



TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
7TH FLOOR L & C ANNEX
NASHVILLE, TENNESSEE 37243-1534

November 16, 2010

RE: **Notice of Determination**
Norfolk Southern IMF Fayette County, (NRS10.013).

The Division of Water Pollution Control has reviewed comments from both the public notice and public hearings held on August 3, 2010. The comments are listed below along with the Division's response.

1. Comment: The project is a significant Federal action and should be required to have a new Environmental Impact Statement prepared.

Response: The State of Tennessee does not require Environmental Impact Statements (EIS). The Federal permitting authority (EPA, Corps of Engineers, etc.) may require an EIS if the intermodal facility proposal meets the definition of a "project that will cause a significant adverse effect on the environment" as defined under Section 771.115 of 23 CFR.

2. Comment: Detailed mitigation for the impacts of this project need to be provided and made available for public review.

Response: The applicant has proposed the use of banking and in-lieu fee stream mitigation for this project.

3. Comment: The proposal to use credit in the Wolf River Wetland Mitigation Bank is a violation of the mitigation regulations since a credit at a bank does not result in the "no overall net loss" as required by statute.

Response: Mitigation banks and in-lieu fee programs are acceptable mitigation methods and are currently the default mitigation accepted by the Corps of Engineers. The principle of the wetland bank is of pre-constructed mitigation that is in turn sold as credit to future projects that require wetland mitigation. The Tennessee In-Lieu Fee Stream Mitigation Program invoices the applicant at \$200 per linear foot for the mitigation required and uses that money to conduct a mitigation project in the watershed of the impacts.

4. Comment: The Division must acknowledge that this project will result in degradation to water quality which cannot be deemed *de minimus*.

Response: The Division recognizes that the impacts proposed in this application are degradation and, as such, require compensatory mitigation.

5. Comment: Laws and standards must be enforced. No water project that violates federal, state or provincial water quality laws should be built.

Response: The Division does not issue permits to authorize activities that are in violation of existing state or federal laws.

6. Comment: There are additional impacts on the permit that are said to be covered by General Permit - isn't this a piece meal approach on behalf of the applicant.

Response: The entire project is encompassed under a single Individual Permit. The impacts that are included in this document may have singly qualified for use of a General Permit, however, the entirety of the project was considered. The use of a single Individual permit prevents that. This does not change the mitigation calculus. Some of the impacts may not require mitigation and would still be conducted under the same requirements set forth in the appropriate General Permit even though they were included in an Individual Permit.

7. Comment: Aquifer recharge areas and aquifer outcrop areas are areas that should be delineated as Source Water Protection Areas.

Response: The Rossville well system has been designated as source waters by the Division of Water Supply. The report of source waters can be found at: <http://www.tennessee.gov/environment/dws/dwassess.shtml>. The Memphis sands aquifer is part of a complex of unconfined sand aquifers encompassing nearly all of west Tennessee. Recognizing the susceptibility of the aquifer the applicant would cap with clay and seal any lens into the Memphis sand aquifer that is located in the facility footprint to prevent any direct impacts to ground water.

8. Comment: Paving over large areas will prevent the rain water from recharging the aquifer.

Response: Introducing a hardened surface does reduce the absorption of precipitation into groundwater and creates the opportunity for increased runoff during storm events. The recharge area of the Memphis sand aquifer is approximately 2,200 square miles in West Tennessee. The proposed site would occupy less than 0.03% of that surface area. From the Ground Water Institute: *The Build Alternative 1 would disturb approximately 440 acres of the 650 acres of the property. Within the 380 acres facility on the property, 233 acres would be paved. These 233 acres would virtually shut off any recharge to the Memphis Sand immediately below. However, the GWI does not view this as a significant impact to the Memphis Sand as a whole. However, if this type of construction became widespread in Fayette County and adjacent counties to the north and south, the recharge could be significantly impacted.*

9. Comment: What would happen if shallow well users lost access to their water supply?

Response: The following response was given by Dr. Jerry Lee Anderson of the Ground Water Institute and concurred with by the Division of Geology. *With respect to the potential of the Memphis Regional IMF to cause contamination of local well water or drawdown of water levels in local wells, no definitive statement can be made given the current information available. Assuming that local wells are screened in the upper part of the Memphis Sand, one would not expect a significant loss of recharge to the Memphis aquifer given that the upper part of the aquifer is approximately 200 feet thick in this area and highly porous (e.g., water can readily flow in all directions). By similar reasoning, minor infiltration of contaminants into the aquifer would likely be dispersed and diluted prior to inception by local pumping wells.*

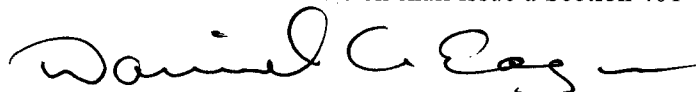
10. Comment: Stream 5 flows into and is a significant part of the hydrology of the 65 acre wetland on the Pictsweet property. What would the impact of this project be on that EPA required wetlands?

Response: Stream 5 would be a rock lined French drain to preserve the ground water flow through the original course. The alteration, as proposed, would not result in a net change in the volume of flow into stream 5.

The Natural Resources Section received several comments related to permits issued by the Permits Section which addressed issuance of a NPDES Construction Storm Water permit. All such comments were forwarded to the Permits Section for consideration and comment. Those comments are not addressed in this document.

In addition, the division received several comments that were not related to water quality concerns. While the division appreciates concerns expressed by the public, it does not have the authority to act outside of the scope of its program areas. Comments unrelated to water quality concerns are not addressed in this document.

Upon consideration of the comments submitted by cooperating agencies and the general public, and a careful examination of the impacts and mitigation measures associated with this application, the Division has determined that the proposed project would not result in either a condition of pollution or a net loss of resources value. The Division shall issue a Section 401 Water Quality Certification to the applicant.

A handwritten signature in black ink, appearing to read "Daniel C. Eagar", with a long horizontal flourish extending to the right.

Daniel C. Eagar
Manager, Division of Water Pollution Control
Natural Resources Section