



## Railroad Right of Entry: A Case Study

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## Railroad Right-of-Entry (ROE)

### Who needs a Rail ROE?

- ▶ Anyone accessing the corridor

### Why do I need a separate ROE?

- ▶ Insures the Railroad is aware
- ▶ For your safety and the safety of others
- ▶ To provide the access you need



## Railroad Right-of-Entry (ROE)

### What railroads require a ROE?

- ▶ Any railroad corridor:
  - North Carolina Railroad Company
  - Norfolk Southern
  - CSX
  - Short Line Railroads

### How do I get one?

- ▶ Application process
- ▶ Plan Ahead



## North Carolina Rail Corridors





## Components of a Rail ROE

### Insurance

- ▶ Railroad Protective Liability
- ▶ Comprehensive General Liability (\$2m)
- ▶ Worker' Compensation
- ▶ Employer's Liability
- ▶ Automobile Liability



## The Project



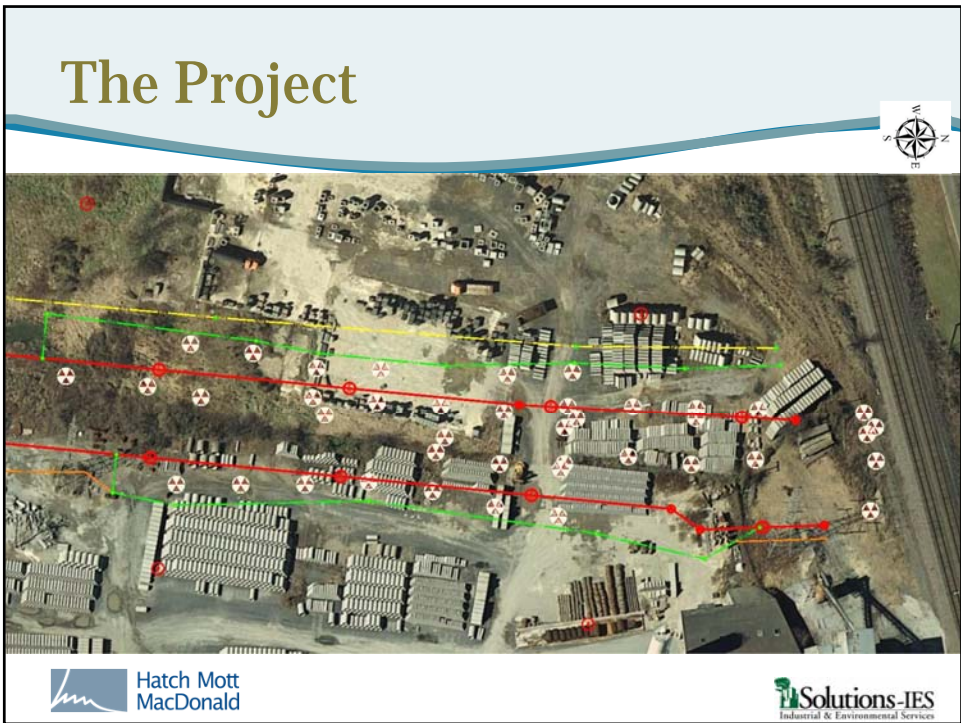
# The Project



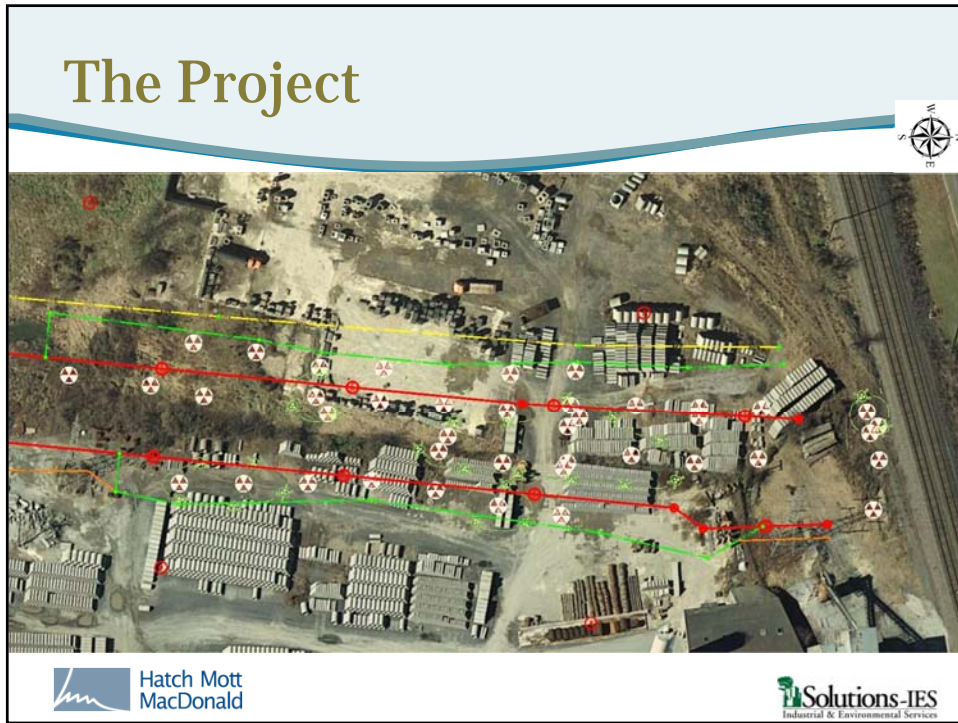
# The Project





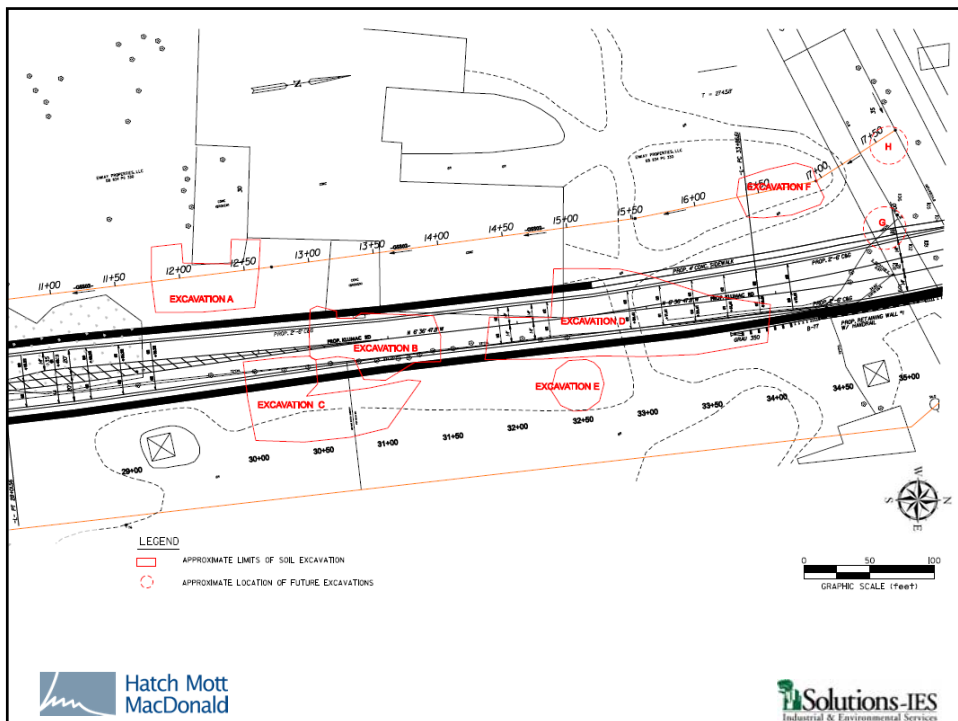


# The Project



Hatch Mott MacDonald

Solutions-IES  
Industrial & Environmental Services

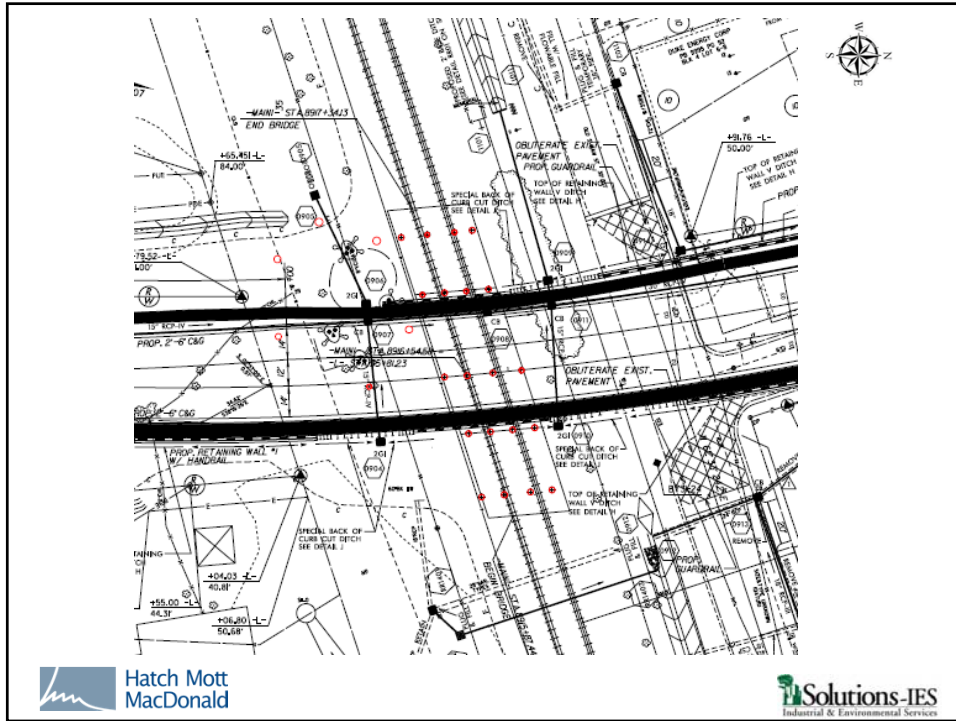


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## Right of Entry Negotiations

Right of Entry Agreement had to be negotiated with:

- Norfolk Southern Railway Company
- North Carolina Railroad Company

One agreement was negotiated that covered both entities

The agreement would be for soil borings and soil sampling only

## Negotiating Points

- ✓ Liability and Indemnification
- ✓ Insurance
- ✓ Site access and fouling the tracks
- ✓ Reporting and confidentiality



## Liability and Indemnification

Licensee agrees to indemnify and hold [NSRR and NCRR] harmless against all costs, losses, claims, damages, or expenses arising out of any loss...which results from the activities of the Licensee hereunder, unless such loss, injury, or damage is solely caused by the negligence of NCRR and/or NSR...

...in the event any boring installed acts as a conduit for contamination whether or not ...caused by the negligence of NCRR and/or NSR.



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Licensee agrees to indemnify and hold [NSRR and NCRR] harmless against **all** costs, losses, claims, damages, or expenses arising out of **any** loss...which results from the activities of the Licensee hereunder, unless such loss, injury, or damage is **solely** caused by the negligence of NCRR and/or NSR...

...in the event any boring installed acts as a conduit for contamination **whether or not** ...caused by the negligence of NCRR and/or NSR.

...provided that no well or borings shall be deemed to be a conduit for contamination if such borings are located in accordance with Exhibit A



## Insurance

### Workers' Compensation Insurance

- Statutory requirements

### Employer's Liability Insurance

- \$500,000 each accident
- \$500,000 per disease per employee

### Comprehensive General Liability Insurance

- \$2,000,000 per occurrence
- NCRR and NSR endorsed as additional insured
- Severability of interests included
- Include Contractual Liability Insurance specific to indemnification provisions
- Delete exclusions for construction or demolition activities within 50 feet of railroad tracks

### Automobile Liability Insurance

- \$1,000,000 per occurrence



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## Insurance Alternatives

### Risk Financing Fee

- \$1,000 payable to NSR
- Fee places project under NCRR and NSR's Master Railroad Protective Liability Insurance Policy

OR

### Railroad Protective Liability Insurance Policy

- \$2,000,000 per occurrence
- \$6,000,000 aggregate





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## Site Access and Fouling the Tracks

No work shall occur and no equipment may be placed within 25 feet of the centerline of any track...

...no part of its equipment shall foul any operating track...

All work shall occur only during daylight hours...

...work shall be performed in accordance with (a) the latest American Railway Engineering and Maintenance Association Guidelines...and (b) to the entire satisfaction of NSR's Division Engineer...

[NSR] shall be given notice of not less than 72 hours before Licensee enters property



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[NSR] shall be given **notice** of not less than 72 hours before Licensee enters property **(email was accepted as proper notice)**



## Reporting and Confidentiality

Unless disclosure is required by court order or applicable law or regulation, Licensee shall maintain the confidentiality of all information pertaining to any environmental test performed on the Property.

Licensee agrees to give NCRR and NSR a complete copy of the results of the analyses of any samples taken from the Property and any reports generated using such data (electronic format preferred), and advise of any planned corrective action and closure of any well(s) and/or regulatory closure of the site.



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## Conclusions

Right of Entry Agreement successfully negotiated

Sampling and analysis indicated no detectable dieldrin in active construction zone

Before Areas G and H can be excavated, another agreement must be negotiated because the work is different



## Questions?

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