



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

00001

EPA Region 5 Records Ctr.



247081

APR 28 1999

REPLY TO THE ATTENTION OF

C-14J

BY FAX AND  
FIRST CLASS MAIL

Mr. Rodney Griffith  
Associate General Counsel  
Consolidated Rail Corporation  
2001 Market Street  
P.O. Box 41416  
Philadelphia, Pa. 19101-1416  
Fax: (215) 209-4817

**RE: Access to Conrail Property in Connection with the Clean-up of the Tilton  
Plating Site, Tilton, Vermilion County, Illinois**

Dear Mr. Griffith:

Thank you for your April 22, 1999, letter and the conference call held at Consolidated Rail Corporation's (Conrail) request on April 23, 1999. In these communications, you expressed concern about the United States Environmental Protection Agency's (U.S. EPA) Administrative Order for entry and access to the Conrail property located adjacent to the Tilton Plating site in Tilton, Illinois. Although you stated on page three of your letter that "Conrail will comply with the Order," you expressed concern that the Order fails to comply with certain constitutional and legal rights, and fails to adequately address serious safety concerns unique to the Conrail property. As requested, your letter is in the administrative record for this site.

The letter and conference call addressed terms of the Administrative Order issued by William Muno, Director, Superfund Division, U.S. EPA Region 5, on April 20, 1999. Conrail, through its counsel Rodney Griffith, and U.S. EPA, through its counsel, Ann Coyle and Jeff Cahn, On-Scene Coordinator Cindy Nolan, and contractors, Charlie Keegan of Earth Tech and Ron Bugg of Ecology & Environment, participated in the teleconference.

The following issues were clarified during the teleconference:

- Conrail stated that its right-of-way is 50 feet wide, with the railroad line running through the center; therefore, its property extends only 25 feet east from the center of the railroad tracks toward the Tilton Plating site.
- Conrail stated that approximately two local service trains per week pass through the

- U.S. EPA described the soil sampling it intended to perform.
- U.S. EPA acknowledged that it inadvertently and incorrectly characterized the Conrail railroad right-of-way as "abandoned" in Part III, ¶ 1 of the Order and recognizes that the railroad currently is active.
- Conrail raised concerns about safety and risk working close to an active rail line. U.S. EPA wholeheartedly agreed with Conrail's concerns and will be working with Conrail's Area Engineer in the soil sampling process.
- Conrail stated that it would comply with the Administrative Order.

Immediately following the teleconference, U.S. EPA's On-Scene Coordinator Cindy Nolan and Bob Nastal, Conrail's Area Engineer, discussed details for sampling the soil on the Conrail property. They agreed that Conrail would check its records for the presence of, and identify by marker, any underground equipment or railroad communication lines on the property and that U.S. EPA would contact the Illinois Dig Hotline to determine if any utility lines exist on the Conrail right-of-way prior to the sampling. U.S. EPA scheduled soil sampling on the Conrail property to take place on Thursday, April 29, 1999, at 10 a.m., with Mr. Nastal present.

Additional analysis of the conditions at the Tilton Plating site indicate that access to Conrail's railroad right-of-way is no longer necessary. Specifically, based on information from Conrail that its right-of-way extends only 25 feet from the center of the railroad track, U.S. EPA contractors collected soil samples from the Tilton Plating site property, approximately 30 and 40 feet away from the Conrail railroad. Laboratory analyses of these samples indicate that the toxicities of the soils are below hazardous levels; therefore U.S. EPA has determined that sampling on the Conrail property is not necessary. The enclosed letter terminates the Administrative Order. We appreciate the opportunity to resolve the valid safety-related concerns and factual issues in a prompt and efficient manner.

However, Conrail's legal concerns are misplaced. Specifically, Conrail alleged that U.S. EPA acted contrary to the Consolidated Rules of Federal Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules). The Consolidated Rules do not apply to the issuance of this Administrative Order. U.S. EPA issued the Order pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5).

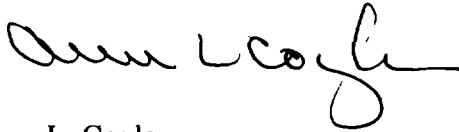
In addition, Conrail raises issues about its transfer of ownership and control of the right-of-way property, which will occur on June 1, 1999. Until Conrail transfers control of the railroad on June 1, 1999, CSX is not an "owner or operator" of the railroad right-of-way, as defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A). However, CSX was made aware of U.S. EPA's need to access the property by letter, which is in the administrative record, and telephone conversations. In addition, U.S. EPA has characterized the Tilton Plating site as a time-critical removal action and will complete all clean-up activities before June 1, 1999.

CERCLA authorizes the issuance of an order to investigate and otherwise conduct an emergency response regarding a release of hazardous substances. Under the provisions of CERCLA, based

on the administrative record for the site and having the opportunity to meet and discuss the order for the site, similar orders have been held not to violate due process, and have been held to be reasonable, within the discretion of the Agency, and consistent with law.

If you have any questions, please call me at (312) 886-2248.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ann L. Coyle". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ann L. Coyle  
Assistant Regional Counsel

Enclosure

cc: Cindy Nolan, On-Scene Coordinator (SE-5J)