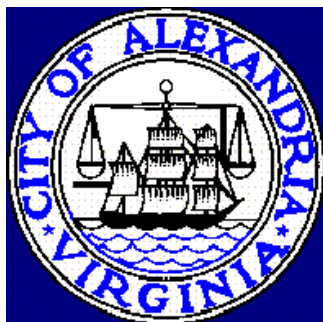


*Independent Review of City Personnel's Notification to the City
Council and Public of the Proposed and Actual Use of the Van
Dorn Yard as an Ethanol Transloading Facility*



**Prepared by
Steven Jansen and David LaBahn
December 10, 2008**

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Executive Summary

On April 9, 2008, Norfolk Southern Railroad Corporation and their facility contactor, RSI Logistics, began the transfer of ethanol from train cars parked in their Van Dorn Intermodal Facility to truck tankers bound for Fairfax County. This process began without any application for a Special Use Permit and before the Alexandria Fire Department, through its Code Enforcement and Fire Marshal Office, had a chance to inspect the facility.

No information was given by the city staff to the Mayor, Council or the nearby residents and businesses until late afternoon on May 15, 2008. As a result of the concerns of City Council and the community regarding the actions and inactions of city personnel this review was requested. This review and report was commissioned by the City of Alexandria's Committee of Inquiry and the reviewers were appointed by the City Council. As a result of this competitive process, the authors were selected and are both former prosecutors with over 30 years of legal experience, ranging from investigative stages through trial. In addition, they have association experience assisting local governments with identifying critical issues and providing recommendations for improvement. The authors were appointed on October 29, 2008, required to have the review completed by November 30, 2008 and a report to the Committee of Inquiry by December 10, 2008.

Based upon our review, the first contact regarding this facility was by Norfolk Southern Vice President David Lawson. He sought and received a meeting with Mayor Euille on June 20, 2006. The Mayor was involved with this meeting and a follow-up meeting on June 23, 2006 with City Manager Hartmann and other city staff. This time period from June-August of 2006 was the first opportunity to notify the Council and community about the proposed transloading facility.

The City's position was that a Special Use Permit (SUP) was required to proceed while Norfolk Southern claimed they were exempt due to federal preemption. Norfolk Southern stated their position in writing on September 18, 2006 and followed up on November 7, 2006 with a letter notifying the Department of Planning & Zoning that facility construction would begin soon after Thanksgiving and finish in January of 2007. This second opportunity by city staff to notify Council and the community should have created some urgency due to the pending construction and ethanol transloading activity. Instead, Planning & Zoning continued to wait for Norfolk Southern's Special Use Permit request.

In November of 2007, Norfolk Southern invited members of the Fire Marshal's Office to the Van Dorn Yard facility for the purpose of discussing the proposed use, installation of new fire hydrants and start-up date of April 2008. A memo was prepared by the Fire Marshal's Office and was distributed to Fire Operations, Code Enforcement, Emergency Management, Planning &

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Zoning, Transportation & Environmental Services and City Manager's Office. Even with this wide distribution, the memo fails to be presented to Council; especially considering it contained an opinion that the City had no code enforcement authority.

On January 16, 2008 the City Manager's Office called a meeting of department heads and other critical staff. Upon conclusion of the meeting, the City's position regarding the SUP remained unchanged, the City Attorney's Office and Planning & Zoning were designated as lead agencies, and the Fire Department was to monitor and report back to the City Manager's Office. During the meeting there was some discussion about drafting a memo to Council and a letter to Norfolk Southern; however, the City Manager's Office directive to the Fire Department ceasing all communication with Norfolk Southern was not properly addressed.

On April 4, 2008 City Attorney Pessoa changed his legal opinion, leaving the City without a preemptive legal strike, after reviewing the Surface Transportation Board's February 1, 2008 opinion in *Town of Babylon and Pinelawn Cemetery* and Chief Fire Marshal Rodriguez's January 18, 2008 memo. Public safety became the paramount concern for city staff and Fire Chief Thiel immediately notified the NOVA fire and emergency agencies. The change in legal opinion is the fifth failed opportunity to notify Council and the community.

Between April 9, 2008 and May 15, 2008, the City Manager's Office attempted to answer every question and finish the negotiations before any information was disclosed to City Council or the community; even though, notification did go out to developers of the Victory Center on May 3, 2008. On May 12th, two Council members made a request for information from city staff regarding tankers in the Van Dorn Yard. Upon these requests, city staff still held information pending the official release.

Since the release of information to Council and the community, both City Manager Hartmann and City Attorney Pessoa have acknowledged the numerous delays and mistakes in the notice of the planning and opening of the ethanol transloading facility at the Van Dorn Yard. This review allowed members of the city staff and the community, some for the first time, to be asked for and provide information. Staff members were given assurances of confidentiality and many willingly discussed their actions and inactions surrounding this issue.

While the subject of this review is the actions and inactions of city staff, it must be noted that Norfolk Southern never contacted the Mayor again until after the facility was fully operational. Further, Norfolk Southern was aware that the City had not done a Fire Marshal or Code inspection prior to them beginning the transloading process and failed to conduct any community outreach.

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In summary, this review found that city staff, during the review period, did not notify the Council or the community nor was there any plan to hold public meetings on this issue. The findings in this review report deficiencies and inactions by City personnel and their failure to notify City Council and the public of the proposed and actual use of the Van Dorn Yard as an ethanol transloading facility. These six recommendations take into account the inactions city-wide:

- Establish clear guidelines and policies for the documentation and reporting on meetings with businesses or constituents.
- Establish a policy for the handling of special issues or projects that should be assigned to a designated point person or agency. While interagency cooperation is necessary, a point of contact needs to be in place to monitor such activities while companies or constituents are required to obtain special use permits.
- The City Attorney's Office and City Manager's Office should develop procedures regarding timely legal opinions or advice to other commissions, committees, and departments.
- The City Manager's Office needs to establish clearer accountability procedures and responsibilities for agency liaisons.
- The City Manager's Office should review the staffing needs of each agency to adequately address workload needs versus the number of developing crucial issues throughout the City.
- Policy and procedures to ensure that the City will take the lead in community outreach and notification of critical information.

The reviewers would like to thank the individuals involved in this commissioned inquiry for their time, effort, and candor during data collection and interviews to ensure the accuracy of the information contained in this report.

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Introduction and Methodology

On October 29, 2008, the authors of this report were selected by the Alexandria City Council to examine city staff actions or inactions related to the opening of the Norfolk Southern Ethanol Transloading Facility. The authors are former prosecutors with more than 32 years of combined legal experience and possess extensive investigatory skills and trial litigation experience. Reviewers have worked for four different county governments and four non-profit associations at both the state and national level. Both have extensive experience assisting governmental agencies with the development of criminal justice initiatives and conducting assessments for the identification of deficiencies and proposing recommendations to correct these deficiencies.

The purpose of this review is to determine what transpired between the City of Alexandria and Norfolk Southern during the time period between June of 2006 and May 15, 2008. Authors will make findings and recommendations regarding City personnel's notification to the City Council and the public regarding Norfolk Southern's actual use of the Van Dorn Yard as an Ethanol Transloading Facility. The methodology adopted to conduct this review consisted of data gathering by the examination of approximately 2500 pages of documents, emails, city letters, memos, timelines and letters from the community in addition to conducting 26 interviews, over a two-week period, of City Staff and other individuals considered principle to this inquiry. All interviews were conducted in-person or via telephone. An interview protocol was developed and used during the interviews so consistent initial base-line information was gathered from each interviewee before exploring their personal involvement with the matter at hand. Additionally, the members of city staff were provided a confidentiality agreement drafted by the City Attorney's Office. All interviews conducted with the understanding that all statements provided would be anonymous and this report would not include any attribution of the contents of any interviews. This report will paraphrase the contents of an interview, but will not disclose the identity of the person interviewed. All italic print indicates a direct quotation from emails, letters, or memos.

It should be reflected that multiple attempts were made to speak with employees from Norfolk Southern, but requests were denied. Mr. John Edwards from Norfolk Southern replied by email on November 19, 2008 with the following: *It is our understanding that you already have access to NS's correspondence with the City during this period. That correspondence is available both through the City and, to a significant degree, available on the City's website. Further, NS has submitted a significant amount of information to the U.S. Surface Transportation Board, including the filing attached, which should provide some relevant information. Both the City and Norfolk Southern have submitted other information in that same docket (Finance Docket No. 35157), which filings are available at the Surface Transportation Board's website. All of this is on the public record. Notwithstanding that, NS and the City are in litigation regarding the Norfolk Southern ethanol transloading facility in Alexandria, both in Federal Court and the Surface Transportation Board. As such, I regrettably must decline your request.*

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Though this review was commissioned to determine the actions or inactions of city personnel during the time period between the initial meeting of Norfolk Southern and Mayor William Euille on June 20, 2006 to the City Manager's release of information memo to City Council on May 15, 2008, the authors considered events leading up to the above stated time and events simultaneously occurring within the City during the same period. It would be a disservice to the Committee of Inquiry, the City Council and the public not to review potential events that could have shaped City's decision making process. Since, some of these events are outside the scope of this commissioned review, observations were made without listing them in the Recommendation section. These outside-the-scope analyses are listed under the section entitled Observations.

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History

The City of Alexandria, Virginia is an urban community of 15 square miles and 135,000 people. With its stable residential districts, and its proximity to Washington, DC the city continues to attract new residents, tourists and business. As the City strives to maintain its high quality of life and quality of its built environment, there continues to be a strong demand for high-end residential housing, office and mixed use development in well-planned areas of the City. The City has experienced not only population growth, but an increase in the complexity of issues as it strives to meet these increasing demands.

The City's governmental structure was passed by voters in 1921 as a council-manager form of city government. This form of government centralizes legislative authority and responsibility in the elected City Council. The City Council only appoints three City Employees, namely, the City Manager, City Attorney and City Clerk. All three appointees have the authority to address or provide information to Council. Administrative authority and responsibility are held by the City Manager, who is appointed by the City Council. The current City Manager is James Hartmann who was appointed in 2005 and has approximately 2350 City employees. He had not been employed by the City before his appointment and had held two similar positions in the states of Colorado and South Carolina. A significant responsibility as to the Manager is the proposing of a yearly budget. During this review time period, eleven Working Sessions were held on the FY 2009 Budget from February 13, 2008 until the final Budget Working Session on May 5, 2008.

The City Council is composed of a Mayor and six Council members who are elected at-large for three-year terms. The Mayor, who is chosen on a separate ballot, presides over Council meetings and serves as the ceremonial head of government. The Mayor does not have the power to veto Council action. The Mayor and Council members are part-time positions, requiring most to have other full-time employment. Mayor Euille was first elected to the City Council in 1994 and elected Mayor in 2003 and again in 2006. Even though he is part-time, he has an office in City Hall, keeps regular office hours and routinely meets with community members, business leaders, and city staff and conducts weekly Mayor/Manager meetings.

The City Council members traditionally choose the person receiving the most votes in the election to serve as Vice Mayor. In the absence or disability of the Mayor, the Vice Mayor performs the mayoral duties. Vice Mayor Pepper was first elected to Council in 1985 and has served prior terms as Vice Mayor during her tenure on the Council. Three of the other Council Members were first elected in 2003, one in 2006 and one in 2007 as the result of a special election.

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Norfolk Southern Railroad and its predecessors have operated in the City of Alexandria for over a century. An important part of those operations have taken place at the Van Dorn Street Yard. Over the years, that yard has been very active. It supports traffic moving over the four adjacent main line tracks. These tracks are used by Virginia Railway Express and Amtrak as well as Norfolk Southern. Up until 2006, the yard served as an intermodal facility with nearly 100 trucks per day entering and leaving the yard. Van Dorn Street Yard is located in the western part of the city in an area that is in transition from being characteristically highly industrial. The immediate area includes industrial uses such as Virginia Paving and the Covanta Waste-to – Energy Facility.

During the past 20 years, the City has permitted residential development and has located their own educational facilities west end, notwithstanding the continued rail and other industrial uses. The community of Cameron Station was originally a military base. In 1996 it was sold by the Army to a developer and today there are approximately 2000 residential units including condominiums, townhouses and single family residences. The current listings of homes for sale in this community range from \$329,000 to \$945,000. In September of 2000, the city opened the Samuel W. Tucker Elementary School in this community. Another smaller development, Summers Grove, was approved and built 110 feet from the entrance to the Van Dorn Yard. While many cities have residential units close to railroad operations, Alexandria is different from other cities in that these homes are high-end and most are owner occupied.

Virginia Paving Company is located in close proximity to both the Norfolk Southern Ethanol Transloading Facility and the Cameron Station Development. During the time period of this review, a special use permit for Virginia Paving was discussed with community leaders and the Council reviewed the matter on two occasions after it passed the Planning Commission. These hearings occurred on October 14, 2006 and passed November 28, 2006 on a 4-3 vote. Many of the community leaders concerned with the Norfolk Southern operation appeared at the October Public Hearing. There are also numerous references to Virginia Paving Company in the Ethanol Transloading Facility Timeline Section of this report. The City has posted information on their website and created a Virginia Paving Community Liaison Committee to resolve any problems, conflicts or issues identified by the community related to Virginia Paving's operation.

The authors of this report were appointed on October 28, 2008 after submitting a competitive proposal through the City's RFP process and subsequent interview by the Committee of Inquiry. This report covers the time from Norfolk Southern's first contact with the City through Mayor Euille until City Manager Hartmann released his Memo to the Mayor, City Council, business and community leaders on May 15, 2008. The purpose of the review was to make findings of the city staff's actions and inactions regarding notification of City Council and the public concerning Norfolk Southern Company's proposed and actual use of the Van Dorn Yard as an ethanol

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transloading facility, including what transpired during the period to be reviewed, the people involved and the decisions that were made.

The *Ethanol Transloading Facility Timeline* contains the most specific facts that we could determine from the materials we requested and were provided. The interviews conducted under the RFP were done with assurances of confidentiality and included a confidentiality agreement. References to specific staff actions in this timeline are based upon written documentation not taken out of these interviews. The Findings section contains information revealed by both the records and the interviews but does not disclose the name of the person interviewed or contain any attribution.

The first contact which could be identified in the review occurred on June 20, 2006. This involved a meeting requested by David Lawson, Vice President of Industrial Products with Mayor Euille. David Lawson is the son of former City Manager Vola Lawson. Ms. Lawson's prior efforts for the City are evidenced by the naming of the Vola Lawson Lobby of the Alexandria City Hall. While Mayor Euille was involved in this meeting and a follow-up meeting during the regular Mayor/Manager Meeting on June 23, 2006, there is no evidence that the Mayor received any update or briefing until May 15, 2008. This review is focused on the staff's actions and inactions, but it is important to note that while Norfolk Southern (NS) found this matter to be of such significance that they requested a meeting with Mayor Euille, NS never communicated again or notified him of any actions until after he sent them a letter on June 16, 2008.

There were two notifications by city staff prior to the City Manager's memo. These occurred through the Fire Department on April 4, 2008 to their NOVA Fire Partners and the City Manager's Office on May 3, 2008 to the Victory Center Developers. All other notice or notification was held for the City Manager's Memo, including inquiry from two City Council Members on May 12, 2008. This lack of notice to the Mayor, City Council and the community led to this exhaustive review and report.

This report is based upon the thousands of pages of emails, letters, memos and timelines as well as letters from the community and Norfolk Southern. Also reviewed and included were the federal lawsuits filed after May 15, 2008 between the City and Norfolk Southern Corporation. One difficulty in building the timeline involved the lack of written agendas and notes relating to meetings held regarding the ethanol facility. While most city staff brought materials to the interview, some arrived without any materials covering this two-year period. A total of twenty-six interviews were conducted both in person and a few by phone. The interviewees included Members of City Council, city staff and members of the community. Every member of City Council or city staff who were requested to be interviewed agreed and many expressed appreciation to the reviewers for the ability to share their actions during this period. Some

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mentioned that this was the first time they felt staff received the appropriate forum to discuss their actions and were prepared to help the reviewers make certain this report is accurate.

The reviewers requested the opportunity to interview Norfolk Southern Employees and were not granted any interviews. Norfolk Southern provided materials already in the possession of the City. The stated reason for the declination was the pending litigation. There was a separate declination for another outside individual on advice of counsel.

The city staff, reviewed in this report, are very competent, experienced and devoted to their work serving the residents of Alexandria. Most departments are under-staffed and lack the resources that they desire. There is a good mix of senior staff and directors as it relates to their length of employment with the City. Some have been there for almost their entire careers while others recently came to the City from other jurisdictions. The City Manager's Office was reorganized in 2005 with both direct reports to the deputies and assistant as well as liaisons by the Deputy City Managers. This and other structural issues were examined by consultants retained by the City Manager to explore three vantage points: 1. Council relations; 2. Relations with the City Manager's Office and 3. Inter-departmental relationships. A November 5, 2008 draft was provided to the reviewers.

The City has responded to this issue by posting a tremendous amount of information on their website. The site contains links to emails, memos, letters and contains a timeline of events as well as Action Updates. The last posted on November 7, 2008. Special Assistant to the City Manager, Steve Mason, is listed as the Project Manager and the site is continuously updated. The City should be applauded for its transparency on this issue. The City has formed a Norfolk Southern Community Monitoring Group similar to those relating to Mirant and Virginia Paving.

The city staff's actions, mostly led by Fire Chief Thiel, outlined in the Ethanol Transloading Facility Timeline for the time period of April 4, 2008 until the review ends on May 15, 2008, show a tremendous amount of work by city staff to make certain that the City residents and employees would be safe. Unfortunately these efforts and accomplishments are diluted by the lack of notice from the City Manager's Office to the Mayor, City Council and the community. City Manager Hartmann has already publically acknowledged this critical mistake.

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Ethanol Transloading Facility Timeline

Time Period for Independent Review is First Contact with the City until Release of Information by the City Manager

6/20/2006 A meeting occurs between representatives of Norfolk Southern (NS) and Mayor Euille regarding plans for their Van Dorn Yard. A follow-up meeting is planned for NS to present this issue to appropriate City Staff at the next Mayor/Manager Meeting.

6/20/06 Email is sent by Gregg Fields, Engineering Supervisor, at the request of Art Dahlberg to Robert Rodriguez and Maurice Jones with contact information for NS regarding the installation of *a new Ethanol Transfer facility on Metro Road (across from Virginia Paving)*.

6/23/06 Weekly Mayor/Manager Meeting includes NS's proposed use discussed between NS representatives and key City Staff including City Manager (CM) Hartmann, Deputy City Manager (DCM) Jinks, Transportation & Environmental Services Director Baier, Code Enforcement Director Dahlberg, and Planning & Zoning Deputy Director Richard Josephson. City Attorney (CA) Pessoa was not in attendance and meeting included discussions of intensified use through ethanol transloading and the City's initial position that a Special Use Permit (SUP) may be necessary pending legal review.

7/12/06 Planning and Zoning Deputy Director Richard Josephson emails Assistant City Attorney Jill Applebaum regarding Ignacio's opinion regarding ethanol transloading. Email is forwarded to CA Pessoa.

7/12/06 Richard Baier emails Josephson regarding the SUP determination for *the ethanol tanker to truck transfer behind the VA Paving*.

7/17/06 Baier emails Josephson asking whether CA Pessoa is making the SUP decision.

7/17/06 Josephson emails Applebaum with specifics facts relating to the ethanol rail to truck operation. Specifics include the hours of operation, number of rail cars/trucks, destination of the trucks, *potential opening date of September/October (90-120 days from the June 2006 Meeting)*, and mention of *outreach and information to operation's neighbors*. Site map is included with the email.

8/7/06 Interdepartmental meeting regarding the Virginia Paving Process. After the meeting, DCM Jinks emails CA Pessoa whether his *office has rendered an opinion regarding the by-right ability (NS's view) or the need for an SUP*. Further states that *he believes an opinion has been requested but it was stated today no one (TES, P&Z) know if you reached conclusion*.

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8/10/06 Duane Perry reports by email to Jannine Pennell regarding a meeting held on August 9 *with a small Army of folks from Norfolk-Southern Railroad to discussed(sp) the proposed Ethanol transfer facility. Director Dahlberg addressed community outreach and proposed a three phase program where notification, concerns and solutions to the concerns would be*

addressed. Also, specific building issues were addressed as well as foam, Knox box and security personnel on site. The email concludes with the plan for a follow-up meeting to discuss the City's requests.

8/22/06 Email from CM Hartmann to Director Dahlberg and CA Pessoa with a copy to DCM Jinks asking for a status report regarding the *by right determination (Ignacio) and what other criteria/measures will be needed for development of such a facility (Art).*

8/22/06 CA Pessoa *concludes that the proposed ethanol transfer facility will require SUP approval...under Zoning Ordinance Section 4-1302(C).* He gives specific examples in his email and sends copies to CM Hartmann, DCM Jinks, Fogarty, Josephson, Applebaum and Dahlberg.

8/23/06 DCM Jink's emails Josephson asking who is going to forward CA Pessoa's opinion to NS.

8/25/06 Josephson sends an email to David Lawson (NS) informing about SUP requirement. Email concludes with a request to be kept informed *if you want to pursue the Special Use Permit and we can discuss the timing for consideration by Planning Commission and City Council as well as outreach to the community.*

9/18/06 William Galanko (NS), Vice President – Law, sends Josephson letter responding to 8/25/06 email stating 49 U.S.C. Section 10505(b) is controlling and the Surface Transportation Board has the jurisdiction thereby preempting local zoning ordinances. Therefore NS will not apply for SUP and *will commence work in the very near future, and anticipates that the facility will be open no later than January 2007.* The letter lists the prior meetings and speaks to the intent of NS *to be a good corporate citizen.* The conclusion expresses that he *will be happy to speak with your legal counsel concerning this matter.*

10/20/06 CA Pessoa responds to the September 18, 2006 letter by email to Galanko of NS stating that *the City of Alexandria does not agree, and rejects your claim of exemption.* He further offers *that filing a special use permit application under a reservation of rights would not be deemed a waiver of any claim or defense under federal preemption law.* He offers his phone number and states he will be back in Alexandria on October 25.

11/7/06 Galanko send a letter to Josephson referencing his 9/18/06 letter but no mention is given to CA Pessoa's 10/20/06 email. Rather, the letter states that he believes NS has not received any response. It states that NS was *initiating necessary terminal improvements (previously reviewed with appropriate city officials) soon after Thanksgiving.* The terminal improvements will be completed sometime after January 2007 and he is available to speak regarding the project.

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11/8/06 – 11/7/07 There is no record of any communication between City Staff and Norfolk Southern regarding the transloading facility. However, a meeting was scheduled for and attended by staff at the facility on November 8, 2007.

11/8/2007 A meeting was held at the NS Yard between NS and Deputy Fire Marshals Perry, Stanton and Assistants Fire Marshal Furr. *The purpose was to discuss the proposed use of the rail yard for the offloading of ethanol fuel directly from rail car to highway tanker. NS provided an educational briefing on how exactly the process will function.* The target date for opening was April of 2008 and staff was directed to prepare a briefing paper for the Chief Fire Marshal. This brief was completed and contains specific items relating to fire safety and environmental concerns regarding spills.

11/19/07 Fire Captain Cross attended a building familiarization drill at 5001 Eisenhower with companies from Fairfax. During the drill the Fairfax companies brought up *the ethanol transfer station being built in the rail yard off of Metro Road and that rail cars of ethanol were going to be brought to the site in Alexandria, and the product off-loaded into trucks to be transported to the Newington fuel storage area. They referenced 40 tractor trailers per day and state they have been planning and training for this hazard.* Cross immediately emails concerns to Battalion Chief Farri.

11/23/07 Battalion Chief Farri forwards Cross' email to Assistant Chief Middleton and Fire Chief Thiel and suggests that code be involved. Further, Farri indicates that he and Cross will put together a plan in case they need to address an incident at the Metro Road facility.

11/28/07 Fire Marshal Rodriguez forwards by email the briefing paper from the 11/8/07 meeting to Director Catlett. He recommends that it be shared with P&Z and T&ES. He concludes with; *as this is railroad property, they will be exempt from Fire Prevention Permits.*

11/29/07 Assistant Chief Middleton forwards Farri's email to Catlett and Rodriguez and asks if any of their staff is aware of an ethanol transfer facility.

11/29/07 Fire Marshal Rodriguez forwards by email the briefing paper and informs Russell Middleton that *as far as permits and plans, that this is railroad property is exempt from local regulation. They are installing additional hydrants and foam for Fire Department use. We were preparing to contact you about this.*

11/29/07 Assistant Chief Middleton sends an email to fire personnel forwarding the briefing paper and indicates that the ethanol facility will open in April 2008. He indicates that an Operation Plan must be developed and that this will be a unified endeavor between Code, Haz-Mat and Suppression personnel. By separate e-mail he notifies Emergency Management Coordinator Penn.

11/30/07 Emergency Management Coordinator Penn forwards the Middleton email to Charlie McRorie with the direction, *FYI, you want to get on top of this one! I am sure the LEPC will be very interested. Might be the first time City Council members hear about it!*

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12/3/07 Rodriguez forwards by email the briefing memo to Hamer and Josephson. He opines that *because this facility is on railroad property Code has no regulatory authority. However, we expect there will be some citizen concerns when this facility begins operation in April 2008.*

12/10-14/07 NS contacts Fire Protection Systems Unit (FPS) to inform them that they had installed several fire hydrants on their property. The FPS Supervisor advised the City may not have permit authority for the hydrant installations on railroad property. An inspector was dispatched and one hydrant was found to be code compliant.

12/11/07 Fire Captain Cross emails to Farri additional concerns and questions after reviewing the briefing paper. He concludes with, *if this development is actually happening, there are numerous operational issues which need to be addressed.*

12/12/07 Charlie McRorie presents the ethanol briefing paper to the Members who were present at the Local Emergency Planning Committee. Neither Council Member was able to attend nor any materials sent to them following the meeting. Further, due to their interpretation of Roberts Rules of Order, agendas, materials and minutes of the meeting were not sent to members who did not attend.

12/16/07 Battalion Chief Farri forwards the operations questions to Assistant Chief Middleton with a copy to Chief Thiel. He states that they should get started on an ops plan and try to get ahead of the April start date. Further he states, *as it stands right now, it appears that we do not have enough resources in place to handle a large spill if it were to occur... Maybe we could get the people that own the ethanol station to supports us with our resource needs before they start or finalize the project.*

12/17-21/07 FPS staff did a courtesy inspection and hydrostatic test of all hydrants on the NS property.

12/18/07 McRorie emailed Hazardous Materials Officer Glen Rudner of the Virginia Department of Emergency Management (VDEM) and former Alexandria employee with the materials he presented to the LEPC. Further, he states that *AFD and Code Enforcement are having difficulty getting information out of Norfolk Southern. Can you help?*

12/19/07 Farri emailed Middleton suggesting that they contact Fairfax Fire for help in the resource needs and plans. Finally, he suggests approaching city leaders so that they are *advised as to the inherited(sp?) dangers we are going to be responsible for.*

12/20/07 Assistant Chief Middleton responds to Farri that he will contact Fairfax and Baltimore and will forward the ops plans upon receipt. Further, he states that *before the City is involved we first need to do our homework which includes analyzing the data...putting together an ops plan and finally coming up with a resource list that will support the plan.* He stated that it was *imperative that Code Enforcement is involved with the planning and presentation.*

12/24-28/07 FPS staff did a flow test of the NS hydrants at the request of Fire Operations in order to determine water availability at the site.

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1/1/2008 Rudner of VDEM emails Charlie McRorie and copies Chief Thiel that he has reviewed the materials and has identified a major issue regarding the *Foam*.

1/1/08 Fire Chief Thiel emails DCM Evans regarding the Ethanol trans-loading facility at Norfolk Southern intermodal ramp in Alexandria with copies to Catlett, Penn and Middleton. He indicates there are going to be *some meaningful challenges to address with respect to fire protection/hazmat preparedness. Probably the subject of a meeting in the near future...our present understanding is this facility will open in April/May 2008. Just FYI...*

1/1/08 Chief Thiel thanks Rudner for his review and indicates that *any issues VDEM anticipates with this facility will be important to know as we engage our policymakers in a discussion about how to ensure the safety of our city with respect to this fixed property and transportation in/out.*

1/2/08 A NS engineer contacts the Fire Prevention Office to inquire about purchasing and mounting a Knox Box at the facility.

1/2/08 Michele Evens emails Thiel and Catlett asking how this matter has come forward. She states, *we had understood that City land use approval was required. Has NS come in to request such approval?*

1/2/08 Catlett responds by email to DCM Evans and copies Chief Thiel, DCM Jinks and Fire Marshal Rodriguez that *it is my understanding from Bob Rodriguez's previous emails that all of this is being conducted on railroad property. I believe he indicated that there was no avenue for city review. From my past dealings with railroads, I believe they are governed by federal regulations that exempt them from local authority. I believe Bob has confirmed this with PZ, but I'll ask him to confirm.*

1/2/08 Rodriguez emails stating *I forwarded all the information to Farrell to make her office aware. When I sent the e-mail to Farrell I indicated this may be a citizen issue with Cameron Station. I did not hear back from either Farrell or her staff on this matter. Further he stated, we are working in an advisory capacity to address hydrant installation/testing, fire extinguisher placement and tours of a similar facility in Baltimore for Fire Operations staff.*

1/2/08 DCM Evans emails Catlett and Thiel with copies to CM Hartmann, CA Pessoa, DCM Jinks and Planning and Zoning Director Hamer stating, *there was a top management level discussion on this with Norfolk Southern some time ago before either of you were here. I think before you (the Fire Department/Code Enforcement) do anything further, we need to find out what is going on. As we recall, there is a requirement for City approval in our view. Please do not communicate with Norfolk Southern further until we have determined the status of this. Ignacio, we probably need to find out what is going on.*

1/02/08 Hartmann forwards the previous email group plus Josephson a copy of the 8/25/06 email to NS stating that the City is requiring an SUP.

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1/2/08 Chief Thiel emails Catlett, Rodriguez, Penn, North and Middleton stating, *while we may continue our research in a generic fashion, please do not contact Norfolk Southern or any of its affiliated subcontractors, etc. until further notice. (Some higher-level discussions need to take place beforehand.)*

1/3/08 DCM Evans emailed Code Enforcement Director John Catlett and copied CM Hartmann, CA Pessoa, DCM Jinks, Chief Thiel and Fire Marshal Rodriguez saying, *John, please do NOT do anything further on this. Jim has forwarded to you the City's position and we stand by that position. Code Enforcement (including Bob) needs to cease any involvement in this matter for the time being. Ignacio will likely handle this from now forward. If you have any further questions about this, please call me. This is a very sensitive issue and the City has established its position on the matter.*

1/3/08 Chief sends an email to Farri and Furr with copies to Middleton, Rodriguez, Cross, Penn and North saying, *the rumors about this facility are false. Effective immediately, there is to be no more contact with Norfolk Southern and/or any of its subcontractors, vendors, etc. until further notice. General planning for our Department to prepare for the increasing prevalence of ethanol in transportation is OK...provided there is no specific effort directed towards this 'notional' facility in Alexandria. Stated more directly, please stand down. Appreciate all the effort placed into this so far. I feel confident it will be put to good use in the future.*

1/3/08 Assistant Fire Marshal Furr emails Duane Perry indicating that *we have not done anything wrong – just politics. If you have any saved emails or copies of any emails where you, Art, or whomever met with Norfolk Southern or discussed these issues please forwards them to me or make copies for me.*

1/4/08 A phone call from Norfolk Southern was received by the FPS Supervisor. NS was advised that he could not comment or assist any further. The NS representative was directed to contact the City Manager's Office for further details.

1/5/08 – 3/31/08 There is no record of any communication between City Staff and Norfolk Southern regarding the transloading facility.

1/09/08 Paul Williams from NS states in an email to Glen Rudner of VDEM that the *NS Safety and Environmental Groups have been actively working with the City of Alexandria Fire Marshal's Office for over a year. We have met with them twice at the site to show them where the transloading will occur and where the office trailer will be located. We have asked them where they would like the "Knox" box located so that they will have a key to the facility. NS has agreed to have our contractor provide 1,600 gallons of alcohol resistant foam on-site (in 5 gallon containers) a cart to haul the foam to thee cars, and a heated storage building to house the foam. We have recently completed the installation of a new water main and several new fire hydrants in the facility. We even consulted the Fire Marshal's Office on where they want the foam storage building located on our lot. We are currently working with our contractor to arrange to have several members of the Fire Marshal's Office (at their request) tour the Baltimore ethanol facility currently be operated by the same contractor. This is supposed to take*

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place in January. I have also offered the head of the City's Haz Mat group a free scholarship to Pueblo in April of this year. It sounds to me like the various agencies within the City are not communicating with each other. I don't know what else NS can do to be more accommodating or provide more information.

1/10/08 Chief Thiel emails DCM Evans stating that we definitely need to have a meeting ASAP with all the City players. He has new information that NS is moving ahead quickly with the Ethanol transloading facility.

1/10/08 **Notice of Important Meeting** sent by City Manager's Office under DCM Evan's name.

1/10/08 Planning and Zoning Director Hamer to send Rich Josephson instead to the Jan 15/16 meeting since he knows more about the situation.

1/10/08 Catlett emails Rodriguez that Assistant fire Marshal Furr may attend. Further, *Chief wants all involved to be at the meeting so all can be placed on the table and the air can be cleared.*

1/14/08 CFM Rodriguez sends email to Chief Thiel stating *we had a staff meeting to discuss November 8- January 4. In addition, they discussed 2006 with prior Director of Code Enforcement (at that time Chief Fire Marshal position was vacant). A memo was prepared outlining the various meetings and calls between July 12, 2006 and January 4, 2008. Contents of memo are incorporated in timeline.*

1/16/08 Meeting occurs at the City Manager's Office. CM Hartmann, DCM Evans, CA Pessoa and Chief Thiel are among the attendees. CA and PZ are designated the lead agencies and materials are requested of other departments. At least two action items were discussed in the meeting; a letter was to be prepared by the CA's Office to NS and as well as a draft Council Memo.

1/18/08 Chief Fire Marshal Rodriguez drafts memo for CA Pessoa outlining the actions, concerns and opinions of the Fire Department including Code Enforcement, Fire Marshals and Fire Operations/Suppression. The memo concludes that *the costs associated with the above requirements are projected at \$2 million. These initial cost outlays are general estimates as of the writing of this memorandum; however, staff can provide more detailed estimates should they be required at a later date. In summary, an ethanol transfer facility in the City of Alexandria will present a significant fire operation problem. The problem must be addressed through strong on site fire protection measures and fire prevention inspection activities coupled with immediately available firefighting equipment that is specialized in handling alcohol based fuel emergencies. Such emergencies necessitate rapid intervention by highly trained personnel in order to minimize the hazards to life, safety and commerce in the surrounding areas. Only through the above measures can the Alexandria Fire Department hope to continue to maintain and preserve the City's valuable building stock in the presence of this type of operation. Please feel free to contact me if you have any questions or need further information on this matter.*

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1/18/08 Josephson emailed to CA Pessoa that *the nearest home in Summers Grove would be located 110 feet from the proposed ethanol transfer operation (trailer parking area) and approximately 900 feet from the proposed rail off-loading area. The access road into the facility is Metro Road, which is immediately adjacent to the Summers Grove townhouse development. Additionally, the off-loading area is located approximately 250 feet from the field at Cameron Station, 300 feet from new townhouses in Cameron Station and approximately 640 feet from Samuel Tucker Elementary School.*

1/28/08 Fire Marshal (FM) Rodriguez emails CA Pessoa and Josephson that a security fence has been installed in the NS Yard.

2/1/08 The Surface Transportation Board (STB) issues its decision in Town of Babylon and Pinelawn Cemetery – Petition for Declaratory Order – STB Finance Docket No. 35057.

2/5/08 Photos of NS progress on the site are sent to Fire Marshal Rodriguez.

4/1/08 FM Rodriguez emails to CA Pessoa and Josephson that *we received a voice mail message this morning from Kelley Minniehan (517 -974-4480) of RSI Logistics. He wants to put keys in their Knox Box at the NS site. He stated they will be starting up operations shortly. We have not received any further direction since our meeting several months ago with the City Manager at which time we were directed to monitor and report. Can you advise how to proceed?*

4/2/08 Tony Rosenthal of RSI Logistics calls Russell Furr to advise regarding the opening of the facility and delivery of the keys to the Knox box. He leaves a voice message.

4/3/08 FM Rodriguez calls Jeffery Farner in Planning and Zoning to attempt to determine if Josephson had made a determination on NS's use.

4/4/08 Deputy Director of Planning and Zoning Josephson emails Farner with a copy to CA Pessoa stating *we have said in the past that the use would require an SUP. If they begin operating without one, it would be a violation. Ignacio is familiar with the situation.*

4/4/08 Telephone call and email from Rosenthal of RSI requesting a meeting and turning over of the keys. He states they intend to begin *our operations on Tuesday 4/8 and will have Knox Box set-up before then.*

4/4/08 FM Rodriguez emails CA Pessoa, Chief Thiel, Josephson and Catlett that *there are ten brand new tank cars located on the siding inside the perimeter fence. We also just received another phone (call) requesting to place keys in Knox Box at the facility and meet with on-site staff to go over plant and process. Please advise if we need to take any further action.*

4/4/08 Chief Thiel emails CM Hartmann, DCM Evans, CA Pessoa, Director Catlett and FM Rodriguez stating *I generally understand the political/legal sensitivities associated with this change-of-use at the Norfolk Southern Intermodal Ramp. That said, we are now "way behind" in terms of our preparation/readiness for an emergency event involving bulk quantities of ethanol.*

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Our needs go far beyond site familiarization and training on the transloading process. We do not have the equipment or supplies to handle a fire at this site, and neither do our regional partners. (I.e. we can't just call for mutual-aid and get what we need.) There's a lot we need to do at this point...recommend we get a meeting of the principals together ASAP. Also, we need to notify our Operations folks, VDEM and FFX/ARL counties without delay.

4/4/08 CM Hartmann emails CA Pessoa with copies to the same email grouping, *Ignacio can't we put some sort of legal pressure on this intensification of use?*

4/4/08 Deputy Director Josephson emails to the group, *we have maintained that this use requires an SUP and have advised Norfolk Southern in the past about this. I don't see how we can allow this. Ignacio, please advise.*

4/4/08 Chief Thiel makes second request of CM Hartmann and DCM Evans that he be allowed to give an appropriate notification to his department and surrounding areas.

4/4/08 CA Pessoa emails to CM Hartmann, DCM Evans, Chief Thiel, Director Hamer, Director Catlett, FM Rodriguez, Deputy Director Josephson the following, *unfortunately since we last met on January 16 to review this potential use at the Norfolk Southern facility, the Surface Transportation Board (STB – the successor to the Interstate Commerce Commission as the federal regulatory agency with oversight of railroad operations) has again addressed the scope of federal preemption of local zoning laws as such local laws may effect railroad transloading operations. “Transloading” is a term of art in the bulk transportation regulations. It means transferring bulk shipments from the vehicle/container of one mode of transportation to that of another mode, at a terminal interchange point. **Under this most recent decision, local zoning regulation of material transloading from rail car to truck, or from truck to rail car, such as is being proposed here for ethanol, has now unequivocally been found to be preempted.** This preemption exists even if the transloading is handled by a contractor, so long as the contractor is acting as the agent of the railroad, and is taking delivery of or loading a bulk product without making significant processing changes to the material at the rail site. **This finding of preemption is especially true as to pre-activity permit (such as SUP) which entails any substantial delay or affords the locality any significant discretion to allow or prohibit the transloading use.** However, traditional health and safety codes, such as building and fire prevention and haz mat regulations, are not preempted, so long as such codes regulate the manner in which the use is conducted, are reasonably objective in the standards imposed, are not applied in a discriminatory fashion, and will not have the effect of unreasonably preventing the conduct of the use. I understand that the proposed ethanol transloading use will comply with all such existing regulations. I would note that new health and safety regulations may be enacted, so long as they meet the foregoing requirements and give the rail carrier a reasonable time to comply. Accordingly, I believe Adam should undertake the notifications he thinks appropriate. **Since the City is now left with no viable zoning objection to the use, such contacts and activities cannot fairly be seen as evidencing the City's acquiescence in the use.** Please let me know if you have any questions.*

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4/4/08 Chief Thiel expresses concern regarding the limitations of his Department and the Regional Partners to deal with a significant event.

4/4/08 CM Hartmann directs Thiel to prepare a gap analysis and go forward with the notification process.

4/4/08 Chief Thiel sends the notification via email to his Department and NOVA Partners and also directs that an operation plan and resource needs assessment be done immediately.

4/6/08 Chief Thiel directs his personnel not to negotiate with NS. The strategic discussions and negotiations are to come from the CMO and CA.

4/8/08 Chief Thiel emails CM Hartmann and DCM Evans suggesting *a meeting of the principals to develop a strategy for addressing subject.*

4/9/08 NS/RSI begins transloading ethanol in Alexandria.

4/9/08 CM Hartmann responds by email to Chief Thiel suggestion of a meeting with copies to DCM Evans and CA Pessoa. *Yes. Please make sure we are included and someone is prepared to go over the process they are using and where the vulnerable points occur and the site layout. We will also need to draft up something that can be distributed to other Stakeholders/general public. Finally, we need to go on record with NS Railroad regarding our position. Lots to discuss. Who do you anticipate inviting?*

4/9/08 Chief Thiel responds to CM Hartmann and DCM Evans that, *given what has happened so far, I wonder if the gravity of the situation might be conveyed better if the meeting is called by the CMO. I think at this point my real question is how we're going **to obtain the necessary resources to be prepared for this new hazard? Do we have the power to negotiate with NS?** We certainly need the City Attorney, PZ, Code, TES, and Fire at the table; there might be others? I'm happy to take the lead...just let me know and we can set it up.*

4/9/08 Nancy Coats confirms a meeting of department heads RE Ethanol Transloading for 4/11/08 at 1:00 pm in the CMO Conference Room.

4/11/08 Meeting occurs at the City Manager's Office. Attendees include CM Hartmann, DCM Evans, CA Pessoa, Chief Thiel, Director Catlett, Emergency Management Coordinator Penn, Director Baier and Deputy Director Josephson. Other City Staff may have attended meeting. Chief Thiel is given the lead role in negotiating with Norfolk Southern with oversight by the CMO and legal assistance from CA.

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4/14/08- Chief Thiel emails David Lawson (NS) with copies sent to CM Hartmann and DCM Evans introducing himself and explained that *I'm writing to seek you assistance with addressing the potential impacts of ethanol transloading at the NS intermodal facility here in Alexandria. While I'm not yet completely familiar with the history of this facility, my present understanding is that ethanol transloading operations have been recently initiated on the site. I'd like to get together with you and your team at your earliest convenience to discuss the transloading operation and how the Alexandria Fire Department can ensure we are properly prepared, trained, and equipped to protect your facility and our City. Please feel free to contact me directly using my information below, or my mobile.*

4/14/08 Chief Thiel and David Lawson (NS) speak by phone and agree to a meeting. He begins the process of setting up a meeting with Department Heads and NS.

4/16/08 Meeting scheduled for 4/21/08 at 8:30am

4/17/08 Norfolk Southern cannot make meeting on 4/21/08 so the meeting is rescheduled for 4/25/08 at 8:00 am in the Fire Department Conference Room. Invitations are sent to Director Catlett, Director Hamer, Assistant City Attorney (ACA) George McAndrews, Emergency Management Coordinator Penn and Director Baier.

4/18/08 ACA McAndrews expresses opinion that CA Pessoa will not be at the meeting on 4/25/08.

4/25/08 Meeting occurs at the Fire Department Conference Room. Attendees include representative from NS and RSI with Chief Thiel, Emergency Management Coordinator (EMC) Penn, Director Baier and ACA McAndrews. The meeting reviewed the ethanol transloading process and ended with the Fire Department scheduled to deliver a detailed needs assessment to NS by Monday, April 28, 2008.

4/28/08 EMC Penn sends email noticing City Staff of the information received in the meeting with NS/RSI on 4/25/08.

4/29/08 FM Rodriguez emails Chief Thiel that his staff completed a survey of the NS ethanol transloading facility on 4/28/08. In summary the report states that *generally speaking, the facility is in compliance with the code...Secondary containment is in place for the facility. However, it is unclear whether the containment provides sufficient capacity...Staff has asked for the terminal manager to provide specifics regarding this item...A comprehensive Fire Safety and Evacuation Plan is under development per section 404 of the Fire Code and must be reviewed and approved by this office. Staff is working with Mr. Tony Rosenthal of RSI Logistics to provide a fully comprehensive list and review of the facility.*

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4/29/08 Chief Thiel mails and emails a letter to Michael Webb (NS) outlining the needs for the Fire Department - Equipment \$321,000 and Annual Maintenance of \$50,000. Code Enforcement – Grounding compliance, secondary containment capacity, new hydrant flushing/finalization, material safety data sheets for the foam reserve and development/review/approval of a comprehensive fire safety and evacuation plan for the facility. Office of Emergency Management – Homeland security threat assessment and if there are recommendations they will be shared with NS as soon as possible. Transportation and Environmental Services – Haul permits for the trucks leaving the facility and storm water pollution and prevention plan. He concludes with *one final issue concerns the ongoing need for collaboration between NS and the City to provide accurate information for our community concerning the NS Van Dorn Intermodal facility and ethanol transloading terminal. In summary, the City looks forward to working in partnership with NS to protect your investment, our citizens, infrastructure, and the environment. Since ethanol transloading operations are underway at your facility, we know NS will continue viewing this matter with a sense of urgency and I look forward to our next discussion and/or meeting.* This letter is copied to CM Hartmann, DCM Evans, CA Pessoa and other interested parties.

4/30/08 CM Hartmann emails Steve Masson, Special Assistant to the City Manager, and copies DCM Evans, Chief Thiel and CA Pessoa saying, *Steve, I need you to coordinate the development and public release of information (Council, then Cameron Station, Summers Grove, others) of Norfolk Southern's Ethanol transloading operation. Please work with Adam and Ignacio. We need to be clear that this is a legal operation operating outside our regulatory environment. Michele and I will have final review responsibility. I would like to have something by the end of today or first thing tomorrow.*

5/1/08 Chief Thiel follows up with Mike Webb of NS regarding his email of 4/29/08 and references *we're getting close to the point of initiating our "community conversation" regarding the facility, and look forward to working collaboratively with NS.*

5/2/08 DCM Evans emails CM Hartmann, Chief Thiel, CA Pessoa and Special Assistant Mason regarding the Council Memo. She states, *I have tried a slightly different approach with this text for our memo to council. Please take a look and give me your feedback. The purpose is to inform council and then the community. I have left out all of the details of the letter to NSC. Ignacio, since much of this is from your email, would you be sure it is correct from the legal side? Adam, do we have any photos of what this operation looks like? It sounds bigger than it is, I think. If we don't can we get some so people can see what we are talking about? Just a few good photos of the site, showing the rail cars, a truck and the platform, fence and storage shed. My other question is what hours and days are they operating? Is it 24/7? Can we find out? A big question will be what are the operations, are they at night and on weekends.*

5/3/08 DCM Evans emails Chief Thiel requesting information about what NS has done to date to address safety. She states that *trucks going during the day and the night which would be a neighborhood concern.*

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5/3/08 DCM Jinks emails Joseph Brennan from the Victory Center (a commercial development adjacent to the ethanol facility) notifying him of NS's operation.

5/5/08 DCM Evans emails Chief Thiel requesting days/hours of operation, safety provisions, new building and destination of the tankers. She then wrote to him to let NS *know in the next day or two we will be sending something to city council and later, the community, informing them that this is now a working operation. We will send them what we send out as soon as we do it, since I expect that they will get questions. I would strongly suggest that you do some research on what if any accidents or incidents involving fire or spills have occurred around the country in ethanol off-loading and where. Norfolk Southern may be able to help you. I guarantee that the community and press will do this for us if we don't do it.*

5/5/08 DCM Evans circulates the Council memo with CA Pessoa's changes and urged a quick response stating *we are striving to get this out tomorrow.*

5/5/08 Communications Director Tony Castrilli emails DCM Evans regarding the council memo with copies to CM Hartmann and Special Assistant Mason indicating that this will be a classic *not in my backyard* type of story. He states *the good news is we are clearly going to get the message out to the residents before the community finds out through the media or other means. Also it looks like the fire chief is well prepared to handle possible media inquiries. One more idea at least to consider regarding coverage on challenging issue in general. We are in a position of strength if we control the story pitch to the media before they call us. The goal is to let media know we are not only aware of this issue, but we have already let the residents know, and the city has a plan to address the issue. As a result the media will go after the operators of the facility and use us for the facts and solutions.*

5/5/08 Chief Thiel emails DCM Evans with copies to CM Hartmann and Special Assistant Mason indicating that he is expecting a positive response to his 4/29/08 from NS and recommends that we hold off on the council memo until we receive NSC's letter tomorrow.

5/5/08 Cameron Station Civic Association Meeting. President Ingrid Sanden and Mindy Lyle were asked by several attendees about the tank cars sitting on the tracks. The cars were observed to be sitting for several days at a time.

5/7/08 Doug McNeil of NS sent a letter and email to Chief Thiel agreeing to purchase \$90,000 worth of foam and a delivery system including foam nozzles/educators. Further, if the Alexandria Fire Department responds to an incident at the transloading facility NS will replace any used foam. Finally, they agreed to sponsor an attendee at the Transportation Technology Center, Inc. Emergency Training center. He concludes by saying that *Norfolk Southern values the relationship we have developed with the Alexandria Fire Department, seeks to strengthen that relationship, and further our mutual safety mission. We believe that what we have offered in this letter, together with the design/build of the facility itself, constitutes a very strong commitment to ensuring adequate fire protection. We look forward to continuing to work with you and putting to bed any final issues with regard to this facility.*

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5/7/08 Chief Thiel emails CM Hartmann, DCM Evans and CA Pessoa with the NS response. He states, *please see the attached response from NSC; it's a start but does not go far enough in meeting our needs. I spoke with Doug McNeil, told him we'll review their response, and to expect a call from Mr. Castrilli regarding the imminent "community conversation" about the facility/operation. I think we should "appreciate" their willingness to contribute the trailer/foam, but take a hard line in further negotiations (there is room for some compromise, but I'm disinclined to do so, considering our present negative fiscal situation v. NSC's positive one); I also think we should ask them to come up for a meeting this Friday to discuss further. Bottom-line: The trailer/foam doesn't do us a bit of good without a dedicated tow vehicle, which we don't currently possess. Furthermore, we need to do a lot more training than sending 1 person/year to TTCL. I'm OK with reducing the annual maintenance fee, but we still need something for depreciation and ongoing training/upkeep. Let me know how to proceed...*

5/7/08 Chief Thiel emails Doug McNeil of NS asking for a follow-up meeting regarding some question about the operating parameters. He states *we'll want to have our respective city/corporate communications folks present to discuss the imminent community conversation.* The suggested date is Friday afternoon, May 9, 2008.

5/8/08 DCM Evans emails Chief Thiel and copies CM Hartmann that the meeting will have to be after the weekly Mayor/Manager meeting which starts at 1:30 and ends approximately 3:15. Invitees to the staff meeting include CM Hartmann, DCM Evans, Chief Thiel, CA Pessoa, Special Assistant Mason and Castrilli. DCM Evans wants TES involved because *the trucks are a community issue and we are getting ready to go to the community on this. We need TES linked up with the contractor – we do control the haul route once they leave the property as I understand it.*

5/9/08 Email from CMO indicating that there will be a meeting with the City's 'ethanol team' at 3:00 today with a conference call scheduled for the team with NS at 4:00.

5/9/08 Conference Call held in the City Manager's Office with NS. Attendees include CM Hartmann, DCM Evans, Chief Thiel and other city staff. The call included a discussion regarding the Spill/Fire Control equipment and their priority for the City and ended with general agreement as to the equipment to be donated to the City pending a new itemized list to be provided to NS by the Fire Department. However, the F-450 tow vehicle was not agreed to during the call.

5/10/08 Chief Thiel emails Doug McNeil of NS following-up on the 5/9/08 conference call. He indicates that *Battalion Chief John North will work directly with your designee(s) to parse the list of ethanol fire/spill response equipment and provide specifications/vendor information for the agreed-upon equipment/supplies/training. We agree with your sense of urgency in developing the final list and securing the needed items as soon as possible...I've also copied Jim Lynch, our administrative services division chief and Assistant City Attorney George McAndrews, to help ensure compliance with any/all applicable state/City regulations for procuring/accepting donated items from Norfolk Southern Corporation.*

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5/12/08 Ingrid Sanden, President of the Cameron Station Civic Action Association, emails Council Members Krupicka and Wilson asking, *can either of you tell me who to ask about the tanker cars on the train tracks behind Cameron Station? I have gotten a few emails about these things and people are a little concerned because who knows what is in them, or how long they will be there?? If there is a contact at CSX, that would be great. I asked VA Paving and they don't know anything...Mindy says not to worry about them, but that doesn't seem like a good answer to my "constituents" if you know what I mean...Thanks in advance.*

5/12/08 Council Member Wilson forwards the request to Rose Boyd with the request; *do you guys have any contact that might be able to assist with this?* Council Member Krupicka follows-up with Director Hamer and is told she will get back to him with information.

5/12/08 Gayle Jordan of NS emails Chief Thiel and Director Baier regarding the hauler permit and the storm water issues. She indicates a willingness to consider any materials Director Baier sends but indicates that the *railroads ICCTA preemption over local permits...As for the storm water plan, the state storm water requirements do not apply to this operation. This has been confirmed again with outside counsel. Nonetheless, in a spirit of cooperation Norfolk Southern will prepare a storm water plan for the facility.* NS is waiting for more information before they will make a decision on the 450 truck.

5/13/08 Director Baier refers NS to CA Pessoa on the hauling permit issue after John Edwards, NS Senior General Attorney, emails that the City Ordinance does not apply.

5/13/08 Rose Boyd forwards Council Member Wilson's request to Chief Thiel saying, *Adam, please process as an informal Council Request and provide me with a copy of your response within five working days of your receipt of this message.*

5/13/08 Robin Chapman, Manager Public Relations for Norfolk Southern emailed Tony Castrilli with information regarding the facility which came up in their call earlier in the day.

5/13/08 Chief Thiel responds to Boyd's request and copies DCM Evans, Special Assistant Mason, CM Hartmann, CA Pessoa and others City Staff with, *I'm forwarding this to the CMO; I expect they will want to handle the response since this inquiry concerns a larger issue.*

5/14/08 Andrea Blackford, at the request of Tony Castrilli, adds additional facts to the Council Memo based upon responses received from NS. Castrilli forwards the edited version to DCM Evans with copies to CM Hartmann and Special Assistant Mason.

5/14/08 DCM Evans emails Chief Thiel (who was out-of-the office on a pre-planned trip the week of May 12-16, 2008) requesting that he *please let us know when you hear from Norfolk Southern. We are trying to finalize the memo to get it out tonight or first thing in the morning. Adam, we need to know your availability to be reached by phone from Thursday on since we expect media inquiries which Tony will be handling.*

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5/14/08 Chief Thiel emails CM Hartmann, DCM Evans and CA Pessoa with a proposed call to NS he states, *how do we feel about my calling Doug McNeil with NS and telling him: a) they're not well-served by pushing on the hauling permit issue, since it will likely arouse a move to adopt a more stringent regulatory scheme than that presently imposed by ordinance; and b) that we've received our first citizen inquiry (to Council) about 'those tank cars' as a harbinger of things to come? It may help move this to the next level, which is where we need to be by tomorrow. Just let me know and I'll call him; I have his cell#.*

5/14/08 CM Hartmann and CA Pessoa agree with the approach suggested by Chief Thiel.

5/14/08 Battalion Chief North emails DCM Evans and Copies Chief Thiel and CM Hartmann with the following; *Ms. Evans, Norfolk Southern now has all the information they need to make their final decision, (models, specifications, pricing) on all equipment and vehicles. I spoke with Mr. Webb at 2:30 yesterday, at that time he indicated that they were still talking about the tow vehicle, no decision has been made. The total amount requested to meet our need comes to \$178,208 if we were to do the purchasing. I will let you know as soon as I receive a response from NS.*

5/14/08 Robin Chapman of NS emailed Tony Castrilli with security information. She said, *the ethanol facility is in the interior of the Van Dorn yard. The front gate of the Van Dorn yard is always open because this is a crew reporting location. The interior ethanol facility has its own gate and perimeter fence and is always locked down, if no one is on site.*

5/14/08 DCM Evans responds to Chief Thiel's suggested approach with NS and copies CM Hartmann, Special Assistant Mason and Tony Castrilli saying; *when you call them you need to let them know we plan to tell Council we have encouraged Norfolk Southern to meet with the community. We are planning to distribute our memo to the business and civic groups in the area once we give it to Council. I expect that the Council will get the memo tomorrow a.m. Tony and Steve are to compile the list of groups. Looking ahead a community meeting would probably be expected to occur next week. You, Mark Penn, Tony and Steve would also be there, but we would be expecting NS to take the lead and explain things.*

5/14/08 Chief Thiel responds to DCM Evan's email with the following information; *OK, I just got off the phone with Doug McNeil (NSC) and here's the current situation: 1) He is trying to reach VP David Lawson to get final approval to supply the items on Chief North's list (~\$178K, including the trailer, tow vehicle, etc.) and we should get confirmation later today; 2) They have requested the haul permit application and he also sees no need for continued legal wrangling (not entirely within his hands, but he said "no one told me 'no' when I said I was requesting the permit application"; 3) They'll make someone available for the community meeting next week, I'd like to provide them with a copy of the Council memo upon release and also get them the date/time/location of the meeting as soon as we know.*

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5/14/08 Doug McNeil emails Chief Thiel agreeing to contribute the requested list of Ethanol Fire/Spill Response Equipment and Supplies which had been provided by the Alexandria Fire Department. *In summary this list includes: Dedicated F450 Tow Vehicle with utility body, foam Trailer with two loaded 330 gallon totes, set of Foam Nozzle/Eductors, Monitoring/Spill Control equipment.* The remainder of the email is consistent with their letter of May 7, 2008.

5/14/08 Battalion Chief North emails Doug McNeil correcting an error in the spreadsheet bring the total to \$116,521.

5/15/08 Chief Thiel emails Fire Administration Director Lynch regarding the method by which Alexandria Fire can *accept/operationalize Norfolk Southern's donation of equipment and supplies.* Copies we sent to ACA McAndrews and DCM Evans.

5/15/08 Chief Thiel emails Doug McNeil and others at NSC. The emails copied to CM Hartmann, DCM Evans, CA Pessoa, Special Assistant Mason, Director Castrilli and other City Staff. He thanks them for their positive response regarding the equipment, tells them they will receive a copy of the city Manager's memo to City Council and further states; *also, we will provide the date/time/location for the initial community meeting, to discuss the ethanol transloading facility/operation, as soon as it is determined (anticipated for next week). The city's expectation for said meeting is that the NS representative(s) will take the lead on presenting an overview of the facility/operation/safety characteristics; City staff (including the Fire Chief and Emergency Management Director) will be present to address relevant questions and discuss our partnership with NS to protect the facility/community.* He concludes with an understanding regarding the haul permits.

5/15/08 DCM Evans replies to Chief Thiel's email and copies CA Hartmann with, *just so you know we are not holding the community meeting. We expect NS to set this up and may suggest how they can go about doing this.*

5/15/08 DCM Evans emails to Chief Thiel and copies CM Hartmann and other City staff that, *if the City is acquiring the fire protection equipment and supplies, they would be considered an emergency purchase. The reason is we have no ability to provide fire protection at and around the Norfolk Southern operation in the west end without these things. We need them immediately...if you need more in the way of justification for this let us know.*

5/15/08 Battalion Chief North emails DCM Evans that the Fire Department will do the ordering of the equipment and the invoices will be sent to NS for payment.

5/15/08 DCM Evans agrees with the purchase plan and copies CM Hartmann.

5/15/08 CM Hartmann replies, *okay, but this needs top priority. Let's get a good handle on the lead time ASAP. I need to know when we will have the equipment in place (and don't tell me we are going to paint the truck). Can we assess the availability by tomorrow?*

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5/15/08 CM Hartmann's Memo is sent to the Honorable Mayor and Members of City Council.

5/15/08 DCM Evans send a copy of the CM's Memo to Congressman Moran's Office with a note that, *the City Attorney has told us that the federal Surface Transportation Board recently issued a decision that preempts local zoning laws that would regulate or prohibit such railroad transloading operations. With this in mind, I expect you might be hearing from West End residents about the federal preemption and why the city is not permitted to regulate such facilities.*

5/15/08 CA Pessoa emails Chief Thiel and ACA McAndrews regarding the City accepting gifts. He states; *there are two approaches to this. Routine gifts get accepted by council as part of the monthly financial report from Finance/OMB. There is a listing of gifts to the City, which have already been received, and which council accepts pro forma in approving the report. Bruce and/or Laura will have more info on the process. Noteworthy gifts are docketed as for acceptance by Council as a separate item, but there is usually no resolution, only a motion to approve the manager's recommendation to accept the gift. It's up to you and the CMO to decide which path to take, so I'd check with Michele.*

5/15/08 CM's Hartmann's Memo is sent to Samuel B. Tucker Elementary School with the request of them to send it to ACPS. DCM Evans also indicates that *Norfolk Southern is handling the questions on this. (Robin Chapman, Manager of Public Relations (757....) I don't know if you have had a chance to meet Tony Castrilli, our Communications Director, yet, but he is very familiar with this issue as well.*

5/15/08 CM Hartmann's Memo is sent to Community Groups in West End.

5/15/08 Mindy Lyle emails Mayor Euille and all of the Members of City Council with a copy to CM Hartmann. She states; *I am sure you have seen the memo attached from the City Manager. At the May 5th Civic Association meeting Ingrid and I were asked by several people about the tank cars sitting on the tracks. The tank cars sit for several days at a time. Now knowing that they are full; and not empty as we were led to believe; I have serious concerns about the safety in this community. Should we enlist the help of Congressman Moran and Senator Davis in an effort to move this facility out of a residential neighborhood? We are supposed to be working to redevelop the West End. Now we find that we have yet another heavy industrial use, and a highly volatile one at that, located at our back doors. Why were we not informed when this began or prior to the start of this transfer facility? With this latest information, I have serious doubts about the ability to redevelop the west End or the commitment of the City to redevelop Eisenhower West. I do realize that this fall under Federal Guidelines; however, you won't see a transfer facility in DC, Old Town, or Fairfax.*

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5/15/08 CM Hartmann's Memo is sent to Community / Business Leaders with a cover memo from him stating, *in mid-April, the Norfolk Southern Corporation began operation of an ethanol transloading terminal at their Van Dorn Intermodal Facility located behind the Waste to Energy Plant. The site is used for transferring liquid ethanol from rail cars into tanker trucks for final delivery to gasoline tank farms in Springfield and in Fairfax City. You have received this memo and attachments because of your neighborhood's proximity to this site. We believe it would be beneficial for you to have this important information. We have encouraged Norfolk Southern Corporation to hold a community meeting on this issue in the near future, and you will be notified of when the meeting is scheduled. If you have any questions, please contact Robin Chapman, Norfolk Southern Corporation Public Relations Manager, at (757)... or robin.chapman@.....com.*

**END OF TIMELINE FOR THE PURPOSES OF THE
INDEPENDENT REVIEW**

Independent Review of City Personnel's Notification to the City Council and Public of the Proposed and Actual Use of the Van Dorn Yard as an Ethanol Transloading Facility

Review Findings

Several common themes developed during the interviews and are reflected in this section and the recommendations. In order to protect the anonymity of interviewees the following section is broken down by city departments or committee (actions or inactions are discussed agency-wide). The majority of individuals' actions taken or not taken are reflected in this report's *Ethanol Transloading Facility Timeline*.

Review of the City Manager's Office

Upon implementation of a new reporting structure within the City Manager's Office (CMO) in November of 2005, Michele Evans and Mark Jinks both carry the title of Deputy City Manager to City Manager (CM) James Hartmann. They have both direct reports from various city department heads and liaison responsibilities with other departments. It became very clear from interviews that different department heads and even staff within the CMO have differing opinions as to the responsibilities of a direct report versus the duties of a liaison. The reporting structure implemented during the time period from June of 2006 to May 15, 2008 facilitated the lack of information sharing between departments and compounded the fact that crucial information was not being provided to City Council.

Per interviews and document review it was determined CM Hartmann was present on June 23, 2006 at a weekly Mayor/Manager's meeting in which Norfolk Southern discussed the proposed use of the Van Dorn Yard as an ethanol transloading facility. At that time, there was very little documentation of these meetings and no circulation of the agenda to Council members. These practices were a contributing factor to the lack of timely information provided to Council regarding potential critical issues developing within the City. It must be noted that since May 15, 2008 weekly Mayor/Manager's meeting agendas are now disseminated to all members of City Council and the Mayor now meets with each member of Council (individually) on a monthly basis to foster information sharing.

After August 2006, when a request by CM Jim Hartmann was sent to City Attorney (CA) Ignacio Pessoa seeking a status report regarding a Special Use Permit (SUP) legal opinion for Norfolk Southern, it was determined the CMO was not directly involved with the Norfolk Southern issue until January of 2008 when Deputy City Manager (DCM) Michele Evans is made aware of developments taken place at the Van Dorn Yard. On January 2, 2008, DCM Evans emails Code Enforcement Director Catlett and Fire Chief Thiel with copies to CM Hartmann, CA Pessoa, DCM Jinks and Planning and Zoning Director Hamer stating, *there was a top management level discussion on this with Norfolk Southern some time ago before either of you were here. I think before you (the Fire Department/Code Enforcement) do anything further, we need to find out what is going on. As we recall, there is a requirement for City approval in our view. Please do not communicate with Norfolk Southern further until we have determined the status of this. Ignacio, we probably need to find out what is going on.*

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The stop-communication directive (stand-down order) does not depart from prior city practices since such contacts and activities could arguably be seen as evidencing the City's acquiescence in the use. Further negotiations with Norfolk Southern were to be done through the CMO. From various interviews, it was evident that during the January 16th staff meeting regarding the Norfolk Southern ethanol transloading facility this stand-down order was not properly addressed. CM Hartmann leads the January 16th staff meeting and upon concluding the meeting it is clear that the CAO and Planning & Zoning (P&Z) are designated the lead agencies on this issue with the Fire Department and Fire Code Enforcement providing monitoring updates.

As the CMO is preparing the fiscal budget for approval by the City Council, numerous budget working sessions and regular City Council meeting are occurring during the time period between January 16 - April 4, 2008. The CMO had two avenues to notify City Council of the potential NS ethanol transloading facility, but neither occurs during this time frame: a direct report to Council from CM Hartmann or the NS issue could have been placed on the City Council agenda by DCM Michele Evans. Some information was provided which indicated a Council memo was to be produced, presumably by the CMO, after the conclusion of the January 16th meeting. This report found there are some issues where the community is going to be disagreement and any delay with providing information to City Council will cause further exacerbate the underlying issues. After April 4, 2008, we find the delay in providing timely information and this memo to Council during the next six week period is excessive.

Moreover, on April 30, 2008 City Manager Hartmann emails Steve Mason, Special Assistant to the City Manager, and copies DCM Evans, Fire Chief Thiel and City Attorney Pessoa saying, *Steve, I need you to coordinate the development and public release of information (Council, then Cameron Station, Summers Grove, others) of Norfolk Southern's Ethanol transloading operation.* Our analysis discovered that an attempt by the CMO to provide Council with the most up-to-date and accurate information, with news the Fire Department and Code Enforcement Bureau has worked with NS to develop safety preparedness in the event of a potential ethanol spill/fire, delayed the delivery of this vital information for an additional 15 days period. The release finally occurs on May 15, 2008. (See Attachment #1)

Through the review period the CMO made numerous request of Norfolk Southern to provide the community with information regarding the ethanol transloading facility; these multiple requests are document in this report's *Ethanol Transloading Facility Timeline*. However, the day the memo was released to Council, DCM Evans replies to Chief Thiel's email and copies CA Hartmann with, *just so you know we are not holding the community meeting. We expect NS to set this up and may suggest how they can go about doing this.* Further evidence revealed a cover letter which accompanied the May 15th Council memo from the CMO, sent to community and business leaders, in which the only contact for further information is Robin Chapman from Norfolk Southern Corporation. This review finds relying upon private industry to conduct community outreach was inappropriate in this situation.

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CM Hartmann has expressed to Council he takes full responsibility for the lack of communication during this period. Since this review period, the CMO has taken measures aimed at correcting many of the organizational deficiencies revealed during the Norfolk Southern ethanol transloading facility issue. Deficiencies identified during the commissioned time period were revealed as a lack of ownership with potential issues, diffused responsibility, lack of accountability, lack of communication, information sharing, and a tendency to not share critical information in a timely manner due to an excessive desire to answer all possible questions and provide solutions to Council. Since the Norfolk Southern ethanol transloading facility issue, the CMO has commissioned an organizational assessment addressing a number of the deficiencies stated above while providing an outline to facilitate organizational change towards greater accountability and better communication providing collaborative efforts across departmental lines.

Review of Planning & Zoning

The Department of Planning & Zoning (P&Z) was properly involved early in the process with Norfolk Southern. One of P&Z's duties is the oversight of SUP and between June 2006 and April 4, 2008, the City was of the opinion that Norfolk Southern would need to seek approval for a special use permit before operations at the ethanol transloading facility could commence. On July 17, 2006 Richard Josephson requests an update regarding the opinion of CA Ignacio Pessoa as to the issue of the special use permit.

On August 22, 2006, CA Pessoa emails his opinion to CM Hartmann, Director of P&Z Elieen Forgarty, Richard Josephson, and Jill Applebaum. CA Pessoa *concludes that the proposed ethanol transfer facility will require SUP approval...under Zoning Ordinance Section 4-1302(C)*. P&Z seems very involved with the process and on August 23, 2006 Rich Josephson is directed by DCM Mark Jinks to forward CA Pessoa's opinion to NS. On September 18, 2006, Norfolk Southern's reply to CA Pessoa's opinion even is sent to Mr. Josephson. November 7, 2006, a second letter is sent to Mr. Josephson by Norfolk Southern stating they did not receive a response from the city regarding their September 18th letter. Even after two letters from Norfolk Southern, P & Z failed to respond and notify them that this matter was being referred to the CAO.

Even though the reviewers/authors determined that P&Z typically has a triggering event before the agency will become involved with an issue (i.e. the request for a special use permit), P&Z was involved early in the Norfolk Southern process and continued to act as the primary agency. Between November 8, 2006 and November 7, 2007 no monitoring occurs and there are no records of any communications between city staff and Norfolk Southern.

However, while P&Z was involved early in the Norfolk Southern process, the department was not engaged again until December 3, 2007. Reviewers find P&Z could not have reasonably anticipate a request for a SUP upon Norfolk Southern's September 18, 2006 letter stating federal preemption and *will commence work in the very near future, and*

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anticipates that the facility will be open no later than January 2007. Once January 2007 passed and the request for SUP, a triggering event that would invoke departmental regulation and a public hearing to notify council, was not sought by Norfolk Southern the staff should have attempted to monitor this issue.

This report's *Ethanol Transloading Facility Timeline* reflects numerous attempts by divisions within the Fire Department between the dates of November 17, 2007 and December 3, 2007 urging notification of City Council, P&Z, T&ES, the community and the Local Emergency Planning Committee (LEPC). After the December 3rd notification, P&Z, though still under the belief NS will need a special use permit, seems to take a backseat role with regards to monitoring the situation and notification to Council and the public.

In December 2007, the Fire Department opines *because this facility* (the Norfolk Southern facility) *is on railroad property, Code has no regulatory authority. However, we expect there will be some citizen concerns when this facility begins operation in April 2008.* Per this report's *Ethanol Transloading Facility Timeline*, P&Z was made aware of three key facts:

- Building and Fire Code believed they did not have the authority under the Fire Code to regulate the transloading facility,
- Norfolk Southern planned to be fully operational by April 2008, and
- Code Administration expressed concerns regarding citizens' notification.

Even though, the Fire Department opines, under the fire code, they may not have regulatory authority, this per se would not invalidate the regulatory authority under a special use permit. Here even without a SUP, P & Z could have notified members of the Planning Commission of the pending Norfolk Southern ethanol transloading project.

During interviews, various departments could not establish which city agency had taken the lead in monitoring the Norfolk Southern issue. Before the January 16th city staff meeting, four different departments (P&Z, CMO, CA, and the Fire Department) were named as the lead monitoring agency by different interviewees. After January 16th, interviewees expressed a clear understanding that the CAO and P&Z were the lead agencies with regard to the Norfolk Southern issue and all updates were to be forwarded to them directly with copies to the CMO.

Inactions determined by interviews and document review concluded that (1) P&Z failed to act proactively as lead agency, (2) there was a lack of dissemination of information to other departmental agencies, and (3) there was a slow response regarding informational notification across departmental lines (e.g. listed below):

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12/3/07 Rodriguez forwards by email the briefing memo to Hamer and Josephson. He opines that *because this facility is on railroad property Code has no regulatory authority. However, we expect there will be some citizen concerns when this facility begins operation in April 2008.*

1/2/08 Rodriguez emails stating *I forwarded all the information to Farrell to make her office aware. When I sent the e-mail to Farrell I indicated this may be a citizen issue with Cameron Station. I did not hear back from either Farrell or her staff on this matter.*

Review of Transportation & Environmental Services

The Department of Transportation & Environmental Services (T&ES) was brought into meetings with Norfolk Southern early in the process (June of 2006). T&ES usually is consulted once a request for a SUP has been initiated within the City-typically to handle right-of-way permits or environmental issues under the sought SUP. In this case, Director Richard Baier and the T&ES were under the belief the City would require Norfolk Southern (NS) to request a special use permit before Norfolk Southern would be authorized to use the Van Dorn Yard as an ethanol transloading facility.

Following the June 23, 2006 meeting with Norfolk Southern, Director Baier requested an update from Richard Josephson, Deputy Director of Planning and Zoning, regarding the status of the legal opinion from the City Attorney's Office. This practice of department heads requesting updates or questioning the status of issues before other agencies could have provided for an early opportunity to notify Council or establish a working group between differing agencies to monitor the status of Norfolk Southern's activities.

On April 25, 2008, Director Baier attended a meeting with Norfolk Southern recommending hauling routes and discussed the need for hauling permits. These permits are ultimately issued, but outside the scope of this review.

Review of the Fire Department

A. Fire Operations

In November 2007, Fire Operations became aware of the Norfolk Southern ethanol transloading facility in the Van Dorn Yard during drills with outside agencies. This was confirmed with the Fire Marshals when a meeting was held at the Norfolk Southern Yard between Norfolk Southern and Deputy Fire Marshals Perry, Stanton and Assistants Fire Marshal Furr. *The purpose was to discuss the proposed use of the rail yard for the offloading of ethanol fuel directly from rail car to highway tanker. Norfolk Southern provided an educational briefing on how exactly the process will function.* The target date for opening was April 2008 and staff was directed to prepare a briefing paper for the Chief Fire Marshal. This brief contains specific items relating to fire safety and environmental concerns regarding spills. (See Attachment #2)

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Almost immediately, Fire Operations began working on public safety concerns regarding potential spills or ethanol fires. Within the Office of Building and Fire Code Administration, it is opined that because this is railroad property the NS ethanol transloading facility will be exempt from local Fire Code regulations. As such an Operation Plan must be developed and this unified endeavor will be addressed by the Office of Building and Fire Code, Haz-Mat and Suppression personnel.

On January 2, 2008, DCM Evans emails Code Director Catlett and Fire Chief Thiel with copies to CM Hartmann, CA Pessoa, DCM Jinks and Planning and Zoning Director Hamer stating, *there was a top management level discussion on this with Norfolk Southern some time ago before either of you were here. I think before you (the Fire Department/Code Enforcement) do anything further, we need to find out what is going on. As we recall, there is a requirement for City approval in our view. Please do not communicate with Norfolk Southern further until we have determined the status of this.*

On January 3, 2008, Fire Chief Adam Thiel sends an email to his department stating stand-down until further notice. After the January 16th staff meeting, the Fire Department and Fire Code Administration are only to monitor the Norfolk Southern situation and provide informational updates to the lead agencies (CAO and P&Z) with copies going to the CMO. Interviews revealed that during the January 16th meeting, the issue of the stand-down order was not addressed. Therefore, without further direction the Fire Department remained in a cease all communications mode with Norfolk Southern. Upon the conclusion of the January 16th meeting, the action items delegated to the Fire Department led these reviewers to find the stand-down order remained in place and the subsequent actions by the Fire Department indicate a department-wide understanding that they are not to communicate with Norfolk Southern.

After April 4, 2008, the Fire Department under Fire Chief Thiel assumes lead agency responsibilities in an effort to prepare the appropriate Operational Plan and obtain the necessary resources to be prepared in case of an ethanol spill or fire. During this period, meetings were held with other departments, memos drafted, and clear direction was given to staff. Inaction or deficiencies within the Fire Department were determined by these reviewers to be the result of a lack of communication with NS between January 2, 2008-April 4, 2008. Also, during the time commissioned by this report, the Fire Department lacked the necessary resources and revised training techniques to contain an ethanol spill or fire. It must be noted that reviewers inquired regarding the procedures that would have taken place had an ethanol spill or fire occurred. Evidence revealed the Fire Department would have responded as they do to any other challenging spill or fire situation across the City with the ability to seek mutual aid from neighboring jurisdictions. Currently, the Fire Department has acquired the proper resources and training to appropriately address a potential ethanol spill or fire.

B. Office of Building and Fire Code Administration

The Office of Building and Fire Code Administration was involved early in the Norfolk Southern issue and provides accurate information and updates throughout. (See

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Attachment #3) On December 3, 2007, Fire Marshal Rodriguez opines that *because this facility is on railroad property Code has no regulatory no regulatory authority. However, we expect there will be some citizen concerns when this facility begins operation in April 2008.*

In early December 2007, Fire Code Administration expressed concern over citizen notification knowing that the ethanol facility will begin operations in April 2008. Acting with the Fire Department, Fire Code Administration began the necessary Operational and Safety Planning procedures in anticipation of the facility going fully operational. As referenced above, for the time period between January 2, 2008- April 4, 2008, the Fire Code Administration accurately monitors and provides updates regarding the activities of Norfolk Southern. After the January 16, 2008 meeting, Fire Marshal Rodriguez prepares a memo to the City Attorney outlining the NS operation. (See Attachment #4)

On April 28, 2008 Fire Code Administration verifies Norfolk Southern is in compliance with the Fire Code as documented in an April 29th email in which Rodriguez notifies Chief Thiel that his staff completed a survey of the Norfolk Southern ethanol transloading facility on 4/28/08. In summary the report states that *generally speaking, the facility is in compliance with the code.*

C. Emergency Management

On November 30, 2007 Emergency Management Coordinator (EMC) Penn forwards email from Assistant Chief Middleton to Charlie McRorie, Emergency Planning Coordinator, with the direction, *FYI, you want to get on top of this one! I am sure the LEPC will be very interested. Might be the first time City Council members hear about it!* Even though, EMC Penn properly identifies the issue, we find that there is no coordination with other departmental agencies or follow up by staff to confirm that the LEPC Council members were notified.

Local Emergency Planning Committee

The LEPC works to understand chemical hazards in the community, develop emergency plans in case of an accidental release, and look for ways to prevent chemical accidents. Interviews revealed that a determination was made to the classification of ethanol and since the chemical did not fall under the categories of hazardous substance or extremely hazardous, there was no legal requirement, under the Emergency Planning and Community Right to Know Act of 1986, to provide community awareness; though the LEPC expressed concerns regarding notification to the community.

Based upon review of the materials, we find that the failure to notify Councilmen Gaines and Krupicka, whom sit on the LEPC board, was the result of a strict adherence to their interpretation of Robert's Rules of Order, therefore, those not in attendance of meetings were not provided with an agenda, materials, or minutes. Since, the Norfolk Southern incident the LEPC has reviewed and revised meeting practices as to ensure greater dissemination of information. Meeting agendas are now sent ahead of time to members

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of the committee so all members are aware of meeting issues. Meeting minutes are distributed to all members regardless of their attendance and LEPC recognizes that more information should be pushed out to the public through the city's website and currently have made materials available to interested parties upon request.

Review of City Attorney's Office

Reviewers observed a very flat structure in which assistant city attorneys report directly to the appointed CA Ignacio Pessoa. This flat organizational structure only allows for limited supervision of assistant city attorneys' work and does not provide for an automatic review of pending matters. Even though the CAO has a senior assistant city attorney position, which acts in the stead of the City Attorney, this position does not include supervision of other assistant city attorneys and carries a full case load. The CAO does appoint assistant city attorneys as liaisons to the different agencies within the city, but CA Pessoa remains primarily responsible for the Department Planning and Zoning, among his other duties. Upon the first initial meetings over the use of the Van Dorn Yard as an ethanol transloading facility by Norfolk Southern (NS), the CAO was asked to provide a legal opinion as to the City's authority to require a SUP before Norfolk Southern could begin operations.

On August 22, 2006, (two months after the initial NS meeting) CA Pessoa provides an opinion stating *the proposed ethanol transfer facility will require SUP approval...under Zoning Ordinance Section 4-1302(C)*. Even though, CA Pessoa is made aware NS rejects the City's opinion and states in a letter based upon U.S. Surface Transportation Board preemption NS will not seek a SUP from the city, the CAO's original opinion does not change. We find based upon interviews and document review it is reasonable to conclude the majority, if not all, of city staff were under the perception, reliant upon the city attorney's opinion, that NS would first need a SUP before ethanol transfers could begin.

In November/December 2007, the Fire Department opines under the fire code that Code may not have regulatory authority. We find no action was done on this letter. This per se would not invalidate the regulatory authority under a SUP, but it is not until January 2, 2007 that the CAO is engaged by Deputy City Manager Michele Evans to find out what is going on with the NS ethanol transloading facility. This delay in information sharing among different agencies or departmental heads caused a bottleneck of crucial information that could have been provide to individuals with a direct report to the City Council. Because the CA's position is appointed directly by the Council, certain notifications could have been provided during monthly City Council meetings, especially during executive session when pending or potential legal issues are properly addressed.

On January 16, 2008, a departmental head meeting was held regarding the NS ethanol transloading facility. It is determined at this meeting the city will stay with the position that NS needs a SUP. During this meeting, it was made clear by the CMO the lead agencies would be the CAO and the department of Planning and Zoning, while all other

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agencies are to report update information directly to the CMO. Upon receipt of additional information from the Fire Department and Code Enforcement, a letter was to be prepared by the CAO to Norfolk Southern.

There was inaction, especially among the designated lead agencies, between January 16th and April 4th, 2008. During this time period, the Fire Department was instructed to keep monitoring the situation, provide periodic updates, and supply background information regarding ethanol transloading. On February 1, 2008 the Surface Transportation Board (STB) issues its decision in the Town of Babylon and Pinelawn Cemetery – Petition for Declaratory Order – STB Finance Docket No. 35057. Inaction during this timeframe is unexplained, but for the fact that the CAO was reviewing legal arguments. We find that this two month period is excessive in light of the progress made by Norfolk Southern regarding their pending fully operational date of April 2008 and the reliance on the CAO by other departments.

On April 04, 2008, after the CA reviewed the case law and the January 18 memo by Fire Marshal Rodriguez (**See Attachment #4**) it is later determined Norfolk Southern had set up a viable federal preemption case regarding the ethanol transloading facility operating out of the Van Dorn Yard and sent the following email notifying various agencies within the City: *unfortunately since we last met on January 16 to review this potential use at the Norfolk Southern facility, the Surface Transportation Board (STB – the successor to the Interstate Commerce Commission as the federal regulatory agency with oversight of railroad operations) has again addressed the scope of federal preemption of local zoning laws as such local laws may effect railroad transloading operations. “Transloading” is a term of art in the bulk transportation regulations. It means transferring bulk shipments from the vehicle/container of one mode of transportation to that of another mode, at a terminal interchange point. **Under this most recent decision, local zoning regulation of material transloading from rail car to truck, or from truck to rail car, such as is being proposed here for ethanol, has now unequivocally been found to be preempted.** This preemption exists even if the transloading is handled by a contractor, so long as the contractor is acting as the agent of the railroad, and is taking delivery of or loading a bulk product without making significant processing changes to the material at the rail site. **This finding of preemption is especially true as to pre-activity permit (such as SUP) which entails any substantial delay or affords the locality any significant discretion to allow or prohibit the transloading use.** However, traditional health and safety codes, such as building and fire prevention and haz mat regulations, are not preempted, so long as such codes regulate the manner in which the use is conducted, are reasonably objective in the standards imposed, are not applied in a discriminatory fashion, and will not have the effect of unreasonably preventing the conduct of the use. I understand that the proposed ethanol transloading use will comply with all such existing regulations. I would note that new health and safety regulations may be enacted, so long as they meet the foregoing requirements and give the rail carrier a reasonable time to comply. Accordingly, I believe Adam should undertake the notifications he thinks appropriate. **Since the City is now left with no viable zoning objection to the use, such contacts and activities cannot fairly be seen as evidencing the City's acquiescence in the use.***

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We find the CA should have provided notice to the City Council at this point. Since the City Attorney has the opportunity to make a direct report to Council during an executive session, this change in legal position should have been shared with Council, which could have been convened at a regularly scheduled Council session.

The review revealed that after April 04th the two designated lead agencies (CAO and Planning & Zoning) are no longer the best situated to address the NS ethanol transloading facility. On April 11, 2008, due to pending public safety concerns Fire Chief Adam Thiel and the Fire Department assume primary responsibilities as the lead agency. The CMO still conducts oversight while the CAO provides legal advice.

Currently, the CAO remains involved with the NS ethanol transloading issue over two pending federal matters. While these cases are outside the scope of this review, the authors reviewed such documents for content to ensure the accuracy of this report.

Since the announcement of CA Pessoa retirement, reviewers would urge a restructuring of the CAO when a new CA is appointed by City Council. The restructuring should include the establishment of a deputy city attorney position. While the CAO has a senior assistant city attorney position, based upon the information provided, this position does not include supervision of other assistant city attorneys. This supervisory position would allow for better office management and case tracking, while permitting the CA to focus primarily on policy issues and Council matters. We find multiple deficiencies within the office including a slow response time in regards to reaching legal opinions, a lack of follow up with Norfolk Southern's legal department, slow or no response to other city departments, and inactivity from January to April 2008.

Norfolk Southern

Review concluded that even though city staff's action and inaction led to a delay in notification to City Council and the community regarding the ethanol transloading facility, Norfolk Southern was informed numerous times, by various city departments, to engage in a community awareness campaign before becoming fully operational. This report notes, Norfolk Southern acted irresponsibly in locating this facility in a residential neighborhood near a school, opening the facility without any community awareness campaign, and by not providing direct notification to the Mayor's Office after becoming operational in April 2008.

Independent Review of City Personnel's Notification to the City Council and Public of the Proposed and Actual Use of the Van Dorn Yard as an Ethanol Transloading Facility

Recommendations

1. Establish clear guidelines and polices for the documentation and reporting on meeting with businesses or outside industry.
2. Establish a policy for the handling of special issues or projects that should be assigned to a designated point person or agency. There needs to be a mechanism in place to monitor such activities while companies or industries are required to obtain special use permits.
3. The City Attorney's Office and City Manager's Office should develop procedures regarding timely legal opinions or advice to other commissions, committees, and departments.
4. The City Manager's Office needs to establish clearer accountably procedures and responsibilities for agency liaisons.
5. The City Manager's Office should review the staffing needs of each agency to adequately address workload needs versus the number of developing crucial issues throughout the City.
6. Establish policies and procedures to ensure that the City will take the lead in community outreach and notification of critical information.

Observations


1. The Mayor and Council Members are part-time positions, requiring most to have other full-time employment.
2. Council Members are elected at-large for three-year terms instead of wards or districts.
3. The review revealed that David Lawson, Vice President of Industrial Products for Norfolk Southern, is the son of former City Manager Vola Lawson.
4. The attempt of city staff to provide detailed and timely information, upon the request by Council Members, may cause delays with other assigned matters or the duplication of efforts.
5. The community remains concerned that the Fire Department should complete all emergency planning drills or further training/ development of emergency safety planning.

City of Alexandria, Virginia

MEMORANDUM

DATE: MAY 15, 2008

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: NORFOLK SOUTHERN CORPORATION ETHANOL
TRANSLOADING FACILITY

In mid-April the Norfolk Southern Corporation (NSC) began operation of an ethanol transloading terminal at their Van Dorn Intermodal Facility located behind the Waste to Energy plant. The NSC property is accessible from Metro Road, which runs between Eisenhower Avenue and Van Dorn Street (Attachment 1).

When we learned that the NSC intended to open this facility in April, City staff met to discuss our concerns about the impact of such an operation on the community and what could be done by the City government to ensure the safety and security of nearby residents and workers, and to protect our environmental assets.

City representatives from the Alexandria Fire Department, and its Code Enforcement Bureau and Emergency Management Office, the Transportation and Environmental Services Department and the Planning and Zoning Department have met with representatives of NSC and discussed the operation of the terminal, as well as City concerns about the safety, environmental and truck hauling issues that may arise.

In our discussions with Norfolk Southern we have encouraged them to meet with the community to discuss their new ethanol operation. City representatives from the Fire Department and Emergency Management will also attend.

Norfolk Southern's Ethanol Transloading Operation

Ethanol is a grain-based fuel that is used as a motor fuel and fuel additive. Ethanol cannot travel in pipelines along with gasoline, because it picks up excess water and impurities. As a result it must be transported by trucks, trains or barges. Transloading means transferring bulk shipments from the vehicle/container in one mode of transportation (railcars) to another mode (tanker trucks) at a terminal interchange point.

NSC ships liquid ethanol via rail car to the transloading facility, where the material is off-loaded by the railroad's contractor into tanker trucks for final delivery to gasoline tank farms in Springfield and in Fairfax City. A perimeter fence surrounds the NSC transloading facility and, according to NSC, the active transloading track has the capacity

to handle a maximum of 20 railroad tank cars. An NSC contractor oversees the transfer of ethanol directly from the railcars into tanker trucks (one tank car serves approximately four trucks).

Currently, about 16 trucks use the terminal each day, five days a week. This number is based on initial operations, and could change depending on the level of business in the terminal at any given time. According to NSC, the current hours of operation for the facility range from 6:00 a.m. to 7:00 p.m., with transloading occurring from 7:00 a.m. to 6:00 p.m., and truck arrivals/departures taking place from 6:00 a.m. to 7:00 p.m. Similarly, these hours are dependent on the amount of business in the terminal at any given time, and if the operation were to expand, the maximum hours of service would be 24 hours a day, seven days a week.

Currently, only one train is transloaded at the facility per day, and switch service for trains is provided from 5:00 p.m. to 5:00 a.m. five days a week. However, train arrivals may occur any day of a seven-day week, or at any hour of the day, based on volume, and crew availability.

Zoning/Legal Issues

While we are opposed to and have concerns about this type of facility, the City Attorney advised us that the federal Surface Transportation Board (STB) recently issued a decision that preempts local zoning laws that would regulate or prohibit such railroad transloading operations, including laws requiring a special use permit for the operation. The STB is the successor to the Interstate Commerce Commission as the federal agency with oversight of railroad operations. This decision is authorized pursuant to the Commerce Clause of the U.S. Constitution, and the Interstate Commerce Commission Termination Act of 1995 (the Act).

The City Attorney determined that the STB has unequivocally preempted local zoning regulation even if a contractor, and not the railroad itself, handles the transloading, provided that the contractor is acting as the agent of the railroad and is taking delivery or loading a bulk product, without making significant processing changes to the material at the rail site.

However, under the Act, the City is able to enforce traditional health and safety codes, such as building and fire prevention and hazardous materials regulations, so long as such codes regulate the manner in which the use is conducted, are reasonably objective in the standards imposed, are not applied in a discriminatory fashion, and will not have the effect of unreasonably preventing the use.

Safety Issues

Safety is of utmost concern to the City. NSC informed staff that in order to be prepared for potential spills of ethanol they have created primary and secondary containment areas, installed a grounded, bonded, and monitored product transfer system, and added several

fire hydrants and eye wash stations. NSC also has installed additional fencing around the transloading area and has provided a shed that contains a quantity of the foam needed for a fire incident. Water cannot be used on ethanol fires. Fighting ethanol fires requires a special type of firefighting foam, which is more expensive than conventional foam.

Following a series of discussions between the Fire Department and NSC over the last few weeks, NSC has agreed to provide the specialized equipment and supplies (including additional quantities of the foam discussed above) that we need. NSC will also help provide our Fire Department with the training needed to safely and effectively handle any incident involving large quantities of ethanol. We appreciate NSC's positive response to our requests.

We are currently discussing with NSC specific truck hauling routes and the preparation of a stormwater pollution and prevention plan as required by the state Department of Environmental Quality.

We will be sending a copy of this letter to the business and citizen associations located nearby. We will keep City Council and community members informed as other information becomes available.

cc: Richard Baier, Transportation and Environmental Services Director
Tony Castrilli, Communications Director
John Catlett, Code Enforcement Director
Michele Evans, Deputy City Manager
Faroll Hamer, Planning and Zoning Director
Mark Jinks, Deputy City Manager
Steve Mason, Special Assistant to the City Manager
Ignacio Pessoa, City Attorney
Adam Thiel, Fire Chief
David Lawson, Vice President, Norfolk Southern Corporation
Robin Chapman, Manager of Public Relations, Norfolk Southern Corporation
Doug McNeil, Director, Distribution Services, Norfolk Southern Corporation
Anthony Griffin, Fairfax County Executive
William Symonds, Alexandria Superintendent of Schools

Norfolk Southern Proposed Ethanol Transfer Facility Synopsis.

- July 12, 2006 – Staff conducted a survey of the property in response to contact by Norfolk Southern regarding a proposed ethanol transfer facility at the vacant intermodal yard at Metro Road. The survey included photographs and recommendations for fire protection features / equipment and response issues.
- August 9, 2006 – Director Art Dahlberg, Deputy Fire Marshal Duane Perry, and representatives from Norfolk Southern met concerning the proposed facility. Deputy City Manager Mark Jinks is also believed to be in attendance. The content of the meeting involved:
 - General discussion of the proposed facility;
 - Staff listened to the concept of the proposed facility;
 - Staff not sure VSFPC and USBC have jurisdiction on railroad property;
 - Staff informed Norfolk Southern that they must contact Planning and Zoning concerning this proposal;
 - Staff notified Norfolk Southern that they would be responsible for all community outreach concerning this proposal.
- November 8, 2007 – Staff met with Norfolk Southern representatives at their request. Norfolk Southern advised that the proposed facility would be in operation in April 2008. Staff asked questions concerning the proposed operation, associated processes and walked the site to get a better understanding of the project. Norfolk Southern offered staff an opportunity to conduct a field trip at the Baltimore facility to gain a better understanding of the project. Staff discussed in general the placement of a foam trailer with Norfolk Southern, if one was to be provided. Staff notified the Chief Fire Marshal of the meeting and was directed to prepare a paper brief which detailed what was being proposed. In addition, concern over citizen issues was discussed. Upon receipt of the brief, the Chief Fire Marshal would discuss the matter with the Director.
- November 19, 2007 – Fire Operations is informed of proposed ethanol facility by firefighters from Fairfax County during a multi-jurisdictional drill.
- November 20, 2007 – Alexandria's Hazmat Team is informed of proposed facility by Fire Ops.
- November 28, 2007 – The Chief Fire Marshal presented the brief to the Director of Code Enforcement for review with a recommendation that it be shared with Planning and Zoning.

- December 3, 2007 – The Chief Fire Marshal sent an e-mail to the Director of Planning and Zoning and the Deputy Director of Planning and Zoning informing them of the proposed use and attached the brief paper.
- Week of December 10, 2007 – Norfolk Southern contacted the Fire Protection Systems Unit and advised them that they had installed several fire hydrants on their property. The FPS Supervisor advised the City may not have permit authority for the hydrant installations on railroad property. An inspector was dispatched to the property. One hydrant was determined to be code compliant.
- Week of December 17, 2007 – FPS staff did a courtesy inspection and hydrostatic test of all hydrants on the Norfolk Southern property.
- Week of December 23, 2007 – FPS staff did a flow test of the Norfolk Southern hydrants at the request of Fire Operations in order to determine water availability at the site.
- January 2, 2008 – A Norfolk Southern engineer contacts the Fire Prevention office to inquire about purchasing and mounting a Knox Box at the facility.
- January 3, 2008 – An order from the Fire Chief was received ceasing all further involvement with Norfolk Southern in this matter.
- January 4, 2008 – A phone call from Norfolk Southern was received by the FPS Supervisor. Norfolk Southern was advised that he could not comment or assist any further. The Norfolk Southern representative was directed to contact the City Manager's Office for further details.

Baltimore Ethanol Transfer Facility Tour – During the meeting with Fire Prevention staff on November 8, 2007 staff was offered an opportunity to tour a similar facility in Baltimore. After fire operations were notified of the proposed ethanol facility in mid-November, staff from the Fire Prevention Office attempted to make arrangements for the tour. Several voice mail messages were left with Norfolk Southern representatives prior to January 3, 2008. As of January 3, 2008 and at no time there after has there been a response from Norfolk Southern concerning a date or a confirmed offer to tour the Baltimore facility.

Proposed Ethanol Offloading Facility at Norfolk-Southern Rail Yard

Introduction:

A meeting was held on November 8, 2007 at the Norfolk Southern Rail Yard, which is located off of Metro Road between Eisenhower Avenue and South Van Dorn Street. The meeting was attended by Deputy Fire Marshals Duane Perry, Darryl Stanton, and Assistant Fire Marshal Russell Furr. The purpose of the meeting was to discuss the proposed use of the rail yard for the offloading of ethanol fuel directly from rail car to highway tanker. This is private property regulated by the railroad to which the City of Alexandria has no enforcement authority. Norfolk Southern provided an educational briefing on how exactly the process will function. The target date to begin the operation has been identified as April of 2008. Norfolk Southern already has similar facilities in operation in Baltimore, MD and Petersburg, VA.

The following are the highlights from the meeting:

- Ethanol fuel will be transported by rail car into the yard and will be directly offloaded onto highway fuel tankers by means of an electronic pump transfer.
- Ethanol is classified as a flammable liquid and behaves much like gasoline in a fire situation. NFPA recommends the same firefighting procedures for ethanol based fuels as are recommended for gasoline. One unique characteristic of pure ethanol is that it burns with a very pale blue flame, which is nearly invisible. It also behaves like most alcohol based fuels in that it is not compatible with normal foam used to fight hydrocarbon based fires. Alcohol fuel fires require alcohol resistant foam that is designed to work with alcohols and polar solvents. Norfolk Southern has agreed to provide up to 1600 gallons of AFFF type foam in portable containers to be stored on site for use by the Alexandria Fire Department. Currently, the fire department already carries this type of foam on most of the units. The foam will be stored on site in a trailer near the main entrance gate off of Metro Road. Ethanol has a flash point of 55 degrees Fahrenheit; a boiling point of 173 degrees Fahrenheit and its explosive limits are between 3.3% and 19%; specific gravity is 0.79 and it is miscible in water. It appears as clear liquid with a weak odor.
- Norfolk Southern is adding 4 hydrants to the site accessed from an 8 inch main to the site. They were given contact information for Maurice Jones and are consulting with him on this task. The hydrant installation is currently in progress.
- The pumping operation will be a “bottom offload” taken from piping at the bottom of the rail car. The pump is an electric type pump driven by a 25 HP explosion proof motor. The pumps and tanks will be bonded and grounded while transfer operations are taking place. Additionally, there will be an encapsulated vapor recovery system in place and a secondary containment area will be provided around the transfer site to contain any spills (approximately 29,000 gallons).

- There are proposed to be 3 pumps on site. According to staff, each pump can fill a tanker in approximately 30 minutes, which would yield approximately 6 tankers per hour.
- Environmental concerns: Spills will be contained in the secondary containment. Norfolk Southern has their own environmental contractor that they would use to clean up any spills on site. The operation is expected to produce minimal noise to surrounding communities from the actual operation, however it is likely that there will be a substantial increase in road traffic and noise from the additional traffic created by the tankers entering and leaving the site (approximately 25-30 tankers a day, up to 40 maximum). They will then be accessing the interstates by Eisenhower Ave and Van Dorn Street, with Summers Grove being the closest current residential area of concern. Staff has advised that tankers will be contained to the site and will not sit idle on the roadway. A site assessment reveals that there should be enough room to contain at least 6 tankers on the site. There will also probably be some minor increase in rail traffic. Noise to Cameron Station should be minimal, as normal rail cars staging in this area would block a substantial amount of the noise created by the operation. Operations would be performed on a Monday-Friday from 0700-1800, which may increase to weekends also, but there are no specific plans. There will be no night operations expected. There will be fire extinguishers at each pump area and drip pans will be in place under connections. No obnoxious vapors or fumes are expected to be produced as there will be an encapsulated vapor recovery system on site. The only vapors which may be present are when equipment connections are broken, which will be minimal. Spill containment equipment will also be provided on site in the form of absorbent booms and spill drums with seal mats.
- Security concerns: There are two access points to the property. The property is surrounded by chain link fence and gates are locked after hours. Additionally, Norfolk Southern Police routinely patrol their properties. There will be no additional on site security after hours, other than the routine patrols.
- Norfolk Southern is in the process of producing a spill and safety plan for the site. A sample plan was obtained for the Baltimore Facility.
- Additional requests: Requests have been made to have a hazardous materials Knox box installed at the front gate, which will contain site contact information and site specific information. We have also requested that an NFPA 704 placard be placed on the gate to identify the hazard. We have also requested NO SMOKING signs at each fueling location and requested that an emergency electrical shut off switch be located at the small existing office located near the front gate, in the event of a catastrophic pump failure where it is necessary to shut power down to the site.

City of Alexandria Virginia

MEMORANDUM

DATE: JANUARY 25, 2008

TO: IGNACIO B. PESSOA, CITY ATTORNEY

FROM: ROBERT B. RODRIGUEZ, CHIEF FIRE MARSHAL

**THROUGH: JOHN CATLETT, DIRECTOR, CODE ENFORCEMENT
ADAM K. THIEL, FIRE CHIEF**

**SUBJECT: FIRE PROTECTION AND OPERATIONAL ISSUES RELATING TO A
PROPOSED NORFOLK SOUTHERN ETHANOL TRANSFER FACILITY**

The purpose of this memorandum is to provide some discussion items that relate to fire protection and fire operational issues should a rail car to tank car ethanol transfer facility be located in the City of Alexandria. As discussed in a meeting with the City Manager recently, Norfolk Southern Corporation has engaged in a number of conversations with various City officials and agencies which indicate a desire to operate an ethanol transfer facility at their former intermodal yard located on Metro Road in the West end of the City. As of the writing of this memorandum, it is my understanding that the facility proposes to operate Monday through Saturday from 9:00 am to 6:00 pm. The facility would have a capability to store ten rail cars filled with ethanol on site and transfer this product to approximately forty trucks a day. These trucks would then depart the facility and deliver this product to several area tank farms including the Newington and Fairfax City tank farms.

The site for the proposed facility is located in the 1000 block of Metro Road. The facility is located across from the Summers Grove town home community, the Newton Asphalt plant and the Cameron Station community as well as Samuel Tucker Elementary School. The site abuts properties for the Van Dorn Street Metro station; United Parcel Service; the Covanta Waste to Energy plant; the Police Firing Range, the City Impound lot and the proposed Victory Center office complex. Backlick Run passes along this site and feeds into Cameron Run just past the Norfolk Southern railroad bridge.

A target hazard assessment conducted by staff has identified a number of critical fire protection issues within a one mile radius of the site. Should a major fire or hazardous materials emergency occur at the proposed facility, the initial impact of such an incident would affect approximately 2000 homes; on going infrastructure and environmental recycling processes; City government operations as they relate to law enforcement and vehicle impoundment activities; and interstate commerce. Retail, commercial and educational activities would also be impacted in the immediate vicinity if a significant incident were to occur. Immediate properties and operations affected include Metrorail, Virginia Railway Express, Amtrak, CSX and Norfolk Southern rail traffic; local roads and interstate

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Re: Fire Protection And Operational Issues Relating To A Proposed Norfolk Southern Ethanol Transfer Facility

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highway traffic; Backlick Run and Cameron Run waterways; United Parcel Service; Covanta Waste to Energy Plant; City Impound lot and Police range; and the Summers Grove town home community. Secondary properties affected include the Cameron Station community; Samuel Tucker Elementary School; Virginia Paving Asphalt Plant; Vulcan Plant; Van Dorn and Pickett Street commercial and residential properties.

Ethanol is classified as a flammable liquid (Class 1B). It has a flash point of 55 degrees Fahrenheit and a boiling point of 173 degrees Fahrenheit. It is a polar solvent, alcohol based fuel which is miscible in water and does not respond well to traditional fire fighting foams. As a result, fire protection features and fire operations tactics and strategies must be specialized in order to properly mitigate any emergencies that can potentially occur on the property.

Because ethanol is an alcohol based fuel, special alcohol based foam is required to fight any type of fire involving this product. The foam must be in ample supply and deployed through the proper delivery system in order to be effective. In addition to fighting a fire, the issue of foam and product run off into Backlick and Cameron Runs complicate the matter. Because ethanol is miscible in water, traditional diking methods associated with petroleum run off will be ineffective. Most likely a site containment berm combined with recovery equipment to immediately reclaim runoff is essential to reducing the environmental impact of such an incident. Lastly, because the transfer process utilizes specialized equipment, operations staff must be very familiar with all aspects of this type of operation in order to address fuel and equipment shutoffs in addition to firefighting concerns.

Based on the discussion above, the Fire Department is faced with two challenges. The first is on site fire protection and prevention. Stopping or mitigating the majority of an incident prior to the arrival of the fire department is the best option in this type of scenario. The issue of jurisdiction as it relates to building and fire code enforcement by a locality on railroad property needs to be reviewed and determined. At present, it is the opinion of our Code Enforcement staff that this proposed operation falls outside the authority of the Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code as there is no on site storage. The mere transfer of product from one mode of transportation to another raises the question "Is this an extension of interstate commerce or not?" The answer to this question needs to be determined so that the level of enforcement and oversight can be addressed during further discussions. That said, should an ethanol transfer facility become a reality, the facility should comply with a number of fire protection and prevention measures. These general measures are outlined below. More specific details can be provided upon request:

- Provide improved water supply and infrastructure improvements to address fire flow demands for the facility;
- Provide spill containment facilities which protect surrounding waterways during transfer operations;
- Install on-site fire protection equipment including portable master streams and associated infrastructure; fixed fire protection designed for ethanol based fuels; and an ample supply of

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foam for alcohol based firefighting;

- Provide increased site security including vehicle impact protection and perimeter fencing;
- Upgrade and install explosion proof electrical equipment on site;
- Eliminate all sources of static electricity;
- Install hazardous materials and informational signage at approved locations;
- Provide a Fire Department Rapid Entry System;
- Eliminate all smoking on site;
- Install an approved vapor recovery system for fuel transfer operations;
- Obtain an annual Fire Prevention Permit and submit to annual and semi-annual inspections by Code Enforcement staff;
- Conduct yearly safety surveys with Alexandria Fire Department Operations personnel;
- Provide pre-planning and emergency response plans to the City for review and approval;
- Conduct annual training drills with staff from the Fire Operations Division and employees;
- Maintain up to date Material Safety Data Sheets and pre-plan procedures;

The second challenge faced by the Fire Department relates to emergency operations at the proposed facility. Currently the Alexandria Fire Department does not have the resources or capability to effectively manage an incident at an ethanol transfer facility within a first alarm assignment. While resources can be pulled from our surrounding jurisdictions through our mutual aid agreements, there will be a significant delay in getting those resources to this facility. This will result in any incident rapidly expanding which will necessitate use of large scale resources to mitigate the emergency and conduct evacuations of the surrounding target hazards mentioned earlier. The Alexandria Fire Department must have sufficient resources immediately available in order to quickly contain any incident and minimize the life safety risk and economic impact to citizens and businesses in the immediate area. In order to accomplish this, I propose the following equipment and training be provided by Norfolk Southern Corporation in consultation with the Alexandria Fire Department. Said equipment and training would be fully funded from a special revenue account established for and paid by Norfolk Southern Corporation. This account would cover initial outlays of expenditures for equipment and training, as well as continued funding for re-supply of material, replacement of equipment, and refresher training courses for personnel.

In order to manage an ethanol emergency at the Norfolk Southern facility, the Alexandria Fire Department will require:

- A Foam Unit equipped to deliver Class B, AR-AFFF type foam on board with automatic nozzles similar to foam units utilized by area airports;
- Training for fire operations staff in the use of the above foam unit and foam firefighting operations;
- A Foam Trailer or Foam Tender which will provide additional containers of foam concentrate to supplement scene operations on large scale emergencies;

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Re: Fire Protection And Operational Issues Relating To A Proposed Norfolk Southern Ethanol Transfer Facility

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- A Spill Response Vehicle and equipment which is capable of handling large spills of product at the facility;
- Provide a minimum of 500 gallons of reserve foam concentrate at an approved location as stipulated by the Alexandria Fire Department;
- Annual funding to cover replenishment and disposal of foam supplies which approach their expiration date;
- Four training slots annually for Alexandria Fire Department personnel to attend a tank car specialist school currently held in Pueblo, Colorado;
- Norfolk Southern communications equipment, emergency contact information, and site plans readily available for use by operations personnel;
- A remote electrical disconnect switch at entrance to site to secure power to transfer operation area
- Leased space to store the above equipment for an interim period of at least five years until the construction and operation of Fire Station 210. In addition, should City funds limit the creation of bay space within Station 210 for storage of the above equipment, Norfolk Southern Corporation will contribute additional funding to the City in order to provide the construction of the necessary bay space within this fire station.

Costs associated with the above requirements are projected at \$2 million dollars. These initial cost outlays are general estimates as of the writing of this memorandum; however, staff can provide more detailed estimates should they be required at a later date.

In summary, an ethanol transfer facility in the City of Alexandria will present a significant fire operations problem. The problem must be addressed through strong on site fire protection measures and fire prevention inspection activities coupled with immediately available fire fighting equipment that is specialized in handling alcohol based fuel emergencies. Such emergencies necessitate rapid intervention by highly trained personnel in order to minimize the hazards to life safety and commerce in the surrounding areas. Only through the above measures can the Alexandria Fire Department hope to continue to maintain and preserve the City's valuable building stock in the presence of this type of operation. Please feel free to contact me if you have any questions or need further information on this matter.

Cc: James K. Hartmann, City Manager
Michele Evans, Deputy City Manager
Correspondence File