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FACSIMILE TRANSMITTAL SHEET

DATE: May 6, 2002

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FROM: Victoria A. Flynn, Esq.

RE: Petition for a Declaratory Order by Hi-Tech Trans, LLC
Finance Docket No. FD34192

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OUR FILE NO.: 88-59.70

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☐ Please Call Me	☐ May I Have Your Comments	☒ Per Our
☐ For your Information	☐ As You Requested	Conversation
☒ Immediate attention requested		

REMARKS:

Attached please find a request on behalf of the Hudson County Improvement Authority and the Essex County Utilities Authority for additional time to file a response to Hi-Tech's revised petition for a declaratory order. The original of this fax is being sent to the STB and counsel for all parties via UPS overnight.

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May 6, 2002

Via Facsimile 202-565-9004

Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board
Washington, D.C. 20423-0001

Re: Petition for a Declaratory Order by Hi-Tech Trans, LLC
Finance Docker No. FD34192

Dear Mr. Williams:

This office represents the Hudson County Improvement Authority ("HCIA") and the Essex County Utilities Authority ("ECUA"), which are the public agencies responsible under the laws of New Jersey for implementing the solid waste management plans of the County of Hudson and the County of Essex, respectively.¹ See N.J. Stat. Ann. 13:1E-1 *et seq.* As

¹ Because it is our understanding that Hi-Tech is operating a solid waste transfer station facility that is located in Essex County, the ECUA also intends to participate in this action because all transfer stations operating within the borders of Essex County are to be included in the County's solid waste management plan.



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the Board is aware, Hi-Tech Trans, LLC ("Hi-Tech") filed a petition with the Surface Transportation Board ("STB") on or about April 4, 2002, for a declaratory order on the issue of whether 49 U.S.C. § 10501 preempts state and local regulation of its facility. The Board granted the HCLIA's request to file its response by May 6, 2002. While we intended to submit a reply on behalf of the HCLIA and the ECUA to the Board today, Hi-Tech's filing of a revised petition a month after its initial filing with the STB compels us to request additional time before submitting our reply.

On May 3rd, we received Hi-Tech's revised petition for a declaratory order, in which Hi-Tech admits that its initial filing with the STB contains various misrepresentations because of a "mis-communication" with representatives of Canadian Pacific Railway ("CPR"). Specifically, Hi-Tech no longer refers to itself as a "licensed agent" of CPR, and requests that CPR be removed as a co-petitioner in this action. Those material changes to the petition will require further deliberation by the HCLIA and the ECUA in preparing our response. We would ask that the STB grant us the necessary time to contemplate the significance of those changes before submitting a reply to Hi-Tech's petition.

Hi-Tech's attempt to inject an additional ground for preemption on the eve of our reply date also provides ample grounds for granting the HCLIA and the ECUA additional time to file their reply. Hi-Tech asserts for the first time in its revised petition that the STB should find Hi-Tech's handling of solid waste is free from state or local regulation pursuant to the preemption language contained in the Hazardous Materials Transportation Act, 42 U.S.C. § 5125(e). That issue will require closer analysis by the HCLIA and the ECUA

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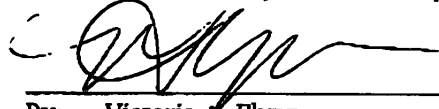
to ascertain the scope of that statute and to understand its applicability in a STB proceeding.

The HCIA and the ECUA, therefore, request that the STB permit them to file their reply 20 days after the Board decides whether it will accept Hi-Tech's belated submission. See 49 C.F.R. § 1104.13(a). Until the STB decides whether it will accept Hi-Tech's petition in its revised form, the HCIA and the ECUA cannot adequately respond to its petition. Indeed, granting the parties additional time to respond will save rather than waste the STB's time. It would also be fair since the ECUA and the HCIA have had less than two working days to digest the information contained in the revised petition.

Thank you for your consideration of this request.

Respectfully submitted,

DeCotiis, FitzPatrick, Gluck & Cole, LLP


By: Victoria A. Flynn

cc: John F. McHugh, Esq.
Edward J. Fishman, Esq.
Jonathan M. Broder, Esq.
James Martin, DAG