From:	David Casaceli
To:	"[redacted] @dot.gov"
Cc:	Troy Lloyd; Kilgore, Kenton (FRA)
Subject:	RE: Information Request: Great Barrington, MA Fatality
Date:	Monday, September 25, 2023 4:15:00 PM

Kenton,

I wanted to confirm our earlier conversation today that the FRA is still working on the information request dated August 24, 2023, below. As discussed, it would be helpful if FRA could provide information as it becomes available for each item below and to respond to the request in-full as soon as practicable.

In addition, over the last 30 days since the original request, we have identified additional avenues of investigation and additional information requests for the FRA. Below is an 'all-encompassing' request to date, including those items in the original request. I tried to add additional context and clarity where possible. Please let anyone working these requests know they can reach out to me directly at any time with any questions or updates.

September 25, 2023

To: Federal Railroad Administration

RE: NTSB Accident Number RRD23FR015
Dear FRA:

As you are aware, the National Transportation Safety Board (NTSB) is investigating the August 4, 2023, Middlesex Corporation (MC) contract employee fatality. The fatal incident occurred on the Housatonic Railroad's (HRRC) Berkshire line, owned by the Massachusetts Department of Transportation (MassDOT), when an MC machine operator struck and killed an employee working on the ground.

As part of this investigation, the NTSB asks for the Federal Railroad Administration's (FRA) responses to the inquiries below to gather facts about FRA's programs to ensure safety and compliance with various regulations.

Regarding FRA's previous compliance oversight activities and actions:

1. Reports of FRA inspections completed on the Housatonic Railroad between 10/14/2017 and 8/3/2023. This is slightly more than five years of reports to gain insight into inspection activities before and after the October 2020 fatality on the HRRC. (*Originally requested August 24, 2023, as item number 1.)*
2. Reports of FRA inspections completed for the Middlesex Corporation for the last five years: between 8/1/2018 and 8/3/2023. (*Originally requested August 24, 2023,*

as item number 2.)

3. Other reports of specific actions taken concerning Housatonic Railroad and Middlesex Corporation, such as compliance agreements, official memorandums, etc. for the same periods outlined above. This is to ensure we have all enforcement actions and communications, including those surrounding the October 2020 fatality on HRRC. (*Originally requested August 24, 2023, as item number 3.)*

Regarding FRA's compliance programs for short line railroads and railroad contractors:

4. Please share summaries and documentation about any FRA programs that inform the nature and frequency of inspections and/or audits on short line railroads? The NTSB would like to determine if there is guidance to FRA employees performing regulatory oversight duties on when and how to perform inspections on short line railroads, or a specific short line railroad, and if there is any guidance regarding when to consider recommending civil penalties that is specific to short line railroads. (*Originally requested August 24, 2023, as item number 4. Additional clarity added)*

5. Please share summaries and documentation about any FRA programs that inform the nature and frequency of inspections and/or audits on railroad contractors. The NTSB would like to determine if there is guidance to FRA employees performing regulatory oversight duties on when and how to perform inspections on railroad contractors, or a specific contractor, and if there is any guidance regarding when to consider recommending civil penalties that is specific to railroad contractors. Please specify if any programs or guidance and specific in nature to contractors employing roadway workers. (*Originally requested August 24, 2023, as item number 5. Additional clarity added)*

6. Does the FRA have data regarding the number of railroad contracting companies and the number of employees or employee work-hours of these railroad contractors, as it does for railroads and railroad employees? Is the FRA able to compute incident, injury, accident, or fatality rates amongst railroad contractor employees similar to how it is calculated for direct railroad employees? Can the FRA determine such incident rates for railroad contractors specifically performing roadway worker activities? If so, how do the accident/incident rates of railroad contractors and contract employees compare to those of railroads and railroad employees? If the FRA cannot calculate incident rates for contract employees, how does FRA determine if a railroad contractor has a safety performance that would lead to the FRA performing additional oversight or recommending civil penalties?

7. For the last five years for which FRA was data: how many roadway worker employee fatalities as a result of railroad duties, were reported? How many contract employee roadway worker fatalities, as a result of railroad duties, were reported? Please exclude deaths of natural causes or otherwise unrelated to the employees' job duties.

Regrading FRA's regulations for Risk Reduction Programs in 49 CFR Part 271:

8. In each calendar year since the rule's publication in February of 2020, has FRA completed its two-phase annual analysis to identify railroads with inadequate safety performance?
    a. If so, please share any findings related to MassDOT and the HRRC, including: Did the quantitative review identify the HRRC for further analysis based on the October 2020 employee fatality? Was HRRC notified by FRA of a qualitative assessment? What were the results of the qualitative assessment? What was FRA's final determination on the HRRC's safety performance?

    b. If not, why was this analysis not performed on an annual basis as outlined in Part 271 Section 13: Determination of inadequate safety performance? When does FRA plan to complete its first *annual* analysis? Does FRA plan to complete this analysis on an annual basis going forward? If FRA had performed the first phase, the quantitative analysis, would the HRRC have been identified as possibly having an inadequate safety performance in this phase?

9. If FRA determines a railroad like HRRC has inadequate safety performance during the second phase analysis, what does the FRA require of the railroad? What are the goals of these requirements?

10. As it was reported to the FRA, will the August 4, 2023, contract employee fatality be included in the quantitative analysis of HRRC conducted in future years?

Regarding FRA's regulations on training, qualification, and oversight for safety-related railroad employees:

11. How does FRA ensure compliance with Part 243? Specifically, how does FRA ensure employers, including short line railroads and railroad contractors, (a) have a compliant program; (b) adhere to that program; (c) monitor the effectiveness of their program; and (d) provide proper oversight tests and inspections of their program. After adopting an approved plan or program, how often does FRA audit or inspect Part 243 training programs, including on short line railroads and contractors? Please share any documentation, programs, guidance, or other instructions to FRA employees regarding how and when to evaluate compliance with Part 243. (*Originally requested August 24, 2023, as item number 6. Additional clarity added)*

I want to thank you for your timely response to this information request. The NTSB appreciates the FRA's commitment to safety and its contributions as a party member in this investigation and all others involving FRA-regulated properties.

Sincerely,

David F Casaceli PE

Railroad Accident Investigator
National Transportation Safety Board
[redacted]

From: Casaceli David
Sent: Thursday, August 24, 2023 3:13 PM
To: [redacted]@dot.gov
Cc: Lloyd Troy <[redacted]@ntsb.gov>; Gordon Robert (Joe) <[redacted]@ntsb.gov>
Subject: Information Request: Great Barrington, MA Fatality

NTSB Accident Number: RRD23FR015

Good afternoon,

The NTSB is investigating the August 4th, 2023, Middlesex Corporation contract employee fatality on the Housatonic Railroad. As part of that investigation, the NTSB is requesting the following information from the FRA.

Please let me know if you have any questions about this request, and we will clarify.

1. Reports of FRA inspections completed on the Housatonic Railroad between 10/14/2017 and 8/3/2023.
2. Reports of FRA inspections completed for the Middlesex Corporation for the last five years: between 8/1/2018 and 8/3/2023.
3. Other reports of specific actions taken concerning Housatonic Railroad and Middlesex Corporation, such as compliance agreements, official memorandums, etc. for the same periods outlined above.
4. A description of and associated documentation of short line specific programs at FRA, including any programs or guidance that inform the frequency and/or nature of inspections and enforcement actions on short line railroads.
5. A description of and associated documentation of programs at FRA specific to railroad maintenance and construction contractors, including any programs or guidance that inform the frequency and/or nature of inspections and enforcement actions of such companies.
6. Documentation or description of how FRA ensures compliance for 49 CFR Part 243, specifically for short line railroads and track maintenance/construction contractors.

FRA's investigative team into this accident includes John Patane and Owen Smith, both of whom have access to the Kiteworks file database associated with this accident. Responses may be uploaded directly to Kiteworks. If others at FRA need access to upload files directly, please let us know.

Thank you,

Kind Regards,

David F Casaceli PE

Railroad Accident Investigator
National Transportation Safety Board

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c: [redacted]
Schedule a Meeting
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