

**RAILROAD
ABANDONMENTS
GUIDE**

A Procedural Guide For WisDOT Staff

and

An Informational Source For Others

**Wisconsin Department of Transportation
Bureau of Railroads and Harbors**

Fall 1999

5 - Railroad Abandonments Guide

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5.1 Overview

5-1-1 Background/Overview/Surface Transportation Board (STB) Process and Role

Generally, a railroad may only abandon a line with the permission of the Surface Transportation Board. The Board must determine whether the present or future public convenience and necessity require or permit the abandonment.¹ In making this determination, the Board balances two competing factors: first the need of local communities and shippers for continued service, balanced against the broader public interest in freeing the railroads from financial burdens that are a drain on the overall financial health of the railroad, and lessens their ability to operate economically elsewhere. In Wisconsin, the Department of Transportation is the designated state agency in railroad abandonment matters.²

1. 49 USC 10903 and 49 CFR parts 1105 and 1152.
2. 49 USC Appx 165A(a), 49 CFR 266.1 and Ch 85 Wis Statutes.

Purpose: As noted on the cover, this guide is intended to outline a process for WisDOT in dealing with abandonments, as well as source of information for others interested in abandonments.

Distribution: Copies are made available to district offices (Planning and Operations Sections, and Railroad Coordinators); offices and individuals involved abandonments (WisDOT Rail Abandonment Committee); and others who have a legitimate interest in abandonment issues.

Abbreviations

BRH =	Bureau of Railroads and Harbors - Initiates, leads and coordinates WisDOT's abandonment process.
BOP =	Bureau of Planning - The DTIM office active in abandonment issues.
DTIM =	Division of Transportation Investment Management.
MPO =	Metropolitan Planning Organization.
OGC =	Office of General Counsel - Provides WisDOT linkage to STB.
RAC =	Rail Abandonment Committee - See 5-1-10.
RPC =	Regional Planning Commission.
STB =	Surface Transportation Board (STB) - A Federal Government Body.
TC =	Transit Commission.

Purpose: To bring a broad transportation perspective to the process of railroad abandonments generally as well as to individual abandonment issues.

1. To work with Bureau of Railroads and Harbors in developing WisDOT positions on individual abandonments.
2. To review and critique all draft "briefing papers" on proposed individual abandonments.
3. To participate in WisDOT decisions on abandonments
4. To assess the adequacy of and identify potential improvements to the process that WisDOT uses to resolve abandonment position.
5. To respond to special requests and/or directions from the Secretary's Office on abandonment issues.

BRH = Bureau of Railroads and Harbors
OGC = Office of General Counsel
DTIM = Division of Transportation Investment Management
BOP = Bureau of Planning
DTD = District Office
BOE = Bureau of Environment
BRE = Bureau of Real Estate
SO = Secretary's Office

When WisDOT first learns of a potential railroad abandonment, either the Office of General Council (OGC) and/or the Bureau of Railroads and Harbors (BRH) immediately begins an investigation and evaluation of the corridor.

- The OGC initiates action if the notification comes from the Surface Transportation Board (STB)
- The BRH initiates action if WisDOT learns of the potential abandonment through the railroad's issuance of a "System Diagram Map" which denotes potential future abandonments, or through less formal channels.

Regardless of the source of information relating to a potential future abandonment, the BRH will immediately notify all affected offices, including Transportation Districts and Regional Planning Commissions.

All of the WisDOT activity is for the purpose of deciding which of the following potential actions is appropriate for the abandonment issue in question.

Retain Service:

1. Continuation of rail service by current operator.
2. Purchase by or for a new railroad operator.

Preserve for Future Service and/or Preserve Corridor

3. Rails to Trails (Railroad must agree)
4. DOT Purchase: (a) All (rail bank)
(b) Land Only (land bank)
5. DOT and Local Partners Purchase (a) All
(b) Land Only
6. Other Public Purchase (First Right Process)

No Interest

7. Allow Abandonment
 - (a) Railroad Sells
 - (b) Reversion to Abutting Owners, and Lose Corridor

The Department of Transportation has the first right of acquisition relating to abandoned railroad property. This is pursuant to s.85.09, Wis.Stats. WisDOT may exercise its first right for transportation or recreational purposes. WisDOT may also assign its first right to any other state agency, county, municipality or transit commission provided, however, that the intended future use of the property is for transportation or recreational purposes.

The first right applies to all property deemed abandoned. Railroad property may be deemed abandoned not only by a decision from a regulatory agency, such as the Surface Transportation Board, but also by circumstances such as non-railroad use for more than two consecutive years, the rail facilities are removed or rendered unfit for service, or if the property is used for other than railroad purposes.

Upon receipt of a request for a release of first right, WisDOT has 90 days to determine the property to be abandoned and if so, determine whether there is public interest in acquiring the property for transportation or recreational purposes. During that 90 day time frame, a solicitation is made of all appropriate state and local agencies affected. (Normally, that would include DNR, the appropriate WisDOT district office, and the county(ies) and municipality(ies) of where the subject property is located.)

If it is determined to exercise or assign the first right, the railroad is notified and a 180-day time period to acquire the property begins. WisDOT or the agency assigned the first right must acquire the property within the 180 days or **prior** to the 180th day, proceed with condemnation.

If there is no expressed transportation or recreational interest, a Statement of Release of Interest is prepared. The "release" document is recorded with the appropriate Register of Deeds thereby satisfying WisDOT's first right of acquisition claim to the property.

The first right law is very clear in stating that any conveyance of abandoned railroad property without a release of WisDOT's first right of acquisition is **void**.

85.09 Acquisition of abandoned rail property.

85.09(1)

(1) (intro.) Definitions. As used in this section:

85.09(1)(b)

(b) "Municipality" means any city, village or town.

85.09(1)(c)

(c) "State agency" means state departments and independent agencies.

85.09(1)(d)

(d) "System diagram map" means the map required under federal law to be filed with the department by the railroad operating in this state that indicates rail lines in the process of abandonment, rail lines the railroad expects to abandon and the rail lines that are under study by the railroad for possible abandonment in the future.

85.09(2)

(2) First right of acquisition.

85.09(2)(a)

(a) The department of transportation shall have the first right to acquire, for present or future transportation or recreational purposes, any property used in operating a railroad or railway, including land and rails, ties, switches, trestles, bridges and the like located thereon, which has been abandoned. The department of transportation may, in connection with abandoned rail property, assign this right to a state agency, the board of regents of the University of Wisconsin system, any county or municipality or any transit commission. Acquisition by the department of transportation may be by gift, purchase or condemnation in accordance with the procedure under s. 32.05. In addition to its property management authority under s. 85.15, the department of transportation may lease and collect rents and fees for any use of rail property pending discharge of the department's duty to convey property that is not necessary for a public purpose. In exercising its property management authority, the department of transportation, to the greatest extent practicable, shall encourage and utilize the Wisconsin conservation corps for appropriate projects. No person owning abandoned rail property, including any person to whom ownership reverts upon abandonment, may convey or dispose of any abandoned rail property without first obtaining a written release from the department of transportation indicating that the first right of acquisition under this subsection will not be exercised or assigned. No railroad or railway may convey any rail property prior to abandonment if the rail property is part of a rail line shown on the railroad's system map as in the process of abandonment, expected to be abandoned or under study for possible abandonment unless the conveyance or disposal is for the purpose of providing continued rail service under another company or agency. Any conveyance made without obtaining such release is void. The first right of acquisition of the department of transportation under this subsection does not apply to any rail property declared by the department to be abandoned before January 1, 1977. The department of transportation may acquire any abandoned rail property under this section regardless of the date of its abandonment.

85.09(2)(b)

(b) (intro.) The first right of acquisition under this subsection applies only to the following property:

85.09(2)(b)1.

1. In unincorporated areas, any land measured 50 feet from the center line of each outermost track bed and any land between such tracks.

85.09(2)(b)2.

2. In incorporated areas, any land measured 33 feet from the center line of each outermost track bed and any land between such tracks.

85.09(2)(b)3.

3. Any property not included in subds. 1. and 2. that consists of a loading or unloading facility, a vehicular access facility, or a building that is, in the department's judgment, suitable for a freight or rail passenger station.

85.09(3)

(3) (intro.) Determination of abandonment. For purposes of this section, rail property shall be deemed abandoned if par. (a) or (b) applies:

85.09(3)(a)

(a) A certificate or approval of abandonment has been issued by the interstate commerce commission or federal court or any other federal or state agency having jurisdiction over the rail property.

85.09(3)(b)

(b) (intro.) A certificate or approval of abandonment is not required and the use of the rail property for railroad or railway purposes has been discontinued with the intent not to resume. Intent not to resume may be inferred from circumstances including, but not limited to, the following:

85.09(3)(b)1.

1. If the rail property is not used for railroad purposes for 2 consecutive years.

85.09(3)(b)2.

2. If the facilities on the rail property are removed or rendered unfit for service.

85.09(3)(b)3.

3. If the rail property is used for other than railroad purposes.

85.09(4)

(4) Acquisition and conveyance. Upon its own initiative, the department may determine at any time whether the rail property is abandoned, and whether it is in the best interest of the state to acquire the rail property. Within 90 days after being requested by any state agency, any railroad or any county or municipality in which the rail property is located, the department shall, subject to sub. (5) (b), make a determination of the abandonment status and, if found to be abandoned, shall determine whether it is in the best interest of the public to acquire the rail property. If it is determined to acquire the rail property or any part or interest therein, the department shall, within 180 days of the determination of its abandoned status, or the interstate commerce commission's final order permitting the abandonment, or the termination of any efforts to negotiate an agreement for continual operation of rail service on the line, whichever occurs last, determine the fair market value of the rail property and acquire the rail property at a price deemed reasonable by the department or make a relocation order under s. 32.05. In making its determination, the department shall consider long-range potential for use of the rail property for restoration of railroad service and for other transportation related purposes. The department shall solicit the opinions of appropriate state agencies, affected counties and municipalities and other interested persons. The department shall give due consideration to an expressed desire by a state agency or an affected county or municipality to acquire, in whole or in part, the rail property under consideration. Subject to sub. (6), all or part of any interest in abandoned rail property acquired by the department under this section or under s. 66.941 (7), 1975 stats., may be subsequently conveyed to another state agency or a county or municipality for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, or to a railroad for continued railroad transportation operations when the railroad has operated on the rail property for 5 years and the department may make such conveyances for such purposes. Any determination of the department under this section that rail property is not abandoned shall not preclude the undertaking of a subsequent investigation and determination concerning the same rail property or any portion thereof. If at any time subsequent to the acquisition of rail property under this section the department determines that the rail property is not suitable for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, or that the rail property or any interest therein may be conveyed to any other person on terms which are not inconsistent with the potential use of the rail property for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution or which yield a benefit, including financial benefits, to the state which outweighs the benefit derived from the rail property if used for transportation purposes, recreational purposes, scenic purposes or for the purpose of constructing a correctional institution, the department may convey the rail property or such interest therein, subject to sub. (6). The department shall give notice of its intention to make the conveyance, and state and local units of government shall have the first 6 months in which to exercise their opportunity to acquire the rail property or interest therein. The railroad from which the rail property was acquired shall have the next 6 months in which to exercise its opportunity to reacquire the rail property or interest therein.

85.09(4i)

(4i) Disposal of rail property. The department shall sell at public or private sale rail property acquired under sub. (4) when the department determines that the rail property is not necessary for a public purpose and, if real property, the real property is not the subject of a petition under s. 16.375 (2). Upon receipt of the full purchase price, the department shall, by appropriate deed or other instrument, transfer the rail property to the purchaser.

The funds derived from sales under this subsection shall be deposited in the transportation fund, and the expense incurred by the department in connection with the sale shall be paid from the appropriation under s. 20.395 (2) (bq).

85.09(4m)

(4m) Relocation plan. The department is exempt from s. 32.25 (1) if the department determines that acquiring rail property under this section will not result in any displaced persons as defined in s. 32.19 (2) (e). The department shall file a statement of its determinations with the department of commerce.

85.09(5)

(5) Duties of railroads and others.

85.09(5)(a)

(a) Any railroad which places a rail line or portion of a line on a system diagram map shall within 60 days of such action provide to the department one legible copy of each map in the railroad's possession which shows rail property boundaries or engineering stations for the line involved. At the same time the railroad shall provide to the department all other pertinent information in its possession requested by the department relating to the title to the rail property covered by the line involved. The department shall determine the reasonable cost to the railroad of providing documents and information under this paragraph and shall reimburse the railroad in this amount. Any conveyance by the railroad made without providing the information required by this paragraph is void.

85.09(5)(b)

(b) Any state agency, railroad, county or municipality which requests the department to make a determination of abandonment status and public interest in acquisition of rail property under sub. (4) shall provide a formal legal description of the rail property which is the subject of the request. The department may decline to take action on requests which do not contain an adequate description of the rail property involved. When the department provides a release of its first right to acquire rail property, the state agency, railroad, county or municipality which receives the release shall within 90 days have the release recorded by the register of deeds for each county in which the rail property is located.

85.09(6)

(6) State rights subordinate to federal law. To the extent that the first or subsequent rights of acquisition under this section conflict with rights conferred by 49 USC 10905 (f) (4) or 10910 (h), the rights conferred by this section are subordinate to such federal rights and shall take effect only when consistent with 49 USC 10905 (f) (4) and 10910 (h).

85.09(7)

(7) Rules. The department may adopt such rules as it deems necessary to accomplish the purposes of this section.

85.09 - ANNOT.

History: 1977 c. 29, 418; 1979 c. 34 s. 1018; Stats. 1979 s. 85.09; 1981 c. 20; 1983 a. 27, 192; 1985 a. 29 ss. 1583 to 1586, 3200 (51); 1985 a. 332 s. 253; 1987 a. 5; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 3525, 9116 (5).

Rails to Trails is the generic term used to refer to federal procedure pursuant to 49 C.F.R. § 1152.29 (attached) which is used to preserve a railroad right of way for interim trail use and rail banking.

Rails to Trails can occur only after a railroad officially files for abandonment through the Surface Transportation Board (STB). However, if approved by the STB, a Notice of Interim Trail Use (NITU) is issued and, providing the parties reach agreement, the **abandonment does not occur**. The subject rail line remains in an active status, allowing the interim trail use. By remaining an active rail line, the railroad corridor stays intact without impact resulting from the quality of title to the underlying property. No reversionary interests to the property come in to play.

Note - This concept is important. While the railroad is allowed to removed the rails, ties and other rail material, the corridor must be treated as an *active* railroad corridor in *interim* trail use. The term *interim* is not defined. There is no regulation as to the amount of time the trail may exist. However, it is understood that rail service may be reestablished at any time if needed.

An agency desiring to manage the corridor under Rails to Trails must be ready to do so fairly quickly. After an initial abandonment filing, notice is published in the Federal Register. Under exempted proceedings, a petition for Rails to Trails is due within 20 days of publication. (60 days are allowed under a full abandonment proceeding, however, nearly all recent abandonment filings have been under the quicker exemption process.)

It is necessary for the agency to prepare a Statement of Willingness to Accept Financial Responsibility agreeing to manage the corridor under the Rails-to-Trails concept. Once a Statement of Willingness is received, WisDOT will petition the STB on behalf of the agency. Provided the railroad requesting abandonment is willing to participate in Rails to Trails, the STB will issue the NITU. A 180-day negotiating period is then allowed for the agency and the railroad to reach agreement as to the terms of the Rails to Trails agreement. Usually, this results in acquisition of the corridor by the agency. An extension to the 180-day time period may be requested for reasonable cause if the parties are negotiating in good faith to reach agreement.

If the terms of the Rails to Trails agreement cannot be reached, or either party wishes to withdraw from the negotiating process, the line is then fully abandoned and subject to WisDOT's first right of acquisition.

CHAPTER X--SURFACE TRANSPORTATION BOARD, DEPARTMENT OF TRANSPORTATION

PART 1152--ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL
TRANSPORTATION UNDER 49 U.S.C. 10903--Table of ContentsSubpart C--Procedures Governing Notice, Applications, Financial
Assistance, Acquisition for Public Use, and Trail Use

Sec. 1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

(a) If any state, political subdivision, or qualified private organization is interested in acquiring or using a right-of-way of a rail line proposed to be abandoned for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d), it must file a comment or otherwise include a request in its filing (in a regulated abandonment proceeding) or a petition (in an exemption proceeding) indicating that it would like to do so. The comment/request or petition must include:

(1) A map depicting, and an accurate description of, the right-of-way, or portion thereof (including mileposts), proposed to be acquired or used;

(2) A statement indicating the user's willingness to assume full responsibility: for managing the right-of-way; for any legal liability arising out of the use of the right-of-way (unless the user is immune from liability, in which case

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it need only indemnify the railroad against any potential liability); and for the payment of all taxes assessed against the right-of-way; and

(3) An acknowledgment that interim trail use is subject to the user's continuing to meet its responsibilities described in paragraph (a)(2) of this section, and subject to possible future reconstruction and reactivation of the right-of-way for rail service. The statement must be in the following form:

Statement of Willingness To Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, _____ (Interim Trail User) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by _____ (Railroad) and operated by _____ (Railroad). The

property, known as _____ (Name of Branch Line), extends from railroad milepost _____ near _____ (Station Name), to railroad milepost _____, near _____ (Station name), a distance of _____ miles in [County(ies), (State(s))]. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-_____ (Sub-No. _____).

A map of the property depicting the right-of-way is attached.

_____ (Interim Trail User) acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

(b)(1) In abandonment application proceedings under 49 U.S.C. 10903, interim trail use statements are due within the 45-day protest and comment period following the date the abandonment application is filed. See Sec. 1152.25(c). The applicant carrier's response notifying the Board whether and with whom it intends to negotiate a trail use agreement is due within 15 days after the close of the protest and comment period (i.e., 60 days after the abandonment application is filed).

(i) In every proceeding where a Trails Act request is made, the Board will determine whether the Trails Act is applicable.

(ii) If the Trails Act is not applicable because of failure to comply with Sec. 1152.29(a), or is applicable but the carrier either does not intend to negotiate an agreement, or does not timely notify the Board of its intention to negotiate, a decision on the merits will be issued and no Certificate of Interim Trail Use or Abandonment will be issued. If the carrier is willing to negotiate an agreement, and the public convenience and necessity permit abandonment, the Board will issue a CITU.

(2) In exemption proceedings, a petition containing an interim trail use statement is due within 10 days after the date the notice of exemption is published in the Federal Register in the case of a class exemption and within 20 days after publication in the Federal Register of the notice of filing of a petition for exemption in the case of a petition for exemption. When an interim trail use comment(s) or petition(s) is filed in an exemption proceeding, the railroad's reply to the Board (indicating whether and with whom it intends to negotiate an agreement) is due within 10 days after the date a petition requesting interim trail use is filed.

(3) Late-filed trail use statements must be supported by a statement showing good cause for late filing.

(c) Regular and NERSA abandonment proceedings. (1) If continued rail service does not occur pursuant to 49 U.S.C. 10904 and Sec. 1152.27, and a railroad agrees to negotiate an interim trail use/rail banking

agreement, then the Board will issue a CITU to the railroad and to the interim trail user for that portion of the right-of-way to be covered by the agreement. The CITU will: Permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and material consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date it is issued (10 days after issuance in NERSA proceedings); and permit the railroad to fully abandon the line if no trail use agreement is reached 180 days after it is issued, subject to appropriate

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conditions, including labor protection and environmental matters.

(2) The CITU will indicate that any interim trail use is subject to future restoration of rail service, and subject to the user continuing to meet the financial obligations for the right-of-way. The CITU will also provide that, if the user intends to terminate trail use, it must send the Board a copy of the CITU and request that it be vacated on a specified date. The Board will reopen the abandonment proceeding, vacate the CITU, and issue a decision permitting immediate abandonment for the involved portion of the right-of-way. Copies of the decision will be sent to:

- (i) The abandonment applicant;
- (ii) The owner of the right-of-way; and
- (iii) The current trail user.

(3) If an application to construct and operate a rail line over the right-of-way is authorized under 49 U.S.C. 10901 and 49 CFR part 1150, or exempted under 49 U.S.C. 10502, then the CITU will be vacated accordingly.

(d) Exempt abandonment proceedings. (1) If continued rail service does not occur under 49 U.S.C. 10904 and Sec. 1152.27 and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a Notice of Interim Trail Use or Abandonment (NITU) to the railroad and to the interim trail user for the portion of the right-of-way to be covered by the agreement. The NITU will: permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and materials, consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date it is issued; and permit the railroad to fully abandon the line if no agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The NITU will indicate that interim trail use is subject to future restoration of rail service, and subject to the user continuing to meet the financial obligations for the right-of-way. The NITU will also provide that, if the user intends to terminate trail use, it must send the Board a copy of the NITU and request that it be vacated on a

specific date. The Board will reopen the exemption proceeding, vacate the NITU, and issue a decision reinstating the exemption for that portion of the right-of-way. Copies of the decision will be sent to:

- (i) The abandonment exemption applicant;
- (ii) The owner of the right-of-way; and
- (iii) The current trail user.

(3) If an application to construct and operate a rail line over the right-of-way is authorized under 49 U.S.C. 10901 and 49 CFR part 1150, or exempted under 49 U.S.C. 10502, then the NITU will be vacated accordingly.

(e)(1) Where late-filed trail use statements are accepted, the Director (or designee) will telephone the railroad to determine whether abandonment has been consummated and, if not, whether the railroad is willing to negotiate an interim trail use agreement. The railroad shall confirm, in writing, its response, within 5 days. If abandonment has been consummated, the trail use request will be dismissed. If abandonment has not been consummated but the railroad refuses to negotiate, then trail use will be denied. If abandonment has not been consummated and the railroad is willing to negotiate, the abandonment proceeding will be reopened, the abandonment decision granting an application, petition for exemption or notice of exemption will be vacated, and an appropriate CITU or NITU will be issued. The effective date of the CITU or NITU will be the same date as the vacated decision or notice.

(2) A railroad that receives authority from the Board to abandon a line (in a regulated abandonment proceeding under 49 U.S.C. 10903, or by individual or class exemption issued under 49 U.S.C. 10502) shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement that the railroad has consummated, or

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fully exercised, the abandonment authority on a certain date. The notice shall be filed within 1 year of the service date of the decision permitting the abandonment (assuming that the railroad intends to consummate the abandonment). Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions, including Trails Act conditions). If, after 1 year from the date of service of a decision permitting abandonment, consummation has not been effected by the railroad's filing of a notice of consummation, and there are no legal or regulatory barriers to consummation, the authority to abandon will

automatically expire. In that event, a new proceeding would have to be instituted if the railroad wants to abandon the line. Copies of the railroad's notice of consummation shall be filed with the Secretary of the Board. In addition, the notice of consummation shall be sent to the State Public Service Commission (or equivalent agency) of every state through which the line passes. If, however, any legal or regulatory barrier to consummation exists at the end of the 1-year time period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier. For good cause shown, a railroad may file a request for an extension of time to file a notice so long as it does so sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing.

(f)(1) When a trail user intends to terminate trail use and another person intends to become a trail user by assuming financial responsibility for the right-of-way, then the existing and future trail users shall file, jointly:

(i) A copy of the extant CITU or NITU; and

(ii) A Statement of Willingness to Assume Financial Responsibility by the new trail user.

(2) The parties shall indicate the date on which responsibility for the right-of-way is to transfer to the new trail user. The Board will reopen the abandonment or exemption proceeding, vacate the existing NITU or CITU; and issue an appropriate replacement NITU or CITU to the new trail user.

(g) In proceedings where a timely trail use statement is filed, but due to either the railroad's indication of its unwillingness to negotiate interim trail use agreement, or its failure to timely notify the Board of its willingness to negotiate, a decision authorizing abandonment or an exemption notice or decision is issued instead of a CITU or NITU, and subsequently the railroad and trail use proponent nevertheless determine to negotiate an interim trail use agreement under the Trails Act, then the railroad and trail use proponent must file a joint pleading requesting that an appropriate CITU or NITU be issued. If the abandonment has not been consummated, the Board will reopen the proceeding, vacate the outstanding decision or notice (or portion thereof), and issue an appropriate CITU or NITU that will permit the parties to negotiate for a period agreed to by the parties in their joint filing, but not to exceed 180 days, at the end of which, the CITU or NITU will convert into a decision or notice permitting abandonment.

[61 FR 67883, Dec. 24, 1996, as amended at 62 FR 34670, June 27, 1997]

5-5 Process

5-5-1 WisDOT and STB Abandonment Processes

The following figures (Figures 1, 2 and 3) depict the flow and the steps involved in a basic, standard railroad abandonment.

However, it should be understood that each abandonment issue is at least somewhat unique, and will probably deviate to some degree from the generic flow that is documented here.

Figure 1, the Chronology of Abandonment Events, provides the most basic picture, with Figures 2 and 3 offering greater detail as to the likely timing of events, including the potential for over lap activities or the need for sequential activities.

More information and assistance is available either from the Office of General Counsel or from the Bureau of Railroads and Harbors.

Railroad Abandonments Chronology of Events (Typical)

<u>What</u>	<u>From</u>	<u>To</u>	<u>Product/Result</u> (Documents Underlined)
1. Intent to abandon	Railroad	Office of General Counsel (OGC)	Letter or verbal or via published map.
2. Request for environmental letter input	OGC	Members of Rail Abandonment Comm.	E-mail solicitation
3. Input on environmental impacts	Rail Abandonment Comm. Members	Office of General Counsel	E-mail response
4. DOT environmental comments	OGC	Surface Transportation Board (STB) Copies to Others Interested	<u>Environmental Letter</u>
5. Draft Briefing Paper	BRH	Rail Abandonment Committee Others as Appropriate	<u>Initial Briefing Paper</u>
6. "Be Aware" letter	Districts	Local Officials Transit Commissions Regional Planning Commissions	<u>District Letter</u>
7. Questionnaire (optional)	Districts	Local Officials Current and Potential Shippers Transit Commissions Regional Planning Commissions	<u>District Questionnaire</u>

Railroad Abandonments Chronology of Events (Typical)

<u>What</u>	<u>From</u>	<u>To</u>	<u>Product/Result</u> (Documents Underlined)
8. Offer to hold public meetings	Districts	Local Officials Transit Commissions Regional Planning Commissions Potential Shippers	District arrange meeting(s)
9. Formal Abandonment Filing	Railroad	OGC	<u>Railroad Filing</u>
10. Notification of filing	OGC	Rail Abandonment Comm.	E-mail notification
11. Offer of assistance and follow-up	BRH	Districts	Help w/questions; local meetings; questionnaire; local interest in general.
12. Finalize Briefing Paper (This is a draft of WisDOT position on abandonment).	BRH	Rail Abandonment Comm.	<u>Briefing Paper</u>
13. Recommend WisDOT position on abandonment.	Rail Abandonment Committee	Secretary's Office Others as Appropriate	Recommendation
14. WisDOT position	Secretary's Office		Decision
15. DOT position to STB	OGC	STB	<u>DOT Position Letter</u>

Railroad Abandonments Chronology of Events (Typical)

<u>What</u>	<u>From</u>	<u>To</u>	<u>Product/Result</u> <u>(Documents Underlined)</u>
16. First Right Solicitation	BRH	Local Units State Agencies	BRH letter to locals/others (Rails to trails could be an option at this point.
17. Appeal? Extension?	OGC	STB	Process could recycle in part
18. Summary Abandonment Status Report	BRH	Interested WisDOT Personnel	Summary status of all active abandonments

WisDOT Railroad Abandonment Process

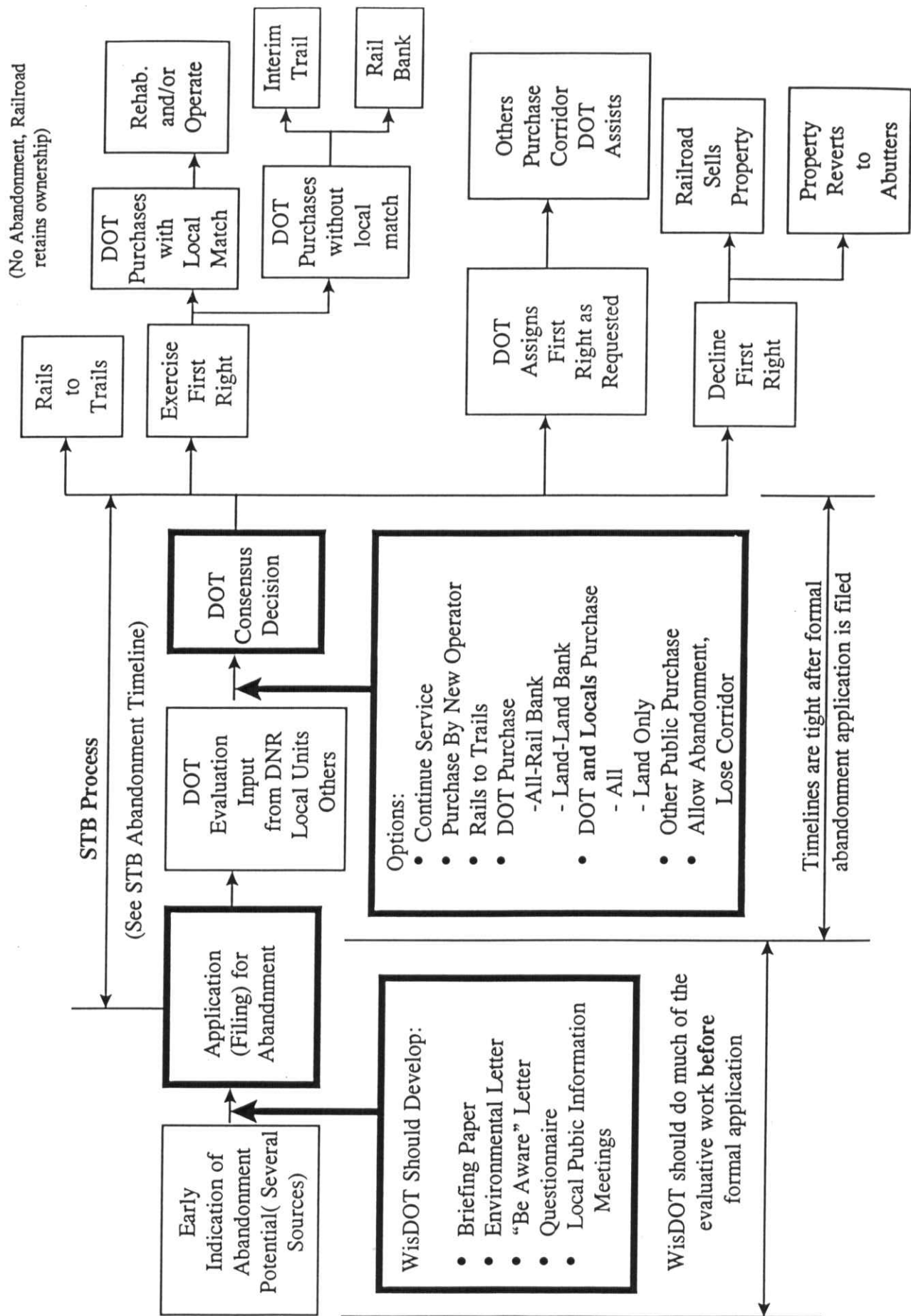


Figure 2

Non Exempt - Top (longer)
Exempt - Bottom (shorter)



No local traffic for 2 years without formal complaint of lack of services for shippers
Overhead traffic can be rerouted to other rail
Timeline per the above chart

10 days after Board's Decision

5-5-1

WisDOT may learn of abandonments in two basic ways:

Formally, through the railroad petitioning the STB for authority to abandon or by the railroad including the proposed abandonment on a "System Diagram Map" that it must publish periodically. Notice of such formal action would come through WisDOT's Office of General Counsel or the Bureau of Railroads and Harbors. Informal notification would usually be by the railroad indicating to local officials or WisDOT staff that abandonment is a future possibility or intention.

WisDOT must be alert to "early warnings" of potential abandonments because once a formal application for abandonment is filed with the STB, time is quite short.

When WisDOT receives an "early warning", district offices should begin to consider several questions:

1. Are we aware of any existing or potential rail users along the corridor?
2. Based on broad discussion among district office staff, are there any reasons/justifications for WisDOT to consider purchase of the line being considered for abandonment, for future rail freight purposes?
3. Would a future highway improvement require any of the railroad right-of-way?
4. Are we aware of any DNR interest in the land for trail or other purposes?

Early consideration of these questions will permit WisDOT to act promptly even under short STB deadlines.

5-10-5 Guideline for Responses to Office of General Counsel (OGC) for
Environmental Letter Input

As a railroad prepares to file for abandonment, they will typically ask various government agencies to assist them in identifying potential economic/environmental effects of that abandonment action. The railroad is required to contact various agencies, including DNR, Governor's Office, shippers, and local units of government. This railroad request to WisDOT comes to the Office of General Counsel (OGC).

OGC will then typically seek input from various offices, and Bureaus of WisDOT, represented on the Railroad Abandonment Committee (RAC).

In responding to the OGC, Districts, Bureaus and Offices should consider the following, commenting on those that are relevant to this particular abandonment. These should be information that the District is aware of or has knowledge of. It is a "top of the head" type response, and is not intended to require field investigation, etc.

- Potential need for continued rail service - New Industry.
- Need of the railroad right of way for road, airport or other transportation improvements.
- Any known hazardous material sites.
- Regional or local land use plans.
- The potential for trail usage (based on known local unit or DNR expressions of interest).
- Known sensitive areas -- streams, wetlands, etc.
- Endangered species or critical habitats or wildlife areas.
- Agriculture.
- Water quality/wetlands/flood potential.
- Unique soils.
- Areas needing 402 or 404 permits.
- Other transportation uses.
- Other utility uses.
- Known archeological/historically significant sites.

If Districts contact local units or others for input when responding to the OGC request for input, they should also note their positions regarding the abandonment if any, and their reasons for those positions. Full identification of issues early in the process is always helpful.

JWD:dla:1549

5-10-10 Local Official Notification Letter

Local Official
Address
City

Dear "local official":

The Wisconsin Department of Transportation recently received notification that the "..... Railroad....." has updated their System Diagram Map, which indicates potential future abandonments. The rail line extending between _____ and _____ has been placed in **Category I**, which means that the line may be subject to abandonment application within three years.

We are providing notice to all units of government which may be affected by this proposed abandonment. While no comment or official response is required at this time, we want you to be aware that the line is seriously being considered for abandonment. If your (community or county) has not already done so, now is the time to begin looking at future needs, potentials (including ways to increase rail use), or alternative uses for the corridor should the abandonment actually occur.

We will keep you informed as we learn about the railroad's future plans for the corridor. If you wish to discuss this issue further or need assistance in planning for the future of the rail corridor, please contact _____.

OR

Dear "local official":

The ".....Railroad....." recently notified the Wisconsin Department of Transportation of their intent to petition the Surface Transportation Board to abandon the rail line between _____ and _____. It is anticipated that the petition will be filed on or aboutdate.....

We are providing notice to all local units of government which may be affected by this proposed abandonment. While no comment or official response is required at this time, we want you to be aware that the line could be authorized for abandonment within a relatively short period of time. If you have not already done so, now is the time to consider future needs, potentials for increased rail use or alternative uses for the rail corridor should the abandonment actually occur.

We will keep you informed as we learn more about the status of the abandonment filing and/or expressions of interest that may affect future use of the rail corridor. If you wish to discuss this issue further or have any further questions, please contact _____.

Sincerely,

5-10-10

Dear _____:

The _____ Railroad has notified the Wisconsin Department of Transportation on _____, of their intent to file an application to abandon the railroad line between _____ and _____. We expect the application to be filed with the Surface Transportation Board in Washington, D.C. in the near future.

We have schedule a meeting with local elected officials to discuss the procedures and timeline for considering the railroad's application. We will also explain alternative actions available, such as WisDOT freight railroad assistance programs to help preserve the railroad line for present or future freight transportation purposes. The railroad has identified _____ as the only current shipper of the line.

The specifics for the meeting are as follows:

Date: _____
Time: _____
Location: _____

Please notify _____ at _____ if you or your representative will be attending the meeting. If you are unable to be represented, please forward any concerns you may have with the proposed abandonment to _____ at _____.

I look forward to seeing you at the meeting.

Sincerely,

5-10-20 Shipper Survey

(Transportation District Letterhead)

(Date)

Dear Wisconsin Freight Shipper:

As you are perhaps aware, the railroad line near your facility has been proposed for abandonment. The Wisconsin Department of Transportation (WisDOT) is charged with preserving railroad lines where there is the potential for viable freight rail usage, now or in the foreseeable future. Public funding is available for the preservation of these lines if they are deemed to be viable.

The WisDOT funding assistance programs are based on many social, economic and environmental factors, but first require a benefit cost analyses. Benefits must exceed costs, and those candidate rail segments with the highest benefit cost are the ones receiving highest priority for funding.

In order to complete the needed benefit cost analysis, we need some basic information from current and potential future shippers like yourself.

Enclosed is a questionnaire which seeks information about your rail operations and asks for your estimates of the effects of a change in rail service. If you have questions or desire assistance, contact my office. For now, we simply ask that you review and study the questionnaire. Someone from my office will be in contact with you soon to either meet with you, to get your answers over the phone, or to ask that you complete the questionnaire as best you can and mail it in to them.

Sincerely,

_____, District Director

JWD:dla:1590

Enclosure

Note: According to information provided the Wisconsin Department of Transportation, your company currently is or has been a rail shipper. If you no longer ship by rail and do not plan to resume shipping by rail, check the box below and return the questionnaire without any further completion. Thank you.

☐ This facility does not ship by rail and does not plan to ship by rail.

Person Responding _____ Title _____

Person's Telephone Number and Area Code _____

(If this facility is a division or subsidiary, give parent company's name and address).

Name _____

Street _____

City or Town _____ State _____ ZIP _____

1. What was your annual dollar sales volume in 19__?-----\$_____

2. What was your annual payroll in 19__?
(Includes benefits and payroll taxes) -----\$_____

3. How many employees do you have? ----- Full Time, _____ Part Time

4. What percent of your total sales are your total transportation and distribution costs? ----- %

5. Do you have a private rail siding? ----- ☐ Yes ☐ No

6. Do you ship or receive commodities by rail that are too large to ship by any other available means? ----- ☐ Yes ☐ No
(If yes, what commodity?)

7. Indicate the number of rail carloads and truckloads that you have received and shipped for the last three complete years:

Year	Received		Shipped	
	Rail Carloads	Truckloads	Rail Carloads	Truckloads
Most Recent Year				
Prior Year				
Next Previous Year				

8. Do track conditions limit your ability to load rail cars to capacity? ----- ☐ Yes ☐ No
(If no, to what tonnage can they be loaded? -----)

9. What are the major products that you ship and receive?

Ship: _____

Receive: _____

10. What are the two most important reasons for the changes in rail use during the last five years?

- | | |
|--|---|
| <input type="checkbox"/> Normal business growth | <input type="checkbox"/> Changes in rail vs. truck service levels |
| <input type="checkbox"/> Changes in rail vs. truck rates | <input type="checkbox"/> Rail car shortages |
| <input type="checkbox"/> Opening, closing plant | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Change in product line | |

Specific comments: _____

11. Comparing rail and truck rates, which has increased faster over the last 3 years? ☐ Rail ☐ Truck
☐ Same for both
12. What do you estimate your rail and truck usage to be over the next 3 years?
(If you cannot give approximate numbers, indicate the percentage spent between rail and truck)

	Received		Shipped	
Year	Rail Carloads	Truckloads	Rail Carloads	Truckloads
Most Recent Year				
Prior Year				
Next Previous Year				

13. What are the two most important factors responsible for the expected changes in rail use?

- ☐ Normal business growth
☐ Changes in rail vs. truck rates
☐ Opening, closing plant
☐ Other (specify)
- ☐ Changes in rail vs. truck service levels
☐ Rail car shortages
☐ Change in product line

Specific comments: _____

14. Please rate the seriousness of problems currently preventing greater use of rail service.
(Please rate them as 5 being the most serious and 1 being the least serious)

- | | | | | | |
|--|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Shortages of rail cars | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Rail agent unavailability | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Rates higher than truck | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Lengthy transit times | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Late delivery penalties greater than truck | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Switching or car spot service unavailable | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Unreliable delivery schedules | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Maximum weight limits too low | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Minimum volumes too large | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |
| Loss or damage to lading | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |

15. Are there particular products and/or shipments which you could definitely shift to rail if there were service or rate changes? If yes, identify products, origins or destinations and service/rate needs. ☐ Yes ☐ No

16. If the rail service that is currently available to you were discontinued, would you

- ☐ Relocate on another rail line
- ☐ Go out of business completely
- ☐ Maintain current level of operation
- ☐ Consolidate operations at another facility of the same company (specify where) _____

If rail service is discontinued, would you truck to or from another nearby rail terminal? ☐ Yes ☐ No
(Name of other location _____)

17. If rail service is discontinued, how much would you anticipate total transportation and distribution costs to increase?

\$ _____ dollar amount, or _____ %.

Please explain:

18. If rail service were discontinued, indicate the alternative way that your tonnage would be moved.

	Percent Via					
	Truck to Rail Terminal	Truck Entire Distance	Truck to Waterport	Other	Discontinue Shipping	Total
Shipped	%	%	%	%	%	100%
Received	%	%	%	%	%	100%

19. If rail service were discontinued, estimate how the number of jobs, your payroll, and/or your sales volume would be affected. (Consider possible truck related employees as well as layoffs if business declines.)

	Within One Year		In Five Years	
	Decrease	Increase	Decrease	Increase
Number of Jobs				
Payroll	\$	\$	\$	\$
Sales Volume	\$	\$	\$	\$

20. If necessary to continue or improve rail services, would you
(Check all those applicable)

- ☐ Ship or receive more of your products by rail
- ☐ Pay higher rail rates
- ☐ Provide a low or no interest loan to the railroad to make track improvements
- ☐ Work with railroad to seek public assistance.

ADDITIONAL COMMENTS

Please feel free to make any additional comments concerning your past, present, and future use of rail service. Your views will help form a better rail system. An idea from you may spark the development of a means to a better rail service.

THANK YOU FOR YOUR COOPERATION

A postage-paid, pre-addressed envelope is enclosed for your convenience. To allow proper time for analysis and inclusion of your views in rail planning work now underway, please complete and return this questionnaire within ten days of receipt. If the envelope is misplaced, please mail survey form to _____, Department of Transportation,
(District Office)

(Address)

The "Briefing Paper" is an informational document, initially prepared when WisDOT first learns of a potential abandonment. It is prepared by the Bureau of Railroads and Harbors (BRH) for the information of WisDOT staff initially, including the Secretary's Office. It summarizes the relevant, known facts and other information related to the abandonment and ends with a conclusion as to the tentative position of WisDOT in the abandonment. It is an early position that BRH "runs up the flag pole" to both inform other WisDOT offices, but also to generate their reaction. As other offices react and as more information is assembled, the conclusion may change, in which case, the Briefing Paper will be updated. Ultimately, it will summarize the WisDOT position and the "conclusion" will be changed to a "recommendation".

At all times, and under the state's open record law, the Briefing Paper should be viewed as a "public" document. While not intended to be released, it is at all times a convenient summary of relevant information and a current position of WisDOT on that particular abandonment issue.

(SAMPLE)

**INITIAL
BRIEFING PAPER
RAILROAD ABANDONMENT
TREGO - STANBERY
(WASHBURN COUNTY, DISTRICT 8)**

- Purpose: To briefly summarize relevant information and the current situation related to the subject abandonment as a means of informing Department personnel, and to thereby assist DOT in reaching a consensus position on the abandonment.
- Issue: Should DOT participate financially in the preservation of this corridor (and track) for future rail freight transportation purposes?
- Probable Value: Land and track: \$575,000 to \$710,000 range.
- Background:
- Union Pacific (UP) indicated probable abandonment of this 12.68 mile segment on September 8, 1997.
 - No shippers on the line. Previous shipper located in Trego relocated to Stanbery in May 1996.
 - There is an identified petroleum haz mat site at Springbrook.
 - DOT had previously purchased 2 segments to the south for \$468,000, both purchased as rails to trails (could be converted to railroad usage in future).
 - Trego to Spooner acquired (land and track) in October 1995; 8 miles long; DNR Rec. trail for ATV's and snowmobiles also occupy corridor; Used for a tourist excursion train during 1997 under a DOT permit.
 - Spooner to Rice Lake, 23 miles, land only (WCL removed track) now used for DNR trail.
 - This 31 mile purchase was based on a 1994 study of Spooner rail yard potentials, which projected 1,500 freight cars annually.
 - Rail freight usage never materialized.
 - The 1997 excursion operation appears to have been sufficiently successful that re-application for 1998 is likely.
 - No rental charges were levied for excursion; no DOT income.
- Conclusion:
- No apparent justification for DOT purchase except for possibly 4 miles adjacent to STH 63 for highway purposes.
 - DNR could be encouraged to purchase the other 7-8 miles.
 - DNR has strong interest in 8 mile Spooner to Trego segment that DOT acquired in 1995. DOT should consider sale of this segment.
 - No current traffic; no prospect of future traffic; no justification for freight rail usage.

By: Wisconsin Department of Transportation
Bureau of Railroads and Harbors
October 24, 1997

JWD:e70474