

**SURFACE TRANSPORTATION STB
SECTION OF ENVIRONMENTAL ANALYSIS**

POST POST ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN
STB DOCKET NO. AB-290 (Sub-No. 293X)

October 25, 2007

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

Notice of Exemption Petition for Exemption Regulated Abandonment

NO NEW COMMENTS WERE RECEIVED

NEW COMMENTS WERE RECEIVED

SEA served an Environmental Assessment (EA) for this proceeding on September 17, 2007 for public review and comment. On October 18, 2007, SEA submitted a Post EA that modified the previously recommended environmental conditions based on several comments that were submitted during the comment period. Due to a late-filed comment from the Commonwealth of Virginia's Department of Environmental Quality's (DEQ) Office of Environmental Impact Review, SEA is submitting this Post Post EA.

Comments on the EA

On October 22, 2007, DEQ submitted comments regarding a number of concerns about the proposed abandonment, including: historic resources; water quality and wetlands; subaqueous lands; Chesapeake Bay preservation areas; erosion and sediment control; stormwater management; state species; air quality; solid and hazardous waste; and state coastal management consistency certification. Overall, it appears that DEQ's primary concern is that NS acquire all relevant state permits and approvals prior to any salvage activities. In an October 24, 2007 conversation with SEA, a representative of NS stated that the railroad will obtain any necessary permits or applications and will comply with reasonable procedures required by regulatory agencies.¹

SEA's review of rail line abandonments includes an analysis of the potential environmental impacts of track removal and diversion of traffic from the line proposed for abandonment. As mentioned in the EA, NS does not plan to salvage the portion of

¹ In the event that NS decides to salvage any portion of the line, SEA recommends that NS use DEQ's letter as a guide to mitigation measures and on the appropriate agencies to contact.

the line that is located in Norfolk because the City of Norfolk has plans to acquire the right-of-way, track, and materials for use as a public transit corridor. In addition, the City of Virginia Beach has stated that city planning documents support future use of the corridor for public transit purposes, and NS states that salvage of the track and materials in Virginia Beach may be deferred until more definite plans for future use of the property are made. Under these circumstances, many of the concerns expressed by DEQ do not appear to be applicable for this proposed abandonment. Additionally, other concerns raised by DEQ have been fully addressed in the EA and Post EA. Nonetheless, we will address DEQ's most recent concerns.²

Historic Resources

DEQ has expressed general concerns regarding historic structures and archaeological resources. The Board's approval of an abandonment is considered an undertaking under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) (NHPA) and is thus covered under its provisions. As is the practice in all abandonment proceedings before the Board, the State Historic Preservation Office (SHPO) was contacted. As stated in the Post EA, the Commonwealth of Virginia's Department of Historic Resources, the SHPO in this proceeding, has stated that no historic properties would be affected within the right-of-way (the Area of Potential Effect or APE) of the proposed abandonment.

Pursuant to the Section 106 regulations of the NHPA at 36 CFR 800.4(d)(1), and following consultation with the SHPO and the public, we determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. Accordingly, we have completed any compliance responsibilities under Section 106 of the NHPA.

Water Quality, Wetlands, and Subaqueous Lands

DEQ has expressed concerns regarding water quality, wetlands, subaqueous lands, and Chesapeake Bay preservation areas. As noted in the EA, NS states that it has no plans to undertake in-stream work or dredge and/or fill any materials in connection with the proposed abandonment. The railroad also does not intend to appreciably remove or alter the contour of the roadbed. Based on this information, the U.S. Army Corps of Engineers Norfolk District (Corps) has stated that, as long as the rail, tracks, ties, and other materials are removed within the right-of-way and the roadbeds are left intact, no further authorization will be required from the Corps' office.

² The railroad's Environmental Report documented a February 21, 2006 phone consultation between a representative of NS and Mr. John Fisher at DEQ. At that time, DEQ determined that there would be no requirements for the Norfolk portion of the line but indicated that erosion and sediment control measures might be necessary for the Virginia Beach portion of the line, depending on what if any salvage activities took place. This prior consultation is largely disregarded in DEQ's October 18, 2007 submission.

No action known to be inconsistent with Federal, state, and/or local water quality standards is contemplated. However, as noted above, NS has agreed to obtain any permits or applications found to be necessary and will comply with reasonable procedures required by regulatory agencies. We will recommend a condition requiring NS to consult with DEQ, the Virginia Marine Resources Commission, and the Department of Conservation and Recreation's Division of Chesapeake Bay Local Assistance regarding potential impacts to water quality, wetlands, subaqueous lands, and the Chesapeake Bay preservation area and comply with the reasonable requirements of those agencies.

Erosion and Sediment Control and Stormwater Management

DEQ has expressed concerns regarding erosion, sediment control, and stormwater management. SEA has already recommended that, prior to beginning any salvage activities, NS consult with the Virginia Department of Conservation and Recreation's Floodplain Management Program staff (FMP) regarding potential impacts to the 100-year floodplains and shall comply with the reasonable requirements of FMP. However, SEA will also recommend that NS consult with DEQ and the Department of Conservation and Recreation's Division of Soil and Water Conservation regarding soil erosion, sediment, and stormwater runoff mitigation practices prior to initiating any salvage activities.

Air Quality Regulations

DEQ has expressed concerns regarding fugitive dust emissions and activities such as burning. As stated above, Salvage of the line is not anticipated at this time. Accordingly, the railroad has no plans to undertake construction activities that could create a fugitive dust problem or to undertake activities such as burning of cleared vegetation and other materials. In addition, as indicated in the EA, the abandonment would generate an estimated four new trucks per year (eight truck trips assuming an empty backhaul) if all the rail traffic is diverted to truck traffic. This increase in truck traffic is not significant and will not exceed the Board's thresholds of an increase of more than ten percent of the average daily traffic (ADT) or 50 vehicles a day on any affected road segment. See 49 CFR 1105.7(e)(5)(C). In the event that NS salvages the Virginia Beach portion of the line, SEA will recommend that NS implement the mitigation measures suggested by DEQ in its October 22, 2007 letter.³

State Endangered and Threatened Species

DEQ has expressed general concerns regarding potential impacts to endangered and threatened species. As stated in the EA, the proposed abandonment will not adversely affect Federally listed threatened or endangered species or Federally designated critical habitat. We have received no comments expressing specific concerns regarding state endangered or threatened species, and wildlife is unlikely to be affected by the

³ Suggested mitigation measures include but are not limited to covering open equipment for conveying materials and using water or chemicals for dust control.

proposed abandonment since the Norfolk portion of the line will not be salvaged and salvage of the Virginia Beach portion of the line is not anticipated at this time. If NS decides to undertake salvage activities on the Virginia Beach portion of the line, we recommend that the railroad consult with the Department of Conservation and Recreation's Division of Natural Heritage and the Department of Game and Inland Fisheries regarding potential impacts to state threatened or endangered species and comply with the reasonable requirements thereof.

Solid and Hazardous Wastes

As stated in the EA, NS has no knowledge of hazardous waste sites or sites where there have been known hazardous material spills on the right-of-way, and there is no information to indicate otherwise. DEQ has expressed concern regarding the removal of structures with asbestos-containing materials or lead-based paint. There is no information to indicate any such structures are located on the line, and NS has no plans to remove any such structures.

State Coastal Management Consistency Certification

DEQ has expressed concerns regarding activities that could affect Virginia's coastal resources or coastal uses. SEA has already recommended that, prior to beginning any salvage activities, NS consult with the Commonwealth of Virginia's Coastal Zone Management Program staff at the DEQ to determine whether state coastal management consistency certification is required. SEA believes that this condition adequately addresses the issue of coastal management consistency.

Conclusions

SEA recommends that the conditions recommended in the Post EA, as well as the additional condition recommended in this document, should be imposed upon any decision granting abandonment authority. The combined conditions are:

1. Prior to beginning any salvage activities, Norfolk Southern Railway Company (NS) shall consult with the Commonwealth of Virginia's Coastal Zone Management Program staff at the Department of Environmental Quality to determine whether state coastal management consistency certification is required for the portion of the line located in Virginia Beach. If consistency certification is required, NS shall be prohibited from performing any salvage activities until it obtains consistency certification and shall then notify the Board's Section of Environmental Analysis, pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq. and the Board's environmental regulations at 49 CFR 1105.9.
2. Prior to commencement of any salvage activities, Norfolk Southern Railway Company shall consult with the Virginia Department of Conservation and Recreation's Floodplain Management Program staff (FMP) regarding potential

impacts to the 100-year floodplains and shall comply with the reasonable requirements of FMP.

3. Prior to commencement of any salvage activities, Norfolk Southern Railway Company shall consult with the City of Virginia Beach regarding the portion of the line located in Virginia Beach and the City's concerns about utility facilities.
4. To address the concerns raised by the Commonwealth of Virginia's Department of Environmental Quality's Office of Environmental Impact Review, Norfolk Southern Railway Company (NS) shall, prior to beginning any salvage activities, consult with DEQ and other appropriate agencies concerning any removal and salvage methods to be used by NS during the proposed abandonment; the final disposition of any salvaged materials; potential impacts to water quality, wetlands, subaqueous lands, Chesapeake Bay preservation areas, or endangered or threatened state species; and soil erosion, sediment, stormwater runoff, and air quality mitigation practices to be utilized during any abandonment activities.

If the above conditions are imposed, SEA believes that the proposed action will not significantly affect the quality of the human environment.

SEA CONTACT: Christa Dean 245-0299



E1-3209
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October 22, 2007

Surface Transportation Board
Case Control Unit
c/o Christa Dean
STB Docket No. AB-290 (Sub No. 293X)
395 East Street, SW
Washington, DC 20423

RE: Environmental Assessment of the Abandonment Exemption, Norfolk Southern Railway Company, Cities of Norfolk and Virginia Beach, DEQ # 07-189F.

Dear Ms. Dean:

The Department of Environmental Quality (DEQ) has completed its review of the Environmental Assessment (EA) for the above-mentioned abandonment of rail line in the Cities of Norfolk and Virginia Beach. DEQ is responsible for coordinating Virginia's review of federal environmental documents and responding to federal consistency certifications submitted in accordance federal consistency implementing regulations for the review of activities requiring a federal license, permit or approval (15 CFR, Subpart D, §930.50 *et seq.*). Pursuant to the Coastal Zone Management Act of 1972, as amended, because this proposed action is subject to a federal permit, license, or approval, it must be conducted in a manner that is consistent with the Virginia Coastal Resources Management Program (VCP).

Project Description

According to the EA, Norfolk Southern Railway Company (NS) filed petition with the Surface Transportation Board for exemption under 49 U.S.C. 10502 seeking exemption from the requirements of 49 U.S.C. 10903. Norfolk Southern wants approval to abandon approximately 15.34 miles of railroad in Norfolk and Virginia Beach. The rail line extends between milepost VB 0.12 and milepost VB 15.46. If the exemption is granted, NS will be able to salvage track, ties and other railroad appurtenances and dispose of the 64 foot right-of-way. The line has been dormant for 5 years, except for the removal of approximately 1 railcar per month. The City of Norfolk has plans to

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acquire the portion of line located within the city for use as a public transit corridor. Future use of the land in Virginia Beach has not been determined.

General Natural Resource Guidance

The following information provides general guidance for future potential project impacts on natural resources that may or may not have been addressed in the EA. Please note that all relevant state permits and approvals must be acquired by NS prior to any salvage activities.

1. Subaqueous Lands Impacts. The EA (page 2) states that the railroad crossed wetlands and waters of the U.S. in 11 locations. There are no plans to undertake in-stream work or dredge and/or fill wetlands. NS also does not intend to appreciably remove or alter the contour of the roadbed. The Virginia Marine Resources Commission (VMRC), pursuant to Chapter 12 of Title 28.2 of the Code of Virginia, is responsible for issuing permits for encroachments in, on, or over State-owned submerged lands throughout the Commonwealth. Accordingly, if any portion of the salvage projects involve any encroachments channelward of ordinary high water along natural rivers and streams, a permit may be required from VMRC.

The Virginia Marine Resources Commission serves as the clearinghouse for the Joint Permit Application (JPA) used by the:

- U.S. Army Corps of Engineers (Corps) for issuing permits pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act;
- DEQ for issuance of a Virginia Water Protection Permit;
- VMRC for encroachments on or over state-owned subaqueous beds as well as tidal wetlands; and
- local wetlands board for impacts to wetlands.

For any salvage activities related to the proposed project with potential impacts to subaqueous lands, water quality or wetland impacts, contact VMRC at (757) 247-2200 for a JPA. VMRC will distribute the application to the appropriate agencies. Each agency will conduct its review and respond.

2. Wetlands Management. The EA (page 2) states that there are no plans to undertake in-stream work or dredge and/or fill wetlands. The U.S. Army Corps of Engineers reviewed the proposed abandonment and stated that as long as the rail, tracks, ties and other materials are removed within the right-of-way and the roadbeds are left intact, no further authorization from the Corps will be required. The EA further stated that NS was informed by DEQ-Office of Environmental Impact Review that a wetland permit was not required. This could not be verified. Furthermore, DEQ-OEIR is not the appropriate office to determine if a Virginia Water Protection Permit is required.

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In Virginia, water quality and wetland impacts are regulated through both Federal and State government programs. Point source pollution control is administered by DEQ pursuant to Virginia Code 62.1-44.15, and is accomplished through the implementation of:

- The National Pollutant Discharge Elimination System (NPDES) permit program established pursuant to Section 402 of the federal Clean Water Act and administered in Virginia as the Virginia Pollutant Discharge Elimination System (VPDES) permit program.
- The Virginia Water Protection Permit (VWPP) program administered by DEQ (Virginia Code §62.1-44.15:5) and Water Quality Certification pursuant to Section 401 of the Clean Water Act.

Wetlands management is accomplished through:

- The tidal wetlands program is administered by the Virginia Marine Resources Commission (VMRC) (Virginia Code 28.2-1301 through 28.2-1320).
- The Virginia Water Protection Permit (VWPP) program administered by DEQ, which includes protection of both tidal and non-tidal wetlands (Virginia Code §62.1-44.15:5), and Water Quality Certification pursuant to Section 401 of the Clean Water Act.

In general, DEQ recommends that stream and wetland impacts be avoided to the maximum extent practicable. For unavoidable impacts, DEQ encourages the following practices to minimize the impacts to wetlands and waterways:

- operation of machinery and construction vehicles outside of stream-beds and wetlands;
- use of synthetic mats when in-stream work is unavoidable;
- stockpiling of material excavated from the trench for replacement if directional drilling is not feasible; and
- preservation of the top 12 inches of trench material removed from wetlands for use as wetland seed and root stock in the excavated area.

For any salvage activities with potential water quality or wetland impacts, contact VMRC at (757) 247-2200 for a JPA.

3. Non-Point Source Pollution Control. According to the Department of Conservation and Recreation (DCR), projects on privately—or locality-owned lands that involve a land-disturbing activity of 10,000 square feet (2,500 square feet or more in a Chesapeake Bay Preservation Area) require that the property owner submit a site-specific erosion and sediment control (ESC) plan to the appropriate local government for review and approval pursuant to the local ESC ordinances. The ESC plan must be approved prior to initiation of any land disturbance at the project site. All regulated land-disturbing activities associated with the project must be covered by an approved plan. Note that dependent on local requirements, a separate stormwater management (SWM) plan may

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be required for this project. Local ESC and SWM requirements should be requested through the City of Norfolk or Virginia Beach.

Also, DCR is responsible for the issuance, denial, revocation, termination and enforcement of the Virginia Stormwater Management Program (VSMP) General Permit for Stormwater Discharges from Construction Activities (previously known as Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Stormwater Discharges from Construction Activities) related to municipal separate storm sewer systems (MS4s) and construction activities for the control of stormwater discharges from MS4s and land disturbing activities under the Virginia Stormwater Management Program. Therefore, for projects involving land-disturbing activities greater of 1 acre or more, the applicant or its authorized agent is required to apply for registration coverage under the General Permit for Discharges of Stormwater from Construction Activities. General information and registration forms for the General Permit are available on DCR's website at <http://www.dcr.virginia.gov/sw/vsmp.htm#geninfo>.

4. Chesapeake Bay Preservation Areas. Under the Chesapeake Bay Preservation Act (Bay Act), localities within the State's coastal zone have enacted programs designed to improve water quality in the Bay through the mitigation of the impacts of development and redevelopment on sensitive environmental features such as streams, wetlands, floodplains, highly erodible and highly permeable soils. Resource Protection Areas (RPAs) and Resource Management Areas (RMAs) have been designated in each locality that consist of groupings of sensitive environmental features. RPA features (tidal wetlands, certain nontidal wetlands, tidal shores, and buffer areas) are the most sensitive and in general only water-dependent uses may be constructed in an RPA. RMA features (highly erodible soils, highly permeable soils, and certain nontidal wetlands) are less sensitive than RPA features, but no less important. Development in an RMA requires that activities meet certain performance criteria designed to mitigate negative environmental impacts. To ensure compliance with the Norfolk and Virginia Beach's Bay Act program, please contact Alice Baird, Department of Conservation and Recreation-Division of Chesapeake Bay Local Assistance, at (804) 225-2307.

5. Air Pollution Control. DEQ-Air Division states that during construction, fugitive dust must be kept to a minimum by using control methods outlined in 9 VAC 5-50-60 *et seq.* of the Regulations for the Control and Abatement of Air Pollution. These precautions include, but are not limited to, the following:

- Use, where possible, of water or chemicals for dust control;
- Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;
- Covering of open equipment for conveying materials; and
- Prompt removal of spilled or tracked dirt or other materials from paved streets and removal of dried sediments resulting from soil erosion.

If project activities include the burning of cleared vegetation or construction material, this activity must meet the requirements under 9 VAC 5-40-5600 *et seq.* of the

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Regulations for open burning, and it may require a permit. The Regulations provide for, but do not require, the local adoption of a model ordinance concerning open burning. In addition, local government officials should be contacted to determine what local requirements, if any, exist. For additional information, please contact DEQ's Tidewater Regional Office at (757) 518-2000.

6. Solid and Hazardous Wastes. The EA states (page 2) that NS has no knowledge of hazardous waste sites or sites where there have been known hazardous material spills on the right-of-way. DEQ administers the Virginia Solid Waste Management Regulations and the Virginia Hazardous Waste Management Regulations. Any soil that is suspected of contamination or wastes that are generated must be tested and disposed of in accordance with applicable Federal, State, and local laws and regulations.

Also, any structures that are to be demolished or removed should be checked for asbestos-containing materials (ACM) and lead-based paint prior to demolition. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, State regulations 9VAC 20-80-640 for ACM and 9VAC 20-60-261 for LBP must be followed.

- **Asbestos Materials.** It is the responsibility of the owner or operator of a renovation or demolition activity, prior to the commencement of the renovation or demolition, to thoroughly inspect the affected part of the facility where the operation will occur for the presence of asbestos, including Category I and Category II nonfriable asbestos containing material (ACM). Upon classification as friable or non-friable, all waste ACM shall be disposed of in accordance with the Virginia Solid Waste Management Regulations (9 VAC 20-80-640), and transported in accordance with the Virginia regulations governing Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.). Contact the DEQ Waste Management Program for additional information, (804) 698-4021, and the Department of Labor and Industry, Ronald L. Graham at (804) 371-0444.
- **Lead-Based Paint.** If applicable, the proposed project must comply with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) regulations, and with the Virginia Lead-Based Paint Activities Rules and Regulations. For additional information regarding these requirements contact the Department of Professional and Occupational Regulation, David Dick at (804) 367-8588.

7. Natural Heritage Resources. The EA states (page 3) that the U.S. Fish and Wildlife Service submitted comments stating that the proposed abandonment will not adversely affect Federal listed threatened or endangered species or Federal designated critical habitat. However, the EA does not indicate that any state agencies were contacted in relation to the rail line abandonment. The Department of Conservation and Recreation's Division of Natural Heritage (DNH) can search its Biotics Data System (BDS) for occurrences of natural heritage resources in the area of any future

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construction related to this proposal. Natural heritage resources are defined as the habitat of rare, threatened, or endangered animal and plant species, unique or exemplary natural communities, and significant geologic communities.

Under a Memorandum of Agreement established between the Virginia Department of Agriculture and Consumer Services (VDACS) and the Department of Conservation and Recreation (DCR), DCR has the authority to report for VDACS on state-listed plant and insect species. We recommend that the DNH be contacted at (804) 786-7951, to secure updated information on natural heritage resources before any project is implemented.

8. Wildlife Resources. The Department of Game and Inland Fisheries (DGIF), as the Commonwealth's wildlife and freshwater fish management agency, exercises enforcement and regulatory jurisdiction over wildlife and freshwater fish, including state or federally listed endangered or threatened species, but excluding listed insects (Virginia Code Title 29.1). The DGIF is a consulting agency under the U.S. Fish and Wildlife Coordination Act (16 U.S.C. sections 661 *et. seq.*) and provides environmental analysis of projects or permit applications coordinated through DEQ and several other state and federal agencies. DGIF determines likely impacts upon fish and wildlife resources and habitat, and recommends appropriate measures to avoid, reduce, or compensate for those impacts. For more information, see the DGIF website at www.dgif.state.va.us or Amy Ewing at (804) 367-2211.

9. Historic Structures and Archaeological Resources. The EA states (page 4) that a Project Review Application Form was submitted to the State Historic Preservation Office (SHPO). As of publication of the EA, the SHPO has not responded. *Section 106 of the National Historic and Preservation Act of 1966*, as amended, requires that activities that receive federal approval must consider effects to properties that are listed or eligible for listing on the National Register of Historic Places. The Department of Historic Resources (DHR) conducts reviews of projects to determine their effect on historic structures or cultural resources. For additional information and coordination, contact Ethel Eaton, DHR, at (804) 367-2323, Ext. 112.

10. Rails to Trails. Virginia's Department of Conservation and Recreation (DCR) works throughout the state to develop greenways and trails. Although no formal process has been established at the state level to work with railroad companies in the negotiation of converting railroad corridors into recreational trails, DCR welcomes the opportunity to discuss development of a recreational corridor within Norfolk and/or Virginia Beach. For additional information on the Commonwealth's recreational corridors, please contact Robert Munson at (804) 786-6140.

Federal Consistency under the Coastal Zone Management Act

Pursuant to the Coastal Zone Management Act of 1972, as amended, prior to initiating activities, Norfolk Southern Railway Company is required to determine the consistency

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of its activities affecting Virginia's coastal resources or coastal uses with the Virginia Coastal Resources Management Program (see section 307(c)(1) of the Act and 15 CFR Part 930, sub-part D, section 930.34). This involves an analysis of the activities in light of the Enforceable Policies of the VCP (see attached) and submission of a consistency certification reflecting that analysis and committing Norfolk Southern's actions to be consistent with the Enforceable Policies. We encourage Norfolk Southern to consider the Advisory Policies of the VCP as well (Attachment 2).

The EA did not contain a consistency certification for the project. While some of the enforceable programs were discussed in relevant sections of the document, the document did not include language expressing a determination of consistency. A consistency certification for each proposed project must be submitted to DEQ for coordinated review prior to salvage activities. Section 930.39 gives content requirements for the consistency certification, or you may visit the DEQ Website at <http://www.deq.state.va.us/eir/federal.html>.

Regulatory and Coordination Needs

Based on the limited information provided in the EA, the following approvals may be required:

1. Water Quality and Wetland Impacts. Any Impacts to wetlands and streams would require a Virginia Water Protection Permit (VWPP) issued by DEQ (9 VAC 25-210-50). Application for VWPP may be made by submitting a Joint Permit Application (JPA) (form MRC 30-300) to VMRC, which acts as the clearinghouse for JPAs and distributes the application to the appropriate agency. Upon receipt of a JPA for the proposed surface water and wetland impacts, Virginia Water Protection Permit (VWPP) staff at DEQ's Tidewater Virginia Regional Office will review the proposed project in accordance with VWPP regulations and guidance. Questions regarding the VWPP process may be directed to Michelle Hollis, DEQ-Tidewater Regional Office, at (757) 518-2000.

2. Subaqueous Lands Impacts. Project impacts to subaqueous lands would require a permit from VMRC, pursuant to Section 28.2-1204 of the Code of Virginia. Encroachments channelward of ordinary high water along creeks and streams may require permitting. As with water and wetland permitting, subaqueous lands permitting may be accomplished with the submission of a JPA (form MRC 30-300) to VMRC. For additional information, contact Ben McGinnis of the VMRC at (757) 247-8028 or Justin Worrell at (757) 247-8063.

3. Erosion and Sediment Control and Stormwater Management. Since this project will disturb 2,500 square feet or more of land, an erosion and sediment control (ESC) plan should be submitted for approval to the Department of Conservation and Recreation, Division of Soil and Water Conservation, York Regional Office (VESCL §10.1-560, §10.1-564; VESCR §4VAC50-30-30, §4VAC50-30-100).

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As with the ESC Plan, a project-specific Stormwater Management Plan is required for all projects involving a regulated activity. All specifications and plans must be prepared in accordance with the current versions of the Virginia Stormwater Management Law and the *Virginia Stormwater Management Regulations* (4 VAC 3-20-210 through 3-20-245). NS must work with DCR's Albemarle, Chowan and Coastal Watershed Office at (757) 925-2388 for approval of its ESC and SWM Plans.

For projects involving land-disturbing activities greater than 2,500 square feet in Chesapeake Bay Preservation localities, the Army is required to apply for registration coverage under the Virginia Stormwater Management Program General Permit for Discharges of Stormwater from Construction Activities. Specific questions regarding the Stormwater Management Program requirements should be directed to Holly Sepety, DCR, at (804) 225-2613.

4. Chesapeake Bay Preservation Areas. To ensure compliance with the general performance criteria (9 VAC 10-20-120) and the stormwater management criteria consistent with water quality protection provisions (§ 4 VAC 3-20-17 *et seq.*) of the Virginia Stormwater Management Regulations (§ 4 VAC 3-20), Norfolk Southern should contact Alice Baird, DCR, at (804) 225-2307.

5. Air Quality Regulations. This project may be subject to air regulations administered by the Department of Environmental Quality. The following sections of Virginia Administrative Code are applicable:

- 9 VAC 5-50-60 *et seq.* governing fugitive dust emissions; and
- 9 VAC 5-40-5600 *et seq.*, for open burning.

For more information contact the DEQ-Tidewater Regional Office at (757) 518-2000.

6. Solid and Hazardous Wastes. All solid waste, hazardous waste, and hazardous materials must be managed in accordance with all applicable federal, state, and local environmental regulations. Some of the applicable State laws and regulations are:

- Virginia Waste Management Act (Code of Virginia Section 10.1-1400 *et seq.*);
- Virginia Hazardous Waste Management Regulations (VHWMR) (9VAC 20-60);
- Virginia Solid Waste Management Regulations (VSWMR) (9VAC 20-80); and
- Virginia Regulations for the Transportation of Hazardous Materials (9VAC 20-110).

Some of the applicable Federal laws and regulations are:

- Resource Conservation and Recovery Act (RCRA) (42 U.S.C. Section 6901 *et seq.* and the applicable regulations contained in Title 40 of the Code of Federal Regulations); and
- U.S. Department of Transportation Rules for Transportation of Hazardous materials (49 CFR Part 107).

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Contact DEQ's Tidewater Regional Office at (757) 518-2000, concerning location and availability of suitable waste management facilities in the project area or if free product, discolored soils, or other evidence of contaminated soils are encountered.

7. Historic Resources. To ensure compliance with *Section 106 of the National Historic and Preservation Act*, contact Ethel Eaton of DHR at (804) 367-2323, Ext. 112.

8. Federal Consistency. As previously discussed, Norfolk Southern is required to determine the consistency of its activities affecting Virginia's coastal resources or coastal uses with the Virginia Coastal Resources Management Program (see section 307(c)(1) of the Act and 15 CFR Part 930, sub-part D, section 930.34). Therefore, please submit 18 copies of the federal consistency certification for review to our office. If you have additional question, contact Anne Pinion at (804) 698-4488.

Thank you for the opportunity to review this project. We appreciate your interest in complying with Virginia's environmental legislation. If you have any questions, please do not hesitate to call me at (804) 698-4325 or Anne Pinion at (804) 698-4488.

Sincerely,



Ellie L. Irons, Manager
Office of Environmental Impact Review

Attachments

CC. Michelle Hollis, DEQ-TRO
Robert Munson, DCR
James Paschall, Norfolk Southern



COMMONWEALTH of VIRGINIA

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Attachment 1

Enforceable Regulatory Programs comprising Virginia's Coastal Resources Management Program (VCP)

- a. Fisheries Management - The program stresses the conservation and enhancement of finfish and shellfish resources and the promotion of commercial and recreational fisheries to maximize food production and recreational opportunities. This program is administered by the Marine Resources Commission (VMRC); Virginia Code 28.2-200 to 28.2-713 and the Department of Game and Inland Fisheries (DGIF); Virginia Code 29.1-100 to 29.1-570.

The State Tributyltin (TBT) Regulatory Program has been added to the Fisheries Management program. The General Assembly amended the Virginia Pesticide Use and Application Act as it related to the possession, sale, or use of marine antifoulant paints containing TBT. The use of TBT in boat paint constitutes a serious threat to important marine animal species. The TBT program monitors boating activities and boat painting activities to ensure compliance with TBT regulations promulgated pursuant to the amendment. The VMRC, DGIF, and Virginia Department of Agriculture Consumer Services (VDACS) share enforcement responsibilities; Virginia Code 3.1-249.59 to 3.1-249.62.

- b. Subaqueous Lands Management - The management program for subaqueous lands establishes conditions for granting or denying permits to use state-owned bottomlands based on considerations of potential effects on marine and fisheries resources, tidal wetlands, adjacent or nearby properties, anticipated public and private benefits, and water quality standards established by the Department of Environmental Quality (DEQ). The program is administered by the Marine Resources Commission; Virginia Code 28.2-1200 to 28.2-1213.
- c. Wetlands Management - The purpose of the wetlands management program is to preserve wetlands, prevent their despoliation, and accommodate economic development in a manner consistent with wetlands preservation.
- (1) The tidal wetlands program is administered by the Marine Resources Commission; Virginia Code 28.2-1301 through 28.2-1320.
 - (2) The Virginia Water Protection Permit program administered by DEQ includes protection of wetlands --both tidal and non-tidal; Virginia Code §62.1-44.15:5 and Water Quality Certification pursuant to Section 401 of the Clean Water Act.

Attachment 1 continued

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- d. Dunes Management - Dune protection is carried out pursuant to The Coastal Primary Sand Dune Protection Act and is intended to prevent destruction or alteration of primary dunes. This program is administered by the Marine Resources Commission; Virginia Code 28.2-1400 through 28.2-1420.
- e. Non-point Source Pollution Control – (1) Virginia's Erosion and Sediment Control Law requires soil-disturbing projects to be designed to reduce soil erosion and to decrease inputs of chemical nutrients and sediments to the Chesapeake Bay, its tributaries, and other rivers and waters of the Commonwealth. This program is administered by the Department of Conservation and Recreation; Virginia Code 10.1-560 et seq.
- (2) Coastal Lands Management is a state-local cooperative program administered by the DCR's Division of Chesapeake Bay Local Assistance and 84 localities in Tidewater (see i) Virginia; Virginia Code §10.1-2100 –10.1-2114 and 9 VAC10-20 et seq.
- f. Point Source Pollution Control - The point source program is administered by the State Water Control Board (DEQ) pursuant to Virginia Code 62.1-44.15. Point source pollution control is accomplished through the implementation of:
- (1) the National Pollutant Discharge Elimination System (NPDES) permit program established pursuant to Section 402 of the federal Clean Water Act and administered in Virginia as the Virginia Pollutant Discharge Elimination System (VPDES) permit program.
- (2) The Virginia Water Protection Permit (VWPP) program administered by DEQ; Virginia Code §62.1-44.15:5 and Water Quality Certification pursuant to Section 401 of the Clean Water Act.
- g. Shoreline Sanitation - The purpose of this program is to regulate the installation of septic tanks, set standards concerning soil types suitable for septic tanks, and specify minimum distances that tanks must be placed away from streams, rivers, and other waters of the Commonwealth. This program is administered by the Department of Health (Virginia Code 32.1-164 through 32.1-165).
- h. Air Pollution Control - The program implements the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards. This program is administered by the State Air Pollution Control Board (Virginia Code 10-1.1300 through §10.1-1320).
- (i) Coastal Lands Management is a state-local cooperative program administered by the DCR's Division of Chesapeake Bay Local Assistance and 84 localities in Tidewater, Virginia established pursuant to the Chesapeake Bay Preservation Act; Virginia Code §10.1-2100 –10.1-2114 and Chesapeake Bay Preservation Area Designation and Management Regulations; Virginia Administrative Code 9 VAC10-20 et seq.

Attachment 2

Advisory Policies for Geographic Areas of Particular Concern

- a. Coastal Natural Resource Areas - These areas are vital to estuarine and marine ecosystems and/or are of great importance to areas immediately inland of the shoreline. Such areas receive special attention from the Commonwealth because of their conservation, recreational, ecological, and aesthetic values. These areas are worthy of special consideration in any planning or resources management process and include the following resources:
- a) Wetlands
 - b) Aquatic Spawning, Nursery, and Feeding Grounds
 - c) Coastal Primary Sand Dunes
 - d) Barrier Islands
 - e) Significant Wildlife Habitat Areas
 - f) Public Recreation Areas
 - g) Sand and Gravel Resources
 - h) Underwater Historic Sites.
- b. Coastal Natural Hazard Areas - This policy covers areas vulnerable to continuing and severe erosion and areas susceptible to potential damage from wind, tidal, and storm related events including flooding. New buildings and other structures should be designed and sited to minimize the potential for property damage due to storms or shoreline erosion. The areas of concern are as follows:
- i) Highly Erodible Areas
 - ii) Coastal High Hazard Areas, including flood plains.
- c. Waterfront Development Areas - These areas are vital to the Commonwealth because of the limited number of areas suitable for waterfront activities. The areas of concern are as follows:
- i) Commercial Ports
 - ii) Commercial Fishing Piers
 - iii) Community Waterfronts

Although the management of such areas is the responsibility of local government and some regional authorities, designation of these areas as Waterfront Development Areas of Particular Concern (APC) under the VCRMP is encouraged. Designation will allow the use of federal CZMA funds to be used to assist planning for such areas and the implementation of such plans. The VCRMP recognizes two broad classes of priority uses for waterfront development APC:

- i) water access dependent activities;
- ii) activities significantly enhanced by the waterfront location and complementary to other existing and/or planned activities in a given waterfront area.

Advisory Policies for Shorefront Access Planning and Protection

- a. **Virginia Public Beaches** - Approximately 25 miles of public beaches are located in the cities, counties, and towns of Virginia exclusive of public beaches on state and federal land. These public shoreline areas will be maintained to allow public access to recreational resources.
- b. **Virginia Outdoors Plan** - Planning for coastal access is provided by the Department of Conservation and Recreation in cooperation with other state and local government agencies. The Virginia Outdoors Plan (VOP), which is published by the Department, identifies recreational facilities in the Commonwealth that provide recreational access. The VOP also serves to identify future needs of the Commonwealth in relation to the provision of recreational opportunities and shoreline access. Prior to initiating any project, consideration should be given to the proximity of the project site to recreational resources identified in the VOP.
- c. **Parks, Natural Areas, and Wildlife Management Areas** - Parks, Wildlife Management Areas, and Natural Areas are provided for the recreational pleasure of the citizens of the Commonwealth and the nation by local, state, and federal agencies. The recreational values of these areas should be protected and maintained.
- d. **Waterfront Recreational Land Acquisition** - It is the policy of the Commonwealth to protect areas, properties, lands, or any estate or interest therein, of scenic beauty, recreational utility, historical interest, or unusual features which may be acquired, preserved, and maintained for the citizens of the Commonwealth.
- e. **Waterfront Recreational Facilities** - This policy applies to the provision of boat ramps, public landings, and bridges which provide water access to the citizens of the Commonwealth. These facilities shall be designed, constructed, and maintained to provide points of water access when and where practicable.
- f. **Waterfront Historic Properties** - The Commonwealth has a long history of settlement and development, and much of that history has involved both shorelines and near-shore areas. The protection and preservation of historic shorefront properties is primarily the responsibility of the Department of Historic Resources. Buildings, structures, and sites of historical, architectural, and/or archaeological interest are significant resources for the citizens of the Commonwealth. It is the policy of the Commonwealth and the VCRMP to enhance the protection of buildings, structures, and sites of historical, architectural, and archaeological significance from damage or destruction when practicable.