

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

For a Judgment under Pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

REPLY AFFIDAVIT IN
FURTHER SUPPORT OF
RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT
AND IN OPPOSITION TO
THE PETITION

Index No.: 1175-12

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

Roswell Crozier, Jr., being duly sworn deposes and says:

1. As stated in my previous affidavit submitted in this matter, I am the Mayor of the Village of Painted Post ("the Village") and a member of the Board of Trustees for the Village (the Trustees and Mayor will be referred to as the "Village Board" and sometimes the Village Board and the Village will be collectively referred to as the "Village"). The statements in this affidavit as in my previous one are based upon my personal knowledge, including based upon my review of pertinent documents including those identified in this affidavit and in my previous one as well as those which are provided as part of the Administrative Record in this matter.

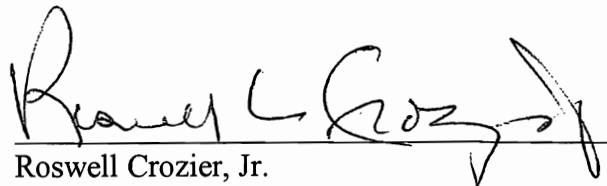
2. I submit this affidavit to clarify the record in this proceeding and to respond to several claims concerning the issues that the Village faced in September regarding certain freight rail operations which occurred during the nighttime.

3. As indicated in the affidavits of a few Petitioners, some Village residents did hear during nighttime hours rail operations including train safety whistles which occurred after 10:00 p.m. in the evening. The noise from these operations occurred over a few week period when the operations associated with the transloading facility (the "Transloading Facility") began with the sale of surplus water under the Surplus Agreement. It is important to note that the time for the movement of the train cars associated with the movement of surplus water by the Wellsboro and Corning Railroad was dictated to it by another rail company Norfolk Southern, with which neither Wellsboro and Corning, nor the Village (nor Painted Post Development), nor SWEPI, LP had any contractual relationship. In short, I am informed under applicable law, the time when a train may use a segment of track is solely within the discretion of the company which owns the rail line at issue. The rail line over which a portion of the operations to move water from the Transloading Facility to SWEPI's facilities in Pennsylvania takes place over a line which is not owned by the Wellsboro and Corning Railroad, but rather the other rail company, Norfolk Southern. As such, the other rail company determines when the rail line is available for use and at the beginning of September those times were after 9:00 in the evening.

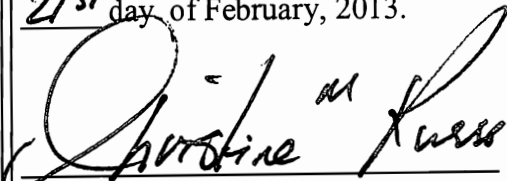
4. As a result of concerns raised by myself and Village residents, the other rail company involved was contacted by me on behalf of the Village residents and it made alternative arrangements so that operations associated the movement of the surplus water would not occur in the evening hours, but rather would occur during the day. It is important to note that under no circumstances did the Village, Painted Post Development, SWEPI or Wellsboro and Corning Railroad have any control over the noise issues of which some residents complained. In short, federal and state law require that trains operating use safety whistles and as such, we were not in a position to prevent such whistles from being utilized, which I understand was the noise which caused the most concern. Nor were the Village, Painted Post Development, SWEPI or Wellsboro and

Corning Railroad able to control when those rail movements occurred. Nevertheless, in my role as Mayor, I was able to insure that the movements occurred at a time when the Village residents who had expressed concern would not be disturbed.

5. I would also add that in the future, Village representatives, including myself as Mayor, would take whatever steps can be taken to address the concerns of Village residents, including from rail operations. That having been said, because of federal and state law applicable to rail operations, such noise, etc. could occur from other rail operations having nothing to do with the sale of surplus water. In any event, I would intervene in the future to attempt to prevent any such issues if Village residents were being impacted.


Roswell Crozier, Jr.

Sworn to before me this
21st day of February, 2013.


Notary Public

CHRISTINE M. RUSSO
NOTARY PUBLIC NO. 01RUG111363
STEBEN COUNTY, STATE OF NEW YORK
MY COMMISSION EXPIRES 6/7/20 16