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June 13, 2014

**URGENT REQUEST – SENT BY E-MAIL AND BY FIRST CLASS MAIL**

Helen M. Hart, Esquire  
General Solicitor  
Norfolk Southern Corporation  
3 Commercial Place  
Norfolk, VA 23510

RE: Maryland Public Information Act Request

Dear Ms. Hart:

On June 11, 2014, I informed David Schoendorfer of Norfolk Southern Railroad Company (NSRC), via telephone, that my client, the Maryland Department of the Environment (MDE), received a public information request on June 9, 2014 pursuant to the Maryland Public Information Act (PIA), §§ 10-611 et seq. of the State Government Article, Annotated Code of Maryland (SG). The PIA request is for the information that NSRC provided to MDE that involves the shipment of one million gallons or more of crude oil by rail into Maryland, including the frequency of the shipments, the quantity of the shipments, and the route(s) of the shipments.

As I advised NSRC in writing on June 6, 2014, the non-disclosure agreement (NDA) signed by Tom Levering of MDE is null and void for several reasons. First, the NDA is in contravention of the Maryland Public Information Act (PIA). Secondly, Tom Levering is an employee of MDE and has no legal authority to sign as the SERC or on behalf of the SERC.

In your email of June 11, 2014, you stated that you would like to come to an agreement on an alternative non-disclosure language or similar arrangement as soon as possible. There is no NDA that the parties can enter into that would allow anything other than compliance with the requirements of the Maryland Public Information Act (PIA). MDE is required by State law to comply with the requirements of the PIA and violations of the PIA are subject to civil and criminal penalties. That was the problem with your NDA from the onset. The NDA has no effect

because it cannot be performed and enforced due to it is in contravention of the PIA. Thus, all public information requests received by MDE for information that NSRC has provided to MDE will be handled and processed in compliance with the PIA.

Out of the information MDE received from NSRC, the only documents that NSRC marked, "Railroad Restricted Information" are two maps, one state map and one county map showing the routes of the shipments (hereinafter collectively, "Maps"). NSRC states in the legends of the Maps that the Maps are to be of a security sensitive nature containing confidential commercial information to be released on a need-to-know basis. Since the remaining information provided by NSRC to MDE, including the spreadsheet showing the range of weekly train frequencies in excel format, were not marked confidential, such information is to be made available to the public.

Under the PIA, MDE must either make the Maps (or portions of them) available to the requester or determine that they are entitled to confidential treatment and not make them available to the requester. In this regard, the requirements of the State law are very similar to those of the Federal Freedom of Information Act.

This letter is to advise you that MDE is engaged in making a determination as to whether the Maps marked, "Railroad Restricted Information" contain confidential commercial information under SG § 10-617(d) of the PIA and to give you an opportunity to submit your comments on this issue. Your comments should address the following questions:

1. The specific portions of the Maps which you contend are entitled to confidential treatment;
2. Federal or state law that requires the Maps be specifically kept confidential and not disclosed to the public;
3. The period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specified event, or permanently);
4. All measures taken to guard against undesired disclosure of the Maps to others;
5. The extent to which the Maps have been disclosed to others and the precautions taken in connection therewith;
6. Whether disclosure of the Maps would likely result in substantial harmful effects to your competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects;
7. The extent to which the Maps are customarily regarded as confidential in your trade, and evidence to support this information; and
8. Whether the Maps to be provided to first responders on a need-to-know basis with a promise of confidentiality affects the requirement to keep the Maps confidential and why.

Please provide your comments to this office **no later than June 23, 2014**, as MDE needs to timely respond to the requester. Failure to submit comments by that date will be treated by MDE as a waiver of any claim you might make for confidential treatment of the information under SG § 10-617(d). Also, if information submitted as part of your comments is marked

confidential when received, it will be regarded by MDE as entitled to confidential treatment to the extent permitted by law.

Please be advised that should MDE make a determination that there are no exemptions under the PIA that entitles the Maps (or portions of them) to confidential treatment, before any disclosure occurs to the requester, MDE agrees to notify NSRC in writing so that NSRC may seek a court order to protect the Maps (or portions of them) and any other information that NSRC provided to MDE from disclosure under Maryland state law. Unless otherwise directed, the aforementioned notification will be sent to you at the e-mail and address listed in your e-mail communications with this office.

If you should have any questions, please do not hesitate to contact me directly at (410) 537-3050.

Sincerely,

A handwritten signature in blue ink that reads "Ellen W. Cohill". The signature is written in a cursive, flowing style.

Ellen W. Cohill

Assistant Attorney General

cc: David Schoendorfer, NSRC