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VIA FEDERAL EXPRESS

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Building, Room 700
1925 K Street, N.W.
Washington, D.C. 20423



Re: STB Financial Docket No. 34281 LB Railco, Inc. - 206 970

Dear Secretary Williams:

Enclosed please find an original and 10 copies of the Verified Statement of Jet-A-Way, Inc. and New Bedford Wastes Services, LLC to supplement their Reply dated December 17, 2002, to LB Railco, Inc.'s Petition to Lift Stay, dated December 10, 2002.

I have enclosed an extra copy of this filing, entitled "Industry Parties' Verified Statement to Supplement Their Reply to LB Railco, Inc.'s Petition to Lift Stay," along with a self-addressed, stamped envelope. I would appreciate receiving a date stamped copy of this document in the return envelope.

Thank you very much for your consideration.

Sincerely yours,

Robert D. Cox, Jr.

RDCJr/igm
Enclosures

cc: John F. McHugh, Esq. (w/encls. via regular mail)
Mary Jude Pigsley, Esq. (w/encls. via regular mail)
John W. Giorgio, Esq. (w/encls. via regular mail)
Michael Creasey (w/encls. via regular mail)

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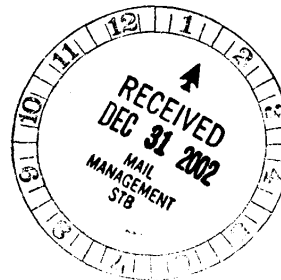
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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34281

LB RAILCO, INC.
– LEASE AND OPERATION EXEMPTION –
PROVIDENCE AND WORCESTER RAILWAY COMPANY



**INDUSTRY PARTIES' VERIFIED STATEMENT TO SUPPLEMENT THEIR REPLY
TO LB RAILCO, INC.'S PETITION TO LIFT STAY**

The National Solid Wastes Management Association, Jet-A-Way, Inc. and New Bedford Waste Services, LLC (the "Industry Parties") previously submitted their reply and motion for an order from the Surface Transportation Board (the "Board") determining that LB RailCo, Inc. (the "Petitioner") is not entitled to an exemption under Section 10501(b) of the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (the "ICCTA"), and the implementing regulations at 49 CFR Section 1150.43, as requested by the Petitioner in a Notice of Exemption filed with the Board on November 18, 2002. The Industry Parties contend, among other things, that the Petitioner's proposed solid waste facility is not integrally related to the provision of interstate rail service and provide this verified statement to supplement and explain in further detail the solid waste industry in Massachusetts and its relation to transportation services.

Jet-A-Way, Inc. operates a permitted solid waste management facility in Roxbury, Massachusetts and is a member of the National Solid Wastes Management Association ("NSWMA"). New Bedford Waste Services, LLC also operates a permitted solid waste management facility in New Bedford, Massachusetts and is a member of NSWMA.

Both the Jet-A-Way and the New Bedford Waste Services facilities are operated in accordance with permits issued by the Massachusetts Department of Environmental Protection ("DEP") and are subject to regulatory requirements designed to protect the environment and public health. As such, these facilities are required to comply with detailed permitting conditions and regulatory standards governing the receipt, processing, handling, aggregating and loading of solid waste. Subject to the limitations and controls imposed by these requirements, Jet-A-Way and New Bedford Waste Services accept deliveries of uncontainerized construction and demolition debris ("C&D Debris"), aggregate them, and remove recyclables as required by state law. Following such processing, the remaining materials are transported through truck or railroad for distribution in commerce, either for disposal, further processing, or recycling.

Pursuant to the requirements of M.G.L. c. 16, Section 21, the DEP has established a formal policy framework for solid waste management in Massachusetts under which solid waste is to be diverted from disposal to recycling outlets in order to protect public health, safety and the environment. The stated objective of the policy framework is to shift the waste industries' role from providers of primary waste disposal to providers of broader waste management services, including processing, separating and recycling. This policy framework is set forth in the DEP's solid waste master plan, Beyond 2000: Solid Waste Master Plan, A Policy Framework, EOE, December 20, 2000.

The DEP has implemented its master plan with a regulatory program that applies uniformly to all waste handlers, regardless of whether they transport waste materials from their facilities to in-state locations or out-of-state locations, and regardless of whether they transport these materials using truck, rail or barge. The DEP has required these waste

handlers to divert from disposal numerous wastes generated in Massachusetts in order to promote recycling and waste reduction. The program is implemented by waste bans which prohibit not only the disposal of various waste materials, but also their transfer for disposal. See 310 CMR 19.017. Consequently, the disposal and the transfer for disposal of wastes that are subject to the waste bans is illegal in Massachusetts.

As part of this framework, the DEP informed the waste industry several years ago that it would amend the waste bans in 2003 by banning C&D Debris from disposal or transfer for disposal. See Beyond 2000: Solid Waste Master Plan. As a result, both Jet-A-Way and New Bedford Waste Services, among others, have made significant investments in technologies necessary to manage, process, and recycle C&D Debris, thereby furthering the state's goals of protecting public health and the environment by reducing the disposal of C&D Debris generated in Massachusetts and establishing a recycling infrastructure. These investments consist primarily of the installation of equipment and associated pollution controls necessary to recover recyclables from C&D Debris received at the facilities. Jet-A-Way and New Bedford Waste Services have collectively invested over \$12 million dollars in the purchase and installation of these improvements.

The Industry Parties' facilities, as well as most other solid waste facilities in Massachusetts, perform the exact same functions as the facility proposed by the Petitioner, except the facilities constructed by the Industry Parties contain state-of-the-art pollution controls required by state and local laws in order to protect public health and the environment. The Petitioner's Reply indicates that unprocessed C&D Debris will be brought to the site in trucks and placed in a "C&D container." (Attachment A to Reply Brief, Section 2.2.1 Site Development, Page 2) The "C&D container," however, is nothing more than a tipping

platform. The platform will not be enclosed. It will be located outside, in the open air. The platform will be exposed to rain and snow and will have no dust, air or storm-water pollution controls. It will consist of a 40-foot square steel area with 8-foot high walls on three sides. Under the petitioner's proposal, trucks hauling C&D waste will tip their loads of C&D Debris upon this platform. Once waste material is deposited on the platform, it will then be lifted in the open air by an excavator and deposited into a railcar for transport. (Attachment A to Reply Brief, Section 2.2.1, and Figure 2). These activities, like most operations at solid waste facilities, are not integral to rail transport.

The process of transferring C&D Debris from one transport vehicle to another using an aggregation area is similar to the process followed at the Jet-A-Way and New Bedford Waste Services facilities, however these facilities implement detailed inspection procedures and maintain costly pollution controls that have been required by regulatory agencies in order to protect public health and the environment.

At the Jet-A-Way facility, incoming short-haul trucks deposit C&D Debris onto a platform or tipping floor. Unlike the Petitioner's proposed facility, Jet-A-Way's tipping floor is located within a 25,000 square foot building and the unloading occurs entirely indoors to prevent impacts on neighboring properties. Loads are inspected for unacceptable materials and periodically, or when suspicious loads are identified, sampled for asbestos containing materials. Unacceptable materials are reloaded on the vehicle that brought the unacceptable materials. Certified asbestos inspectors conduct screening tests and a polarized light microscope is maintained for such purposes on site. Samples are retained for further compilation and analysis by outside laboratory facilities in accordance with the requirements of a permit issued by DEP to Jet-A-Way for processing C&D Fines. Jet-A-Way also employs

procedures outlined in its DEP's permit to insure that asbestos containing materials are not accepted or processed at the facility.

Air pollution controls at the Jet-A-Way facility include an automated dust suppression system which is activated when an electric eye is tripped by trucks entering the building. The system may be activated manually and if there is an especially dusty load, a fire hose is used to control dust. A street sweeper is used by Jet-A-Way to clean the road in front of the facility and the streets and yards adjacent to the facility to reduce the tracking of dust out of the facility.

At the New Bedford Waste Services facility, incoming short-haul trucks also deposit C&D Debris onto a tipping floor within a 48,000 square foot building. All unloading occurs entirely indoors to prevent impacts on neighboring properties. As at the Jet-A-Way facility, as a load is deposited, it is inspected by certified inspectors for asbestos containing materials and hazardous waste. Only after a load is inspected and deemed acceptable is a truck allowed to leave. Unacceptable loads are reloaded onto the truck that delivered the load for removal from the facility. As with the Jet-A-Way facility, the New Bedford Waste Services facility is equipped air pollution control equipment. The building contains a multi-zone odor control and dust suppression system. Fire hoses are also available for additional dust control as needed. The air pollution control equipment includes four large automated intake vents and seven exhaust fans.

For both facilities, the removal of recyclables from the C&D Debris is required by DEP permit and the failure to process C&D Debris in accordance permits issued by the DEP would be a violation of law. Consequently, both companies have invested heavily in equipment to sort C&D Debris to remove these recyclables from the waste stream. The only

difference between the activities proposed by the Petitioner and those of the Industry Parties is that the Petitioner's solid waste processing would take place closer to a rail line. In addition, while the Industry Parties load processed waste to trucks, the Petitioner would load processed waste to railcars. The aggregation and processing of the C&D Debris before it is loaded for transport, however, is the same, except for the removal of recyclables. While the Industry Parties need to satisfy complex and detailed state and local permitting requirements in order to conduct their operations, the Petitioner seeks to use the claim of preemption under the ICCTA to avoid such requirements.

The Petitioner's attempt to remove its proposed facility from the jurisdiction of state and local permitting authorities will thwart the state's master plan goals to divert C&D Debris from disposal and foster the development of an environmental recycling infrastructure. If the Petitioner's facility is allowed to proceed as proposed, the Petitioner will gain an unfair economic advantage over the Industry Parties by creating a facility that costs far less than other lawful facilities to construct, and costs far less to operate. Such a facility will also have substantially fewer environmental controls.

One of the objectives of the DEP's Solid Waste Master Plan is for the Commonwealth of Massachusetts to become self-sufficient with respect to solid waste disposal such that no more solid waste is exported, than imported. Presently, over 2 million tons of solid waste per year are exported out of state and imports are minimal. Thus, the additional exportation of solid waste out of state by rail, as the Petitioner proposes, is contrary to the specific objective of the DEP's Solid Waste Master Plan.

In addition to the Jet-A-Way and New Bedford Waste Services facilities, there are at least five other facilities in Massachusetts with similar processing operations. Each depends

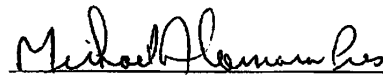
upon the flow of materials and recycling outlets to maintain their viability. If Petitioner's facility is allowed to proceed without DEP restrictions on waste bans or without regard to the DEP Solid Waste Master Plan, tipping fees would drop dramatically and the DEP's goals for recycling and establishing of necessary infrastructure and outlets would be entirely undercut and unattainable. The Industry Parties would lose out on their significant investment in processing equipment (collectively in excess of \$12 million) and there would be a significant resulting of loss of jobs. By their participation in this motion, the Industry Parties seek only to assure that all facilities providing substantially similar waste management services are subject to the same protective environmental requirements with respect to public review and permitting.

For these reasons, the Board should determine that the activities proposed by the Petitioner are not an integral part of interstate operations of a railroad, and are therefore outside the jurisdiction of ICCTA, and that the preemption of state and local laws provided by Section 1050(1) of the ICCTA does not apply to the proposed facility.

Verification Statements Attached

VERIFICATION STATEMENT

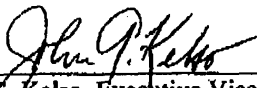
I, Michael A. Camara, President, New Bedford Waste Services, LLC verify under penalties of perjury that I have reviewed the foregoing statement and state that the facts set forth therein as they relate to New Bedford Waste Services, LLC and the solid waste industry in Massachusetts are true and correct based upon my personal knowledge, and that I have authorized our counsel to file the foregoing statement with the Board. Signed on this 30th day of December, 2002.



Michael A. Camara, President

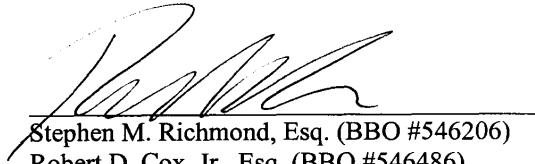
VERIFICATION STATEMENT

I, John G. Kelso, Executive Vice-President and Chief Operating Officer, Jet-A-Way, Inc. verify under penalties of perjury that I have reviewed the foregoing statement and state that the facts set forth therein as they relate to Jet-A-Way, Inc. and the solid waste industry in Massachusetts are true and correct based upon my personal knowledge, and that I have authorized our counsel to file the foregoing statement with the Board. Signed on this 30th day of December, 2002.



John G. Kelso, Executive Vice-President and
Chief Operating Officer

Respectfully Submitted,



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Date: December 20, 2002

CERTIFICATION OF SERVICE

I hereby certify that I have this 30th day of December, 2002 served copies of the foregoing upon the following parties of record in this proceeding by first class mail, postage pre-paid, in accordance with the rules of practice of the Surface Transportation Board:

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