

#EI-17876
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August 24, 2009

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

David Fink
President
Pan Am Railways
1700 Iron Horse Park
North Billerica, Massachusetts 01862

Dear Mr. Fink:

The United States Environmental Protection Agency (EPA) Region 1 and the Massachusetts Department of Environmental Protection (DEP) recently received a copy of the August 18, 2009, letter from Daniel Nason, Director of the Ayer Department of Public Works to Mr. George Thayer of Pan Am Railways, regarding the San Vel facility. The correspondence indicates that Pan Am Railways appears to be making material changes to the stormwater system at the site and that the system will be installed in the very near future.

In follow up discussions with Mr. Nason, it appears not only that Pan Am Railways is replacing Stormceptor units with different units, but that the size, number and location of the units will also be changed. Such changes are at variance with the information provided in Section 8 of the Stormwater Pollution Prevention Plan (SWPPP) dated June 18, 2008.

These changes raise concern that the level of protection committed to in the SWPPP may not be met. As we have highlighted in previous correspondence, Mr. John Edwards, on behalf of Pan Am Norfolk Southern made representations that the stormwater system would provide the highest level of protection on site. It is imperative that the issue raised by EPA, MassDEP and the Town of Ayer in recent correspondence be addressed before the system is installed.

The STB Order requires that Pan Am submit to the town a final Stormwater Pollution Plan that will address various components of the stormwater management system as well as other plans that will protect important natural resources. Up until this point the town has been reviewing draft plans and designs that have been submitted by Pan Am. Unfortunately, it appears that those draft plans and designs have undergone repeated

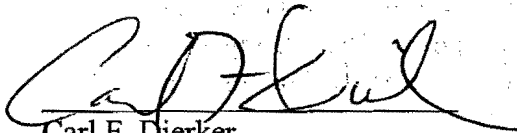
changes, leaving it difficult to identify and comment upon the final actions contemplated by Pan Am.

Presumably, it is the final plan that will present those measures that Pan Am intends to take to protect Ayer's water supply, and it is impossible for MassDEP and EPA to review these plans and to comment upon them unless final plans are provided. To assist all parties, including the Town, the MassDEP and EPA, in reviewing Pan Am's plans with respect to the protection of the aquifer underlying the site, we request that Pan Am provide its final plans as soon as possible. We, of course, will need adequate time to review these plans and provide our technical review comments to Ayer. During that period, we request that Pan Am refrain from undertaking any significant work at the site, particularly any work that will impair or delay the construction of the superior environmental management systems to which Pan Am has committed.

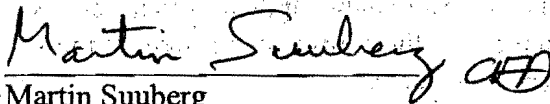
Should you have any questions regarding this letter, you may wish to contact William Walsh-Rogalski Esq. of EPA at 6717-918-1035 or Martin Suuberg of MassDEP at (508) 767-2729.

Thank you for your attention to this matter, and we await your response within the timeframe indicated above.

Sincerely,



Carl F. Dierker
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Cc: Evelyn Kitay, Esquire, Surface Transportation Board
Victoria Rutson, SEA Chief, Surface Transportation Board
Congresswoman Niki Tsongas
Senator Edward Kennedy
Senator John Kerry
State Senator Jamie Eldridge
Shaun A. Suhoski, Ayer Town Administrator
Margaret Kidder, Chair Ayer Board of Health
Dan Nason, Ayer Superintendant of DPW
John Edwards, Esquire, Norfolk Southern