

September 10, 2015
Martin Honigberg, Chairman
NH Site Evaluation Committee
NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: SEA-3, Inc. ("SEA-3") Request for Exemption, NH SEC Docket No. 2015-01

Dear Chairman Honigberg:

The purpose of this communication is to follow-up on relevant issues raised in my correspondence of April 22, 2015 in the above-referenced docket. The focus of that letter was the uncertain structural integrity of the Pan Am railroad bridges along the 13 mile freight rail line—the infrastructure that will carry propane to the SEA 3 facility in Newington, NH.

There remain no public assurances that the old, wooden trestles identified in that document have been inspected on a regular basis, nor have those inspections been reviewed by the Federal Railroad Administration (FRA). As I stated in the April 22 letter: "Requests for the annual bridge inspections, which are conducted in-house by the owner, Pan Am, have not been made available for review. Federal and state rail inspectors do not inspect the structural components of bridges—they only inspect the visible rail line. The bridges straddle tidal waters and are prone to sub-surface scouring from tides and ice. The inspection reports are only made available upon request by the Federal Railroad Administration."

In an effort to access the inspection reports, I submitted a request to the FRA, pursuant to the Freedom of Information Act in September, 2014. A response was received in May, 2015 stating that the FRA did not have any such inspections—both documents are attached here. Since the FRA never requested to review the in-house Pan Am inspections, the FRA obviously did not have them. It is conceivable that just a single structural engineer at Pan Am is privy to the inspections, if they were carried out at all. The rail line is only as good as the bridges. I share this information because no matter what public safety requirements are in place along the line or at the SEA 3 facility—without proof that the bridges are structurally sound—the SEA 3 expansion should not be allowed to move forward.

Of concern as well, is the inability of the NH DES Oil Spill Recovery team to easily access the upper portion of Great Bay in a derailment scenario. The Great Bay rail crossing is a combination of two trestles measuring 500 feet with another 1000 feet of elevated access. The propane tanks cars are often in mixed loads with other materials which will not evaporate and may enter the estuary in a derailment. Strong

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tides will carry the spill up the Squamscott River towards Exeter in a matter of hours, or out into Great Bay. The best estimate for a spill response team is two hours depending on tide and depth of water. If the bay is frozen in the winter, no response is possible. Were it not for the planned expansion of SEA 3 at the end of the Pan Am freight rail line in Newington, these concerns would not be an issue. Though perhaps beyond the scope of your review, it is worth noting that the NH DES Oil Spill Recovery effort is funded by an assessment on each gallon of fuel that is imported for resale and distribution by businesses like Irving Oil and Sprague Energy.

Both the safe transport of product to the SEA 3 facility by rail, and safe distribution by truck from the facility should absolutely be considered in a full safety and environmental review. A full application should address them even though they are not specific to the SEA 3 Newington site.

I appreciate the opportunity to supplement my prior submission.

Sincerely,



Jeff Barnum

Great Bay-Piscataqua Waterkeeper
Conservation Law Foundation
27 North Main Street
Concord, NH 03301

CC: Jane Ferrini, Esq.

Sen. Martha Fuller Clark

Sen. Nancy Stiles

Sen. David Watters

Peter Wellenberger, GBS

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Russell Dean, Town Manager, Exeter

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September 15, 2014

BY CERTIFIED MAIL

Denise Kolluhlon
Freedom of Information Act Coordinator
Office of Chief Counsel
Federal Railroad Administration
1200 New Jersey Avenue, S.E., Stop 10
Washington, D.C. 20590

Re: Freedom of Information Act Request

Dear Ms. Kolluhlon,

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), I am requesting on behalf of the Conservation Law Foundation ("CLF") certain information from the Federal Railroad Administration ("FRA") regarding annual inspections of water crossings conducted by Pan AM Railways ("Pan AM"), located at 1700 Iron Horse Park, North Billerica, Mass. 01862. Based on our understanding, these reports are generated at the directive of the FRA and retained in-house by Pan Am until released by request to the FRA. Given that plans to significantly increase rail traffic on the 13.5 mile freight line which runs from Rockingham Jct. through Stratham, Greenland, Portsmouth, and Newington, New Hampshire, I request the two most recent inspection reports compiled by Pan AM for each of the four crossings.

I anticipate that the annual inspections, conducted by a qualified structural engineer, will include visible components of the railroad track, as well as comprehensive inspection of the structural and vertical components. This would include the subsurface integrity of the structure below the water line, as those components may be affected by ice scouring and water damage. It is expected this information is within the custody or control of the FRA's Rail and Infrastructure Integrity Division, FRA's Railroad Safety Information Management Division, FRA's Risk Reduction Program Division, and/or other offices or divisions of the FRA.

In particular, I am requesting:

1. The two most recent inspection reports regarding two elevated wooden structures spanning the Squamscott River between Newfields, New Hampshire and Stratham, New Hampshire at the head of the Great Bay. One structure is approximately 275 feet and the other is approximately 180 feet in length;
2. The two most recent inspection reports regarding the Winnicut River bridge,

spanning the Winnicut River in Greenland, NH, which is approximately 21 feet in length;

3. The two most recent inspection reports regarding an unnamed railway bridge lying less than 100 feet west of the Sarah Mildred Long Bridge (U.S. Rte. 1 By-pass) across the Piscataqua River, on the railway in question. This bridge is adjacent to the barge pier at the Port of New Hampshire and is approximately 90 feet in length.

I will accept electronic versions of the requested records. If FRA maintains that any requested record is exempt from disclosure, please identify with particularity (identifying the sender or author, recipient, and date) each record claimed to be exempt from disclosure, and detail the justification for the claimed exemption. *See* 5 U.S.C. § 552(a)(6)(F). I further request that the FRA release all segregable portions of material that the FRA otherwise claims are exempt. *See* 5 U.S.C. § 552(b).

For the purposes of fee assessment and as required by 49 C.F.R. § 7.24(b) (1), our organization falls within the “other” fee category defined by 49 C.F.R. § 7.42(g). I hereby request a fee waiver for this request pursuant to 49 C.F.R. § 7.43 (c), as the release of these records is a matter of the public interest. The request meets the applicable requirements as outlined in the statute:

1. The request seeks information related to inspections conducted by Pan AM at the directive of the FRA. These inspections are an identifiable activity of the FRA.
2. The information is likely to contribute to the understanding of the Federal Government operations or activities. Plans to the expand Sea-3, Inc. propane terminal in Newington, New Hampshire are currently underway.¹ Under the proposal, the terminal will receive shipments by rail, operated by Pan AM.² The bridges in question may be subject to increased freight traffic in the coming years, much of which will be propane. Furthermore, these bridges cross all or part of three rivers – the Squamscott, the Winnicut, and the Piscataqua – which are part of the Great Bay Estuary, a highly sensitive aquatic resource already under environmental stress. A failure of any one of

¹ *Expanded Rail Operations for Proposed Sea-3 Terminal Expansion*, City of Portsmouth (last visited September 11, 2014) <http://www.cityofportsmouth.com/Sea-3.html>.

² *Id.*

these bridges could result in disastrous environmental damage to this sensitive ecosystem. Disclosure of inspection records would increase understanding of the measures the federal government is taking to prevent such an occurrence.

3. CLF is a nonprofit, member-supported legal and policy advocacy organization. CLF advocates have expertise in many fields, including the Great Bay Estuary, and possess advanced and professional experience in law, economics, resource management, and science. CLF routinely communicates with the public through the media, by providing comments at hearings, speaking at conferences and to community groups, and by preparing information summaries and communication materials to educate the public. CLF also routinely uses its blog, CLF Scoop (<http://www.clf.org/blog/>), and an email newsletter pertaining directly to the Great Bay Estuary, *Great Bay Currents*, to disseminate editorial content created by many of CLF advocates on important environmental, energy, and public health topics.
4. There is a significant public interest in developing a full, public account of the record of the FRA's review of these bridges. The estuary receives freshwater which drains a 930 square mile watershed spanning thirty-nine communities in New Hampshire. The estuary represents a significant environmental, cultural, and recreational asset to the residents of New Hampshire. Pollutants in its source rivers will directly impact Great Bay and the estuary as a whole. Substantially increasing traffic over bridges with any structural flaws increases the likelihood that bridges will fail, spilling pollutants into these source rivers. Recent issues, such as a train derailment, raise questions about the capacity of the existing rail line to handle the substantial increase in freight traffic.³ Therefore, an understanding of the current state of these bridges is significant to the public interest.

³ Jason Schrieber, *Minor Train Derailment Draws Major Concern from Residents*, SEACOAST ONLINE (September 11, 2014), <http://www.seacoastonline.com/article/20140911/NEWS/409110405/-1/NEWS01>.



5. As described above, CLF is a nonprofit, member-supported legal and policy advocacy organization. As such, it does not have any commercial interests in the disclosure.

I look forward to your response to this request within twenty (20) working days of receipt. *See* 49 C.F.R. § 7.31(a)(2).

Sincerely,

Jeff Barnum
Great Bay-Piscataqua Waterkeeper
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(603) 255-3060



U.S. Department
of Transportation
**Federal Railroad
Administration**

1200 New Jersey Ave. SE
Washington, DC 20590

May 1, 2015

Mr. Jeff Barnum
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, Vermont 05602

Re: FRA FOIA File No. 14-400

Dear Mr. Barnum:

This letter is in response to your Freedom of Information Act (FOIA) request to the Federal Railroad Administration (FRA) for copies of the two most recent inspection reports conducted by Pan AM Railway concerning the following bridges:

1. "...two elevated wooden structures spanning the Squamscott River between Newfields, New Hampshire and Stratham, New Hampshire at the head of the Great Bay....
- 2....the Winnicut River bridge, spanning the Winnicut River in Greenland, NH ...
- 3....an unnamed railway bridge lying less than 100 feet west of the Sarah Mildred Long Bridge (U.S. Rte1 By-pass) across the Piscataqua River ..."

After conducting a thorough search, we have determined that the agency's files do not contain any records responsive to your request. I am responsible for the determination that the agency's files do not contain any records related to inspections conducted by Pan AM Railway of the above mentioned bridges. In making this determination, we have searched the Office of Safety. No reports matching the information you provided were identified.

You may appeal my decision regarding the lack of records to the Administrator, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590. According to the Department's FOIA regulations, 49 C.F.R. Part 7, your appeal must be submitted in writing within thirty days of your receipt of this letter, it must indicate that it is an appeal under FOIA, it must include all arguments and information upon which you rely, and the envelope in which the appeal is sent must be prominently marked, "FOIA Appeal."

2

Since FRA has no records in its possession that are responsive to your request, I am closing your file in this office. If you have any questions regarding the processing of your request, please contact me at 202-493-6039.

Sincerely,

A handwritten signature in cursive script that reads "Denise Kollahlon". The signature is written in dark ink and is positioned below the word "Sincerely,".

Denise Kollahlon
FOIA Officer