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The Honorable Anne K. Quinlan
Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: Formal Comments by New York State Department of Environmental
Conservation Regarding the Environmental Appendix for the Norfolk Southern
Railway, Pan Am Railways, Inc., et. Al. - Joint Control and Operating/Pooling
Agreement - Pan Am Southern LLC

Dear Secretary Quinlan:

Enclosed please find the comments of the New York State Department of Environmental
Conservation regarding the Environmental Appendix for the Norfolk Southern Railway, Pan Am
Railways, Inc., et. Al. - Joint Control and Operating/Pooling Agreement - Pan Am Southern
LLC, Finance Docket Number 35147.

Sincerely,



Alison H. Crocker
Deputy Commissioner
and General Counsel

Enclosure

cc: Commissioner Grannis
Stu Gruskin
Jared Snyder
Michael Lenane
Val Washington
James Tierney
Christopher Amato

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35147

**COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ON THE ENVIRONMENTAL APPENDIX FOR THE
NORFOLK SOUTHERN RAILWAY, PAN AM RAILWAYS, INC., ET. AL.
JOINT CONTROL AND OPERATING/POOLING AGREEMENT
PAN AM SOUTHERN LLC**

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Before the Surface Transportation Board

Finance Docket No 35147

Norfolk Southern Railway, Pan Am Railways, Inc., et al - Joint Control and Operating/Pooling Agreements - Pan Am Southern LLC.

Comments of the New York State Department of Environmental Conservation on the Environmental Appendix prepared for the Norfolk Southern Railway, Pan Am Railways, Inc., et al - Joint Control and Operating/Pooling Agreements - Pan Am Southern LLC.

Environmental Comments

New York State Department of Environmental Conservation (NYSDEC or Department) has reviewed the Environmental Appendix (Appendix) prepared in support of Finance Docket No. 35147 - Norfolk Southern Railway, Pan Am Railways, Inc., et al - Joint Control and Operating/Pooling Agreements - Pan Am Southern LLC, and submits the following comments to the Surface Transportation Board (STB).

The Department recommends that an environmental assessment be performed. NYSDEC is concerned that activities conducted by rail carriers often elude state and local environmental review, regulation and permitting. The applicants have stated that they will obtain, to the extent applicable, state and local environmental permits. In order to address NYSDEC's concern, NYSDEC recommends that the Environmental Appendix commit the applicants to work with state and local agencies and comply with state and local environmental regulations, whether a permit is required or not, to insure that all potential environmental impacts are assessed and mitigated and the Mechanicville facility stands as a cooperative effort to facilitate rail activities in an environmentally sound manner.

Air Quality Concerns

The Department supports the comments submitted from the NYS Department of Transportation. In addition, the Department has concern regarding the Applicants representations made at page 21 of the Appendix. Here, it is represented that the combination of truck traffic at the new Mechanicville Facility and the transaction related increase in rail traffic, expressed in annual "GTM", as impacted on the Mohawk Yard Facility, and the NY trackage rights rail line segments, are well within the de minimis levels established by the EPA's General Conformity Rule for measuring air quality impacts in a given region. This information is insufficient for the Department to determine its accuracy and therefore requests clarification whether all the emissions associated with the Mechanicville Intermodal Facility have been included in Table 1 of Exhibit D. Emissions from additional trains, yard equipment and trucks should be included in this calculation

The Department also requests clarification regarding foot note 40, located at page 21 of the Appendix, which includes the following statement: "Although EPA's General Conformity Rule is not directly applicable to Board actions, it nevertheless provides useful thresholds for measuring the air quality impacts of a proposed project before the Board " It is not clear to the Department, based upon review of 40 C.F.R Part 51, Subpart W, why EPA's General Conformity Rule is not applicable to the Board actions and accordingly requests clarification of this interpretation.

The Department notes that the applicant fails to address green house gas emissions (GHG) within the analysis contained in the Appendix. The Department believes that GHG should be considered and addressed with regard to this facility. In addition, the Department seeks clarification as what impact if any the proposal will have on the PM2.5.

Wetland Concerns

There are several wetlands and protected streams that the existing rail-line runs through or crosses, including FWW 100' buffers. For example, the proposed Mechanicville facility is located directly adjacent to the Anthony Kill and its associated wetlands. The new proposed facility is bordered by a protected stream to the north and an environmental restoration site to the south. In addition, the Schaghticoke dam spill way is surrounded by water that is classified as federal wetlands. Furthermore, improvements to Route 67 crossing on the northern side of Valley Falls, if required, maybe within 100' of Federal wetlands. The Appendix does not provide sufficient information to determine whether there could be an impact on any of these resources and the Department requests that an environmental assessment be performed which addresses these concerns.

Solid and Hazardous Waste Concerns

NYSDEC recommends that the Environmental Appendix identify with particularity the proposed uses of the Mechanicville facility. If the facility is to be used solely for the transfer of closed containers from truck to rail, rail to truck and rail to rail and the unloading and loading of new automobiles, the Environmental Appendix should so state. If the facility will be used as a transfer station for the transfer of any solid or hazardous waste materials, the Environmental Appendix should describe each type of waste to be transferred and the methods and facilities utilized to affect the transfer.

Effect on Endangered, Threatened or Special concern Species

Prior projects in the vicinity of the proposed Mechanicville facility have identified potential habitat for endangered species. NYSDEC recommends the applicants coordinate with the U.S. Fish & Wildlife Service and NYSDEC to identify any endangered, threatened or special concern species in the vicinity of the Mechanicville facility and determine whether the project will effect any subject species habitat areas.

Effect on Surface Waters, Ground Water and Wetlands

The proposed Mechanicville facility is located directly adjacent to the Anthony Kill and its associated wetlands. In addition, ground water in the area is likely to be hydrologically and/or hydraulically connected to such surrounding surface waters. Moreover, storm water from the Mechanicville facility is likely to impact all of these waters. NYSDEC recommends the applicants identify impacts to any and all area waters and document efforts to avoid, minimize or mitigate those impacts

NYSDEC supports the comments by the NYS Department of Transportation. The Department further recommends that the applicants document their compliance with applicable NPDES permit requirements or 401 Water Quality Certifications under the Federal Clean Water Act, Stormwater Runoff from Construction Activities; SPDES permit requirements under New York State Environmental Conservation Law (Art. 17); New York State water quality standards and implementing regulations; or Use and Protection of Water permit requirements under New York State Environmental Conservation Law (Art. 15).

For the foregoing reasons, the Department respectfully requests that its concerns be considered by the STB and an environmental assessment be performed.

Respectfully Submitted,

The New York State Department of Environmental Conservation

By: Alison H. Crocker Date: 7/15/08
Alison H. Crocker
Deputy Commissioner
and General Counsel