J. Corman Railroad Company/Pennsylvania Lines Inc. (RJRP) pending the completion of an environmental review to be performed pursuant to the National Environmental Policy Act (NEPA).

The Draft Scope of Study for the EIS proposes to treat the construction and operation of the proposed rail line (construction and operation of an abandoned 10.8 mile rail line between Wallacetown Junction and Winburne and the reactivation of track on the connecting 9.3 miles of currently rail banked line between Winburne and Gorton) as a single action rather than as an integral and connected portion of the larger landfill project. The proposed action for the Draft Scope of Study for the EIS should be a connected action that includes not only the proposed rail line but also the landfill it will serve and other facilities incidental to the landfill, viz. industrial park, and recent quarry, as required by 40 C.F.R. § 1508.25 (a).

Please note the comments contained within this document will not be PPC's only submission with regards to the review of Finance Docket No. 35116 et al. PPC reserves the right to submit further public comment, testimony, criticisms, responses, make requests, initiate actions, and otherwise participate in this review process.

Sincerely,

JoAnn Gillette, Coordinator
Review Committee
People Protecting Communities
PO Box 38
Clarence, PA 16829
joann.gillette@yahoo.com
(814) 387-6537

I. The Proposed Action for the Draft Scope of Study for the EIS Is Inadequate

The scope of the environmental impact statement should encompass the entire project of which the proposed reactivation of the proposed Beech Creek rail line (construction and operation of an abandoned 10.8 mile rail line between Wallace Junction and Winburne and the reactivation of track on the connecting 9.3 miles of currently rail banked line between Winburne and Gorton) is a part — namely the proposed landfill, industrial park, quarry and rail line — rather than the rail line alone. Limiting the scope of the EIS to the rail line action and treating the landfill and industrial park as cumulative impacts of that action, rather than treating the landfill and industrial park as part of the action being reviewed is inconsistent with 40 C.F.R. § 1508.25.

The Council on Environmental Quality's (CEQ) regulation governing the scope of the action to be addressed in environmental review defines the "action" to be reviewed to include:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

In the present case the proposed rail line both (1) is an interdependent part of the larger action including the proposed landfill and depends upon the landfill for its justification and (2) cannot and will not proceed unless the landfill is permitted, built and brought into operation. Accordingly, the scope of the EIS should encompass (1) the rail line, (2) the landfill, (3) the industrial park, and (4) the quarry.

To isolate the rail line from the larger landfill project is inconsistent with the prior consistent statements of the project developers and economic reality. In fact, the only driver behind the request for construction and operation of the former Beech Creek line to Gorton, Pennsylvania (PA) is the developments being proposed by Resource Recovery, LLC (RRLC)—primarily a landfill and future industrial park. The rail line has been treated as an incidental part of the larger landfill project since the concept presentation by RRLC to Snow Shoe Township April 2004 (Exhibit 1) and the Host Municipality Agreement between RRLC and Rush Township May 2004 (Exhibit 2). The proposed rail line, landfill, and industrial park are all interdependent and "links of a single chain."

Moreover, the rail line is not commercially feasible without the landfill. There presently is no customer that would be served by the construction and operation of this line of a size that could support the line commercially. The only official permitted industrial activity in the area to be served by the line is a small, non-coal surface mine limited to a total annual production of 10,000 tons of stone, less than two truckloads per week day. (Exhibit 3) This is not enough to require rail service for transport. Moreover, a quarry of the type proposed will produce materials used in building and road construction locally; it is not economic to transport this type of material over the distances that would require or support rail service. Given the quarry's permitted production,

the petitioner would run 1 unit train (100 cars–100 tons per car), which would have a breakeven hauling cost of approximately \$160/ton to use the 20 mile track, which exceeds, by about an order of magnitude, the market price for the sand and gravel that the quarry will produce. (Exhibit 4)

The quarry is primarily intended to provide material for construction and operation of the landfill and may never have customers that would require use of the rail line. In fact, in its original petition (May 20th—original petition, FD No. 35116, doc #222416) the petitioner stated, “It is anticipated that RJCP will haul unit trains [note plural trains] of sand, stone, and perhaps coal¹ outbound from the quarry within the Gorton development to Keating, and will haul unit trains of municipal solid waste and/or construction and demolition debris inbound from the Keating interchange to the landfill portion of the development.” The petitioner thus expected to receive income from hauling materials in and out of the landfill.

Thus, both the need and economic viability of the proposed rail line will be entirely dependent upon the permitting, construction and operation of the proposed RRLC landfill (a larger action). The rail line and proposed landfill are connected actions under 40 CFR §1508.25(a)1: therefore the proposed action for the Draft Scope of Study for the EIS should be a connected action to include the proposed rail line, landfill, industrial park, and recent quarry. This Draft Scope of Study for the EIS must evaluate the cumulative impacts of the proposed rail line, landfill, quarry, and industrial park on environmental resources, aesthetics, and environmentally sensitive areas (e.g., residences; seasonal properties; schools; nursing homes; parks; recreation areas; sensitive wildlife habitat; waters of the Commonwealth; wetlands, both jurisdictional and nonjurisdictional; cultural and historic resources; etc.) that will be affected by this action.

II. The Alternatives as Proposed by the STB Draft Scope of Study for the EIS Are Inadequate

Because the proposed scoping document unduly limits the action considered to the rail line rather than the entire project of which the rail line is a part, the alternatives selected for analysis do not represent the full range of alternatives that should be considered. Analysis of alternatives “is the heart of the environmental impact statement.” 40 C.F.R. §1502.14. Accordingly, CEQ regulations require that agencies “[r]igorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. §1502.14(a). The proposed set of alternatives presented by the STB in the Draft Scope of Study for the EIS does not meet this standard.

Most notably, because the STB has improperly limited the scope of the action being considered, the agency does not consider the alternative actually being proposed: construction of the landfill, industrial park, quarry, and rail line. This analysis is critical and should be conducted as the primary alternative.

A second alternative that should be considered is location of the landfill closer to the solid waste to be disposed in the landfill. In order to properly scope alternatives, the source of garbage for the proposed primary shipper (i.e., the landfill) must be clearly identified. To date, and confirmed through conversations with STB representatives at the February 10, 2009 Scoping Meeting in Philipsburg, PA, the petitioners expect these sources to be primarily from New York and New Jersey. The scoping process as presented by the STB, to date, is prejudiced by the site-

¹ There is no permitted coal mining operation that could be served by the train.



Danielle Gosselin/STB

04/13/2009 10:37 AM

To

cc

bcc

Subject Fw: Scoping documentation-disconnect

From: Darryl Farber
Sent: Friday, February 20, 2009 10:26 AM
To: Danielle.Gosselin@stb.dot.gov
Cc: GosselinD@stb.dot.gov; Darryl Farber
Subject: Scoping documentation-disconnect

Hi Danielle,

I think I have found a significant disconnect. The original petition gives the vague impression that the applicant is permitted (or likely to be soon) for a large quarry (2,444 ac.) with local road access to haul significant tonnage, (730,000 tons/year) with significant local road traffic (32,850 trucks per year). And that the railroad activation would be avoiding this traffic from the local roads (which provide the separate utility). This is incorrect.

The applicant is actually permitted for a small limited production 5 acre quarry and limited to 10,000 tons per year and 400 trucks per year --about 1% of the total tonnage and truck traffic claimed. This is a significant difference that would also affect the economic justification and shows the need for larger action.

Attached is the Pennsylvania Department of Environmental Protection quarry permit issued Dec. 4, 2008, also attached is the initial construction and operation exemption - the application dated May 19, 2008 (May 20, 2008 in FD_35116 document #222416) for your convenience.

In the original petition for construction and operation exemption the claim is made:

"Both segments of the reactivated rail line will be operated by RJCP and will serve primarily a new quarry, landfill, and industrial park near Gorton, Pennsylvania currently being developed by Resource Recovery, LLC (Resource Recovery). Resource Recovery is developing approximately 2,443.78 acres of land previously strip-mined and not reclaimed. The site will be used for a sand and stone quarry, a landfill, and other industrial users " (p. 4).

The actual permit is for 5 acres for the quarry only.

Additionally, original petition makes the claim:

"At peak capacity, the quarry will produce approximately 2000 tons of sand and stone per day, and rail transportation of that material will keep approximately 90 trucks per day from the local roads and highways" (p. 6).

The site is permitted for a maximum of 10,000 tons per year that is 400 trucks per year.

Hawbaker is mining CLOG lands, CLOG is the Resource Recovery, LLC site.

The permitted quarry is only 0.2% or 0.002 of the original acreage stated in the Corman petition or 10,000 tons per year, which is only about 1% of the

yearly tonnage and truck traffic claimed.

Since the petitioner does not have a permit for the claimed "2000 tons of sand and stone per day" it means there is no basis to conclude that "rail transportation of that material will keep approximately 90 trucks per day from the local roads and highways" so that one would conclude that the petitioner does not have a separate utility for the tonnage claimed in the original petition and that the action is intrinsically connected to future actions that are part of a larger action that may require an environmental impact statement.

Thank you,

Darryl

Surface Transportation Board

Incoming Correspondence Record



#EI-16425

Correspondence Information

Docket #: FD 35116 0

Name of Sender: Kathi Lewis

Date Received: 02/25/2009

Group:

Date of Letter:

Submitter's Comments

Evaluating the reactivation and rebuilding of the rail line between Wallacetown and Gorton by RJ Corman Railroad as a stand-alone project would be a waste of STB resources and would not give a fair overview of the environmental impacts this project will have on the land and residents in the affected areas of Clearfield and Centre Counties. The proposed reactivation of the railroad in the area and the landfill/industrial park proposed by Resource Recovery, LLC (RRLC) are parts of the same project, without the proposed landfill and industrial park there will be no reason for the reactivation of this section of rail line. The projects should be evaluated as two parts of a connected action.

The landfill is not operating, nor constructed, nor permitted. Moreover, RRLC has no signed contracts from waste suppliers. The industrial park is not permitted, nor have any detailed plans been published. The only other source of rail freight is the quarry which is permitted for 10,000 tons per year, less than one train load. In contrast, the PA Department of Environmental Protection has approved 10 landfill permits in 2007–2008. Only one is a new landfill, nine are expansions of existing landfills. Of the four new landfills proposed, three were denied, suspended, or withdrawn. Of the nine expansions proposed, all were approved. The rate of approval for new landfills, as RRLC is proposing, is very low. It is likely that RRLC will never build the proposed landfill or industrial park. Thus, STB risks approving the rail line "to nowhere."

It seems that the only logical, prudent alternative is no action or denial.