

Memorandum

Florida Department of Environmental Protection

ENFORCEMENT MEETING DOCUMENTATION

Attendees: See attached List

Location: NWD PCB DEP Office **Date:** May 29, 2009 **Time:** 10:30 A.M.

Subject: Enforcement of alleged violations at Bay Line RR of Panama City

Meeting Requested By: FDEP

Meeting Objectives: To discuss enforcement action being taken by DEP.

Notes:

The meeting was opened with introductions of the participants. Jim Byer provided an explanation of the two phases of the meeting, first to discuss contents of the inspection report for accuracy and provide an opportunity to provide additional information or any circumstances regarding the case. Second is to discuss the proposed resolution to the issues determined and the possibility of a voluntary mutual agreement.

Jim Byer provided everyone with a copies of the previous inspection instances of similar issues and the most recent inspection report with alleged violations cited. Bay Line RR (BLRR) representative, Mr. Michael Taylor was asked to review the inspection report and the alleged violations cited for any inaccuracies. The first violation for failure to have proper liability insurance was discussed. Department representatives had obtained a copy of BLRR's current insurance coverage as provided by the insurer, Marsh - Lexington Insurance Company. All three remaining alleged violations were discussed and BLRR provided copies of 8700-12FL notification and annual report sent to HWRS in Tallahassee subsequent to the inspection of April 23, 2009. It was mutually agreed by DEP and BLRR representative to eliminate alleged violations for failure to maintain current insurance required for a HW Transporter.

Jim Byer explained that Florida DEP has EPA-delegated authority to enforce the Resource Conservation and Recovery Act program. He mentioned that EPA oversees the program and has provided DEP with compliance and enforcement guidance and then explained the characterization process and the application to each of the three remaining alleged violations. He further explained and identified the associated penalties derived from the penalty matrix. The penalty for the remaining three violations was selected from the top of the penalty range in each case because of a

history of non-compliance by BLRR for these same issues. BLRR had no additional facts or information to consider in determination of the civil penalty.

Agreements/Conclusions Reached:

- DEP would propose a settlement in the form of a short form consent order, to be sent to BLRR within 30 days.
- The proposal would have a civil penalty of \$4,510 and Department costs of \$250.
- Payment of Department cost and civil penalty would be made within 60 days.
- BLRR would correct all alleged violations and follow up review of the records would be conducted to confirm compliance.
- BLRR was given the option to propose a P2 Project for possible penalty offset. The proposal by BLRR will be evaluated by the Department within 30 days.



Prepared by: James Byer

Part II - Multi-Day Penalties and Adjustments

Adjustments	Dollar Amount
Good faith/Lack of Good Faith prior to Discovery: Justification	\$0.00
Good faith/Lack of Good Faith after Discovery: Justification	\$0.00
History of Non Compliance Justification	
Economic Benefit Justification	\$3,410
Ability to Pay Justification	\$0.00
Total Adjustments	\$0.00
Multi-Day Penalty Number of days adjustment factor(s) to be applied Justification	
Or Number of Days matrix amount is to be multiplied" Justification	\$0.00

Part III - Other Adjustments Made After Meeting with the Responsible Party

Adjustment	Dollar Amount
Relative merits of the case:	
Resource Considerations:	
Other Justification:	

Facsimile Transmittal Sheet

MARSH
An MMC Company

From: Karen Haas

To: Thomas Dillard

Phone:

Fax: 850-872-7790

Date: 29-May-09

Attention:

Time: 10:57 AM

Company:

Message:

RECEIVED

MAY 29 2009

DEP PANAMA CITY
BRANCH OFFICE

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IMPORTANT

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If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

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MAY 29 2008

**DEP PANAMA CITY
BRANCH OFFICE**

ACORD CERTIFICATE OF LIABILITY INSURANCE

PRODUCER Marsh USA, Inc. 112 East Pecan Suite 2625 San Antonio, TX 78205-1505 Attn: Karen Haas, karen.haas@marsh.com 827760--Railr-08-09 BAY		DATE (MM/DD/YYYY) 05/29/2009
INSURED The Bay Line Railroad LLC c/o Genesee & Wyoming Railroad Inc. 1200-C Scottsville Road Rochester, NY 14624		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A: Lexington Insurance Company		19437
INSURER B: National Union Fire Ins Co Pittsburgh PA		19445
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	POLICY NUMBER	LIMITS
INSR ADD'L LTR INSR	TYPE OF INSURANCE				
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> GENERAL AGGREGATE LIMIT APPLIES PER PROJECT <input type="checkbox"/> LOC <input type="checkbox"/>				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPOP AGG \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	08/01/08	08/01/09	CA4576363	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AUTO ONLY: AGG \$ EACH OCCURRENCE \$ AGGREGATE \$ DEDUCTIBLE \$ RETENTION \$ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below
A	OTHER Railroad Liability Claims Made Inc: BI, PD, FELA, xs AL xs FRS, xs BOL	08/01/08	08/01/09	0863721	Per Occurrence 25,000,000 Annual Aggregate 25,000,000 SIR 500,000
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS					

CERTIFICATE HOLDER HOU-000904992-10

CANCELLATION

State of Florida
 Attn: Sebrina Bolton
 Department of Environmental Protection
 2600 Blair Stone Road MS 4550
 Tallahassee, FL 32399

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
 of Marsh USA Inc.
 Stephen R. Skeeter

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ACORD 25 (2001/08)

MAY 29 2009

DEP PANAMA CITY
 BRANCH OFFICE

ACORD CORPORATION 1988

A	B	C	D	E	F	G	H	I	J	K
Generator Status	Focus Area	Rule Cite	Potential for Harm	Extent of Deviation	Notes	Significantly Detrimental	Economic Benefit Calculation	Multiday or Calculation	Regulation Description	
1	CESSG/SGG	Notification	62-730.150(2) (b)	Minor	Mod-SSG to LGG Minor-CESSG to SGG	See note. 262.12(a)			Failure of a generator to notify of changes in status	
2	10	TFA/TSD/LG/SGG	Record Keeping	62-730.170(2) (e)	Minor	Moderate		X	Failure to submit Transporter Status form annually.	
3	143	TFA	Financial	62-730.170(2) (a)	Major	Major		X	Failure of a Transporter to meet financial responsibility for sudden accidental occurrences; no coverage	
4	154	TFA	Financial	62.730.170(3)	Minor	Minor		X	Failure of a Transporter to submit annual verification of insurance	
5	156	TFA	Financial	62.730.170(3)	Minor	Minor		X	Failure of a Transporter to submit annual verification of insurance	

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RCRA GRAVITY-BASED PENALTY MATRIX

EXTENT OF DEVIATION FROM THE REQUIREMENT				P O T E N T I A L F O R H A R M	
Range - Middle	MAJOR	MAJOR	MODERATE	MODERATE	MINOR
\$32,500 TO \$25,791	\$29,150	\$25,790 TO \$19,343	\$14,184 TO \$6,448	\$3,868 TO \$1,934	\$2,900
\$19,342 TO \$14,185	\$22,550	\$6,447 TO \$3,869	\$5,150	\$644 TO \$500	\$1,300
MINOR	MODERATE	MODERATE	MODERATE	MODERATE	MINOR

Note: If the violation involving a hazardous waste results in human injury or death, or involves the deliberate disposal to the ground, surface water or groundwater, the \$50,000 per day statutory maximum penalty should be pursued.