

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Application of the
Metropolitan Council for a Variance from
the Standard for Horizontal Width
Clearances at its MWWTP Warehouse
Facility Located at 2400 Childs Road,
St. Paul, Minnesota, Pursuant to the
Provisions of Minn. Stat. § 219.47

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FINDINGS OF FACT, CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Phyllis A. Reha on October 31, 1995, at the Minnesota Administrative Truck Center, Second Floor Hearing Room, Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota.

Appearing for the Applicant, Metropolitan Council, was Vladimir Gorenburgov, Metropolitan Council, 23 East Fifth Street, St. Paul, MN 55101 and the project's engineer, Thomas R. Anderson, Bonestrom, Rosene, Anderlik and Associates, 2335 West Highway 36, St. Paul, MN 55113. Appearing on behalf of the Minnesota Department of Transportation (Department) was Ronald F. Mattson, Office of Railroads and Waterways, 925 Kelly Annex, 395 John Ireland Boulevard, St. Paul, MN 55155. Also in attendance were Transportation Regulation Board Commissioner, Lyle G. Mehrkens and TRB Administrative Director, Mike McKay. The record closed at the conclusion of the hearing.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUE

The issue in this case is whether the Applicant has established that a variance from the statutory horizontal clearance requirements of Minn. Stat. § 219.47, subd. 1 will not create a condition unduly hazardous to its employees or employees of common carriers using the tracks.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 24, 1995, the Minnesota Transportation Regulation Board (Board) received an application from the Metropolitan Council (Applicant) for a variance to the clearance requirements provided in Minn. Stat. § 219.46, subd. (d) (1).

2. The proposed project involves mounting a “dock lock” apparatus on the Applicant’s existing warehouse dock to accommodate its use as a combined rail/truck unloading dock. The warehouse dock is located by the Applicant’s privately owned railroad spur at the MWWTP warehouse facility in St. Paul, Minnesota. This privately owned spur track is served by the Union Pacific Railroad (formerly, the Chicago and Northwestern Transportation Company) (Railroad).

3. On September 22, 1995, the Board issued a Notice of Public Hearing on the application. The Notice was published in the Board’s weekly calendar on September 22, 1995, and weekly thereafter through the date of the hearing. Due to an unexpected scheduling conflict, responsibility for the matter was transferred from ALJ Allen Giles to ALJ Phyllis A. Reha.

4. The dock lock apparatus is intended to be a safety device which will prevent a truck trailer from moving when it is stationed at the warehouse loading dock. The dock lock will be mounted on a hinge which automatically swings out when a truck trailer is backed into the loading dock area. A metal hook attaches to a metal rod at the rear of the truck trailer. The dock lock can swing away out of the proscribed area to a stored position when not in use.

5. When fully extended, the dock lock will measure 5’ 7” from the center line of the railroad track. Thus the dock lock will protrude into the regulated envelope of 8’ 6” by 3’ 11”. When in its stored position, the apparatus will measure 7’ 9” from the center line of the railroad right-of-way; thus, even when stowed, it will protrude into the regulated envelope by 1’ 11”. There is a 2’ differential between the fully extended and the fully stored positions.

6. The loading dock itself measures 40' in length and 6' wide with bumpers on each side of it. The dock lock mechanism is in the center part of the dock thus there is a 20' approach from either end of the dock. The dock height is 48" from ground level to the top of the dock. Railroad crews usually come in from the northwest and spot the railroad cars approximately one-half mile to the southeast of the loading dock.

7. There are very few train movements on this railroad spur. Approximately once a month or every two months a railroad car will back into the area for unloading of chlorine. The Railroad also uses the spur track for other train movements unrelated to the applicant's business. These other train movements are also infrequent, perhaps up to one or two times per month.

8. Currently, the Applicant uses the loading dock for the unloading of semi-trucks approximately once or twice a week for delivery of non-standard length equipment. Both train and truck movements occur mostly during the day, but sometimes deliveries are made in the evening.

9. The dock lock mechanism is essentially non-automated, although the hook on the apparatus does automatically retract when a truck is at the loading dock. The current design plans do not provide a warning or signaling device when the apparatus is in its fully extended position. If not manually returned to its stowed position, it is possible that the apparatus could be inadvertently left in its extended position thus causing a hazard to railroad crew and other persons.

10. It would be possible to place reflective tape on non-moving parts of the apparatus; however, a warning device with a flashing light and/or bell would provide greater safety in the area. The Applicant has no objection to providing a warning system consistent with Railroad standards to enhance the safety of Railroad crews. The Applicant also would have no objection to placing lighting over and above the dock lock mechanism to illuminate the area during hours of darkness.

11. The Department recommends that standard, vertical, "no clearance" signs as shown in Exhibit No. 5 be attached to the corners of the dock so that the warning signs will be visible to train crew on either end of the dock when trains approach from the southeast or the northwest. The standard, vertical, no clearance signs are 3' 6" in

height, therefore the 4' height of the dock will accommodate such no clearance signs without creating additional encroachment. Since train movements may occur during hours of darkness, the Department further recommends that these vertical no clearance signs be illuminated during the hours of darkness. The Applicant does not object to the placement of the suggested vertical, no clearance signs as shown in Exhibit No. 5; nor does it object to illuminating the signs during hours of darkness

12. The Department would like to be notified upon completion of the installation of the dock lock if the Board grants the variance so it can inspect the lighting and signing installations. It is reasonable to have the Department of Transportation review the installation for proper lighting and signing to ensure the safety of the train crews.

13. The Union Pacific Railroad, the Transportation Communications International Union and the United Transportation Union were all notified of the Applicant's request for variance and this hearing. None of these entities appeared or provided comments either supporting or opposing the variance request.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Transportation Regulation Board has jurisdiction over the subject matter of this hearing and the matter is properly before the Administrative Law Judge pursuant to Minn. Stat. §§ 219.46 and 14.50.

2. The Notice of and Order for Hearing was proper in all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. The Applicant's proposed project at its MWWTP facility in St. Paul, Minnesota includes additions which provide less than the statutory horizontal clearances.

4. Compliance with statutory horizontal clearances would be unreasonable, because the dock lock safety mechanism could not be installed within the statutory

horizontal clearances and thus, the Applicant would not be able to install a safety device for the protection of its employees in the truck unloading operations at its warehouse dock.

5. Variance of the horizontal clearance will not create a condition that is unduly hazardous for any train or Applicant employee because the area will be adequately lighted, no clearance signs will be posted where appropriate, and an automatic warning device will be placed on the apparatus to warn train crews and other Applicant personnel when the device is in the fully extended position.

6. The clearance encroachment will not create a condition unduly hazardous to the Applicant's employees or to employees of the common carrier using the railroad tracks, and the clearance variance requested by the Applicant meets the standards set forth in Minn. Stat. § 219.47, subd. 1, and Minn. Rules pt. 8830.3000; so long as signs are posted and appropriately illuminated and warning devices are installed consistent with Department of Transportation rules.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

On the basis of the foregoing Conclusions, the Administrative Law Judge recommends that the Transportation Regulation Board enter the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the application of Metropolitan Council for a variance from the horizontal requirements to construct a dock lock apparatus at its warehouse dock located at the Metropolitan Waste Water Treatment Plant warehouse site in St. Paul, Minnesota as described in its Petition be GRANTED on the following conditions: 1) that the Applicant post vertical, NO CLEARANCE signs in conformance with Minn. Rule pt. 8830.9930 on the southeast and northwest corners of the Applicant's loading dock, and that the signs be illuminated during hours of darkness; 2) that the Applicant place reflective tape on non-moving parts of the dock lock apparatus; 3) that

the Applicant install a safety device consistent with Railroad standards on the dock lock apparatus so that warning lights will be visible to train crews when the dock lock is in its fully extended position; and 4) that illumination be provided above the apparatus during hours of darkness.

IT IS FURTHER ORDERED that the Applicant notify the Minnesota Department of Transportation for inspection immediately after installing such signs and warning devices.

Dated this 23rd day of January, 1996

/s/

PHYLLIS A. REHA

Administrative Law Judge

Reported: Taped

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.