

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35020

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

**REQUEST FOR STAY
BY THE NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

As the New Jersey Department of Environmental Protection ("NJDEP") is faced with another potential waste facility along railroad tracks in New Jersey by virtue of the above captioned Notice of Exemption¹, and is concerned with the serious public health and safety consequences of trash facilities, NJDEP respectfully requests that the Surface Transportation Board ("Board") stay the effectiveness of this Notice of Exemption ("Notice") filed by Northern and Bergen Railroad, LLC ("NBR") on April 26, 2007 pending the development of facts and details related herein. NBR provided few details. Further development of facts is necessary in order to determine whether NBR is entitled to the exemption set forth in 49 C.F.R. §§ 1150.31-34 and therefore whether NBR is entitled to acquire from New York & Greenwood Lake Railway

¹ On January 29, 2007, a purported railroad, Ashland Railroad, Inc. ("Ashland"), filed a Notice of Exemption with the Board. Based on NJDEP's request and NJDEP's concerns that Ashland was seeking to construct a waste facility and avoid regulatory oversight under the guise of federal preemption, the Board stayed the effectiveness of Ashland's Notice of Exemption proceeding and directed Ashland to submit information to address NJDEP's concerns by March 29, 2007. (See the Board's February 26, 2007 Order in STB Finance Docket Nos. 34986 and 34987.) Because Ashland's additional submission only raised additional questions concerning Ashland's plans for a location in Freehold, NJDEP has requested that the Board continue the stay. As discussed below, the instant proceeding raises identical questions about the bona fides of the proposed operations and motivation of NBR.

("NYGL") approximately 1.1 miles of railroad track in Garfield and Passaic, New Jersey as a "rail carrier" as defined in 49 U.S.C. § 10102(5). This exemption will become effective on May 26, 2007 unless stayed by the Board.

I. STATEMENT OF INTEREST

The NJDEP is an administrative agency of the State of New Jersey that is established and organized pursuant to N.J.S.A. 13:1D-1 et seq. As NJDEP recently indicated in its stay request concerning Ashland's Notice of Exemption, NJDEP is responsible for protecting the environment and the health and safety of New Jersey's citizens. Id. at 13:1D-9. Because the subject property is located in Garfield and Passaic, New Jersey at the site of a solid waste operation that received a Notice of Violation from NJDEP, NJDEP has a compelling interest to ensure that NBR is not a sham railroad attempting to avoid state regulation through the Notice of Exemption process.

II. THERE IS INSUFFICIENT EVIDENCE SUPPORTING NBR'S CLAIM THAT IT INTENDS TO OPERATE AS A BONA FIDE RAIL CARRIER

Through the shortened exemption process set forth in 49 C.F.R. §§ 1150.31-34, NBR seeks to be designated a "rail carrier" by the Board. If so designated, the Board's jurisdiction and ICCTA's preemption provision, 49 U.S.C. § 10501(b), are implicated.² If the new railroad is in

² As stated in NJDEP's Ashland stay request, both the courts and the Board have recognized that ICCTA does not affect the State's duty to exercise its traditional police powers and enforce regulations designed to protect the public health and safety. See, e.g., Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 163 N.J. 446, 460-61 (2000) ("[L]ocality may enforce its local fire, health, plumbing, safety and construction regulations to the extent they are applicable to the existing maintenance [rail carrier] facility"); Hi Tech Trans, LLC-Petition for Declaratory Order, STB Finance Docket No. 34192, n. 6 (November 19, 2002)(ICCTA preemption "does not prevent state and local governments from imposing appropriate health and safety regulations and exercising their police powers").

reality a solid waste processing facility masquerading as a railroad, this sham can result in a serious threat to public health and safety, as such an entity will often attempt to resist the State's legitimate and essential regulatory oversight.

The exemption procedure was not intended to be misused in order to create sham railroads. When the Interstate Commerce Commission ("ICC") originally promulgated the class exemption procedure, the agency contemplated that interested parties--including the various States--would have sufficient information concerning an applicant's operations to determine whether a challenge was necessary. See Class Exemption - - Acq. & Oper. of R. Lines under 49 U.S.C. §10901, 1 ICC 2d 810 (1985). For example, in determining whether the class exemption procedure should include a specific comment period before becoming effective, the ICC concluded that this was not generally necessary since, "... as a practical matter, State and local governments receive actual notice well before the proposal is filed." Id., 1 ICC 2d at 816. Similarly, in response to suggestions that the ICC require detailed financial and operating data, the ICC concluded, again, that this was generally not necessary:

[T]hose directly involved (including the State) are, in fact, well aware of the financial condition of the potential acquirer, expected traffic, volumes and commodities, as well as intended operation. [Id. at 817.]

In addition, the exemption procedure was intended to maintain rail service by relieving regulatory burden for bona fide rail carriers not needing a certain a line that wanted to sell to new, and legitimate as well, carriers as opposed to simply abandoning their line. See STB Ex Parte No. 659, at 5-6, Public Participation in Class Exemption Proceedings, Comments of the Association of American Railroads (May 15, 2006) (citing Class Exemption for the Acquisition

and Operation of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C. 2d at 813), Attachment B.

NBR's Notice indeed fails to demonstrate that it is a bona fide rail carrier. For example, the Notice contains no information on: (1) its proposed plans for the 1.1 miles of track that it intends to acquire from NYGL; (2) whether NBR is experienced in the rail transportation business; or (3) concerning its role and responsibilities with respect its proposed plans. Indeed, the Notice contains no information on NBR with the exception of its name, address, and identification of its counsel. Moreover, there are no details concerning whether NBR intends to operate locomotives, own or lease rail cars, provide either local or overhead rail operations, establish through rates and divisional arrangements with any other rail carriers or otherwise actually operate as a railroad "common carrier" as it alleges.

Counsel for NJDEP wrote to NBR asking for information in response to specific questions on NBR and the subject property. See letter dated May 2, 2007, Attachment A. To date, NBR has not responded. Therefore, NJDEP believes that the Notice contains insufficient information to enable the Board to determine whether NBR is in fact a rail carrier, as the term is defined in 49 U.S.C. §10102(5), or whether it is in reality a shipper in the solid waste disposal industry whose primary intent is to evade the State of New Jersey's environmental safety and health statutes and regulations.

Further, there is insufficient evidence to support NBR's claim that environmental review is exempted pursuant to 49 C.F.R. § 1105.6. While 49 C.F.R. § 1105.6 does provide that environmental documentation is not "normally" prepared in acquisition proceedings conducted under 40 U.S.C. § 10901, that is not necessarily the case where, as here, the proposed operation raises significant environmental and public health and safety issues. Moreover, without any

meaningful explanation of the proposed operations of NBR, it is impossible to know whether the thresholds set forth in 49 C.F.R. § 1105.7 (e)(5) - (9) are implicated or exceeded. Here, NJDEP cannot ascertain from the information supplied either in the Notice or otherwise, whether the proposed arrangement constitutes rail transportation or whether NBR is a rail carrier within the meaning of §§ 10102(5).

III. THERE IS EVIDENCE TO SUGGEST THAT NBR INTENDS TO OPERATE A SOLID WASTE TRANSFER FACILITY

The subject 1.1 miles of NYGL track is located along a currently operating and noncompliant solid waste facility. NJDEP inspected this solid waste facility on July 19, 2006 and found several violations of N.J.A.C. 7:26-2D.1. Notably: (1) the building was nearly at full capacity resulting in waste being offloaded outside of the building and then being pushed into the building; (2) the facility had ineffective stormwater and wastewater management systems; (3) there was no adequate air pollution control system; and (4) there was an inadequate fire suppression system. See Statement of Albert Raimund Belonzi ("Belonzi Statement"), Attachment B at ¶ 4. In April 2006, waste stored within the building caught fire, destroyed an excavator and front-end loader, damaged two rail cars, and caused substantial damage to the building. See Belonzi Statement, Attachment B at ¶ 3 and Exhibit A. On August 24, 2006, NJDEP issued the facility a Notice of Violation for these violations. See id. at Exhibit B. Recent inspections have revealed that the facility continues to operate out of compliance with critical public health and safety regulations. See id. at ¶ 4. Although the roadways have been paved, dust continues to be a problem and there is still no sprinkler system in place to control fires. Moreover, waste continues to be tipped outside of the building into the open air. See id. During

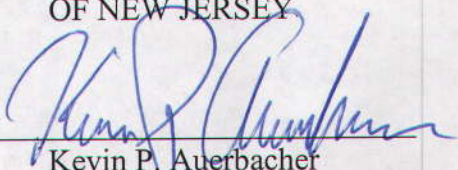
an inspection on May 9, 2007, a representative of NYGL told NJDEP that NYGL has accepted a letter of intent from NBR to purchase NYGL's assets at this waste facility. See id. at ¶ 6. For these reasons, NJDEP has reason to believe that NBR intends to take over this waste facility. Based on the conditions at the site currently, NJDEP is concerned that NBR's operation will continue a waste facility in a similar manner.

IV. CONCLUSION

For these reasons, NJDEP requests that the Board enter a stay of the effectiveness of the exemption in this docket in order to require the applicant to provide additional and specific information with respect to, e.g., the specific plans for the subject property, the nature of the proposed operations, whether solid or hazardous waste will be handled, the nature of the freight, the nature and volume of the proposed shipments, the identity and nature of the proposed shippers, the names of NBR's management and their qualifications to provide rail transportation, and other information relevant to a determination of whether NBR will be a "rail carrier" as that term is defined in Section 10102(5) of the Act. The lack of information submitted to date and evidence suggesting that waste will be handled at the subject property warrants a 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: 5-16-07

CERTIFICATE OF SERVICE

I certify that I have this day, May 16, 2007, served copies of the Request for Stay 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.


Michele D. McGahey

EXHIBIT A



JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 093
TRENTON, NJ 08625-0093

STUART RABNER
Attorney General

ROBERT J. GILSON
Director

May 2, 2007

Jeffrey O. Moreno, Esquire
Thompson Hine LLP
1920 N. Street, N.W., Suite 800
Washington D.C. 20036-1600

**Re: STB Finance Docket 35020, Northern and Bergen Railroad, LLC—Verified
Notice of Exemption
Garfield and Passaic, New Jersey**

Dear Mr. Moreno:

We are in receipt of the Notice of Exemption that you filed with the Surface Transportation Board ("STB") with respect to the above referenced Finance Docket Number. On behalf of the Attorney General of the State of New Jersey, the New Jersey Department of Environmental Protection ("NJDEP"), and other state agencies that may be affected by this application, we have reviewed your submission to the STB. Based on our review, we are seeking information regarding details of the "common carrier rail service" that will be provided by Northern and Bergen Railroad, LLC ("NBR") in Garfield and Passaic, New Jersey and the specific nature and operations that NBR will provide on the line that is the subject of the above referenced Notice ("Site").

Initially, please provide any operating, transportation or other agreements concerning the Site. This request includes any other documents relating to any relationship with shippers for this Site and/or with New York & Greenwood Lake Railway ("NYGL"). We also request that you provide any insurance agreements or policies relating to the Site and/or any proposed facility. In addition, please provide answers to the following questions:

1. Please provide information on the formation of NBR including but not limited to when and where it was formed and the nature of its business and/or services. Please also include the identity of the principals of NBR.
2. Explain NBR's experience and the qualifications of NBR's principals in providing



"common carrier rail service."

3. What type of service will be provided at the Site?
4. Explain the nature of any facility proposed at the Site.
5. Will any waste materials—solid (Type 10 or 13 waste as defined by NJDEP regulations) or hazardous—be handled in any manner or at any time by NBR at the Site? If not waste, describe precisely what kind of materials will be handled and/or transported by NBR at the Site.
6. If waste is offered, will a building be constructed? Who would ship waste materials to the facility? Please describe the operations of the facility should waste be offered as a commodity for shipment. Further, what types of containers would be used for the waste? Would these containers be impervious?
7. Does NBR have a contract with any shipper and/or hauler to haul solid and/or hazardous waste? If there is no contract, has any shipper been provided with a rate quote or tariff rate?
8. What type of construction is planned and/or needed?
9. Who is responsible for the costs associated with the Site including any proposed construction? What are these anticipated costs?
10. What are the anticipated revenues for the Site and what is the basis for this projection? Please provide any documentation in this regard.
11. Who are the shippers or proposed shippers for the Site? How and by whom have these shippers been solicited with respect to the Site?
12. What is the proposed volume of shipments?
13. Who is supplying rail cars that will be used for moving the shipments? What type of rail cars?
14. To where will the shipments go from the Site, including the ultimate destination?
15. From what source(s) would the shipment(s) originate?

16. What type of solicitation/marketing has there been or will there be for the Site?
17. Has there been any communication with NJDEP or any other New Jersey agency concerning the Site? Does NBR intend to communicate with such agencies and/or seek approval for the Site? Who will be responsible for obtaining any environmental permits or any other approvals?
18. Does NBR intend to comply with New Jersey regulations concerning the Site (e.g. regulations implementing the Solid Waste Management Act, N.J.A.C. 7:26-2.1 et seq.) or any other applicable regulation?
19. What types of environmental controls are planned for the Site (e.g. controls concerning air and water pollution and fire hazards)?
20. Will NBR issue the bills for any shipments?
21. Has NBR made any arrangements with trucking companies that will be bringing any shipments into the Site? Which trucking companies? Has NJDEP permitted these trucking companies or will these companies be permitted? Will these trucking companies issue bills of lading? Has NBR entered into any agreements with such trucking companies or will it?
22. Will any shippers or any other person or entity reimburse NBR for any costs associated with the Site?
23. What is the relationship between NYGL's existing solid waste facility in Passaic, New Jersey? Does NBR plan to continue NYGL's waste facility?

Thank you in advance for your cooperation in providing the information that is necessary to understand the nature of the proposed operations here. I am available to discuss these items further.

Sincerely yours,

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY

By: Ruth E. Carter
Ruth E. Carter
Deputy Attorney General

EXHIBIT B

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35020

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

**VERIFIED STATEMENT OF ALBERT RAIMUND BELONZI IN SUPPORT OF
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S
STAY REQUEST**

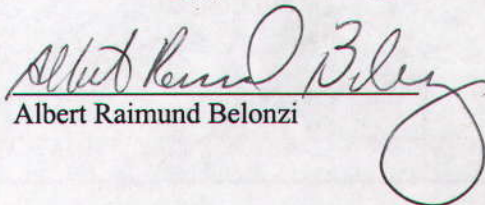
I, Albert Raimund Belonzi, hereby certify as follows:

1. I submit this verified statement in support of the New Jersey Department of Environmental Protection's ("NJDEP" or "Department") request for a stay of the effectiveness of the Notice of Exemption filed by Northern and Bergen Railroad, LLC ("NBR"), seeking an exemption from 49 U.S.C. § 10901 to acquire approximately 1.1 miles of track from New York Greenwood Lake Railway ("NYGL") in the Townships of Garfield and Passaic, Bergen and Passaic Counties, New Jersey. This verified statement supports and is a follow up to the verified statement submitted by John Castner, the Department's Director of the Division of County Environmental and Waste Enforcement within NJDEP, Attachment B in Finance Docket Nos. 34986 & 34987.
2. I am employed as the Bureau Chief of the Bureau of Solid Waste Compliance and Enforcement within the Department. I have been employed as a Bureau Chief (primarily in my current assignment) since 1987 and I have worked for the Department for 25 years. My current duties and responsibilities concern the oversight and management of the solid waste enforcement program. This program inspects and regulates entities engaged in solid waste activities (such as composts, transfer facilities, incinerators, transporters, and recycling operations).
3. NBR's Notice of Exemption concerns property along NYGL's tracks that is currently the site of a waste transfer facility. In April 2006, waste stored within the building caught fire, destroying an excavator and front-end loader, damaging two rail cars, and causing substantial damage to the building. See Exhibit A.
4. On September 20, 2006, NJDEP issued NYGL and the shipper at that time a Notice of Violation for several violations of the 2D regulations. See Exhibit B. Notably: (1) the

building was nearly at full capacity resulting in waste being offloaded outside of the building and then being pushed into the building; (2) the facility had ineffective stormwater and wastewater management systems; (3) there was no adequate air pollution control system; and (4) there was an inadequate fire suppression system. Recent inspections by NJDEP reveal that many of these violations remain such as continued air pollution problems and lack of a fire suppression system.

5. NJDEP has photographed the waste facility that is operating on the subject property. Attached as Exhibit C shows that the facility has allowed the transfer building to reach maximum capacity, resulting in waste being offloaded outside of the building. This waste is clearly exposed to the environment with no provisions to collect air contaminants or leachate releases that can migrate to surface and groundwater. This photograph was taken on January 19, 2006. Recent photographs taken from NYGL's webcast, to which NYGL offered access to NJDEP, on April 3, 2007 similarly reveal that waste continues to be offloaded outside. See Exhibit D.
6. On May 9, 2007, NJDEP inspected the property and NYGL indicated that it has accepted a letter of intent from NBR to purchase NYGL's assets in this waste facility.

Albert Raimund Belonzi, having first been duly sworn according to law, deposes and states that he has read the foregoing Verified Statement, is familiar with the contents thereof, and that the same are true and correct to the best of his knowledge, understanding and belief.

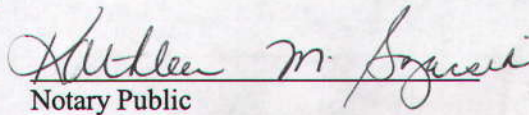

Albert Raimund Belonzi

STATE OF NEW JERSEY)
COUNTY OF MERCER)

ss.

SUBSCRIBED AND SWORN TO before me this 5th day of May, 2007.

Witness my hand and official seal.


Notary Public

Kathleen M. Szucsik
Notary Public of New Jersey
My Commission Expires 02/27/2011



EXHIBIT A

NFIRS - 1
Basic**B: Location**95 PASSAIC St
Passaic, NJ 07055

WILDLAND FIRE?

C: Incident Type*

111 Building fire

E1: Dates & Times

Check boxes if dates are the same as Alarm Date.

Alarm* 04/04/2006 0544

Arrival* 04/04/2006 0547

Controlled

Last unit cleared 04/04/2006 0932

E2: Shift & Alarms

Shift 2

Alarms 1

District 070

D: Aid Given or Received* ☒ None

N None

E3: Special studies# ID Code
1 6000 1**For Local Use**

County Run

Method of Alarm to the FD

7 911 / Telephone tie-line to fire department

F: Actions Taken*

(all incident types)

- 11 Extinguish
- 80 Information, investigation & enforcement, oth.
- 81 Incident command

G1: Resources*☐ Apparatus or Personnel forms used

OR ==> Apparatus Personnel

Suppression 9 30

EMS 1 2

Other 3 3

☐ aid received included**G2: Estimated \$ Loss & Value****LOSSES:**Property 0 ☒ noneContents 0 ☒ none**PRE-INCIDENT VALUE:**Property 0 ☒ noneContents 0 ☒ none**H1: Casualties**

Deaths Injuries

Fire Service: 0 0

Total Civilian: 0 0

Total casualties: 0 0

including:

EMS patients: 0 0

but NOT including:

HazMat Civ. cas.: 0 0

☒ None

Deaths Injuries

Including Civilian FIRE 0 0

Fields in Italics are used to determine form counts:
 Fire Service -> NFIRS5, Civilian Fire -> NFIRS4,
 EMS -> NFIRS6, HazMat -> HazMat total casualties.
 Only Fire Service and Total Civilian are on NFIRS.

Modules

- ☒ 2-Fire
☒ 3-Structure
☐ 4-Civilian Fire Casualty
☐ 5-Fire Service Casualty
☐ 6-EMS
☐ 7-HazMat
☐ 8-Wildland Fire
☐ 9-Apparatus
☐ 11-Arson

H2: Detector Alerted Occupants? H3: Hazardous Material Release☐ Yes ☐ No ☒ Unknown

N None

I: Mixed use Property

60 Industrial use

J: Property Use

000 Property Use, other

K1: Persons/Entities Involved AND K2: Owner

Last Name First Name Business Name Phone Street or Highway Name

K2:

M: Authorization

Officer in charge ID

Name: (first, mi, last)

Position or rank Assignment Date*

108 Jose Roman

Dep. Chief OIC 04/04/2006

☒ Check box if same as Officer in charge

Member making report

Name: (first, mi, last)

Position or rank Assignment Date*

108 Jose Roman

Dep. Chief OIC 04/04/2006

Passaic Fire Department • 11 Hope Ave • Passaic, NJ 07055

FDID State Date Time Incident Exp Station
 16070 NJ 04/04/2006 05:44 0000553 000 070

NFIRS
 Printed: 08/03/2006 08:40

B: Property Details

B1: Estimated number of residential living units in building of origin.
(whether or not all units became involved)
☒ Not residential OR 0

B2: Number of buildings involved
(totals for incident in 000 exposure)
☒ None OR 0

B3: Acres burned (outside fires)
None OR 0
☒ Less than 1 acre

C: On-Site Materials or Products

Complete if there were any significant amounts of commercial, industrial, energy or agricultural products or materials on the property, (whether or not they became involved)

On-site materials: ☐ None Material Storage Use

1.	NNN	None		
2.				
3.				

NFIRS - 2
Fire**D: Ignition**

D1: Area of fire origin*

45 Shipping/receiving area; loading area, dock or bay

D3: Item first ignited*

UU Undetermined

☐ Fire spread was confined to object of origin

D2: Heat source*

UU Undetermined

D4: Type of material first ignited

UU Undetermined

E1: Cause of Ignition

5 Cause under investigation

E2: Factors Contributing To Ignition☐ None OR

1. NN None

2.

E3: Human Factors Contributing to Ignition(check all that apply) ☒ None

- | | | |
|---|--------------------------|---------------------------------------|
| 1 | ☐ | Asleep |
| 2 | ☐ | Possibly impaired by alcohol or drugs |
| 3 | ☐ | Unattended or unsupervised person |
| 4 | ☐ | Possibly mentally disabled |
| 5 | ☐ | Physically disabled |
| 6 | ☐ | Multiple persons involved |
| 7 | ☐ | Age was a factor |

(if age a factor)

Est. age of person involved

☐ Male
☐ Female**F: Equipment Involved In Ignition**☐ None

NNN None

Year:

Brand:

Model:

Serial #:

F2: Equipment Power Source

F3: Equipment Portability

☐ Portable ☐ Stationary**G: Fire Suppression Factors**☐ None

1. NNN None

2.

3.

H: Mobile Property Involved☐ None

Mobile property type

Model:

License Plate #

VIN#:

State:

Mobile property make

Year:

Requires Modules: 11-Arson

Passaic Fire Department • 11 Hope Ave • Passaic, NJ 07055

FDID 16070 State NJ Date 04/04/2006 Time 05:44 Incident 0000553 Exp 000 Station 070

NFIRS
Printed: 08/03/2006 08:40

I1: Structure Type* 1 Enclosed building		I3: Building Height* Count the ROOF as part of highest story. Total number of stories at or above grade: 1 Total number of stories below grade: 0		I4: Main Floor Size* Total square feet OR ==> Length by Width (In feet) 100 BY 100		NFIRS - 3 Structure Fire
I2: Building Status* 6 Vacant and unsecured						
J1: Fire Origin* Story of fire origin: 1 Below grade		J3: # Stories Damaged by Flame* Count the ROOF as part of the highest story. 1 minor (1 to 24%) damage 1 significant (25 to 49%) damage heavy (50 to 74%) damage extreme (over 75%) damage		K: Mat'l Contributing Most to Flame Spread ☒ No flame spread OR same as mat'l first ignited OR unable to determine Item: Type: 		Passaic Fire Department • 11 Hope Ave • Passaic, NJ 07055 FDID 16070 State NJ Date 04/04/2006 Time 05:44 Incident 0000553 Exp Station 000 070 NFIRS Printed: 08/03/2006 08:40
J2: Fire Spread* 4 Confined to building of origin						
L: Detectors						
L1: Presence of Detectors* (in area of fire) ☐ None Present ☒ Present ☐ Undetermined		L3: Detector Power Supply 0 Detector power supply, other		L5: Detector Effectiveness (If operated)		
L2: Detector Type 0 Detector type, other		L4: Detector Operation U Undetermined		L6: Detector Failure Reason (If failed)		
M: Automatic Extinguishment System (AES)						
M1: Presence* ☒ None Present ☐ Present		M2: Type (if fire in designed range of AES)		M4: # Operating Sprinkler Heads (If operated)		
		M3: Operation (if fire in range of AES)		M5: Failure Reason (If failed)		

L: Remark

NFIRS -
Remark

Seq #: 001

Subject: Chief's remarks

ON ARRIVAL FOUND A 1-STORY - 100 X 100 CORRUGATED METAL BUILDING - BUILDING IS A WASTE TRANSFER STATION FOUND HEAVY FIRE AND SMOKE CONDITION. A DEFENSIVE MODE WAS ORDERED DUE TO AN UNKNOWN CONTENTS AND STRUCTURE. FIRE WAS WELL INVOLVED ON ARRIVAL. STRUCTURE CONTENTS WERE WASTE DEBRIS, THE AMOUNT WAS UNKNOWN, ALSO INSIDE WERE SIX RAIL CARS FULL WITH DEBRIS, AND AN ESCAVATER - ENG-2, ENG-3 AND TRK-2 SET UP FOR DEFENSIVE MODE AT THE "A" SIDE ON SOUTH STREET ENTRANCE RAIL "A". A DIVISION SET MASTER STREAMS AND PORTABLE DECK GUNS - VENT HOLES WERE CUT TO GAIN ACCESS TO SEAT OF FIRE, A SECOND ALARM WAS CALLED TO THE SCENE - ENG-4 AND TRK-1 WERE POSITIONED ON PASSAIC STREET FOR DEFENSIVE OPERATIONS - ENG-4 ESTABLISHED WATER SUPPLY FOR TRK-1 - TRK-1 MADE VENT OPENING, ENG-4 AND TRK-1 WERE USING MASTER STREAMS ON THE "C" SIDE - POWER TO BUILDING WAS SECURED, ENG-1 ASSISTED ON THE "A" SIDE - PATERSON AND CLIFTON WERE CALLED TO THE SCENE, AND SET UP ON THE "C" SIDE TO ASSIST IN WATER TOWER OPERATIONS - COUNTY HEALTH AND HAZMAT WERE CALLED TO THE SCENE TO MONITOR AIR AND WATER RUN OFF - MAIN BODY OF FIRE KNOCK DOWN, A PLAN TO REMOVE RAIL CARS WAS ORGANIZED, HYDRAULIC DOORS WERE OPENED WITH A PAYLOADER, OWNER, MR WILSON WAS ABLE TO REMOVE RAILCARS TO YARD - TRK-2 SET UP WATER TOWER TO EXTINGUISH REMAINING FIRE IN THE RAIL CARS, ARSON AND FIRE OFFICIAL WAS ON SCENE - CHIEF ZAYATZ ON SCENE, SAFETY AND COM 1 ON SCENE TO ASSIST COMMAND AT 0932 HRS. DEPUTY #3 WAS GIVING COMMAND.

D/C A. ROMAN

Passaic Fire Department • 11 Hope Ave • Passaic, NJ 07055

FDID	State	Date	Time	Incident	Exp	Station
16070	NJ	04/04/2006	05:44	0000553	000	070

NFIRS
Printed: 08/03/2006 08:40

95 PASSAIC St
Passaic, NJ 07055NFIRS - 1
Basic

WILDLAND FIRE?

C: Incident Type*

111 Building fire

D: Aid Given or Received* ☒ None

N None

E1: Dates & Times

Check boxes if dates are the same as Alarm Date.

Alarm* 04/04/2006 1926

Arrival* 04/04/2006 1926

Controlled

Last unit cleared 04/05/2006 0200

E2: Shift & Alarms

Shift

Alarms 1

District 070

E3: Special studies

ID Code
1 6000 1

For Local Use

County Run

Method of Alarm to the FD

1 Telephone direct to fire department

F: Actions Taken*

(all incident types)

1. 11 Extinguish
2.
3.

G1: Resources*

Apparatus or Personnel forms used

OR → Apparatus Personnel

Suppression 1 3

EMS 0 0

Other 0 0

aid received Included

G2: Estimated \$ Loss & Value

LOSSES:

Property 0 ☒ noneContents 0 ☒ none

PRE-INCIDENT VALUE:

Property 0 ☒ noneContents 0 ☒ none

H1: Casualties

Deaths Injuries

Fire Service: 0 0

Total Civilian: 0 0

Total casualties: 0 0

Including: EMS patients: 0 0

but NOT including HazMat Civ cas.: 0 0

☒ None

Deaths Injuries

including Civilian FIRE 0 0

Fields in italics are used to determine form counts:
Fire Service → NFIRS5, Civilian Fire → NFIRS4,
EMS → NFIRS6, HazMat → HazMat total casualties.
Only Fire Service and Total Civilian are on NFIRS.

Modules

☒ 2-Fire
☒ 3-Structure
☐ 4-Civilian Fire Casualty
☐ 5-Fire Service Casualty
☐ 6-EMS
☐ 7-HazMat
☐ 8-Wildland Fire
☐ 9-Apparatus
☐ 11-Arson

H2: Detector Alerted Occupants? H3: Hazardous Material Release

☐ Yes ☐ No ☒ Unknown N None

I: Mixed use Property

NN Not mixed use

J: Property Use

891 Warehouse

K1: Persons/Entities Involved AND K2: Owner

Last Name First Name Business Name Phone Street or Highway Name

K2:

M: Authorization

Officer in charge ID

Name: (first, mi, last)

Position or rank Assignment Date*

81

John

Scangarello

Dep. Chief

OIC

04/04/2006

☒ Check box if same as Officer in charge

Member making report

Name: (first, mi, last)

Position or rank Assignment Date*

81

John

Scangarello

Dep. Chief

OIC

04/04/2006

Passaic Fire Department • 11 Hope Ave • Passaic, NJ 07055

FDID 16070 State NJ Date 04/04/2006 Time 19:26 Incident Exp Station 0000559 000 070

NFIRS
Printed: 08/03/2006 08:37

NFIRS - 2

Fire

Passaic Fire Department • 11 Hope Ave • Passaic, NJ 07055

FDID 16070 State NJ Date 04/04/2006 Time 19:26 Incident 0000559 Exp 000 Station 070

NFIRS
Printed: 08/03/2006 08:37**B: Property Details**B1: Estimated number of residential living units in building of origin.
(whether or not all units became involved)
☒ Not residential OR 0B2: Number of buildings involved
(totals for incident in 000 exposure)
☒ None OR 0B3: Acres burned (outside fires)
☒ None OR 0
Less than 1 acre**C: On-Site Materials or Products**

Complete if there were any significant amounts of commercial, industrial, energy or agricultural products or materials on the property, (whether or not they became involved)

On-site materials: ☐ None ☐ Material Storage Use

1. NNN None

2.

3.

D: Ignition

D1: Area of fire origin*

00 Other

D3: Item first ignited*

00 Item First Ignited, Other

Fire spread was confined to object of origin

D2: Heat source

00 Heat source: other

D4: Type of material first ignited

00 Type of material first ignited, other

E1: Cause of Ignition

1 Intentional

E2: Factors Contributing To Ignition

None OR

1.

2.

F: Equipment Involved In Ignition☐ None

NNN None

Year:

Brand:

Model:

Serial #:

E3: Human Factors Contributing to Ignition
(check all that apply) ☒ None

- | | | | |
|---|--------------------------|---------------------------------------|-----------------------------|
| 1 | ☐ | Asleep | (If age a factor) |
| 2 | ☐ | Possibly impaired by alcohol or drugs | |
| 3 | ☐ | Unattended or unsupervised person | Est. age of person involved |
| 4 | ☐ | Possibly mentally disabled | |
| 5 | ☐ | Physically disabled | |
| 6 | ☐ | Multiple persons involved | |
| 7 | ☐ | Age was a factor | |

☐ Male
☐ Female**F2: Equipment Power Source****F3: Equipment Portability**☐ Portable ☐ Stationary**G: Fire Suppression Factors**☐ None

1. NNN None

2.

3.

H: Mobile Property Involved☐ None

Mobile property type

N None

Model:

License Plate #

VIN#:

State:

Mobile property make

Year:

Requires Modules: 11-Arson

I1: Structure Type* 0 Structure type, other		I3: Building Height* Count the ROOF as part of highest story. Total number of stories at or above grade:		I4: Main Floor Size* Total square feet OR ==> Length by Width (in feet) BY	
I2: Building Status* 0 Other		Total number of stories below grade:			
J1: Fire Origin* Story of fire origin: ☐ Below grade		J3: # Stories Damaged by Flame Count the ROOF as part of the highest story. 1 minor (1 to 24%) damage significant (25 to 49%) damage heavy (50 to 74%) damage extreme (over 75%) damage		K: Mat'l Contributing Most to Flame Spread ☒ No flame spread OR same as mat'l first ignited OR unable to determine Item: Type:	
J2: Fire Spread* 1 Confined to object of origin					
L: Detectors L1: Presence of Detectors* (in area of fire) ☒ None Present ☐ Present ☐ Undetermined		L3: Detector Power Supply		L5: Detector Effectiveness (if operated)	
L2: Detector Type		L4: Detector Operation		L6: Detector Failure Reason (if failed)	
M: Automatic Extinguishment System (AES)					
M1: Presence* ☒ None Present ☐ Present		M2: Type (if fire in designed range of AES)		M4: # Operating Sprinkler Heads (if operated)	
		M3: Operation (if fire in range of AES)		M5: Failure Reason (if failed)	

NFIRS - 3
Structure
Fire

Passaic Fire Department • 11 Hope Ave • Passaic, NJ 07055

FDID 16070 State NJ Date 04/04/2006 Time 19:26 Incident Exp Station 0000559 000 070

NFIRS
Printed: 08/03/2006 08:37

L: Remark

Subject: Engine Co. 1's remarks

FOUND SMOLDERING TRASH - HOOKED UP TO HYDRANT AND FOUND WATER ALL RIGHT AND
EXTINGUISH HAD SPREAD.NFIRS -
Remark

Seq #: 001

Passaic Fire Department • 11 Hope Ave • Passaic, NJ 07055

FDID	State	Date	Time	Incident	Exp	Station
16070	NJ	04/04/2006	19:26	0000559	000	070

NFIRS
Printed: 08/03/2006 08:37

04/04/2006

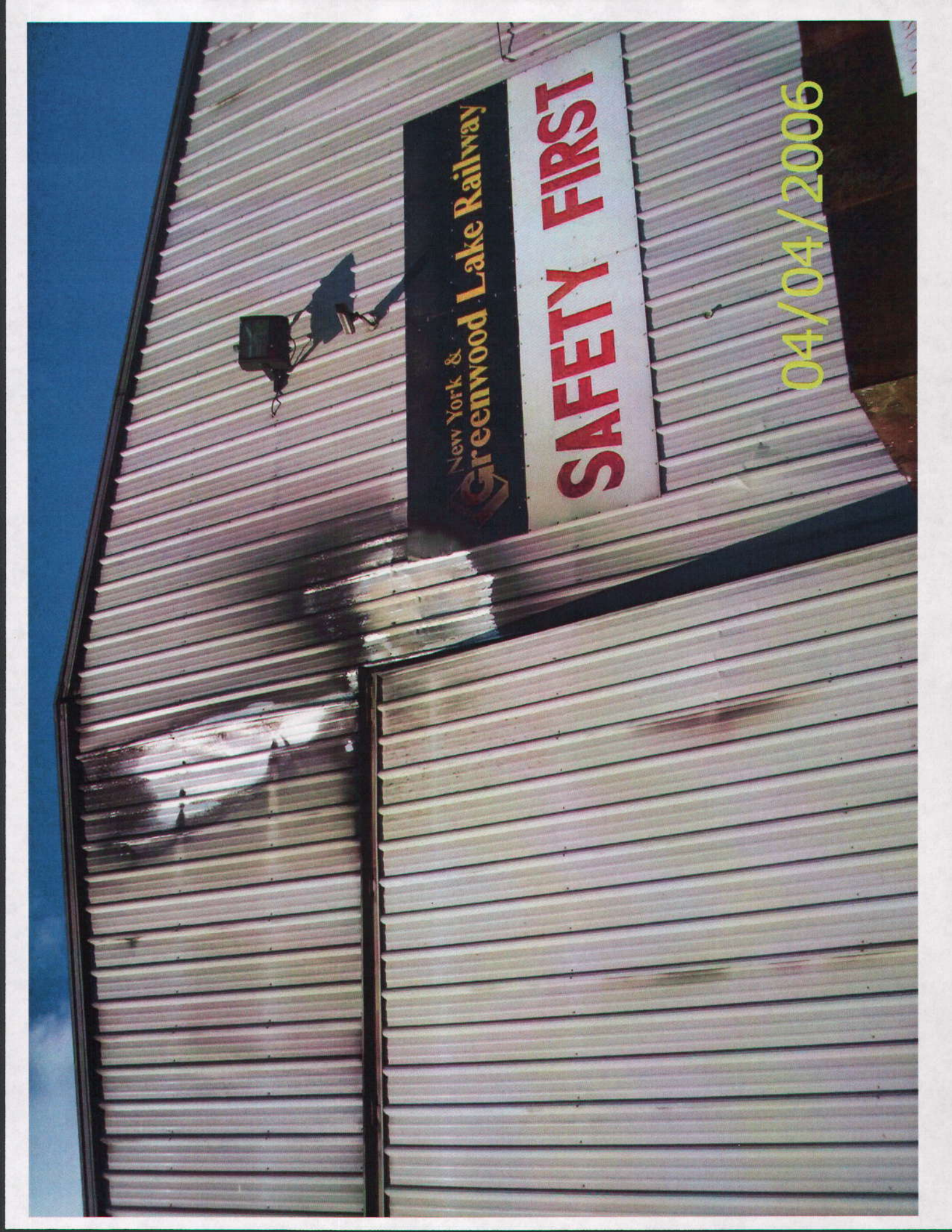




04/04/2006

04/04/2006





New York &
Greenwood Lake Railway

SAFETY FIRST

04/04/2006

HOME OF
PASSAIC
PBA



LOCAL 14

"The City's
Strongest Union"

PEA PRESIDENT
ANTHONY DANTINO
SINCE ORIGINATED
MARC MORRIS

New York &
Greenwood Lake Railway
"DUGGIE" TEAM TRACK WARD & P&LE SONG
PASSAIC TRAINING CENTER
PASSAIC TRAINING CENTER
PASSAIC TRAINING CENTER

COOL BREAKFAST.
HOT PRIZES.
BREAKFAST BOATERS
MEET AT THE SCHOOL

04/04/2006



04/04/2006



04/04/2006



04/04/2006

EXHIBIT B

Post-It® Fax Note	7671	Date	9/20	# of pages	5
To	Mike Gage	From	Terri Slack		
Co./Dept.		Co.	(assume you)		
Phone #		Phone #	didn't need		
Fax #	588-2444	Fax #	attachments		



New Jersey
ENVIRONMENTAL PROTECTION

Steel wheels

LISA P. JACKSON
Commissioner

County Environmental and Waste Enforcement
401 East State Street, PO Box 422
Trenton, New Jersey 08625-0422
Tel. No 609-292-6704
Fax. No. 609-292-9938

August 24, 2006

NY & Greenwood Lake Railway
95 105 Passaic Street
Passaic, NJ 07055
Attn.: Jim Wilson

Steel Wheels Transport, LLC
Dundee Yard
95 Passaic Street
Passaic, NJ 07055

Dear Sirs,

On July 19, 2006, the DEP inspected the solid waste transfer facility located at 95-105 Passaic Street, Block 31, Lot 30, Passaic City, Passaic County. During the inspection, a representative of your facility (Chaim Moster, Office Manager) asked our inspector for guidance on how the facility is to be operated and what regulations apply to the facility. This letter is in response to that inquiry.

At the outset, we note that according to Mr. Moster, the facility had not received any inbound waste since on or about July 11, 2006. Mr. Moster informed our inspector, however, that operations were expected to resume "next week," which from the date of inspection would be the week of July 24, 2006. A more recent inspection conducted on August 7, 2006 confirmed that the facility is indeed accepting waste.

First, to the extent that the facility processes solid waste, including Construction and Demolition debris ("C&D"), such activities are not "transportation" as defined by the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. §§ 10101 et seq. See NJDEP v. J.P. Rail, Docket No. C-41-06, (N.J. Super. Ct. Ch. Div. June 22, 2006) (Order by the Honorable William C. Todd III, P.J. Ch., attached as Attachment 1). Such activities therefore do not fall within the purview of the ICCTA and accordingly, are subject to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., and the

disclosure requirements found at N.J.S.A. 13:1E-126 et seq. At this time, the Department has insufficient information regarding the activities conducted at the facility. Please forward same to the Department so we may ascertain the specific operations at the facility.

Second, rail carrier facilities that transload solid waste are subject to the regulations codified at N.J.A.C. 7:26-2D.1 (attached hereto as Attachment 2 and hereinafter referred to as the "2D Regulations"). In general terms, the 2D Regulations require railroads to operate their "transloading facilities" according to the same environmental, public health and public safety standards, but not the planning and permitting processes, applicable to non-rail carrier transfer stations. Please forward to the Department operational agreements pertaining to and reflecting the relationship between NY & Greenwood Lake Railway and Steel Wheels Transport, LLC as well as any other entity associated with the facility so that we may ascertain the operational control of the facility. Without such information, we are unable to determine, assuming that the facility conducts no processing activities, whether the facility is a rail carrier facility for purposes of the ICCTA.

Third, assuming that the activities at the facility here are "transportation by a rail carrier," the facility is required to comply with the 2D Regulations. Assuming that the 2D Regulations apply, please find below our comments to the requirements set forth in the 2D Regulations according to conditions observed during our inspections of the facility. Please be advised that our comments do not reflect an agreement by the DEP that this facility is in fact "transportation by a rail carrier." They are merely provided as guidance of the minimal environmental standards required to protect the public health and safety to which the facility will be held.

Compliance with 2D regulations:

During our inspections of your facility we have noted several violations of the 2D regulations which are detailed below:

1.) Regulatory requirement:

N.J.A.C. 7:26-2D.1(d)1 All facility processing, tipping, sorting, loading, storage and compaction of materials (that is, solid waste and mixtures of solid waste and recyclable materials) shall occur within the confines of an enclosed building that complies with all requirements of the Uniform Construction Code.

Comment:

During many of our inspections the building was nearly at full capacity resulting in waste being offloaded outside of the building and then being pushed into the building. Tipping outside of the building is in violation of this and other requirements (see below) and such practice must cease immediately.

In addition, it is unclear if the building used for the waste transfer operation meets the Uniform Construction Code ("UCC"), including but not limited to any fire suppression systems that may be required under the UCC. Please submit evidence to demonstrate such compliance.

2.) Regulatory requirements:

N.J.A.C. 7:26-2D.1(d)2. Facility shall have concrete or equivalent tipping floors or ramps to ensure proper containment and channeling of wastewater to sanitary sewer connections or holding tanks and constructed to withstand heavy vehicle usage, in compliance with applicable rules regarding the discharge of wastewater and the utilization of holding tanks at N.J.A.C. 7:14B; and

N.J.A.C. 7:26-2D.1(d)3. Facility shall have a system that collects, stores, and properly disposes of wastewater generated during normal operations, including wash-out and cleaning of equipment, trucks, and floors, in compliance with the applicable rules regarding wastewater and stormwater management at N.J.A.C. 7:14A.

Comment:

There have been reports that the floor drains within the building are sometimes blocked, preventing the effective containment and/or disposal of wastewater. In addition, the areas outside of the building are not paved resulting in ineffective and inadequate management of stormwater and wastewater. This concern is magnified because as noted in No. 1 above, solid waste has been unloaded outside of the building enclosure. The facility must implement and maintain effective storm water and wastewater management systems, e.g., through proper maintenance of the existing systems or facility improvements.

3.) Regulatory requirements:

N.J.A.C. 7:26-2D.1(d)4. Within each 24-hour period, the operator shall clean each area where waste has been deposited or stored;

N.J.A.C. 7:26-2D.1(d)5. No waste shall be stored overnight without effective treatment to prevent odors associated with putrefaction; and

N.J.A.C. 7:26-2D.1(d)21. Nonputrescible solid waste shall not remain at the rail facility for more than 10 days, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers. Putrescible solid waste shall not remain at any rail facility for longer than 72 hours.

Comment:

During each inspection, a pile of construction and demolition waste has always been allowed to remain on the tipping floor. Further, we have been informed by on site personnel that this pile is used as a platform by the grapppler operator to load rail cars. This practice is unacceptable, not only because it violates the above cited regulation(s), but also because it creates an unacceptable risk to the safety of the grapppler operator. If the grapppler is unable to load waste into railcars from a position on the ground, a safe alternative must be implemented, e.g., construction of an elevated platform or pedestal for the grapppler.

4.) **Regulatory requirement:**

N.J.A.C. 7:26-2D.1(d)7. Methods of effectively controlling dust shall be implemented in order to prevent migration outside the enclosed building and off-site; and

N.J.A.C. 7:26-2D.1(d)(8). The operation shall not result in the emission of air contaminants, except by locomotive or locomotive engine, in violation of N.J.A.C. 7:27-5.2(a).

Comment:

As noted above, waste has been observed being tipped outside the building; because tipping occurred outdoors rather than indoors, the dust that was generated was already outside the enclosed building. This practice must cease. Further, the dust that was generated was not controlled. The misting system in place is an ineffective method of controlling dust even when operational, which has not always been the case. The facility must install and implement a method of effectively controlling dust and preventing the emission of air contaminants, e.g., a negative air handling system.

5.) **Regulatory requirement:**

N.J.A.C. 7:26-2D.1(d)9. An adequate water supply and adequate fire-fighting equipment shall be maintained or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

Comment:

In April 2006, waste stored within the building caught fire, destroying an excavator and front-end-loader, damaging two rail cars and causing substantial damage to the building. This fire demonstrates the risks posed by handling such waste and the need for adequate fire suppression systems. The facility must have both "[a]n adequate water supply" and "adequate fire-fighting equipment . . . readily available to extinguish any and all types of fires." (emphases added). As shown by the April 2006 fire, the facility is not adequately equipped to handle "any and all types of fires," and the facility must install an adequate fire suppression system, including a sprinkler system and fire alarm system, so that the facility is capable of extinguishing any and all types of fires.

6.) **Regulatory requirement:**

N.J.A.C. 7:26-2D.1(d)12. A facility's on-site roadways and storage areas shall have concrete or asphalt paving in those areas subject to vehicle loading and unloading activities.

Comment:

The majority of the on-site roadways and storage areas including areas subject to loading and unloading are comprised of unsealed asphalt millings, in violation of this requirement. Please also note that the Department does not allow the use of millings unless they are sealed or covered by concrete or asphalt, see Attachment 3. The unpaved loading areas and use of millings must be addressed by the facility, preferably through paving all on-site roadways and storage areas with concrete or asphalt.

7.) **Regulatory requirement:**

N.J.A.C. 7:26-2D.1(d)15. Facilities and all appurtenances, other than those owned or operated by rail carriers, including vehicles while on-site, shall be positioned and buffered in such a manner that sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control rules, N.J.A.C. 7:29, and rail carriers shall at all times comply with the noise emission standards set forth in Title 49 C.F.R., Part 210, and any applicable regulation promulgated pursuant to the State Noise Control Act, N.J.S.A. 13:1G-1 et seq.;

Comment:

The facility is located within a residential neighborhood. During our inspections we have noted noise from equipment has extended to adjoining residential streets. We have also received complaints regarding noise. The facility should investigate options to reduce such noise.

8.) **Regulatory requirement:**

N.J.A.C. 7:26-2D.1(d)16. Only solid waste vehicles properly registered pursuant to N.J.A.C. 7:26-3 with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted for loading or unloading of any solid waste at the facility;

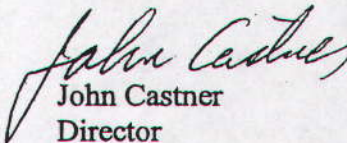
Comment:

On at least one occasion we have noted the facility allowed an unregistered transporter to unload at the facility. Only properly registered solid waste vehicles with appropriate registration number and solid waste decal displayed may be admitted for unloading. The facility must adopt procedures to ensure compliance with this regulation.

The problems noted above are not necessarily all inclusive, as they simply represent the problems noted during our recent inspections.

Within 20 days of receipt of this letter, please provide the information requested and advise how the above problems will be addressed.

Sincerely,


John Castner
Director

C: Kevin Auerbacher, DAG
Wolfgang Skacel, Assistant Commissioner
Frank, Coolick, Administrator
Anthony Fontana, Bureau Chief
Raimond Belonzi, Bureau Chief

EXHIBIT C



EXHIBIT D







