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## FAX COVER LETTER

Date : December 15, 2004

Completed by : TJL  
Phone Extension : 508

To : **Christa L. Dean, Esq.**  
Company : **Surface Transportation Board  
Office of Proceedings**

Fax No. : **202-565-9000**  
Phone No. : **202-565-1606**

From : **T.J. Litwiler**      Direct Dial : **312-252-1508**  
E-Mail : **tlitwiler@fletcher-sippel.com**

Re : **Docket Nos. AB-875X and AB-876X**

Comments : **Attached is the response we just received from the U.S. Army Corps of Engineers, Huntington District. This may come too late to change the recommended Corps of Engineers condition in the final decision (due out December 23<sup>rd</sup>), but since it satisfies the condition presumably no further action by Corman or the Board would be required.**

**I received your message on the Kentucky Heritage Council, and will follow up with them. Thanks for the heads-up on that one. Happy holidays!**

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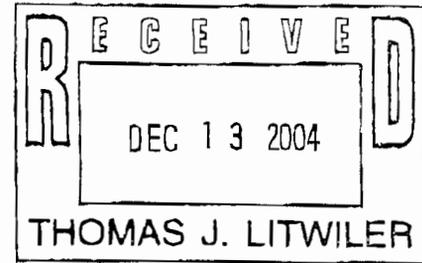
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DEPARTMENT OF THE ARMY  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

REPLY TO  
ATTENTION OF:

Operations & Readiness Division  
Regulatory Branch  
200401416



Thomas J. Litwiler  
Fletcher & Sipple, LLC  
29 North Wacker Drive  
Chicago, Illinois 60606-2875

Dear Mr. Litwiler:

I refer to your letter dated October 7, 2004, received in this office on October 26, 2004, concerning a proposal by the R.J. Corman Railroad Company and R.J. Corman Equipment Company to discontinue and abandon their Dawkins Line railroad (Docket No's. AB-875X and AB-876X) and salvage rail, ties and track materials. The line begins at Dawkins, Kentucky, traverses Jennys Creek in Johnson County and extends 36.08 miles through Magoffin and Breathitt Counties, Kentucky.

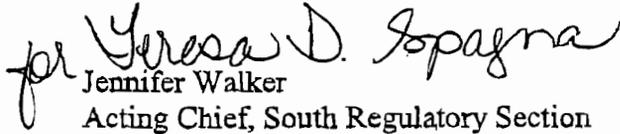
The Corps of Engineers' authority to regulate jurisdictional waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328. Navigable waters, their tributaries and adjacent wetlands are waters of the United States subject to the provisions of Section 404 of the Clean Water Act (CWA). The determination of jurisdiction for streams on-site is based on the presence of an ordinary high water (OHW) mark and evidence indicating the streams exhibit surface water connections to tributary systems to navigable waters. The Corps regulates streams up to the point where they no longer exhibit an OHW mark. The term "ordinary high water mark" is that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank such as shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris or other appropriate means that consider the characteristics of the surrounding areas (33 CFR 328 and 329). Wetland limits are determined based on the presence of hydrologic conditions, hydric soils and hydrophytic plant communities.

A review of your Environmental/Historic Report and other information provided indicates all tunnels, bridges, railbed and subgrade of the Dawkins Line would remain in place and not be disturbed, and the work would not involve the placement of dredged or fill material in waters of the United States. Therefore, based on the information provided, it appears a DA permit would not be required for the proposed work.

Our determination is limited to only those effects which may fall within our area of jurisdiction and thus does not obviate the need to obtain state or local assent required by law for this activity. If project plans change which would necessitate the discharge of dredged or fill material into waters of the U.S., including wetlands, plans should be submitted for our review.

If you require further assistance, please contact Richard Berkes of the South Regulatory Section, at 304-399-5710.

Sincerely,

  
Jennifer Walker  
Acting Chief, South Regulatory Section