

FINANCIAL & FORENSIC POLLUTION CLEANUP COST AUDIT

CONTRACTUALLY RESTRICTED VS. FULL FDEP/EPA REMEDIATION

Dave Jaye | Author & Lead Researcher, Chairman, Lee County Taxpayers Association

Organization Websites: usataxfighters.org • tripleddippers.org

Prepared for: Bonita Springs City Council, Mayor, Press, and Local Taxpayers

Clean up costs could be much worse as Seller (Railroad) claims \$0 in cleanup liabilities under "AS-IS" terms, while standard FDEP/EPA standards project \$12.5M to \$24M+ in site cleanup costs. Furthermore, the Seminole Gulf Railroad prohibits testing for common dangerous railroad chemicals—including Diesel Fuel/BTEX (TPH), Volatile Organic Compounds (VOCs) and Chlorinated Solvents, Carcinogenic Creosote Leachates, Heavy Metals (Copper, Chromium, Cadmium, Nickel, Mercury), and Organochlorine Herbicides—and insists on a 30-day only review, making scientific consideration of pollution findings impossible.

SECTION I: EXECUTIVE SUMMARY & COMPARATIVE COST BREAKDOWN

The March 26, 2026 Purchase and Sale Agreement creates a severe financial trap for local taxpayers. The Railroad's position is clear: sell the property "AS IS and WHERE IS," claim zero responsibility for historical pollution, and force local taxpayers to assume all future cleanup liabilities. As Dave Jaye, Chairman of the Lee County Taxpayers Association (usataxfighters.org), emphasizes, the Taxpayer Position is non-negotiable: **Polluter Pays, Not Taxpayers.**

By allowing the seller (Seminole Gulf Railway / Trust for Public Land) to control Exhibit "B" Phase 2 testing, soil analysis is contractually restricted to a 6-inch surface cap and only three chemical classes (Arsenic, Lead, PAHs).

This restricted protocol explicitly prohibits testing for common dangerous railroad chemicals (TPH, VOCs, Creosote, Heavy Metals, Herbicides), omits a standard historical City Directory search—failing to investigate adjacent commercial polluters like Tisch Laundry (chlorinated solvent plume)—and ignores deep industrial contamination along omitted sidetracks (Old 41, Terry Street, Causeway Lumber, Builder Marts, Depot Park AX 987.4).

COST CATEGORY	SELLER / EXHIBIT "B" CLAIM	FULL FDEP / EPA CLEANUP (62-780)
Land Acquisition Cost	\$28,565,723	\$28,565,723
Assessed Property Valuation	< \$380,000	< \$380,000
Railroad Stated Cleanup Liability	\$0 ("AS-IS" Transfer)	\$0 (Polluter Pays Mandate)

Testing Depth Profile	Capped at 0–6 Inches	0–2 ft, 2–5 ft, Vadose & Groundwater
Sample Handling & Dilution	5-into-1 Composite	Discrete Soil Borings
Prohibited Chemical Testing	TPH, VOCs, Creosote, Metals	Full TCL/TAL (VOCs, SVOCs, Metals)
Sidetrack & Depot Park Testing	SKIPPED / OMITTED	Targeted Deep Core Delineation
Adjacent Solvent Screening	OMITTED (Tisch Ignored)	Groundwater Monitoring Wells
City Directory Search (Adjacent)	\$0 (Skipped in Phase 1)	\$15,000 – \$35,000 (Adjacent Search)
Legal Fees (CSX Deed Challenge)	\$0 (Ignored by Council)	\$250,000 – \$750,000 (Litigation)
Litigation Timeline (Deed Trial)	0 Days (Unresolved)	18 to 36 Months (Circuit/Federal)
Phase 2 Assessment Cost	\$75,000 – \$150,000	\$450,000 – \$850,000
Track Removal & Creosote Disposal	\$1,200,000 – \$1,800,000	\$2,800,000 – \$4,200,000 (Hazardous)
Soil Remediation & Excavation	\$0 (Hidden via Cap)	\$12,500,000 – \$24,000,000 (Deep Dig)
Impervious Asphalt Cap & Barrier	\$3,500,000 – \$5,200,000	\$5,800,000 – \$8,500,000 (FDEP Cap)
Overpass Bridges & Site Infra	\$35,000,000 – \$37,000,000	\$35,000,000 – \$37,000,000
30-Year Bond Interest (4.5–5.5%)	\$35,000,000 – \$42,000,000	\$35,000,000 – \$42,000,000
ESTIMATED TOTAL TAXPAYER EXPOSURE	\$103,340,723 – \$114,715,723	\$120,880,723 – \$145,900,723+

SECTION II: DETAILED FORENSIC FINANCIAL, LEGAL, & HEALTH AUDIT

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1. Analysis of Prohibited Chemicals & Omitted City Directory Search

A. Prohibited Common Railroad Chemicals

Contractual restrictions under Exhibit "B" prohibit laboratory testing for standard rail contaminants accumulated over a century of operations:

- 1. Total Petroleum Hydrocarbons (TPH) & BTEX:** Diesel fuel leaks, crankcase drippings, and gear lubricants.
- 2. Volatile Organic Compounds (VOCs):** Industrial degreasers, solvent spills, and chlorinated cleaning agents.
- 3. Carcinogenic Creosote Leachates:** Polycyclic aromatic hydrocarbons and coal-tar compounds leaching from wooden ties.
- 4. Expanded Heavy Metals Suite:** Copper, Chromium, Cadmium, Nickel, Zinc, and Mercury from rail hardware and treated ties.
- 5. Organochlorine Herbicides:** Non-selective chemical defoliants continuously sprayed on the rail bed.

B. Omission of City Directory Search & Tisch Laundry Threat

The 2,401-page Phase I ESA completed by S&S Environmental Consultants failed to perform a standard City Directory Search for adjacent properties. Historical city directory searches trace business operations across neighboring parcels over a 100-year period to identify commercial entities that accepted, processed, stored, or dumped toxins.

A major Recognized Environmental Condition (REC) was flagged along West Terry Street, where shallow groundwater beneath the tracks is threatened by chlorinated dry-cleaning solvents (PCE/TCE) from the adjacent Tisch Laundry site. Conducted under full FDEP standards, a complete City Directory Search and adjacent groundwater investigation costs \$15,000 to \$35,000 but prevents millions in unexpected off-site solvent remediation costs.

OMITTED BONITA SPRINGS SIDETRACKS

- [1] Northern Old 41 Sidetrack Complex (AX 984.25–984.43)
- [2] Northern SGLR Omitted Clustered Sidetracks (Near Terry St.)
- [3] Tisch Laundry Adjacent Sidetrack (Chlorinated Solvents)
- [4] Historic Depot Siding AX 987.4 (Depot Park Platform)
- [5] Southern Bonita Sidetrack Complex (AX 988.00–988.09)
- [6] Causeway Lumber & Builder Marts Sidetracks (AX 988.24–989.29)

2. Legal Costs & Timeline to Challenge Recorded CSX Deed Restrictions

A. The CSX Recreational Prohibition

Recorded under Lee County Instrument # 2019000150246 (executed June 24, 2019), the Corrective Confirmatory Quitclaim Deed contains binding covenants in gross running with the land that explicitly ban public parks, hiking paths, biking trails, and public gathering places.

CSX 2019 DEED RESTRICTION STRUCTURE

CSX Transportation / Atlantic Land & Improvement Co.

- ↳ Executed 2019 Corrective Deed (Inst #2019000150246)
- ↳ EXPLICIT BAN: Public parks, hiking/biking trails
- ↳ EXPLICIT BAN: Groundwater extraction or use
- ↳ ENFORCEMENT: Covenants run with the land in gross

B. Legal Expense & Litigation Timeline

Overturning or extinguishing these recorded CSX deed restrictions is not automatic. If CSX refuses to execute a voluntary release, the City would be forced into quiet title litigation or declaratory judgment actions in state or federal court:

- **Estimated Legal & Expert Witness Costs:** \$250,000 to \$750,000 in specialized real estate and title litigation representation.
- **Projected Court Litigation Timeline:** 18 to 36 Months across Lee County Circuit Court and Florida Appellate Courts. Purchasing property before resolving this title restriction risks spending \$28.56M on land that cannot legally open as a public trail.

3. Railroad Position ("AS-IS") vs. Taxpayer Position ("Polluter Pays")

RAILROAD / SELLER POSITION	TAXPAYER / WATCHDOG POSITION
Sell corridor "AS IS, WHERE IS"	POLLUTER PAYS for all cleanup
Claim \$0 cleanup liability	Seller must fund Phase 3 plan
Prohibit testing TPH/VOCs	Test full Target Compound List
Limit testing to 6" surface	Deep-core borings (0–5 ft + H2O)
Dilute via 5-into-1	Discrete sampling for hotspots
Force 30-day decision	Minimum 90-day review post-data
Retain billboard/utility cash	Municipal acquisition includes cash

4. Public Health Risks & Child Trespassing Exposure

DEPOT PARK TRESPASSING & EXPOSURE

- **Activity:** Children playing on tracks and ballast rock
- **Legal Classification:** Trespass on Railroad Property (F.S. 810.09)
- **Contaminants Present:** Arsenic, lead, carcinogenic PAHs, creosote

- **Municipal Action:** Scrubbed images from public website

- **Airborne Dust During Track Removal:** Disturbing timber ties and ballast rock releases airborne dust containing inorganic arsenic, lead particulates, and polycyclic aromatic hydrocarbons (PAHs). Airborne toxic dust presents acute risks to nearby outdoor restaurant patrons (including downtown pizzerias) and retail visitors along the right-of-way.
- **Child Exposure at Depot Park:** Photos document children running on un-remediated ballast rock near Depot Park. Children absorb higher toxic doses per body weight when inhaling or ingesting contaminated soil particulates. Deleting photos from municipal websites does not remove physical toxic exposure or extinguish municipal liability.

SECTION III: IMMEDIATE ACTIONABLE EXECUTION CHECKLIST FOR CITY COUNCIL

1. **Enforce "Polluter Pays" Principle:** Reject the Railroad's "AS-IS" purchase clause and require the seller to fund a complete Phase 3 Remediation Plan prior to closing.
2. **Fund City Directory Search:** Commission an immediate historical City Directory Search (\$15K–\$35K) covering all adjacent properties along the rail corridor, including the Tisch Laundry solvent site, to include all businesses that historically received, processed, or delivered toxic chemicals.
3. **Demand CSX Title Release:** Require the seller to deliver an executed, recorded legal release from CSX Transportation extinguishing the 2019 deed restriction prohibiting public trails before any funds are disbursed.
4. **Lift Testing Restrictions:** Replace Exhibit "B" composite rules with discrete deep-core borings (0–6", 6"–24", and 24"–60") and include testing for VOCs (EPA 8260), TPH/BTEX (EPA 8015), Heavy Metals (EPA 6020), and Herbicides (EPA 8151) across all mainlines and sidetracks.
5. **Formally Engage City Environmentalist:** Re-assign City Environmentalist Laura Gibson to perform an independent audit of all environmental records.
6. **Extend Review Period:** Execute a contract amendment extending the review period to a minimum of 90 days following delivery of un-redacted laboratory data.