DCA-12-MR-009

CSX Transportation Freight Train Derailment with Non-railroad Fatalities

Ellicott City, MD

August 21, 2012

Interview of FRA Railroad Safety Inspector on October 4, 2012

64 pages, including cover

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

Investigation of:	*	
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CSX TRAIN DERAILMENT	*	
AUGUST 20, 2012	*	Docket No.: DCA-12-MR-009
ELLICOTT CITY, MARYLAND	*	
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Interview of: FRANK CROWTHER
Track Safety Inspector, FRA

Ellicott City, Maryland

Thursday,
October 4, 2012

The above-captioned matter convened, pursuant to notice.

BEFORE: JAMES SOUTHWORTH
Investigator-in-Charge

APPEARANCES:

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(Representative on behalf of Mr. Crowther)

I N D E X

I N T E R V I E W

MR. SOUTHWORTH: Okay. Again, my name is James Southworth and I'm the Investigator in Charge for the NTSB for this accident. We are here today, October the 4th, to conduct an interview with Mr. Frank Crowther, Track Safety Inspector for the Federal Railroad Administration. This interview is in conjunction with NTSB's investigation of a train derailment with non-railroad fatalities on CSX's Old Main Line Subdivision in Ellicott City, Maryland on August the 20th, 2012. The NTSB accident reference number is DCA-12-MR-009.

Before I begin -- or before we begin our interview and questions, let's go around the table and introduce ourselves. Please spell your last name, and please identify who you are representing and your title. I would remind everyone to speak clearly, so we can get an accurate recording. I'll lead off, and then I'll pass off to my right.

Again, my name is James Southworth. The spelling of my last name is S-o-u-t-h-w-o-r-t-h. I'm the Investigator-in-Charge for the NTSB on this accident.

MR. HIPSKIND: My name is Richard Hipskind and I work for the National Transportation Safety Board and I am the Track Group Chairman assigned to this accident investigation. And the spelling of my last name is H-i-p-s-k-i-n-d.

MR. SCHULTE: Okay. Christopher Francis Schulte, last name is S-c-h-u-l-t-e, Federal Railroad Administration, Region 2,

Supervisory Safety Specialist, and I am here as an observer.

MR. KANNENBERG: My name is David Kannenberg. It's K-a-n-n-e-n-b-e-r-g. I'm with the Federal Railroad Administration, Deputy Regional Administrator, Region 2, and I'm here as a member filling in for Frank as he's being interviewed.

MR. ROSE: And my name is Bruce Rose, that's R-o-s-e. I'm the CSX party spokesperson who is sitting in at this time for Mr. Randy Daniels who is part of CSX, the Track Group, who had to be absent at this time.

MR. SOUTHWORTH: Okay. Mr. Crowther, if you could introduce yourself? Oh, I'm sorry.

MR. INCLIMA: Excuse me.

MR. SOUTHWORTH: Rick. Right next to me.

MR. INCLIMA: No problem. I am Rick Inclima, Director of Safety for the Brotherhood of Maintenance of Way Employees Division. Thank you.

MR. SOUTHWORTH: Frank.

MR. CROWTHER: My name is Frank Crowther, C-r-o-w-t-h-e-r. I'm a Track Safety Inspector for the Federal Railroad Administration assigned to Region 2, headquartered in Baltimore, Maryland.

MR. SOUTHWORTH: Okay. Thank you. And do we have your permission to record this discussion and our interview of you today?

MR. CROWTHER: Yes, you do.

MR. SOUTHWORTH: Thank you. And do you wish to have a representative with you at this interview?

MR. CROWDER: Yes, I do.

MR. SOUTHWORTH: Okay. The representative, can you identify yourself, please?

MS. CHRISTENSON: My name is Gahan Christenson. I'm a Trial Attorney with the Federal Railroad Administration. And I've been asked to spell my first and last name. First name, Gahan, G-a-h-a-n, last name Christenson, C-h-r-i-s-t-e-n-s-o-n.

MR. SOUTHWORTH: Thank you so much.

Mr. Hipskind, proceed.

INTERVIEW OF FRANK CROWTHER

BY MR. HIPSKIND:

Q. Frank, thanks for taking the interview with us today. Let's start with your history, how many years you've been in the railroading industry, and take us back to where you want to start and give us the highlights, and then we'll go from there.

A. Okay. I prepared -- I have a -- I'm going to read from a piece of paper because I prepared some of these answers in advance that I thought you might ask me because some of them are lengthy, so I'm going to -- I'll read from that.

Q. That's fine, Frank.

A. I hired on at Penn Central April 1974 as a trackman. One week later I was promoted to a foreman in the division production. I was promoted to a section gang foreman in May of

'75. I was then promoted to Assistant Production Supervisor, Division Gangs, in November '75. I was promoted to Assistant Track Supervisor, Subdivision, December of '76. I was next promoted to a Track Supervisor, January 1978. I was then promoted to Assistant Division Engineer, June 1994.

In August of 1999, CSX took over control of Conrail. In November of 1999, I was transferred to CSX Baltimore office as an Assistant Division Engineer and I retired from CSX in April of 2004. I started with the FRA December 2004 to the present.

Q. Okay. And so, in general terms, you've been with FRA about how many years?

A. It would be 7 years and 10 months; 8 years in December.

Q. And in the Baltimore area?

A. That's right.

Q. Okay. Let's go back to some of your early days in a supervisory position and let's talk about your familiarity at that point in time with FRA track safety standards.

And how would you characterize some of the things that you were seeing in the field and how were you repairing things? Were they to a company standard that you were working for or were you repairing -- fixing and repairing things to FRA standards?

A. When I first started working for the railroad -- again it was in 1974 -- the FRA didn't exist. We had -- at that time we were using a Penn Central standard track field manual that spelled out what actually was the best of both worlds, Pennsylvania

Railroad/New York Central standards that they had for the engineering department. They were kind of melded together and that's what we were expected to have out on the track. There was no minimum. It was that standard and that's what you did.

Sometime in the mid '70s -- I think it was '76; I'm not correct -- I'm not sure -- the FRA came in and they had minimum standards. They weren't -- the book wasn't very thick, but we did -- that was the minimum. But again, the Penn Central standard was a tougher standard engineering-wise so that's what we followed. The FRA rules were there, but we didn't really use them too much because our standard that I was working for on the railroad company was a stiffer standard. There wasn't too many FRA inspectors in the early years so hardly did we ever see anybody out in the field.

And then as Conrail came, Conrail started changing the rules in the engineering book. There was more rules coming from the FRA as they grew in size and collected more people from the field that they hired for their side of the business. And so we saw more people in the field and they were doing inspections. But again, we were -- Conrail's standard was a stiffer, higher standard than the minimum that the FRA was. So everything that we did, we inspected for the FRA minimum but repaired to the higher standard of the railroad that I was working for at that time, which was Conrail.

Q. And Frank, you've been around long enough and you've

talked about the inception and seeing FRA in its beginning stages and coming onto the property and whatnot way back then in the '70s. And I want to ask you -- you've heard some of the interviews and we've talked about training, so kind of give me a look into that window about -- back in the '70s and through the '80s about your experience with training and maybe how some of the track safety standards, FRA track safety standards, about how people became familiar with those.

A. In the early years, with Penn Central, the only training we had was OJT out in the field. You got hired. If you were lucky, the older men who were in their late 60s -- a lot of old guys -- if they liked you, they took you under their wing and they taught you what you needed to know. If they didn't like you and you tried to use your authority a little too much over these more senior people, they shunned you, didn't teach you anything, let you get in trouble and get fired.

So Penn Central was bankrupt. They had no money to, never mind fix the track or to teach anybody anything formally in a school or a class. Conrail came along. They were struggling for the first few years so there really wasn't any formal training. And they were just trying to get the railroad back together and stop having derailments every day in almost every division within the system.

As things -- as times went on and things got better, there was money for training. They were hiring a lot of people so

there was a lot -- and a lot of older people were leaving. They had younger people come in and they recognized they got to do something. So they started having training on the divisions. They were talking about having a school, but it wasn't developed back in the early '80s. So everything was done in the field, but it was done in groups. There was groups of people that went to a meeting room and there was instructors that came out from Philadelphia and presented the classes for whatever material it was.

The FRA standards, you had to have -- you had to be certified in FRA to be a foreman or a track inspector. A track supervisor you had to be certified in the FRA track safety standards. And we had little cards -- everybody had to get a card signed by the division engineer and carry it, you know, on their person. That was one of the requirements because the FRA would certainly come and check and want to see your qualification card.

So there was training in the track safety standards. And right along with that they also had training for -- you know, we were building a lot of new track -- repairing a lot, but also building new track so we had two sets of standards within the company. We had maintenance standards and we had new track standards. So they had to be taught to us because now we had three things we had to look and learn. So there was quite a bit of training in the early '80s to get everybody up to speed.

Q. Okay. Well, let's fastforward and let's start talking

about in the '90s. Are you still on Conrail at this time?

A. I was -- oh, yeah. In the '90s I was on Conrail -- now, in the '90s they got a lot of money, they're flush with cash, and they want to have an educated workforce. And they would send us to colleges for certain subjects. They were sending people to Chicago -- I think it was Northwestern, if I'm not mistaken. There was a professor that had a railroad course out there. They were sending people out there. I didn't go for the full course. I went out for approximately half the course.

They were sending us all over the country to get educated. We went to rail plants. We went to manufacturers of track equipment. We went to manufacturers of quality small track appliances that go on the rail around the track structure. They wanted us to not only know how to apply them, but they wanted us to know how they were made, how were they to be used, how they could be abused and not go there. So it was -- and then they had classes going in formal settings and they had classes -- informal classes on the divisions. We had a very well educated workforce from the trackmen, you know, all the way up.

Q. Okay. So sometime in the '90s and maybe in the mid to late '90s would you say that the training programs on Conrail matured?

A. Yes, they did.

Q. Okay. And at that point in your career did you feel more comfortable with just your overall understanding of the FRA

track safety standards?

A. I did.

Q. Okay. Well, let's talk about how you may have applied them in your career at that time. You would -- from time to time, I take it, you would be out on the track hi-railing looking for defective conditions? Is that fair to say?

A. Yes. As a foreman, assistant supervisor, supervisor, in any management position I held, every time I was -- I set foot on the track structure I was looking for defects.

Q. Okay. And let's cut to the chase and let's talk about fouled ballast or saturated subgrade. In your travels and in your times with Conrail and through the '90s, is -- are these conditions that you saw from time to time?

A. Yes.

Q. Give me your thoughts on how you addressed that, your understanding of the track safety standards at the time, as well as your company standards. How did you go about managing those kinds of track conditions?

A. In the early years of -- in Penn Central years, you know, that was like -- fouled ballast or saturated subgrade, depending on the severity, was, you know, like a no-brainer. You didn't even fool with it. We don't have money for that.

Conrail, as time went on, again, they were trying to -- now they're trying to -- as time went on they were trying to get the track back in and they weren't going to allow to have those

things happen because it's like a cancer. You have a small spot and you don't do anything with it, it gets larger. Over time it just spreads and you'll have terrible track condition and instead of having just two ties wide, which would be approximately we'll say 40 inches, you know, you could have several feet. And now you can have a defect in that easier than if it was a narrow defect spot.

So over time we started fixing. We would have a list and we would go the larger spots to the smaller spots, you know, we'd prioritize them. If they had defects in them -- and when I say defects I'm talking geometry or bad ties. A lot of times you could fix the geometry if you just put the tie in, you know. And so, as time went on we fixed more of them. But in the early years, if there wasn't a defect associated with that fouled ballast, it was -- it just sat there.

Q. Well, let me ask you a question on that. When we say if there wasn't a defect associated with the fouled ballast, let's be specific. We're talking about threshold breaking geometry, whether it's a warp, a cross-level, a profile type condition. We're talking about whether -- also if the fouled ballast condition had an adverse effect on the cross-ties. And we're also talking about whether the fouled ballast condition may have had an adverse effect on gauge.

Are those the kind of defects that I should understand that were -- at that point in time in your career on that railroad

those were the triggers for dealing with fouled ballast?

A. Yes.

Q. Okay. When did things change? When did you have -- while you were still in the industry, when did you ever change from those -- that kind of thinking and those kinds of list of defects we just talked about as being triggers? Did your thinking about fouled ballast -- what I'm really asking, did it evolve? And if it did, take me through some of that thinking.

A. It evolved, Dick, in the sense that on the railroad that I was working on at the time went from a -- you know, what we would look at as a yard track today was a main line track back in the days when Conrail took over. It was terrible. So you had to concentrate on things that were causing derailments. And so, you know, you had to take care of the wide gauge and you had to take care of the terrible warps or cross-levels or profiles that were horrendous, I mean just horrendous.

And so as time got on and more money came in and there was more money allotted for rail replacement, tie replacement, we did undercutting. There was ballast cleaning. All these maintenance activities over the years finally were catching up and we were having a railroad that you could actually maintain and have a list of priorities of things that needed to be taken care of. Even though they weren't going to cause derailments you needed to take of them because it was part of good railroading. Having good drainage is -- the number one key of railroading is

having proper drainage. And that's not only in the ditch lines, but it's also within the track structure.

So over time we got cranes and we got undercutters and ballast cleaners and ditch witches and whatever we needed to start getting the drainage back up. And once we had something there to work with, and then we started taking care of those small mud spots with subdivision gangs that not -- that just sat there and were okay to go over. It didn't have any of those defects that we talked about, but they were eyesores and they were taken care of.

Back in the day, you know, there was always that saying, you know, ugly isn't a defect. You can have ugly track and have a perfectly good railroad.

Q. Okay. And during this same time, say, in the mid to late '90s, were you exposed to FRA's interpretation or their -- did they -- in your training or in your evolution of thinking about fouled ballast, did any of that FRA interpretation did that come into play with how you thought about fouled ballast/saturated subgrade?

A. No. If we had a track geometry, if we had the warp or the profile or cross-level, you know, that was a -- that was that defect. We didn't have combination defects. We didn't have fouled ballast and a geometry defect. It was a geometry defect. The FRA said fouled ballast was fouled ballast.

Q. Okay. But what --

A. It described what fouled ballast was.

Q. But what did that mean to you then?
A. Well --
Q. Is the reason that some of the answers to this are because of a subjective nature of what maybe fouled ballast is to one person and it's not the same to somebody else?
A. It is. There's -- it is. And again, it's a -- I think you would find, even though the FRA spells out what fouled ballast is, each person, each inspector in the field looks at that a little differently, I believe.
MS. CHRISTENSON: I mean, I think -- I don't know. Answer him based on your experience. I mean, he's focusing on where you are now --
MR. CROWTHER: That's what he's asking me. My experience.
MS. CHRISTENSON: Yes, um-hum.
MR. CROWTHER: And that was the same experience that I had with the FRA people. They would come out and not write up defects because I had fouled ballast. They would write it up if I had a defect within the fouled ballast.
BY MR. HIPSKIND:
Q. Again, a trigger or a threshold breaking --
A. Or -- right, right.
Q. -- trigger --
A. Right.
Q. -- and if fouled ballast was there, why, go ahead and

take care of that too?

A. Right.

MR. HIPSKIND: Hold on. Hold on. Everybody will get a turn.

BY MR. HIPSKIND:

Q. Well, let's move you off the Conrail and let's get you to the next stage in your life. Let's talk about how would you characterize the differences between your Conrail and experience and then when you moved over and were working for CSX?

A. Oh, my gosh. I pledged to be honest here, so -- when I left Conrail and went to CSX it was -- I was very disappointed in what I had to work with and where it was and the conditions of the track. I was led to believe when I was recruited to go to work for CSX and signed my contract to work for them that they had a world-class railroad just like Conrail did. And I came down to work for them and it was like Penn Central back in the -- my early '70s career.

So, you know, I walked around probably for the first month saying, you know, I've been here done this once already. I really don't need it at my age. So it was very difficult. They had -- their track standards weren't -- not only were their track standards not being met, they weren't meeting the FRA standards. So, it was difficult to get work done. It was difficult to -- they didn't have the proper equipment. They didn't have the proper tools. They were -- it seemed to me that they were on an

austerity program. They weren't -- the headquarters people weren't supporting the field people. The field people would lie to the headquarters people and tell them everything was wonderful out in the field. And the field people were just out there floundering.

And so, it was difficult -- again, now I got to start prioritizing what I'm going to do because you can't do it all. You just couldn't fix that much. It just was not possible.

Q. So was it --

A. So we slow ordered track. We took the track out of service. We took the safe courses, but, you know, you still had to work off this list.

Q. So a little bit of déjà vu all over again?

A. Oh, yeah.

Q. Okay. Well, did things eventually get better in the time that you were with them?

A. I was with them from, you know, late '99 until, like I say, April 2004. And things -- I'm going to say stuff probably got about 20% better. They were still trying to catch up. They had to play catch up on the entire system. They had nice buildings and they weren't taking the profits and putting it back into the track or equipment. You know, they're doing other things with it. And there was constant changes in management.

There was no culture. It was like no one -- it was like the flavor of the day. Every other 2 years a new chief engineer

would show up, a new vice president of engineering would show up. They had their ideas what they wanted to do. It was a nightmare. Oh, they had another reorganization in 2004 when I left. To answer you question, within the 5 -- last 5 years they've been pouring I don't know how many hundreds of millions of dollars into the railroad. It's like a completely different railroad now from when I was working for them. It's a pretty nice railroad.

Q. Okay. And just for context, your last comment is past 2004. And now in your comment about the most recent years at CSX, you're over at FRA now?

A. I'm an FRA now. And between 2004 and now were the years that I didn't work, of course, for CSX. But I'm thinking it was like -- this is '12, so probably around 2008, '9, I saw the money starting to come and they started replacing rail ties. I mean, they really started pouring the money in. And they haven't stopped every year since then.

Q. And just so we all know, part of your assigned territory at FRA are trackage in the Baltimore area that includes CSX?

A. The assigned territory that I have to inspect is some of the very same territory that I had to manage when I worked for CSX.

Q. Okay. Well, let's stay on, you're on FRA now for past 2004/2005. Let's talk about how much territory do you have that is assigned to you as an FRA inspector?

A. All right. My territory goes from the Maryland/Virginia

line south of D.C.; north to Wilsmere, Delaware; east of the Chesapeake Bay. And that includes Norfolk Southern, Amtrak Northeast Corridor and CSX. Going west, my territory goes all the way out to the Maryland/West Virginia line in the northeast corner of Maryland/West Virginia. And I have the southern, like the southern tier of Pennsylvania, York to Robert Kennedy (ph.), you know, out in that area there, and all of Maryland.

Q. Southeast Pennsylvania?

A. Um-hum.

Q. So fair to say multiple states, multiple railroads, multiple types of operation, and a lot to look at?

A. Yes.

Q. Too much to look at?

A. For one person it would be. I have a -- I actually have two state partners. One is in Pennsylvania -- well, actually three, I'm sorry. One is in Pennsylvania, one's in Maryland, and I have one in West Virginia.

Q. Okay. Tell me a little bit more how does that work out to your advantage?

A. It frees me up to looking at the -- certainly the Class 1's in the Northeast Corridor, spending enough time on them, and some of the larger regionals. The state partners not only look at the Class 1's also, but they concentrate on the industrial yards, short lines, and the regionals.

Q. Okay. And in the course of fulfilling your duties and

responsibilities tell us some of the kind of activities that you do as an FRA safety inspector. Does it involve walking inspections, hi-rail inspections? Just kind of go over the gamut of things that are part of your regular routine.

A. Okay. I'll list them, I guess. I do walking inspections of yards. I do walking inspections of main lines. I do walking inspections of switches. I do hi-railing of main lines and branch lines. I ride the railroads' geometry cars. I ride Amtrak's high-speed geometry cars. I ride FRA geometry cars. And I do audits of -- record audits of the railroads on the reporting of broken rails, joint bars, their inspection records.

Q. Okay. So you look at records, multiple modes of going out and looking at the track, and do you do accident investigations?

A. I do.

Q. Complaint work as well?

A. I do. I do congressional complaint work, e-mail, phone call complaint work, accident and fatality investigations also.

Q. Okay. And just to tie up a loose end, with the three state inspectors, I take it you guys assign a schedule or you talk out who's going to be where when so you're not on top of each other?

A. That's right. We do.

Q. Okay. And that -- but that works out well?

A. Yeah, we communicate on the phone and there's the also

-- the federal side has a AWS schedule and that spells out weeks in advance where I'm going to be at. And I send that to them so they also see it, so we don't, you know, gang up on a particular supervisor.

Q. Okay. Okay. Frank, you've been in on the on-scene investigation and interviews, you've helped us out with interviews here today, and you know that we've talked about training, just training as an overall topic with everybody we've talked about. So let's talk about you, FRA, and your training at FRA, if you could kind of characterize that for me?

A. Well, I started with the FRA in December of 2004 and within the following summer, I guess -- I don't know it might have been June/July 2005, I already found -- I found myself in school attending classes. Because I was hired -- everybody is hired in the FRA as a new guy. It didn't matter I had 30 years' experience, they were going to teach me what they wanted me to know.

So I started and I haven't stopped. Every year I go to classes. They decide what I need to go to. I can't tell you what I've attended. I should have brought my record because I know it exists, but it's quite detailed. You go over everything that's in the Track Safety Standard Compliance Manual and it's quite detailed. If a railroad was to take the TSSC -- CM I guess -- you could teach a brand new person off the street how to be a railroader and how to inspect a track.

Q. Okay.
A. And that's what they use to teach their inspectors.
Q. Well, I want --
A. One of the items.
Q. I want to put a qualifier with your training. It sounds like it's a lot, not a little. Whether you've given us a litany of it, it's a lot, not a little?
A. It's a great deal. It's a lot. It's a great deal of training. The investigative training, they brought in ex-Secret Service agents or FBI agents to teach us investigative skills, writing report skills. I mean, it's in-depth training.
Q. Fair to say, you had no idea what you were getting involved with?
A. Not at the age that I was, no.
Q. Okay. Well, let's talk -- you mentioned the FRA Track Safety Standards Compliance Manual. Let's talk about that a little bit. And do you have a hardcopy of that with you today?
A. Dick, I don't have a hardcopy of the entire thing because it is -- you know, I would be wasting paper if I printed the whole thing out. I do have it digital on my computer on my hard drive and I can certainly send it to you if you need it. But I do have components or parts of it because there's four parts.
Q. Okay. Do you have the part that talks about exceptions?
A. I do.
Q. Do you have the part -- and I'm going to name of a few

things and you tell me if you've got these printed or not. Okay?

Do you have a part of the Track Safety Standards Compliance Manual that talks about Scope of Part, 213.1?

A. Let me look, sir.

Q. Take your time.

A. I do.

Q. Okay.

A. No, I don't. I thought I did. I have the -- no, I don't.

Q. Okay. We have several FRA personnel here. Let me just ask Mr. Kannenberg.

A. But I do have my Track Safety Standards book that has it in it and I could read to you, if you want.

Q. Okay. Why don't we start there, and if we need to read some guidance language that comes out of the Track Safety Standards Compliance Manual we'll tend to that here a little bit later. Okay?

MR. INCLIMA: Scope of Part. I have that.

MR. HIPSKIND: Okay.

MR. INCLIMA: I do have the manual here.

MR. HIPSKIND: Okay. Thanks, Rick.

BY MR. HIPSKIND:

Q. All right. Well, let's start off with -- would you please read into the record 213.1, Scope of part? And just slowly, clearly --

A. "213.1 Scope of part: (a) This part prescribes the minimum safety requirements for railroad track that is part of the general railroad system of transportation. The requirements prescribed in this part apply to specific track conditions existing in isolation. Therefore, a combination of track conditions, none of which individually amounts to a deviation from the requirements in this part, may require remedial action to provide for safe operations over that track. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part."

Paragraph (b). "Subparts A through F apply to track Classes 1 through 5. Subpart G and 213.2, 213.3, and 213.15 apply to track over which trains are operated at speeds in excess of those permitted over Class 5 track."

Q. Okay. Thanks for that. Let's just try and talk in layman's terms here for a second. Is one understanding of the language in the scope of part to put in a -- whether it's an FRA track inspector or whether it's a industry track inspector, is it to put the notion in their head that, look, you might have some things out there that in -- and I think this is the operative word -- in combination may cause you some problems? And you need to be aware of that and you need to deal with that?

A. I would say that's, you know, a fair statement, yes.

Q. Okay. And we can -- maybe a little later on if we need to talk about some of the guidance language we can do that. But I

just want that as a stepping stone.

Now, the second question I want to ask you about scope of part -- because you do go out and make FRA track safety inspections to find out if there is compliance with the standards when you're on a particular railroad, correct?

A. Yes, I do.

Q. And when you code up a track deficiency, should you find any, you have defect codes as part of 213 track safety standards, right?

A. Yes, there is.

Q. And you look in the back of the book and you access those codes and that's what you use to denote in your report?

A. Yes, I -- yeah, that's right.

Q. Okay. Is there a defect code for scope of part?

A. No.

Q. Okay. Has that ever been explained to you?

A. No.

Q. Okay. All right. Let's move forward. In the time that you've been an FRA inspector and out on the various properties, have you ever had an occasion to find or to note a fouled ballast?

A. Yes.

Q. And give me your understanding or give me some of how that process unwound and how you went about letting the railroad know that.

A. I'm usually with the railroad -- 85% of the time I'm

with somebody with the railroad so we're hi-railing or walking track. And depending on the size and the severity of what I see, if it's fouled ballast -- and that's what we're talking about now, fouled ballast.

Q. F-o-u-l-e-d, fouled.

A. Yes, fouled ballast. Now, the book really doesn't spell out -- the TSS doesn't really spell out exactly -- well, it did. Our new standards -- we have some new codes that came out last year, I believe --

Q. Okay.

A. -- that spell out a little bit more in detail what fouled ballast, saturated subgrades, those defects are. So when I found fouled ballast, I wrote it if it was causing geometry, a geometry defect. But let me clarify that it could have been a class of track, specific defect of Class 2, 3, 4, or 5, whatever class of track I was inspecting. But it could have been it didn't meet the threshold of that class of track, but I wanted it taken care of so I wrote a defect on what I measured.

And if it measured more than half of what that defect was allowed -- if it measured 3 -- if a defect was 3 inches and I could get an inch and a half or an inch and three-quarters, I wrote it as a defect even though it didn't meet the threshold, because I wanted it taken care of.

Q. Let me interrupt. When we talk about didn't meet the threshold, we're not talking about a threshold for fouled ballast.

We're talking about --

A. A geometry.

Q. -- a class specific type thing --

A. Right.

Q. -- that we talked about earlier --

A. Right.

Q. -- in some of the other interviews: gauge, cross-level, warp, those kinds of things?

A. Yes.

Q. And those from time to time are called class specific type deficiencies?

A. Yes.

Q. Okay. So you're an FRA inspector, you're out, you see fouled ballast, continue with the explanation.

A. Well, there is always this -- there was always this give and take about fouled ballast, saturated subgrade, and mud.

Q. Okay.

A. Fouled ballast -- when you look at, you know, what ballast can consist of, it can consist of dirt, in the book -- cinders, dirt, anything that will support the track structure and provide drainage. So if I went along and I saw fouled ballast that was dry and there was no track geometry of any there, I didn't write a defect.

Q. Okay. You were present at the interview earlier this morning and you heard the CSX track inspector provide his

description and understanding of fouled ballast?

A. I did.

Q. How did that strike you? Do you think he was close to the mark or did you differ greatly from his description of that?

A. Well, he used three key words in his description of fouled ballast when he was talking about it. He said that he had fouled ballast and he said it was mud and he said it was saturated subgrade.

Q. And I think --

A. He said the subgrade was saturated and he had water and there was mud and it was fouled.

Q. And I think too --

A. So --

Q. -- he added that the -- one of the attributes was that the condition would hold water; didn't he? Something like that?

A. Well, the ends of the ties created pockets because it was pumping.

Q. Okay.

A. And created a little dam at the end of the ties to keep the water in.

Q. Okay. Well, let's go back to your just general experience and you're out on different railroads, you find a fouled ballast condition. You've described kind of what it looks like to you and you've described your method of determining that. So when you wrote it up, if you didn't have a threshold breaking

track geometry thing, I take it you didn't write it as geometry defect?

A. That's right.

Q. And so you coded it up how?

A. Well --

Q. As fouled ballast or -- you tell me.

A. At the present time, with the new book and our new defect codes, it made it a little easier for us to make those decisions.

Q. Well, enlighten me on the newness and the defect codes, et cetera.

A. Under 213 -- all right. Okay. Hang on a second. Let me dig it out. Under 213.103, Fouled ballast, we have -- 213.103(c), Fouled ballast, failing to provide adequate drainage for the track.

Prior to this coming out we didn't have a defect like that. We had to come up with something else to add to it to put it on the report.

Q. Tell me more.

A. Well, as I explained to you, I would find -- we'll say I found a warp -- no. Well, let's see here -- a profile. I found a profile on a Class 2 track, it's -- and it was an inch, but you're allowed 2 and a quarter inches. So I would write it up because it was half of what was -- of what the threshold was. And over time what I found was there prior to when I got there, so if I -- once

I left I wanted it fixed before it got worse. So I wrote it up as fouled ballast causing approximately an inch profile.

Q. Okay. Well, let me -- let's do some -- let's stop. Let's slow down and let's do some math. If you're allowed 2 and a quarter inches --

A. Um-hum.

Q. -- of profile and you only had an inch of profile --

A. Right.

Q. -- you're less than half of the threshold.

A. I understand. But if it did -- let's see here. You know, I -- you could say I created a defect, but I wanted it fixed.

Q. Okay. Okay.

A. And if it's on a report, somebody's going to fix it to get it off the report.

Q. As part of taking an exception to a track condition that you found, do you have any other expectation of what needs to be done? And maybe before we talk about that, we need to make note that if we're talking about geometry it's class specific.

A. Right.

Q. But when we talk about fouled ballast and writing fouled ballast as a track deficiency that's over in the non-class specific category?

A. Yes, it is.

Q. Okay. Well, does that make it difficult if I'm the

industry track inspector, roadmaster, supervisor, division engineer, do I have clarity about maybe what it is that you want me to do? And I'm not asking you to answer -- for my thinking as an industry, I'm asking you what is that you have with them -- have they ever asked you, well, Frank, what is it that you want me to do? Is there ever any discussion about do I need to put a slow order on this or I don't need to put a slow order on this? Tell me a little bit about that.

A. Now, I can't speak specifically about every incident, but I know the people that I am inspecting. I knew them before I started working for the FRA. And so, I have a good rapport with almost everybody that I inspect from the division engineer down to people in the field that are just trackmen and truck drivers.

So when I go hi-railing there might have been this spot that I just described to you and you repeated the description, I might have found that spot once before when it was dry and had nothing wrong with it. And then we come along after a couple of rainstorms and I come hi-railing, now it's wet and it's pumping. It wasn't pumping before. It wasn't wet. It was dry. And so, now I take exception to it because, you know, it's not a defect but it's going to be a defect soon.

Q. Soon as you add water?

A. Right.

Q. I mean, is that your -- is that some of your consideration?

A. Well, no, over time, you know -- because it's wet and it's -- it starts pumping. So it's not going to get any better, and if it's been there for any length of time at all before I saw it, it must have been, you know, wet, dry, wet, dry, wet, dry. So --

MS. CHRISTENSON: Were you waiting -- did you have --

MR. HIPSKIND: No, I'm just taking notes is all.

BY MR. HIPSKIND:

Q. Okay.

A. So I come along and I find this spot, Dick, and more than likely I talked to them before verbally and said, hey, you got to get this taken care of before I come back the next time and find something worse. So it's the -- a rapport that inspectors have with the people that -- you've got to be enforcing the rules and regulations, but you also have to be, I think -- this is my personal opinion -- with all the experience I have in these newer inspectors, there's not -- I have a lot of experience to give people and I can explain to them what happens prior to and after these things happen or are found.

Q. Okay. And you're speaking on your behalf. You are not speaking for FRA --

A. No, I am not.

Q. -- or their policy or --

A. I said -- right.

Q. -- interpretation?

A. That's right.
Q. Okay. We want to be clear about that.
A. That's right.
Q. Well, let -- Frank, if you will --
MR. HIPSKIND: And thanks to all the rest of you for being patient. I know I'm going along, but I am trying to get to a certain place.
BY MR. HIPSKIND:
Q. Let's add another element to this discussion. And you have your book there. Can you read for me for the record 213.9 paragraph (b)?
A. "213.9 Classes of track: operating speed limits." And then underneath 213.9(b)(1) "Failure to restore other than excepted track to compliance with Class 1 standards" --
Q. Well, let me stop you. I should have been more specific. Can you read the passage of the regulatory language in the book?
A. Oh, in -- all right.
Q. I know you started reading --
A. I'm sorry.
Q. -- the defect code there and I just wanted to stop you there before we got through that whole list. And once you read that I'll try and give my tie-in and we'll talk about that just very briefly.
A. "213.9 Classes of track: operating speed limits.

(a) Except as provided in paragraph (b) of this section and 213.57(b), 213.59(a), 213.113(a), and 213.137(b) and (c), the following maximum allowable operating speeds apply."

And then it lists the five class of tracks.

Q. Well, you can skip over that and paragraph (b) --

A. Paragraph (b). "If a segment of track does not meet all of the requirements for its intended class, it is reclassified to the next lowest class of track for which it does meet all of the requirements of this part. However, if the segment of track does not at least meet the requirements for Class 1 track, operating may continue at Class 1 speeds for a period of not more than 30 days without bringing the track into compliance, under the authority of a person designated under 213.7(a) who has at least one year of supervisory experience in railroad track maintenance, after that person determines that operations may safely continue and subject to any limiting conditions specified by such person."

Q. Okay. Let's break some of that down and I'll try and be pretty quick with it. It mentioned in the first sentence there quite a few other sections in Part 213 and I think those are like gauge, geometry, broken rails. Is that fair to say?

A. Yes, sir.

Q. Okay. And it mentions the phrase "all the requirements of Part 213." Right?

A. Um-hum. Yes.

Q. And earlier we had talked about that there are two

categories of track deficiencies, things that you code up, and they're either class specific or non-class specific. Correct?

A. Yes.

Q. And when we talk about -- or when that regulatory language talks about all requirements is the umbrella wide enough that it encompasses both the class specific type track deficiencies as well as the non-class specific?

Or let me rephrase that while you're thinking. In your training with FRA and on the Track Safety Standards Compliance Manual does that become a little bit of a difficult question to answer?

A. Well, it does.

Q. Okay. That's fine. That's fine. Now, let's talk about why do you think that is?

A. Well, you know, you do -- you read this and it says, as you repeated that except as provided in paragraph -- this section -- and the 57(b), 59(a), 113, 137 and (c) the following maximum allowable speeds, operating, apply. But a class -- if you -- if you're not meeting the class of track, then you drop it down into the next class that it will meet for that type of defect that you found and the measurement that you got.

Q. Okay.

A. So they're talking class of tracks. Those are specific defects. A non-class specific defect -- a frog, if you have a broken frog it spells out in the book that that broken frog, which

isn't class specific, will be 10 mile an hour passing over it.

Q. Okay.

A. If it's in the frog point.

Q. Okay. Well, where do you think fouled ballast or saturated subgrade fits into the reading of 213.9(b)? When we think about the phrase "if it doesn't meet for all" -- what's the phrase there? All the requirements of this part?

A. Yeah, um-hum.

Q. Okay.

A. Okay. Yep.

Q. And I think the other thing that I would want to note real quickly is that it says there's an expectation to bring the track condition into compliance with all requirements of the part 213. And they give a time limit, 30 days.

And is -- do you think it becomes problematic -- maybe not for you, but in your experience out there with track supervisors and track inspectors in the industry, do you think that they have some problems understanding what to do with non-class specific deficiencies? All those codes that are in the back of the book that don't have a class specific, if it doesn't meet this threshold, you lower it to the next class for which it does?

A. It --

MS. CHRISTENSON: Well, that's, you know, opinion based. You know what I mean? If it's something you, you know, have

experience with that can answer it. But if it's something that calls on --

MR. CROWTHER: I've -- I'll answer the question the best that I can.

BY MR. HIPSKIND:

Q. Thank you.

A. I gave you an example of a broken frog. That says 10 miles an hour. Fouled ballast, if we are to use our TSS what we're guided by, there's no restriction -- because it's a non-class so there's no speed restriction for fouled ballast. So the track inspector, again, he's going to use -- or the track supervisor -- as you heard today from CSX, their testimony, they put it on their inspection report. And the company, their company expects something to be done with that spot within 30 days regardless if there's a speed restriction or not.

Now, there's nothing that says that they can't put a speed restriction on it if they want to. And I have been with them when they have and I've been with other people when they haven't. But there's nothing for me, per what I've been told, that if they fail to put a speed restriction on it that I can write them up for it. So to answer your question, when I have non-class specific defects that don't have a remedial action provided to me by the FRA, it doesn't really exist as far as speed goes.

MR. HIPSKIND: Okay. Well, let me throw this out there

to the group. Do you all mind if we take a short break? I know I've -- I know Frank and I have been talking for a long time, so might I suggest with your permission that we take a short break and then come back in and finish off our discussion?

MR. SOUTHWORTH: That's fine. Yeah.

(Off the record.)

(On the record.)

MR. HIPSKIND: Okay. Frank, I think I'm going to stop my discussion and questioning right now. And I appreciate all the candor and all the thoroughness of your answers. And let me pass off to Rick.

MR. INCLIMA: Thanks, Dick.

BY MR. INCLIMA:

Q. Frank, I've only got just a few questions. I know you said when you go out and you're on the property inspecting you're with railroad personnel. Do you have occasions and do you ride with the, you know, assigned track inspector, generally a BMW track inspector?

A. I do.

Q. Have you rode with Danny?

A. I have -- no, I have not. His track supervisor is a very dedicated track supervisor and does what his company wants and that's to accompany me.

Q. Um-hum.

A. So when I go on his territory, the Old Main Line, I've

been with the track supervisor and/or the engineer of track. But there's been times when we've hi-railed behind Danny and I requested that so that we could come along behind him and see if we could find defects that maybe he didn't find.

Q. Okay. Now --

A. To see how he was doing his job.

Q. How he was doing. Would you see value in riding with Danny or any, let's say, contract track inspector or agreement track inspector without management to get a feel for what their challenges are and what their deficiencies are and what's on their mind?

A. Yes, I would and -- because I have in the past. And there's a lot of young track inspectors, and we heard some of their training that they go through or receive. And if I was to go with them, they would get more insight --

Q. Um-hum.

A. -- from the FRA on how we interpret and look at the track and what's a defect, what isn't a defect to continue with their education, I would say.

Q. Right. You know, just from my standpoint I think that would be very beneficial for BMW track inspectors to be accompanied by an FRA inspector to have, you know, that back and forth conversation, ask questions, you know, outside of the light, if you will, of their supervisor. So I would certainly encourage you to do that. Not only you as an individual, but I would --

frankly, I would encourage that as a FRA policy to do more of that. I think it's helpful for both sides.

A. But let me qualify -- or answer to what you just said. It's CSX policy who goes with us on the hi-rail trips. I can request, but it's their policy that management goes with me. I do pull -- normally I'll pull up inspection records for that territory so I'll know who the individual is that made the last inspection or last five, six inspections, and I'll use those records to see what's he finding; is he finding anything; are they -- you know, are the repairs made? So even though I might not be with the track inspector, I have knowledge of what he's done in the past with me.

Q. Okay. Thank you. Whether you're riding with -- you know, whether it be a manager or a track inspector or just get questions from the field about these non-class specific, such as fouled ballast, I mean, how do you answer that question? I mean, is it, well, it's non-class specific and you don't have a geometry defect, therefore, it doesn't exist? I mean, how do you deal with that?

A. All right. The FRA side in me says to the guy, you got fouled ballast, you know, what are you going to do with it? Well, they tell me, you know, I don't have any defects in it; I don't have any geometry defects, warps, you know, gauge, profile, cross-level. And then the railroad side in me says to them you got a problem here and you got to take care of it, you know, because

it's -- you got to get rid of it.

And as I had said earlier in my testimony, from what I see in my territory now from CXS's production that they put in capital work, the local maintenance can now maintain their fouled ballast locations. So, you know, they got -- and I know that they're on prioritized lists that the roadmaster has and a lot of times they'll say to me -- and they'll show me the list. I got the two or three behind me that you wrote up the last time -- and I'll say, right -- and I'm coming to this one. So, you know, they're getting it done. They recognize what they got to do and it just takes time.

Q. Okay. Thank you, Frank. I appreciate that. Just one other question that -- it's more -- I'm seeking more a personal perspective than maybe an FRA official response.

But do you think that it would be helpful, not only to yourself as an FRA inspector but to the railroads in general, the track inspectors, track foremen, if there was -- you know, if there was more guidance in the CFR, like we have a remedial action table for certain rail defects? You know, would it be helpful to the industry to have some specific guidance in the CFR for things like fouled ballast?

MS. CHRISTENSON: And again, you know, since he's here in the FRA capacity --

MR. INCLIMA: Right, right, right.

MS. CHRISTENSON: -- you know.

MR. CROWTHER: Yeah, I can't make -- you know, I --
BY MR. INCLIMA:
Q. You don't make policy.
A. I can't answer your question --
Q. I understand that.
A. In all reality -- and I'm not responding for FRA, you know.
Q. Um-hum.
A. I'm responding as me the track inspector. Everywhere I go I find different things in the field. And to have a policy that is going to spell it out, there can't be a policy that spells it out because there's too many variables that go into this fouled ballast.
Q. Okay.
A. That's all I --
Q. Yeah, that's a fair enough opinion.
A. I mean, we have a defect code and it says -- you know, it spells out when a fouled ballast has got to be addressed. And they have the same codes that I have. And if they use those codes they wouldn't have a problem in that regard.
Q. Okay. Do you know when that new code went into the CFR, Frank? I --
A. Well, I don't remember. Let me look. I thought I -- I might have wrote it down somewhere. This is a supplement -- no, I -- Rick, I only can speak for myself. I sent an e-mail when these

came out to the division people telling them that these new FRA codes came out and that they should make -- get copies made available to them. These are stick-in. You stick them in, in your book --

Q. Oh, okay.

A. -- over the old ones.

Q. Okay.

A. Okay? So I can't -- it was last year. I believe it -- I'm not sure.

Q. Okay.

A. But it was last year.

Q. I mean, it's fairly recent --

A. Yes. Yes.

Q. -- the miscellaneous revisions, probably tied to some other, you know, some other (indiscernible) --

A. I think it was done in the RSPC, because of the RSPC. We have a RSPC -- it's our reporting system that, you know, we have.

Q. Oh, okay.

A. And I think it was done to expand --

Q. Um-hum.

A. -- the codes and -- so we would have clear verbiage in some of the aspects of the things here, so -- but, you know, when I first started using these the railroad would say to me where are you coming up with that?

Q. Right.
A. Because they didn't have it, you know, so that's why I said, you know, I sent an e-mail saying, you know, you should let your people know that I'm going to start using these new codes. And I --
Q. Um-hum.
A. -- I believe I faxed them the codes so that they would know what it was on the report.
MR. INCLIMA: Okay. Well, great. Thank you. That's all I have.
MR. HIPSKIND: Mr. Kannenberg, you have been exceptionally patient. I think we ought to have you to join the discussion.
MR. KANNENBERG: Mr. Hipskind, I can't thank you enough for the opportunity.
BY MR. KANNENBERG:
Q. I would like to revisit a couple of things that had me thinking. We were talking about fouled ballast locations and you talked about wet, dry, wet, dry, wet, dry. Will track degrade after just being wet and dry without tonnage being on it?
A. No.
Q. So there's another aspect that has to be taken into effect -- or into account by any inspector. I don't want to seem like I'm putting words in his mouth, but, I mean, I'll question -- I'll ask it like this. Would a branch line that runs empties five

times a day see track degradation at the rate that they would on the Powder River Basin where they're running 500 million gross ton a year?

A. No.

Q. And that's one of the variables I'd like to point out. Would that make it -- well, I guess that pretty much answers that. Thank you.

And another thing I'd like to point out is -- or ask you, is you said that you would point out that something may be coming up or something may be coming down the road that's going to cause you trouble and you'll tell somebody. Well, does all track degrade at some rate?

A. Yes.

Q. So literally, every piece of track in America will degrade at some point. It's just a matter -- and our -- at the point you can write it up at is when it reaches what's been determined as a track safety standard minimum safety standard level?

A. For that class of track.

Q. Okay.

MR. HIPSKIND: Are you done?

MR. KANNENBERG: No.

MR. HIPSKIND: Okay. Please continue.

MR. KANNENBERG: Thank you.

BY MR. KANNENBERG:

Q. I'd also like to ask you a little about -- a little bit about 213.9(b) as it applies to non-class specific defects. So if you give them a non-class specific defect -- let's just say it would bolts on a frog, a non-class specific defect, is that -- do you think that that is enough to get them to repair the defect or do you think more needs to be done? As far as writing a non-class specific defect?

A. When I write a non-class specific defect and it hits the report, I expect it to be repaired when I go back and look. And there's -- at the end of the day when I'm done with the inspector or assistant roadmaster or whoever the person is representing the company, the railroad that I'm with, at the end of the day I have a list of my defects, I have a list that was class specific and I have a list that was non-class specific. And I'll ask the railroad representative at the end of the day what have done to protect the track for X, Y, Z class specific defects? And they respond to me: I slow ordered it; I repaired it, you know, whatever their response it. They have to tell me that they've taken action at the end of the day before we leave -- before I leave.

Q. Okay. So if they were to put a 213 -- let's just say that there was another condition there that was class specific and they put a 213.9(b) on there. How long do they have to fix that?

A. They -- they and the book says 30 days.

Q. And a non-class specific they have how long?

A. They say 30 days.
Q. So either way the defect, whether class specific or non-class specific, would be fixed in 30 days?
A. That's right.
Q. Okay.
MR. HIPSKIND: Can I interject? The they means who?
MR. CROWTHER: At this time it's CSX. We're here for their derailment and their people, their representative reported through their interview today that they had 90 -- 30 days on non-class specific repairs on 213.9(b).
MR. HIPSKIND: Okay. But they could also be construed as the railroad industry.
MR. CROWTHER: I'm sorry. CSX railroad reported to me that they put it on -- reported to us today through interview that they put
non-class specific in their -- on their reports as comments and they're fixed within 30 days.
MR. HIPSKIND: Point taken. Sorry for the interruption.
MR. KANNENBERG: Oh, absolutely.
BY MR. KANNENBERG:
Q. And fouled ballast seems to be pretty much getting a lot of attention here. Do you write -- or can you estimate how many times you've written fouled ballast in the last 6 months?
A. Twenty, 30.
Q. Do you always write fouled ballast when you get to that

mythical halfway mark -- I shouldn't say mythical -- when you get to the halfway mark?

A. Yes. Presently -- at the present time I do. I used to do saturated subgrade a lot.

Q. Which is the same fix and is the same thing it's just a different way that we wrote it?

A. But -- yeah.

Q. So that's great. And that's exactly what's expected of you, so thank you.

MR. KANNENBERG: And -- fouled ballast -- I'm trying to follow up on a whole of stuff here. You can ask Dick -- my notes, I only have a small notebook here, but I think that's --

MR. HIPSKIND: You will get a second round though, Dave.

MR. KANNENBERG: Okay. Then that's all I have. Thank you.

MR. HIPSKIND: Mr. Rose, anything from you?

MR. ROSE: No. No, I'm not -- I had the time question somewhat answered, the tonnage answered, so I'm good.

MR. HIPSKIND: Jim?

MR. SOUTHWORTH: I'm --

BY MR. HIPSKIND:

Q. Okay. If it's back to me -- and let's start going for the wrap-up here.

Frank, I mentioned earlier -- and you don't have this stuff with you, but I've called it up on my computer. And we had

you to read into the record 213.1 Scope of part. And you'll see underneath there -- and I'll use my finger -- could you read into the record this portion right here --

A. Um-hum.

Q. -- that starts with "Guidance"? And just read down to the bottom of that paragraph, if you would please?

A. Sure.

Q. And let us note where the guidance appears. Does it appear under the regulatory language of Scope of part?

A. All right.

Q. Does it?

A. It does.

Q. Okay. And if you'll please read that?

A. Under the paragraph of Guidance, which is directly underneath 213.1 Scope of part, it states, "It is important to note that the TSS" -- that's Track Safety Standards -- "are minimum safety requirements and are not appropriate for track maintenance purposes. This section also notes that while the TSS address specific track conditions that exist in isolation, there can sometimes be a combination of track conditions, none of which individually amounts to a deviation of the TSS that require remedial action to provide for safe operations over the track. Experience has shown that such an event occurs only rarely, but if an inspector should encounter such a condition, the inspector should immediately bring the condition to the attention of the

accompanying railroad official, explain the hazard of such a condition, and encourage its rapid removal. Where the inspector is not able to convince the railroad to initiate some action, the inspector should refer to the regional track specialist for assistance."

Q. Okay. Thank you. If you'll hand that back to me? A couple of follow-up questions. The rails on which the rolling stock, the trains ride, are those part of the track structure?

A. Yes, sir.

Q. Okay. Let me go to a second section that we had to read into the record. And we didn't have in front of us at that time the guidance language, so give me just a second and we'll get there. And the section again is 213.9(b).

And when I give this to you, if you want to page up and note the regulatory language, 9(b), that paragraph? And if you'll just scroll down after you verify that -- if you'll scroll down to just the next -- top of the next page? And like before, there is the word "Guidance." You went just a little bit too far. Just scroll up. A little bit more. If you will read where it starts there "Guidance" down through those first four bullets?

A. It states: Guidance. A track segment must meet all the requirements for its designated class of track -- or class. Where a track segment does not meet all the requirements, railroads can reclassify the segment for the next lowest class with which it complies. For example, on a Class 3 track, where the alignment

measurement of a 62-foot chord in a tangent is 2 inches, the railroad can elect to reduce the speed equivalent to Class 2 track.

Trains may continue to operate over a non-complying condition under 213.9(b). However, the 30-day limit for any given condition cannot be exceeded. The 30-day period commences when:

An FRA inspector notifies the carrier or issues notice with a F 6180.96 form;

(2) a person designated under 213.7 records the defect on an owner's record of inspection;

(3) notices of substandard conditions are received from third parties; and

(4) the track owner is deemed to have a constructive knowledge if the defects were discoverable through properly performed track inspections required by the TSS even if the defects are not reported on the owner's record of inspection.

Q. Okay. That's the end of it?

A. Um-hum. Yes, it is.

Q. Okay. Thank you very much. And we had talked earlier about class specific and non-class specific and I think the jury's out a little bit on whether all non-class specific -- whether that's part of the phrase "all requirements."

And I'm okay -- and we can leave it at that unless you have a comment otherwise about your thought or your training at FRA since you've been with FRA whether that training has given you

the understanding to answer that question.

A. No. I agree with your summary of -- your statement. There is some non-class specific spelled out that require a slow order; there's others that don't. So in my estimation, if a non-class specific requires a slow order, well, then it's --

Q. It's almost like it's become class specific.

A. Right. That's correct. It falls in that group. But those minor things that we mentioned, a loose bolt, a missing bolt, you know, other non-class -- they don't fall -- in my estimation and in my training they don't fall within the same guidelines.

Q. And let's add this element to the discussion too that sometimes this regulatory language it just is what it is. It's regulatory language. And a lot of times it would be easy for, not only FRA track inspectors, but also industry personnel performing track inspections, performing repairs, doing supervisory stuff, to know all the nuances and interpretation of some of that language. Do you think that's a fair statement?

MS. CHRISTENSON: And again, if it's, you know --

MR. CROWTHER: Well, it -- you know, I had all this stuff -- all these questions you're asking me now I had the answers for in my living room at home. But now I have all this paper and I don't know where to look for it. But within my training it says that I am to use my intuition and experience --

BY MR. HIPSKIND:

Q. Good judgment.

A. -- in picking what a defect is and what it isn't. My eyes are to know what I'm looking at. I can't explain it any better than that.

Q. Yeah, and the FRA Track Safety Standards Compliance Manual they use a little bit of that same terminology, but they use good judgment and they talk about the FRA track safety inspector's experience. So experience, good judgment, and you kind of sort out some of these things and -- okay.

[QUESTION REDACTED.]

MR. HIPSKIND: Well, here's where we're at, Frank. Let me just -- for the transcriber and for the record, let me just strike that last question and let me -- I'd like to pull it back. I'd like to redact it, whatever the transcriber can do, and let's just move on with I will thank you very much for your candor and all your experience and helping us out with the investigation from on scene, the initial interviews, and with today's interviews and being patient with us for this discussion.

But let me pass it off to Rick and give Dave and everybody a second round.

MR. INCLIMA: I don't have any further questions. Thank you.

MR. HIPSKIND: Thank you, Rick. Dave?

MR. KANNENBERG: Okay. I'm processing some of the 213.9(b) questions real quick now.

MR. HIPSKIND: Take your time. Take your time.

MR. KANNENBERG: If you want to go ahead.

MR. ROSE: No, I've got nothing. The questions I had you guys beat me to them so I'm good.

MR. KANNENBERG: I guess this may be an opinion question, but it's something I want to know and you don't have to answer it. With 213.9(b), the combination of 213.9(b) and non-class specific defects, do you feel that you have the tools you need to get repairs made to all conditions you find out there that need to be repaired?

MR. CROWTHER: I certainly have all the tools I need to effect repairs in the field of the defects that I find -- or conditions.

MR. HIPSKIND: Is it back to me?

MR. KANNENBERG: Yes, sir. I'm all done.

BY MR. HIPSKIND:

Q. Let me try and wrap it up with this. So we talked about scope of part, a combination of defects -- no, a combination of conditions, neither one of which is a defect coming together and somebody -- raising somebody's awareness to where they're going to do something whether it breaks a threshold of a company standard policy, procedure, measurement, or whether it breaks a threshold of FRA minimum track safety standards. We've talked about that and we read the language in and we also read the guidance.

Now, they were a little disjointed and appear in

different parts of the interview, but we have that there. And we also talked about 213.9(b). And we've had a discussion about class specific defects. We've talked about that. It seems very simple to me. You just go out and you put a proper measurement under load on a condition you have and that measurement tells you -- because you go to a table and it's either good for that class of track or it's not. And depending on your operating speed, you may have to lower the operating speed for the class for which it makes. Fair enough so far?

A. That's correct.

Q. Okay. But it seems like the rough comes in -- and here's where I'm going with this -- what do we do or what does FRA do and what is the industry to do when we're really honest and thorough about our inspections and we record class specific defects? And I'm going to say that's kind of in the no-brainer category. We go out, we measure it, we know what to do with it, we put a slow order on it, and things happen, and things get better. And men and manpower, machinery are brought in and whatever that particular location, whatever that defect is, it has a tendency to get corrected or remedial action provided. Okay?

But it seems to me that in the non-class specific -- and we've had a good discussion about that and we've used as a consistent example fouled ballast, saturated ballast. But the point is we could have talked about dozens and dozens and dozens of other non-class specific defects. Just for brevity we chose to

focus on fouled ballast because it has over the years tended to be kind of an item that does cause a lot of questions to come forward.

So with all that said, what do we do when that 30-day limit comes and goes and we have non-class specific defects that we've entered in on the record? Now maybe a lot of them we go ahead, we enter them on there, we get them fixed. CSX has a IT IS program and it tracks it, it prompts it, it gives all kinds of flags. Well, what if you don't have an ITIS program? What if you're just doing it the old fashioned way?

What do we do -- what is FRA's position or what is -- how do you handle when you become aware that you're looking at something that has exceeded 30 days and it's in the non-class specific category?

A. Well, I can't speak for the FRA --

Q. Okay.

A. -- for the entire FRA.

Q. No, I understand.

A. I explained to you earlier what I do.

Q. Okay. Okay. And you let that expectation be known where you go in your territory and the places that you inspect?

MR. KANNENBERG: I don't know if you understood his question, if I could just barge in?

MR. CROWTHER: I do. I do.

MR. HIPSKIND: No, that's okay.

MR. CROWTHER: No.

MR. KANNENBERG: All right.

MR. CROWTHER: No. He's talking non-class specific --

MR. KANNENBERG: And after it's not been repaired for 30 days and you come back and it's not repaired.

BY MR. HIPSKIND:

Q. Okay or no okay? Case by case?

A. Well, I guess the -- okay, let me give you the official FRA answer.

Q. Please do.

A. It would be a -- it would generate a violation report if I come back and I've written a defect up, told them to get it fixed, and I would come back to look at it. If I come back and it's not there, then they get violated. The next step --

Q. Well, let's add some -- a little bit of specifics to this example that we're talking about. Would it make a difference to you if we're talking about Class 4 or Class 5 track and the operating are 80, 70, 60 mile an hour and they haven't done anything?

A. It would to me, but to the FRA black is black, white is white and it would be a violation if it was on Class 1, 2, 3, 4, or 5.

Q. That's an answer. That is an answer. Okay. I think that we've gone as far as I want to go with the discussion today.

I think what we need to talk about now -- and we have

purposefully avoided talking about policy issues. I mean we talked ahead of time that we wouldn't go there, but if it comes to NTSB's decision that we may want to delve deeper into some of the topics that we raised today on a policy level who should we reach out to in terms of a name, a title? Where do we go to have that further discussion?

A. I personally could not give you that answer. Maybe my counsel or my regional, assistant regional administrator could possibly give you the name.

Q. Okay. Would it likely be somebody at FRA headquarters?

A. Yes, it would.

MR. HIPSKIND: Okay. I think we can go with that unless Mr. Kannenberg wants to offer a name or a title?

MR. KANNENBERG: I can give you the track staff director's name. He would probably be the one taking the questions. And, of course, you know, that's Kenneth Rusk. And then there's also Carlo Patrick for Rail Integrity and Structure. But Ron Hines is their director and you guys know Ron, so --

MR. HIPSKIND: And actually we know all the individuals, but -- okay. And if the need arises, we can continue the conversation with them.

But as we have done with a lot of the interviewees, Frank this is your moment. Is there anything else that you want to add to the discussion? Is there anything that you don't think that we talked about that we need to talk about a little bit more

or to add clarification or to add greater understanding for NTSB on the -- some of these subjects we talked about today?

MR. CROWTHER: Let's see. Well, I would like -- the reason why we're here today is that we're investigating a derailment that occurred on a broken rail that was in an area of fouled ballast. And that's why I believe you've been asking a lot of questions on fouled ballast. And not only of me, but the CSX people.

On July 19th, approximately a month before the derailment -- I told you this before and it's on my 96 report -- I was in that area walking track and I specifically went from mile pole 12 to 13 with a level board. And I took measurements and I saw fouled ballast. It was bone dry. There was no movement in the track vertically or horizontally. There was no defect there. And that's what my report reflects. And that's all I have to say.

MR. HIPSKIND: Okay. But let me add some context to that. Probably at that time of year -- and we haven't reached back to do a weather thing, but much of the nation was experiencing a rather higher than normal summer temperatures and many of the parts of the country were in kind of a drought type thing. I don't know if it existed out here, but that kind of maybe would be consistent or go hand in hand with your observation at the time.

MR. CROWTHER: It certainly did. It had not rained for quite a while.

MR. HIPSKIND: Okay.

MR. KANNENBERG: I would also like to add, though, if track is pumping when it's wet -- and correct me if I'm wrong, Frank -- if track is pumping when it's wet, even when it dries out you're still going to have the movement that you had when it was wet. So at that point whenever it was, there was no evidence of the track moving wet or dry.

MR. HIPSKIND: Point taken.

MR. KANNENBERG: Thank you.

MR. SOUTHWORTH: Okay. Any other additional comments, questions from anybody?

MR. KANNENBERG: I'd like to bring up -- you asked the question what does FRA do when we are honest in our inspections? And I'm not sure what you meant by that.

MR. HIPSKIND: No, I -- that may have been an inartful term. I think maybe I was talking more not from FRA's perspective, but from an industry perspective, that if the industry is -- and maybe I should say -- instead of honest I should say reflecting actual field conditions. If I have a second swipe at that, I think I would rather use that term.

MR. KANNENBERG: Okay. And you're referring to the industry folks and not us, right?

MR. HIPSKIND: Exactly.

MR. KANNENBERG: Or FRA?

MR. HIPSKIND: Yeah. And if I said it and it may have

been misconstrued, no, I mean that in the general process of industry track inspection reflecting actual field conditions in place of the word honest.

MR. KANNENBERG: I understand. And that's what we expect of them, but --

MR. HIPSKIND: Okay. Jim?

MR. SOUTHWORTH: I'm fine.

MR. HIPSKIND: It's up to you if you want to close it out?

MR. SOUTHWORTH: I think we've got what we need. So far we've got -- we've identified headquarters D.C. and we know the personnel there that we need to talk to from a policy standpoint. I think we stayed well within the lines of where we thought we would for our discussions. I appreciate everybody's candidness and help and expertise. And we'll bring this to an end right now.

(Whereupon, the interview was concluded.)

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF:	CSX TRAIN DERAILMENT AUGUST 20, 2012 ELLICOTT CITY, MARYLAND Interview of Frank Crowther
DOCKET NUMBER:	DCA-12-MR-009
PLACE:	Ellicott City, Maryland
DATE:	October 4, 2012

was held according to the record, and that this is the original, complete, true and accurate transcript which has been transcribed to the best of my skill and ability.

_____

Anne VanDereedt
Transcriber