

Board of Selectmen

MEETING TUESDAYS AT 7:00 P.M. • UPPER TOWN HALL • 1 MAIN STREET • AYER, MASSACHUSETTS 01432



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August 11, 2008

223531



VIA CERTIFIED MAIL

Anne K. Quinlan, Esq., Acting Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20024

**RE: Comments of the Town of Ayer
Finance Docket No. 35147
Norfolk Southern Railway Company, Pan Am Railways, Inc. et al.
Joint Operating Agreements – Pan Am Southern LLC**

Dear Secretary Quinlan:

Enclosed please find the comments of the Town of Ayer in respect of the above-referenced matter. These comments are further to the Town's July 7, 2008 correspondence to the

ENTERED
Office of Proceedings
SEP - 4 2008
Part of
Public Record

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Shaun A. Suhoski".

Shaun A. Suhoski
Town Administrator

cc: Board of Selectmen
DPW Superintendent
Conservation Commission
Water Dept. Foreman
Board of Health
Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35147

**NORFOLK SOUTHERN RAILWAY COMPANY, PAN AM RAILWAYS, INC., ET AL. –
JOINT CONTROL AND OPERATING/POOLING AGREEMENTS – PAN AM
SOUTHERN LLC.**

**COMMENTS OF THE
TOWN OF AYER, MASSACHUSETTS**

In accordance with the Board's decision served June 26, 2008 in this matter the Town of Ayer (the Town) hereby submits its comments concerning the above-referenced proposed transaction.

Based upon review of the Environmental Appendix filed in the above matter the Town respectfully requests that further environmental review under the National Environmental Policy Act should be required due to potential impacts on drinking water, stormwater management, traffic and endangered species.

The STB and project proponents should also be required to assess an alternative to the construction of a new auto unloading facility directly above the Town's drinking water supply aquifer in favor of reuse of an existing, vacant auto unloading facility that is proximate to the site but located outside of the Mass. Dept. of Environmental Protection's designated Zone II aquifer.

At minimum, the STB should mandate full compliance with all conditions incorporated in the Consent Decree dated July 24, 2003 (U.S. District Court – Massachusetts, C.A. No. 99-CV-12606 JLT) incorporated herein by reference as Exhibit A.

1. Drinking Water: Spectacle Pond Well Fields – Mass. DEP Zone II Aquifer

The filing indicates planned construction of a “new automotive facility” at the so-called San Vel site in Ayer. The proposed new facility would accommodate 810 vehicles on a Massachusetts Dept. of Environmental Protection designated Zone II aquifer.

This aquifer directly recharges the Town’s Spectacle Pond wellfield a primary source of the Town’s public water system. The neighboring town of Littleton also has wellfields located within the zone of Spectacle Pond. A full environmental assessment should be required to ensure no negative impact to the drinking water supply for two municipalities.

2. Stormwater: Stormwater Prevention Plan, NPDES Permit, MassDEP Stormwater Regs

The proponents should be required to comply with all applicable stormwater standards including preparation of an acceptable Stormwater Prevention Plan that employs low-impact development and best management procedures (LID/BMPs).

Whereas the new facility will greatly exceed disturbance of one acre of land, it would appear that the applicants are required to file for a general construction permit under the National Pollutant Discharge Elimination System (NPDES)

Further, the project should be required to comply with current Massachusetts Department of Environmental Protection (MassDEP) Wetlands regulations found at 310 CMR 10.00, and the Water Quality Regulations at 314 CMR 9.00 relating to stormwater as of February 2008.

3. Traffic: Threshold for Review Exceeded

Page 20 of the filing indicates a “projected additional 58 trucks per day” associated with the transaction at the Ayer Intermodal location. The same page states that 226 trucks per day is

the pre-transaction total in 2007. The increase appears to exceed the 10 percent threshold for traffic calling into question the "minor" transactional status.

4. Endangered Species: Blanding's Turtles

The Town believes that there are documented reports of Blanding's Turtle habitat within the so-called San Vel site proposed for the new auto unloading facility. The applicants should be required to comply and verify such compliance with the National Endangered Species program.

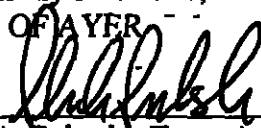
5. Option: Utilize Existing Transload Facility in Ayer / No New Build Scenario

The filing makes reference an existing, "unused" automotive transload facility in Ayer that is currently leased to CSX until 2017.

This longstanding auto unloading facility sits proximate to the proposed new facility but is located outside the Zone II aquifer. The STB and project proponents should be required to analyze an option that would facilitate reuse of the existing facility in lieu of major construction of a new facility directly above the Town's drinking water supply.

In the event the conditions of this transaction are modified and could further adversely affect the interests of the Town of Ayer, the Town reserves its right to submit further comments at an appropriate time.

Respectfully submitted,
TOWN OF AYER

BY: 
Shaun A. Suhoski, Town Administrator

Dated: August 11, 2008

EXHIBIT "A"

JUL 30 2003/1

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 99-CV-12606 (LT)

Boston and Maine Corporation,
Springfield Terminal Railway Co.,
and Guilford Transportation Industries, Inc.,

Plaintiffs,

v.

Town of Ayer, Ayer Board of Selectman,
Ayer Planning Board, Paul D. Bresnahan,
Connie P. Sullivan, Robert J. Pena,
William Oelske, James Fay, James F. Williams,
Janet L. Luchetti, Thomas Gibbons, Lauri J. Rosas,
Margaret M. Kidder, and C. Jane Witherow,

Defendants

CONSENT DECREE

Upon the consent of all parties hereto, as evidenced by their signatures below, it is on the 28th day of July, 2003 ORDERED, ADJUDGED and DECREED

1. Boston and Maine Corporation, Springfield Terminal Railway Co., and Guilford Transportation Industries, Inc., (hereinafter collectively referred to as Guilford") may proceed with the development, construction and operation of an automobile unloading facility at what is known as the San Vol site in Ayer, Massachusetts, subject to the conditions set forth in Exhibit A.

2. The parties agree that the issues relative to attorneys fees as briefed have been reserved to the First Circuit Court of Appeals and they shall not be prejudiced or

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affected by the entry of this Consent Decree

3 Except as provided in Exhibit A, the Town of Ayer (hereinafter referred to as "Ayer") has no authority to regulate the construction and operations of a railroad facility at the San Vel site. Any plans or test results provided to the Town in accordance with Exhibit A or under any other circumstances will be for informational purposes only with no right of the Town to approve, delay or otherwise regulate the construction or operation of a railroad facility at the San Vel site.

4 If the Town of Ayer believes that Guilford is failing to comply with this Consent Decree, Ayer's only recourse is to seek relief in the United States District Court for the District of Massachusetts or the Surface Transportation Board.

5 This court will retain jurisdiction to enforce the provisions of this decree.

6 Each individual consenting to the entry of this Decree on behalf of an entity represents by such consent that (a) such entity has duly authorized its consent and (b) such individual is duly authorized to consent on behalf of such entity.

7 To the extent that this Decree is inconsistent with the Judgment entered in this action on March 22, 2002, this decree shall take precedence.


United States District Judge Tamm

EXHIBIT A

- 1 *In constructing an Auto Unloading Facility (hereinafter "the Facility") in Ayer, Massachusetts at what is known as the San Val site, Guilford Transportation Industries Inc., Boston and Maine Corporation and Springfield Terminal Railway Company (hereinafter "Guilford") will install catch basins designed for a minimum infiltration rate of 5 inches per hour, with oil/gas separator hood, consistent with design drawing Sheet 6 of 7 dated 1/11/2000 titled Willow Park, Ayer, Massachusetts Miscellaneous Details, attached as Appendix A*
- 2 *Guilford will conduct test pits in the vicinity of the retention basins to confirm that the soils are consistent with test borings previously submitted to the Town of Ayer. See prior test results attached as Appendix B. The test pit results will be submitted to the Town of Ayer (hereinafter "Ayer") within one week of receipt by Guilford*
- 3 *Guilford will install a monitoring well network around the facility and will measure groundwater quality twice a year for as long as the facility is in operation and groundwater quantity twice a year for four years after completion of the facility. These test results will be submitted to Ayer within one week of receipt by Guilford*
- 4 *Guilford will comply with all applicable requirements of the Massachusetts Contingency Plan with regard to any release of hazardous materials at the site*
- 5 *Guilford will develop a Stormwater Pollution Prevention Plan consistent with EPA Stormwater Regulations*
- 6 *Guilford agrees to continue to plow that portion of the emergency access road provided to Wagon Road residents that is on Guilford property*
- 7 *Guilford will continue to honor its agreements with Wagon Road residents regarding use of that private crossing and emergency access issues*
- 8 *Guilford will comply with applicable building, electrical, fire and plumbing codes except to the extent that such codes are applied in a discriminatory manner, unreasonably restrict the railroad from conducting its operations or unreasonably burdens interstate commerce*
- 9 *In operating the Facility, Guilford will comply with applicable federal noise control requirements.*

10. Guilford will comply with applicable state best management practices during construction of the Facility.
11. Guilford will provide Ayer with informational copies of construction plans and precautions being taken for the construction of the Facility not less than 60 days before initiation of construction of the Facility.
12. Guilford will provide Ayer with informational copies of as built plans for the Facility not more than 60 days after completion of construction of the Facility.
13. Should Guilford develop the San Vel site for alternative uses, Guilford will provide Ayer with informational copies of construction plans and precautions being taken for any additions, improvements or changes to the San Vel site. Guilford will provide this information to Ayer no less than 60 days prior to initiation of construction and will comply with those conditions set forth herein that are material to the alternative uses. Ayer may object however Guilford does not agree that Ayer has the right to do so.
14. Should Guilford develop the San Vel site for alternative uses, Guilford will provide Ayer with informational copies of as built plans and precautions being taken for any additions, improvements or changes to the San Vel site. Guilford will provide this information to Ayer no more than 60 days after completion of construction.
15. Guilford will install a septic system at an appropriate location at the site and may connect to the Town sewer system in the future. Any septic system must comply with Title 9 regulations.
16. Guilford will install a gas-membrane liner under the locomotive area. Testing of the integrity of the liner will be performed at Guilford's discretion. The test results will be provided to Ayer within one week of Guilford's receipt of the test results.
17. Guilford will not remove snow from the site except for emergency situations.

AYER 78 TEST PIT DATA			
		2/13/99	2/13/99
Pit	Cnd Surface EL, Depth to GWT	EL GWT	
1	227.38	11.0	216.38
2	226.00	7.5	218.50
3	224.82	7.6	217.22
4	224.74	8.2	216.54
5	222.68	8.2	214.48
6	221.68	9.9	211.79
7	220.33	7.5	212.83
8	219.80	7.0	212.80
9	220.17	6.5	213.67
10	220.09	7.5	212.59
11	222.13	13.0	209.13
12	222.63	10.0	212.63
13	223.05	10.0	213.05
14	222.39	12.0	210.39
15	222.22	10.0	212.22

CERTIFICATE OF SERVICE

I, Shaun A. Suhoski, Town Administrator for the Town of Ayer, hereby certify that a copy of the comments of the Town of Ayer has been served this 11th day of August, 2008, by first class mail, postage pre-paid, on all parties of record in this proceeding as indicated on the attached Service List.

A handwritten signature in black ink, appearing to read 'Shaun A. Suhoski', written over a horizontal line.

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