

204792

SIDLEY AUSTIN BROWN & WOOD LLP

CHICAGO
DALLAS
LOS ANGELES
NEW YORK
SAN FRANCISCO
SEATTLE

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

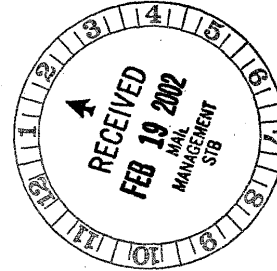
BEIJING
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

ENTERED
Office of the Secretary
WRITER'S DIRECT NUMBER
(202) 736-8071
FEB 19 2002

Part of
Public Record

February 19, 2002

WRITER'S E-MAIL ADDRESS
csadler@sidley.com



By Hand Delivery—Original and 25 Copies

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 700
1925 K Street, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 33388--CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail, Inc. and Consolidated Rail Corporation:

Petition for Extension of Time for Completion of Compliance with Environmental Condition 11

Dear Secretary Williams:

Norfolk Southern Corporation and Norfolk Southern Railway Company ("Norfolk Southern" or "NS") hereby request an extension of the time for completion of compliance with Environmental Condition 11 of Appendix Q of Decision No. 89 in the above-referenced proceeding.

Pursuant to Environmental Condition 11, Applicants are required, with the written concurrence of the responsible local governments, to mitigate train wayside noise at the locations identified by the Surface Transportation Board in the Environmental Condition 11 table entitled "Receptors that Meet Wayside Noise Mitigation Criteria." Environmental Condition 11 further provides that the specific requirements of the condition "shall not apply to those communities that have executed Negotiated Agreements with Applicants that satisfy the communities' environmental concerns." In addition, the Board has expressed its general "preference for privately negotiated solutions", Decision No. 89 (slip op. at 153). In Decision No. 167 (served August 22, 2000), the Board granted NS a one-year extension of the original compliance date for Environmental Condition 11 to August 22, 2001. In Decision No. 196 (served August 21, 2001), the Board granted NS a further extension to February 22, 2002 with respect to the two NS rail

Secretary Vernon A. Williams
February 19, 2002
Page 2

line segments in Ohio subject to Environmental Condition 11 and until May 22, 2002 with respect to the one NS rail line in Virginia and the one NS rail line segment in West Virginia subject to Environmental Condition 11. Norfolk Southern completed all of its obligations under Environmental Condition 11 in Indiana through Negotiated Agreements with two responsible local governments and has so previously advised the Board.

In order to complete its remaining obligations under Environmental Condition 11 in Ohio, Virginia and West Virginia, Norfolk Southern requests a one-year extension of the current compliance dates. NS has worked diligently to implement the requirements of Environmental Condition 11 and has obtained either Negotiated Agreements with the responsible local governments in the relevant communities or has settled its obligations under Environmental Condition 11 with the majority of the individual property owners determined by the Board to be eligible for noise mitigation. To date, those efforts have yielded Negotiated Agreements with eight responsible local governments in Virginia and two responsible local governments in West Virginia, in addition to the two Negotiated Agreements with responsible local governments in Indiana. The Board has issued orders accepting those Negotiated Agreements with NS in satisfaction of Environmental Condition 11 in the case of ten of those agreements, and the remaining two Negotiated Agreements, submitted to the Board on January 4, 2002, are awaiting Board approval at this date. Moreover, NS has entered into settlement agreements with the owners of a large majority of the eligible receptors in Ohio and Virginia, and its settlement efforts in Virginia continue.

With respect to Ohio, the STB determined in Environmental Condition 11 that noise-sensitive receptors were located along rail line segments N-079 and N-085 in Ohio. A field survey was undertaken by the Board's Section of Environmental Analysis ("SEA") and its third-party environmental consultants to verify the locations of the structures along N-079 and N-085 eligible for noise mitigation. SEA informed NS of the final results of that survey in June 2001. Following discussions with NS, the responsible local governments of the five relevant communities in Ohio informed NS that, in lieu of entering into community Negotiated Agreements, they wished NS to contact the owners of the structures eligible for noise mitigation in their communities. As a result of its implementation of those instructions, NS has settled its obligations under Environmental Condition 11 with the owners of 93 of the eligible structures in Ohio. The owners of only five eligible structures in Ohio have opted not to accept the settlement offers made by NS. For those five remaining structures in Ohio, NS will offer to install sound insulation in satisfaction of its Environmental Condition 11 obligations, as described in greater detail below.

SEA and its third-part consultants similarly conducted a field survey in Virginia in August 2001 to verify the locations of the structures eligible for noise mitigation along rail line segment N-100 in those communities that have opted not to enter into Negotiated Agreements with NS. The results of the Virginia field survey were provided to NS by SEA in October 2001. NS was informed by seven responsible local governments in Virginia that, in lieu of executing Negotiated Agreements with NS, they wished NS to contact the owners of the

Secretary Vernon A. Williams
February 19, 2002
Page 3

structures the SEA field survey verified to be eligible for noise mitigation. As a result of its discussions with the individual property owners in those communities, NS has to date settled its obligations under Environmental Condition 11 with the owners of 26 of the eligible structures along N-100. NS is at this time engaged in settlement discussions with the owners of the 11 remaining eligible structures along N-100 and hopes to be able to complete that work in a few weeks. If at the conclusion of those settlement discussions any owners of the eligible structures along N-100 opt not to accept the NS settlement offers, NS will offer to install sound insulation in those structures.

In West Virginia, NS has to date entered into Negotiated Agreements with the responsible local governments of two communities along N-111. The local government of a third community has not yet indicated its final preference for either a community Negotiated Agreement with NS or a request that NS contact the individual owners of any eligible structures. NS has advised that remaining local government that SEA and its third-party consultant will in the next several weeks conduct a field survey to verify the location of any eligible structures along N-111 in West Virginia. Once the results of the SEA field survey are available, the responsible local government will advise NS as to whether it wishes to enter into a Negotiated Agreement with NS or prefers that NS contact the owners of the eligible structures in the community. Should the local government select the latter option, NS will promptly initiate contacts with the individual property owners to make settlement offers. At the conclusion of that process, should any property owners opt not to accept NS' settlement offers, NS will offer to install sound insulation in those structures determined by the SEA survey to be eligible for noise mitigation.

The multi-step process required to implement Environmental Condition 11 necessarily requires sufficient time to allow the communities to consider their noise mitigation options, to initiate and conclude settlement discussions with individuals property owners in those communities that elect not to enter into Negotiated Agreements, and, finally, to implement the sound insulation installation program in those eligible structures whose owners have opted not to accept Applicants' settlement offers. Given the fact that the status of implementation of Environmental Condition 11 differs in Ohio, Virginia and West Virginia, NS believes that a one-year extension of the current completion dates established by the Board is necessary in order to complete its obligations. NS has completed its settlement discussions with the responsible local governments in Ohio as well as its settlement discussions with the individual owners of eligible structures. Upon approval by SEA of a sound insulation program protocol to be implemented by Applicants in all relevant jurisdictions, NS will be ready to contact the owners of the remaining five eligible structures to discuss the program. The extension requested by NS will allow NS to complete the sound insulation program in Ohio in approximately one year. In the case of Virginia, SEA's October 2001 report on the field verification survey has determined the locations of the eligible structures and NS is working to complete its contacts with the individual property owners to make settlement offers. As of the week ending February 16, 2002, NS has settled with over 70% of the owners of the eligible structures along N-100 in Virginia, and NS expects to complete its discussions with the owners of the remaining eligible structures within

Secretary Vernon A. Williams
February 19, 2002
Page 4

the next several weeks. In West Virginia, where one responsible local government has not yet decided whether to enter into a Negotiated Agreement, NS must await the results of a field verification survey to be scheduled by SEA and its third-party consultant before concluding settlement discussions with the local government. If the local government decides not to enter into a Negotiated Agreement, NS will then contact the owners of the eligible structures to make individual settlement offers. Because the sound insulation program protocol to be approved by SEA will be implemented by Applicants for all eligible structures and is currently under consideration by SEA, NS expects to be able to proceed without delay in initiating the sound insulation program for any eligible structures remaining in Virginia and West Virginia at the conclusion of settlement discussions with the individual property owners. Nevertheless, for the reasons explained below, several months will be required to implement the sound insulation program under the most favorable scenario, and a number of factors could result in the need for more time for completion.

NS, CSX and Conrail have worked together with noise mitigation consultants to develop a protocol for a sound insulation program for the remaining eligible receptors. Acoustical engineering issues as well as procedural and legal matters must be taken into consideration in order to put into place an appropriate program for installing sound insulation in eligible structures. Once a protocol has been approved, NS expects to move expeditiously to implement the installation program.

Among the aspects of the program will be an opportunity for the property owners to elect to have NS install a sound insulation treatment for their structure, designed by NS' noise mitigation consultants to address site-specific issues presented by the structure, or to accept a monetary settlement. NS anticipates that each property owner will be given at least a month in which to make this initial selection. For those eligible structures whose owners elect the sound insulation installation option, pre-mitigation noise measurements will be made by NS' noise mitigation consultants. NS anticipates that sound insulation treatments will include replacement of some windows and/or doors with windows and doors designed to minimize external noise experienced inside the structure. The consultants will then design an appropriate sound insulation treatment for the structure for the owner's consideration. The owner will be provided an opportunity to request reasonable modifications for NS to consider. He or she will be informed of any building code, structural integrity or similar measures that must be completed prior to installation of the sound insulation treatments. Pre-installation modifications or corrections to the structure will be the responsibility of the property owner and must be completed by the property owner before sound insulation treatments can be installed. In some instances, it is possible that additional structural integrity, electrical system or other requirements will be discovered during the course of the sound insulation installation. Should that occur, the property owner will be notified and will be responsible for ensuring that such work is completed before the installation of sound insulation treatments may continue. Upon completion of the sound insulation installation work, post-mitigation noise measurements will be taken by NS' noise mitigation consultants.

SIDLEY AUSTIN BROWN & WOOD LLP

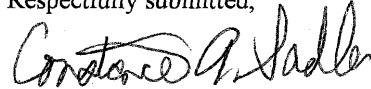
WASHINGTON, D.C.

Secretary Vernon A. Williams
February 19, 2002
Page 5

There are thus many timing factors tied to the implementation and completion of a sound insulation program which will be applied to those eligible structures remaining at the conclusion of the community and individual property owner settlement processes. NS believes that a one-year extension of the current deadlines for satisfaction of Environmental Condition 11 until February 22, 2003 for rail line segments N-079 and N-085 in Ohio and until May 22, 2003 for rail line segments N-100 in Virginia and N-111 in West Virginia is reasonable and necessary and would serve the public interest by providing adequate time for consideration of the noise mitigation offered by NS and for the installation of the sound insulation treatments.

For these reasons, we respectfully request that the time for completion of compliance with Environmental Condition 11 be extended until February 22, 2003 with respect to N-079 and N-085 and until May 22, 2003 with respect to N-100 and N-111.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Constance A. Sadler", written in a cursive style.

Constance A. Sadler

cc: Victoria J. Rutson, Chief, SEA
Phillis Johnson-Ball, SEA