

SERVICE DATE – APRIL 25, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 791X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN MASON COUNTY, KY.

Digest:¹ This decision waives a regulatory provision that would have resulted in the expiration of a railroad’s authority to abandon its dock and loadout/conveyor belt in Mason County, Ky., and accepts its late-filed notice of consummation.

Decided: April 24, 2023

In 2019, CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon its dock and loadout/conveyor belt at the Maysville Port in Maysville, beginning at milepost CA 599.0 in Mason County, Ky. (the Line). Notice of the exemption was served and published in the Federal Register on June 7, 2019, (84 Fed. Reg. 26,715), and the exemption became effective on July 7, 2019.

By decision served on July 3, 2019, a historic preservation condition under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, was imposed on the exemption. On April 20, 2020, the Section 106 condition was removed, and an unanticipated discoveries condition was imposed. This new condition explained steps that must be taken if archaeological sites, human remains, funerary items, or associated artifacts are discovered during salvage.

On December 15, 2022, CSXT filed a notice of consummation, stating that salvage and consummation of the abandonment were delayed while it complied with the “regulatory barrier imposed...in the April 20, 2020 decision.” (Notice of Consummation 1.) CSXT states that it completed salvage on November 7, 2022. (Id.)

The Board’s regulations provide that if a notice of consummation of abandonment is not filed within (i) one year of the service date of the decision permitting abandonment (provided there are no legal or regulatory barriers to consummation), or (ii) 60 days after the satisfaction, expiration, or removal of the last legal or regulatory barrier to consummation, whichever is later, the abandonment authority automatically expires. 49 C.F.R. § 1152.29(e)(2). Here, the Section 106 condition (which, by its terms, must be removed before consummation can occur), was a regulatory barrier to consummation, but the salvage-related unanticipated discoveries condition

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

was not. See Consummation of Rail Line Abans. Subject to Historic Pres. & Other Envtl. Conditions, EP 678, slip op. at 4 (STB served Apr. 23, 2008) (stating that a salvage condition is typically not a regulatory barrier to the filing of a notice of consummation and has no bearing on the consummation deadline). Thus, CSXT's abandonment authority expired on June 19, 2020, 60 days after the Section 106 condition was removed.

Here, CSXT failed to file its notice of consummation before the deadline passed, seek an extension of that deadline, or seek clarification about the condition. However, although CSXT failed to recognize that the unanticipated discoveries condition is not a barrier to consummation, its filing does demonstrate an attempt to comply with the Board's requirements. As such, the Board will waive the provision at 49 C.F.R. § 1152.29(e)(2) to the extent it would have resulted in the expiration of CSXT's abandonment authority and accept CSXT's late-filed notice. The Board admonishes CSXT and its counsel for their failure to comply with the Board's consummation requirement. CSXT is strongly advised to use diligence in discerning and adhering to Board decisions and regulatory deadlines.

It is ordered:

1. The provision at 49 C.F.R. § 1152.29(e)(2) setting a 60-day deadline for filing a notice of consummation upon the expiration of any legal or regulatory barriers is waived, as discussed above.
2. CSXT's December 15, 2022 notice of consummation is accepted.
3. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.