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STEPTOE & JOHNSON ^{LLP}
ATTORNEYS AT LAW

David H. Coburn
202.429.8063
dcoburn@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com



March 11, 2004

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, DC 20423-0001

FD 34284

Re: Reply of Southwest Gulf Railroad Company to MCEAA Letter Filing

Dear Secretary Williams:

Enclosed for filing please find an original and 10 copies of the Reply of Southwest Gulf Railroad Company to MCEAA February 20, 2004 letter.

Respectfully,

David H. Coburn
Attorney for Southwest Gulf Railroad
Company

Enclosure

cc: All parties of record

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Finance Docket No. 34284

**SOUTHWEST GULF RAILROAD COMPANY --
CONSTRUCTION AND OPERATION EXEMPTION --
MEDINA COUNTY, TEXAS**

**REPLY OF
SOUTHWEST GULF RAILROAD COMPANY
TO MCEAA FEBRUARY 20, 2004 LETTER**

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David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Ave.
Washington, D.C. 20036
(202) 429-8063

Attorney for Southwest Gulf
Railroad Company

March 11, 2004

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**REPLY OF
SOUTHWEST GULF RAILROAD COMPANY
TO MCEAA FEBRUARY 20, 2004 LETTER**

Southwest Gulf Railroad Company ("SGR") hereby replies to the February 20, 2004 "Letter for placement in the record" submitted by the Medina County Environmental Action Association ("MCEAA").¹

A. MCEAA's Arguments are Addressed to Environmental Issues Within SEA's Purview

The nature and purpose of MCEAA's unusual filing is unclear. MCEAA does not ask for any specific relief, but rather appears to have filed its letter primarily in order to reiterate arguments that MCEAA has previously made in a series of separate filings with the Board's Section of Environmental Analysis ("SEA"). Those arguments primarily concern the scope of the Environmental Impact Statement ("EIS") being prepared by SEA in this case, and specifically the issue of whether that EIS should assess the direct environmental impacts of a

¹ MCEAA is composed of landowners who oppose the proposed 7-mile common carrier SGR line, and the limestone quarry of a sister company that it would serve. They apparently have other plans for the area and thus seek to use the Board's processes to halt or delay construction of the rail line.

quarry that SGR will serve. SEA issued, on January 28, 2004, a Notice of Intent to Prepare an Environmental Impact Statement and solicited comments on the draft scope of that EIS ("Draft Scoping Notice"). MCEAA's arguments in its February 20 are, in large measure, addressed to that Draft Scoping Notice.

SGR responded to MCEAA's environmental scoping issues by a March 10, 2004 letter filed with SEA. SGR demonstrated in that reply that SEA had properly chosen in the Draft Scoping Notice to confine its assessment of the quarry to a cumulative impacts analysis. SGR submits that there is no basis, and MCEAA has asserted no basis, on which the Board, as opposed to SEA, should intervene in the EIS process on this issue. Matters concerning the scope of the EIS that SEA is preparing should be addressed by SEA as part of its continuing environmental review, and presumably will be addressed by SEA when it issues a final scoping notice in this proceeding.

B. MCEAA Has Not Demonstrated Any Basis for Questioning the Conditional Exemption Granted to SGR

Apart from its environmental scoping arguments, MCEAA's rambling letter to the Board also appears to suggest at page 3 that somehow the filing of that letter places a burden on SGR to respond to alleged "bases for exemption denial" suggested by MCEAA. MCEAA, however, has not even set forth a colorable basis for questioning the Board's May 19, 2003 decision conditionally granting SGR's exemption petition. That decision was affirmed on August 21, 2003, when the Board denied a Petition for Revocation filed by MCEAA. In its February 20 letter -- its second bite at the apple -- MCEAA has not even asked for any specific relief, much less articulated "reasonable, specific concerns under the revocation criteria," as is required to

justify a challenge to the exemption.² Thus, as in its previously denied Petition for Revocation, MCEAA has once again failed to meet *its* burden of proof that the Board acted erroneously in granting the SGR exemption.

Using tortured arguments, MCEAA suggests SGR's proposed rail line might not meet certain Rail Transportation Policy ("RTP") goals set forth at 49 U.S.C. § 10101, and thus might not warrant an exemption under 49 U.S.C. § 10901. MCEAA appears to argue that the rail and quarry together may give rise to a safety detriment that would warrant denial of the rail line exemption, citing 49 U.S.C. 10101(8).³ Putting aside the question of the extent to which the quarry should be addressed in the EIS, there is no doubt that safety issues will be assessed in the EIS. Once the Board has analyzed the EIS, it can impose those mitigation measures that it deems appropriate to address any legitimate safety concerns that it finds. Further, SGR has supplied information about the projected level of quarry-generated rail traffic for the reasonably foreseeable future. MCEAA's suggestion that there is more data to supply is not correct.⁴

Moreover, MCEAA's effort to argue that the SGR line poses an unreasonable safety risk that could justify denial of its exemption is based on nothing more than far-fetched speculation. The SGR line traverses a primarily rural area, few trains will operate on the line and grade crossings will be protected consistent with applicable standards. There is no reason to believe that the line poses any kind of special risk above and beyond that associated with any rail line of

² See August 21, 2003 Decision at 1.

³ That provision of the RTP states that, "In regulating the railroad industry, it is the policy of the United States Government -- . . . (8) to operate transportation facilities and equipment without detriment to the public health and safety."

⁴ MCEAA appears to believe that there are "other phases" of the quarry as to which SGR should supply information. However, the number of trains SGR has estimated will operate over the line is based on an estimate of quarry production over a reasonable foreseeable period of at least several years.

this nature. In addition, MCEAA offers no basis to question that the SGR line will further several RTP goals, including ensuring the development of a sound rail transportation system and promoting efficient rail transportation. *See* 49 U.S.C. §§ 10101(3), (4).

MCEAA also argues that SGR must disclose its financial relationship with the quarry in order to show financial viability. MCEAA relies on no regulations or precedents for this odd proposition, and SGR knows of none. The Board does not normally assess financial viability in rail construction exemption cases, and there is no reason to do so here. SGR is a subsidiary of one of the largest corporations in the United States, Vulcan Materials Company. Vulcan had over \$2.5 billion in sales in 2003, is included in the S&P 500 and is one of the largest producers of aggregate in the nation. It was recently ranked by Fortune Magazine in fifth place out of the U.S. Fortune 1000 companies in terms of financial soundness, and was joined in the top ten by companies such as United Parcel Service, Microsoft and Exxon-Mobil.⁵ Given these facts, there is no reason to believe that SGR will not have the financial backing needed to build and operate its line.⁶

The final portion of MCEAA's letter filing (pages 8-15) is devoted to a rambling critique of how the Board has handled its NEPA responsibilities in prior rail construction cases. Generally, MCEAA seems to believe that in several cases the Board committed reversible error in failing to adequately address environmental issues. SGR has responded to this critique in its March 10 letter addressed to SEA.

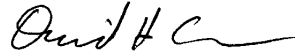
⁵ See attached press release. Vulcan was also ranked by Fortune among its top ten companies in terms of social responsibility.

⁶ SGR has never claimed that it will rely on quarry-generated revenues for its financial viability. Further, SGR is not in a position at this stage to estimate traffic volumes or revenues that will be generated from its common carrier operations for businesses other than the quarry that might locate on or near its line. Such revenues could further support SGR's line.

CONCLUSION

The NEPA issues raised by MCEAA are properly addressed in the on-going environmental process, in which MCEAA will have ample opportunity to comment. To the extent that MCEAA's February 20 letter warrants any Board action, the Board should find that there is no basis in that letter for questioning the Board's prior decisions granting and affirming SGR's conditional exemption.

Respectfully submitted,



David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Ave.
Washington, D.C. 20036
(202) 429-8063

Attorney for Southwest Gulf
Railroad Company

March 11, 2004

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Thursday, March 04, 2004

VULCAN ON FORTUNE MAGAZINE'S MOST ADMIRABLE LIST - AMONG TOP TEN IN SOCIAL RESPONSIBILITY AND FINANCIAL SOUNDNESS

Birmingham, Ala. — Vulcan Materials Company (NYSE:VMC) announced that it has been named to Fortune Magazine's "America's Most Admired Companies" list, which appears in the publication's March 8, 2004 issue. Vulcan ranked first in its industry category and ranked among the top ten companies in the U.S. Fortune 1000 for both financial soundness and social responsibility.

To compile its "Most Admired Companies" industry rankings list, Fortune identified the ten largest companies by revenues in 64 industries, including large subsidiaries of foreign-owned companies. They then asked 10,000 executives, directors and securities analysts to rate the companies of their own industries in eight separate categories: innovation, employee talent, use of corporate assets, social responsibility, quality of management, financial soundness, long-term investment, and quality of products and services. Within its industry group, Vulcan was rated number one in all eight categories.

"Our culture and our vision for the future of this Company compel us to be good stewards of our financial resources while also operating in a socially responsible manner," said Donald M. James, Vulcan's chairman and chief executive officer. "The Fortune list is one indication that we are on the right track for continued success for our company, customers and communities. This recognition is a great tribute to the thousands of Vulcan employees all across the country who work every day to achieve superior returns for our shareholders and to be good citizens in the communities where we operate."

Vulcan Materials Company was ranked 9th out of all Fortune 1000 companies in social responsibility. Social responsibility efforts at Vulcan are focused upon four areas: community involvement, environmental stewardship, safety and health, and product usage. Community involvement ensures we help strengthen the communities that support our facilities and provide us with employees. Environmental stewardship preserves the quality of life for future generations while providing products to enhance the quality of life for the present generation. Safety and

health programs are fundamental in ensuring the health and well being of our workers and neighbors. Product usage reflects our determination to manufacture quality products in a responsible manner that adds value to society.

Every year the Company's sites become open-air classrooms, offering thousands of students a hands-on experience in earth science and ecology. Approximately 30,000 students toured Vulcan locations in 2003. Each plant selects relevant activities that fit the interests of tour participants. In addition, many facilities partner with school groups or science classes to erect nest boxes for wildlife, create butterfly gardens, develop habitat to attract native flora and fauna, and build nature trails on our land. Some work with local Scouting organizations, retirement communities or other groups to monitor wildlife at these sites. Employees are active participants in these and other community-enhancing activities.

The other companies among the top ten in Fortune's social responsibility category were United Parcel Service, Alcoa, Washington Mutual, BP, McDonald's, Procter & Gamble, Fortune Brands, Altria, and American Express.

In the financial soundness category, Vulcan was ranked fifth out of all Fortune 1000 companies, and was joined in this category by United Parcel Service, Microsoft, Anheuser-Busch, Exxon-Mobil, Berkshire Hathaway, Procter & Gamble, Johnson & Johnson, Liz Claiborne, and Cisco Systems in the top ten.

Vulcan Materials Company, an S&P 500 company, is a producer of industrial materials with significant positions in two industries. It is the nation's foremost producer of construction aggregates, a major producer of other construction materials, and a leading chemicals manufacturer, supplying chloralkali and other industrial chemicals. For more information about Vulcan, see www.vulcanmaterials.com.

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For further information contact David Donaldson, Media Relations, at (205) 298-3220.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March 2004, I caused a copy of the foregoing Reply of Southwest Gulf Railroad Company to be served via first-class mail on the parties of record to this proceeding or their counsel.



David H. Coburn