



April 23, 2024

Submitted electronically via
www.stb.gov

Office of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20423-0001

To the Office of Environmental Analysis:

The Pennsylvania Department of Environmental Protection (“Department”) administers and enforces numerous environmental statutes, including the Pennsylvania Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1978, P.L. 1375, No. 325, as amended, 32 P.S. §§ 693.1 – 693.27 (“Encroachments Act”), and the regulations promulgated pursuant thereto at 25 Pa. Code, Chapter 105 (“Chapter 105”).

The Department received a copy of the Draft Environmental Assessment (“Draft EA”) in Docket No. AB 1233 (Sub-No. 2X). The Draft EA relates to Allegheny Valley Railroad Company’s (“AVR”) proposal to abandon approximately 3.6 miles of rail line in Allegheny County (“Line”). The Department previously provided comments and questions via letter to AVR, a copy of which is attached and incorporated herein. To date, the Department has not received a response to the questions posed in the letter. The Draft EA notes that the Department provided comment.

Pursuant to Section 6 of the Encroachments Act, 32 P.S. § 693.6(a), “No person shall construct, operate, maintain, modify, enlarge or abandon any dam, water obstruction or encroachment without the prior written permit of the [D]epartment.” Further, DEP’s regulations at 25 Pa. Code § 105.47 set forth the requirements for “abandonment” of water obstructions and encroachment. These requirements apply to railroads, and the Department administers these laws in a manner that does not discriminate against railroads or impose an unreasonable burden upon interstate rail transportation. New York Susquehanna and Western Railway Corp. v. Jackson, 500 F.3d 238 (3d Cir. 2007).

Based on the information provided in the Draft EA, the Department's understanding is that AVR does not intend to "abandon" the existing bridge over the Allegheny River or any other water obstruction or encroachment, as that term is used in the Encroachments Act or Chapter 105, but rather seeks to cease operating train service on the Line. The Department encourages AVR to carefully consider all permitting needs associated with the abandonment, and consult with the Department in advance of any work.

The Draft EA recommends a condition requiring AVR to consult with the Department prior to commencement of any abandonment-related activities regarding potential impacts to the Allegheny River, and comply with the Department's reasonable requirements. The Department supports the inclusion of this requirement, but requests the following revisions:

Prior to commencement of any abandonment-related activities, Allegheny Valley Railroad Company shall consult with the Pennsylvania Department of Environmental Protection regarding potential impacts to any watercourse or wetland, including the Allegheny River, and shall comply with ~~its reasonable~~ all applicable permitting requirements.

These revisions are necessary because the Encroachments Act and Chapter 105 extend to smaller watercourses and wetlands. Pursuant to Chapter 105, no person, including AVR, may "construct, operate, maintain, modify, enlarge, or abandon a dam, water obstruction or encroachment without first obtaining a written permit from the Department." 25 Pa. Code § 105.11(a).

Should you have any questions about this letter, please feel free to contact me at (412) 442-4149.

Sincerely,

Dana Drake

Dana Drake
Program Manager
Waterways and Wetlands Program



GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF ENVIRONMENTAL PROTECTION

March 18, 2024

Thomas J. Healey, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, IL 60606-3208

Re: Allegheny Valley Railroad Company – Abandonment Exemption –
in Allegheny County, PA, Docket No. AB 1233 (Sub-No. 2X)

Dear Mr. Healey:

The Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) is in receipt of your Environmental/Historic Report and letter dated February 23, 2024, advising that Allegheny Valley Railroad Company (“AVR”) intends to file with the Surface Transportation Board a notice of exemption for abandonment of approximately 3.6 miles of rail line in Allegheny County (“Line”).

As you are likely aware, the Department administers and enforces numerous environmental statutes, including the Pennsylvania Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1978, P.L. 1375, No. 325, as amended, 32 P.S. §§ 693.1 – 693.27 (“Encroachments Act”), and the regulations promulgated pursuant thereto at 25 Pa. Code, Chapter 105 (“Chapter 105”). Among other things, the Encroachments Act and Chapter 105 regulate “encroachments” and “water obstructions” as those terms are defined in Section 3 the Encroachments Act, 32 P.S. § 693.3:

“Encroachment.” Any structure or activity which in any manner changes, expands or diminishes the course, current or cross-section of any watercourse, floodway or body of water.

“Water Obstruction.” Includes any dike, bridge, culvert, wall, wing wall, fill, pier, wharf, embankment, abutment or other structure in, along, across or projecting into any watercourse, floodway or body of water.

In order to better understand the potential environmental effects of your proposed abandonment, and crucially the effect of such propose abandonment on the section of the Line that utilizes a bridge over the Allegheny River (“Bridge”), which constitutes an encroachment, the Department requests the following additional information:

1. Please provide a copy of the contract referenced in your letter between AVR and the Redevelopment Authority of Allegheny County ("RAAC").
2. What entity will be responsible for conversion of the Line to its intended use as a public recreational trail?
3. What entity will be responsible for long-term operation and maintenance of the Bridge and other sections of Line upon abandonment?
4. What rights and responsibilities for the Bridge, including ownership thereof, will be transferred to RAAC?
5. Does AVR own the Bridge, or does some other entity own the Bridge?
6. Does AVR or other entity currently hold any permits or Submerged Lands License Agreements from the Department for any part of the Line or the Bridge?
7. What modifications will be made to the Line or the Bridge as part of the proposed abandonment?

Please note that pursuant to Section 6 of the Encroachments Act, 32 P.S. § 693.6(a), "No person shall construct, operate, maintain, modify, enlarge or abandon any dam, water obstruction or encroachment without the prior written permit of the [D]epartment." Further, DEP's regulations at 25 Pa. Code § 105.47 set forth the requirements for "abandonment" of water obstructions and encroachment. Based on the information you have provided to date, the Department's understanding is that AVR does not intend to "abandon" the Bridge or any other water obstruction or encroachment, as that term is used in the Encroachments Act or Chapter 105, but rather seeks to cease operating train service on the Line. If our understanding is incorrect, please notify us immediately.

Should you have any questions about this letter or wish to discuss the inquiries posed above, please feel free to contact me at 412-442-4270.

Sincerely,

s/ Christopher L. Ryder

Christopher L. Ryder
Assistant Counsel