

John F. McHugh
Attorney at Law
6 Water Street, Suite 401
New York, NY 10004



Phone: (212) 483-0875
Fax: (212) 483-0876

206450

ENTERED
Office of Proceedings

OCT 18 2002

Part of
Public Record

October 17, 2002

Of Counsel
W. Patrick Quast
164 Franklin Tpk.,
Waldwick, N.J. 07463,
201-444-5990
Fax 201-444-5094

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

RE; *Hi Tech Trans, LLC-Petition for a Declaratory Order- Hudson County,
New Jersey*
Finance Docket No. 34192

Dear Secretary Williams:

Enclosed please find one unbound copy and ten bound copies of the reply papers filed by Hi Tech Trans in the action filed in the District of New Jersey seeking an injunction against Hudson and Essex County officials. This action relates to the same situation addressed by the petitioner in the captioned action, except that the Court action includes the Essex County Utilities Authority and its chairman as a defendant. This action was filed as the Board does not have injunctive powers. These documents are for the board's information. The motion is now fully submitted to the Court.

Thank you for your attention to this matter.

Very truly yours,

John F. McHugh

cc: Carolyn V. Wolski
Leonard Street and Deinard, P.A.
150 South Fifth Street

Minneapolis, MN 55402

Kirkpatric & Lockhart, LLP
1800 Massachusetts Avenue, N.W.
Washington D.C. 20036-1221

DeCotis Fitzpatrick Cluck & Cole, LLP
500 Frank W. Burr Blvd
Teaneck, N.J. 07666

Paul Samuel Smith
Senior Attorney
United States Department of Transportation
400 Seventh St. S.W.
Washington D.C. 20590

Jonathan M. Borader
VP Law and General Counsel
Conrail
2001 market Street, 16th Floor
Philadelphia, PA 19103

Nathan Fenno, Esq.
New York Susquehanna and Western Railroad Co.
One Railroad Ave.
Cooperstown, N.Y. 13326

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HI TECH TRANS, LLC,

Case No. 02-3781 (F.J.H.)

Plaintiff,

vs.

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

Defendants.



**PLAINTIFF'S REPLY MEMORANDUM OF LAW IN
SUPPORT OF THE ISSUANCE OF A PRELIMINARY INJUNCTION
AND IN OPPOSITION TO THE CROSS MOTION**

ENTERED
Office of Proceedings

OCT 18 2002

Part of
Public Record

**W.Patrick Quast
164 Franklin Tpk.,
Waldwick, N.J. 07463,
201-444-5990
Fax 201-444-5094**

**John F. McHugh
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875**

CONTENTS

Table of Authorities,	Below
Preliminary Statement	1
Facts	1
Argument I	
PLAINTIFF HAS DEMONSTRATED A HIGH PROBABILITY OF SUCCESS ON THE MERITS	3
Argument II	
PLAINTIFF IS ENTITLED TO AN INJUNCTION	10
CONCLUSION	13

TABLE OF AUTHORITIES

CASES

<u>AGG Enterprises v. Washington County</u> 281 F.3d 1324, 1328-1330 (9 th Cir 2000) cert denied U.S. (October 7, 2002)	6
<u>Atlantic Coast Demolition & Recycling v. Board of Chosen Freeholders</u> 112 F.3d 652 (3 rd Cir.)	11
<u>Boston and Maine Corp v. Town of Ayer</u> , ____ F. Supp ____ 2002 WL 1286098 (D. Mass. Civ. A. 99-12606*2, June 10, 2002)	11-12
<u>Central States Motor Freight Bureau Inc. v. Interstate Commerce Commission</u> , 924 F. 2d 1099,1102 (D.C. Cir. 1991)	5, 11
<u>Mark E. Dennis v. Margaret L. Higgins</u> , 498 U.S. 439, 447, 111n S. Ct. 865, 870 (1991)	3, 12, 13
<u>Florida East Coast v. City of West Palm Beach</u> , 266 F. 3d 1324 (8 th Cir. 2001)	7
<u>Gibbons v. Ogden</u> 22 U.S. 1, 221 (1824)	1, 11, 10, 11, 15

<u>Hillsboro v. County Medical Lab Inc.</u> , 471 U.S. 707, 717(1985)	9
<u>Hutchins v KQED</u> 438 U.S. 1, 29, 98 S. Ct. 2588, 2601(1978)	14
<u>H.P. Hood & Sons, Inc. v. Du Mond</u> , 336 U.S. 525, 539, 69 S.Ct. 657, 665, 93 L.Ed. 865 (1949).	14
<u>Inter-Rail Express, Petition for Declaratory Order</u> , FD 39621 (1984)	2
<u>Johnson v. Guhl</u> , 166 F. Supp. 2d 42, 60 (DN.J. 2001)	8, 9
<u>Medigen of Kentucky, Inc v. Public Service Commission</u> , 787 F. Supp. 602, 610 (S.D.W. Va. 1992).	10
<u>Molly v. Metropolitan Transportation Authority</u> , 94 F. 3d 808, 811, (2d Cir. 1996).	13
<u>Nuclear Diagnostic Laboratories, Inc., Contract Carrier Application</u> , 131 ICC 578, 580 (1979)	7
<u>Norfolk & Western Ry. V. American Train Dispatchers Assn.</u> 499 U.S. 117, 127-34. (1991)	9
<u>People v. Conrail Corp.</u> 613 N.E.2d 784 (Ill App. 1993)	10
<u>Pennsylvania Medical Society v. Marconis</u> 941 F.2d. 842, 853 (3d. Cir. 1991)	8
<u>United States v. Lopez</u> , 514 U.S. 549, 554 (1995)	11
<u>Wintertuhr International American Ins. Co. v. Quackenbush</u> , Civ. S-00-0506WBSJFM, 2000 W.L. 777978*13-14 (E.D. Cal. 2000)	13

STATUTES

28 U.S.C. 1983	3, 10, 15
49 USC §10102	6
49 USC §10103 (repealed)	10
49 U.S.C. 10501	5, 10
49 U.S.C. § 11321(a)	5, 9

REGULATIONS

49 CFR §1104 et seq.	3
49 CFR §1150.31	3

LEGISLATIVE HISTORY

S. Rep. 104-176,*5, 104 th Cong 1 st Sess, 1995 WL 701522.	4
H.R. Conf. Report 104-422 * 189, 1955 U.S.C.C.A.N. 850,**874.	4
H.R. Conf Report 103-677 at 85 (1994)	7

PRELIMINARY STATEMENT

Defendants, on page 26 of their Memorandum state, "The record before the Court establishes that **HCIA and ECUA hold exclusive franchises on solid waste generated within Hudson County and Essex County.**" On page 23 of the brief the Defendants assert HCIA and ECUA have both "sought and obtained a franchise from the Board of Public Utilities giving them **the exclusive rights to control the stream of solid waste generated within their respective counties.**" (emphasis added). Thus, the Defendants have admitted that, they have been granted an exclusive franchise, by a State agency, to control, not to handle, solid waste generated within their counties. It is respectfully submitted that based on Gibbons v. Ogden 22 U.S. 1, 221 (1824), the franchises the Defendants claim are repugnant to the Commerce Clause.

FACTS

Before accepting any cargo or opening its facility, Hi Tech sought and received three informal opinion letters from the Surface Transportation Board informing it that its proposed operation was lawful. All informed Hi Tech that its proposed operations were within the exclusive jurisdiction of the Surface Transportation Board, Exhibit A to the

Declaration of Ron Kempner dated July 31, 2002. (Klempner Para.) When Defendants refused to accept those opinions, Hi Tech immediately sought a formal declaratory order from the Surface Transportation Board. However, as soon as that petition was filed, as Ron Kempner reports, agents of the Hudson County Improvement Authority began to call customers threatening the imposition of draconian fines if they shipped waste via the Canadian Pacific Railway through Hi Tech. (Klempner, Para. 12)

It is submitted that the descriptions of the Plaintiff's operation provided on this motion by the Plaintiff are accurate and fully consistent even with the report of the Defendant's inspectors. Defendant's submissions confirm that Hi Tech's operation simply receives C&D cargos from shippers by truck; it then moves that cargo from the truck to a rail car via a receiving container and a loading machine. Defendant's inspector did not find any waste stored on the premises. All waste was moving through the premises. What the inspector did not report, but the CPR has confirmed in its submission to the STB, is that Hi Tech then moves the rail cars via the CPR to final destinations on the continental rail system, (Klempner, Exhibit D).

Hi Tech does not pick up garbage nor does it own or lease any waste hauling trucks. Its business is confined to Construction and Demolition Debris and contaminated soils, all products of heavy

construction activity. It contracts with shippers to move such materials. Hi Tech contracts with truckers solely to move such materials from an off rail site to the rail terminal.

I

PLAINTIFF HAS DEMONSTRATED A HIGH PROBABILITY OF
SUCCESS ON THE MERITS

Defendants' reply fails to deal with the overwhelming legal authority cited by the Plaintiff in support of its request for a preliminary injunction establishing that the Commerce Clause is "...a substantive 'restriction on permissible state regulation of interstate commerce... (I)ndividuals injured by state action that violates this aspect of the Commerce Clause may sue and obtain injunctive and declaratory relief,'" Mark E. Dennis v. Margaret L. Higgins, 498 U.S. 439, 447, 111n S. Ct. 865, 870 (1991). As the Court stated in Dennis, the Commerce Clause creates a right in citizens to freely participate in interstate commerce and a State can be enjoined pursuant to 28 U.S.C. 1983 from enforcing a regulation which exceeds its authority.

Defendants' seek to enforce a State granted exclusive franchise over the commerce in waste originating in their counties. Rather than deal with the major issue, the authority of the State to grant that franchise, they seek to challenge the exclusive jurisdiction of the Surface Transportation

Board over the Plaintiff. The resulting law and legislative history of the Interstate Commerce Commission Termination Act (ICCTA) show the Congressional intent to free the railroad industry from all but minimal regulation. The Senate Committee Report states in relevant part;

As reported, the bill continues the deregulation theme of the past 15 years by providing further regulatory reductions in the surface transportation industries. Overall this bill is designed to repeal unnecessary regulations...Many broader transportation policy proposals viewed by the Committee to be re-regulatory were not included in this bill...

...
The Committee notes **the increasing emphasis on intermodalism and providing seamless transportation via rail, motor and water modes in the transportation industry.** The Committee believes the remaining Federal government oversight of these transportation modes should be housed within a single agency with the expertise and prospective to view the transportation industry as increasingly intermodal

...
...nothing in this bill should be construed to authorize States to regulate railroads in areas where Federal regulation has been repealed by this bill. ... The railroad system in the United States is a nationwide network. The hundreds of rail carriers that comprise the railroad industry rely on a nationally uniform system of economic regulation. **Subjecting rail carriers to regulatory requirements that vary among the States would greatly undermine the industries ability to provide "seamless" service that is essential to the shippers** and would weaken the industry's efficiency and competitive viability.

S. Rep. 104-176,*5-6, 104th Cong 1st Sess, 1995 WL 701522.

The House Report, reflected the same goals H.R. Conf. Report 104-422 * 189, 1955 U.S.C.C.A.N. 850,**874. Congress's intent was to facilitate operations such as Hi Tech's i.e. cargo moving seamlessly from point of

origin to point of destination by truck and rail. 49 U.S.C. 10501 means exactly what it says, "The jurisdiction of the Board over Transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules, (including car service, interchange, and other operating rules), **practices**, routes, **services and facilities** of such carriers . . . is exclusive. . . . the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." Congress restated this at 49 U.S.C. § 11321(a) "person participating in (an) approved or exempted transaction..." which "...is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain and operate property and exercise control of the franchises acquired through the transaction." As is set forth at pages 5, 7 and 8 of the Plaintiff's initial Memorandum, CPR is such a carrier and has chosen to serve Hudson and Essex County C&D shippers utilizing the services of Hi Tech. Such intermodal operations are exempt from local regulation, Central States Motor Freight Bureau Inc. v. Interstate Commerce Commission, 924 F. 2d 1099,1102 (D.C. Cir. 1991) cited on page 26 of Plaintiff's initial memorandum. Congress obviously was

in the ICCTA to expand the concept, assigning that task to the Surface Transportation Board.

CPR prevailed upon Hi Tech not to become a rail carrier in its own right as, consistent with the intent to encourage intermodal transport on a seamless system, the ICCTA defines the term a "railroad transportation" to include any person providing services in connection with common carrier railroad transportation for compensation. Rail transportation is thus defined to include, without regard to ownership, "services related to that movement, including receipt, delivery, elevation, transfer,... handling and interchange of passengers and property..." 49 USC §10102. Defendant's inspector confirmed that Plaintiff was engaging in precisely those activities transferring cargos from trucks to rail cars.

Therefore, contrary to the Defendants' protestations, the Plaintiff is a rail carrier within the definition of the act as it is engaged intermodal services intended by Congress to be within the exclusive jurisdiction of the Surface Transportation Board and exempt from State regulation.

Defendants' reliance on AGG Enterprises v. Washington County 281 F.3d 1324, 1328-1330 (9th Cir 2000) cert denied U.S. (October 7, 2002). is misplaced. That Court found that the Federal Aviation

Administration Authorization Act's exemption of trucking from State regulation did not reach the pick up and disposal of garbage and refuse. It opined that the thrust of that Act which was air carrier related trucking (Federal Express, an air service was free of state regulation while UPS, a ground carrier providing identical service, was not). It cites to the House Conference Report No. 103-677 at 85 (1994) which established that Congress did not think the language it was proposing for the FAAAA covered garbage due to its lack of monetary value.

The legislative history of the ICCTA, quoted above, supports no similar exception for waste. The Interstate Commerce Commission had long ago determined that waste being moved in long distance interstate commerce, as opposed to short haul local truck operations, is property. In Nuclear Diagnostic Laboratories, Inc., Contract Carrier Application, 131 ICC 578, 580 (1979) (property means ownership and not just value). Congress knew exactly what it was doing and intended to free the railroads from all regulation except that which Congress itself imposed or that which Congress allowed only the Surface Transportation Board to impose.

Defendant also cites Florida East Coast v. City of West Palm Beach, 266 F. 3d 1324 (8th Cir. 2001). That reliance is also misplaced. That railroad leased land to an aggregate dealer. It claimed that the dealer's

facility was a rail operation, to wit a team track, (a general delivery terminal). But the dealer merely received its own cargos shipped to it on the railway, sorted them on the property and distributed the products from the leasehold, using its trucks, to its customers. There was no claim that the aggregate dealer was a common carrier or that the facility was open to all receivers of aggregates. Hi Tech, in contrast, does not own any of the property it moves and is engaged in common carriage in concert with the CPR. Unlike the aggregate dealer on the Florida East Coast, Hi Tech accepts cargo from anyone who offers it and is willing to pay the applicable rates, issuing bills of lading for the CPR covering services rendered by both Hi Tech and CPR. The regulations at bar, as opposed to those in Florida, seek to regulate rail services, not regulate non-rail land use. They are preempted.

The Defendants also incorrectly rely on Johnson v. Guhl, 166 F. Supp. 2d 42, 60 (DN.J. 2001) and Pennsylvania Medical Society v. Marconis 941 F.2d. 842, 853 (3d. Cir. 1991) for the proposition that the ICCTA does not preempt State law. Both involved the Medicaid Act and dealt with implicit preemption of State Law. No language in the Medicaid Law provides for preemption. In Johnson, in marked contrast to the case at bar, the Federal Agency involved had informally opined that there was no

preemption, [facts similar to those in Hillsboro v. County Medical Lab Inc., 471 U.S. 707, 717(1985) also relied upon by Defendants]. In the case at bar, precisely the opposite facts apply. The ICCTA specifically provides for preemption, twice, and three informal opinions from the Surface Transportation Board state that Hi Tech's operations are exempt from the Defendants' regulations. Adding to this, the legislative history of the ICCTA leaves absolutely no question about Congress' intent open for discussion. These two opinions and others cited by the Defendants which relate to standards imposed by the Courts to determine if preemption was intended where a statute is silent on the issue, have no application to the ICCTA. Here, "(t)he... language in §11321(a) exempting carriers from ...State and municipal law is clear broad and unqualified". See; Ex Norfolk & Western Ry. V. American Train Dispatchers, Assn. 499 U.S. 117, 127-34. (1991), relating to ICA language restated in the ICCTA.

But Johnson v. Guhl, supra, is instructive as to the quality of the Defendants' conduct. Hi Tech provided the Defendants with three opinion letters from the Surface Transportation Board supporting the proposition that Hi Tech's operation was lawful. Defendants rejected those letters out of hand. That Court Supra, pg. 51, stated that such an informal opinion "...although not formal regulations, was entitled to some deference by this

Court as long as 'they are consistent with the plain language and purpose of the statute and if they are consistent with prior administrative views'..." Here, not only did HCIA ignore three opinion letters from the STB, which cited both judicial and administrative authority for the conclusions reached, when a formal petition was filed for a declaratory order, HCIA began threatening shippers, a direct reaction to Hi Tech's resort to the remedies provided by law and a violation of 28 U.S.C. §1983, Medigen of Kentucky, Inc v. Public Service Commission, 787 F. Supp. 602, 610 (S.D.W. Va. 1992).

Defendants also cite cases decided under the repealed Interstate Commerce Act such as People v. Conrail Corp. 613 N.E.2d 784 (Ill App. 1993). The Interstate Commerce Act, last amended in 1978, before its repeal in 1996, provided in §10103, "The remedies provided under this subchapter are in addition to the remedies existing under another law or at common law". In marked contrast, §10501 of the ICCTA states: "Except as otherwise provided in this part the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law."

The balance of the authorities cited by the Defendants relate to a railroad's being subject to local health and safety regulations. There is no

issue of health or safety before this Court. The State Regulations the Defendants rely upon for their franchises are titled "Economic Regulations". Defendant's regulations seek only to direct traffic pursuant to these franchises. Those are unconstitutional Gibbons v. Ogden, Supra, 221, still the vital law of this nation, United States v. Lopez, 514 U.S. 549, 554 (1995) (tracing Gibbons from 1824 to 1995 in finding that a Federal criminal statute relating to guns in school zones had nothing to do with commerce and thus was invalid). Where as here the defendants assert the validity of a State granted exclusive franchise, excluding the plaintiff rail carrier from the commerce to two counties, the fine points of the cases cited in Lopez as causing the Court to expand the doctrine of Gibbons as well as all the considerations usually reviewed in dormant commerce clause cases, such as Atlantic Coast Demolition & Recycling v. Board of Chosen Freeholders 112 F.3d 652 (3rd Cir.) Cert Denied 552 U.S. 996 (1997) are irrelevant. Under Gibbons the State had no power to grant a franchise at all and the means by which it was granted is therefore irrelevant. One can not sell what one does not own. Indeed, the issue now before this Court was finally resolved in 1824. Stating it in more modern terms, "By conferring exclusive jurisdiction over railroad matters to the STB the ICCTA imposes a binding obligation on the states not to regulate railroads with respect to those matters" Boston and

Maine Corp v. Town of Ayer, ____ F. Supp ____ 2002 WL 1286098 (D. Mass. Civ. A. 99-12606*2, June 10, 2002).

II

PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION

Ignoring ruling authority, Defendants seek to assert that a preliminary injunction is available only where the personal rights are in issue. Defendants' argument has been rejected by the Supreme Court, Dennis v. Higgins, and Supra, 445-446, cited in Plaintiff's initial Memorandum of Law at pgs. 21 and 24. Defendants have not sought to argue that this precedent does not apply, they simply ignore it.

The Court in Dennis v. Higgins concluded that a restriction on interstate commerce, causing a commercial injury could be enjoined based on a constitutional deprivation alone. The Court dispensed with the argument Defendant's seek to make here as follows:

... We further concluded that "the dichotomy between personal liberties and property rights is a false one.... The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account.

Where as here, the issue is whether rules or regulations promulgated by the Defendant public entities under authority of State law are unconstitutional, the only issue relevant to the issuance of a preliminary

injunction is whether the Plaintiff has shown a high probability of success on the merits, See Molly v. Metropolitan Transportation Authority, 94 F. 3d 808, 811, (2d Cir. 1996). The Supreme Court has held that a preliminary injunction will issue where a State has sought to impose an unlawful regulation in violation of the Commerce Clause, Dennis v. Higgins, Supra.

While Plaintiff has shown a major decline in its business since it filed its petition for a declaratory order with the Surface Transportation Board, such a showing is irrelevant where, as here, local governmental interference with a federal right is in issue. It has shown also that this loss of business was attributable to Defendants' threats against its customers commencing after it sought a declaratory order from the STB. The timing of the Defendant's enthusiasm for enforcing its regulations vigorously indicates malice and intent to penalize Plaintiff for resorting to the STB. Where State agents, using State judicial processes, threaten to enforce an unconstitutional law which will injure the Plaintiff's business, irreparable injury has been demonstrated and a preliminary injunction is appropriate, Wintertuhr International American Ins. Co. v. Quackenbush, Civ. S-00-0506WBSJFM, 2000 W.L. 777978*13-14 (E.D. Cal. 2000). (Preliminary injunction against enforcement of state insurance law granted where law sought to effect companies out of state activity in violation of the

Commerce Clause).

Defendants also object to the Plaintiff's championing the cause of its customers. When Plaintiff is being denied the right to provide common carrier rail services to residents of Hudson and Essex Counties, the residents of those counties are also denied access to rail services assured to them by Federal law. Where a right of access is denied, both the person seeking that access and any other person having the right to the benefit of that access is effected and either has the right to protect the rights of both, See, Hutchins v KQED 438 U.S. 1, 29, 98 S. Ct. 2588, 2601(1978) (denying inmates the right to freely communicate with a radio station denies the prisoner the right to speak and the radio station the right to receive information and both have standing to enforce the rights of the other) . Indeed, in any matter where a preliminary injunction is sought to remove a bar to the free exercise of the right to engage in commerce, the rights of the public are always in issue as the public is the beneficiary of the Commerce Clause as was explained in H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 539, 69 S.Ct. 657, 665, 93 L.Ed. 865 (1949).

"Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his exports, "

The regulations of the Defendants' at bar are a "home embargo" designed to

deny the residents of Hudson and Essex Counties free access to the means and instrumentalities of Interstate Commerce. Plaintiff seeks to serve these residents and provide them with access to the national market via the nation's railway network. Plaintiff is an aggrieved party and has the right to seek such access for its potential customers as well.

Therefore, Plaintiff has shown irreparable harm as it is being denied a constitutional right by the Defendants.

III

DEFENDANT'S COUNTERCLAIM IS WITHOUT MERIT

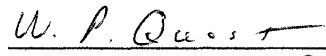
In its counterclaim the Defendants seek to enforce their exclusive State granted franchises over the commerce in waste originating in Hudson and Essex Counties of New Jersey. It is respectfully submitted, as stated above, the mere recitation of this claim defeats it. An exclusive franchise, granted by a State, over the commerce of the State or any part thereof, is repugnant to the Commerce Clause and can not stand, Gibbons v. Ogden, supra. The Defendants' counterclaim fails to state a claim.

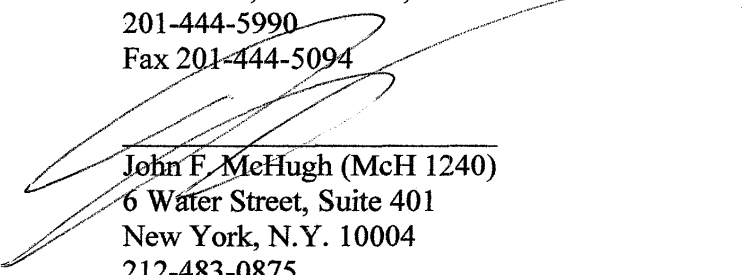
CONCLUSION

The Plaintiff has established a high probability of success on the merits establishing a violation of 28 U.S.C. 1983, therefore a preliminary injunction should issue.

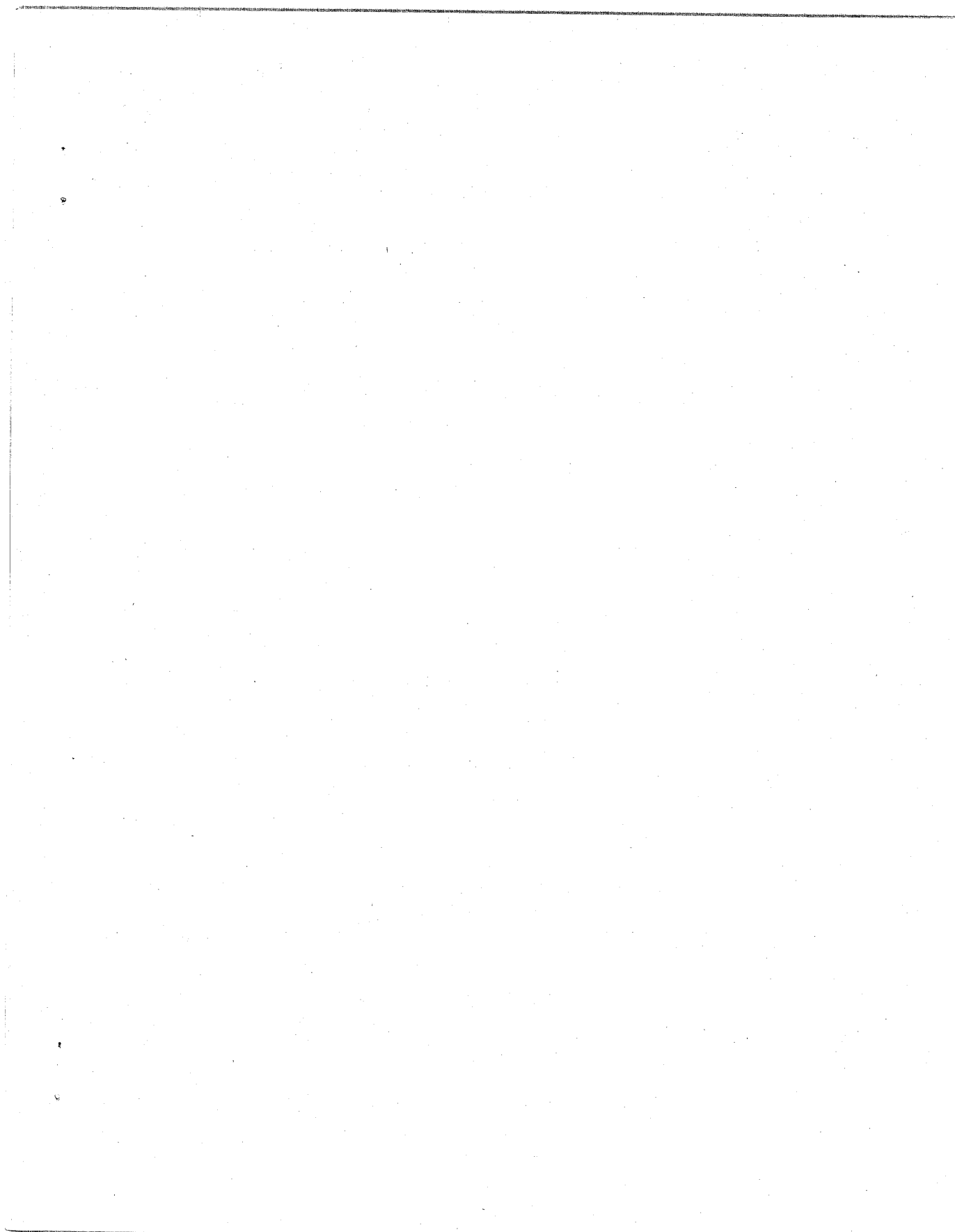
Dated, New York, N.Y.
October 16, 2002

Respectfully submitted


W. Patrick Quast *WQ 8810*
164 Franklin Tpk.,
Waldwick, N.J. 07463,
201-444-5990
Fax 201-444-5094


John F. McHugh (McH 1240)
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875

Attorneys for the plaintiff



W. Patrick Quast
164 Franklin Tpk.,
Waldwick, N.J. 07463,
201-444-5990

John F. McHugh
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875
pro hac vice

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HI TECH TRANS, LLC,

Plaintiff,

vs.

Declaration in Further Support of the
Motion and in Opposition to the Cross
Motion
CASE NUMBER 02-3781(F.J.H.)

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

Defendants.

Ronald Kempner declares under penalty of perjury as follows:

1. I am a managing member of Hi Tech Trans, LLC and as such am fully familiar with the facts and if called to testify I would competently testify to the following:
2. Hi Tech Trans had not begun any operations when it filed its Notice of Exemption with the Surface Transportation Board on July 3, 2000. Indeed, the Notice

informed the Board that Hi Tech did not anticipate commencing any operations prior to January 1, 2001. Thus, at that time Hi Tech was a newly formed Limited Liability Company engaged solely in negotiating a business arrangement with the Delaware and Hudson Railroad, a wholly owned subsidiary of the Canadian Pacific Railroad.

3. Hi Tech withdrew its Notice of Exemption after the Canadian Pacific Railroad asked me to. CPR deemed its status as a rail carrier sufficient to bring all the activity contemplated by Hi Tech within the exclusive jurisdiction of the Surface Transportation Board. CPR had internal reasons for not wanting Hi Tech to seek separate operating authority at that time. On advice of counsel we agreed to withdraw the Notice of Exemption as the legal authority relied upon by CPR was sound.

4. Hi Tech is not a trucking company. Hi Tech does not own a truck used to move cargo. Indeed, it owns two rubber tired vehicles, neither licensed to leave its facility in Newark, an old fire truck used to eliminate dust and a pick up truck used to move around the rail yard.

5. As I stated in my prior declaration in this matter, Hi Tech has been inspected by representatives of health and environmental agencies and no health or safety concerns have been brought to our attention. C&D is not garbage, it does not smell nor is it allowed to contain hazardous substances. Hi Tech also does not cause any nuisances as dust from the transfer operation is eliminated by a water spray system, the fire truck mentioned above.

6. I have now spoken to two major customers of our facility. They ship all C&D waste they pick up in all of northern New Jersey through our facility except waste from the Defendant's counties. Essex and Hudson Counties are the counties

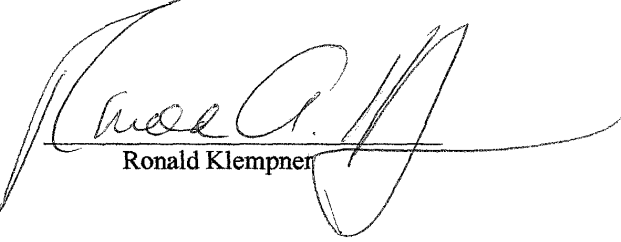
closest to our facility. These two shippers inform me that they dare not use our facility for C&D from those two counties because of threats they have received from officials of the Defendants. As a major share of construction activity requiring demolition in New Jersey at this time is in those two counties, Plaintiff is losing significant business.

7. Plaintiff was handling significant traffic prior to seeking a declaratory order from the Surface Transportation Board. A large portion of that traffic ceased shortly after that event and as I reported in my prior Declaration of July 31, 2002, paragraph 12, 13 and 14, I was told or our staff was told by several shippers that they took their business to the defendants' designated transfer stations due to direct threats from the defendants. As the result of this loss of business, Hi Tech has just been forced to refinance. Hi Tech is operating now by consuming invested capital. Thus, Hi Tech can not last long if the preliminary relief requested here is not granted. If it is granted I am assured that Hi Tech's two major customers will more than double their use of Hi Tech's facilities if defendant's threats ceased. That alone would, in all likelihood, render the operation financially secure.

8. Defendant has affixed a copy of an advertisement to its papers. It infers a joint venture between Hi Tech and a trucking company. Counsel informs me that the content of the advertisement is irrelevant, however, that advertisement was not authorized by Hi Tech and is not entirely accurate. Hi Tech will take contaminated soils as they are within the definition of clean waste, i.e. that with no hazardous content, which we will handle. To date we have handled only one shipment of such waste, a shipment from southern New Jersey.

Wherefore your declarant respectfully requests that the Plaintiff's motion
be granted and the cross motion be denied.

Dated, Teaneck, N.J.
October 16, 2002



Ronald Klempner

W. Patrick Quast
164 Franklin Tpk.,
Waldwick, N.J. 07463,
201-444-5990

John F. McHugh
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875
pro hac vice

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HI TECH TRANS, LLC,

Plaintiff,

vs.

Declaration in Further Support of the
Motion and in Opposition to the Cross
Motion
CASE NUMBER 02-3781(F.J.H..)

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

Defendants.

John F. McHugh, an attorney duly admitted to practice before the Courts
of the State of New York and the United States Courts of the Second and Sixth Circuits,
declares under penalty of perjury as follows:

1. I am an attorney for the plaintiff herein and am personally familiar with the matters now before the Court.

2. When Hi Tech Trans, LLC, filed its Notice of Exemption before the Surface Transportation Board, (variously referred to herein as the "Board" or the "STB") on July 3, 2000, Plaintiff was a newly formed entity and it was not yet engaged in any transportation services whatsoever. Hi Tech was negotiating a contract with the Canadian Pacific Railway (CPR)¹. Pursuant to the Rules of the Surface Transportation Board, codified at 49 CFR at 1104 et seq. and specifically 1150.31 Hi Tech was a non carrier. It became a carrier only upon either obtaining authority from the Board or by entering into a contract with the CPR to engage in activity included within the intentionally broad definition of a rail carrier contained in the Interstate Commerce Commission Termination Act. Defendants' reference to the proceeding as establishing that Plaintiff is a trucker is deceptive. The Notice begins with:

Hi Tech Trans LLC, a non carrier, has filed a notice of exemption pursuant to 49 CFR 1150.31 **to commence the operation of common carrier rail service** from Oak Island, Newark, Essex County, N.J. to Irwin, N.Y., Buffalo, N.Y., Niagara Falls, N.Y., Lowellville, Ohio and or Canton, Ohio.

(emphasis added). And it goes on to describe a distinctly rail operation throughout New Jersey, Pennsylvania, New York and Ohio.

3. As is stated in CPR's submission to the Surface Transportation Board, Exhibit D to the Declaration of Ron Klempner, dated July 31, 2002, ("Klempner Dec.") the goal of the contractual relationship between CPR and Hi Tech was to extend CPR's services from its rail terminal in Newark to the region generally and to use Hi Tech's

¹ As was explained in the Plaintiff's initial Memorandum of Law on this motion, the CPR owns the former Delaware and Hudson Railroad (DHRR) which is the actual company which has a contract with Hi Tech. On this motion, however, to avoid confusion, CPR refers to both DHRR and CPR.

unique expertise in the transport of Construction and Demolition waste products ("C&D") to obtain this traffic for the railroad.

4. Hi Tech's decision to seek its own operating authority was due to the intention to follow the example of Inter-Rail Express. I was an officer of Inter-Rail Express, a corporation which had leased terminal space from the City of New York to operate trains between that City and Florida to carry agricultural products. That company was to use the services of five host railroads to move its trains, a concept identical to that for which Hi Tech initially sought an exemption. Inter-Rail was recognized as a railroad by the Interstate Commerce Commission on January 31, 1984, the second time a railroad without track had been given such operating authority, the first being Road-Rail Transportation Company, Inc. FD 29898 (1982). A copy of the Inter-Rail decision is affixed hereto as Exhibit L.

5. Hi Tech withdrew its notice of exemption at the request of CPR. CPR took the position that Hi Tech was to operate as its contractor solely to solicit business and to place waste from remote locations on the railroad. CPR's position was that Hi Tech did not need status as a rail carrier beyond that created by its association with the CPR. CPR's exemption covers intermodal operations whether operated by their own employees or by contractors such as Hi Tech. That conclusion is correct pursuant to the case law and the legislative history of the ICCTA which is recited at length at pages 6- 8 of the Plaintiff's Reply Memorandum of Law submitted herewith and in the Plaintiff's initial Memorandum of Law at Pg. 27. Indeed, the legislative history indicates Congress's intent to foster intermodal transportation, i.e. moving cargo seamlessly by truck and rail and indicates an intention to expand the jurisdiction of the Surface

Transportation Board, not contract it. Your declarant drafted amendments to the ICCTA legislation while it was being considered at the request of a congressman who had a large union following seeking to limit the sweep of this very language. That amendment is one the Senate Report is referring to when it says: "... Many broader transportation policy proposals viewed by the Committee to be re-regulatory were not included in this bill..." S. Rep. 104-176,*5, 104th Cong 1st Sess, 1995 WL 701522 quoted at page 6 of Plaintiff's Reply Memorandum of Law. Therefore, Hi Tech acquiesced to CPR's request.

6. Hi Tech issues bills of lading for the transport in question. Two versions of the Bill of lading are affixed hereto as Exhibit M. Both indicate that the shipping document is issued for CPR. One states that Hi Tech is acting as agent for CPR, a status confirmed by CPR's submission to the Department of Environmental Protection, Exhibit B to the Declaration of Ronald Klempner, dated July 31, 2002. ("Klempner Dec")

7. Defendants' however, attribute the withdrawal of that notice to the opposition of the UTU. Defendants also identify the UTU as a rail carrier. The United Transportation Union, UTU, is not a railroad. It is a Union. Your declarant has filed numerous Notices of Exemption under both the ICCTA and its predecessor and in each and every case the UTU has opposed. The opposition of the UTU had nothing to do with Hi Tech's decision to withdraw its notice.

8. Mr. Clark states in paragraph 7 of his Declaration that the defendants hold exclusive franchises barring the plaintiff from participation in the business of transporting waste originating in Hudson and Essex Counties. That franchise has nothing to do with health and safety. It was obtained pursuant to State Law. As the defendant

seeks to assert that information taken off the Internet is relevant, I have attached Home Page from the New Jersey Department of Environmental Protection's Web Site which shows that these regulations are labeled "economic". I have also attached the mission statement which shows the goal to be "...to ensure effective competition amongst solid waste facilities and solid waste collectors and approve the release of escrowed money to properly close and monitor landfills", confirming the economic thrust of the regulations, Exhibit N.

9. Hi Tech's indemnity agreement was designed to inform the Trade that Hi Tech was a lawful operation and able to receive waste notwithstanding flow control regulations. It based that statement on the three informal opinion letters it had received from the STB and on extensive legal research. It has sought to honor its commitment to its shippers first by attempting to negotiate with the defendants and presenting them with Hi Tech's legal authority to operate. Each of the defendants here received an opinion letter from me supported by copies of the three informal opinions from the STB, Klempner, Exhibits E and G to. When the defendants were unmoved by these authorities, Hi Tech filed a petition for a declaratory order with the STB. When that caused Hudson County inspectors to begin targeting Hi Tech's customers followed quickly by those from Essex, harassment which caused most traffic from both defendants' counties to stop, Hi Tech brought the instant action seeking an injunction as the STB does not have such authority. Indeed all STB declaratory orders must be converted into orders of a District Court to become effective, See, 28 U.S.C. 1336. Thus, Hi Tech represented to the trade that it was a lawful operator and would defend its

customers from the enforcement of unconstitutional regulations and Hi Tech is attempting to honor that commitment.

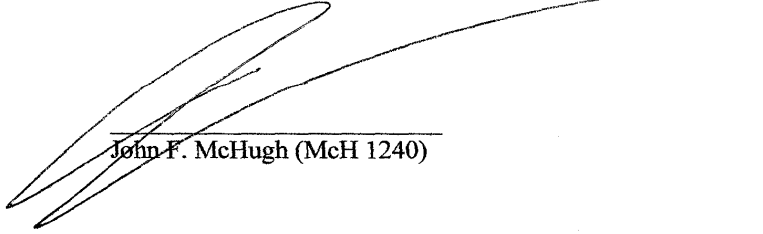
10. As a former employee of the Erie-Lackawanna Railroad myself, I am mystified by the defendants' reliance here on an internet statement of a person who Mr. Clark believes to be an employee of the Erie-Lackawanna. As fine a railway as the Erie-Lackawanna was it went out of business and its lines were incorporated into Conrail by the Final System Plan in 1976. It has not existed for just over a quarter century. Quoting the state of knowledge of an "employee" of that deceased company and presenting that as something significant on this motion shows both complete ignorance of history and defendants' absolute inability to find any fact upon which to rest any substantial argument in opposition to the motion. Indeed, the fact that an employee of a railroad, even one which actually exists, does not know who "these folks are", referring Hi Tech, is of no moment. Hi Tech is fully identified in the Complaint and in the Motion Papers and defendants' inspector has visited their operation and confirmed what "these Folks" do.

11. Finally, the advertisement, apparently authored solely by a trucker seeking the business of moving materials to Hi Tech's yard, stating that Hi Tech's facility is a transfer station is also irrelevant. Defendant's inspector has confirmed that this "transfer station" only moves waste from a truck to a rail car. Whether called a reload center, a transload facility or a transfer station the function is the same, the handling, elevation and loading of cargo moving continuously in interstate commerce utilizing the highway mode and the rail mode as part of a continuous intermodal rail move in interstate commerce.

12. On this motion the Plaintiff asserts, and the Defendants have not contested, that Defendants do not handle or own any solid waste. Defendants do not own a truck or a transfer station engaged in handling waste nor have they paid any agent to do so. Indeed, defendants admit that they seek only to enforce an exclusive franchise granted by the Public Utilities Commission of the State of New Jersey to "control" waste traffic originating in their respective counties. It is submitted that, that admission establishes all the facts plaintiff must establish to prevail. A State granted franchise which excludes any citizen or resident of the United States from participation in, or bars any citizen or resident of the United States from the benefits of free access to, interstate commerce is repugnant to the Commerce Clause of the Constitution as is fully explained at length in both the Plaintiff's initial Memorandum of Law and the Plaintiff's reply Memorandum of Law.

Wherefore, for the reasons set forth above and in the Plaintiff's memoranda of Law, this motion should be granted and a preliminary injunction should be issued barring the Defendants from taking any steps to enforce the flow control regulations, promulgated by both, against the Plaintiff and against anyone who wishes to utilize the Plaintiff's services, pending a final judgment being entered by this Court herein and denying the Defendants' cross-motion as it seeks to enforce a exclusive franchise issued by the State in violation of the Commerce Clause of the Constitution and laws promulgated by Congress there under.

Dated, New York, N.Y
October 16, 2002



John F. McHugh (McH 1240)

Exhibit L

EC

SERVICE DATE

JAN 31 1984

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 30357

INTER-RAIL EXPRESS, CORP. - SECURITIES EXEMPTION

No. 39621

INTER-RAIL EXPRESS, CORP., PETITION FOR DECLARATORY ORDER

Decided: January 25, 1984.

In Finance Docket No. 30357, Inter-Rail Express, Corp. (Inter-Rail or petitioner) seeks an exemption under 49 U.S.C. 10505 from the provisions of 49 U.S.C. 11301 to raise \$4.05 million through an initial public offering of securities. In No. 39621, Inter-Rail requests that the Commission issue a declaratory order affirming that Inter-Rail is a rail carrier subject to the jurisdiction of the Commission, that it need not file for a Certificate of Public Convenience and Necessity, and that its forthcoming intermodal operations involving the use of RoadRailer equipment will be exempt.

BACKGROUND

The Proposed Operation. Inter-Rail was organized in July of 1982 to provide intermodal freight service between Florida and the New York, NY, metropolitan area. Temperature controlled 45-foot semi-trailers (Roadrailer units) designed for use both on highways and rail lines will be used in unit-train movements

Finance Docket No. 30357, et al.

between petitioner's Ft. Pierce, FL, rail terminal serving the south-central Florida produce area and its Hunt's Point terminal in New York.

Line-haul transportation is expected to be performed pursuant to contracts presently being negotiated with Florida East Coast Railway Company; Norfolk Southern Corporation; Richmond, Fredericksburg and Potomac Railroad Company; Consolidated Rail Corporation, and National Railroad Passenger Corporation (Amtrak).

The light weight, low clearance, and special suspension systems of Roadrailer equipment will permit Inter-Rail to use Amtrak's high-speed Northeast Corridor to and from New York, including tunnels under the Hudson and East Rivers. Thus, petitioner anticipates that door-to-door service can be provided 12 hours faster than competing highway service and 24 hours faster than all-rail service. Thus, New York produce merchants will be able to offer fresh fruits and vegetables to consumers 1 or 2 days faster than at present. Shippers will also reap the benefits of single carrier responsibility. While petitioner will initially provide once-a-week, round-trip service, it expects to increase the frequency and service area of its operations as they prove successful.

Securities Offering. To inform the Commission more fully of the details of its proposed securities offering, petitioner submitted a copy of its registration statement filed December 15,

-2-

Finance Docket No. 30357, et al.

1983, with the Securities and Exchange Commission. It proposes to offer 4.5 million shares of common stock at a price per share of \$1.00, including an underwriting discount of \$450,000, which would yield net proceeds to the company of \$4.05 million. The proceeds of the offering will be used to lease Roadrailer equipment, lease and maintain terminal facilities in Florida and New York, and otherwise conduct its intermodal operations.

DISCUSSION AND CONCLUSIONS

In Finance Docket No. 29898, Road-Rail Transportation Company, Inc.-Petition for Exemption (not printed), served August 27, 1982 (Road-Rail), the Commission determined that a person providing rail-oriented intermodal transportation involving the use of Roadrailer equipment is a rail carrier as defined under 49 U.S.C. 10102(18) and, therefore, is subject to the Commission's jurisdiction. The Commission found, however, that the exemption of railroad operations involving trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) service in Ex Parte No. 230 (Sub-No. 5), Improvement of TOFC/COFC Regulation, 364 I.C.C. 731 (1981), aff'd sub nom. American Trucking Associations v. ICC 656 F. 2d 1115 (5th Cir. 1981), extends to intermodal operations using Roadrailer equipment. Because the intermodal service in Road-Rail was to be provided by a rail carrier, we found that it was covered by the exemption previously granted in Ex Parte No. 230 (Sub-No. 5).

Finance Docket No. 30357, et al.

A similar finding is warranted here. Petitioner's proposed operation is virtually identical to that involved in Road-Rail. Both include door-to-door operations featuring consolidation, pick-up, and delivery service between customers' facilities and rail terminals at origin and destination. Bimodal Roadrailer trailers will be employed in unit-train movements. Line-haul transportation will be provided by existing railroads.

With the exception of loss and damage liability and labor protection obligations, petitioner's entire enterprise is exempt from the provisions of Subtitle IV of Title 49 (49 U.S.C. 10101 et seq.).^{1/} Since this exemption also covers our approval process for the issuance of securities, Inter-Rail need not file with this Commission an application under 49 U.S.C. 11301.^{2/} Accordingly, its petition for exemption in Finance Docket No. 30357 will be dismissed.^{3/}

Moreover, petitioner will not have to acquire a certificate of public convenience and necessity or file otherwise applicable

^{1/} We have no authority to exempt carriers from applicable loss and damage regulations or labor protection rules. See 49 U.S.C. 10505(e) and (g).

^{2/} Section 11301 requires a rail carrier subject to the Commission's jurisdiction to seek approval from the Commission before it may issue securities. As we have found previously, an operation such as Inter-Rail's is rail carriage, but is exempt except as indicated above.

^{3/} Pursuant to section 308 of the Railroad Revitalization and Regulatory Reform Act of 1976, petitioner's offering is subject to review by the Securities and Exchange Commission. An appropriate disclosure filing has been made with that agency.

tariffs for any motor freight forwarder or motor carrier service because all of the proposed intermodal operations are exempt under Ex Parte No. 230 (Sub-No. 5), See 49 C.F.R. 1039.13. In addition, as we found in Road-Rail, persons such as petitioner are exempted from our accounting and reporting requirements, because the requirements are not necessary to carry out the transportation policy of 49 U.S.C. 10101a,^{4/} and because the exemption will not lead to an abuse of market power.^{5/} The same result is warranted under the facts presented here.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. The petition for declaratory order is granted, and the petition for exemption from the provisions of 49 U.S.C. 11301 is dismissed.

2. Petitioner is exempt from our accounting and reporting requirements.

^{4/}In Ex Parte No. 230 (Sub-No. 5), we did not exempt existing rail carriers from our reporting and accounting requirements because we needed data of this kind to make informed decisions regarding such matters as revenue need and general increases. Since the Commission would not be regulating the new entrant's rates or monitoring its revenue adequacy in Road-Rail, we found no need to continue the reporting and accounting requirements there.

^{5/} Shippers have abundant transportation alternatives for motor carrier and rail service.

Finance Docket No. 30357, et al.

3. Petitioner's securities issuance and proposed operations, with the exception of any applicable loss and damage or labor protection obligations, are already exempt from Commission regulation pursuant to Ex Parte No. 230 (Sub-No. 5) and 49 C.F.R. 1039.13.

4. This decision is effective on its date of service.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

(SEAL)

James H. Bayne
Acting Secretary

Exhibit M

ALTERNATE STRAIGHT BILL OF LADING - SHORT FORM



Canadian Pacific
Railway

Date: _____

Bol # _____ Page# 1 of 1
Shipper # _____
Carrier #: Loaded

HTT as agent for CPRS

973-274-0004

(Name of Carrier)

(Fax)

TO: Railway Transfer Services	FROM:
Address: 14909 Gaskill Cr., NE Alliance, Ohio 44601	Address:
Dest: Alliance, Ohio	Origin: CP-Oak Island Rail Yard, NJ Track 19
STCC# 4029154	Contract#: CPRS 140229
Attention: Lenard Okerbloom, HTT, 91 Bay Avenue, Oak Island Rail Yard, Newark, NJ 07105	
Route: CPRS- Oak Island, NJ/ Buffalo, NY- NS Alliance, Ohio	
Commodity: Construction & Demolition Debris, Non Haz having no value	

Init.	Car#	Kind of Packaging, Description of Articles, Special Marks and Exceptions	Weight	Rate	Charges
-------	------	---	--------	------	---------

GFSX Per HTT Construction & Demolition Debris in Gondola Cars To Be Determined Per
Designation Contract

Remit COD to: N.A.	C.O.D. Amt: Per Contract	Fee: \$ Per Contract	Freight: Prepaid		Total Charges: \$ Per Contract
Note: Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding: \$ <u>None</u> Per <u>Per</u>			Subject to Section 7 of the conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: <u>Not Applicable</u> (Signature of Consignor)		

Received subject to the classifications and lawfully filed tariffs in effect on the date of the issue of this Bill of Lading, the property described above in apparent good order, except as noted (contents and condition of packaging unknown), marked, consigned, and destined as indicated above which said carrier (the word being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of, said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the bill of lading terms and conditions in the governing classification on the date of shipment. Shipper hereby certifies that he is familiar with all the bill of lading terms and conditions in the governing classification and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Shipper:	Carrier: High Tech Trans, LLC as agent for CPRS -NSRR
Per:	Per:

ALTERNATE STRAIGHT BILL OF LADEN- SHORT FORM

DATE: 10/15/2002

CANADIAN PACIFIC RR

888-762-7245

BOL # HTL

PAGE 1 OF 1

NAME OF CARRIER

FAX

SHIPPER #

1530

CARRIER# LOADED CARS

TO: OTTOWA COUNTY LANDFILL ADDRESS: 530 NORTH CAMP RD PORT CLINTON OH 43452 DEST: LACARNE OHIO		FROM: HI TECH TRANS ADDRESS: 91A BAY AVE NEWARK NJ 07105 ORIG: CPRS OAKISLAND NJ T19			
STCC#: 4029154		CONTRACT: CR CPRS-140229			
ATTENTION: FREIGHT BILLS HI TECH TRANS 91A BAY AVE NEWARK NJ 07105					
ROUTE: CPRS OAK ISLAND NJ BUFFALO NY-NS BUFFALO-SANDUSKY OHIO, LACARNE OHIO					
COMMODITY: CONSTRUCTION DEMOLITION DEBRIS NON HAZARDOUS HAVING NO RECYCLABLE VALUE					
INITIALS	CARS#	KIND OF PACKAGING, DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS.	WEIGHT (POUNDS TO NEAREST 10)	RATE	CHARGES (FOR CARRIER USE ONLY)

REMIT COD TO:	C.O.D AMT:	FEE:	FREIGHT: PREPAID	TOTAL CHARGES \$
Note: Where the rate is dependent on value, shippers are required to state specifically in writing the agreed on declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding:		Subject to Section 7 of the conditions, if this shipment is to be Delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:		
\$ PER		Consignor		

Received subject to the classifications and lawfully filed tariffs in effect on the date of issue of this bill of lading, the property described above in apparent good order, except as noted (contents and condition of packaging unknown), marked, consigned and destined as indicated above which said carrier (the word being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of, said property over all or any portion of said route to destination and as to each party at anytime interested in all or any of said property, that every service to be performed hereunder shall be subject to all the bill of lading terms and conditions in the governing classification on the date of shipment. Shipper hereby certifies that he is familiar with all the bill of lading terms and conditions in the governing classification on the date of shipment. Shipper hereby certifies that he is familiar with all the bill of lading terms and conditions in the governing classification and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

973-274-1818 PHONE 973-274-0942 FAX

SHIPPER:		
PER:	AGENT FOR HTT	PER:

Exhibit N



Solid Waste Regulation



Solid Waste Escrow

Administration

Joseph Lomerson,
Supervisor

Tom Kearns,
Bureau Chief

Phone: 609-984-2080
Fax: 609-984-6874



Economic Regulation Section

Mike DeTalvo,
Supervisor

Mission/Goals

Division of Solid & Hazardous Waste
401 East State St.
PO Box 414
Trenton, NJ 08625-0414

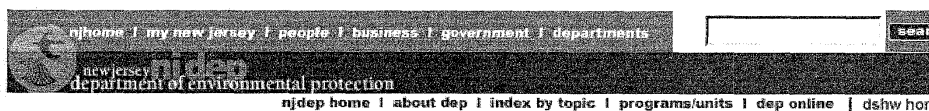
Comments or suggestions on the Division of Solid & Hazardous Waste web pages?
Please contact dshweb@dep.state.nj.us

[contact us](#) | [privacy notice](#) | [legal statement](#) 

department: [njdep home](#) | [about dep](#) | [index by topic](#) | [programs/units](#) | [dep online](#) | [dshw home](#)
statewide: [njhome](#) | [my new jersey](#) | [people](#) | [business](#) | [government](#) | [departments](#) | [search](#)

State of New Jersey, 1996-2002
Department of Environmental Protection
P. O. Box 402
Trenton, NJ 08625-0402

Last Updated: March 4, 2002



Our Mission:

The mission of Bureau of Solid Waste Regulation is to ensure effective competition amongst solid waste facilities and solid waste collectors and approve the release of escrowed money to properly close and monitor landfills.

Our goals:

- to ensure that facilities and collectors provide safe, adequate, and proper service at a reasonable rate;
- to release escrowed money within 60 days of request for reasonable and properly documented for closure activities;
- to continually monitor all landfill closure accounts for proper depositing of closure money;
- to maintain an accurate listing of registered facilities for invoicing; and,
- issue Certificates of Public Convenience and Necessity to new collectors and facilities to guarantee safe, adequate, and proper service within 60 days of request.

Comments or suggestions on the Division of Solid & Hazardous Waste web pages?
Please contact dshweb@dep.state.nj.us

[contact us](#) | [privacy notice](#) | [legal statement](#) |

department: [njdep home](#) | [about dep](#) | [index by topic](#) | [programs/units](#) | [dep online](#) | [dshw home](#)
statewide: [njhome](#) | [my new jersey](#) | [people](#) | [business](#) | [government](#) | [departments](#) | [search](#)

Copyright © State of New Jersey, 1996-2002
Department of Environmental Protection
P. O. Box 402
Trenton, NJ 08625-0402

Last Updated: May 16, 2002

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----X
HI TECH TRANS, LLC,

Case No.: 02-3781 (FSH)

Plaintiffs,

Affidavit of Service

v.

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY
UTILITIES AUTHORITY, et al.,

Defendants.
-----X

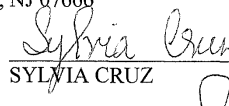
STATE OF NEW JERSEY: s.s.:

SYLVIA CRUZ, under penalties of perjury, deposes and states as follows:

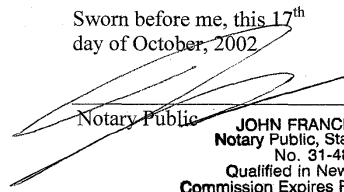
1. I am not a party to this action. I am over the age of eighteen years of age and
reside in New Jersey.

2. On October 17, 2002, I caused the annexed Plaintiff's Reply Memorandum of
Law and Declarations to be served upon Benjamin Clarke by Federal Express at the
following address:

DeCotiis, Fitzpatrick, Gluck & Cole, LLP
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, NJ 07666


SYLVIA CRUZ

Sworn before me, this 17th
day of October, 2002


Notary Public

JOHN FRANCIS McHUGH
Notary Public, State of New York
No. 31-4886140
Qualified in New York County
Commission Expires February 2, 2003