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WRITER'S E-MAIL:

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September 22, 2005

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001

FILED

SEP 22 2005

TRANSPORTATION BOARD

Re: Finance Docket No. 34763, The Columbus
& Ohio River Rail Road Company – Trackage
Rights Exemption – Ohio Rail Development
Commission and Ohi-Rail Corporation

Dear Secretary Williams:

Enclosed for filing in the referenced docket please find an original and ten copies of the Verified Notice of Exemption of The Columbus & Ohio River Rail Road Company ("CUOH").

An additional copy of the Notice also is enclosed. Kindly indicate receipt of the filing by time-stamping this extra copy and returning it to the bearer of this letter. We also have enclosed twenty unbound copies of CUOH's map, a copy of this filing in electronic format, and a check in the amount of \$1,000.00 to cover the applicable filing fee. Thank you for your attention to this matter.

FILED

SEP 23 2005

TRANSPORTATION BOARD

Sincerely,

Andrew B. Kolesar III

Andrew B. Kolesar III
An Attorney for The Columbus & Ohio
River Rail Road Company

ENTERED
Office of Proceedings

SEP 23 2005

Part of
Public Record

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



THE COLUMBUS & OHIO RIVER RAIL
ROAD COMPANY – TRACKAGE RIGHTS
EXEMPTION – OHIO RAIL
DEVELOPMENT COMMISSION AND
OHI-RAIL CORPORATION

Finance Docket No. 34763

ENTERED
Office of Proceedings

SEP 23 2005

Part of
Public Record

VERIFIED NOTICE OF EXEMPTION

FILED

SEP 22 2005

SURFACE
TRANSPORTATION BOARD

FEE RECEIVED

SEP 22 2005

SURFACE
TRANSPORTATION BOARD

THE COLUMBUS & OHIO RIVER
RAIL ROAD COMPANY
47849 Papermill Road
Coshocton, Ohio 43812

OF COUNSEL:

SLOVER & LOFTUS
1224 17th Street, N.W.
Washington, D.C. 20036

By: Kelvin J. Dowd
Andrew B. Kolesar III
Slover & Loftus
1224 17th Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Dated: September 22, 2005

Attorneys & Practitioners

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



THE COLUMBUS & OHIO RIVER RAIL)
ROAD COMPANY – TRACKAGE RIGHTS)
EXEMPTION – OHIO RAIL)
DEVELOPMENT COMMISSION AND)
OHI-RAIL CORPORATION)

Finance Docket No. 34763

VERIFIED NOTICE OF EXEMPTION

The Columbus & Ohio River Rail Road Company (“CUOH”), a Class III rail carrier,¹ files this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. §§ 11323, et seq., pursuant to 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), in order to permit it to acquire trackage rights over approximately 7.9 miles of rail line in the vicinity of Hopedale, Ohio owned by the Ohio Rail Development Commission, an independent commission within the Ohio Department of Transportation (“ORDC”), and operated by Ohi-Rail Corporation (“Ohi-Rail”), a Class III rail carrier.

The parties have entered into a written agreement for the trackage rights which are not sought as a responsive application in a rail consolidation proceeding.

¹ CUOH is a wholly owned subsidiary of Summit View, Inc., a non-carrier. In addition to CUOH, Summit View also controls the following nine carriers: The Aliquippa & Ohio River Railroad Company, the Mahoning Valley Railway Company, Ohio Central Railroad, Inc., Ohio & Pennsylvania Railroad Company, Ohio Southern Railroad, Inc., The Pittsburgh & Ohio Central Railroad Company, The Warren & Trumbull Railroad Company, Youngstown & Austintown Railroad, Inc., and The Youngstown Belt Railroad Company.

a. Summary of the Transaction
(49 C.F.R. 1180.6(a)(1)(i))

The rail line at issue in this Notice is a portion of the “Piney Fork Line.”

The Piney Fork Line extends between approximately milepost 43.5 in Minerva, Ohio on the north and approximately milepost 77.7 in Hopedale, Ohio on the south. ORDC owns the Piney Fork Line and leases its to Ohi-Rail, which operates over the line. The portion of the Piney Fork Line over which the subject trackage rights are to apply extends from approximately milepost 74.0 at the “Pan Interchange,” where it connects with the line of CUOH, and approximately milepost 66.1 (the “Line”). The trackage rights at issue are non-exclusive rights and are granted for the sole purpose of permitting CUOH to provide rail service to a landfill facility located along the Line. See Exhibit 2 at page 2.

CUOH’s address is 47989 Papermill Road, Coshocton, Ohio 43812.

Questions regarding this transaction may be addressed to CUOH’s counsel as follows:

Andrew B. Kolesar III
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036
(202) 347-7170

b. Proposed Time Schedule
(49 C.F.R. § 1180.6(a)(1)(ii))

CUOH expects to begin trackage rights operations on or about October 1, 2005.

c. Purpose of the Transaction
(49 C.F.R. § 1180.6(a)(1)(iii))

The purpose of this transaction is to facilitate service by CUOH to a solid waste landfill facility (the “Apex Landfill”) in Springfield Township, Jefferson County, Ohio. The subject trackage rights will permit CUOH to access and provide service to the Apex Landfill via CUOH’s east-west line between Bowerston and Mingo Junction, Ohio.

d. List of States in Which
Applicant’s Property is Situated
(49 C.F.R. § 1180.6(a)(5))

CUOH’s property is situated in the State of Ohio.

e. Map (49 C.F.R. §1180.6(a)(6))

See Exhibit 1.

f. Agreement (49 C.F.R. § 1180.6(a)(7))

See Exhibit 2.

g. Labor Protection

Inasmuch as only Class III carriers are involved in this transaction, no labor protection is applicable.

h. Environmental and Historic Matters

Pursuant to 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3), environmental and historic reports need not be submitted for this type of transaction.

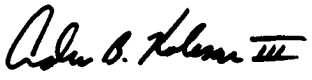
Respectfully submitted,

THE COLUMBUS & OHIO RIVER
RAIL ROAD COMPANY
47849 Papermill Road
Coshocton, Ohio 43812

OF COUNSEL:

SLOVER & LOFTUS
1224 17th Street, N.W.
Washington, D.C. 20036

Dated: September 22, 2005

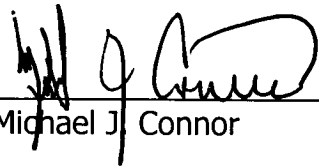
By: Kelvin J. Dowd
Andrew B. Kolesar III 
Slover & Loftus
1224 17th Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys & Practitioners

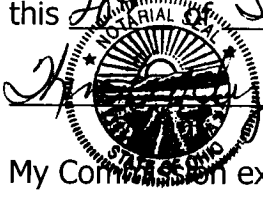
VERIFICATION

STATE OF OHIO)
)
) ss:
)
COUNTY OF COSHOCTON)

Michael J. Connor, being duly sworn, deposes and says that he is Vice President of The Columbus & Ohio River Rail Road Company, that he has read the foregoing Notice and knows the contents thereof, and that the same are true as stated to the best of his knowledge, information, and belief.



Michael J. Connor

Sworn and subscribed before me
this 20th of September, 2005
 Kimberly R. Wright Notary Public
My Commission expires: June 5, 2008

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34763

**THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY
– TRackage RIGHTS – OHIO RAIL DEVELOPMENT COMMISSION
AND OHI-RAIL CORPORATION**

Ohi-Rail Corporation as operator and the Ohio Rail Development Commission, an independent commission within the Ohio Department of Transportation, as owner, have agreed to grant non-exclusive trackage rights to The Columbus & Ohio River Rail Road Company between approximately milepost 74.0 at the Pan Interchange near Hopedale, Ohio and approximately milepost 66.1 at the point two (2) miles north of the Apex Landfill switch, a total distance of approximately 7.9 miles. The trackage rights will be effective on October 1, 2005.

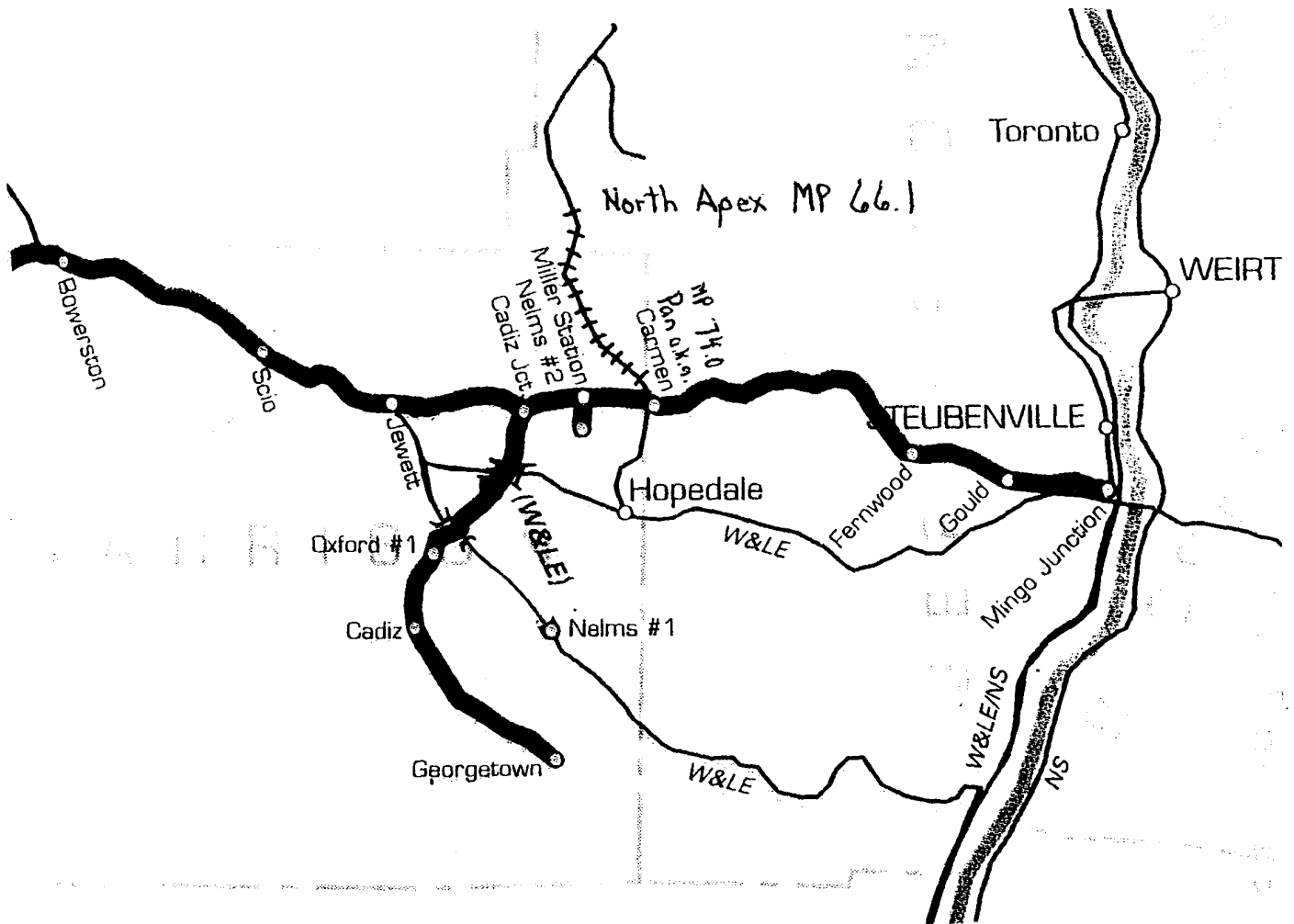
This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board.

Vernon A. Williams
Secretary

Exhibit 1



THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY
OHIO CENTRAL RAILROAD, INCORPORATED
Operating Units of the Ohio Central Railroad System

Map Showing Trackage Rights
Granted by the
Ohio Rail Development Commission, Owner
and
Ohi-Rail, Incorporated, Operator
Between MP 74.0 [Pan] and MP 66.1 [North Apex]
In Harrison and Jefferson Counties, Ohio
Trackage Rights Denoted Thusly: ++++++
15 September 2005 MJC No Scale

Exhibit 2

TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT ("Agreement") is made and entered into as of the 15th day of December, 2004 (the "Effective Date"), by and among Apex Environmental, LLC, a Delaware limited liability company ("Apex"), Ohi-Rail Corporation, an Ohio corporation ("Ohi-Rail"), Ohio Rail Development Commission, an independent commission within the Ohio Department of Transportation ("ORDC"), and Ohio Central Railroad, Incorporated, an Ohio corporation ("OHCR").

WITNESSETH:

WHEREAS, Apex is the prospective owner of a solid waste landfill facility to be constructed in Springfield Township, Jefferson County, Ohio ("Apex Landfill");

WHEREAS, the Apex Landfill will be located adjacent to a line of railroad known as the Piney Fork Line that extends between approximately milepost 43.5 in Minerva, Ohio on the north and approximately milepost 77.7 in Hopedale, Ohio on the south ("Piney Fork Line");

WHEREAS, the Piney Fork Line is owned by ORDC and leased and operated by Ohi-Rail, a Class III rail carrier, pursuant to a Lease Agreement effective as of June 2003 ("Lease Agreement");

WHEREAS, OHCR has agreed to transport municipal solid waste, construction and demolition debris and possibly other non-hazardous materials to the Apex Landfill over the Piney Fork Line once the Apex Landfill is operational;

WHEREAS, OHCR has agreed to provide such rail service initially over the portion of the Piney Fork Line between approximately milepost 74.0 at the Pan Interchange and approximately milepost 66.1 at the point two (2) miles north of the Apex Landfill switch (as such portion is further defined in Section 2.4 hereof, the "Apex Track");

WHEREAS, OHCR desires to obtain trackage rights over the Apex Track to enable OHCR to provide rail service to and from the Apex Landfill;

WHEREAS, ORDC and Ohi-Rail are agreeable to granting said non-exclusive trackage rights, and Apex is agreeable to receiving service pursuant to such trackage rights, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed among the parties as follows:

1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions of this Agreement, ORDC, as owner, and Ohi-Rail, as operator, hereby grant to OHCR or its affiliate Columbus & Ohio River Rail Road (collectively, "OHCR") the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the

Apex Track for the sole purpose of providing rail service to and from the Apex Landfill.

II. USE OF THE APEX TRACK

2.1 OHCR shall have the right to use the Apex Track for the purpose of transporting municipal solid waste, construction and demolition debris, and possibly other non-hazardous materials to the Apex Landfill. OHCR shall not handle or transport hazardous materials or hazardous substances, as such terms may be defined under applicable laws, over the Apex Track.

2.2 OHCR shall have the right to use any part of the Apex Track to store railcars and other equipment used in the provision of rail service to and from the Apex Landfill as long as such storage does not interfere with the operations of other railroads that may be authorized to use the Apex Track.

2.3 OHCR shall not use any part of the Piney Fork Line (other than the Apex Track) for the purpose of storing, switching or servicing of cars or equipment, or the making or breaking up of trains. Ohi-Rail shall be prohibited from using any portion of the Apex Track for the storage of railcars or other equipment. Ohi-Rail's use of the remaining portions of the Piney Fork Line for storage of railcars and other equipment shall not interfere with OHCR's provision of rail service to and from the Apex Landfill or with any other rights or obligations of OHCR under this Agreement.

2.4 In the event that OHCR elects (with the consent of Apex and subject to ORDC's advance written consent, which shall not be unreasonably withheld, conditioned or delayed) to use a routing over portions of the Piney Fork Line other than the initial Apex Track between the Pan Interchange and the point two (2) miles north of the Apex Landfill switch to serve the Apex Landfill, OHCR's non-exclusive trackage rights under this Agreement shall automatically extend to such other portion of the Piney Fork Line (1) upon completion of any necessary improvements to such track by OHCR or Apex in order to accommodate the movement of multiple car trains consisting of locomotives and maximum 286,000 pound gross weight loaded Plate "F" railcars and (2) upon the effective date of any necessary filings with or decisions by the Surface Transportation Board authorizing such trackage rights. In the event of any such extension of the trackage rights, the term "Apex Track" as used in this Agreement shall mean that portion of the Piney Fork Line over which OHCR has trackage rights pursuant to this Agreement.

III. TRAIN CONTROL

Before OHCR commences operations on the Apex Track, OHCR and Ohi-Rail shall establish a mutually acceptable arrangement for controlling OHCR train movements on the Apex Track.

IV. COMPENSATION

4.1 OHCR shall pay ORDC at a rate of ten dollars (\$10.00) per loaded railcar or individual articulated flatcar (collectively, "railcar") for the right to use the Apex Track under this Agreement (the "Trackage Rights Fee"); provided, however, if the weight of

any loaded railcar exceeds one hundred ten (110) tons, OHCR shall also pay ORDC ten cents (\$0.10) for each ton over one hundred (100) tons for such railcar. The parties anticipate initially using 89' four position flatcars. Ohi-Rail and ORDC shall not directly or indirectly charge OHCR, Apex, or Apex Landfill customers any additional fees, rates or charges in connection with OHCR's use of the Apex Track to serve the Apex Landfill. OHCR shall make such payments to ORDC until such time as Ohi-Rail or another party acquires ownership of the Apex Track. Any future owner of the Apex Track shall require OHCR to pay no more than the applicable Trackage Rights Fee to use the Apex Track for purposes of serving the Apex Landfill.

4.2 The Trackage Rights Fee set forth in Section 4.1 shall be adjusted on the fifth (5th) anniversary of the date that OHCR begins serving the Apex Landfill using the trackage rights provided herein (the "Commencement Date") and every five (5) years thereafter in accordance with the percentage change in the AAR Railroad Inflation Index (materials, prices, wage rates and supplements combined, including fuel-East excluding the productivity adjustment factor) (the "Designated Index"). The method of adjusting the Trackage Rights Fee shall be to calculate the percent of increase or decrease in the most recent available Designated Index as of the time of such adjustment as related to the Designated Index upon which the immediately preceding adjustment was based. If the AAR or any successor organization discontinues publication of the Designated Index, an appropriate substitute for determining the annual percentage increase or decrease of the fees shall be negotiated by ORDC (or any future owner of the Apex Track), OHCR and Apex.

V. PAYMENT OF BILLS

All payments of the Trackage Rights Fee shall be made by OHCR within thirty (30) days after the close of each month during the term of this Agreement. OHCR shall be responsible for keeping track of the number and weight of loaded railcars that it transports over the Apex Track. The records of OHCR, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by ORDC for a period of three (3) years from the date of billing.

VI. MAINTENANCE OF THE APEX TRACK

6.1 As provided in Section 3.2 of the Rail Service Agreement dated as of the date hereof by and among Apex, Liberty Waste Transportation, LLC, Ohi-Rail, ORDC, Jeffco Resources, Inc., LWR, Inc. and OHCR (the "Rail Service Agreement"), Apex shall maintain, at its sole cost and expense, that portion of the Apex Track used by OHCR to provide rail service to and from the Apex Landfill to a minimum of FRA Class I standards (excluding the portion between the Apex Landfill switch and the point two (2) miles north thereof, which Apex may maintain as it deems necessary for car storage, switching and train assemblage activities). Apex shall conduct such maintenance activities in accordance with all applicable federal, state and local regulations, including without limitation applicable FRA and State of Ohio PUCO requirements relating to grade crossings. ORDC, Ohi-Rail and OHCR shall have the right to inspect the Apex

Track from time to time to determine whether Apex is complying with its maintenance obligations.

6.2 In the event that Ohi-Rail or any other railroad other than OHCR operates over any portion of the Apex Track, Ohi-Rail and such other railroads shall provide advance notice to Apex so that operating and maintenance activities can be coordinated. ORDC and Ohi-Rail shall impose this notice obligation upon any other railroad that is authorized to operate over the Apex Track.

VII. MAINTENANCE OF OHCR PROPERTY

OHCR shall maintain, at its sole cost and expense, the portion of railroad right of way and trackage that it owns or leases (including the spur at Pan Interchange that will connect the Piney Fork Line and the Panhandle Line), any facilities or structures appurtenant thereto (including without limitation bridges and tunnels) and its locomotives and other equipment that will be used to provide rail service to and from the Apex Landfill in such condition as is reasonably necessary to fulfill its obligations hereunder. OHCR shall perform such maintenance in a prompt and efficient manner in order to minimize any disruption in rail service to and from the Apex Landfill.

VIII. MANAGEMENT AND OPERATIONS

8.1 OHCR shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Apex Track. OHCR shall indemnify, protect, defend, and save harmless Apex, Ohi-Rail and ORDC, their parents, subsidiaries and affiliates, and all of their respective shareholders, directors, officers, agents and employees from and against all claims, fines, penalties and liabilities imposed upon or asserted against them under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of OHCR to comply with its obligations in this regard.

8.2 The trains, locomotives, cars and equipment of OHCR, Ohi-Rail, and any other future user of the Piney Fork Line or any portion thereof shall be operated without prejudice or partiality to any party and in such manner as will afford the most economical and efficient movement of all traffic.

8.3 In the event that a train of OHCR shall be forced to stop on the Apex Track, due to mechanical failure of OHCR's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if in emergencies, crippled or otherwise defective cars are set out of OHCR's trains on the Apex Track, Ohi-Rail shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars,

or to properly move the disabled equipment off the Apex Track, and OHCR shall reimburse Ohi-Rail for the cost of rendering any such assistance.

IX. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in OHCR's trains on the Apex Track shall be assumed by OHCR and reported and paid by it directly to the owner of such cars.

X. CLEARING OF WRECKS

Whenever OHCR's use of the Apex Track requires rerailing, wrecking service or wrecking train service, OHCR shall perform or provide such service, including the repair and restoration of roadbed, track and structures, in a prompt and efficient manner in order to minimize any disruption in rail service to and from the Apex Landfill. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 11 hereof.

XI. LIABILITY AND INSURANCE

11.1 OHCR's liability and indemnity obligations to ORDC, Ohi-Rail and Apex shall be governed by Section 4.2 of the Rail Service Agreement.

11.2 OHCR, at its sole cost and expense, shall procure and maintain comprehensive general liability insurance with the broad form endorsement against claims for bodily injury, personal injury, wrongful death and property damage coverage together with all costs for defense. The policy limits shall be no less than one million dollars (\$1,000,000) per person and five million dollars (\$5,000,000) per occurrence for both bodily injury and property damage. Said policy shall designate Apex, Ohi-Rail and ORDC as "additional insureds." OHCR shall be required, upon request of ORDC, to increase its insurance coverage as of each fifth (5th) anniversary of the Commencement Date to a level that is consistent with the industry standard that is in existence at such time for shortline railroad operators.

11.3 Apex, at its sole cost and expense, shall procure and maintain comprehensive general liability insurance with the broad form endorsement against claims for bodily injury, personal injury, wrongful death and property damage coverage together with all costs for defense. The policy limits shall be no less than one million dollars (\$1,000,000) per person and five million dollars (\$5,000,000) per occurrence for both bodily injury and property damage. Said policy shall designate OHCR, Ohi-Rail and ORDC as additional insureds. Apex shall be required, upon request of ORDC, to increase its insurance coverage as of each fifth (5th) anniversary of the Commencement Date to a level that is consistent with the industry standard that is in existence at such time for shortline railroad maintenance activities.

XII. CLAIMS

With the exception of ORDC, each party shall indemnify and hold harmless the other parties including ORDC against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement.

XIII. REGULATORY APPROVAL

The parties agree that OHCR shall prepare and file with the Surface Transportation Board ("STB"), at its sole cost and expense, a notice of exemption for the acquisition of these trackage rights upon the Apex Track and any additional pleadings or other information that may be required to obtain STB authorization. In the event that OHCR obtains trackage rights over additional portions of the Piney Fork Line pursuant to the terms and conditions of this Agreement, it shall prepare any additional STB filings necessary to obtain authorization for such trackage rights at its sole cost and expense. If, for any reason, OHCR discontinues service to the Apex Landfill, it shall, at its sole cost and expense, submit any and all required documents to the STB to discontinue the trackage rights granted herein. ORDC shall have the right to review, comment on and approve in advance any STB filings made by OHCR pursuant to this provision.

XIV. ARBITRATION

Any dispute, controversy or claim arising out of or relating to this Agreement shall be finally settled through binding arbitration by a sole, disinterested arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. ORDC shall not be bound by this section.

XV. TERM AND TERMINATION.

This Agreement shall become effective as of the Effective Date and shall continue in effect until such time as the Apex Landfill (including any expansions thereof) reaches its maximum capacity. Notwithstanding the foregoing provision, the trackage rights granted hereunder shall not become effective until they have been authorized or exempted from authorization by the STB.

XVI. GENERAL PROVISIONS

16.1 All notices or other communications to be given pursuant to this Agreement shall be in writing and shall be deemed given upon receipt of a confirmed facsimile transmission, or upon receipt of registered or certified mail (return receipt requested) addressed as follows:

If to Ohi-Rail:

Ohi-Rail Corporation.
P.O. Box 75
6200 Salineville Road, N.E.
Mechanicstown, OH 44651
Attention: Tom Barnett

With a copy to:

Richard Delatore
c/o Schiappa Coal
P.O. Box 728
Steubenville, OH 43952

If to ORDC:

Ohio Rail Development Commission
50 West Broad Street, Suite 1510
Columbus, OH 43215
Attn: James E. Seney, Executive Director

If to OHCR:

Ohio Central Railroad
47849 Paper Mill Road
Coshocton, OH 43812
Attn: William Strawn, President

If to Apex:

Apex Environmental, LLC
Dominion Tower, Suite 3100
625 Liberty Avenue
Pittsburgh, PA 15222-3124
Attention: General Counsel

16.2 Neither this Agreement nor any rights or obligations hereunder shall be transferred or assigned without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Apex, Ohi-Rail or OHCR may transfer or assign their respective interests hereunder without such consent to an affiliated or parent company, or pursuant to the financing, merger or sale of their business or assets (except that Apex shall retain its

consent rights if OHCR's interests are transferred or assigned to an entity other than a Class I or Class II railroad, and ORDC shall retain any consent rights that it has under the Rail Service Agreement).

16.3 This Agreement constitutes the entire agreement and understanding by and among the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

16.4 This Agreement shall be binding upon, and shall inure to the benefit of, the parties, their respective successors and approved assigns, and any future owners, lessees or operators of the Apex Track, as it is the intent of the parties that this Agreement continue to govern the provision of rail service to and from the Apex Landfill over the Apex Track for the life of the Apex Landfill (including any expansion thereof).

16.5 If any term, clause or provision of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent be deemed invalid or unenforceable under present or future laws, the remainder of the Agreement and the application of such term, clause or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby.

16.6 This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

16.7 In the event that a breach of any provision of this Agreement is not cured within ten (10) days after the alleged breaching party receives notice thereof from any other party or parties to this Agreement (or within such other cure period as may be reasonable under the circumstances), the non-breaching party or parties shall have any and all rights and remedies available at law and in equity (including, without limitation, the right to specific performance).

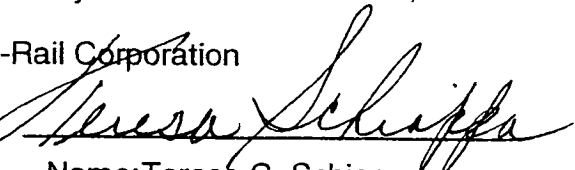
16.8 The headings contained in this Agreement have been inserted for convenience of reference, shall not be deemed to be a part of this Agreement and shall not in any way define or limit the scope and contents of this Agreement or in any way affect its provisions.

16.9 A party's performance hereunder may be suspended and its obligations hereunder excused in the event and during the period that such performance is prevented by acts of God (except for standard meteorological events), war, terrorism, court orders, nuclear incidents, riots, public disorder, criminal acts of other entities, or other such causes beyond the reasonable control of said party; and in any such event, the applicable time period for performance shall be extended only for the amount of time said party is so delayed; provided that this Section 16.9 shall not be construed to affect the responsibilities of said party hereunder to so perform once such delays have been removed. Any party invoking force majeure pursuant to this Section 16.9 shall provide written notice to the other parties setting forth the facts or circumstances giving rise to the applicability of this Section 16.9.

16.10 This Agreement may be executed in counterparts, each of which shall be considered an original.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

Ohi-Rail Corporation

By:  Pres.

Name: Teresa C. Schiappa

Title: President

Ohio Rail Development Commission

By: _____

Name: James E. Seney

Title: Executive Director

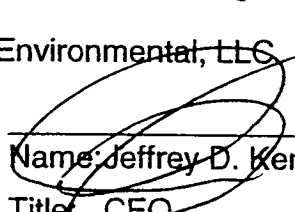
Ohio Central Railroad, Inc.

By: _____

Name: Marty Pohlod

Title: Sr. Manager Marketing & Industrial Development

Apex Environmental, LLC

By: 

Name: Jeffrey D. Kendall

Title: CEO

16.10 This Agreement may be executed in counterparts, each of which shall be considered an original.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

Ohi-Rail Corporation

By: _____

Name: Teresa C. Schiappa

Title: President

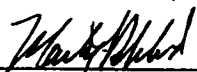
Ohio Rail Development Commission

By: _____

Name: James E. Seney

Title: Executive Director

Ohio Central Railroad, Inc.

By:  _____

Name: Marty Pohlod

Title: Sr. Manager Marketing & Industrial Development

Apex Environmental, LLC

By: _____

Name: Jeffrey D. Kendall

Title: CEO

16.10 This Agreement may be executed in counterparts, each of which shall be considered an original.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

Ohi-Rail Corporation

By: _____

Name: Teresa C. Schiappa

Title: President

Ohio Rail Development Commission

By: _____

Name: James E. Seney

Title: Executive Director

Ohio Central Railroad, Inc.

By: _____

Name: Marty Pohlod

Title: Sr. Manager Marketing & Industrial Development

Apex Environmental, LLC

By: _____

Name: Jeffrey D. Kendall

Title: CEO