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August 5, 2003

VIA HAND DELIVERY

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



RE: Finance Docket 34192, Hi Tech Trans, LLC -- Petition for
Declaratory Order -- Hudson County, NJ

Finance Docket No. 34192 (Sub-No. 1), Hi Tech Trans LLC --
Petition for Declaratory Order -- Rail Transload Facility at
Oak Island Yard, Newark, NJ

Dear Secretary Williams:

We are in receipt of a letter dated July 31, 2003 from counsel for Hi Tech Trans, LLC ("Hi Tech") (the "July 31 letter") in the above-referenced proceeding. On this occasion, Hi Tech makes several inaccurate and misleading allegations concerning actions being taken by the New Jersey Department of Environmental Protection ("NJDEP") and attaches copies of three pleadings filed by Hi Tech, NJDEP and the Essex County Utilities Authority and Hudson County Improvement Authority ("the Counties") in an administrative proceeding pending before NJDEP which arose out of the Administrative Order EA ID#: PEA030001-U131 (the "Administrative Order Proceeding").

The record in this proceeding closed on July 7, 2003 and Hi Tech has not sought leave, again, to introduce additional information or argument. While we understand Hi Tech's desire to have the last word, these materials are now time barred and should be stricken. Moreover, Hi Tech's July 31 letter is replete with argumentative inaccuracies and misleading information. For example, Hi Tech states that this proceeding before the Board



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involves an effort by the NJDEP "... to shut down a rail transloading facility" that is supposedly operated by Hi Tech as a licensee of a railroad. In the first place, this proceeding was initiated by Hi Tech, not NJDEP. And, Hi Tech's motivation in initiating this proceeding - - and the other litigations described in this record - - was its attempt to circumvent actions taken by, first, the Counties and, second, NJDEP to enforce the State's environmental health and safety laws and regulations, including waste flow control regulations. In other words, this proceeding has nothing to do with shutting down a rail transload facility.

Second, notwithstanding its contention, there is not a scintilla of evidence in this proceeding that Hi Tech is operating a rail transloading facility as licensee of a railroad. To the contrary, Hi Tech is operating a solid waste transfer station for hire, in violation of numerous New Jersey laws and regulations, on property that is owned by a railroad.

Third, Hi Tech's July 31 letter implies that the administrative proceeding ongoing before Chief Administrative Law Judge Jeff F. Masin of the New Jersey Office of Administrative Law ("OAL") is an inappropriate effort by NJDEP to enforce the State's environmental laws and regulations. Yet, both the Federal District Court and the U.S. Court of Appeals for the Third Circuit have refused to enjoin Hi Tech's attempts to interfere with that administrative process. Indeed, Hi Tech itself agreed that it was appropriate for Judge Masin to determine whether the NJDEP's Administrative Order proceeding was preempted by federal law. (See Exhibit A to Hi Tech's July 31 letter.)

Fourth, Hi Tech incorrectly claims that NJDEP and the Counties have misrepresented the Board's holdings in this proceeding to Judge Masin. NJDEP correctly argued to Judge Masin that the federal preemption in 49 U.S.C. §10501(b) does not apply to Hi Tech, that the Board's decision in this proceeding served November 20, 2002 held that the activities described there were not within its exclusive jurisdiction and that Hi Tech is not a railroad. (See Exhibit B to Hi Tech's July 31 letter, NJDEP Brief at 21-38.) Nothing in the NJDEP briefs to Judge Masin in the Administrative Order proceedings or to the Board in this case are in any way inconsistent with the decisions in this docket of November 20, 2002 or June 30, 2003.¹

¹ Curiously, although it has conceded to the federal courts that it is not a railroad, Hi Tech's Reply Brief in the Administrative Proceeding, again attempts to misrepresent fact and legal conclusions by arguing that Hi Tech "... operates a railroad and supplies railroad transportation, thereby implicating the exclusive jurisdiction of the STB." (See Exhibit C to Hi Tech's July 31 letter, at 5)



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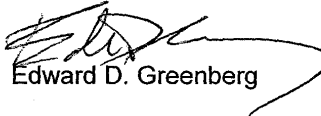
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NJDEP has no objection to the Board's issuance of a decision in this proceeding on an expeditious basis. But NJDEP has also explained in its Reply Brief filed July 7 in this proceeding that: Hi Tech's arguments are wrong on the merits, Hi Tech is barred by issue preclusion principles from re-litigating its status, and the Eleventh Amendment precludes its attempt to enjoin the State's enforcement of its environmental laws and regulations. Judge Masin, and on review, the Commissioner of NJDEP, are the appropriate fora to decide the issues raised in the Administrative Order proceeding. If necessary, Hi Tech can obtain appropriate review of any aspect of those decisions in the appropriate state courts. While Hi Tech purports to seek an expeditious decision from the Board in order to "avoid the possibility of inconsistent decisions", what it actually wants is a decision in its favor from the Board. For the reasons we have explained in our brief, that it cannot have.

In accordance with the Board's rules, we have enclosed an original and 11 copies of this letter and request that the extra copy be date-stamped and returned so that our files may properly evidence this filing.

If you have any questions concerning this, please do not hesitate to contact me.

Very truly yours,


Edward D. Greenberg

cc: James A. Fletcher, Esq. (via facsimile)
Benjamin Clarke (via facsimile)
James H. Martin, Esq. (via facsimile)
All parties of record (via regular mail)



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