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April 25, 2018

Ms. Cynthia T. Brown
Chief of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001



RE: FD 36184, Hainesport Transportation Group, LLC- Corporate Family Transaction Exemption

FD 36185, Hainesport Industrial Railroad, LLC-Lease and Operation Exemption

Dear Ms. Brown:

On behalf of Hainesport Transportation Group, LLC ("HTG"), and Hainesport Industrial Railroad, LLC ("Hainesport Industrial"), I am filing an original and 10 copies of the following four documents:

1. In FD 36184, on behalf of HTG a notice of exemption under 49 CFR 1180.2(d)(3) for a corporate family transaction covering the insertion of a noncarrier holding company between the individual owners of two short line railroads and their individual owners;
2. In FD 36184, on behalf of HTG a Motion to Dismiss this exemption notice as not required on the grounds the transaction does not require agency approval;
3. In FD 36185, on behalf of Hainesport Industrial, a notice of exemption under 49 CFR 1150.41 covering its lease and operation of a rail line owned by Hainesport Secondary Railroad, LLC;

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4. In FD 36185, on behalf of Hainesport Industrial, a letter requesting a waiver of the Board's regulation at 49 CFR 1150.42(e) requiring a 60 day notice to affected employees.

I am including a computer disk containing these four documents as well as check payable to the Board for \$3,400 covering the requisite filing fees.

Sincerely yours,

CLARK HILL STRASBURGER



John D. Heffner
Attorney

JDH:jh

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36185



**HAINESPORT INDUSTRIAL RAILROAD, LLC
- LEASE AND OPERATION EXEMPTION -
HAINESPORT SECONDARY RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Submitted By:

John D. Heffner
ClarkHillStrasburger
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Applicants

Dated: April 25, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36185



**HAINESPORT INDUSTRIAL RAILROAD, LLC
- LEASE AND OPERATION EXEMPTION –
HAINESPORT SECONDARY RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Hainesport Industrial Railroad, LLC (“Hainesport Industrial”), an existing Class III short line railroad common carrier, files this Notice of Exemption, pursuant to 49 C.F.R. §1150.41, *et. seq.*, with the Surface Transportation Board (“the Board”) to permit it to lease and operate a line of railroad including a yard, grounds, and improvements thereon (“the “Line”) owned by its corporate affiliate, Hainesport Secondary Railroad, LLC (“Hainesport Secondary”).¹ The lease was originally entered into on January 1, 2016. A map depicting the Line is shown on the attached Exhibit A.

INFORMATION REQUIRED BY 49 CFR §1150.43

Name and Address of Applicants 49 CFR §1150.43(a)

Karen M. Murray Esq.
General Counsel
Hainesport Transportation Group LLC
4002 Sylon Blvd.
Hainesport, NJ 08036

¹ Collectively “the Applicants”

Name and Address of Applicants' Representative 49 CFR §1150.43(b)

John D. Heffner
ClarkHillStrasburger
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Statement of Agreement 49 CFR §1150.43(c)

Hainesport Industrial and Hainesport Secondary signed a ten year lease for the Line on January 1, 2016.

Operator of the Property 49 CFR §1150.43(d)

Hainesport Industrial is currently the operator and will continue to be the operator.

Summary of Transaction 49 CFR §1150.43(e)

Some background information will be necessary for the Board's understanding of this transaction. Hainesport Industrial was originally established in 2005. It became a common carrier railroad subject to the Board's jurisdiction when it acquired and initiated common carrier railroad service on about 1 mile of track in Burlington County, NJ, owned by the Hainesport Industrial Park Railroad Association, Inc.² The track acquired and operated by Hainesport Industrial formed a wishbone configuration with one leg pointing east ("the East Line") and one leg

² *Hainesport Industrial Railroad, LLC–Acquisition and Operation Exemption–Hainesport Industrial Park Railroad Association, Inc.*, FD 34695 (STB served Nov. 18, 2005).

pointing south (“the South Line”). In 2013 Hainesport Industrial’s owners established Hainesport Secondary as a corporate affiliate in anticipation of a possible future transaction. Hainesport Industrial then transferred the East Line to the newly formed Hainesport Secondary while retaining ownership of the South Line. Hainesport Industrial’s owners filed a corporate family transaction exemption notice to obtain Board approval for that transaction.³ Hainesport Industrial then entered into a haulage agreement with Hainesport Secondary with the intent that Hainesport Secondary would provide haulage services for Hainesport Industrial by handling traffic moving between the South Line and the Conrail interchange that traverses a short segment of the East Line. Hainesport Industrial’s owners had intended to sell Hainesport Industrial to a third party in 2013; however, that transaction was never consummated.

As part of the transaction creating Hainesport Secondary, Hainesport Industrial exercised an option within its then-existing Lease of its current facility and property in Hainesport, New Jersey, by the purchase of that property and improvements, commonly known as 5900 Delaware Avenue, Hainesport, New Jersey, and designated on the tax map of the Township of Hainesport as at Block 104, lots 10, 11 and 12. The property was conveyed to Hainesport Secondary, as

³ In *Hainesport Industrial Railroad, LLC—Corporate Family Transaction Exemption*, FD 32068 (corrected STB decision served Nov. 5, 2015) the Board approved the “spinoff” of one of Hainesport Industrial’s two lines (the East Line) to Hainesport Secondary with Hainesport Secondary to provide service under a haulage agreement.

nominee for Hainesport Industrial, by deed dated April 7, 2015. Thereafter, Hainesport Industrial continued its operations on Lot 11 and Hainesport Secondary commenced operations on Lots 10 and 12, and by providing the contracted haulage services over the East Line to Hainesport Industrial. In 2016, so as to meet the requisites of State solid waste permitting requirements, Hainesport Industrial entered into a formal ten year lease agreement with Hainesport Secondary, relating to its ongoing use of Lot 11. The lease provides Hainesport Industrial continuing use of its historic site, identified as follows:

Block 104 of Lot 11 on the Tax Map of the Township of Hainesport, State of New Jersey, commonly known as 5900 Delaware Ave., Hainesport, New Jersey, as well as the benefits and burdens of the Permanent Easement running over Block 104, Lot 8.01 on the Tax Map of the Township of Hainesport, New Jersey. The principal asset on the parcel is a one story building.⁴

At the time the parties entered into their agreement, they believed that the transaction was merely a commercial one involving the lease of land by Hainesport Industrial from Hainesport Secondary. Until discussing the matter with the undersigned STB counsel, Applicants did not realize this lease and operation transaction for the Line might require additional Board approval, beyond that required for the spin-off of Hainesport Secondary. Counsel explained to the Applicants that the term “railroad” as defined by the ICC Termination Act includes as relevant:

⁴ The property that is the subject of this transaction is described in the attached Exhibit B.

“a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.” 49 U.S.C. §10102(6) (C).

Upon realizing that additional authority for this transaction was required, Applicants instructed the undersigned to seek Board approval. Applicants submit that the subject lease transaction qualifies for an exemption, albeit belatedly. The Board has long had a policy of approving previously unauthorized transactions that were done inadvertently and in good faith where the parties were unaware of approval requirements. *See, e.g., See Kenosha Auto Transport Corp.—Control—U.S.A.C. Transport, Inc.*, 85 M.C.C. 731, 736 (1960) *David W. Wulfson—Control Exemption—Clarendon & Pittsford R.R.*, FD 33607 (STB served Aug. 20, 1998) and *New Brunswick Railroad Company – Continuance in Control –Maine Northern Railway Company*, FD 35520 (STB served Sept, 26, 2011). Collectively these cases stand for the proposition that where a failure to seek approval was inadvertent, there was no intent to flout the law or of a deliberate or planned violation, or any evidence of prejudice to any party, the agency will approve the transaction.

- (1) Name and address of the lessor of the subject property:
Hainesport Secondary Railroad, LLC
4002 Sylon Blvd.
Hainesport, NJ 08036
- (2) The proposed time schedule for consummation of the transaction:
The transaction has already occurred.
- (3) The mileposts of the subject property, including any branch lines:

There are no mileposts.

- (4) The property subject to this transaction is a parcel of land with two tracks on it.

Map 49 CFR §1150.43(f)

A map depicting the involved operation is attached as Exhibit A.

Certificate Regarding Class III status 49 CFR §1150.43(g):

Attached as Exhibit C.

Interchange Commitments 49 CFR §1150.43(h)

N.A. None exist.

Caption Summary 49 CFR §1150.44

A caption summary in the prescribed form which identifies the existence of an interchange agreement is attached as Exhibit D.

Related Transaction

Concurrently, Applicants are submitting a Verified Notice of Exemption for a corporate family transaction whereby Applicants' individual owners propose to insert in the corporate structure a non-carrier holding company between them and Hainesport Industrial and Hainesport Secondary, respectively. That notice has been docketed as FD 36184. Because Applicants believe that this transaction does not require Board approval, they are also submitting a Motion to Dismiss.

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,



John D. Heffner
ClarkHillStrasburger
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Applicants

Dated: April 25, 2018

EXHIBIT A



RAND McNALLY
HANDY RAILROAD MAP
New Jersey

Copyright by Rand McNally & Company
Made in U.S.A.

EXHIBIT B

AGREEMENT OF LEASE made as of the first day of January, 2016 between Hainesport Secondary Railroad, LLC, a New Jersey limited liability company, having its principal place of business at 3600 Sylon Boulevard, Hainesport, New Jersey (the "Landlord"), and Hainesport Industrial Railroad, LLC, a New Jersey limited liability company having its principal place of business at 5900 Delaware Avenue (a/k/a 5900 Sylon Boulevard), Hainesport, New Jersey (the "Tenant").

RECITAL

Landlord hereby leases to Tenant and Tenant hereby hires and takes from Landlord, the Premises, for the Term, commencing on the Commencement Date, subject to the terms, covenants, conditions and provisions of this Lease.

NOW THEREFORE, IN CONSIDERATION of the Premises and of the covenants, representations, warranties and conditions herein, the parties hereto agree as follows:

ARTICLE I: DEFINITIONS

Whenever used in this Lease, the following terms shall have the meanings indicated below:

- (a) **Additional Rent:** All other amounts, except Fixed Rent, payable by Tenant under this Lease.
- (b) **Building:** The building located at 5900 Delaware Avenue, Hainesport, New Jersey.
- (c) **Commencement Date:** January 1, 2016.
- (d) **Fixed Rent:** The fixed rent for the first year of this Lease term shall be [REDACTED] per year payable in [REDACTED] on the first day of each month, with the first payment due on or before the Commencement Date. On the anniversary of the Commencement Date each year, from the second through tenth years of this Lease, the fixed rent shall be increased by three percent (3%) over the prior year's fixed rent, and such fixed rent shall apply during that Lease Year.
- (e) **Governmental Authority:** The United States, the state, county, city, town, village and any water, sewer or district covering the area in which the Premises of which the Premises forms a part is located, and any political subdivision thereof or any local public or quasi-public authority, agency, department, commission, board, bureau or instrumentality of any of them including, with respect to matters pertaining to insurance, boards of fire underwriters, rating bureaus and the like, to the extent they have



transfer facility, as per the terms of the NJDEP solid waste facility permit # TRP100001, issued March 20, 2015, including any subsequent renewals, and as may be amended from time to time. Tenant's use of the Premises shall at all times be consistent with the requirements of all Permits specific to the Premises, and Tenant shall comply with each and every obligation set forth in, or arising from, any of the Permits. Permitted Use specifically excludes utilization of the Premises for any operations which would subject the facility to the provisions of the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. (hereinafter "ISRA").

- (m) **Premises:** Block 104, Lot 11 on the Tax Map of the Township of Hainesport, State of New Jersey, commonly known as 5900 Delaware Avenue, Hainesport, New Jersey, as well as the benefits and burdens of the Permanent Easement running over Block 104, Lot 8.01 on the Tax Map of the Township of Hainesport, State of New Jersey.
- (n) **Permits:** Permits shall refer to all licenses, permits or authorizations issued by any federal, state, local or other governmental agency, relating to the use, occupancy, and operation of the Premises, whether issued at or prior to the Commencement Date, or at any time during the Term, and shall including but not be limited to the following: New Jersey Solid Waste Facility Permit TRP100001; New Jersey Air Pollution Control Permit PCP110001; New Jersey NJPDES RF – Stormwater Permit NJ0192961; Verified Notice of Exemption at Surface Transportation Board Finance Docket # 34695.
- (o) **Person:** A natural person, estate, firm, partnership, association, limited liability company, or corporation as the case may be.
- (p) **Rent:** The Fixed Rent, the Tax Rent and the Additional Rent due and owing to Landlord under the terms of this Lease.
- (q) **Security Deposit:** Tenant shall pay no security deposit.
- (r) **Term:** Ten (10) years from the Commencement Date.
- (s) **Tax Rent and Taxes:** As defined in Section 3.3 below.

ARTICLE II: ACCEPTANCE/ALTERATIONS AND IMPROVEMENTS

2.1. Acceptance of Premises.

- (a) Tenant accepts the Premises, as to the Commencement Date, and for the Term, to be utilized for all Permitted Uses.
- (b) Tenant acknowledges that it is familiar with the Premises and has had ample opportunity to inspect the Premises and hereby agrees to accept the

Exhibit C

Certification

I, Darryl Caplan, certify that this transaction will not result in the Applicant railroad becoming a Class I or Class II rail carrier. Applicant further certifies that its project annual revenues will exceed \$5 million. Consequently, Applicant has complied with the notice requirements of 49 CFR §1150.32(e), and has certified its compliance to the Board on _____.

Dated: April 19, 2018



Signature

**EXHIBIT D
CAPTION SUMMARY**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36185

**HAINESPORT INDUSTRIAL RAILROAD, LLC
- LEASE AND OPERATION EXEMPTION –
HAINESPORT SECONDARY RAILROAD, LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Hainesport Industrial Railroad, LLC (“Hainesport Industrial”), an existing Class III short line railroad common carrier, files this Notice of Exemption, pursuant to 49 C.F.R. §1150.41, *et. seq.*, with the Surface Transportation Board (“the Board”) to permit it to lease and operate a line of railroad consisting of yard, grounds, and improvements thereon, owned by its corporate affiliate, Hainesport Secondary Railroad, LLC (“Hainesport Secondary”). The lease was originally entered into on January 1, 2016. There are no mileposts.

Concurrently, Applicants are submitting a Verified Notice of Exemption for a corporate family transaction and related Motion to Dismiss. In that transaction Applicants’ individual owners propose to insert in the corporate structure a railroad

holding company between them and Hainesport Industrial and Hainesport Secondary, respectively. That notice has been docketed as FD 36184.

An original and ten copies of all pleadings referring to FD 36185 must be filed with the Board and served on Hainesport Industrial's representative: John D. Heffner, ClarkHillStrasburger, 1025 Connecticut Avenue, N.W., Suite 717, Washington, D.C. 20036, (202) 742-8607. This notice is filed under 49 C.F.R. § 1150.41, *et. seq.* If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction. Petitions to stay must be filed no later than May 18, 2018, at least 7 days before this exemption becomes effective.

Board decisions and notices are available on its website at WWW.STB.GOV

Decided:

By the Board

VERIFICATION

STATE OF NEW JERSEY)

)

CITY OF HAINESPORT)

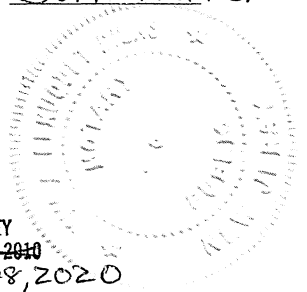
Darryl S. Caplan, being duly sworn according to law, hereby deposes and states that he holds the position of Member with applicant/petitioner, is authorized to make this Verification, had read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information, and belief.



Subscribed to and sworn to before me, a Notary Public, in and for the County of BURLINGTON in the State of NJ, this 19th day of April, 2018.


Notary Public

KIM A. LEHUQUET DILKS
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. ~~22, 2018~~



My Commission expires: Jan. 28, 2020