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June 27, 2002

VIA UPS OVERNIGHT

Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board
Mercury Building, Room 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

**ENTERED
Office of Proceedings**

JUN 28 2002

**Part of
Public Record**



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

Dear Mr. Williams:

On behalf of the Hudson County Improvement Authority ("HCIA") and the Essex County Utilities Authorities ("ECUA"), enclosed please find an original and eleven (11) copies of our response to Hi-Tech's sur-reply in the above-referenced matter. Kindly return a copy marked "received" for our files in the envelope provided.

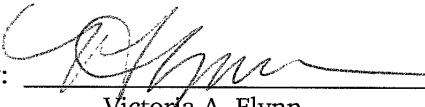
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June 27, 2002
Page 2

Thank you.

Very truly yours,

**DeCOTIIS, FITZPATRICK, GLUCK
& COLE, LLP**

By: 

Victoria A. Flynn

VAF/djr
Enclosures
cc: See attached service list

SERVICE LIST
PETITION FOR A DECLARATORY ORDER
BY HI-TECH TRANS, LLC
FINANCE DOCKET NO. FD 34192

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June 24, 2002

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

Dear Mr. Williams:

This firm represents the Hudson County Improvement Authority ("HCIA") and the Essex County Utilities Authority ("ECUA") in the above-referenced matter. On June 18, 2002, we received Hi-Tech's "motion to strike the Reply of the State of New Jersey Department of Environmental Protection." While that submission, on its face, attacks only the State's (and not HCIA's and ECUA's) reply to Hi-Tech's Petition, the second and third arguments in Hi-Tech's "Motion to Strike" address contentions that HCIA and ECUA (hereafter, "HCIA/ECUA") have raised in their joint submission to the Board of June 5,

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2002. Accordingly, we submit this letter on behalf of HCIA/ECUA in reply to those arguments, and in further support of HCIA/ECUA's request for dismissal.

ARGUMENT

POINT I

**HI-TECH'S LATEST SUBMISSION CONFIRMS
THAT IT IS NOT A RAIL CARRIER, AND IS NOT
ENGAGED IN "TRANSPORTATION BY A RAIL
CARRIER."**

Recognizing that it cannot hope to pass itself off as a rail carrier, Hi-Tech asserts that "Delaware and Hudson [Railroad] is a rail carrier." (Motion at 3). Hi-Tech appears to forget that the Delaware and Hudson ("CPR") chose not to be a co-petitioner with Hi-Tech, and went so far as to insist that it be removed as a putative co-petitioner. Thus, CPR's status as a rail carrier does nothing to advance Hi-Tech's position.

Hi-Tech also notes that CPR has submitted a letter in support of Hi-Tech's petition. In that letter, CPR characterizes Hi-Tech as a "licensee" of the railroad, and says that Hi-Tech "obtains construction and demolition debris (C&D), transfers it from truck to rail at CPR's transload facility, and then ships the C&D in interstate commerce on CPR's lines." (Motion at 4.) So far from establishing that Hi-Tech is a "rail carrier," this description confirms that Hi-Tech is a mere customer or contract agent of CPR that is engaged in the operation of a solid waste transfer station. The fact that CPR may derive revenues from Hi-Tech's transfer station operations (or, to put it in Hi-Tech's odd phrasing, the fact that "Hi-Tech is used by CPR to obtain and load cargoes for shipment on that railway") does not

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make Hi-Tech's collection and storage of waste "transportation by a rail carrier."

Since the record is clear that Hi-Tech is a private transfer station operator that stands in the role of customer or contract agent of CPR, the Board's lack of jurisdiction is likewise clear, and Hi-Tech's Petition should be dismissed.

POINT II

**THE BOARD LACKS JURISDICTION OVER HI-
TECH'S SOLID WASTE TRANSFER
OPERATIONS.**

Hi-Tech asserts that, in Nuclear Diagnostic Laboratories, Inc., Contract Carrier Applications, 131 MCC 578, 580 (1979), "the Commission held that waste moving in long distance commerce was property within the meaning of the act." (Motion at 5.) That is, to say the least, an expansive reading of Nuclear Diagnostic; in the Commission's own words, the holding in that case was that "radioactive waste materials destined for burial are 'property.'" This case does not involve radioactive waste materials – at least so far as HCIA and ECUA know and hope. It involves, primarily, C&D waste, which was held in Joray Trucking Corp. v. Common Carrier Application, 99 M.C.C. 109 (1965), not to constitute "property" under the Interstate Commerce Act. Based in part on that holding, Congress determined not to include solid waste within the preemptive scope of the Federal Aviation Administration Act of 1994. See AGG Enterprises v. Washington County, 281 F.3d 1324, 1328 (9th Cir. 2002). Hi-Tech offers no reason for the Board to part company with those precedents here.

The collection, storage and handling of solid waste has historically been and remains

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an area of close regulation by state and local authorities. AGG, supra. Nothing in the ICC Termination Act or precedents of the Board or Commission ousts state and local bodies of their longstanding regulatory powers on solid waste issues, and Hi-Tech's attempt to lead the Board down such a wayward path should be rejected.

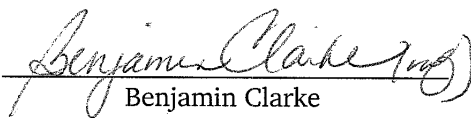
CONCLUSION

For the foregoing reasons, Hi-Tech's petition for a declaratory order should be dismissed.

Respectfully yours,

DeCotiis, FitzPatrick, Gluck & Cole, LLP

By:


Benjamin Clarke