

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35020

**NORTHERN AND BERGEN RAILROAD, LLC
NOTICE OF EXEMPTION**

**ADDITIONAL COMMENTS BY NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

In accordance with the Board's Decision dated May 25, 2007 in the above referenced finance docket, the New Jersey Department of Environmental Protection ("NJDEP") submits these additional comments concerning Northern and Bergen Railroad, LLC ("NBR")'s Notice of Exemption whereby NBR seeks to become a rail carrier as defined by 49 U.S.C. § 10102(5). NJDEP believes that New Jersey Transit's ("NJT") recent letter to the Board in this matter—which indicates that NJT is uncertain at best whether it will enter into a lease agreement with NBR concerning the rail siding which would connect NBR's operations to the main rail line—demonstrates that NJDEP is entitled to a stay of these exemption proceedings. In short, because at this time, NBR cannot provide rail transportation service from the rail track that it seeks to acquire from the New York Greenwood Lake Railway ("Dundee Spur") due to the lack of a lease with NJT¹, NBR cannot become a "rail carrier" as defined by the Interstate Commerce Commission Termination Act. NJT's indications and concerns, therefore, lend sufficient doubt to the validity of NBR as a legitimate rail carrier under the present circumstances.

¹ In its May 18, 2007 submission, NBR argues that its Notice of Exemption is distinct from the Notice of Exemption filed by Ashland Railroad, Inc. due, in part, to the fact that NYGL intends to assign its lease for the property to NBR. However, as indicated by NJT, NJT's Lease Agreement with NYGL is not only expired but it is not transferable.

Because it is not possible for NBR to provide rail transportation service off of the Dundee Spur without this lease, and because NJT has submitted that it is uncertain whether it will and/or be able to enter into a lease agreement with NBR, NJDEP submits that there is sufficient information demonstrating that a stay in this matter should be continued, pending, at the very least, the submission of information requested by NJT from NBR and the evaluation of this information by NJT. Accordingly, NJDEP has demonstrated that it has met the first factor necessary for a stay, i.e., that there is a strong likelihood that it will prevail on the merits of any challenge to NBR's assertion that it is a rail carrier providing rail transportation.

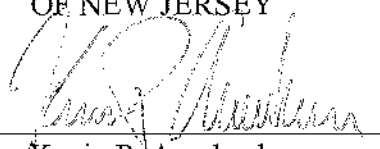
In addition, NJDEP has met the additional factors necessary for a stay. First, NJDEP reiterates that it has serious environmental concerns with the solid waste processing facility that currently operates at the Dundee Spur and as a result, the public health and safety is threatened with irreparable harm in the absence of a stay and the public interest supports the granting of the stay. For example, waste dumping and transferring routinely occur outside of the facility's building because the facility receives more waste than it is capable of handling. As a direct result, waste remains on site for longer than 24 hours at a time (such conditions resulted in a fire last April that nearly destroyed the facility). Also directly threatening the public here is the fact that the facility—despite promises to do so—continues to lack an adequate fire suppression system. Moreover: (1) the facility does not operate an effective air pollution control system; the outside dumping and handling of waste further exacerbates this deficiency causing uncontrolled dust releases to the environment and surrounding community; (2) the infrastructure for managing stormwater and wastewater from this facility is inadequate and poorly maintained and thus may lead to stormwater quality impacts; and (3) there are excessive noise impacts on the nearby residential community from the handling of waste. NJDEP submits that, in addition to the fact that NBR does not have a lease

agreement with NJT, NBR should not be allowed to use the Notice of Exemption proceeding to continue and maintain non-rail transportation solid waste processing activities that are not in compliance with critical public health and safety environmental laws. NJDEP has also satisfied the fourth factor necessary for a stay because other interested parties (e.g., NJT) are in support of NJDEP's stay request.

For all of these reasons, NJDEP respectfully requests that the Board continue the stay in this matter.

Respectfully submitted,

STUART RABNER
ATTORNEY GENERAL
OF NEW JERSEY

By: 

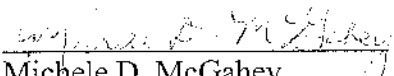
Kevin P. Auerbacher
Deputy Attorney General
609-292-6945
Attorney for
New Jersey Department
of Environmental Protection

Dated:

Nov 31, 2007

CERTIFICATE OF SERVICE

I certify that I have this day, May 31, 2007, served copies of the Additional Comments in this proceeding (FD No. 35020) by the New Jersey Department of Environmental Protection upon Jeffrey O. Moreno, Esq., attorney for applicant, Northern and Bergen Railroad, LLC, via electronic mail at Jeff.Moreno@ThompsonHine.com and Suzanne Silverman, Esq., attorney for New Jersey Transit Corporation, via electronic mail at ssilverman@njtransit.com.


Michele D. McGahey