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July 18, 2006



Original and 2 copies to the Board, SEA, via DHL Express
and via E-mail to the attention of Mr. Troy Brady

Original and 10 copies to the Board via DHL
Express and copy via fax

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006

ENTERED
Office of Proceedings

JUL 19 2006

Part of
Public Record

Re: STB Docket No. AB-290 (Sub-No. 254X), Norfolk Southern Railway Company - Petition for Exemption - Discontinuance of Service - Between Halls Ferry Junction, NC and Badin, NC, in Stanly County, North Carolina; **217082**

STB Docket No. AB-290 (Sub-No. 274X), Yadkin Railroad Company - Petition for Exemption - Discontinuance of Service and Operating Rights Under Lease - Between Halls Ferry Junction, NC and Badin, NC, in Stanly County, North Carolina [Re-styled]; **217083**

STB Docket No. AB-149 (Sub-No. 211) Winston-Salem Southbound Railway Company - Petition for Exemption - Discontinuance of Service and Operating Rights Under Lease - Between Whitney, NC and Badin, NC, in Stanly County, North Carolina [Re-styled] **217079**

Petitioners' Response to Alcoa's Comments to the Environmental Assessment and Motion and Request for Relief In Those Comments

Dear Mr. Williams:

Enclosed for filing with the Section of Environmental Analysis, attention Mr. Troy Brady, are the original and two copies of the subject document. In addition, enclosed

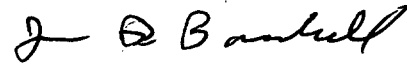
Mr. Vernon A. Williams
Re: AB-290, Sub-No. 254X
AB-290, Sub-No. 274X
AB-149, Sub-No. 2X
Cover Letter Page 2 of 2
July 18, 2006

for filing with the Board are an original and ten copies of the document.

In order to expedite receipt of this document, it is also being faxed to the Board and e-mailed to Mr. Brady. In addition, it is being e-mailed and served via DHL Express on Mr. Michael F. McBride, attorney for Alcoa.

Thank you for your consideration of this matter.

Very truly yours,



James R. Paschall

Enclosures

cc via e-mail

Mr. Troy Brady, STB, Section of Environmental Analysis

Via e-mail and DHL Express

Mr. Michael F. McBride
LeBoeuf, Lamb, Greene & MacRae LLP
1875 Connecticut Avenue, N.W.
Washington, DC 20009

Attorney for Alcoa

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-290 (Sub-No. 254X)

Norfolk Southern Railway Company -
Petition for Exemption - Discontinuance of Service -
Between Halls Ferry Junction, NC and Badin, NC, in Stanly County, North Carolina

STB Docket No. AB-290 (Sub-No. 274X)

Yadkin Railroad Company -
Petition for Exemption -
Discontinuance of Service and Operating Rights Under A Lease -
Between Halls Ferry Junction, NC and Badin, NC, in Stanly County, North Carolina

STB Docket No. AB-149 (Sub-No. 2X)

Winston-Salem Southbound Railway Company -
Petition for Exemption -
Discontinuance of Service and Operating Rights Under A Lease -
Between Whitney, NC and Badin, NC, in Stanly County, North Carolina

Petitioners' Response to Alcoa's Comments to the Environmental Assessment
and Motion and Request for Relief Under That Style

Norfolk Southern Railway Company (NSR), on behalf of itself, its wholly-owned subsidiary Yadkin Railroad Company (YRC) and its jointly-owned affiliate Winston-Salem Southbound Railway Company (WSSB)(collectively Petitioners), submits this response to Alcoa, Inc.'s (Alcoa) July 12, 2006 "Comments on the Environmental Assessment," which also contain a request or motion for affirmative relief. Under the Board's rules and considerations of fundamental fairness, Petitioners have a right to file a response to this extraordinary request or motion for relief and to correct the record. If

for any reason leave to file a response may be required, however, Petitioners request that the Board allow leave to file this response for reasons set forth below. Alcoa's comments and motion are principally based upon the verified statement of Mr. Tom O'Connor and references thereto. As a result, Alcoa's comments and motion are based upon assertions that are at best incomplete, speculative and highly prejudicial. They can fairly be characterized as inaccurate and misleading¹ as also explained below.

Mr. O'Connor has wrongly accused NSR of failing to abide by the Board's environmental rules and regulations² and he has made the egregious and scurrilous assertion that: "This railroad has ignored the law as if it did not apply to NS." Mr. O'Connor does not have the expertise to make this prejudicial legal conclusion and his statement lacks the evidence to back it up. Aside from reference to and speculation about a single current incident at a plant track that he incompletely explained and that is being remedied this week, as Alcoa was told it would be on July 10, 2006, his statement

¹Contrary to Alcoa's charges, Petitioners' environmental report did not fail to address contamination issues but included all known incidents and was more complete than it was required to be. Because the petitions seek only an exemption to permit discontinuance of service and Petitioners will not conduct any salvage operations, Petitioners were not required to address any supposed contamination problems at all. Nonetheless, they did so through an examination of their records and visual inspections of the Line. The single instance of an existing minor fuel drip that is being remedied, even if the previous four fuel drips that have been cleaned up at the same location are also considered, does not constitute evidence that Petitioners have failed to address the matter or that there are additional problems elsewhere. Despite the absence of a requirement to address these issues in a discontinuance proceeding, Petitioners address the merits of Alcoa's claims in addition to pointing out its lack of legal merit.

²This is an ironic assertion from a cost and economic analyst who previously presented a statement in this case in which he failed to support his cost arguments with facts or calculations under the Board's abandonment costing regulations but relied on an URCS revenue to variable cost ratio without any detail on how the result was reached. He continues to assert that NSR's Petition shows numerous defects in its analytical methodology, which is unusual to say the least in view of his previous argument that his deviations from the prescribed methodology (which NSR followed) and his strange and random collections of statistics and speculations form a better basis for a decision in this case.

consists of speculation, allegation and hearsay that do not support his odious charge.³

Alcoa's requests for relief cannot be sustained or granted. Their entire factual predicate is the weak and erroneous O'Connor statement. Even more importantly, they are contrary to well-established applicable legal precedent, detailed below.

Fundamental fairness requires that a complete and accurate presentation of the facts and applicable legal precedent be placed on the record for consideration by the Board. Board action should not be premised on Alcoa's incomplete and unsupportable filing.

Alcoa's comments and requests for relief are based on the O'Connor statement and general statements about the environmental review process from two inapposite cases. Thus, they are without material factual or relevant legal support. The requests for relief are so plainly deficient and illogical that the Board might well deny them even without a response from Petitioners. Nonetheless, Petitioners do not acquiesce in Alcoa's comments, which might be implied if Petitioners did not rebut the comments' incomplete, inaccurate and misleading assertions. Petitioners should be permitted to correct the record and identify the errors, omissions and deficiencies in the comments and request for relief. Petitioners have prepared and submitted this response as quickly as possible after receiving Alcoa's comments late in the day on July 12, 2006. This prompt response will not delay the Board's handling of the environmental matters. It will aid the Board through presentation of all the pertinent facts and applicable precedent.

Petitioners are not adding facts to the record that could have been presented

³This assertion goes beyond the usual level of hyperbole by asserting, without reasonable support, that NSR deliberately ignores the environmental law. NSR has a policy of strict compliance with environmental laws that is implemented through training videos and other means.

earlier. Petitioners are supporting the validity of their prior report and the environmental assessment against an incomplete, speculative and erroneous filing and responding to extraordinary requests for relief. Petitioners had no objection to the Environmental Assessment. Petitioners could not have been expected either to comment on the EA or to anticipate the substance of Alcoa's comments and unsupportable request for relief.

Alcoa bases its conclusions and request for relief on weakly supported assertions that NSR has permitted and ignored widespread contamination of Alcoa's railroad property. The support for the comments and request is an incomplete report of a single existing small incident of dripping of a small amount of petroleum or petroleum products on a storage or parking track at the Alcoa plant. The implications of this occurrence on an ancillary track that is not part of the Line itself are speculatively exaggerated in the O'Connor statement.⁴ Mr. O'Connor, a cost and economic analyst with no qualifications in environmental matters, casually observed the site, took a few photos and had vaguely described discussions with unidentified Alcoa personnel about unidentified similar incidents. As shown below, NSR has responded to this incident promptly and is remediating the area of the dripping this week. NSR also has responded to past incidents when called to the attention of NSR management or professional personnel, as O'Connor admits. This hardly provides evidence of some wider, hidden problem.

⁴Alcoa cites the four other examples of oil drips from Petitioners' environmental report and acknowledges that NSR cleaned up the area in which they occurred in each case. In a further example of the baffling logic that pervades the O'Connor statement, O'Connor uses these examples of situations to which NSR responded as examples of NSR's failure to live up to its responsibilities, its failure to abide by environmental law and its failure to report other examples of similar problems - although O'Connor can only speculate that such other examples exist. Such speculation no doubt could be offered with respect to every railroad line. We can not see how past examples of minor drips or releases that have been cleaned up advance Alcoa's argument.

O'Connor presents no specific evidence of other contamination along the Line. NSR's consultants who are qualified in the area of identification of environmental problems and remediation, whose verified statement is attached, present the situation more accurately and identify major deficiencies in O'Connor's statement.

Alcoa's description of its efforts to seek a private solution to its environmental damage claim with NSR is incomplete at best. Alcoa raised the issue of the locomotive petroleum contamination just seven days prior to the comment date for the Environmental Assessment, although they have obviously known about it since May. NSR provided an adequate and responsive written reply to Alcoa's specific expressed concerns within five calendar days. This has been followed by remediation work at the site this week. After NSR's counsel was contacted by Alcoa's counsel about the petroleum drip on July 5, 2006, NSR's consultant investigated the situation described. As Exhibit 1 shows, after receiving the consultant's report and accompanying photographs, the undersigned replied to Alcoa's counsel on behalf of NSR as follows:

Our environmental consultant has inspected the area affected by the dripping of fluid or fuel from the locomotive at Badin, NC. As soon as possible, perhaps as soon as this week, the consultant will clean up the affected area and place matting in the vicinity to prevent any adverse effects if there are any further incidents of this nature.

Our consultant's investigation revealed no other sites for which NSR might be responsible that required environmental response actions. You have mentioned no other specific sites. On at least two recent occasions, Alcoa has brought concerns over leaks to our attention and we have responded. If Alcoa has concerns about any other specific sites that Alcoa believes may require cleanup because of incidents for which NSR has responsibility, they may contact us as they have done in the past and we will investigate those sites.

Under these circumstances, especially since our consultant will soon respond to the problem which you cite, I believe we will have handled the matter satisfactorily. It seems to me that this leaves no further issues concerning

possible contamination for discussion, but again, if Alcoa has a specific concern, we will look into it.

Alcoa's counsel replied:

Dear Jim: Thank you for your response. I do not believe it adequately addresses Alcoa's concerns or NSR's obligations. In light of your response, we will address those matters at the STB and possibly in another venue. Best regards, Mike McBride

Alcoa's reply is puzzling at best. If Alcoa's concern simply was to ensure proper handling of environmental problems with respect to the railroad property, it is difficult to see how NSR's response, its remediation work this week, along with its four previous responses, do not adequately address those concerns. Alcoa has identified no other sites on the Line with even minimal or superficial contamination or facts that refute the conclusions drawn from NSR's and its consultant's inspections of the Line. Alcoa cites no reported incident in which a response was not made upon notice to NSR management or professional personnel. Alcoa apparently wishes to support its efforts to delay discontinuance of service over the Line, but this is unsupported and unsupportable.

Alcoa's delay in handling this environmental claim against NSR undermines its assertions about its seriousness and provides no support for a delay in the effective date of the Board's decision or for other requested relief. While it is obvious from the date stamps on O'Connor's photos that Alcoa was aware of the issue at least as early as May 26, 2006, we have no indication that they brought it to the attention of any NSR management or professional personnel until Alcoa's counsel contacted NSR's counsel on July 5, 2006, just seven days before comments on the Environmental Assessment were due. NSR has responded promptly and positively to Alcoa's contact about the fuel

drip, but Alcoa filed its comments without reference to this response in any event. This incomplete presentation, unsupported by clearly applicable precedent, provides no basis for Alcoa's conclusions or requests.

As the attached verified statement of Lisa King and Lawrence George and the accompanying photos show, NSR has identified the extent of the petroleum (fuel or lubricant) drip problem at the storage track at Alcoa's facility at the end of the subject Line accurately. It is being remediated this week. The available evidence, including Photo 7, a view of a culvert about 100 yards from the locomotive parking track, shows no petroleum or other staining of the area or of substances migrating from the immediate surface⁵ area of the track. This photo and other points made in the verified statement clearly show that Alcoa's assertion about potential widespread contamination of the Line based on a minor matter that is being remedied is speculative, at best.

Alcoa's witness, Mr. O'Connor, has no expertise in environmental matters and his observations cannot and do not support his conclusions. He based his opinion on the possible extent of any contamination of the rail Line from the observation of superficial staining of about two hundred feet of track, ties, ballast and surface ground at a yard or industrial track location and speculation about possible contamination elsewhere on and even off the Line.⁶ This speculation is unsupported by this single observation. Moreover, the absence of additional examples in O'Connor's statement

⁵Consultants consider releases confined to the top two feet of the ground and not migrating from the immediate area as being on the surface of the area.

⁶Mr. O'Connor refers to some puddling of the petroleum drip at the storage track. Far from supporting his argument, the most likely inference from this occurrence is that the clay layer underneath the soil is preventing absorption and migration of the petroleum.

suggests he could identify no widespread problem. Alcoa has had more than enough time since these petitions were filed and since Mr. O'Connor's site visit in May to examine its own property and to notify NSR of environmental problems that require investigation or response. The lack of such examples shows that the assertions about the inaccuracy of Petitioners' environmental report are unsupported and speculative extrapolations.⁷

Mr. O'Connor also asks that Petitioners be required to remediate supposed problems dating back to the beginning of Petitioners lease of the line in 1916. The ICC rejected such an unwarranted⁸ request in *Union Pacific Railroad Company -- Abandonment -- Wallace Branch, ID*, Docket No. AB-33 (Sub-No. 70) (ICC served November 2, 1992), reversed on other grounds *State of Idaho By and Through Idaho Pub. Utilities Comm'n v. I.C.C.*, 308 U.S. App. D.C. 268, 35 F.3d 585, 599 (D.C. Cir. 1994), in which the ICC stated:

⁷Mr. O'Connor's contract interpretation is equally uninformed and unpersuasive. He repeats his assertion that NSR has received benefits not counted in its cost/revenue calculation because it did not include the benefit from a small corrugated shed for the convenience of the railroad personnel serving Alcoa's facility placed on an unused patch of ground near the rail line at Alcoa's facility. Photo 1 shows this tiny and obscure parcel of property and small building, suggesting its small cost to Alcoa. Mr. O'Connor states that this "office" is used by NSR for offline business without taking into account that Alcoa's traffic is taken or received offline and considering that the crew based at Alcoa is called upon for intra-plant switching. Most importantly, Paragraph 4 of the 1916 Agreement between Alcoa and YRC and WSSB provides in pertinent part: "...Lessor [Alcoa]...shall, moreover, from time to time hereafter, at its own cost and expense, make such additions to, betterments, or improvements of said line of railroad and terminal facilities, including extraordinary maintenance thereof, as may be necessary and reasonable for the safe and convenient operation of said line of railroad..."

⁸The request not only is unrealistic in its duration, beyond the scope of the Board's inquiry and lacking in relation to the Board's action, but it extends to the property of a heavy industry that has been in operation for 90 years. It surpasses belief that any contamination of the property of a heavy industry would be due largely to NSR's fuel drips or unidentified other incidents rather than from Alcoa's operations and its own and its employees' vehicles.

We are sympathetic to the parties' environmental concerns. However, protestants, in effect, are asking us to assess the impact of matters which are not an inherent component of the only proposed action before us. In an abandonment proceeding, we are not required to assess the environmental consequences of 50 or more years of past railroad operations. Thus, we meet our obligations under the environmental laws by doing what we can to ensure that the anticipated impacts of the abandonment proposal before us, i.e., diversion and salvage activities, will not exacerbate an already existing problem.

Note that both Alcoa's witness and its argument cite the 2000 draft lease of the entire YRC property by NSR as some sort of authority for the proposition that NSR has environmental obligations to Alcoa. Alcoa is not a party to this intra-corporate agreement that simply states common, general obligations between corporate affiliates.⁹ Moreover, Alcoa's selective recitation of only parts of the documents fails to include the following paragraph 15, which shows that Alcoa can derive no right or claim under this intra-corporate NSR/YRC lease:

21. No Third Party Beneficiary. This lease is intended for the sole benefit of the parties hereto, nothing in this lease is intended or may be construed to give any person, firm, corporation or other entity, other than the parties hereto and their respective officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns, any right pursuant to any provision or term of this Lease, and all provisions and terms of this Lease are and will be for the sole and exclusive benefit of the parties to this Lease.

Alcoa continues to mischaracterize Petitioners' request for relief as a request to be relieved of their obligations under their leases with Alcoa.¹⁰ Of course, all that

⁹The provisions of the lease apply to YRC's entire system and obviously were not meant to benefit any third party, including Alcoa. In any event, NSR's obligations under the environmental laws, if any in this case, would not be based on its lease of YRC's property and will not be affected by the Board's permission for Petitioners to discontinue service.

¹⁰Alcoa has characterized the leases between it and Petitioners in various and contradictory ways, including as a trackage rights agreement or a lease, in order to fit the nature of the argument it is making at a particular point in its filing. These characterizations make little difference with respect to the environmental assessment. In discontinuance cases, the Board only considers environmental issues concerning diversion of traffic, since the applicant or

Petitioners have requested the Board to do is grant an exemption in order to permit Petitioners to discontinue service over an unprofitable line and to be relieved of their common carrier duty to operate over the Line. It is Alcoa's use of the lease as the basis for arguments that discontinuance of service over the Line should be denied or delayed that is beyond the Board's authority, contrary to precedent and unjustified. It is well settled that a private contract can not affect the jurisdiction of the Board to rule on an abandonment application or petition.¹¹ Of course, Petitioners have the unrestricted right

petitioner will not be salvaging the track and material from the line. See *Union Pacific Railroad Company - Discontinuance Exemption - in Oklahoma City, OK*, STB Docket No. AB-33 (Sub-No. 239X) (STB served April 13, 2006) (Discontinuance of service under a lease); *Atlantic & Pacific Railroad and Transportation Company - Discontinuance of Service Exemption - In Rice County, KS*, STB Docket No. AB-992X (STB served March 22, 2006) (Discontinuance of service under a lease); *Union Pacific Railroad Company - Discontinuance of Service and Trackage Rights Exemption - In Los Angeles and Orange Counties, CA*, STB Docket No. AB-33 (Sub-No. 212X) (STB served March 31, 2004).

¹¹In *Burke County, Georgia v. United States*, 206 F. Supp. 586, 588-589 (S.D.Ga. 1962), a 3-judge panel of the United States District Court for the Southern District of Georgia declined to set aside that portion of an ICC order that permitted the Savannah & Atlanta Railroad Company to abandon a line of railroad. The Court stated:

Because the Commission is concerned with only the public interest to be served by an abandonment, carrier agreements with private or official parties to continue the operation of a line can have no effect on its decision. *Baton Rouge Bus Co. Abandonment*, 275 I.C.C. 1 (1949).

If such agreements operated to prevent the Commission from authorizing abandonment even when the public convenience and necessity favored such authorization, the 'sole' test for abandonment, as stated in *Colorado v. United States*, *supra*, at page 168, 46 S.Ct. 452, 70 L.Ed. 878, would be thwarted. Private agreements cannot thwart the Commission in its Congressionally delegated duty to regulate interstate commerce, *Moeller v. Interstate Commission*, 201 F.Supp. 583, 589-590 (S.D.Iowa 1962).

See also *Salt Lake City Corporation - Adverse Abandonment - in Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) (STB served March 8, 2002) ("UP cannot voluntarily contract away our jurisdiction over the abandonment of this Line"); *Union Pacific Railroad Company - Abandonment Exemption - in Rio Grande and Mineral Counties, Co; in the Matter of an Offer of Financial Assistance*, STB Docket No. AB-33 (Sub-No. 132X) (STB served May 24, 2000) ("... whether UP has violated provisions of its 1969 right-of-way agreement with Colorado does not affect our continuing jurisdiction here."); *Burlington Northern Railroad Company - Abandonment - In Fergus, Judith Basin, and Chouteau Counties, MT*, ICC Docket No. AB-6

to terminate the leases on sixty days' notice in any event. So it is Alcoa, which seeks to prevent Petitioners from exercising that right through the addition of unjustified and unsupportable Board-imposed terms and conditions. Alcoa actually asks the Board to determine Petitioner's rights and add to their duties under these agreements based on the weak and limited O'Connor statement and contrary to applicable precedent.

Alcoa's filing states that NSR's environmental report does not fully disclose all of the environmental issues present on the Line and that NSR has ignored its responsibility to prevent and cure environmental damage to the Line and its surroundings. These statements are wrong. They are based solely on the speculative extrapolation of a single small occurrence of petroleum dripping that NSR promised to remedy and is already remediating. Previous small incidents of the same nature at the same location that were cleaned up provide no additional support for this speculation. NSR's consultant and its own personnel have inspected the Line and found no evidence of such serious environmental issues. Alcoa presents no evidence of any environmental damage to the Line's "surroundings," much less to the Line itself, from Petitioners' operations. As noted above, they could have presented examples of such serious contamination if there were any. Alcoa does not identify any hazardous materials that were ever transported over the Line, much less released on it.¹²

Alcoa's assertion that Petitioners have a contractual responsibility to continue

(Sub-No. 175)(ICC decided July 26, 1984).

¹²As the petition states, NSR records show only aluminum billets or ingots or iron and steel ingots being shipped over the Line in recent years. Bricks are the only commodity known to have been shipped in small quantities from another location near the end of the line some years ago.

service until environmental issues under the lease are handled is clearly wrong as well as illogical. Not only does the lease say nothing about environmental clean-up but it gives Petitioners the unrestricted right of cancellation on sixty days' notice. Moreover, the Board cannot order continuation of service on the Line simply in order to provide leverage to Alcoa for a contract or other claim that will not be affected by the Board's action. If there are environmental issues concerning the condition of the Line to be resolved, and Alcoa has not proven that there are, they will be handled outside the context of a discontinuance of service.¹³ The Board's action in permitting discontinuance of service, and Petitioners' action in discontinuing service will not result in salvaging the Line which Alcoa owns, or in any disturbance of the railroad property.

Alcoa cites the general principles and regulations concerning environmental review taken solely from one routine statement in a notice and a construction application case that does not contradict or overrule the precedent cited below. Alcoa does not relate these general statements of basic legal principles to the facts of this case. More importantly, Alcoa ignores well established precedent specifically relating to similar situations that stands squarely against the relief that it requests. In numerous past decisions, the agency has refused to impose "clean up" conditions in abandonment proceedings or has stated that resolution of cleanup issues are best left to other forums. See *Union Pacific Railroad Company -- Abandonment -- In Saline, Ottawa, Lincoln,*

¹³In the environmental assessment in *Burlington Northern and Santa Fe Railway Company - Abandonment Exemption - in Snohomish County, WA*, STB Docket No. AB-6 (Sub. No. 422X)(STB served July 9, 2004), SEA stated: "The Board's jurisdiction does not extend to post-abandonment maintenance of the right-of-way. Therefore, the Board's Section of Environmental Analysis cannot recommend that the Board impose such mitigation." See also *City of Alameda - Acquisition Exemption - Alameda Beltline Railroad*, STB Finance Docket No. 34798, (STB served April 3, 2006).

Russell, Osborne and Rooks Counties, KS, ICC Docket No. AB-33 (Sub-No. 78) (ICC served December 21, 1993) ("The issue of land restoration goes beyond the issues normally considered in an abandonment proceeding"); Union Pacific Railroad Company -- Abandonment -- Between Echo and Park City and Between Keetley Junction and Phoston, in Summit and Wasatch Counties, UT, ICC Docket No. AB-33 (Sub-No. 55) (ICC decided July 6, 1990); CSX Transportation, Inc. -- Abandonment -- Between Beam and Kane -- In Marion, Nelson, Larue and Taylor Counties, KY (not printed), ICC Docket No. AB 55 (Sub-No. 276) (ICC served February 3, 1989); Chicago and North Western Transportation Company -- Abandonment -- in Sauk and Juneau Counties, WI, ICC Docket No. AB-1 (Sub-No. 147) (ICC decided November 6, 1985); Docket No. AB-6 (Sub-No. 259), Burlington Northern R. Co. - Aband. - in Ashland, Bayfield, and Douglas Counties, WI (not printed) (ICC served July 3, 1985); Arcata and Mad River Rail Road Company - Abandonment Exemption-in Humboldt County, CA, ICC Docket No. AB-241X (ICC decided April 9, 1985) ("...the drainage problem is longstanding and is not, therefore, attributable to the abandonment) and Chicago and North Western Transp. Co. - Abandonment - Betw. Mallard and Terri, IA (not printed), ICC Docket No. AB-1 (Sub-No. 81F) (ICC decided April 20, 1981).

Alcoa refers to possible violations of CERCLA and RCRA. Federal laws such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund Act) PL 96-510, 42 U.S.C. §9601 et seq. sometimes referred to as "CERCLA" and the Resource Conservation and Recovery Act of 1976 ("RCRA), 42 U.S.C. 6901 et seq. do not apply to oil or petroleum products. See the statutory exclusion for oil as a "hazardous substance" at 42 U.S.C. Section 9601 (14) and the

regulatory exclusion of oil since neither diesel fuel oil nor lube oil is a characteristic hazardous waste or a listed hazardous waste as defined by the EPA at 40 C.F.R. Section 261.3 and Subparts C and D pursuant to RCRA. Alcoa has not shown that Petitioners have violated any provision of CERCLA or RCRA but wrongly bases its opinion on minor petroleum dripping not covered by the acts and speculation.

Alcoa has not shown that NSR has not complied with environmental laws. In any event, the Board has no jurisdiction or authority to require Petitioners to remediate the Line as a condition to discontinuance of service. Any claim exists outside the Board's jurisdiction and will not be affected by the discontinuance as Petitioners will not salvage the Line. In *Butte-Silver Bow County - Abandonment Exemption - In Silver Bow County, Montana*, STB Docket No. AB-597X (STB served July 16, 2002), the Board stated:

The Board has limited authority to impose conditions to mitigate potential environmental impacts. As a government agency, the Board can only impose conditions that are consistent with its statutory authority. Accordingly, any conditions the Board imposes must relate directly to the transactions before it, must be reasonable, and must be supported by the record before the Board. Thus, the Board's practice consistently has been to mitigate only those impacts that result directly from the proposed action. The Board typically does not require mitigation for pre-existing environmental conditions.

See also the similar ICC precedent in the footnote below.¹⁴

¹⁴In a decision denying a petition to reopen and to revoke the Commission decisions in *Union Pacific Railroad Company -- Abandonment -- Between Echo and Park City and Between Keetley Junction and Phoston, in Summit and Wasatch Counties, UT*, ICC Docket No. AB-33 (Sub-No. 55) (ICC decided July 6, 1990) because of dissatisfaction with the ICC's grant of a CITU, the ICC stated:

Gillmor seeks removal of the CITU on the ground that UP did not disclose in its application an alleged environmental problem. Specifically, Gillmor contends that the right-of-way contains mine tailings with lead, arsenic, cyanide, mercury and other heavy metal contaminants.

Under the National Environmental Policy Act (NEPA), 42 U.S.C. 4331, and the implementing regulations at 49 CFR 1105, the Commission considers the environmental effects of its action, in this case abandonment authorization. The matter petitioner raises

Alcoa states that if the Board does not delay the discontinuance of service for NSR to remediate (non-existent) contamination, "Alcoa would be left to remediate environmental issues which were caused by Petitioners' negligence, in breach of the lease agreements, and their duty as common carriers."¹⁵ If Alcoa actually has environmental claims based on tort (negligence) or contract with respect to the Line, Alcoa presents no precedent or logical argument that the Board's permission for Petitioners to discontinue service over the Line would affect those claims. In *Union Pacific Railroad Company – Discontinuance Exemption – in Oklahoma City, OK*, STB Docket No. AB-33 (Sub-No. 239X) (STB served April 13, 2006), the Board stated in a case in which UP leased a rail line and the Oklahoma Department of Transportation (ODOT) owned it and desired conditions placed upon the discontinuance of service:

As for the second requested condition, we likewise see no need to reopen this proceeding to state that the exemption does not affect any private contractual rights between UP and ODOT. It is well established that we do not

is not affected by abandonment of the rail line. In short, any environmental problems of the type she raises cannot be tied to the abandonment or any related Commission action, so as to involve NEPA.

See also *Akron Barberton Cluster Railway Company – Acquisition and Operation Exemption – Certain Lines of Consolidated Rail Corporation; Wheeling Corporation – Continuance in Control Exemption – Akron and Barberton Cluster Railway Company*, Finance Docket No. 32537, Finance Docket No. 32538 (ICC served January 12, 1995) where the ICC stated:

Our environmental regulations require only that, in approving transactions, we consider environmental problems resulting from the transaction, not environmental problems that existed before the transaction and that would continue to exist whether or not the transaction is approved. Here, the alleged environmental problems were property-related problems that would continue to exist even if the transaction never took place. Because the alleged problems did not result from the transaction, we do not have to reopen the record to consider them.

¹⁵The reference to common carrier duty is simply puzzling. Alcoa does not support the apparent request that the Board order Petitioners to remediate contamination without any proof there is more than the one incident that is being cleaned up.

undertake to interpret or enforce private contracts, including operating agreements such as the ODOT-UP lease. See, e.g., *The Kansas City Southern Railway Company – Adverse Discontinuance Application – A Line of Arkansas and Missouri Railroad Company*, STB Docket No. AB-103 (Sub-No. 14), slip op. at 7 (STB served Mar. 26, 1999), and case cited therein. Our action here should have no effect on the contractual issues. For these reasons, we will deny ODOT's alternative request to reopen the proceeding to place conditions on UP's exemption.

See also *Tacoma Eastern Railway Company - Adverse Discontinuance of Operations Application - A Line of City of Tacoma, in Pierce, Thurston and Lewis Counties, WA*, STB Docket No. AB-548, (STB served March 3, 1999) and cases cited in this footnote.¹⁶

Alcoa asks for delay in the Board's decision or a stay to investigate environmental issues that it conjures based on mere speculation, and that in any event, are beyond the Board's purview in this case. In *Saginaw Valley Railway Company, Inc. - Acquisition Exemption - CSX Transportation, Inc.*, Finance Docket No. 32829 (STB served July 24, 1996), the Board rejected a "request that we delay ruling on the merits of the exemption is not based on any claim that regulation is necessary; rather, it revolves around a dispute over a private contract." Alcoa would have the Board delay a

¹⁶The Board made the following instructive statement in *Boston and Maine Corporation and Springfield Terminal Railway Company v. New England Central Railroad, Inc.*, STB Finance Docket No. 34612 (STB served January 10, 2006): "The remaining issues involved in the complaint are fact-bound, and they predominantly involve claims of breach of contract and tort. For the reasons discussed in the February 2005 Decision, we will continue to defer to the courts the resolution of the remaining issues."

See also *Springfield Terminal Railway Company - Abandonment Exemption - In Hampden County, MA*, STB Docket No. AB-355 (Sub-No. 30X)(STB served August 10, 2004) where the Board through the Director of the Office of Proceedings stated:

Concerning the requested restoration of every public at-grade railroad crossing, the only impacts to public roadways that could result from this proposed abandonment are likely to occur as a result of salvage. Here, however, ST has no right to salvage the line because WMDC's reversionary interest in the property will vest on consummation of the abandonment. Accordingly, a Finding of No Significant Impact under 49 CFR 1105.10(g) will be made pursuant to 49 CFR 1011.7(b)(9).

ruling here not based on the merits of the request for abandonment but due to a dispute over a contract or common law claim. The agency regularly has rejected such calls for delay in reaching a decision based on post-abandonment matters rather than the merits of the abandonment or discontinuance of service on many occasions.¹⁷

In *Southern Pacific Transportation Company - Abandonment in Fresno County, CA*, ICC Docket No. AB-12 (Sub-No. 75) (ICC decided March 1, 1985), the ICC stated:

The possible soil contamination problem caused the Department to request that we stay the abandonment until it completed its assessment. We are reluctant to grant that relief because it goes beyond the scope of the soil contamination problem. Soil contamination does not affect the issue of whether SPT should be required to continue to provide service. Contrary to the claims of Pacific and Argo, the July 30, 1984 EA took the required "hard look" at the environmental consequences of abandonment....

In focusing on the possible soil contamination problem protestants ignore the crucial fact that abandonment will not aggravate any problem that now exists.

If Alcoa has any further claims against Petitioners with respect to environmental contamination, they will base those claims on contract, environmental or common law.¹⁸ These are beyond the Board's inquiry in this case. The Board is obligated to consider the environmental consequences of its actions, but it has no jurisdiction to enforce

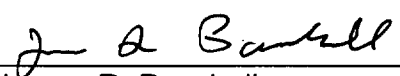
¹⁷See *Central Kansas Railway, Inc. - Abandonment Exemption - In Kay and Grant Counties, OK, and Harper County, KS*, ICC Docket No. AB-406 (Sub-No. 1X) (ICC served June 3, 1994); *Consolidated Rail Corporation -- Abandonment Between Union City and Redkey In Jay and Randolph Counties, IN*, Docket No. AB-167 (Sub-No. 1111) (ICC served February 18, 1993); *The Baltimore and Ohio Railroad Company, Metropolitan Southern Railroad Company and Washington and Western Maryland Railway Company -- Abandonment and Discontinuance of Service -- In Montgomery County, MD and the District of Columbia*, Docket No. AB-19 (Sub-No. 112) (ICC served Mar. 28, 1988) and *Rahway Valley Railroad Company -- Abandonment -- Between Aldene and Summit in Union County, NJ*, Docket No. AB-211 (ICC served Aug. 27, 1992).

¹⁸In *Union Pacific Railroad Company - Abandonment - In Saline, Ottawa, Lincoln, Russell, Osborne and Rooks Counties, KS*, ICC Docket No. AB-33 (Sub-No. 78) (ICC served January 19, 1994), the ICC stated: "The matters of bridges, cleanup, and land restoration are properly resolved under State law. Our conditioning authority is used to ensure that the anticipated impacts of the abandonment do not exacerbate an already existing problem."

claims under environmental laws, or to enforce the laws themselves, and has frequently noted that contract or damages issues should be resolved in another forum. The Board's approval of discontinuance of service over the Line will not result in the disturbance of any contaminated site because Alcoa owns the subject Line and Petitioners will not perform any salvage or other work. In fact, if continuing contamination of the Line actually were a problem, given the small amount of remaining traffic at the Alcoa plant and the availability of alternative transportation, the most logical way to prevent any further contamination of the Line would be to discontinue service over the Line, remove the locomotives from the plant area, cease intra-plant switching and to do so as soon as possible, as Petitioners have requested.

The Board should accept the environmental assessment as submitted by SEA and reject Alcoa's unsupported and legally unprecedented and unjustified attempt to create issues or doubts where there are none in order to obtain a delay in the discontinuance of service over the Line or other unjustified relief.

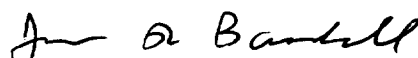
Respectfully submitted,


James R. Paschall
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510
(757) 629-2759
fax (757) 533-4872

Attorney for Petitioners

CERTIFICATE OF SERVICE

I certify that the foregoing response to environmental comments and incorporated request for relief in STB Docket Nos. AB-290 (Sub-No. 254X), AB-290 (Sub-No. 274X) and AB-149 (Sub-No. 2X) has been served on Mr. Michael F. McBride, LeBoeuf, Lamb, Greene & MacRae LLP, 1875 Connecticut Avenue, N.W., Washington, DC 20009, Attorney for Alcoa, Inc., via e-mail and DHL Express, this 18th day of July, 2006.



James R. Paschall

Dated: July 18, 2006

Paschall, James, R.

From: McBride, Michael F. [MFMCBRID@llgm.com]
Sent: Monday, July 10, 2006 5:11 PM
To: Paschall, James, R.
Cc: Meek, Thomas (Legal) J.; Tinaves, Arisa; Tryon, Ahren
Subject: RE: Alcoa/NS Proposed Discontinuance of Service at Badin

Dear Jim: Thank you for your response. I do not believe it adequately addresses Alcoa's concerns or NS's obligations. In light of your response, we will address those matters at the STB and possibly in another venue. Best regards, Mike McBride

Michael F. McBride
Partner
LeBoeuf, Lamb, Greene & MacRae LLP
1875 Connecticut Avenue, N.W., Suite 1200
Washington, D.C. 20009-5728
Direct: +1 202 986 8050
General: +1 202 986 8000
Fax: +1 202 986 8102
Mobile: +1 703 851 1976
michael.mcbride@llgm.com
mfmcbriid@llgm.com
www.llgm.com

From: Paschall, James, R. [mailto:james.paschall@nscorp.com]
Sent: Monday, July 10, 2006 2:01 PM
To: McBride, Michael F.
Cc: Meek, Thomas (Legal) J.
Subject: RE: Alcoa/NS Proposed Discontinuance of Service at Badin

Mike:

Our environmental consultant has inspected the area affected by the dripping of fluid or fuel from the locomotive at Badin, NC. As soon as possible, perhaps as soon as this week, the consultant will clean up the affected area and place matting in the vicinity to prevent any adverse effects if there are any further incidents of this nature.

Our consultant's investigation revealed no other sites for which NSR might be responsible that required environmental response actions. You have mentioned no other specific sites. On at least two recent occasions, Alcoa has brought concerns over leaks to our attention and we have responded. If Alcoa has concerns about any other specific sites that Alcoa believes may require cleanup because of incidents for which NSR has responsibility, they may contact us as they have done in the past and we will investigate those sites.

Under these circumstances, especially since our consultant will soon respond to the problem which you cite, I believe we will have handled the matter satisfactorily. It seems to me that this leaves no further issues concerning possible contamination for discussion, but again, if Alcoa has a specific concern, we will look into it.

Jim

Note to Exhibit 1:

The substance of the previous correspondence and the headers of two e-mails from James R. Paschall and one from Michael F. McBride are omitted inasmuch as they were preliminary exchanges and the ultimate substantive reply is the only relevant information for this filing. The header of the first e-mail is retained to show the time and date the sequence of correspondence began.

From: McBride, Michael F. [mailto:Michael.McBride@lfgm.com]

Sent: Wednesday, July 05, 2006 11:44 AM

To: jim.paschall@nscorp.com

Cc: Tinaves, Arisa; Tryon, Ahren; La Rose, Joanne M.; Meek, Thomas (Legal) J.; Hetzel, David G.; Freeman, Paul C.

Subject: Alcoa/NS Proposed Discontinuance of Service at Badin

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-290 (Sub-No. 254X)

Norfolk Southern Railway Company -
Petition for Exemption - Discontinuance of Service -
Between Halls Ferry Junction, NC and Badin, NC, in Stanly County, North Carolina

STB Docket No. AB-290 (Sub-No. 274X)

Yadkin Railroad Company -
Petition for Exemption -
Discontinuance of Service and Operating Rights Under A Lease -
Between Halls Ferry Junction, NC and Badin, NC, in Stanly County, North Carolina

STB Docket No. AB-149 (Sub-No. 2)

Winston-Salem Southbound Railway Company -
Petition for Exemption -
Discontinuance of Service and Operating Rights Under A Lease -
Between Whitney, NC and Badin, NC, in Stanly County, North Carolina

Verified Statement of Lisa King and Lawrence M. George

My name is Lisa King. I am a geologist with Marshall Miller and Associates (MM&A), Route 720, Bluefield Industrial Park, P.O. Box 848, Bluefield, VA 24605. My resume and qualifications are attached (Attachment A). Along with Lawrence M. George, Technical Director/Senior Scientist of Marshall Miller and Associates, 5825 Triangle Drive, Raleigh, NC 27617, whose resume and qualifications are attached (Attachment B), I have prepared the following verified statement on behalf of the railroad petitioners, Norfolk Southern Railway Company (NSR), Yadkin Railroad

Company (YRC), and Winston-Salem Southbound Railway Company (WSSB), in the subject dockets in response to the July 12, 2006 filing of Alcoa, Inc., including the verified statement of Mr. Tom O'Connor.

MM&A is a nationally recognized environmental consulting firm. With over 200 employees at our Bluefield headquarters and eleven branch offices in eight States, including Virginia and North Carolina, MM&A is well experienced in dealing with petroleum-related and other contamination and remediation in the railroad environment. MM&A is a unique assembly of engineering and science-related professionals, whose goals are to primarily serve the fossil fuels, transportation, and land and mineral development industries; and to integrate successfully and professionally with government agencies to achieve environmental responsibility and preservation of natural resources. MM&A initially inspected the Halls Ferry-Whitney-Badin, NC rail line to assist NSR in the preparation of the environmental report submitted with the railroads' petitions to discontinue service under lease in the subject dockets.

Alcoa's attorney sent an e-mail to NSR's attorney on July 5, 2006 in which he alleged that NSR had contaminated the rail line that is the subject of these dockets, specifically at Badin, NC, and principally from leaking locomotives. In response, at NSR's request, I immediately conducted an inspection of the current conditions of the rail line in an effort to evaluate the extent of any problem and the extent of cleanup, if necessary. I took the attached photographs 1-7 showing the condition of the property at Badin, NC about which Alcoa complained on that day (Attachment C).

My observation of the nature and extent of the petroleum contamination complained of is that there is superficial surface petroleum staining of ballast for about

the length of two locomotives along the rail in the area near Milepost WF-10.36 at Badin, NC where the locomotives are parked for the convenience of Alcoa, in support of switching rail cars in the operation of its plant. The attached photos support the conclusion that the contamination complained of presents a minor problem. I found no evidence of contamination other than some minor dripping of fuel or lubricants, as commonly occurs with all locomotives or other vehicles. The staining was confined to the area between and immediately adjacent to the rails within the designated locomotive storage area. The lack of lateral migration of the staining indicates spillage of small quantities of petroleum product, and not "extensive" spills as described in the verified statement of Mr. O'Connor. Given MM&A's experience with similar spills, I suspect that the environmental impact would be restricted in both lateral and vertical extent, would not be expected to reach groundwater, and little remediation, other than some limited shallow soil and ballast cleaning or removal, would be required to clean up this leakage of a few gallons of locomotive lubricant or fuel. Mr. George supports this analysis.

Attached photo 7 shows no petroleum impact or staining of the culvert adjacent to the rail line and near the parked area. Alcoa does not actually claim otherwise inasmuch as Mr. O'Connor states: "Our on site review found that the contamination permeated the above ground track structure but it is as yet undetermined how much below the surface the contamination reaches." In addition, I examined all accessible track up and down from the parking area and it appeared clean. I also inspected all the public crossings and walked along portions of the line, photographed them, and observed that they appeared clean. As such, Mr. O'Connor's statement that the spillage poses a "potential environmental risk" to nearby water resources is unfounded and exaggerated.

Regardless of the exact amount of petroleum dripped, on July 10, 2006, NSR's attorney sent an e-mail reply to Alcoa's attorney concerning the alleged contamination complaint. The e-mail stated that NSR would clean up the leaked petroleum at Badin, NC and place matting in the area in an effort to prevent any adverse effect from any further dripping so to the extent a problem exists at this location, it will be handled in the very near future. Thus, NSR stated without reservation that it would clean up the leaked petroleum identified in the pictures, as Alcoa acknowledges it has done on other occasions.

The apparent rejection of NSR's obvious and straightforward responses to Alcoa's complaints about this petroleum (suspected lube oil) leakage is all the more puzzling because Alcoa's witness, Mr. Thomas O'Connor states: "In several instances in past years, Alcoa requested that NS cease operation and bring in contractors to clean up spills. Alcoa reported that NS complied with its requests and brought in specialists to clean up the leaking fluids." With this background of responding to previous complaints and NSR's statement that it will clean up the existing leakage and place matting down to prevent further adverse effects from future leakage, Mr. O'Connor's conclusions about NSR's inattention to and disregard of such matters are difficult to understand, much less accept. Certainly NSR has not refused to respond to complaints about such leaks as our experience and Mr. O'Connor's own statements show. Mr. O'Connor's statements that NSR has acted as if the law does not apply to it are unwarranted and unsupported by the facts in his own statement.

Alcoa has exaggerated the seriousness of the stained ballast and soil at Badin, NC by misrepresenting the extent complained of oil releases. Alcoa alleges that the

locomotive area at Badin, NC is "heavily contaminated with locomotive diesel fuel and other locomotive lubricants." I have observed and shown above that this is factually incorrect. Moreover, Alcoa has mischaracterized the substance that was leaked or released as "hazardous wastes" or "hazardous substances." As Mr. George also can attest, neither term applies by law to petroleum products. Alcoa has not complained of any NSR releases of actual "hazardous wastes" or "hazardous substances" along the line, and MM&A's inspections of the line and consultations with NSR concerning its records of any incidents along the line have revealed none. Alcoa's presentation was made by Mr. Tom O'Connor, a cost, economic, business and policy analyst with an economic and management firm. Mr. O'Connor has no apparent qualifications to judge the nature and extent of the environmental problem, if any, at Badin, NC. He relies not on any testing or general expertise, but on his exaggerated characterization of his observation and some second-hand comments from Alcoa employees. A close reading of Mr. O'Connor's statement shows that his conclusions are based on nothing more than unconnected and unsupported assertions and undisguised speculation.

While Mr. O'Connor states that NSR has misstated, mischaracterized and incorrectly omitted facts from its analysis, it is in fact Mr. O'Connor who has misstated the extent of the petroleum (suspected lube oil) leakage at Badin, NC, mischaracterized the type of problem, if any, present at Badin, NC, and incorrectly omitted NSR's response to the recent Alcoa request to clean up the current leak. He argues that contamination must have occurred in other areas of the line but presents not a single photograph, past incident, observation or identification of a location where such an incident may have occurred. He does not state that Alcoa has ever reported such an

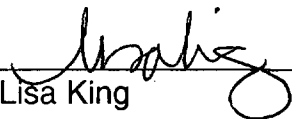
incident to NSR, much less that NSR refused to clean up any area that it might have contaminated. Thus, the basis for his conclusion concerning a possible wider problem is based on mere speculation.

Mr. O'Connor also concludes that this minor matter should result in the rejection of the petitions for discontinuance of service over the line and that NSR be required to take responsibility for all contamination on the line resulting from rail operations since 1916. He provides no factual or legal support for these requests. There is no connection between the Board's authorization of discontinuance of service over the rail line and any responsibility NSR may have for environmental remediation. The material on the line will not be salvaged or disturbed because Alcoa owns the line. If Alcoa is greatly concerned about the petroleum leakage or further contamination of its property, and is unsatisfied with NSR's proposed cleanup and placement of matting in the area, the logical conclusion to satisfy this concern is not to continue service, but to remove the locomotive(s) permanently from the property and to discontinue rail operations over it.

VERIFICATION

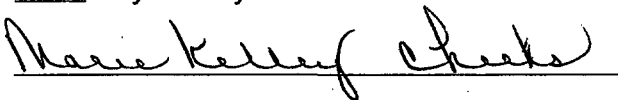
Commonwealth of Virginia)
) ss
County of Tazewell)

Lisa King makes oath and verifies under penalty of perjury that she is a geologist with Marshall Miller & Associates; that she has been authorized by the Petitioners Norfolk Southern Railway Company, Yadkin Railroad Company and Winston-Salem Southbound Railway Company to file the foregoing statement in STB Docket Nos. AB-290 (Sub-No. 254X), AB-290 (Sub-No. 274X) and AB-149 (Sub-No. 2X) on their behalf; that she has carefully read the statement and has knowledge of the facts stated therein; and that all facts and representations set forth in the statement and accompanying attachments are true and correct to the best of her knowledge, information, and belief.



Lisa King

Subscribed and sworn to before me, a notary public
in and for the State and County above named, this
13th day of July 2006.



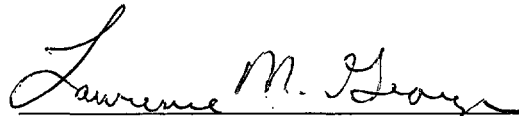
Marie Kelley Cheeks

Notary Public
My commission expires June 30, 2009

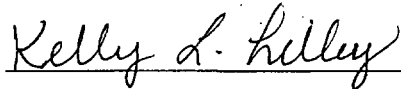
VERIFICATION

State of North Carolina)
) ss
County of Wake)

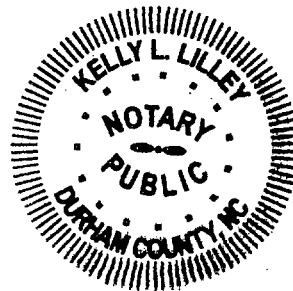
Lawrence M. George makes oath and verifies under penalty of perjury that he is a Senior Scientist with Marshall Miller & Associates; that he has been authorized by the Petitioners Norfolk Southern Railway Company, Yadkin Railroad Company and Winston-Salem Southbound Railway Company to file the foregoing statement in STB Docket Nos. AB-290 (Sub-No. 254X), AB-290 (Sub-No. 274X) and AB-149 (Sub-No. 2X) on their behalf; that he has carefully read the statement and has knowledge of the facts stated therein; and that all facts and representations set forth in the statement and accompanying attachments are true and correct to the best of his knowledge, information, and belief.


Lawrence M. George

Subscribed and sworn to before me, a notary public in and for the State and County above named, this 13th day of July 2006.



Notary Public Kelly L. Lilley
My commission expires: 8/17/07



Attachment A

Qualifications of Lisa King

Education:

Master of Science – Geology
East Carolina University, Greenville, North Carolina (in progress)

Bachelor of Science – Geology
University of Cincinnati, Cincinnati, Ohio, 2002

Bachelor of Commerce - Business
Ryerson University, Toronto, Ontario, Canada 1992

Marketing Diploma
George Brown College, Toronto, Ontario, Canada 1990

Background:

2004 – Present	Staff Scientist Marshall Miller & Associates, Inc., Bluefield, Virginia
2002 – 2004	Graduate Teaching Assistant East Carolina University, Greenville, North Carolina
2003 – 2004	Technical Writing Tutor East Carolina University, Greenville, North Carolina
1999 – 2000	Regional Sales Access First, Cincinnati, Ohio
1997 – 1999	Vice President of Operations Access First, Cincinnati, Ohio
1996 – 1998	Marketing Tash International, Toronto, Ontario, Canada

Certifications:

CSXT Roadway Worker Protection Training, 2005 and Annual Refresher
OSHA 8-Hour HAZWOPER Refresher Training, 2005 and Annual Refresher
OSHA 40-Hour Hazardous Waste Operations, 2004
Mass Spectrometry Experience, 2004
X-Ray Diffractometer Training, 2002
ESRI Certified for ArcView GIS, 2000

Memberships:

GSA Member.

Listings and Recognitions:

Abstract: KECK Proceedings: Glacial Ohio Project, 2002
North-central GSA Undergraduate Research Grant, 2002
Ohio Gem & Mineral Scholarship, 2002
Professional Writing Award, University of Cincinnati, 2001
Women in Science & Engineering Scholarship, 2001

Qualifications of Lisa King – Page 2 of 2

- 2004 – Present Coordinate and assist in various types of environmental site assessments and remediation projects for Class 1 Railroad client. Conduct Phase I Environmental Site Assessments. Coordinate field personnel, operations, and procurement of equipment. Perform and/or supervise field assessment activities including soil borings, installation of monitoring and recovery wells using hollow stem auger drilling and direct push technology, and soil and groundwater sampling for various state remediation programs sites. Evaluate field and laboratory data and write Environmental Assessment Reports, Monitoring Reports, and Asbestos Reports for various state regulatory agencies, such as the Virginia Department of Transportation (VDOT), the Kentucky Division of Waste Management (KDWM), and the West Virginia Department of Environmental Protection (WVDEP). Assist in the writing of Corrective Action Plans for sites in West Virginia and Virginia. Prepare scope of work proposals to clients and various state regulatory agencies for approval. Prepare Health and Safety Plan reports. Conduct health and safety meetings for the environmental department.
- 2002 – 2004 Taught *Dynamic Earth: Introductory Geology Lab* and served as faculty assistant.
- 2003 – 2004 Weekly instruction to geology students in writing, revising, and editing skills necessary for scientific report writing.
- 1999 – 2000 Responsible for North American introduction of Siemens, voice-activated, product to the assistive technology industry.
- 1997 – 1999 Coordinated, launched, and managed new business venture in the assistive technology industry.
- 1996 – 1998 Developed marketing strategies in the assistive technology industry to increase product awareness, sales, and customer service throughout United States.

Continuing Education:

Monitoring Project Budgets and Schedules: Earned Value Method, 2005
Adobe PageMaker Workshop, 1999
How to Give Effective Presentations, 1998
Designing Brochures, Catalogs, and Newsletters, 1996
Using Microsoft Access, 1996

Attachment B

Qualifications of Lawrence M. George

LAWRENCE M. GEORGE, P.G., R.S.M.

RCRA and CERCLA; Remedial Investigation/Feasibility Studies; Risk Assessment; Voluntary Remediation and Redevelopment

Education

Master of Science – Geology

Texas A & M University, College Station, Texas – 1986

Bachelor of Science – Geology

Michigan State University, East Lansing, Michigan – 1981

Background

1997 – Present	Technical Director/Senior Scientist Marshall Miller & Associates, Inc., Raleigh, North Carolina
1996 – 1997	Program/Senior Project Manager Marshall Miller & Associates, Inc., Raleigh, North Carolina
1992 – 1996	Project Manager/Project Team Leader ENSCI Environmental, Inc., Raleigh, North Carolina
1991 – 1992	Project Manager Applied Environmental Services, Raleigh, North Carolina
1991	Staff Geologist Applied Environmental Services, Raleigh, North Carolina
1987 – 1991	N.C. Certified Environmental Health Specialist Dare County Health Department, Manteo, North Carolina
1990 – 1991	N.C. Certified Environmental Health Specialist Contract Employee, Hyde County Health Department, Swan Quarter, North Carolina

Certifications

Georgia Professional Geologist – Certification No. 1699, May 2003
North Carolina Licensed Geologist – Certification No. 1163, June 1992
South Carolina Professional Geologist – Certification No. 2149, June 1998
Virginia Certified Professional Geologist – Certification No. 997, May 1994
Indiana Certified Professional Geologist – Certification No. 1725, March 1996
Alabama Professional Geologist – Certification No. 945, September 1998
Missouri Professional Geologist – Certification No. 998, November 1998
Kentucky Professional Geologist – Certification No. 2246, August 1998
West Virginia Voluntary Remediation Program – Licensed Remediation Specialist,

Certification No. 22

North Carolina Registered Environmental Consultant Program – Registered Site Manager

40 Hour OSHA Certification for Hazardous Materials Management

8 Hour OSHA Annual HAZWOPER Refresher, January 2004

NITON XRF Analyzer, Certification No. V1998430 – 4

Roadway Worker Protection Training: 49 CFR 214, January 2005

Associations

National Groundwater Association

Groundwater Professional of North Carolina

Professional Experience

1997 – Present **Technical Director/Senior Scientist** – Responsible for managing the technical operations of the Raleigh, NC branch office. Duties include technical staff supervision and scheduling, establishing standard operating procedures and quality assurance measures, technical review, and project management.

1996 – 1997 - **Program/Senior Project Manager** – Responsible for establishing a foundation to conduct soil and groundwater assessment and remediation projects to include budgeting, project management and staff supervision.

1992 – 1996 - **Project Manager/Project Team Leader** – Responsible for managing a team of geologists and technicians in all facets of non-hazardous and hazardous waste hydrogeological and geological assessment, and remedial planning/design projects throughout North Carolina, Virginia, and South Carolina.

1991 – 1992 - **Project Manager** – Responsible for managing and directing projects involving comprehensive investigations to characterize the nature and extent of chemical releases to soil and groundwater, and hydrogeological properties of sites overseen by various regulatory programs.

1991 - **Staff Geologist** – Responsible for directing field investigations including soil sampling, monitoring well installation, groundwater sampling, geological and hydrogeological characterization, and aquifer testing. Prepared a variety of technical reports summarizing the findings of the field investigations. Assisted project managers with project coordination.

1987 – 1991 - **Environmental Health Specialist** – Responsible for enforcement of North Carolina on-site sewage disposal code, conducting site investigations to determine soil textural and hydrologic properties, plan review of engineered waste disposal systems; designing sewage disposal systems; permitting; complaint investigation; well siting, sewage disposal system installation inspections; surface water

and groundwater sampling. Duties of the contract position with Hyde County also included assisting Health Director with interpreting State regulations and establishing local public health policies.

Key Project Experience

Completed a **Remedial Investigation and Feasibility Study** associated with an inactive waste disposal unit. The project is active and is being conducted through the North Carolina Department of Environment and Natural Resources Registered Environmental Consultant Program. Developed and implemented a **Remedial Action Plan** to address impact to soil and groundwater by volatile organic compounds.

Performed **Field-Scale Treatability Studies** to evaluate several remedial technologies including chemical oxidation, bioremediation and chemical thermal treatment. Completed a natural attenuation study to evaluate feasibility of proposing natural attenuation as a remedy for ground water remediation. **Contaminant Fate and Transport Modeling** was performed to determine migration of contaminants to a nearby river and resulting concentrations in the surface water resulting from discharge of the contaminant plume into the river. Implemented the Remedial Action Plan to complete on-site ex-situ treatment of soil using chemical oxidation, bioremediation and chemical thermal treatment. Obtained **Sedimentation and Erosion Control** Plan for the remedial activities. **Decommissioned and Decontaminated** treatment train and all heavy equipment used in the remediation process.

Performed a **Remedial Investigation/Feasibility Study** of two waste disposal areas regulated by the Indiana Department of Environmental Management (IDEM) under the Voluntary Remediation Program (VRP). Evaluated thermally enhanced soil vapor extraction for soil remediation. Thermal enhancement through injection of air heated by a heat exchanger was considered due to climate, impacted soil depth, and the chemical characteristics of the contaminants. Wrote the Remediation Work Plan and associated Site Specific Health and Safety Plan. Performed **Site-specific Risk Assessment**, and calculated and proposed cleanup standards for chemicals of concern. Supervised the excavation and disposal of about 2,500 tons of F-listed hazardous waste. Obtained approval of the remediation by and Certificate of Completion from the IDEM VRP.

Performed **Closure of RCRA Hazardous Waste Management Units**, involving both interim status and permitted facility requirements. Conducted a geologic site characterization involving literature research, fracture trace mapping, **Seismic Refraction and Resistivity Surface Geophysical Applications** to determine bedrock topography, boring/rock coring, and groundwater monitoring well installation. Wrote closure plans, groundwater detection monitoring plans, groundwater quality assessment plans, geologic site characterization plan, and a site health and safety plan. Designed and supervised installation of groundwater detection monitoring and compliance monitoring well networks. Implemented groundwater detection monitoring and groundwater quality assessment plans. Implemented closure plans to determine status

of soils. Risk-based closure for unrestricted land use was approved by VADEQ for two of the units. One of these units was also clean-closed for ground water. The third unit was **Decommissioned** by removing and disposing of remaining components of the unit and impacted soils. Ongoing ground water quality assessment, ground water monitoring, and preparation of **Part A and Part B Application for Post-closure Care Permit. Fractured Bedrock Aquifer** is primary aquifer impacted by chlorinated solvents. Performed borehole geophysical logging including acoustic tele-viewer to characterize fracture orientations and density. Completed **Magnetometer Survey** to determine if diabase intrusions were present in the study area. Prepared **Phase I RCRA Facility Investigation (RFI) Work Plan**, including Sample Collection Methods and Procedures Plan, Quality Assurance Project Plan, Data Management Plan, Community Relations Plan and Health and Safety Plan for pending Phase I RFI.

Conducted a **Remedial Investigation and Risk Assessment**. Site had over 100-year operational history including use as a rail terminal and rail car maintenance facility. Chemicals of concern (COC's) included metals, chlorinated solvents, PAH's, PCB's and petroleum hydrocarbons. Utilized Geoprobe sampling technology and field screening techniques to conduct rapid assessment to define extent of the COC's in soil and ground water. A site-specific risk assessment was performed to calculate exposure and risk based on the projected use of the property for industrial purposes.

Currently performing **Hydrogeological Characterization** in support of preparing the remedial design as specified in the Record of Decision for the North Carolina State University, Lot 86 **National Priority List** site. Prepared an Aquifer Testing Work Plan describing methodologies and procedures for conducting multi-level slug testing to evaluate spatial variability in the hydraulic conductivity within the saprolite, weathered bedrock and fractured bedrock hydrogeological units, as well as an aquifer pumping test. Project will involve three dimensional fate and transport modeling using Visual ModFlo Pro to support design of the extraction well field and predict the fate and transport of contaminants in the saprolite and bedrock aquifers.

Served as Senior Project Hydrogeologist for conducting **Hydrogeological Investigations** and **Corrective Action Plan** development at asphalt plants in the Piedmont Physiographic Province. Experience includes saprolite and **Fractured Bedrock** aquifers contaminated with **Chlorinated Solvents**. Conducted geophysical logging including acoustic televiewer to characterize fracture patterns in bedrock. Designed discrete-interval sampling and aquifer testing programs to characterize ground water quality and hydrogeological properties of different fracture zones. Projects involved contaminant fate and transport modeling and natural attenuation studies. CAP's submitted to and approved by NCDENR for ground water remediation through natural attenuation.

Completed a **Remedial Investigation/Feasibility Study** for several waste disposal units at a hardboard manufacturing facility in North Carolina under the North Carolina Division of Waste Management, Superfund Section, Inactive Hazardous Sites Branch.

Developed Site Specific Health and Safety Plan. Conducted waste characterization and profiling investigations and associated field and laboratory analyses. Performed an emergency removal action to extract and dispose of containerized and non-containerized F-listed wastes. Obtained closure of the site from the North Carolina Department of Environment and Natural Resources, Division of Waste Management, Superfund Section, Inactive Hazardous Waste Sites Program.

Responsible for field coordination of decontamination and emergency support activities during a **Treatability Study** conducted at a chemical disposal area listed on the EPA **National Priority List**. Field activities were conducted in Level A and Level B Personal Protective Equipment. Performed technical reviews of project documentation including the site health and safety plan.

Project manager for preparation of **Remediation Work Plan** to address surface and shallow subsurface soil impacted by arsenic, lead and PCBs, and two areas of NAPL on perched groundwater. Utilized Geoprobe sampling technology to conduct detailed soil assessment to precisely define limits of excavation before excavating. Negotiated with the overseeing regulatory agency to obtain approval to use the assessment results in lieu of confirmation sampling. Excavated soil was characterized, and soil that exceeded Federal TCLP standard was stabilized by mixing with lime so that it could be disposed in a permitted Subtitle D landfill. One area of NAPL was remediated through excavation of NAPL saturated soil. The second area of NAPL was remediated using pulsed dual-phase extraction with a liquid-ring pump.

Project manager for performing **Groundwater Assessment** and developing a **Corrective Action Plan** to address lead-impacted soil and groundwater. The site was previously used as an automotive recycling facility. Produced potentiometric surface maps from groundwater elevations measured in monitoring wells. Conducted groundwater testing for dissolved and total lead, as well as geochemical parameters to assist with determining cause of elevated lead in groundwater. The corrective action plan was prepared based on a **Risk Assessment** to develop site-specific cleanup objectives based on the proposed future use of the property for a paved parking lot.

Project manager for completing a **Remedial Investigation** at a site that was operated as a foundry and foundry slag was deposited on the ground surface across the majority of the property. Conducted investigations on-site to delineate areas of elevated **Arsenic and Lead** in the foundry slag. Field analysis was performed using field-portable x-ray fluorescence (XRF) spectrometer. Conducted sampling off-site to establish background concentrations of lead, arsenic and PAHs in soil, as well as sampling at residential and public-use areas bordering the foundry. Surface water and sediment sampling was also performed in a wetland area adjacent to the site. Documents prepared in support of the investigation included a remedial investigation work plan, sampling and analysis plan, quality assurance project plan and a health and safety plan.

Project Manager for completing a **Remedial Investigation** and **Remedial Action Plan** implementation at a manufacturing facility in Michigan as per regulations and guidelines of the Michigan Department of Environmental Quality. Soil and groundwater was impacted by solvents containing toluene, ethylbenzene and xylenes. Excavated and disposed of 1,200 tons of impacted soil. Groundwater remediation is ongoing and consists of focused injection of RegenOxTM (chemical oxidation) and plume-wide injection of ORC AdvancedTM.

Selected Continuing Education

UNLV and Midwest Geosciences Group Short Course: "Improving Hydrogeologic Analysis of Fractured Bedrock Systems", March, 2005

NGWA Short Course: "Applications of Groundwater Geochemistry", March, 2003.

NGWA Short Course: "Fundamentals of Groundwater Geochemistry", March, 2003.

NGWA Short Course: "Natural Attenuation, Risk Assessment, and Risk-Based Corrective Action: Analysis and Decision-Making Through Applied Groundwater Modeling", January, 2001.

Olson Enterprises, Inc. Short Course: "Fracture Rock Hydrology", Instructor: David G. Evans, Ph.D., Department of Marine, Earth and Atmospheric Sciences, North Carolina State University, June 1999

Old Dominion University, College of Health Sciences Short Course: Risk Assessment and Virginia's Health-Based Cleanup Standards, January 1999

North Carolina State University, College of Engineering, Industrial Extension Service Short Course: Environmental Risk Assessment, June 1998

Marshall Miller & Associates, Inc.
Photo Documentation

Client: Norfolk Southern	Site Location: Halls Ferry to Badin, NC
Site Name: Norfolk Southern Rail Line	Project Number: NS1545
<u>PHOTO 1</u>	
Date: July 5, 2006 Description: Rail Segment: MP WF-0.00 to -11.11 Facing crew building looking toward MP WF-10.36 (Alcoa Plant).	
<u>PHOTO 2</u>	
Date: July 5, 2006 Description: Rail Segment: MP WF-0.00 to -11.11 Ballast petroleum staining noted at parking area (MP WF-10.36)	

Marshall Miller & Associates, Inc.
Photo Documentation

Client: Norfolk Southern	Site Location: Halls Ferry to Badin, NC
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Site Name: Norfolk Southern Rail Line	Project Number: NS1545
--	-------------------------------

PHOTO 3

Date:
July 5, 2006

Description:
Rail Segment:
MP WF-0.00 to
-11.11

Ballast
petroleum
staining noted
at parking area.

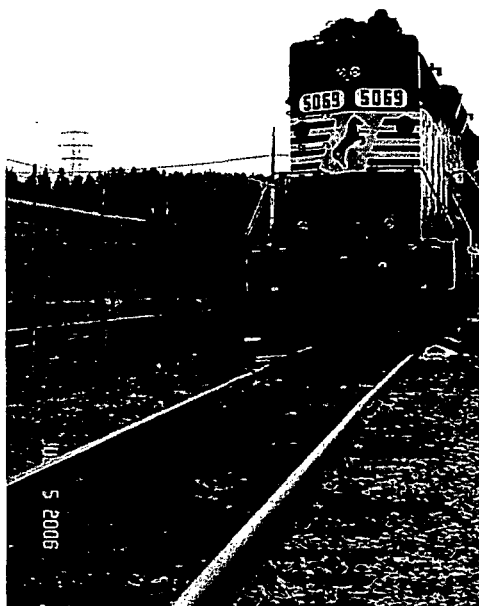


PHOTO 4

Date:
July 5, 2006

Description:
Rail Segment:
MP WF-0.00 to
-11.11

Ballast
petroleum
staining on rail
line at parking
area.



Marshall Miller & Associates, Inc.
Photo Documentation

Client: Norfolk Southern	Site Location: Halls Ferry to Badin, NC
Site Name: Norfolk Southern Rail Line	Project Number: NS1545

PHOTO 5

Date:
July 5, 2006

Description:
Rail Segment:
MP WF-0.00 to
-11.11

Typical ballast
at parking area.



PHOTO 6

Date:
July 5, 2006

Description:
Rail Segment:
MP WF-0.00 to
-11.11

Rail line
leading into
Alcoa Plant.
Dark areas are
not diesel stains
but black
gravel-sized
stones.



Marshall Miller & Associates, Inc.
Photo Documentation

Client: Norfolk Southern	Site Location: Halls Ferry to Badin, NC
Site Name: Norfolk Southern Rail Line	Project Number: NS1545
<u>PHOTO 7</u> Date: July 5, 2006 Description: Rail Segment: MP WF-0.00 to -11.11 Culvert located below rail line near parked area. No staining noted. 	