

From: Gernand, Matthew A.
Sent: Thursday, April 13, 2017 3:24 PM
To: 'deborah.singleton@ky.gov'
Cc: 'ken.cooke@kbcnet1.com'
Subject: Wolf Run

Deborah Singleton
Environmental Inspector
Division of Water
300 Sower Blvd
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Ms. Singleton

Thank you for your message April 10 regarding water quality concerns in the Lexington Municipal Separate Storm Sewer System (MS4). Kentucky Department of Environmental Protection had provided three photographs and a link to a video by Friends of Wolf Run. Norfolk Southern Railway Company (NSRC) has reviewed that information and completed some preliminary investigation into the matter.

The source of both the flow and color in the photos provided is not clear from the information or our followup investigations to date. If the source is stormwater, as KDEP is aware and your message references, it is not typical for sediment or similar material of any significance to be washed from rail lines as a result of a rain or stormwater event. Federal Clean Water Act regulations at 40 C.F.R. Part 122 address the scope of Stormwater discharge regulation for transportation related activities and Norfolk Southern is in compliance with those requirements. Norfolk Southern is not conducting any activities which would constitute a discharge of stormwater associated with industrial activity under those Clean Water Act regulations or KDEP's National Pollutant Discharge Elimination System (NPDES) Clean Water Act permit which incorporates these requirements.

We have also done a preliminary investigation and there are not any industrial wastewater or other wastewater sources from the railroad, which is to be expected. The photographs and video depicted a flow and it was not clear whether a recent rain would produce that flow or some other source would produce that flow. To date we've not located a source for that flow, but as part of our follow investigations at least with respect to areas accessible to NSRC we will report back any findings.

Federal rail safety requirements require frequent inspection of the track and there has been no notable area of erosion and no recent track work or land disturbance at least with respect to the rail right of way in this area. Rail drainage and ditches are also subject to federal requirements which involve considerations such as drainage and safety. As you might be aware, state and local approvals and conflicting requirements are preempted as applied to rail projects serving interstate commerce under the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), 49 U.S.C. § 10501 and Federal Railway Safety Act of 1970 ("FRSA"), 49 U.S.C. § 20101. Your message cites KRS 224.70-110 which provides that discharges not otherwise in compliance with regulatory provisions are prohibited. NSRC prides itself regarding environmental compliance and our investigation to date indicates there is no situation of non-compliance respecting NSRC at this location.

We have asked track inspection personnel to consider whether there are adjacent sources of erosion, or possibly high energy water flow, from adjacent properties which might be causing either some erosive

force in the rail ditch, or some other condition which might cause or contribute to the conditions in KDEP's message. It will take some time to consider these other potential sources and so we would plan to continue assessing the situation and provide a followup to this email hopefully with additional information and identification of a source or cause. Historically NSRC has found illicit discharges into the rail drainage systems or otherwise excessive water or water with pollutants discharged into rail ditches and has worked with state regulatory entities to address those types of issues which might include conditions such as those in the photographs provided.

We appreciate KDEP notifying us of their concern and the situation. We have additional investigation to complete before a full response and any action, and we will report back to KDEP the results (we expect a week or so from now). We may be asking KDEP assistance in the event we find an adjacent source of pollutants or simply excessive flow causing erosion or other issues regarding water quality or rail property.

One final note, Federal rail safety provisions require specific rail safety training for any person accessing railroad right of way or operating rail property, and personal protection equipment such as hard hat, goggles, ear protection and specific footwear. This is all to prevent injury. Norfolk Southern and the other Class I railroads appreciate our regulators helping to inform citizens and others who may not be aware of these requirements prior to accessing rail property.

Sincerely,

Matt Gernand | General Attorney

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