

#E1-926
RJD

THE MEDINA COUNTY ENVIRONMENTAL ASSOCIATION, INC.
202 CR 450, HONDO, TX. 78861
www.dontmesswithquihi.com

PHONE 830-741-5048
FAX 830-426-2060



July 11, 2004

Hope Andrade, Commissioner
Texas Transportation Commission
125 E. 11th Street
Austin, Texas 78701-2483

FD 34284

Dear Commissioner Andrade:

This letter is in reference to your site visit to Quihi, Texas on June 19, 2004. We appreciate your interest and concern in determining the type of highway crossing of FM 2676 by Vulcan Materials/Southwest Gulf Railroad and by gravel trucks should the proposed quarry open. As promised, I am forwarding this correspondence for TX DoT records for further consideration.

It is MCEAA's understanding that it is TXDoT's responsibility and obligation to insure the safety of the traveling public and of industrial traffic using Texas highways. This fact has priority over the cost of the proposed crossing. Vulcan has already publicly stated it will bear the cost of the proposed crossing as well as paying for the necessary upgrading of other roads it will utilize to deliver crushed limestone to the local area over the fifty year life of the quarry.

Vulcan Materials, in February of 2000, and again in March of 2003, was informed by TXDoT that a grade separation of FM 2676 would be required. Additionally, in February of 2003 in Vulcan's (SGR railroad) application to the U.S. Surface Transportation Board for a permit for the railroad, stated they would construct whatever type crossing that Tex Dot required.

However, in December of 2003, SGR tried to get permission for an at-grade crossing with accompanying warning devices on FM 2676. As you know, the decision on this request has been postponed and delayed because of MCEAA and county official's intervention and the decision of STB to require Vulcan to do an EIS on the railroad. Prior to the postponement, Vulcan had submitted a contract to Tex Dot stating that if allowed to construct an at-grade crossing they would replace this crossing with a grade separation if and when Tex Dot required one. This demonstrates Vulcan's callous lack of concern for the traveling public. Vulcan knows that if it were allowed to build an at-grade crossing, TXDoT would not require them to convert it to a grade separation crossing until some horrific accident/accidents occurred. This line of reasoning is unacceptable. Local and state representatives have supported the safest type of crossing, grade separation, in correspondence to the STB and TXDoT.

Following is a list of the reasons a grade separation of FM 2676 is necessary:

- It is the safest type of crossing whether used by 400 railroad cars a day or 125 to 800 gravel trucks a day. It must also be considered that this crossing will have to bear 125 workers going to and from the proposed quarry in addition to supply trucks carrying diesel fuel and nitrates to the quarry. According to Vulcan, the proposed quarry will operate 20 hours a day, 250 days a year, at its` peak operation, and will continue for 50 years.
- Consider the type of traffic this intersection will compete with. This highway and its` intersections with CR 351 and CR 353 carries school buses, large farming implements, slow-moving tractors/vehicles, fuel trucks with gas and diesel fuel, trucks full of fertilizer, fire department vehicles, police and EMS vehicles, workers which commute daily, and other travelers to and from San Antonio, all of which would be delayed by slow-moving 400 car trains daily at this at-grade crossing, four times a day. Moreover, FM 2676 is the only direct way out for the people of northeastern Medina county without using CR471 and FM1283. These two roads (CR 471 and FM 1283) are already saturated with gravel trucks coming out of the many quarries in that area.
- Also of concern is the future disruption of traffic on FM 2676 that would be caused by the dismantling of the at-grade crossing and re-construction installing a grade separation during the time the quarry is in operation, if Vulcan is allowed to have at-grade crossings now. The re-routed traffic during this reconstruction would be a nightmare, particularly when the traffic has to complete with gravel trucks. Please consider this. This is a very important point that we feel has not been adequately brought to your attention.
- There would be unnecessary additional cost, and a waste of time and materials, if this crossing would have to be constructed twice.
- It I possible that a grade separation, if done in the future, would be borne by taxpayers. Vulcan would seek federal funds as has been done in the past, to put in a grade separation. The only sure way of making Vulcan bear the cost of a grade separation, which they have agreed to do, is to require them to do it initially.
- Additional cost to Vulcan and Texas taxpayers caused by Vulcan/SGR seeking State and/or Federal funds to replace the at-grade crossing will be made even more burdensome by inflation and the time delays, such as awaiting Federal approval of the funds required.

In conversations with TXDoT engineers David Casteel and Carlos Lopez, it has been brought to our attention that Vulcan is using the “don’t pick on us” argument by making the statement that TXDoT “hasn’t in the past” required grade separations in many areas, and that TXDoT would be treating them unfairly by starting now to require a grade separation.

Here is our response, which should nullify this argument. According to TXDoT records:

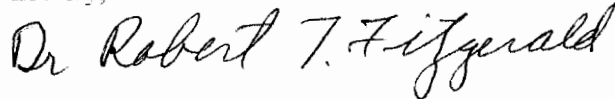
- Texas rates #1 in the number of at-grade crossing fatalities.
- The Federal Railroad Administration has encouraged states to reduce the number of at-grade crossings by consolidating crossings, closing crossings and (constructing) grade separations whenever possible.

We believe the above reasons alone justify a grade separation over FM 2676.

The public is becoming increasingly aware of the shortcomings in our rail system, as the enclosed newspaper article indicates. (The San Antonio Express-News, Sunday July 11, page 8A) Moreover, news of rail/vehicular traffic accidents is becoming more commonplace. Public outcry is growing. The time for change is certainly upon us.

TXDoT should take the opportunity to improve its past policies, and set the safest standards that past experience tells them are needed. Vulcan is a large company and brags in its statements to its stockholders and in newspaper articles that it is a good neighbor. Yet, Vulcan is pressing TXDoT to gamble with people's lives for the sake of their profit. TXDoT should remember Vulcan would not be considering this project if it were not going to make a profit on it. The people of Medina County will be profoundly affected by this project, if it comes into being. We ask you to not sacrifice lives for the sake of Vulcan's profit. This is an opportunity for Tex Dot to begin a "new policy" to do the right thing. As you initially stated and as the Federal Railroad Authority recommends, you have the power and the support of the people to require a grade separation crossing at FM 2676.

Sincerely,



Dr. Robert Fitzgerald, President
Medina County Environmental Action Assn., Inc.

Encl: Article from San Antonio Express-News

cc: Senator Kay Bailey Hutchison
Senator John Cornyn
Congressman Henry Bonilla
Senator Frank Madla
Senator Troy Fraser
David B. Casteel, P.E.
Carlos A. Lopez, P.E.
David Barton, Attorney at Law
Victoria Rutson, Chief SEA, Surface Transportation Board
Tracy King

MCEAA, INC., for your Home, Health and Heritage

Railroads shirk their re

Union Pacific was sanctioned for evidence mishandling.

By WALT BOGDANICH
NEW YORK TIMES

At 5:45 p.m., with the autumn sun dipping toward the horizon, a McAllen man drove his truck loaded with potatoes onto a railroad crossing in south-central Washington state.

In an instant, a 4,700-ton Union Pacific train rammed his truck with the force of an explosion, ripping apart his body.

Union Pacific responded as most railroads do after fatal crossing wrecks: It blamed the victim, not itself.

What Union Pacific didn't say was that the warning signal at the crossing contained parts that the manufacturer had said, 12 years earlier, should be replaced "as soon as possible" because they might be defective.

Union Pacific's conduct is a stark example of how some railroads, even as they blame motorists, repeatedly sidestep their own responsibility in grade-crossing fatalities.

Their actions range from destroying, mishandling or simply losing evidence to not reporting the crashes properly in the first place, a seven-month investigation by the New York Times has found.

Union Pacific stands out. In one recent 18-month period, seven federal and state courts imposed sanctions on Union Pacific, the nation's biggest railroad, for destroying or failing to

educational campaign has contributed to the decline.

Many wrecks are caused by careless or reckless driving. A federal study released late last month blames "risky driver behavior or poor judgment" for 87 percent of fatal crossing accidents over the past decade.

The audit, though, was based mostly on wreck reports from the railroads themselves. Blackwell acknowledged railroads sometimes are at fault, too.

Overgrown vegetation can block a driver's view. Gates or lights can fail. An engineer may blow a horn too late.

"In order to avoid that train, you have to be able to see the train and to hear the train," said John Parker, a South Carolina lawyer who represents crossing wreck victims.

Yet, in most cases, no one thoroughly investigates the railroads' conduct.

The industry has worked to keep the power to investigate grade-crossing wrecks centered in Washington, where it long has been an influential force. Vice President Dick Cheney served on Union Pacific's board and Treasury Secretary John Snow is a former chief executive of CSX.

But federal authorities rarely use those investigative powers in crossing wrecks.

"We typically will only look at those that have extraordinary or unusual circumstances," said Warren Flatau, a railroad administration spokesman.

That usually means three or more deaths in a single wreck. More federal attention is paid to derailments and train-on-train collisions. And although states

can punish railroads for unsafe crossings, they usually don't.

The Barber case

On Jan. 19, 1998, a garbage truck driven by Charles Rolfe pulled up to Union Pacific Crossing 123, just west of Palestine, Ark.

"We started easing up to the crossing until we practically got on the track itself — you couldn't see anything," said Chris Barber, Rolfe's co-worker who was in the truck.

Suddenly, Barber turned his head and saw a giant yellow engine. The impact killed Rolfe, and Barber spent the next two months in a hospital and rehabilitation center.

Federal authorities didn't investigate the crash and Barber sued Union Pacific, saying the railroad failed to keep the crossing safe, to properly sound the train's horn and to operate the train at a safe speed. Union Pacific denied each of those accusations in court.

In preparing for the trial in 2002, Barber's lawyers wanted audiotapes of the railroad's dispatchers talking to the crew, track inspection records and any "slow orders" directing trains to reduce their speed near the crossing because of hazardous conditions.

Union Pacific, however, said the tapes had been recorded over and the track reports had been discarded, some after Barber asked for them. The railroad also said it could find no slow orders for the crossing.

Even so, Barber's lawyers sent a consultant to Union Pacific headquarters in Omaha, Neb., who eventually found some of the slow orders for the track around Crossing 123, despite the railroad's claims that they didn't exist.

Union Pacific's conduct earned it a sanction from the presiding judge, who told the jury it could — but wasn't required to — conclude the mis-

An analysis by the New York Times over the past eight years found that railroad accidents were not reported to the National Response Center.

sing evidence wasn't favorable to the railroad.

The jury awarded Barber \$5.1 million in compensatory damages and \$25 million in punitive damages.

Union Pacific appealed, but the Arkansas Supreme Court upheld the verdict this year with an opinion that said the company behaved with a "high degree of reprehensibility."

Union Pacific has asked the U.S. Supreme Court to review the case. But the company also has put in place a more aggressive, system-wide program to control vegetation at crossings.

Unreported wrecks

A basic maxim of wreck investigations is the sooner evidence is collected, the better.

For that reason, federal rules require railroads to quickly report by phone crossing fatalities to the National Response Center, which functions as a 911 call center. Those reports are forwarded to the railroad administration and National Transportation Safety Board, where officials decide whether to dispatch investigators.

Despite federal regulations requiring the immediate report of fatalities, railroads repeatedly ignore them, according to a computer analysis by the Times of tens of thousands of federal accident reports compiled by the National Response Center

and the railroad administration.

The analysis found that over

teen*klip
kid's hair & fun

Highlights Color Relax

\$6⁹⁹ KID'S CUT (Reg. \$11.99)

\$5⁰⁰ OFF A GIRL'S FUN MAKE-OVER

4853 NW Loop 410
on Stunned Parkway between Callaghan & Evers

(210) 647-5547

With coupon. Not valid with any other discount.

THE **chain** SINC
CASUAL FURNIT

**CHECK C
SUMMER
SA
CIRC
IN TODAY**

We make it easy.

3 SAN ANTONIO S
THE FORUM - 8348 Agora Pa
NORTHWEST - 5219 De Zava
CENTRAL - 6931 San Pedro As

www.chainking.com



preserve evidence in crossing accidents, and an eighth court ordered a case retried. One sanction has since been overturned on appeal.

In fact, Kathryn Blackwell, a spokeswoman for Union Pacific, said in an e-mail that federal regulators told the railroad in late 1999 "to stop calling" after fatal accidents. Federal officials denied doing so, but the following year, the Times' analysis shows, the number of accidents not reported promptly by Union Pacific quadrupled.

Since 2000, about 1,600 people have been killed in grade-crossing accidents, more than twice the number killed in commercial plane crashes. On average, one person a day dies at a crossing in the United States. But these deaths draw little national attention because they usually come one or two at a time, often where tracks slice through small towns and rural expanses.

Families of victims searching for the cause of a crash have to ask the railroads themselves or file lawsuits. But as judges who have imposed sanctions against Union Pacific have found, getting an answer can be difficult.

Blackwell said her company's policy was to keep records as long as federal law requires.

"Union Pacific did not purposefully destroy evidence to keep it from the jury," she said. "Union Pacific would not destroy documents in anticipation of litigation."

Between the cracks

Railroads and the federal government have spent educating the public about the motorist's responsibility for avoiding trains. "Always Expect A Train!" has become the slogan of the railroads as well as their principal regulator, the Federal Railroad Administration.

Grade-crossing deaths have declined by more than 50 percent since 1990 and both the industry and regulators say the

sponsibility in wrecks

York Times finds that about 750 fatal railroad ed to the Nation

the past eight years about 750 fatal wrecks weren't reported to the response center. These wrecks eventually were reported to the railroad administration in monthly filings, but that made timely investigations difficult if not impossible.

Because some victims may have died more than 24 hours after the crash — and their deaths would not have to be reported to the response center — the total violations over the eight years can't be definitively stated.

But for wrecks in 2003, the Times examined police reports and coroner records to establish times of death and found 71 fatalities, or nearly 25 percent of all fatal crashes that year, that should have been reported but were not.

Of those, the greatest number, 46, involve Union Pacific. Another eight were not reported properly by CSX.

Secret switch

This was to have been Blas Lopez's last year in the potato fields of Washington state. With a steady scrap metal business in McAllen, Lopez, 35, had tired of the long drive north during the potato harvest.

With his last load of potatoes, Lopez drove his truck up to a rail crossing east of the city of Pasco. The crossing had only warning lights, no gates, to protect drivers on the busy highway.

The warning lights were about 700 feet from the crossing, and supposed to activate simultaneously 20 seconds before a train entered the crossing.

A private tree farm on one side of the crossing made it difficult to hear and see trains, nearby residents said.

As Lopez approached, Helen Gibson was behind him in a truck. Gibson testified later that Lopez already had passed the first warning light before it began flashing. Another motorist said he saw Lopez shielding his eyes from the setting sun just before the train hit and killed him.

After his wife and their four young children filed a lawsuit against Union Pacific, the railroad blamed Lopez. The railroad even said in court papers that Lopez's negligence caused damage to its train and that the Lopez family should pay Union Pacific for "loss of use of its locomotives, rail cars and equipment."

But the family's lawyer, Nicholas Scarpelli, focused on whether the wreck was caused by a "short signal" — a light that activated too late.

There were, however, problems with his case.

The railroad denied the signal malfunctioned and presented a sworn affidavit from the regional signal manager, Robert Ryan, stating the signal been inspected regularly with no problems reported, in an effort to get the case dismissed.

Two days later Scarpelli told Ryan he planned to inspect the signal box.

"I asked Ryan, 'May we look in the box tomorrow morning?' and he said, 'Yeah,'" Scarpelli recalled. When Scarpelli and his

expert inspected the signal box that morning with Ryan's help, they found nothing unusual.

But Ryan beat the lawyer there by several hours, secretly swapping the suspect parts for newer ones. The cover-up was discovered more than a month later, when Scarpelli's legal team noticed the serial numbers on the parts didn't match the railroad's records.

Scarpelli quickly asked the court for sanctions against Union Pacific and got them.

"His actions were not that of a rogue underling," fumed Judge John Coughenour of U.S. District Court. "His acts were egregious. Severe sanctions are appropriate."

As punishment, Coughenour ruled that at trial Union Pacific could not dispute that "this defect caused the crossing signals to fail." The railroad settled the Lopez lawsuit soon after.

Kathryn Blackwell said Ryan, who's no longer with the company, "was a good employee who made a very bad decision."

Afterward, the company instituted a new centralized database to ensure that suspect signal parts are removed quickly, she said.

But several weeks ago, when asked about potentially defective parts that had not been removed from a signal at an Arkansas crossing where a woman had been killed, Blackwell said Union Pacific realized its tracking system was experiencing "some technical difficulties."

Blackwell said that the railroad's senior management had ordered that the system be fixed quickly.

"They have put the highest priority on this," she said.