

Before the Surface Transportation Board

STB Finance Docket - 36714

**SUNFLOWER STATE INDUSTRIAL RAILWAY, LLC -
CONSTRUCTION & OPERATION - IN GARNETT, KAN**



Sunflower State Industrial Railway, LLC (Sunflower) as many other small railway's does not have a Law Dept - like you'd find with BNSF, UP, CSX, et al. As such, it should be entitled to some degree of latitude in preparing paperwork before the STB. The STB, like many other state & federal regulatory entities prefers cases be brought by attorneys - which small petitioner's do not have & can not afford to have. That said, Sunflower is resubmitting its "NOTICE TO CONSTRUCT PRIVATE RAIL TRACKS". The STB Decision of September 19th, 2023 was studied by Sunflower and the missing information is provided here in hopes the Board might be able to arrive at a more beneficial decision.

307458

As mentioned: Sunflower not having the benefit of legal guidance, means being able to gather vital info the Board needs - thus, Sunflower has followed a prior case decided by this Board. As such, Sunflower relies on: STB Finance Docket No. 34952 - a case brought before the Board - by Devens Recycling Center, LLC.

ENTERED
Office of Proceedings
November 13, 2023
Part of
Public Record

In the cited case, Devens sought a determination that Board's prior authorization is not required under 49 USC § 10901 for construction of track in Middlesex County, MA because - the track would qualify for the exception contained under 49 USC § 10906 as 'ancillary track' (spur, industrial, team switching, or side track). Also, Devens sought a determination that - regardless of the classification of the track - the construction would not result in either Massachusetts Development Finance Agency (Mass. Development) or Devens becoming rail common carriers.

Here, Sunflower is responsible for building its track & retains ownership of it and track-related structures. Sunflower will enter into an Agreement with the Union Pacific Railway (UP), whereby the 'UP' will switch railway cars to and from Sunflower's tracks.

Sunflower will serve the East Kansas Agri Energy, LLC (EKAE). This in a 35 million gallon ethanol plant & began operating in 2005. Its Annual Plant capacity in addition to the ethanol it produces includes: 68,000 tons of DDGs, 110,000 tons of WDGs & 92,000 tons of CO2. The plant was built in 2005, just 14 yrs after Atchison Topeka and Santa Fe RR abandoned tracks that ran just a few yards west of EKAE's plant. [Note in the aerial photo of EKAE: 'right of way' for rail Was built - but no rail service or new rail start up ever materialized]. Consequently, without rail service happening: the ethanol plant went to 100% tanker truck shipping. The nearest interstate's (I-35): 23 miles away. Garnett, Kansas has 1 railroad (Union Pacific), six freight (local) lines and six interstate carriers.

Sunflower has No plans to allow any other shipper, to use any part of it's rail tracks. Adjacent the line between the point where the interchange with the UP will be located & the ethanol plant: there are two business's. One is a farm service company that produces feeds and agri svc for area farms and the other business there: a small repair machinery service. Neither business has ANY interest in shipping product's or goods by rail. As has been mentioned above EKAE Will use the proposed rail service. Of the 13 ethanol plants in Kansas: ONLY EKAE has NO rail service. They would be the 1st to tell you: shipping by rail is a heck of a lot Cheaper than moving 35 million gallons of ethanol by semi truck!

Sunflower also notes nearby companies who ONCE had rail service, but no longer do & ship 100% by truck. This includes Brummel Farm Svc & Beachner's Grain plant. Both formerly were served by the Union Pacific RR - but truck was much cheaper (due to small shipper volumes). When contacted: neither entity indicated interest in rail svc.

Sunflower believes based on the physical characteristics & intended use of its track that the proposed track: 'Ancillary spur track' is excepted under 49 USC § 10906, from approval requirement of 49 USC § 10901. Sunflower notes that the said track - will have physical characteristics of a spur trk Because it is 2.5 miles, stub-ended, will be used for operations that are ancillary to the Union Pacific's operations over its mainline and Only serves EKAE (moving 'produced' EKAE goods in rail cars to the Union Pacific RR and Bringing empty railcars from the Union Pacific Railroad to EKAE's rail tracks: Period). Moreover, there will not be transfer stations, agents or loading platforms built along the track, that ALL rail traffic will be shipments for EKAE & that the track will Not invade the territory of another railway. Simply the track benefits wholly EKAE's shipper needs.

Sunflower further adds that neither it nor the ethanol plant (EKAE), are or intend to become a common carrier. Rather, the operator, the Union Pacific RR, will acquire a common carrier obligation once the proposed transaction is OK'd. [See Maine, DOT - Acq. Exemption, ME Central R. Co., 8 I.C.C.2d 835 (1991) (State of Maine)].

Sunflower also notes: there is NO potential rail svc opportunities aside of service to EKAE. Traffic volume (carloads) is expected to be between 25 to 30 cars per week. Sunflower has received a bid from A&K RR Materials as plans are to use #110 - #115 relayer rail (used). Sunflower will use its Other Tracks (see Map Diagram re: track use) that do not serve the ethanol plant: to operate the Prairie Spirit Diner Car operation & thus, Sunflower will Not be using all 3 miles of its track to provide service to EKAE, but will use approximately 1/4 mile of track (out of 3 total miles) to serve EKAE. The other 2.75 miles of track will be used by Sunflower for its dining car service, rail car storage & trackage to reach Sunflower's rail maintenance garage. Thus, the Majority of this private rail will be used by Sunflower for its Own operations & thus falls outside the Decision in Effingham RR. [See Effingham RR - Pet for Dec Order - Constr @ Effingham, IL 2 STB 606, 609-10 (1997), aff'd sub nom. United Transp. Union-III. Legislative Bd, v. STB, 183 F.3d 606 (7th Cir. 1999) [requiring a party, to seek construction and operating authority under 49 U.S.C § 10901 for what would otherwise be § 10906 track because the track to be constructed constitutes the Entirety of the party's rail system. STB Fln Doc # 34952].

Here, "Private Track" to serve Only EKAE meets the requirements of § 10906, because (a) it will serve 1 customer & (b) Sunflower's main tracks are for: rail tourist operations (dining car operation & scenic rail rides): clearly a non-STB regulated rail.

Per the above mentioned 'additional info' Sunflower's re-submitting for the STB's review & re-examination of the previously rejected Sept. 19, 2023 Notice by the STB.

Respectfully,



Steve P. Gorsline, General Manager
Sunflower State Industrial Railway, LLC

Nov. 8th, 2023

51832
DO

SERVICE DATE – SEPTEMBER 19, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36714

SUNFLOWER STATE INDUSTRIAL RAILWAY, LLC—CONSTRUCTION &
OPERATION—IN GARNETT, KAN.

Decided: September 19, 2023

On July 17, 2023, Sunflower State Industrial Railway, LLC (Sunflower), filed what it calls a “Notice of Intent to Construct & Operate Private Rail Tracks.” Specifically, Sunflower proposes to construct a 2.5-mile line, between milepost 83.+2185 and milepost 85.+0495, in Garnett, Kan. (Notice 1.) Sunflower states that Board authority under 49 U.S.C. § 10901 is not required because the proposed track would be ancillary track under 49 U.S.C. § 10906 and that, regardless of the track’s classification, construction of the trackage would not result in Sunflower becoming a common carrier. (*Id.* at 1.)

Sunflower’s submission will be rejected, as there is insufficient information to determine the nature of the proposed project and whether Board authorization is required. The construction and operation of new railroad lines requires prior Board authorization, either through issuance of a certificate under 49 U.S.C. § 10901 or through an exemption under 49 U.S.C. § 10502 from the formal application procedures of § 10901. *See* 49 C.F.R., part 1150; Savannah Indus. Transp., LLC—Operation Exemption—in Effingham Cnty., Ga., FD 36489, slip op. at 4-5 (STB served Aug. 1, 2023). Under 49 U.S.C. § 10906, however, the construction of spur, industrial, team, switching, or side tracks does not require Board authority, although such track is still within the jurisdiction of the Board. *See Savannah Indus. Transp., LLC*, FD 36489, slip op. at 5. In addition, certain “private” track is outside of the Board’s jurisdiction altogether. *Id.* (citing Hanson Natural Res. Co.—Non-Common Carrier Status—Pet. for Decl. Ord., FD 32248, slip op. at 20-21 (ICC served Dec. 5, 1994)).

In determining whether a particular track is subject to the Board’s licensing authority or is ancillary track excepted from the Board’s licensing authority under § 10906, the Board has adopted a case-by-case, fact-specific approach. Factors relevant to that inquiry may include the track’s intended use, physical characteristics, relationship to the rail system, and history. *See N.Y.C. Econ Dev. Corp.—Pet. for Declaratory Order*, FD 36467, slip op. at 3-4 (STB served June 11, 2021). Certain indicia used in making this determination have included the length of the line; whether it serves more than one shipper; whether it is stub-ended; whether it was built to penetrate new markets; whether the shipper is located at the end of the line; whether there is regularly scheduled service; traffic volume; who owns and maintains the line; whether the line was constructed with light-weight rail; the condition of the line; what the line is used for (e.g.,

switching, loading, and unloading); and whether there are stations on the line. Brookhaven Rail Terminal—Pet. for Declaratory Order, FD 35819, slip op. at 3-4 (STB served Aug. 30, 2016).

Here, the notice contains only sparse, and to some extent contradictory, information about the proposed track, with little indication as to how the track would connect to the rail network beyond a vague indication that Union Pacific Railroad Company is “agreeable to construction” of an interchange at Garnett. (Notice 1.) Sunflower states that it will operate the proposed trackage as an industrial spur that will serve an ethanol plant owned by East Kansas Agri Energy, LLC (EKAE), as the “sole customer on the line,” but it is unclear as to whether EKAE actually intends to use the industrial spur as described by Sunflower. (Id. at 1-2.) Further, while Sunflower states that it is “[n]ot planning to construct private tracks,” (id. at 1), it nevertheless describes its filing as a “Notice to Construct and Operate Private Rail Trackage.” (Id.) Moreover, even if the proposed tracks could otherwise be classified as ancillary track under § 10906, it is unclear whether the tracks would constitute Sunflower’s entire rail system, thus requiring Board licensing authority. See Effingham R.R.—Pet. for Declaratory Order—Constr. At Effingham, Ill., 2 S.T.B. 606, 609-10 (1997), aff’d sub nom. United Transp. Union-Ill. Legislative Bd. v. STB, 183 F.3d 606 (7th Cir. 1999) (requiring a party to seek construction and operation authority under 49 U.S.C. § 10901 for what would otherwise be § 10906 track because the track to be constructed would constitute the entirety of the party’s rail system).

Because Sunflower’s notice does not provide sufficient information to determine the nature of the transaction and whether Board authority is necessary, it will be rejected.

It is ordered:

1. Sunflower’s notice is rejected.
2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001**

**OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300
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Hasler CAPITAL DISTRICT 208 Hasler

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ZIP 20423
011E11680831

FD_36714
Steve P. Gorsline
P.O. Box 245
Colony, KS, 66015-0245, United States

66015-024545



1500 SW Arrowhead Road
Topeka, KS 66604-4027



Dwight D. Kern, Chair
Steve K. Duffy, Commissioner
Andrew J. French, Commissioner

Phone: 785 271-3100
Fax: 785 271-3354
<http://kcc.ks.gov>

Laura Kelly, Director

February 23, 2012

Steve P. Gorsline
General Manager
Sunflower State Industrial Railway
PO Box 245
Colony, KS 66015
SunflowerStateIndustrialRR@gmail.com

Re: Railway Line

Mr. Gorsline,

The Kansas Corporation Commission received your letter today requesting guidance and filing requirements in forming a short railway line in Kansas.

The Kansas Corporation Commission's Transportation Division maintained minimal jurisdiction over the railroads such as grade crossing site clearance and a few other related rules through June of 2006. However, because the majority of the railroad safety oversight had been federally pre-empted, the Transportation Division, pursuant to K.S.A. 75-5078, transferred all remaining authority related to railroads to the Kansas Department of Transportation (KDOT) effective July 1, 2006. The contact at KDOT was John W. Maddox, CPM, KDOT, Bureau of Transportation Planning, Freight and Rail Unit, Eisenhower State Office Bldg., Topeka, KS 66603, 785-296-3228, johnm@ksdot.org.

I hope this has been of assistance.

Respectfully,

A handwritten signature in black ink, appearing to read "Lynn M. Retz".

Lynn M. Retz
Executive Director

Delight D. Eisenhower State Office Building
700 S.W. Harrison Street
Topeka, KS 66603-3745
Julie L. Lorenz, Secretary



Phone: 785-366-3441
Fax: 785-366-7415
kdot@publicinfo.ks.gov
700 South Capitol City
Laura Kelly, Governor

March 18, 2022

Mr. Steve P. Gorsline, General Manager
Sunflower State Industrial Railway
P.O. Box 245
Colony, KS 66015

Dear Mr. Gorsline:

Thank you for your letter regarding the Sunflower State Industrial Railway. Governor Kelly has asked that I follow up with you. You have presented several interesting ideas for potential freight rail service.

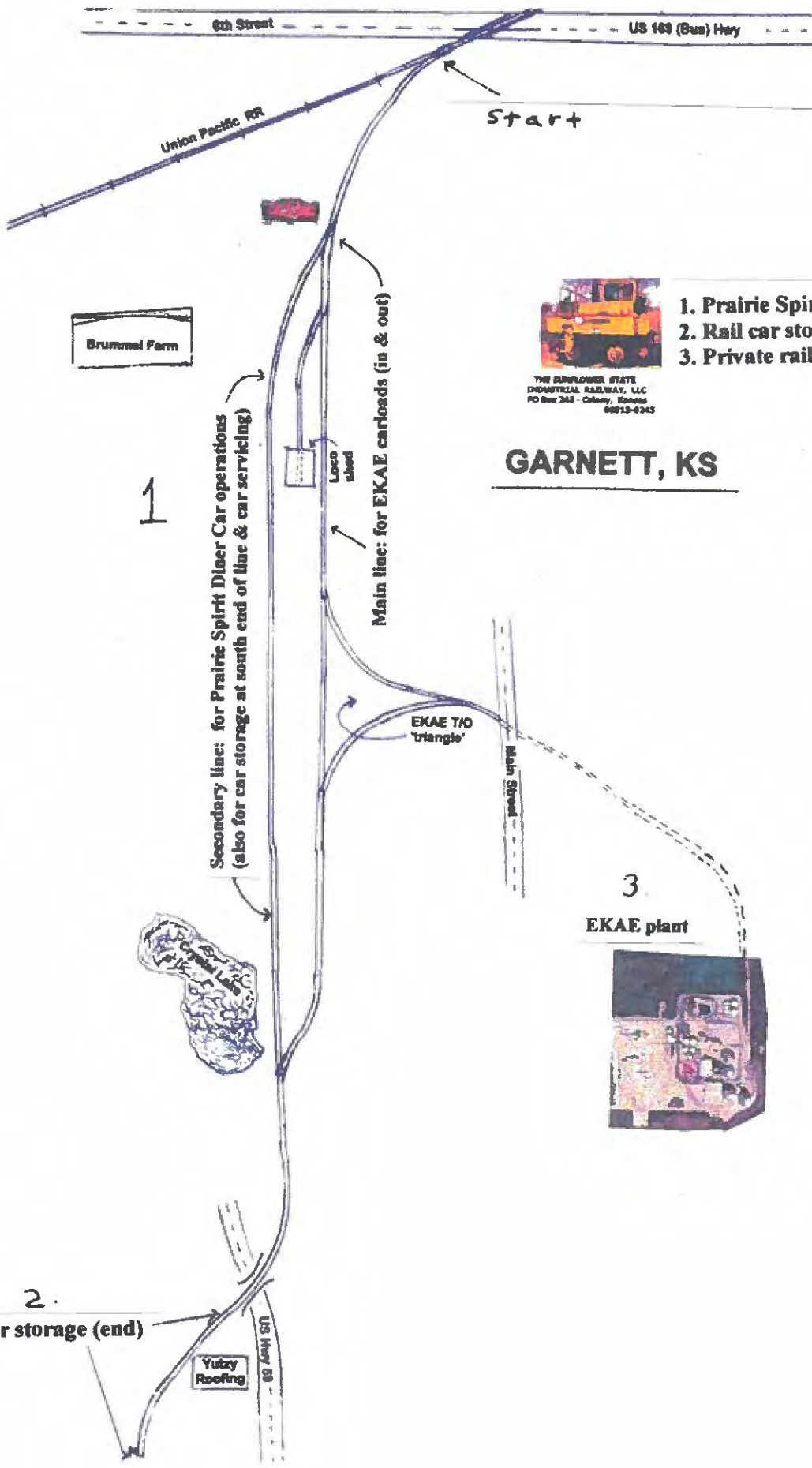
I have asked John Maddox, Freight and Rail Program Manager at the Kansas Department of Transportation (KDOT) to reach out to you and discuss the details presented in your correspondence. KDOT offers two rail rehabilitation grant programs. Mr. Maddox can explain KDOT's Rail Service Improvement Fund (RSIF) and Short Line Rail Improvement Fund (SLRIF) programs for freight rail infrastructure improvement projects and the guidelines associated with those programs.

I'd also like to note that KDOT is wrapping up its 2021 State Rail Plan Update. A draft of the update will be available online within the next several weeks for public comment. This plan will highlight additional information on both programs and provide you with an overview of KDOT's freight and rail unit structure, activities, and project selections over the last 20 years.

You're welcome to contact Mr. Maddox at john.maddox@ks.gov.

Sincerely,

Julie L. Lorenz
Secretary of Transportation
Director of Kansas Turnpike Authority



THE EMPLOYER STATE
INDUSTRIAL RAILWAY, LLC
PO Box 245 - Garnett, Kansas
66613-0245

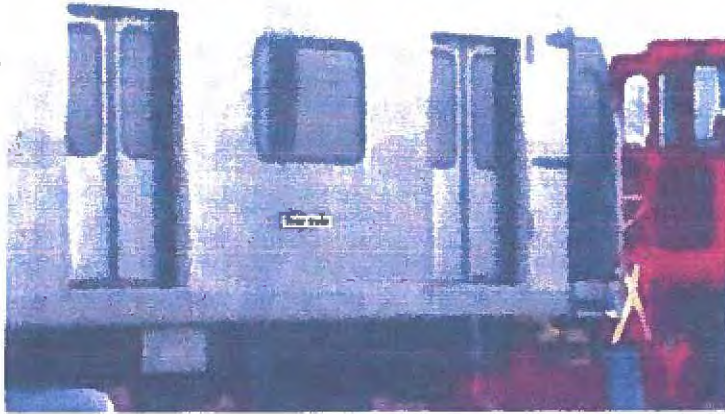
- 1. Prairie Spirit Diner Car Operation
- 2. Rail car storage segment (stub end)
- 3. Private rail service for EKAE plant

GARNETT, KS



Sunflower's Rail Services Plan

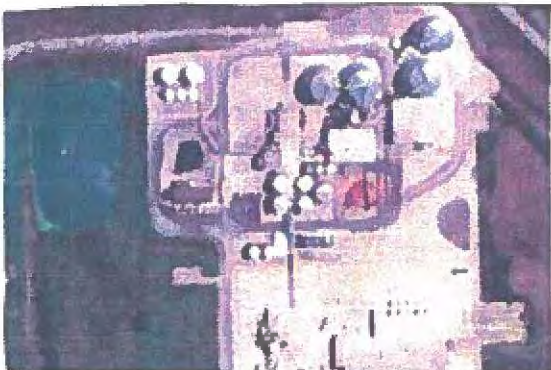
1. Tourism Operations: Diner car Train Scenic Rail Travel



2. Railcar storage:



3. EKAE switching: EKAE's carloads to and from the Union Pacific RR



8th Street

US 169 (Bus) Hwy

Start

Union Pacific RR

EKAE service plan: Full tanker cars of ethanol are pulled from EKAE's service tracks and parked at the UP interchange. UP then pulls the full cars from Sunflower's Interchange tracks and then sets the empty tanker cars on the same interchange tracks.

Brummel Farm

Secondary line: for Prairie Spirit Diner Car operations
(also for car storage at south end of line & car servicing)

Loco shed

Main line: for EKAE carloads (in & out)



THE SUNFLOWER STATE
INDUSTRIAL RAILWAY, LLC
PO Box 245 - Colony, Kansas
66015-0245

GARNETT, KS

EKAE T/O
'triangle'

Main Street

EKAE plant



END

Yutzy Roofing

US Hwy 69

Aerial

Maps

E 6th Ave

U.S.
169
Hwy

E 6th Ave

GARNETT, KS

Interchange switch
w/ Union Pacific RR

Union Pacific RR

Swain St

Swain St

East 7th Avenue

E 7th Ave

E 7th Ave





E 6th Ave



E 6th Ave

GARNETT, KS

**Interchange switch
w/ Union Pacific RR**

Union Pacific RR

Main St

Main St

East 7th Avenue

E 7th Ave

E 7th Ave

Santa Fe
caboose

loco-
shed

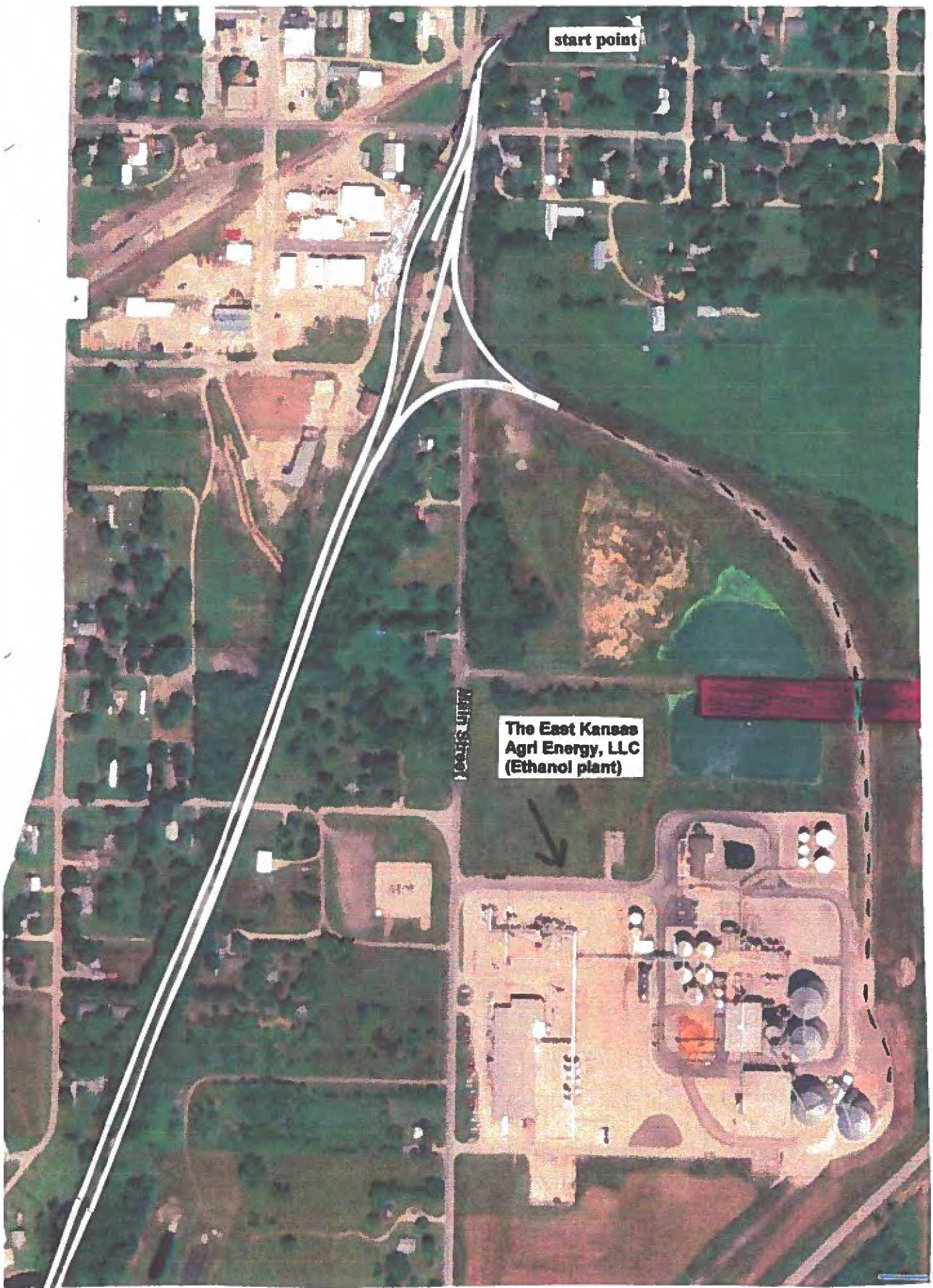


Parking lot for
Diner car entry

S Main St

S Main St

n St



start point

Main Street

The East Kansas
Agri Energy, LLC
(Ethanol plant)

Crystal Lake

US 169

US 59

Gas Sta
Trk stop

end point

Yutzy C/S
(metal roof co)



E

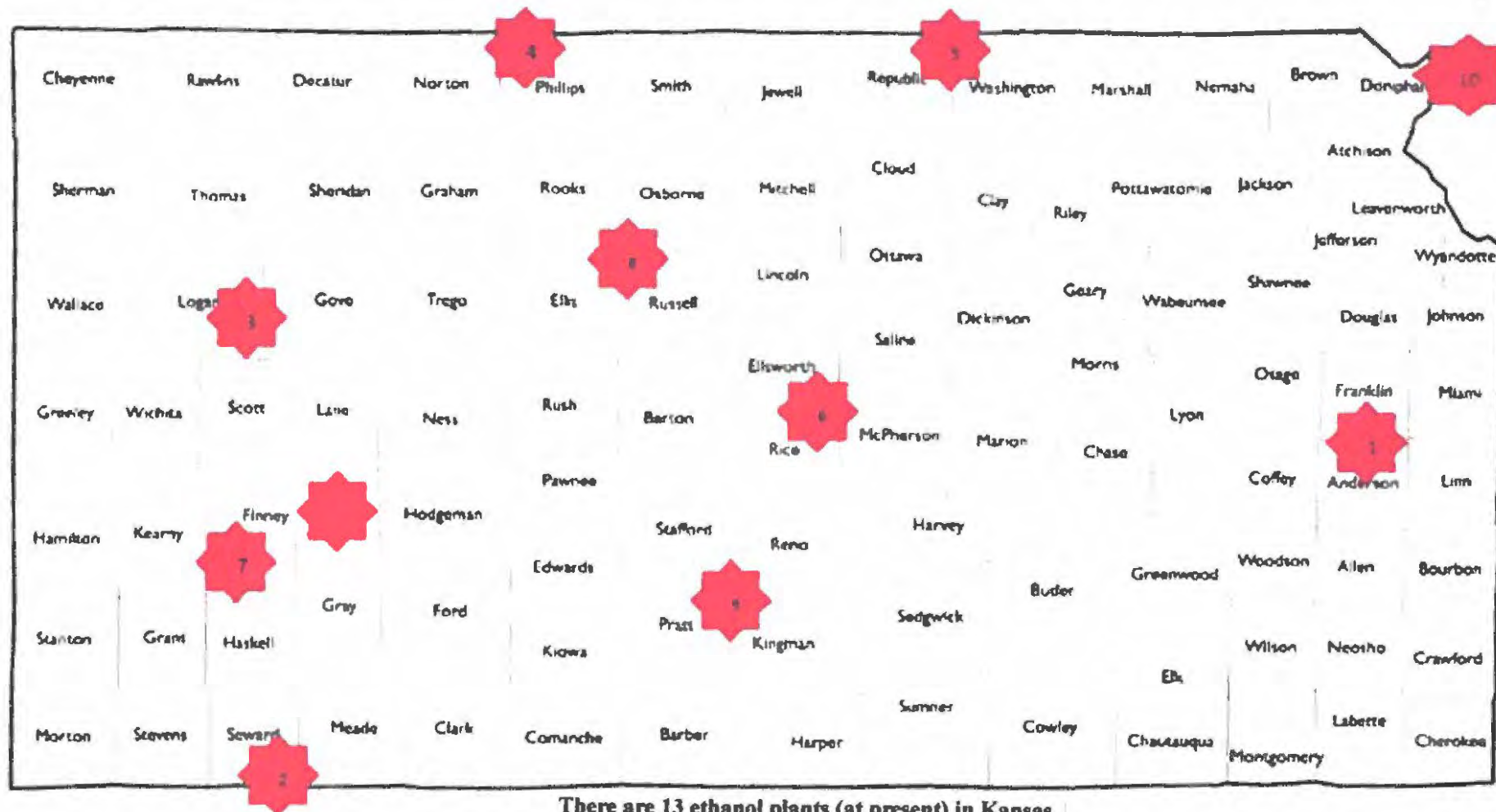
K

A

E



Private railway ROW built by EKAE for rail service - But, rail service never happened.



There are 13 ethanol plants (at present) in Kansas.

Potential

Rail

Customers?



SUNFLOWER STATE INDUSTRIAL RAILWAY, LLC
Post Office Box 245 - Colony, Kansas 66015-0245

Former rail customers of both the Santa Fe RR & Union Pacific RR were contacted and NONE of them (see attached) wanted to go back to rail service.

Former rail customers were:

Beachner's Grain elevator (UP RR)
Brummel Farm Service Co (UPRR)

A supply warehouse that Santa Fe RR once served: is now torn down.

As such: the ONLY customer to be found: East Kansas Agri Energy (the ethanol plant).

United States - KS - Anderson

Union Pacific tracks pass by Beachner's Elevator. Their rail siding was pulled up years ago as the grain traffic is basically local and for 1 or 2 rail carloads: truck was cheaper than rail.

Union Pacific RR

UP RR

UP RR

6th St US 169-Bus Hwy

Looking at an aerial view of the UPRR crossing: it looks like Brummel Farm Service once had rail service with UP. (Concrete shows it was "cut out" and the 'outline' on the Brummel driveway.

Brummel
Farm Svc





United States KS Anderson Co. Gemett

Farm repair site

Bldg is torn down.
(Was a supply co)

Feedo

Effingham

R. R

CSX

Peerless Co

Transload yard →

Mid-Illinois Concrete Co →

EFFINGHAM RAILROAD

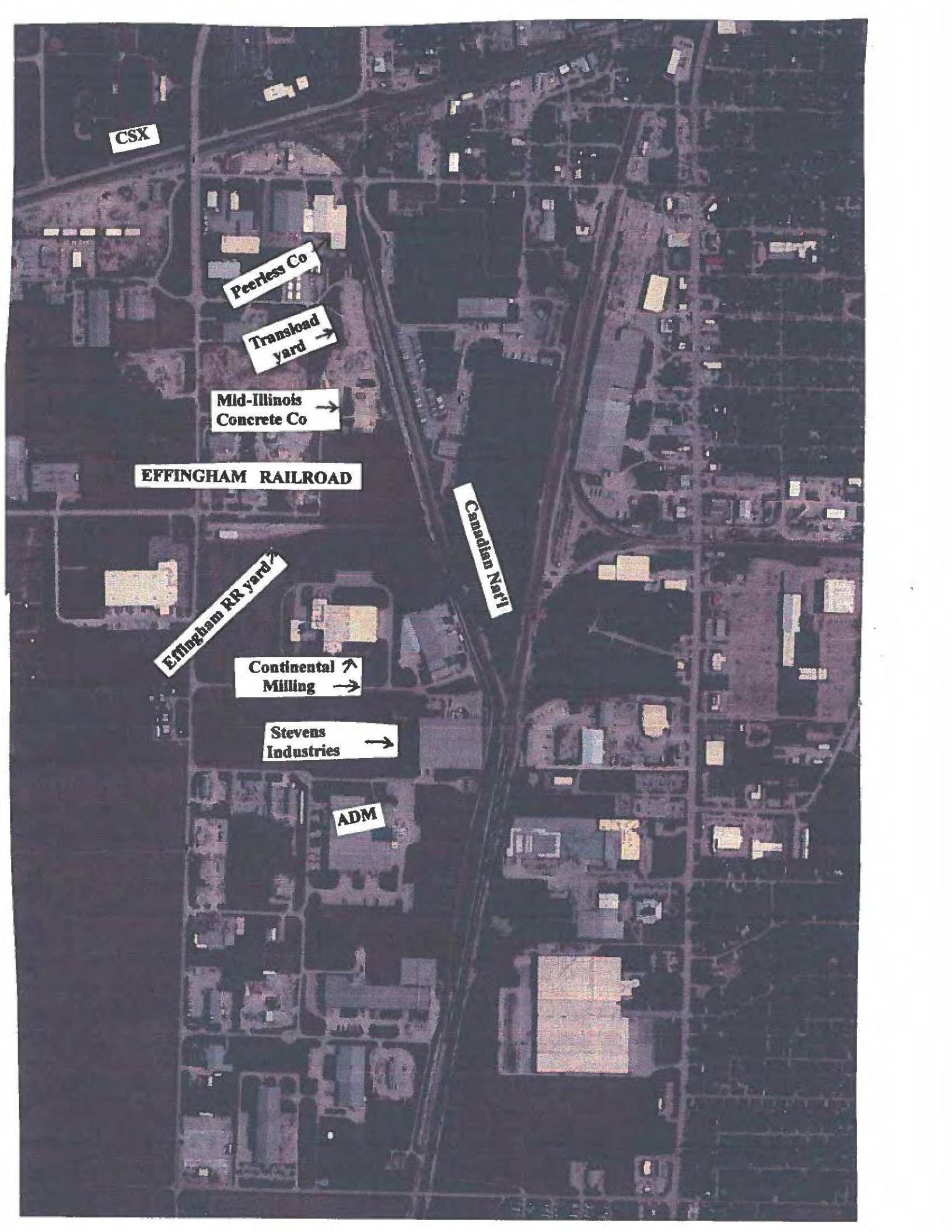
Effingham RR yard

Canadian Nat'l

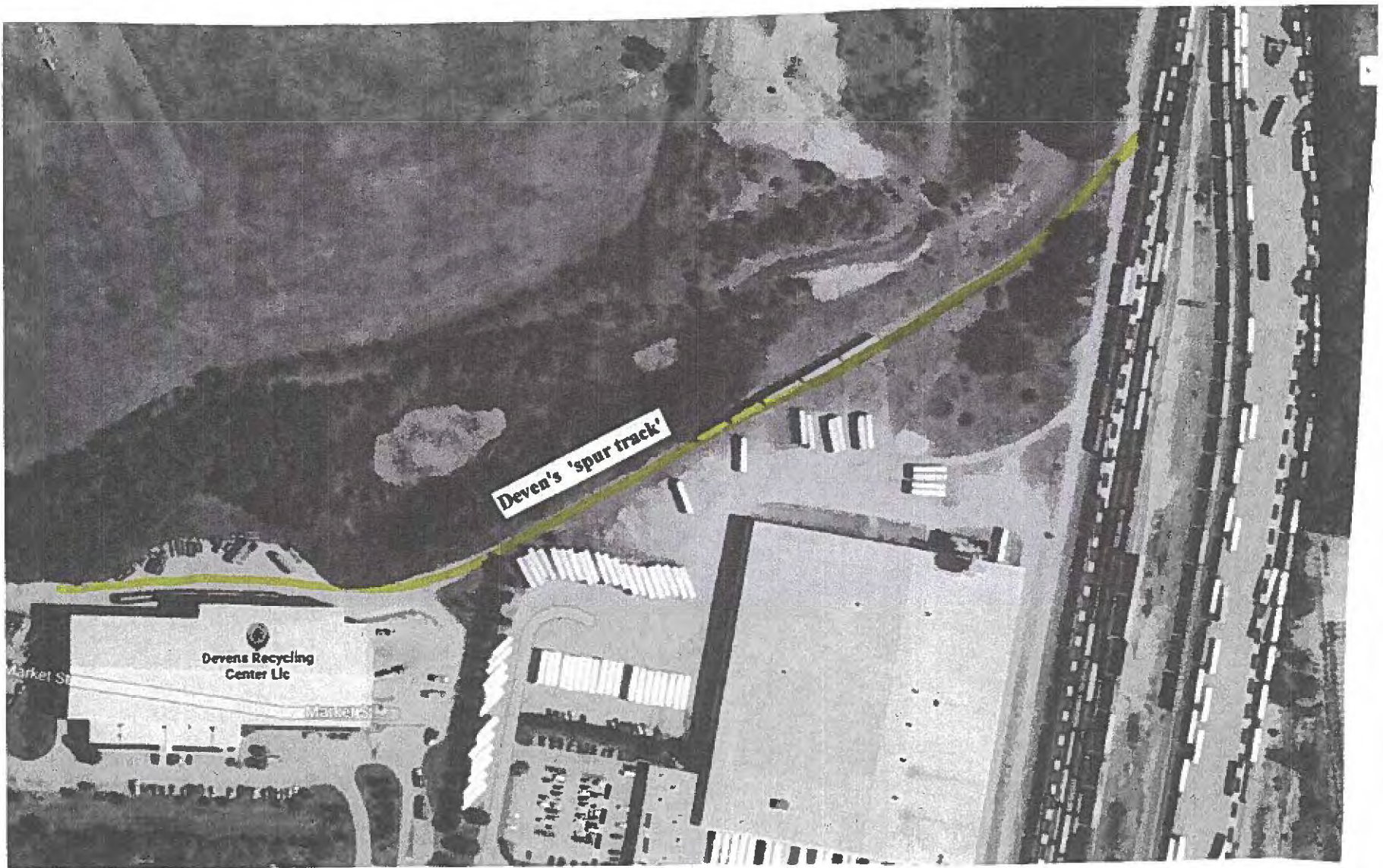
Continental Milling ↗ →

Stevens Industries →

ADM



Deven's Recycling Center



Devens Recycling Center

• Recycling Center, Dumpster Rental

7:00 AM - 5:00 PM [See hours](#)

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