

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. 1327X

**Flats Industrial Railroad Company – Abandonment Exemption –
In Cleveland, OH**

BACKGROUND

In this proceeding, Flats Industrial Railroad Company (FIR) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Cleveland, Cuyahoga County, Ohio. The rail line proposed for abandonment extends approximately 1.85 miles from Milepost 10 to Milepost 11.85 near West 41st Street (the Line). A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). If the notice becomes effective, the railroad will be able to salvage track, ties, and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

The Line is within Zip Code 44113, in the West Bank of the Flats District of Cleveland, so named because of its low-lying topography near the west bank of the Cuyahoga River. Both the East and West Banks of the Flats have undergone redevelopment from heavy industry to new housing, restaurants, and river-based tourism.

FIR states that the Line has been out of service for over two years and FIR has provided no local or overhead traffic during this time. If the Surface Transportation Board (Board) grants the abandonment, FIR would remove the rail, tie plates, crossties, and upper layer of ballast and would neither disturb the sub-grade nor excavate the Line below the upper layer of ballast. FIR states that it would not need to build new access roads or conduct dredging or use fill materials to salvage the Line. The track materials that FIR would remove (identified above) would be transported from the Line and disposed of in accordance with statutory requirements.

ENVIRONMENTAL REVIEW

FIR submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment of the Line, including salvage. FIR served the E&H Report on several appropriate federal, state, and local agencies as required by the Board's environmental

rules [49 C.F.R. § 1105.7(b)]¹ implementing the National Environmental Policy Act. The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

As noted above, FIR states that no overhead or local traffic has moved over the Line over the last two years. Therefore, the proposed abandonment would not result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. Nor would the proposed abandonment adversely impact the development, use and transportation of energy resources or recyclable commodities or the transportation of ozone-depleting materials.

Salvage Activities

Impacts from salvage and disposal of a rail line typically include removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. FIR states that no construction of new access points to the right-of-way would be necessary to remove track materials. Rather, the right-of-way itself would be used to access and remove the track material. Crossties removed from the Line would be disposed of appropriately and not discarded on the right-of-way. Last, FIR would ensure that abandonment-related fuels or lubricants do not enter the Cuyahoga River or any other waterway during salvage.

Land Use

FIR provided the E&H Report to Cuyahoga County and requested comments on the consistency of the proposed abandonment with existing land use plans. To date, Cuyahoga County has not provided comments. Accordingly, Because the Line is located in a developed, urban area and because abandonment-related salvage activities would be limited in scope, OEA believes that the proposed abandonment would be consistent with existing land use plans and is not recommending any conditions related to local land use.

The Flats District of Cleveland is highly developed and in transition from heavy industry to residential, bars and restaurants, and tourism. In compliance with the Board's environmental rules, FIR requested comments from the Natural Resources Conservation Service (NRCS) regarding the potential impact of the proposed abandonment on agricultural land. To date, NRCS has not provided comments. Because salvage activities would take place within an existing rail right-of-way in an urban area, OEA concludes that the proposed abandonment

¹ The E&H Report is available for viewing on the Board's website at www.stb.gov by clicking "Search STB Records;" selecting "Filings" in the "Search for" dropdown menu; entering "AB" "1327" "0" "X" sequentially in the four boxes for "Docket Number," then selecting "Search." The E&H Report was filed on October 11, 2022.

would not affect agricultural land and is not recommending any mitigation related to agricultural land.

Based on FIR's E&H Report and OEA's review of available information, the Line does not pass through and is not immediately adjacent to any state parks or forests, national parks or forests, or wildlife sanctuaries. Accordingly, no mitigation related to protected areas is warranted or recommended.

Hazardous Materials

FIR states that it has no knowledge of any hazardous waste sites or sites where there have been hazardous material spills within or adjacent to the rail right-of-way. OEA's review indicates the presences of hazardous waste sites in Cleveland, including in and around the Flats area, but not in the immediate vicinity of the Line.² Accordingly, OEA does not recommend mitigation related to hazardous waste sites or spills.

Biological Resources

To identify federally listed threatened and endangered species that could be present near the project area, OEA conducted a search of the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) system.³ The table below shows the federally listed endangered and threatened species known or thought to occur in the vicinity of the Line, as identified by OEA's search and further research. OEA notes that the Line does not cross critical habitat for any federally listed threatened or endangered species.

Federally Listed Species in Project Area	
Mammals	Status
Indiana Bat (<i>Myotis sodalis</i>)	Endangered
Northern Long-eared Bat (<i>Myotis septentrionalis</i>)	Threatened
Tricolored Bat (<i>Perimyotis subflavus</i>)	Proposed Endangered

FIR requested comments from USFWS regarding the potential impact of the proposed abandonment on protected species. USFWS has not responded. Because salvage activities would not involve bridges, tunnels, or take place within an existing rail right-of-way in an urban area that does not provide habitat for any of the species listed above, OEA has determined that the proposed abandonment would have *no effect* on threatened and endangered species or other biological resources. Accordingly, formal consultation with

² Environmental Protection Agency, NEPAassist, <https://www.epa.gov/nepa/nepassist> (last visited October 18, 2022).

³ U.S. Fish and Wildlife Service, Information for Planning and Consultation System, <https://ecos.fws.gov/ipac/> (last accessed October 18, 2022).

USFWS under Section 7 of the Endangered Species Act (16 U.S.C. § 1536) is unnecessary, and OEA is not recommending any mitigation related to biological resources.

Water Resources

FIR provided the E&H Report to the Ohio Department of Natural Resources and the U.S. Environmental Protection Agency (USEPA) and requested comments regarding the potential impact of the proposed abandonment. To date, those agencies have not commented on the potential for salvage activities to affect water resources. As discussed above, FIR plans to conduct salvage activities using the rail right-of-way itself, along with existing public and private crossings as necessary. FIR does not intend to disturb the underlying roadbed or cause sedimentation or erosion of the soil. No dredging would occur. OEA concurs with FIR that the proposed abandonment would not affect water quality and that a National Pollutant Discharge Elimination System (NPDES) permit under Section 402 of the Clean Water Act (33 U.S.C. § 1342) would not be required. Therefore, OEA is not recommending any mitigation related to water quality.

FIR provided the E&H Report to the U.S. Army Corps of Engineers (Corps) requesting comments on the potential impact of the proposed abandonment on waters of the United States requiring a Corps permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344). According to the information submitted in FIR's environmental report, the Line does not cross any streams or wetlands, and FIR does not intend to undertake any in-stream work as part of abandonment-related salvage activities. Therefore, OEA is not recommending any mitigation related to waterways and wetlands.

Because a portion of the Line is located within the boundary of the Lake Erie watershed, consultation under the Coastal Zone Management Act (16 U.S.C § 1451-1467) (CZMA) regarding coastal zone consistency would be necessary for the proposed abandonment.⁴ Therefore, OEA is recommending a mitigation condition related to coastal zone management that prohibits FIR from consummating the abandonment or conducting salvage activities until completion of the CZMA consultation process.

Air Quality

USEPA provided comments stating that USEPA does not anticipate any adverse impact to air quality as a result of salvage activities. OEA believes that any air emissions associated with abandonment-related salvage would be temporary and would not have a significant impact on air quality. Therefore, OEA is not recommending any mitigation related to air quality.

⁴ Ohio Department of Natural Resources, Office of Coastal Management, <https://gis.ohiodnr.gov/MapView/?config=interactiveatlas> (last visited November 1, 2022).

Noise

OEA believes that any noise related to abandonment activities would be temporary and should not have a significant impact on the area surrounding the proposed abandonment. Therefore, OEA is not recommending any mitigation related to noise.

Conclusion

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to the following agencies for review and comment:

U.S. Army Corps of Engineers, Region 5

Ohio Department of Natural Resources, Office of Coastal Zone Management

HISTORIC REVIEW

Trains have run in the Cuyahoga Valley since the 1880s, when the Valley Railway began operations, transporting coal to Cleveland, Akron, and Canton from the Tuscarawas River Valley and providing passenger service. After a decade of operation, the Valley Railway became part of the Baltimore & Ohio Railroad. In the 20th century, competition from automobiles, trucks, and buses caused the decline of both freight and passenger service.

FIR came into existence in 1996 when it sought and received authority from the Board to acquire 4 miles of rail line from the Consolidated Rail Corp. (Conrail). In 2001, FIR sold approximately 2.15 miles of its rail line to Norfolk Southern Railway Company. In spring 2020, the railroad's primary customer, the Grain Craft flour mill on Merwin Avenue, announced it would be closing.

FIR served the E&H Report on the Ohio State Historic Preservation Office (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).⁵ The historic report explained that FIR was one of many subsequent owners of its rail assets. FIR, according to its historic report, did not receive historic records from the prior owners. The historic report notes that there are no structures on the Line proposed for abandonment. To date, SHPO has not commented on the information contained in the historic report.

OEA has not heard from the SHPO and therefore has not been able to consider the SHPO's opinion before determining if the rail line may be potentially eligible for listing on the National Register of Historic Places. Accordingly, OEA is recommending a condition requiring

⁵ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. § 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009).

the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process. Guidance regarding the Board's historic preservation review process is available on the Board's website at [www](http://www.stb.gov).

<https://www.stb.gov/resources/environmental/historic-preservation-overview>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development's Tribal Directory Assessment Tool (TDAT) to identify federally recognized Tribes that may have ancestral connections to the project area.⁶ The database indicated that the following federally-recognized tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment: Delaware Nation, Oklahoma, Eastern Shawnee Tribe of Oklahoma, Forest County Potawatomi Community of Wisconsin, Hannahville Indian Community, Little Traverse Bay Bands of Odawa Indians, Miami Tribe of Oklahoma, Ottawa Tribe of Oklahoma, Seneca Nation of Indians, Seneca-Cayuga Nation, and the Wyandotte Nation. Accordingly, OEA is sending a copy of this Draft EA to these Tribes for review and comment.

CONDITIONS

OEA recommends that the following conditions be imposed on any decision granting abandonment authority:⁷

1. Pursuant to the Coastal Zone Management Act (16 U.S.C. § 1451-1467) and the Board's environmental regulations at 49 C.F.R. § 1105.9, Flats Industrial Railroad (FIR) shall consult with the Ohio Department of Natural Resources, Office of Coastal Management and obtain state coastal management consistency certification, if necessary. FIR may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until it reports the results of these consultations in writing to the Board's Office of Environmental Analysis and the Board has removed the condition.
2. Flats Industrial Railroad (FIR) shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. FIR shall report back to the Office of Environmental Analysis (OEA) regarding any

⁶ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov.tdat> (last accessed on November 2, 2022).

⁷ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with this condition is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

consultations with the Ohio State Historic Preservation Office (State Historic Preservation Officer or SHPO) and the public. FIR may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended conditions are imposed, abandonment of the Line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Board's Federal Register notice of the proposed abandonment. The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁵

TRAIL USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29). The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁶

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

OEA encourages interested parties to submit their comments on the Draft EA electronically through the Board's website at <https://www.stb.gov/>. From the Board's home page, select "File an Environmental Comment" below the "Need Assistance?" button. Log-in accounts are not needed to file environmental comments electronically, and brief comments can be typed in the comment field, and lengthier comments can be attached as Word, Adobe Acrobat, or other file formats.

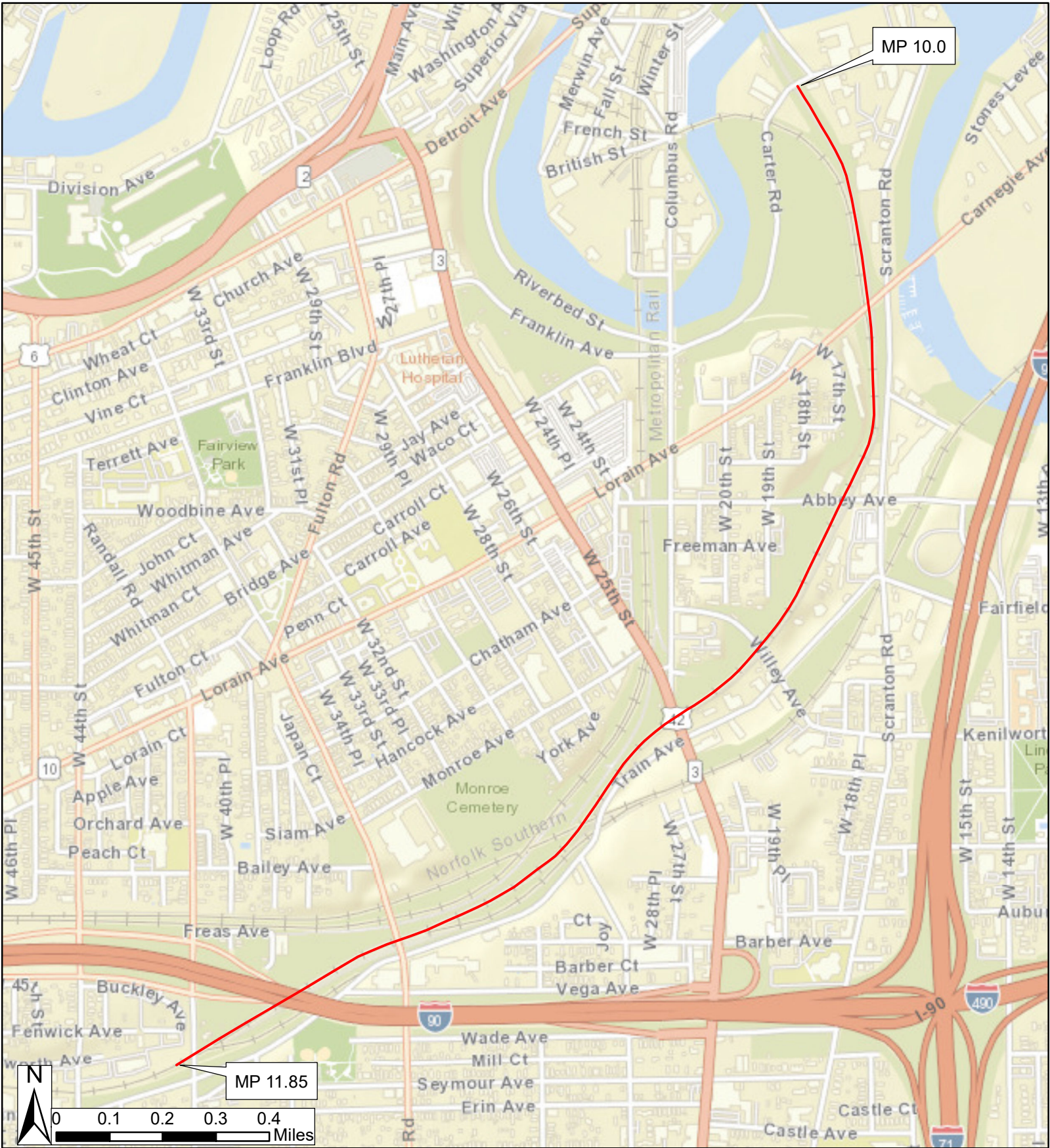
Alternatively, comments submitted by mail should be addressed to: Vicki Rutson, Surface Transportation Board, 395 E. Street SW, Washington, DC 20423-0001, Attention: Environmental Filing, Docket No. AB 1327X. If you have any questions, please contact Ms. Rutson by email at Vicki.Rutson@stb.gov or by phone at 202-245-0295.

Date made available to the public: November 4, 2022

Comment due date: November 18, 2022

By the Board, Danielle Gosselin, Director, Office of Environmental Analysis.

Attachment



Docket No. AB 1327X
Flats Industrial Railroad Company
Abandonment Exemption
In Cleveland, Ohio

Legend

 the Line

Note: Maps produced by the STB's Office of Environmental Analysis are based on information provided by the applicant and are for reference purposes only.



Cuyahoga County



Ohio