

DONALD G. KARPOWICH

ATTORNEY-AT-LAW, P.C.

85 Drasher Road • Drums, PA 18222 • (570) 788-6647 • Fax (570) 788-0654

September 9, 2010

James J. McNulty, Jr., Secretary
Pennsylvania Public Utility Commission
Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: White Haven Borough vs. Reading Blue Mountain and Northern Railroad
Docket No. C-00004204**

Dear Sir or Madam:

Enclosed please find an original and ten (10) copies of White Haven Borough's Petition for Reconsideration, Reargument and/or Stay of Order with the accompanying Certificate of Service as it pertains to the above referenced matter. After filing, kindly return a time-stamped copy to my office in the envelope provided. By way of this letter, a copy of the same has been served upon the parties as indicated on the attached Certificate of Service.

Should you have any questions or concerns, please do not hesitate to contact me.
Thank you.

Very truly yours,

DONALD G. KARPOWICH
Attorney-at-Law, P.C.



Sean W. Logsdon, Esquire

SWL:cry
Enclosures
cc: *As per Certificate of Service*

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4. In their Objection, the Borough requested that the Railroad's plan should be denied and rejected based on the fact that it was not a plan for replacement of the wall but a plan to repair the wall.

5. The Commission found that the crux of the objection was whether the plan submitted by the Railroad qualified as a plan for repair or a plan for replacement of the wall.

6. As noted in the Commission's Opinion and Order, Paragraph 3 directs, "[t]hat Reading, Blue Mountain & Northern Railroad Company shall . . . prepare and submit to the Parties for examination . . . *complete and detailed construction plans for replacement* of the relevant retaining wall" (emphasis added).

7. At the time that the Borough's Objection was filed, the Borough did not have the opinion of their engineer available to submit to the Commission.

8. In the Commission's Opinion it was noted that the plan submitted by the Railroad was endorsed by an engineer.

9. The Borough engineer's opinions are now available.

10. In the opinion of the Borough's engineer, attached hereto as "Exhibit B", the plan submitted by the rail road is actually a sketch, not a plan.

11. The sketch itself as submitted is lacking in construction detail and no specifications are provided for performance of the work, which in itself violates Paragraph 3 of the Commission's February 2008 Order.

12. In regard to the substantive "plan" itself, the Borough engineer opines that the existing retaining wall has failed, and in his opinion, placing a layer of concrete over the top of the existing bulged and failed wall does not constitute a replacement. *See Paragraph 1.*

13. The Borough engineer also opines that the pictures supplied with the Railroad's sketch are of a different wall and irrelevant to the particular site condition. *See Paragraph 2.*

14. The Borough engineer also opines that the "Brenner" report recommends replacement of the wall. *See Paragraph 3.*

15. The Borough engineer also opines that there is no plan showing limits of construction, including footing location and limits of work at the top of the wall. *See Paragraph 4.*

16. The Borough engineer also opines that there is no drainage layer to ensure functioning of the weep holes. *See Paragraph 5.*

17. The Borough engineer also opines that the plan should indicate design frost depth to ensure the footing is proposed below it. *See Paragraph 6.*

18. The Borough engineer also opines that the footing is unreinforced. *See Paragraph 7.*

19. The Borough engineer also opines that the steel proposed appears to be shrinkage steel. *See Paragraph 8.*

20. The Borough engineer also opines that the height of the wall is not shown. *See Paragraph 9.*

21. The Borough engineer also opines that the existing wall has failed and is of questionable soundness to accept the concrete façade proposed. *See Paragraph 10.*

22. The Borough engineer also opines that the plan does not include removal of trees, show grading limits, or construction limits. *See Paragraph 11.*

23. The Borough engineer also opines that it is unknown whether live loads, vibrations and surcharges were considered in the design. *See Paragraph 12.*

24. It is clear that even if we accept the finding that the Railroad's Plan qualifies as a replacement and not a repair, it is still not a complete and detailed construction plan and is not adequate to even qualify as a replacement do to the actual condition of the site.

25. In the interest of public safety, the Borough prays that the Commission will reconsider the decision as the plan as it stands is woefully inadequate.

26. In addition, it is respectfully requested that the Order be stayed pending resolution of this Petition as it is believed that the Railroad will begin construction activities on the site, as they have been ordered to complete the project within sixty (60) days and as noted above, the Borough believes that any construction performed pursuant to the plan which has been approved will be inadequate.

Wherefore, in light of the above, White Haven Borough respectfully requests that the Commission reconsider, permit reargument or rehearing, and stay the September 3, 2010 Order which approved the Plan for Repair/Replacement of the White Haven wall.

Respectfully submitted,

Donald G. Karpowich, Attorney-at-Law, P.C.



Date: 9/9/10

By: _____
Donald G. Karpowich, Esquire
ID # 78176

Date: 9/8/10

By: _____
Sean W. Logsdon, Esquire
ID # 93096

Date: 9/8/10

By: _____
Kevin M. Walsh, Jr., Esquire
ID # 206334
85 Drasher Road
Drums, PA 18222
(570) 788-6647
Attorneys for White Haven Borough

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Exhibit A

PAUL R. OBER & ASSOCIATES

A PENNSYLVANIA PARTNERSHIP

PAUL R. OBER
TERRY L. PARISH
JAMES L. DAVIS
CHARLES M. WATKINS
JOSEPH A. LA FLAMME, P.E.
THOMAS C. ANEWALT
JAMES A. CUNNINGHAM
MICHELLE A. RHIZOR*

ATTORNEYS AT LAW
234 N. 6TH STREET
READING, PENNSYLVANIA 19601

(610) 378-0121
FAX (610) 378-9712

JOHN J. MURPHY, JR. (1984)

BOYERTOWN OFFICE:
10 N. Reading Avenue
Boyertown, PA 19512
(610) 367-6991

* ALSO MEMBER CALIFORNIA BAR
* ALSO MEMBER NEW JERSEY & FLORIDA BARS
* LL.M. IN TAXATION
* OF COUNSEL/RETIRED
* ALSO MEMBER NEW JERSEY BAR
* LICENSED PROFESSIONAL ENGINEER
IN PENNSYLVANIA, FLORIDA & NEW YORK

paul@oberandassociates.com

June 8, 2010

Rosemary Chiavetta, Secretary
PA PUC
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: White Haven Borough v. RBM&NRR
Docket No. - 2168 CD 2009

Dear Secretary Chiavetta:

Enclosed please find an original plus one copy of Defendant's *Plan for Repair/Replacement of White Haven Wall*. Please file same on behalf of Reading, Blue Mountain and Norther Railroad Company. All parties have been served in accordance with the enclosed *Certificate of Service*.

Please return a time-stamped copy to the undersigned; thank you for your anticipated cooperation.

Very Truly Yours,
Paul R. Ober & Associates



Kristie Faller-Stump, Legal Assistant
to Paul R. Ober, Esquire

PRO/kns
Enclosures

SUBURBAN OFFICES
by appointment

607 S. 4TH STREET, HAMBURG, PA 19526 (610) 562-5879
1244 WEST HAMILTON STREET, ALLENTOWN, PA 18102 (610) 437-4455
P.O. BOX 196, SKIPPACK, PA 19474 (484) 576-0233

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

White Haven Borough :
 :
 v. : Docket No. 2168 CD 2009
 :
 Reading Blue Mountain and :
 Northern Railroad Company :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Plan for Repair/Replacement of White Haven Wall* in accordance with the requirements of 52 Pa. Code Section 1.54 *et. Seq.* (Relating to service by participant):

VIA FIRST CLASS MAIL:

Terrance J. Buda, Esquire
Public Utility Commission
Commonwealth Keystone Building
PO Box 3265
Harrisburg, PA 17105-3265

James P. Blaum, Esquire
Luzerne County Courthouse
200 N. River Street
Wilkes-Barre, PA 18711

Donald G. Karpowich, Esquire
White Haven Borough
85 Deasher Road
Drums, PA 18222

Gino Andreuzzi, Esquire
Dennison Township
76 Walnut Street
White Haven, PA 18661

Thomas P. Pizano, Chairman
Luzerne County Courthouse
200 N. River Street
Wilkes-Barre, PA 18711

Jason D. Sharp, Esquire
PA Dept. Of Transportation
9th Floor Keystone Building
Harrisburg, PA 17105-8212

Sam Macurak, Jr., Chairman
Dennison Township
20 Macorak Lane
White Haven, PA 18661

Gary C. Fawver, Chief
PA DOT Right of Way & Utilities
7th Floor Keystone Building
Harrisburg, PA 17105-3362

Elizabeth J. Altero, Secretary
White Haven Borough
3122 Main Street
White Haven, PA 18661

Joseph Strok
PennDOT District 4-0
PO Box 111
Scranton, PA 18501

Samuel T. Guesto, Jr. Chief Clerk
Luzerne County Courthouse
200 N. River Street
Wilkes-Barre, PA 18711

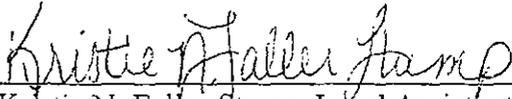
Kathleen Stortz, Secretary
Dennison Township
67 Coallagher Lane
White Haven, PA 18661

Wesley Westenhofer
RBM&NRR
PO Box 218
Port Clinton, PA 19544

Ron Sturgeon
Pennoni Associates
100 N. Wilkes-Barre, PA 18701

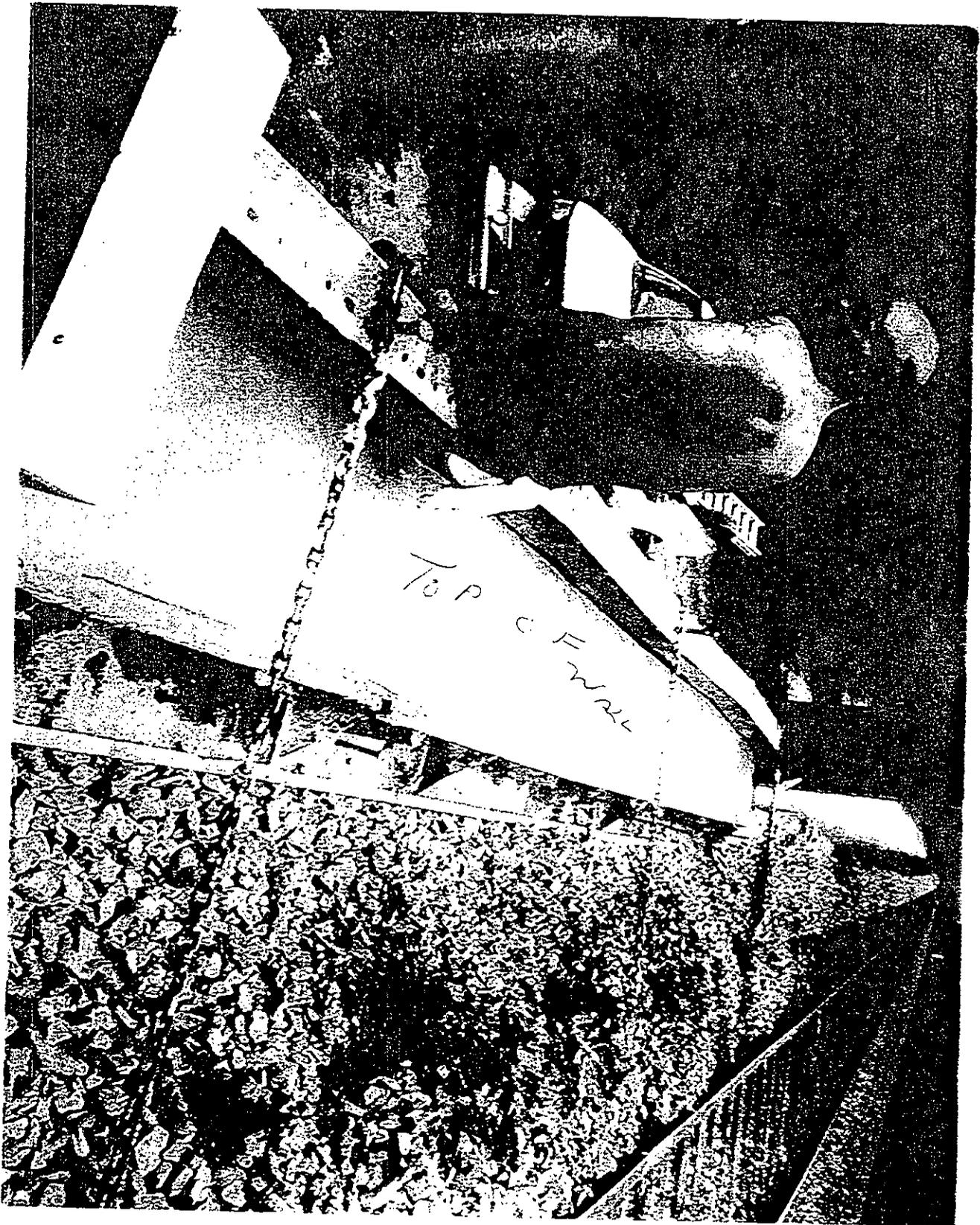
Honorable Ember S. Jandebour
Administrative Law Judge
PA Public Utility Commission
Room 317 Scranton Office Building
100 Lackawanna Avenue
Scranton, PA 18503

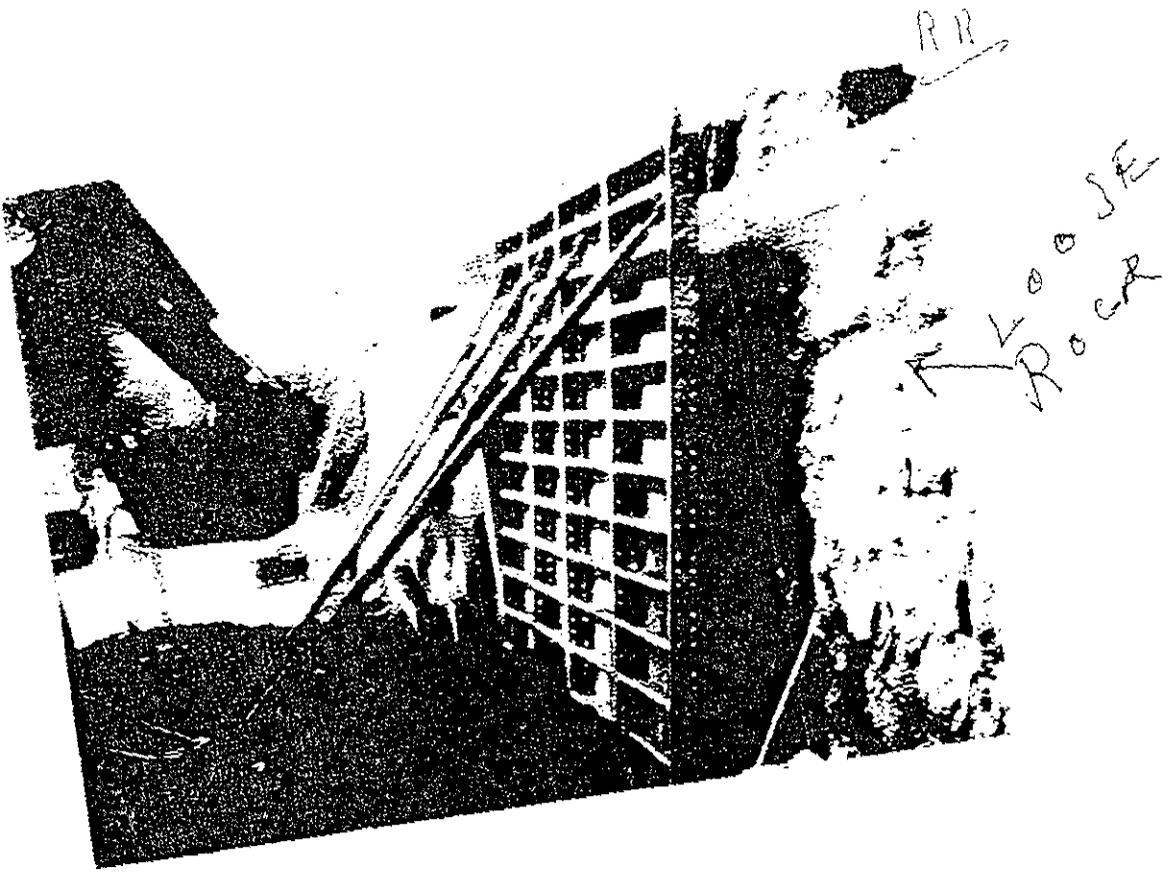
DATED: _____



Kristie N. Faller-Stump, Legal Assistant
to Paul R. Ober & Associates
234 North 6th Street
Reading, PA 19601
610-378-0121

FIRMS
WARR

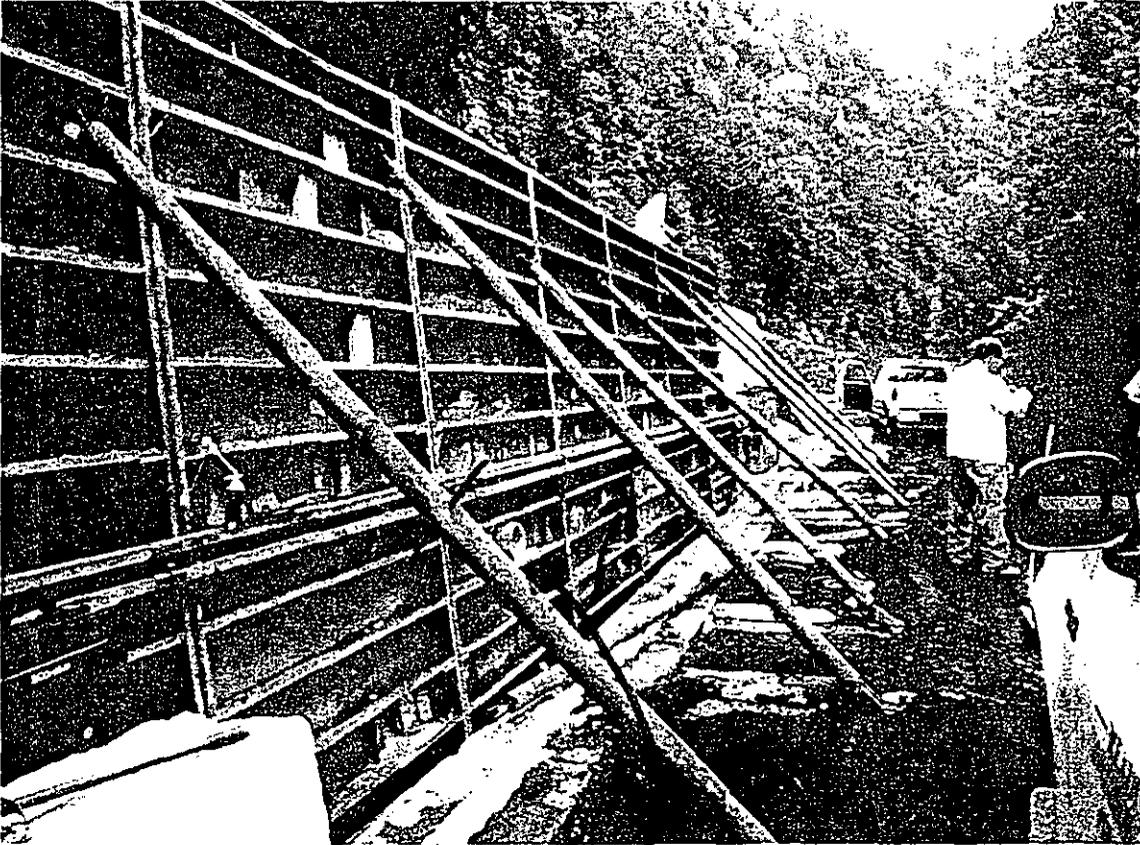




W

Melanie

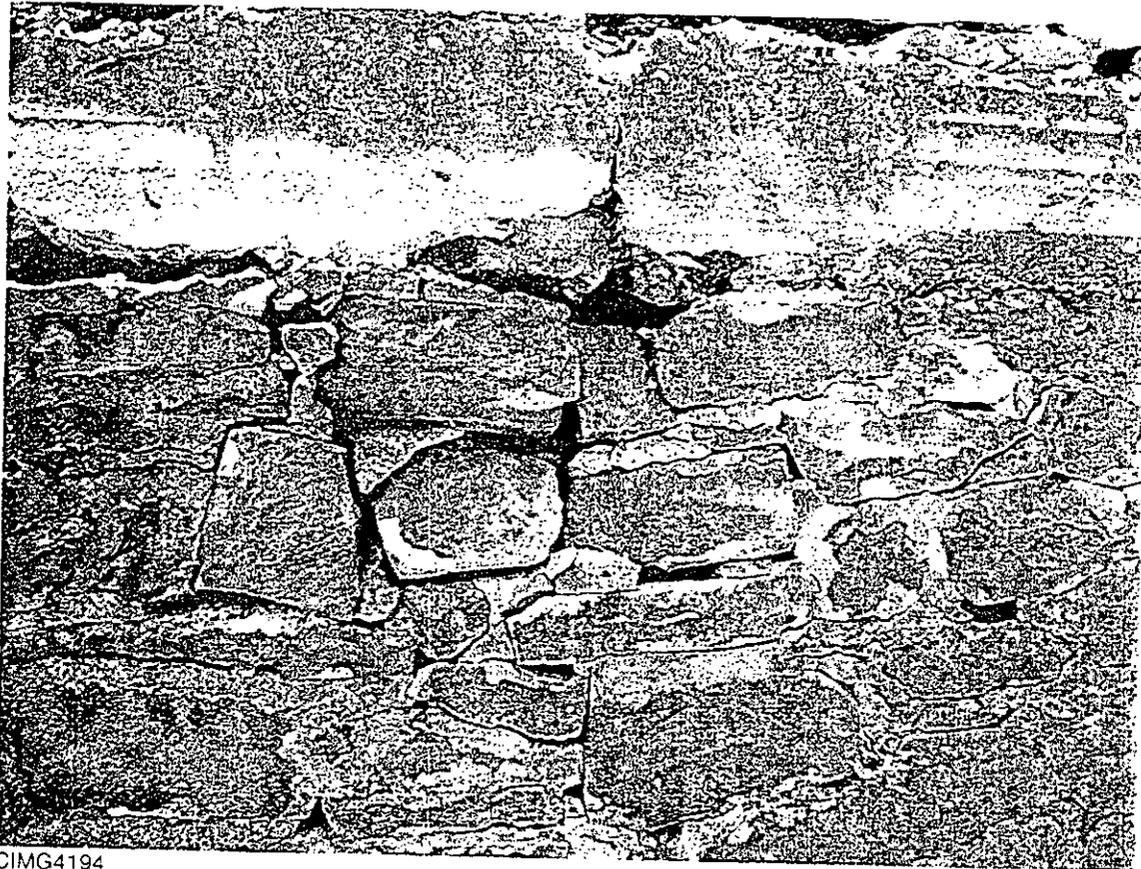
From: John Walaitis [jwalaitis@verizon.net]
Sent: Sunday, December 13, 2009 6:55 PM
To: melanieann1@verizon.net
Subject: 3 great iPhotos



CIMG4284

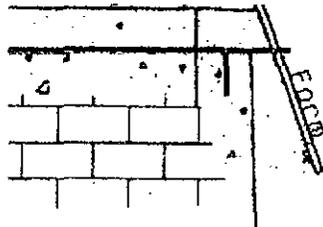
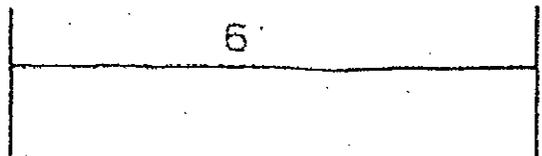
WEEP
HOLES

12/14/2009



CIMG4194

*New concrete wall placed
over this Road*



Mechanically fastened threaded bolt

#6 Rebar 18" O.C.
30" length
"L" bar

minimum thickness

wire mesh

Detail 1

Re-Steel 4' x 4' By 4 Gauge Deformed
ASTM 497-07

12" minimum thickness

Existing Stone wall

8" Diameter Weep Hole
8" O.C. 2' 6" above grade
Continuous throughout entire wall

#8 Rebar 3' O.C.
30" length

Use Class AA Cement Concrete
(PennDot Publication 408)

Keyway

existing grade



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Exhibit B



PENNONI ASSOCIATES INC.
CONSULTING ENGINEERS

June 24th, 2010

Mr. Harvey Morrison, President
White Haven Borough Council
312 Main Street
White Haven, PA 18661

RE: Reading Blue Mountain & Northern Railroad
Retaining Wall near G&A Hardware

Dear Borough Council:

We are in receipt of a sketch submitted as a design for "repair/replacement" of the above referenced retaining wall.

The sketch as submitted is lacking in construction detail and no specifications are provided for performance for the work. Further the work is characterized as a repair, not a replacement

- 1.) The existing retaining wall has failed, and in our opinion placing a layer of concrete over the top of the existing bulged and failed wall does not constitute a replacement.
- 2.) Pictures were supplied with the sketch, they are of some other wall and their relevance to this site's conditions is unclear.
- 3.) The Brenner report recommends replacement of the wall.
- 4.) There is no plan showing limits of construction, including footing location and limits of work at the top of the wall.
- 5.) There is no drainage layer to ensure functioning of the weep holes.
- 6.) Design frost depth should be indicated to ensure the footing is proposed below it.
- 7.) The footing is un-reinforced.
- 8.) The steel proposed appears to be shrinkage steel.
- 9.) The height of the wall is not shown.

10.) The existing wall has failed and is of questionable soundness to accept the concrete façade proposed.

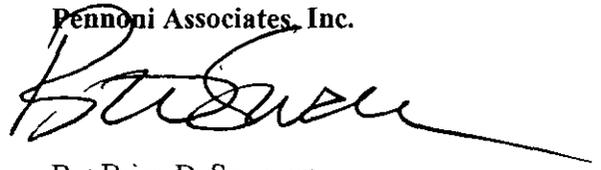
11.) The plan does not address removal of trees, show grading limits, or construction limits.

12.) It is unknown whether live loads, vibrations and surcharges were considered in the design.

If you have any questions or comments, please do not hesitate to call me at (570) 706-1890. Thank You.

Sincerely,

Pennoni Associates, Inc.

A handwritten signature in black ink, appearing to read "B. Swanson", with a long horizontal flourish extending to the right.

By: Brian D. Swanson

Borough Engineer

VERIFICATION

I hereby verify that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to the unsworn falsification to authorities.

White Haven Borough

Date: 9/8/10

By: Harvey Morrison Pres.
Harvey Morrison, Council President

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PA # 78176
SEAN W. LOGSDON, ESQ.
PA # 93096
KEVIN M. WALSH, JR., ESQ.
PA # 206334
85 Drasher Road
Drums, Pa 18222
(570) 788-6647

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

WHITE HAVEN BOROUGH, :
 :
 : **DOCKET NO. C-00004204**
 :
 v. :
 :
 :
 READING BLUE MOUNTAIN & :
 NORTHERN RAILROAD :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the forgoing Petition to Reconsider, Reargue, and/or Stay the Commission's September 3, 2010 Order upon the persons listed below by first class mail:

Hon. Ember S. Jandebaur
Administrative Law Judge
PA Public Utility Commission
Room 317 Scranton Office Bldg.
100 Lackawanna Ave.
Scranton, PA 18503

Thomas P. Pizano, Chairman
Luzerne County
Luzerne County Courthouse
200 N. River Street
Wilkes-Barre, PA 18711

Terrance J. Buda, Esquire
Law Bureau Prosecutory Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

James P. Blaum, Esquire
Luzerne County
Luzerne County Courthouse
200 N. River Street
Wilkes-Barre, PA 18711

Elizabeth J. Altero, Secretary
White Haven Borough
312 Main Street
White Haven, PA 18661

Samuel T. Guesto, Jr., Chief Clerk
Luzerne County Courthouse
200 N. River Street
Wilkes-Barre, PA 18711

Gino Andreuzzi, Esquire
Dennison Township
76 Walnut St.
White Haven, PA 18661

Wesley Westerhoefer
Reading Blue Mtn. & Northern Railroad
PO Box 218
Port Clinton, PA 19549

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Sam Macurak, Jr., Chairman
Dennison Township
20 Macorak Lane
White Haven, PA 18661

Reading Blue Mtn. & Northern Railroad
PO Box 218
Port Clinton, PA 19549

Kathleen Stortz, Secretary
Dennison Township
67 Coallagher Lane
White Haven, PA 18661

Paul R. Ober, Esquire
234 N. 6th Street
Reading, PA 19601

Ron Sturgeon
101 Wyoming Avenue, 4th Floor
Scranton, PA 18503

Joseph Strok
Penn DOT District 4-0
PO Box 111
Scranton, PA 18501

Jason D. Sharp, Esquire
PA Dept. of Transportation
9th Floor Keystone Building
PO Box 8212
Harrisburg, PA 17105-8212

Gary C. Fawver, Chief
Penn DOT Right of Way & Utilities
7th Floor Keystone Building
PO Box 3362
Harrisburg, PA 17105-3362

Donald G. Karpowich, Attorney-at-Law, P.C.

Date: 9/9/10

By: 
Sean W. Logsdon, Esquire
ID # 93096
85 Drasher Road
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(570) 788-6647
Attorneys for White Haven Borough



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 85 Drasher Road
 Drums, PA 18222



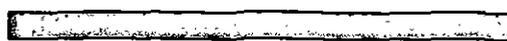
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 Pennsylvania Public Utility Commission
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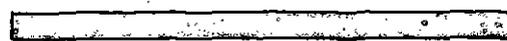


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