



#E1-20731

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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December 1, 2014

Norfolk Southern Corporation
Attn: Ms. LaWada Poarch, Abandonments Coordinator
Strategic Planning Dept., 12th Floor
3 Commercial Place
Norfolk, Virginia 23510

RE: Surface Transportation Board Docket No. AB-290 (Sub-No. 364X), Norfolk
Southern Railway Company: Abandonment in Hopewell, Virginia
(DEQ #1757)

Dear Ms. Poarch:

This letter responds to your submission of information (letter dated February 25, 2014 and received July 8 via e-mail; e-mail correspondence with this Office dated July 8 and November 13) and information from the federal Surface Transportation Board (an Environmental Assessment) relative to the proposed abandonment of 0.46 mile of rail line in Hopewell, Virginia. The November 13 e-mail from the Surface Transportation Board refers to that Board's requirement that consultation with the Commonwealth take place relative to the federal Coastal Zone Management Act of 1972, as amended (CZMA). We provided guidance on the federal consistency requirements under the CZMA via e-mail on July 8, 2014.

On behalf of the Commonwealth of Virginia, the Department of Environmental Quality (DEQ) is responsible for reviewing and responding to federal consistency documentation submitted in accordance with Executive Order 12372, the Intergovernmental Review of Federal Programs and federal consistency regulations for the review of federal financial assistance to state and local governments (15 CFR Part 930, Sub-part F, sections 930.90 *et seq.*). DEQ does the same for federally licensed or permitted projects (15 CFR Part 930, Sub-part D, sections 930.50 *et seq.*). Pursuant to the CZMA, projects requiring federal licensing or permitting must be constructed and operated in a manner consistent with the Virginia Coastal Zone Management Program (VCP).

While the information submitted by Norfolk Southern Corporation does not comply with the requirements under 15 CFR Part 930, Sub-part D, sections 930.50 *et seq.*, DEQ is providing this response in consideration of the nature of the undertaking

(no construction proposed) and as a courtesy to the Surface Transportation Board which is seeking closure on this matter.

PROJECT DESCRIPTION

As indicated in your February 25 letter and accompanying map, site plan, and later Environmental Assessment (EA) from the Surface Transportation Board (STB), Norfolk Southern has applied to the STB for an exemption from the prior approval requirements of 49 U.S.C. section 10903 to abandon approximately 0.46 mile of rail line on its City Point Branch in Hopewell. The rail line travels through industrial and residential land uses from milepost CP 9.40 to milepost CP 9.86, in a north-south direction, closely parallel to the James River. The right-of-way width ranges from 50 to 100 feet, within zip code 23860. If abandonment authority is granted, Norfolk Southern intends to convey the rail line right-of-way to Regional Enterprises for private use. No shippers would be harmed by the proposed abandonment (EA, page 1, "Background" heading).

According to the February 25 letter, the abandonment will be followed by the salvaging of rails and related track material by removal. The contours of the existing rail bed will remain as is, and existing drainage systems will stay intact. The contractor will smooth the roadbed once the rail and track material are removed. No soil will be disturbed; no digging or burying will be permitted. Crossties may be re-used or will be disposed of in accordance with applicable federal and state laws and regulations.

The EA states that Norfolk Southern has submitted an environmental report and a historic report to appropriate agencies, including DEQ, as of July 1, 2014 (page 1, "Environmental Review" heading).

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

The activities described in your letter are consistent with the Virginia Coastal Zone Management Program (VCP), provided that all applicable permits or approvals listed under "Enforceable Programs of Virginia's Coastal Resources Management Program" (Attachment 1) are received prior to implementation of the project. If any of the enforceable policies are applicable, please contact the relevant agencies to obtain applicable permits or approvals. Norfolk Southern Corporation, as applicant for federal approval, must obtain any permits and approvals listed under the enforceable policies of the VCP that may apply. DEQ's Piedmont Regional Office (DEQ-PRO) administers the enforceable programs listed under DEQ's jurisdiction. Please contact DEQ-PRO at (804) 527-5020 for assistance in meeting the requirements of applicable DEQ programs.

1. Non-point Source Pollution Control.

1(a) Agency Jurisdiction. DEQ administers the non-point source pollution control enforceable policy of the VCP pursuant to the Virginia Erosion and Sediment Control

Law and Regulations (VESCL&R) and Virginia Stormwater Management Law and Regulations (VSWML&R).

1(b) Erosion and Sediment Control Plan; Stormwater Management Plan. Norfolk Southern is responsible for submitting a project-specific erosion and sediment control (ESC) plan to City of Hopewell authorities for review and approval pursuant to the local ESC requirements, if any project involves a land-disturbing activity of equal to or greater than 10,000 square feet (2,500 square feet or more in a Chesapeake Bay Preservation Area). Depending on local requirements the area of land disturbance requiring an ESC plan may be less. The ESC plan must be approved by the locality prior to any land-disturbing activity at the project site. All regulated land-disturbing activities associated with the project, including on-and off-site access roads, staging areas, borrow areas, stockpiles, and soil intentionally transported from the projects must be covered by the project-specific ESC plan. [References: Virginia Erosion and Sediment Control Law, Virginia Code sections 62.1-44.15:51 *et seq.* and *Virginia Erosion and Sediment Control Regulations*, 9 VAC 25-840-30 *et seq.*] Additional guidance is available from DEQ's Office of Stormwater Management (Larry Gavan, telephone (804) 698-4040 or e-mail larry.gavan@deq.virginia.gov).

1(c) Stormwater Management Plan. Depending on local requirements, a Stormwater Management (SWM) plan may be required. Local ESC and SWM program requirements must be requested through the appropriate City office. Additional guidance is available from DEQ's Office of Stormwater Management (Larry Gavan, telephone (804) 698-4040 or e-mail larry.gavan@deq.virginia.gov). [References: Virginia Stormwater Management Act, Virginia Code sections 62.1-44.15:24 *et seq.* and the *Virginia Stormwater Management Program Permit Regulations*, 9 VAC 25-870-54 *et seq.*]

1(d) General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR 10). DEQ is responsible for the issuance, denial, revocation, termination, and enforcement of the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities (previously known as the General Permit for Discharges of Stormwater from Construction Activities or the Virginia Stormwater Management Program (VSMP) Permit). [References: Virginia Stormwater Management Act, Virginia Code sections 62.1-44.15:24 *et seq.* and the *VSMP Regulations*, 9 VAC 25-870-10 *et seq.*]

1(d))(i) Requirements. Accordingly, the operator or owner of a construction activity involving land disturbance greater than or equal to 1 acre is required to register for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, and to develop a project-specific stormwater pollution prevention plan (SWPPP). The SWPPP must be prepared prior to submission of the registration statement for coverage under the General Permit, and it must address water quality and quantity in accordance with the *Virginia Stormwater Management Program (VSMP) Regulations*.

1(d)(ii) Additional Information. General information and registration forms for the General Permit are available on DEQ's web site at www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPermits/ConstructionGeneralPermit.aspx. Additional guidance is available from DEQ's Office of Stormwater Management (Holly Sepety, telephone (804) 698-4039 or holly.sepety@deq.virginia.gov).

1(e) Conclusions. Provided that the applicant complies with the requirements described in items 1(b), 1(c), and 1(d) above, the project will be consistent with the Non-point Source Pollution Control enforceable policy of the VCP.

2. Coastal Lands Management: Chesapeake Bay Preservation Act.

2(a) Agency Jurisdiction. Effective July 1, 2013, the administration of the Chesapeake Bay Preservation Act ([Virginia Code](#) sections 62.1-44.15:67 *et seq.*) and the *Chesapeake Bay Preservation Area Designation and Management Regulations* (9 VAC 25-830-10 *et seq.*) was transferred to the Department of Environmental Quality from the Department of Conservation and Recreation.

2(b) Explanation. Under the Chesapeake Bay Preservation Act and the *Regulations*, localities within the state's coastal zone have enacted programs designed to improve water quality in the Bay through the mitigation of the impacts of development and redevelopment on sensitive environmental features such as streams, wetlands, floodplains, highly erodible and highly permeable soils. Resource Protection Areas (RPAs) and Resource Management Areas (RMAs) have been designated in each locality; these areas consist of groupings of sensitive environmental features. RPA features (tidal wetlands, certain non-tidal wetlands, tidal shores, and buffer areas) are the most sensitive; in general, only water-dependent uses may be constructed in an RPA. RMA features (highly erodible soils, highly permeable soils, and certain non-tidal wetlands) are less sensitive than RPA features, but no less important. Development in an RMA requires that activities meet certain performance criteria designed to mitigate negative environmental impacts.

2(c) Comments. The information you submitted does not indicate whether the project area is within a Resource Management Area or a Resource Protection Area as defined by Hopewell's Chesapeake Bay preservation ordinance. Please contact the appropriate City office for project review and approval that may be required pursuant to the local Chesapeake Bay Program. Additional guidance on the requirements of the Chesapeake Bay Preservation Act and the *Regulations* is available from DEQ's Office of Stormwater Management (Daniel Moore, telephone (804) 698-4520 or e-mail Daniel.moore@deq.virginia.gov).

2(d) Conclusion. Assuming that the project requires City of Hopewell project review, and that such review is obtained and the project is approved, the project will be consistent with the Coastal Lands Management enforceable policy of the VCP.

3. Air Quality.

3(a) Agency Jurisdiction. DEQ is charged with carrying out mandates of the State Air Pollution Control Law (Virginia Code sections 10.1-1300 *et seq.*) and the *Regulations for the Control and Abatement of Air Pollution* as well as Virginia's obligations under the federal Clean Air Act, as amended in 1990. The objective is to protect and enhance public health and quality of life through control and mitigation of air pollution. DEQ's Division of Air Program Coordination and its Regional Offices ensure the safety and quality of air in Virginia by monitoring and analyzing air quality data, regulating sources of air pollution, and working with local, state and federal agencies to plan and implement strategies to protect Virginia's air quality. DEQ's Piedmont Regional Office is directly responsible for the issuance of necessary permits to construct and operate all stationary sources as well as monitoring emissions from these sources for compliance in the Piedmont region, which includes Hopewell.

3(b) Comments. The City of Hopewell is in an ozone maintenance and emission control area for oxides of nitrogen (NO_x and volatile organic compounds (VOC). DEQ recommends that precautionary measures be employed during the development of the project to reduce ground-level ozone concentrations, especially during ozone alert days. This can be done by minimizing the generation of ozone precursors such as volatile organic compounds and nitrogen oxides during operation of construction equipment and vehicles.

3(c) Requirements. Questions regarding the following requirements, and other questions concerning air pollution control, should be directed to DEQ's Piedmont Regional Office (see "Regulatory and Coordination Needs," item 1, below).

3(c)(i) Fugitive Dust. During construction, fugitive dust must be kept to a minimum by using control methods outlined in 9 VAC 5-50-60 *et seq.* of the *Regulations for the Control and Abatement of Air Pollution*. These precautions include, but are not limited to, the following:

- Use, where possible, of water or chemicals for dust control;
- Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;
- Covering of open equipment for conveying materials; and
- Prompt removal of spilled or tracked dirt or other materials from paved streets and removal of dried sediments resulting from soil erosion.

3(c)(ii) Open Burning. If project activities include disposal of construction or demolition debris by open burning, or use of special incineration devices, this activity must meet the requirements of 9 VAC 5-130 *et seq.* of the *Regulations* for open burning, and it may require a permit. The *Regulations* provide for, but do not require, the local adoption of a model ordinance concerning open burning. City of Hopewell officials should be contacted to determine what local requirements, if any, exist.

3(c)(iii) Additional Information. Information on possible permit requirements and guidance on air pollution control are available from DEQ's Piedmont Regional Office (James Kyle, telephone (804) 527-5047 or e-mail james.kyle@deq.virginia.gov).

3(d) Conclusions. Provided that the applicant complies with the requirements described above, the project will be consistent with the Air Pollution Control enforceable policy of the VCP.

ADDITIONAL ENVIRONMENTAL CONSIDERATIONS

With respect to federal consistency, no further action is necessary if none of the enforceable programs of the VCP are applicable. However, the project must comply with all other applicable federal, state and local laws and regulations. The following discussion is provided as a guide to programs, administered by the Department of Environmental Quality and other agencies of the Commonwealth, which could apply to the project. Final determination concerning potential impacts on these programs rests with the DEQ's Piedmont Regional Office and the appropriate agency administering each program. It is the responsibility of the Norfolk Southern Corporation, as applicant for federal approval, to coordinate with these agencies.

1. Solid and Hazardous Wastes, and Hazardous Substances. DEQ administers the Virginia Solid Waste Management Regulations and the Virginia Hazardous Waste Management Regulations. We recommend that all solid wastes generated at the site be reduced at the source, re-used, or recycled. All hazardous wastes should be minimized. All solid waste, hazardous waste, and hazardous material must be managed in accordance with all applicable federal, state, and local environmental regulations.

Please contact DEQ-PRO (Kyle Winter, telephone (804) 527-5052 or e-mail kyle.winter@deq.virginia.gov) concerning the location and availability of waste management facilities in the project area.

2. Historic and Archaeological Resources. Section 106 of the National Historic and Preservation Act of 1966, as amended, requires that proponents of activities that receive federal funding must consider effects to properties that are listed, or eligible for listing, on the National Register of Historic Places. The Department of Historic Resources (DHR) conducts reviews of projects to determine their effect on historic structures or cultural resources. In the event that archaeological resources are encountered during track removal and related activities, immediately contact that Department (Roger Kirchen, telephone (804) 482-6091 or e-mail roger.kirchen@dhr.virginia.gov).

Thank you for your inquiry. We appreciate your interest in complying with Virginia's and the federal government's environmental regulations. If you have any further questions please call me at (804) 698-4339.

Sincerely,

A handwritten signature in black ink, appearing to read 'John E. Fisher', with a stylized flourish at the end.

John E. Fisher
EIR Coordinator

Enclosure

Ec. Mark Alling, DEQ-PRO
(with copy of the request)
Victoria Rutson, USDOT-STB
Diana Wood, USDOT-STB



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Attachment 1

Enforceable Regulatory Programs comprising Virginia's Coastal Zone Management Program (VCP)

- a. **Fisheries Management** - The program stresses the conservation and enhancement of finfish and shellfish resources and the promotion of commercial and recreational fisheries to maximize food production and recreational opportunities. This program is administered by the Marine Resources Commission (VMRC) (Virginia Code §28.2-200 to §28.2-713) and the Department of Game and Inland Fisheries (DGIF) (Virginia Code §29.1-100 to §29.1-570).

The State Tributyltin (TBT) Regulatory Program has been added to the Fisheries Management program. The General Assembly amended the Virginia Pesticide Use and Application Act as it related to the possession, sale, or use of marine antifoulant paints containing TBT. The use of TBT in boat paint constitutes a serious threat to important marine animal species. The TBT program monitors boating activities and boat painting activities to ensure compliance with TBT regulations promulgated pursuant to the amendment. The VMRC, DGIF, and Virginia Department of Agriculture Consumer Services (VDACS) share enforcement responsibilities (Virginia Code §3.2-3904 and 3.2-3935 to §3.2-3937).

- b. **Subaqueous Lands Management** - The management program for subaqueous lands establishes conditions for granting or denying permits to use state-owned bottomlands based on considerations of potential effects on marine and fisheries resources, tidal wetlands, adjacent or nearby properties, anticipated public and private benefits, and water quality standards established by the Department of Environmental Quality (DEQ). The program is administered by the Virginia Marine Resources Commission (VMRC) (Virginia Code §28.2-1200 to §28.2-1213).

- c. **Wetlands Management** - The purpose of the wetlands management program is to preserve wetlands, prevent their despoliation, and accommodate economic development in a manner consistent with wetlands preservation.

(1) The tidal wetlands program is administered by VMRC (Virginia Code §28.2-1301 through §28.2-1320).

(2) The Virginia Water Protection Permit program administered by DEQ includes protection of wetlands - both tidal and non-tidal - (Virginia Code §62.1-44.15:5) and Water Quality Certification pursuant to Section 401 of the Clean Water Act.

- d. Dunes Management - Dune protection is carried out pursuant to The Coastal Primary Sand Dune Protection Act and is intended to prevent destruction or alteration of primary dunes. This program is administered by VMRC (Virginia Code §28.2-1400 through §28.2-1420).
- e. Non-point Source Pollution Control - (1) Virginia's Erosion and Sediment Control Law requires soil-disturbing projects to be designed to reduce soil erosion and to decrease inputs of chemical nutrients and sediments to the Chesapeake Bay, its tributaries, and other rivers and waters of the Commonwealth. This program is administered by DEQ (Virginia Code §62.1-44.15:51 *et seq.*).

(2) Coastal Lands Management is a state-local cooperative program administered by DEQ's Water Division and 84 localities in Tidewater (see i) Virginia (Virginia Code §62.1-44.15:67 – 62.1-44.15:79 and Virginia Administrative Code 9 VAC 25-830-10 *et seq.*).
- f. Point Source Pollution Control - The point source program is administered by the State Water Control Board (DEQ) pursuant to Virginia Code §62.1-44.15. Point source pollution control is accomplished through the implementation of:
 - (1) The National Pollutant Discharge Elimination System (NPDES) permit program established pursuant to Section 402 of the federal Clean Water Act and administered in Virginia as the Virginia Pollutant Discharge Elimination System (VPDES) permit program.
 - (2) The Virginia Water Protection Permit (VWPP) program administered by DEQ (Virginia Code §62.1-44.15:5) and Water Quality Certification pursuant to Section 401 of the Clean Water Act.
- g. Shoreline Sanitation - The purpose of this program is to regulate the installation of septic tanks, set standards concerning soil types suitable for septic tanks, and specify minimum distances that tanks must be placed away from streams, rivers, and other waters of the Commonwealth. This program is administered by the Department of Health (VDH) (Virginia Code §32.1-164 through §32.1-165).
- h. Air Pollution Control - The program implements the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards. This program is administered by the State Air Pollution Control Board (DEQ) (Virginia Code §10-1.1300 through §10.1-1320).
- i. Coastal Lands Management - A state-local cooperative program administered by DEQ's Water Division and 84 localities in Tidewater, Virginia established pursuant to the Chesapeake Bay Preservation Act (Virginia Code §62.1-44.15:67 – 62.1-44.15:79) and Chesapeake Bay Preservation Area Designation and Management Regulations (Virginia Administrative Code 9 VAC 25-830-10 *et seq.*).