

#EO-634

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis and Administration

August 20, 2007

Karen Hardy Cardenas, Chair
Committee for a Safer Brookings
316 17th Avenue, South
Brookings, SD 57006-2704

Dear Ms. Cardenas:

Thank you for your letter dated May 5, 2007. I apologize for the delay in responding to you. I have discussed the questions that you pose in your letter with others at the Surface Transportation Board (Board) to ensure that I am providing you with the most accurate information possible. In your letter, you explain that the number of Dakota, Minnesota & Eastern Railroad (DM&E) trains traveling through Brookings transporting ethanol has increased substantially in recent years, yet the condition of the DM&E's tracks remains poor. You and many of your fellow citizens are concerned about your safety.

First, I must tell you that as a "common carrier" railroad ~ that is, one that undertakes the responsibility of carrying goods or persons for hire and who undertakes to serve all impartially¹-- DM&E is obligated to carry the goods of any shipper located near its rail line that is interested in transporting its goods by rail. In other words, DM&E must carry the goods of shippers interested in rail service, including shippers of ethanol. Existing railroads ordinarily also are free to increase their level of operations without seeking approval from the Board and without limit.

You ask if a law exists prohibiting railroads from transporting combustible fuel through residential areas. I am not aware of any such law, although the rules of the Federal Railroad Administration (FRA) require all rail cars carrying hazardous materials to bear markers indicating clearly that the products they are transporting are hazardous. In addition, new Homeland Security legislation (P.L. 110-53) recently signed by the President

¹ Rail Talk: A Lexicon of Railroad Language, James H. Beck, 1978.

includes provisions related to the safe routing of freight trains carrying certain hazardous chemicals.

You ask if the community has the right to force DM&E to improve sub-standard track that passes through Brookings. The FRA sets track standards by regulation. These regulations requires track to be maintained to specific standards before commodities may be moved above certain speeds. You note that the DM&E trains slow to 5 miles per hour as they travel through Brookings, but you remain concerned that old track and combustible commodities present a dangerous combination. To address this issue, I have forwarded a copy of your letter and my response to the Office of Safety at FRA. If DM&E is violating any safety standards required by the FRA, you should contact the FRA's Office of Safety Assurance and Compliance at (202) 493-6244 to request that it take action to correct the violation.

Finally, you ask if Brookings can require DM&E to accept a rail bypass that would be financed by the city, and if there is any source of funding that would assist Brookings to mitigate some of the impacts caused by the operation of the DM&E railroad through the community.

The question of a Brookings bypass was considered and rejected by the Board in its Final Environmental Impact Statement and 2002 decision in the Powder River Basin Expansion Project proceeding, the pertinent pages which I have enclosed. To have the bypass considered again by the Board, you would need to file a pleading before the agency called a "petition to reopen," and explain in that document that new evidence or changed circumstances would warrant the Board's taking another look at its decision to approve DM&E's existing rail route through Brookings instead of the bypass. Staff here at the Board is available to guide you through the requirements of filing such a pleading,² if you think the circumstances would justify reopening, and reconsideration of the Brookings bypass at this point.

Finally, you ask if funding sources for mitigation are available. The question of government funding for mitigation is somewhat out of my area of expertise. I do know that FRA administers a Quiet Zone program to assist communities to enhance the safety of rail/highway operations so that trains no longer need to sound their horns at grade crossings. Mr. Ron Ries of FRA administers this program and may be contacted at (202) 493-6285.

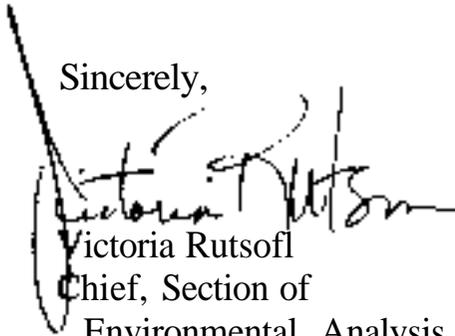
² The Office of Public Assistance may be contacted at (202) 245-0203

Also, the Board required DM&E to comply with extensive mitigation when it approved DM&E's proposal to construct its new 280-mile rail line into the Powder River Basin. If and when DM&E implements its Powder River Basin Expansion Project and begins carrying coal from the Powder River Basin, it will need to complete the upgrading of its entire existing line through South Dakota and Minnesota and comply with all 147 environmental mitigation conditions imposed by the Board.

I remember the time several years ago that I spent in Brookings fondly. I enjoyed the town and its citizens very much. I am sorry to hear that you are having difficulties with the expansion of the town and the presence of the railroad. The possibility of a negotiated community agreement between Brookings and DM&E always remains, if both Brookings and DM&E can find a mutually acceptable solution that would address the community's concerns. Should such an agreement be reached, the parties would file a petition to reopen with the Board to substitute the terms of the agreement for the site-specific mitigation that would otherwise apply to Brookings.

I hope this letter has provided some guidance to you. If I can be of any further help, please do not hesitate to contact me at (202) 245-0295 or rutsonv@stb.dot.gov.

Sincerely,



Victoria Rutsof
Chief, Section of
Environmental Analysis

Enclosures

cc: Ron Ries, FRA
(w/out enclosures)