

# SPRINGER BUSH & PERRY P.C.

ATTORNEYS AT LAW

SHAWN N. GALLAGHER

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(412)338-9168

DOCUMENT

November 10, 2004

C-20030526

Office of the Chief Clerk  
Commonwealth Court of Pennsylvania  
624 Irvis Office Building  
Harrisburg, PA 17120

*Re: Norfolk Southern Railway Company v. Pennsylvania Public  
Utility Commission  
No. 2342 CD 2004*

Dear Sir or Madam:

Enclosed for filing, please find an original and three (3) copies of Harmar Township's Notice of Intervention in the above-captioned matter. Please time-stamp an extra copy and return it to me in the enclosed self-addressed, stamped envelope.

If you have any questions or concerns regarding the enclosed, please contact our office at your earliest convenience.

Very truly yours,

SPRINGER BUSH & PERRY P.C.

By

  
Shawn N. Gallagher

SNG/kdb

Enclosures

cc: All Parties of Record (w/encl.)  
Harmar Township c/o Thomas J. Affinito (w/encl.)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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No. 2342 C.D. 2004

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NORFOLK SOUTHERN RAILWAY COMPANY,  
APPELLANTS,

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION,  
APPELLEE,

DOCUMENT

v.

HARMAR TOWNSHIP,  
INTERVENOR-APPELLEE,

---

NOTICE OF INTERVENTION PURSUANT TO PA. R.A.P. 1531

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APPEAL FROM THE OPINION AND ORDER OF THE PENNSYLVANIA PUBLIC  
UTILITY COMMISSION ENTERED ON OCTOBER 5, 2004 AT DOCKET NO. C-  
20030526.

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SPRINGER, BUSH & PERRY P.C.

Blaine A. Lucas, Esquire  
Pa. I.D. No. 35344  
Shawn N. Gallagher, Esquire  
Pa. I.D. No. 88524

Two Gateway Center  
15<sup>th</sup> Floor  
Pittsburgh, PA 15222  
(412) 281-4900

*Attorneys for Intervenor-Appellee,  
Harmar Township*



## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document, by first class mail, addressed upon the persons indicated below which service satisfies the requirements of Pa.R.A.P. 121:

Benjamin C. Dunlap, Jr., Esquire  
Nauman, Smith, Shissler & Hall, LLP  
200 North 3<sup>rd</sup> Street, 18<sup>th</sup> Floor  
P.O. Box 840  
Harrisburg, PA 17108-0840

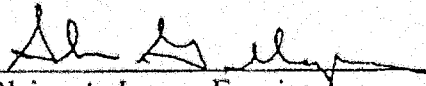
Jason D. Sharp, Esquire  
PA Department of Transportation  
Commonwealth Keystone Building  
9<sup>th</sup> Floor  
P.O. Box 8212  
Harrisburg, PA 17105-8212

Howard M. Louik, Esquire  
Assistant County Solicitor  
300 Fort Pitt Commons Building  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219

David A. Salapa, Esquire  
Assistant Counsel  
Law Bureau  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Jerry Pappert, Attorney General  
Commonwealth of Pennsylvania  
Strawberry Square  
Harrisburg, PA 17120

  
Blaine A. Lucas, Esquire  
I.D. No. 35344  
Shawn N. Gallagher, Esquire  
I.D. # 88524  
Two Gateway Center, 15<sup>th</sup> Floor  
Pittsburgh, PA 15222  
(412) 281-4900

Counsel for Harmar Township

Dated: November 10, 2004

LAW OFFICES  
**NAUMAN, SMITH, SHISSLER & HALL, LLP**

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200 NORTH THIRD STREET  
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HARRISBURG, PENNSYLVANIA 17108-0840

SPENCER G. NAUMAN, JR.  
J. STEPHEN FEINOUR  
GRAIG J. STAUDENHAIER  
BENJAMIN C. DUNLAP, JR.  
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July 27, 2005

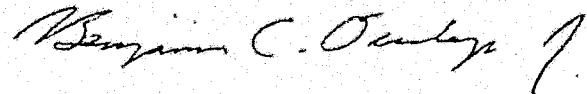
James McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**In Re: Harmar Township v. Norfolk Southern Railway Company; Allegheny County;  
and Commonwealth of Pennsylvania, Department of Transportation. PUC  
Docket No. C-20030526; Our File No. 14077**

Dear Secretary McNulty:

Pursuant to Ordering Paragraphs 5 and 6 of the Commission's Opinion and Order entered October 5, 2004, in the above-referenced matter and the Commonwealth Court's Opinion and Order filed June 10, 2005, at No. 2342 CD 2004, Norfolk Southern has replaced the crossing surface and cleared vegetation within 200 feet of either side of the subject crossing along its right-of-way. This work was completed by July 15, 2005. Please contact me if you have any additional questions.

Sincerely yours,



Benjamin C. Dunlap, Jr.

**DOCUMENT  
FOLDER**

BCDjr/jc  
cc: Randal S. Noe, Esquire

05 JUL 26 AM 9:07

SECRETARY'S BUREAU

**DOCKETED**  
JAN 05 2007

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BABST | CALLAND | CLEMENTS | ZOMNIR  
 A PROFESSIONAL CORPORATION

August 26, 2005

C-20030526

VIA FACSIMILE AND CERTIFIED MAIL

Benjamin C. Dunlap, Jr., Esquire  
 Nauman, Smith, Shissler & Hall, L.L.P.  
 200 North 3<sup>rd</sup> Street, 18<sup>th</sup> Floor  
 P. O. Box 840  
 Harrisburg, PA 17108-0840

DOCUMENT  
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RECEIVED

AUG 26 2005

PA PUBLIC UTILITY COMMISSION  
 SECRETARY'S BUREAU

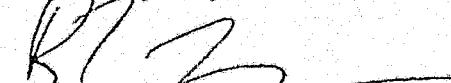
*Re: Harmar Township v. Norfolk Southern Railway Company  
 Commonwealth Court Docket No. 2342 CD 2004*

Dear Mr. Dunlap:

Since all applicable appeal periods have now expired, the Commonwealth Court's decision affirming the September 30, 2004 opinion and order of the Pennsylvania Public Utility Commission is now final. As a result, Norfolk Southern Railway Company is now obligated to undertake the repair and maintenance work set forth in the Commission's opinion and order, and Harmar Township requests that the Norfolk Southern Railway Company immediately proceed to do so. Please also be advised that on September 6, 2005, the Township will commence its repair and maintenance responsibilities as set forth in the Commission's opinion and order.

If the railroad has any questions regarding the Township's work on this project, please direct all calls to James Devore, Road Foreman, at (724) 274-4553 (office) or (724) 448-2211 (cell phone).

Yours very truly,

  
 Blaine A. Lucas, Solicitor  
 Harmar Township

BAL/dms

- cc: Harmar Township (c/o James R. DiPalma, Chairman) (via facsimile and Regular Mail)
- Jason D. Sharp, Esquire (via facsimile and Certified Mail)
- Howard M. Louik, Esquire (via facsimile and Certified Mail)
- David A. Salapa, Esquire (via facsimile and Certified Mail)
- James J. McNulty, Secretary (via facsimile and Certified Mail) ✓
- Gerald J. Pappert, Attorney General (via facsimile and Certified Mail)



Please Reply to:  
P O Box 840  
Harrisburg, PA 17108-0840

Benjamin C. Dunlap, Jr.  
E-mail: [bdunlapjr@nssh.com](mailto:bdunlapjr@nssh.com)

September 1, 2005

Blaine A. Lucas, Esquire  
Babst, Calland, Clements & Zomnir P.C.  
Two Gateway Center  
Pittsburgh, PA 15222

RE: **Harmar Township v. Norfolk Southern Railway Company; Allegheny County; and Commonwealth of Pennsylvania, Department of Transportation.**  
**PUC Docket No. C-20030526; NS File No. ST000017; Our File No. 14077**

Dear Mr. Lucas:

I am writing in response to your letter dated August 26, 2005, in regard to the above-referenced matter. Please be advised that Norfolk Southern completed its work of replacing the crossing surface and clearing vegetation within 200 feet of either side of the subject crossing along its right-of-way by July 15, 2005, in accordance with Ordering Paragraphs 5 and 6 of the PUC Opinion and Order entered October 5, 2004, in the above-referenced matter and the Commonwealth Court's Opinion and Order filed June 10, 2005.

Perhaps it would have been wise to have first checked with your client as to whether Norfolk Southern's work had been completed before sending out a demand letter to anyone even tangentially involved with this case, by certified mail no less according to your letter. A simple phone call to me would have also sufficed.

Sincerely yours,

Benjamin C. Dunlap, Jr.

BCDjr/jc

cc: Jason D. Sharp, Esquire  
Howard M. Luik, Esquire  
David A. Salapa, Esquire  
James J. McNulty, Secretary  
Thomas W. Corbett, Jr., Attorney General  
Randal S. Noe, Esquire

SECRETARY'S BUREAU

SEP 1 2 05 10:09 AM



-20030526

BABST | CALLAND | CLEMENTS | ZOMNIR  
A PROFESSIONAL CORPORATION

STEPHEN L. KORBEL  
Attorney at Law  
412 394 5627  
skorbel@bccz.com

DOCUMENT  
FOLDER

January 5, 2006

RECEIVED  
2006 JAN 10 PM 1:13  
PA:U.C.  
SECRETARY'S BUREAU

VIA U.S. FIRST CLASS MAIL

Philip Merlli  
Division Engineer  
Norfolk Southern Railroad Company  
425 Holiday Drive  
Pittsburgh PA 15220

PA PUBLIC UTILITY COMMISSION

JAN 09 2006

BUREAU OF TRANSPORTATION & SAFETY  
RAIL SAFETY DIVISION

RE: Harmar Township v. Norfolk Southern Railway Company, et al.  
No. 2342 C.D. 2004

Dear Mr. Merlli:

Thank you again for taking time during your holiday vacation to meet with Jim DiPalma, Chairman of the Harmar Township Board of Supervisors and Bob Seibert, Member of the Harmar Township Board of Supervisors regarding the unsatisfactory repairs to the pedestrian railroad crosswalk ("Crosswalk") as a result of the order issued by the Pennsylvania Public Utility Commission in the above-referenced litigation. I am writing to memorialize the agreement reached regarding the repairs Norfolk Southern Railway Company ("Norfolk Southern") has agreed to undertake at the Crosswalk. Specifically, Norfolk Southern has agreed as follows:

1. Norfolk Southern will begin the work described below on or before March 1, 2006, however, Norfolk Southern will begin such work at an earlier date if reasonably possible;
2. Norfolk Southern will remove all previously placed cold-mix asphalt at the Crosswalk and will replace such cold-mix asphalt with hot-mix asphalt in the manner described in paragraphs 3 and 4 below.
3. Norfolk Southern will place hot-mix asphalt on the Freeport Road side of the railroad tracks at the same height as the concrete stairs that approach the Crosswalk and at a width of four feet until the hot-mix asphalt reaches the ballast. From the ballast, the hot-mix asphalt will slope upward until it

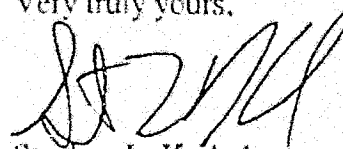
Philip Merilli  
January 5, 2006  
Page 2

reaches the railroad tracks at a width of four feet. On the Allegheny River side of the railroad tracks, Norfolk Southern will place hot-mix asphalt from the railroad tracks sloping downward at the width of four feet to the end of the previously laid cold-mix asphalt so that the height of the newly laid hot-mix asphalt will be level with the height of the asphalt walkway previously installed by Harmar Township.

- 4 Norfolk Southern will install rubber flangeway headers on the inside and outside of the railroad tracks on both the Freeport Road and Allegheny River sides of the railroad tracks and will place hot-mix asphalt at a width of four feet between the railroad tracks and the installed rubber flangeway headers.

Please notify me immediately in writing if this is not your recollection of the agreement reached on December 27, 2005 between Harmar Township and Norfolk Southern regarding the Crosswalk.

Very truly yours,



Stephen L. Korbel

SLK/sth

cc: Benjamin Dunlap  
Harmar Township, c/o James R. DiPalma, Chairman, Board of Supervisors  
David Fisher, Pennsylvania Public Utility Commission

FYI: Robert W. Seibert, Jr.



# County of Allegheny

DEPARTMENT OF PUBLIC WORKS

THOMAS E. DONATELLI, P.E.  
DIRECTOR

June 7, 2006

ORIGINAL

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

Dear Mr. McNulty:

RE: HARMAR TOWNSHIP V. NORFOLK SOUTHERN RAILWAY CO.  
PEDESTRIAN BRIDGE C-20030526

We received a copy of the above subject notice for Final Inspection to be held at the subject site Friday June 16, 2006. Please be advised that Allegheny County has no record of being responsible for any facilities in the subject crossing areas. We do not plan to send a representative to the final inspection.

Please call David L. Wright, P.E., Project Manager, at (412) 350-6645 if you have any questions.

Yours truly,

Thomas E. Donatelli, P.E.  
Director

cc: Howard Louik, Esq., Law Dept.  
Bernie Rossman, P.E.  
Dave Wright, P.E.

2006 JUN 13 11:59:03  
SECRETARY'S BUREAU

BA