



PAN AM RAILWAYS
IRON HORSE PARK
NO. BILLERICA, MA 01862

E1-17877
v

September 4, 2009

VIA OVERNIGHT MAIL

Carl F. Dierker
Regional Counsel
U.S. EPA, Region 1
1 Congress St., Suite 1100
Boston, MA 02114-2023

Martin Suuberg
Regional Director
Massachusetts Department of
Environmental Protection, Central Region
627 Main St.
Worcester, MA 01608

Re: Pan Am Southern LLC San Vel Automotive Facility, Ayer, MA

Dear Messrs. Dierker and Suuberg:

On July 15, 2009, Pan Am Southern LLC ("PAS") responded to your letter to Mr. David Fink of Pan Am Railways, dated July 1, 2009, regarding construction of PAS's San Vel Automotive Facility. On July 21, 2009, PAS provided additional information to your offices in response to verbal requests made to PAS by a representative of the United States Environmental Protection Agency ("EPA") as well as to provide an update to certain information in the July 15 letter. On July 29, 2009, Mr. John Edwards, on behalf of PAS, participated in a panel discussion to provide even more information regarding the facility. PAS also has received other requests for various information from the EPA and DEP, dated August 13, 2009 and August 24, 2009. This letter provides further response and updates associated with construction of the San Vel Automotive Facility.

PAS has completed installation of the monitoring well network, as agreed by the Town and approved by the Licensed Site Professional. A map of the well locations and the well logs are included in Attachment A hereto for informational purposes. In addition, during the week of August 31, 2009, PAS conducted test pits in the vicinity of the planned retention basins to confirm that the soils are consistent with test borings previously submitted to the Town of Ayer (and included with the July 15 letter to you). In accordance with the Consent Decree and the order issued by the Surface Transportation Board ("Board") approving the project, the test pit results will be submitted to the Town of Ayer within one week of receipt by PAS. Also included in attachment D is the Soil Management Plan prepared by the LSP reflecting discussions between the LSP and the DEP.

Further, Attachment B contains an amended Storm Water Pollution Prevention Plan and Stormwater Management Report ("SWPPP") for the facility. This amendment reflects updated conditions at the facility, including entity name and the final facility design. The amendment further reflects the finalized stormwater management system, as was shown on the site plans provided in our July 15 correspondence to you, with certain modifications. Specifically, the stormwater management system reflected in this amended SWPPP, and on the site plans included in the amended SWPPP, includes six Stormceptor units with sizes varying from 450 gallons to 11,000 gallons. Five of these six Stormceptor units were included in the site plans (dated April 9, 2009) submitted for informational purposes with the July 15 correspondence. After further discussions with and at the request of the Town of Ayer's Department of Public Works ("DPW") representative, however, our engineers added a sixth Stormceptor (labeled #5 on the attached plans). This change was made even though the stormwater management system as previously designed would have been sufficiently effective for the current design of the San Vel Automotive Facility. The capacity of the stormwater management system as currently designed is significantly greater than any engineering calculation would ordinarily call for. The 2-, 10-, 25-, and 100-year flood drainage calculations, which are included in the SWPPP, provide further support in this regard.

While SWPPPs are intended by EPA guidance to be dynamic working guides, modified from time to time as needed without submittal to an agency, we anticipate that the amended SWPPP included in Attachment B, dated September 3, 2009, will be the final version before operations commence at the facility. In accordance with EPA regulations and guidance, PAS will continue to retain the SWPPP, as amended from time to time, at the facility during construction and operations.

The primary questions in the two August letters from EPA and DEP relate to the adequacy of the stormwater management system at the facility. As stated by Mr. Edwards in the July 29 panel discussion, the stormwater management system is designed to handle a 100-year flood. As noted above, the calculations in this regard are included in the SWPPP. The facility is designed in this manner notwithstanding the fact that it is not located within the 100-year floodplain. In addition, the stormwater management system is designed in a manner such that it would safely handle the impossible event (barring intentional acts of vandalism) of every automobile that the facility could temporarily store at the facility simultaneously losing its 1 to 2 gallons of fuel and oil. The trucks serving the facility will not be stored at the facility, but will be mobile, entering and exiting the facility as operations demand. If a truck were to lose the entire contents of its fuel and/or oil tanks, the stormwater management system is designed in a manner such that it would safely handle that occurrence. Likewise, locomotives will not be stored at the facility, and also will be moving in and out as operations demand. If a locomotive were to lose the entire contents of its fuel and oil tanks, the most likely place that would occur would be in the containment area where the geomembrane liner will be installed. In addition to the liner, which will have a capacity of at least 3,500 gallons, the stormwater management system is designed in a manner such that it would safely handle

such an occurrence. Sufficient information related to the stormwater management system, including site drainage plans and calculations, are included in the SWPPP.

The SWPPP, as mentioned previously, is a dynamic working guide that, by necessity, PAS must update as needed. During the construction phase, as the agencies no doubt must be aware, the SWPPP will change as design plans are amended as reasonable and necessary due to various circumstances encountered in the field. In addition, vendors may change depending on circumstances. These are typically neither extraordinary nor significant occurrences. Further, during the operations phase, again as the agencies no doubt must be aware, the SWPPP will change as important operational modifications are implemented. Finally, there is no requirement in the regulations or in the Board's order to submit a SWPPP to the agencies or the Town for review or comment. Instead, the Board's decision and the applicable regulations require that PAS implement and comply with a SWPPP. It appears from your August 24 correspondence that the agencies perceive that there is a "final" SWPPP that PAS could provide to the agencies for their information. Further, it appears from that correspondence that the agencies may have misunderstood the discussions between PAS and the DPW regarding the Stormceptor vendor. In this particular instance, the contractor for PAS was exploring vendor alternatives for aspects of the stormwater management system, while maintaining the functionality and effectiveness of the system. After discussion with the Town DPW about those alternatives, however, PAS determined that it would use the Stormceptor brand as originally anticipated. As noted above, the site plans previously provided to the agencies and the Town, among other recipients, depicted the stormwater management system substantially similar to the one currently included in the site plans included herewith, except that the modifications reflected in the site plans attached hereto include additional protections even greater than what the agencies previously reviewed. Moreover, a Spill Prevention Control and Countermeasure plan under 40 C.F.R. Part 112 is not required for this automobile unloading facility, but spill prevention and response procedures are contained in the SWPPP.

Finally, we understand that the EPA and DEP have provided comments to the DPW regarding the monitoring well network. In those comments, the agencies request information such as well monitoring plans, well construction logs and quality assurance/quality control ("QA/QC") protocols for the sampling that will occur twice per year. PAS installed the monitoring well network under the Consent Decree and the Board's order, and the well locations are as requested by the Town and approved by the Licensed Site Professional. We note that the wells have been installed and will be sampled prior to commencement of operations at the facility specifically to address the Town's previously expressed concern of having a baseline to reflect pre-operation conditions. In accordance with the Consent Decree and the Board's order, PAS will monitor the wells twice per year and will sample for the parameters set forth in the Consent Decree, as also reflected in the SWPPP. As a result of ongoing discussions with the Town, PAS has advised the Town that, subject to an appropriate agreement, it will increase the testing protocols to permit sampling, at the Town's expense, an additional

two times per year if the Town so desires. The Town has not yet requested the extra testing, but that offer remains open.

To address the agencies' concerns regarding well installation and sampling, PAS is voluntarily providing the well logs for informational purposes in Attachment A hereto. In addition, PAS is voluntarily providing standard operating procedures for well sampling for informational purposes in Attachment C. The Massachusetts-certified laboratory to which the monitoring well samples will be sent will use appropriate QA/QC procedures applicable to such sample analysis. We note, however, that there is no regulatory, contractual or other requirement to develop or submit any of this information or a formal monitoring plan for these monitoring wells as EPA suggests in its comments. The components of a monitoring plan as suggested by EPA appear to be those applicable to investigations conducted after a release or spill at a cleanup site. The San Vel Automotive Facility is not such a site, and given the engineering controls that are being put in place at the facility, is unlikely to become such a site. In that unlikely event, however, any cleanup activities would be conducted in accordance with applicable state and federal requirements.

We trust that the agencies are considering the facts associated with construction and eventual operation of this facility. As you are aware, PAS has addressed any valid public concerns regarding this facility by, *inter alia*, instituting various stormwater control measures, as we have previously and repeatedly described. PAS has been, is, and will continue to be fully compliant with the conditions set forth in the Board decision and the requirements of the Consent Decree, as well as any applicable regulatory requirements. PAS in fact has exceeded the requirements set forth in the Board decision and Consent Decree in an attempt to further assuage the Town's concerns and those of the EPA and DEP. While we appreciate your continued review and comment, and we will voluntarily continue to provide updates as we deem appropriate, we are concentrating our limited resources on constructing a safe facility and incorporating the controls as we have repeatedly described.

If you have any questions regarding the information contained in this transmittal or any of the attachments, please contact the undersigned at (603) 816-0042 or rculliford@flypanam.com.

Sincerely,



Robert B. Culliford
for PAN AM SOUTHERN LLC

Attachments

cc: Office of Senator Edward M. Kennedy (*without attachments*)
Senator John F. Kerry (*without attachments*)
Congresswoman Niki Tsongas (*without attachments*)
Francis P. Mulvey, Acting Chairman, Surface Transportation Board (*without attachments*)
Charles D. Nottingham, Vice Chairman, Surface Transportation Board (*without attachments*)
Evelyn Kitay, Associate General Counsel, Surface Transportation Board (*without attachments*)
Vicki Rutson, SEA Chief, Surface Transportation Board (*with attachments*)
State Senator James B. Eldridge (*without attachments*)
Shaun A. Suhoski, Town of Ayer (*with attachments*)