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November 13, 2003

Via Hand Delivery

ENTERED
Office of Proceedings

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St., N.W.
Washington, D.C. 20423

NOV 14 2003

Part of
Public Record

RE: STB Finance Docket No. 34421, *HolRail LLC—Petition for Exemption from 49 U.S.C. § 10901 to Construct and Operate a Rail Line in Orangeburg and Dorchester Counties, South Carolina*

Dear Secretary Williams:

Please find enclosed for filing the original and ten (10) copies of HolRail LLC's Verified Petition for Exemption from 49 U.S.C. § 10901 to Construct and Operate a Rail Line in Orangeburg and Dorchester Counties, South Carolina in the above referenced docket.

Please note that the original and the copies contain **COLOR IMAGES** in Exhibits A and B to the petition.

An extra copy of this filing is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Jeffrey O. Moreno
Michael H. Higgins
Counsel for HolRail LLC

FILED

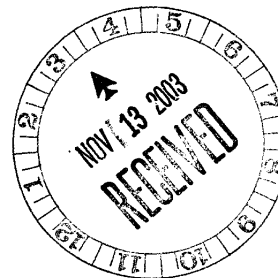
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TRANSPORTATION BOARD



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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34421

**HOLRAIL LLC—
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901
TO CONSTRUCT AND OPERATE A RAIL LINE
IN ORANGEBURG AND DORCHESTER COUNTIES, SOUTH CAROLINA**

VERIFIED PETITION FOR EXEMPTION

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Dated November 13, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34421

**HOLRAIL LLC—
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901
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VERIFIED PETITION FOR EXEMPTION

Petitioner, HolRail LLC (“HolRail”), hereby petitions the Surface Transportation Board (“STB” or “Board”) for an exemption pursuant to 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a rail line in Orangeburg and Dorchester Counties, South Carolina. The primary purpose of the construction project is to establish competitive rail service at the Holly Hill cement production facility (“Holly Hill” or “the facility”) located in Orangeburg County, which is owned by HolRail’s corporate parent, Holcim (US) Inc. (“Holcim”). Presently, Holly Hill is served only by CSX Transportation, Inc. (“CSX”). The proposed line will connect to a rail line owned by the Norfolk Southern Railroad Company (“NSR”), approximately two (2) miles south of Holly Hill, in Dorchester County.

I.

BACKGROUND

Holcim is one of the largest suppliers of Portland and blended cements and related mineral components in the United States. It ships more than 20 million tons of cement and related materials each year, of which 16% moves by railroad. Holcim has 14 manufacturing

facilities and approximately 70 distribution terminals across the country and employs approximately 2,500 people in the United States. Holcim's annual revenues are approximately \$1.1 billion.

The Holly Hill production facility is located in Orangeburg County, South Carolina. It manufactures a variety of cement and masonry products and relies on rail transportation to receive inbound raw materials and to ship outbound products. Holly Hill is also one of Holcim's bagging facilities for its specialty colored cement. In August of 2003, Holcim completed a plant expansion project that increased the size of the facility and doubled output capacity. Holly Hill now has the ability to produce 2,000,000 tons of cement per year and is ramping up production to achieve this level. A substantial portion of Holly Hill's production is shipped by rail to Holcim distribution terminals to serve markets that are over 100 miles from the facility. Because trucking cement over distances greater than 100 miles is uneconomic and impractical, Holly Hill requires reliable, economic, and efficient rail transportation to reach optimal plant utilization.

Holcim will increase its use of rail transportation because of the expansion at Holly Hill. In 2004, Holcim projects that the facility will ship approximately 555,000 metric tons of cement by rail, which totals approximately 6,440 carloads. At optimum production, Holly Hill will load and tender up to 60 rail cars per day in a single block-train. Inbound, Holly Hill will receive approximately 150,000 metric tons of coal per year (1,500 carloads) in 70-car unit trains, and smaller quantities of sand and white cement. A Holcim subsidiary, Energis LLC, also located at the plant site, will receive approximately 260 tank cars of waste chemicals annually (projected for 2004), which are blended for incineration as fuel. The Holly Hill facility consumes a portion of the blended product and the remaining amount (roughly 120 carloads annually) is shipped to other facilities.

As part of the Holly Hill plant expansion, Holcim has reevaluated Holly Hill's rail transportation needs. Holcim has concluded that rail competition is necessary to achieve the full benefits of the expansion. Presently, CSX is the only rail carrier with direct access to the facility and it transports all inbound raw materials and outbound products that move by railroad.¹ Suffice it to say, CSX's track record is weak. Its service is unreliable and inadequate, and its customer representatives are indifferent to Holcim's requirements and requests for service improvements.

For example, CSX's refusal to allow Holcim to use its private railcar fleet to transport Holly Hill's product has been injurious to the facility. Typically, CSX cannot meet Holcim's railcar requests within the required time, and when CSX supplies its own cars, they are regularly bad-ordered and unusable. By contrast, Holcim's non-captive competitors are freely allowed to ship product in private cars without restrictions that CSX imposes on Holcim. This gives them a competitive advantage over Holly Hill, which must absorb operational and economic inefficiencies caused by CSX's inadequate railcar service or its restrictions on private cars.

Additionally, CSX's rates exceed Holcim's competitors that have competitive rail service. By obtaining rail competition, through its build out to NSR, Holcim will place Holly Hill on equal footing with other comparable cement facilities that have access to more than one railroad.

In summary, CSX's consistently poor service, which has caused Holcim to lose business opportunities in the past, simply cannot meet the needs of Holly Hill's expanded production

¹ Pursuant to the so-called "Carolinas Plan," Finance Docket No. 32299, *Norfolk Southern Ry. Co. – Consolidation of Operations – CSX Transportation, Inc.* 1993 ICC Lexis 241 (served Nov. 26, 1993), CSX typically serves Holly Hill from the south by operating NSR locomotives over NSR track from Pregnall north to reach its own track at Giant, which is two miles south of Holly Hill. CSX track extends north from Giant, past Holly Hill, to Sumter. CSX could serve Holly Hill from the north via Sumter, but does not, apparently because of certain efficiencies.

capacity. Holcim believes that competition between CSX and NSR at Holly Hill will produce more responsive, more reliable, and better rail service. Improved rail service, in turn, will support the facility's increased production and allow Holcim to supply distant markets and to compete in new markets. Additionally, rail-to-rail competition will lead to a reduction in rail rates, making Holly Hill more competitive with non-captive producers. Accordingly, Holcim desires to construct a two-mile rail line, running south from the facility, to obtain competitive access from NSR. Holcim has incorporated HolRail for this purpose.

II.

DESCRIPTION OF THE PROJECT.

HolRail intends to construct a two-mile line of rail from the Holly Hill facility to a point of connection with NSR's rail line near Giant, South Carolina. *See* Exhibits A (map) and B (aerial photograph), attached hereto. HolRail has identified two routes, both of which parallel the existing CSX line across wetlands.

The preferred route of the new railroad line extends south across the existing CSX rail corridor over wetlands owned mostly by CSX. The planned interconnection with NSR is situated on land owned by a neighboring cement facility, over which HolRail intends to obtain access by easement or other means. Holcim has studied the dimensions of the corridor and concluded that construction and operation of HolRail's rail line parallel to the existing CSX line, within the CSX right-of-way, is feasible and would not affect CSX's operations. HolRail has selected this as its preferred route because it would significantly reduce environmental impacts that might otherwise result if HolRail were to construct the line outside of the CSX right-of-way, only a few hundred feet to the West of the existing CSX line.²

² If necessary, HolRail intends to file a petition to cross the CSX right-of-way, pursuant to 49 U.S.C. § 10901(d), in order to construct the proposed rail line along the preferred route.

As an alternative to its preferred route, HolRail has identified an alternate route that would run parallel to the CSX line, approximately 50 yards to the east, across property already owned by Holcim. *See* Exhibit A. The environmental impact of this alternative route likely would be greater, however, since HolRail would have to clear a greater amount of natural vegetation and undergrowth.

HolRail intends to construct and own the track, which would be a common carrier rail line. HolRail would arrange for a third-party operator—possibly NSR—to provide rail service. HolRail would employ a contractor to provide maintenance service for the line, or engage the third-party operator to perform this service.

III.

HOLRAIL'S CONSTRUCTION PROJECT MEETS THE STANDARDS FOR EXEMPTION CONTAINED AT 49 U.S.C. § 10502

Under 49 U.S.C. § 10901, construction and operation of an additional line of railroad requires prior STB approval. However, pursuant to 49 U.S.C. § 10502, the Board must exempt a project from regulation if it finds that (1) continued regulation is not necessary to carry out the rail transportation policy codified at 49 U.S.C. § 10101, and (2) either the transaction or service is of limited scope, or regulation is not needed to protect shippers from abuse of market power.

Congress enacted the exemption provision contained in the Staggers Rail Act—now codified at 49 U.S.C. § 10502—as a means through which transactions like the one proposed herein by HolRail could be liberated from otherwise applicable cumbersome regulatory processes. *See* H.R. Rep. No. 96-1430, at 105 (1980), *reprinted in* 1980 U.S.C.C.A.N. 4110, 4137. Precedent dictates that the Board should apply its exemption power “boldly” to advance deregulation. *Simmons v. I.C.C.*, 760 F.2d 126, 132 (7th Cir. 1985); *American Trucking Ass’n v. I.C.C.*, 656 F.2d 1115, 1119 (5th Cir. 1981) (“[T]he Commission is charged with the

responsibility of actively pursuing exemptions for transportation and services that comply with the section's standards."'). As discussed below, HolRail's proposed rail line construction project meets the standards of 49 U.S.C. § 10502 and should be exempted from the prior approval requirements of 49 U.S.C. § 10901.

A. Regulation is Not Necessary to Carry Out the Rail Transportation Policy at 49 U.S.C. § 10101.

Regulation of HolRail's construction and operation of the railroad line described herein is not necessary to carry out the rail transportation policy expressed at 49 U.S.C. § 10101. In fact, granting the requested exemption will promote the rail transportation policy through the creation of competition between CSX and NSR at the Holly Hill facility and the realization of the attendant benefits of such competition.

For example, in STB Docket No. 34210, *Sunflower Rail Company LLC—Construction and Operation Exemption—Finney County, KS*, (Served March 28, 2003), the Board determined that a 4.7-mile rail line construction project creating competitive service for the petitioner's parent company would achieve the objectives of the rail transportation policy codified at 49 U.S.C. §§ 10101(1), 10101(2), 10101(4), 10101(5), and 10101(7). HolRail's construction project will similarly advance the rail transportation policy and is therefore equally deserving of an exemption.

First, the proposed project will allow competition and the demand for service to establish reasonable rates for transportation by rail. 49 U.S.C. § 10101(1). Second, an exemption will minimize the need for federal regulatory control over the rail transportation system. 49 U.S.C. § 10101(2). Indeed, competitive rail service at Holly Hill would address problems caused by CSX's chronic and inadequate railcar service, which Holcim otherwise would be forced to

remedy by complaining to the Board.³ Third, construction of the line will promote the development of a sound rail transportation system with effective competition among rail carriers. 49 U.S.C. § 10101(4). Fourth, a promptly issued exemption will reduce regulatory barriers to entry into the rail industry. 49 U.S.C. § 10101(7). Fifth, the proposed line construction will encourage honest and efficient management through market discipline imposed by direct rail-to-rail competition. 49 U.S.C. § 10101(9). Sixth, the project will help avoid undue concentration of market power and prohibit unlawful discrimination. 49 U.S.C. § 10101(12). Finally, granting an exemption will provide for expeditious handling and resolution of this proceeding. 49 U.S.C. § 10101(15).

The Board and its predecessor previously have exempted similar line construction projects from the prior approval requirements imposed by 49 U.S.C. § 10901, often in instances where the petitioner sought to create competitive rail service. *See* STB Finance Docket 34210, *Sunflower Rail Company, LLC—Construction and Operation Exemption, Finney County KS*, (Served March 21, 2003); STB Finance Docket No. 34060, *Midwest Generation, LLC—Exemption from 49 U.S.C. § 10901—For Construction in Will County, IL* (Served March 21, 2002); STB Finance Docket 34002, *Alamo North Texas Railroad Corp.—Construction and Operation Exemption—Wise County, TX* (Served Sept. 3, 2002); STB Finance Docket No. 33782, *Entergy Arkansas and Entergy Rail—Construction & Operation Exemption—White Bluff to Pine Bluff, AR*, (Served May 4, 2000); ICC Finance Docket No. 32630, *Omaha Public Power District—Construction Exemption in Otoe County, NE* (Served May 2, 1995); and ICC Finance Docket 32607, *WFEC Railroad—Construction & Operation Exemption—Choctaw & McCurtain*

³ *See* STB Finance Docket No. 34060, *Midwest Generation, LLC—Exemption from 49 U.S.C. § 10901—For Construction in Will County, IL* (Served March 21, 2002) (recognizing proposed construction as advancing the RTP by obviating need for a Board investigation).

Counties, OK, (Served Feb 27, 1996). Accordingly, it is proper for the Board to follow precedent in this proceeding and to grant the exemption requested by HolRail.

B. Regulation is Not Necessary Because The Project Is Limited In Scope.

HolRail's proposed rail line construction project satisfies the second part of the exemption standard because it is limited in scope. As noted above, the line will be approximately two miles long and will parallel CSX's existing rail line. The Board has found much larger projects to be of limited scope. See ICC Finance Docket 32607, *WFEC Railroad—Construction & Operation Exemption—Choctaw & McCurtain Counties, OK*, (Served Feb 27, 1996) (14 mile line); ICC Finance Docket No. 32630, *Omaha Public Power District—Construction Exemption in Otoe County, NE* (Served May 2, 1995) (5 mile line), and ICC Finance Docket No. 31989, *The Elk River Railroad, Inc.—Construction and Operation Exemption—Clay and Kanawha Counties, WV*, (Served May 28, 1992) (30-mile line). Therefore, precedent dictates that HolRail's proposed project is limited in scope within the meaning of 49 U.S.C. § 10502(a)(2)(A).

C. Regulation is Not Necessary to Protect Shippers from Abuse of Market Power.

Because HolRail's proposed transaction is limited in scope, the Board is not required to make the alternative finding, at 49 U.S.C. § 10502(a)(2)(B), that regulation is not needed to protect shippers from the abuse of market power. See STB Finance Docket No. 34060, *Midwest Generation, LLC—Exemption from 49 U.S.C. § 10901—for Construction in Will County, IL*, (Served March 20, 2002). Nevertheless, in addition to being limited in scope, this project should be granted an exemption because regulation of the project is not necessary to protect shippers from abuse of market power.

By its very nature, HolRail's proposed build out to NSR is intended to protect Holcim from the abuse of market power through creation of a rail transportation alternative to CSX at the Holly Hill facility. Georgia Pacific Company, situated adjacent to Holcim on the CSX line, will share this same benefit, as will any other shippers who may locate along the proposed rail line. Consistent with established precedent, it is appropriate for the Board to find that HolRail's line construction project—which increases rail transportation alternatives—will not subject shippers to abuse of market power. See STB Finance Docket No. 34060, *Midwest Generation, LLC—Exemption from 49 U.S.C. § 10901—for Construction in Will County, IL*, (Served March 20, 2002) (“The proposed transaction would provide Midwest, and possibly other shippers that may locate on the line, with an additional rail option, and thus would enable shippers to realize the benefit of increased railroad competition.”); STB Finance Docket No. 33782, *Entergy Arkansas and Entergy Rail—Construction & Operation Exemption—White Bluff to Pine Bluff, AR*, (Served May 4, 2000); and, ICC Finance Docket 32607, *WFEC Railroad—Construction & Operation Exemption—Choctaw & McCurtain Counties, OK*, (Served Feb 27, 1996).

IV.

THE EXEMPTION TO CONSTRUCT AND OPERATE SHOULD BE GRANTED SUBJECT TO COMPLETION OF THE BOARD'S ENVIRONMENTAL REVIEW.

Consistent with STB practice in construction cases, HolRail requests that the Board issue a preliminary decision addressing the transportation merits of this matter before the completion of the required environmental review process. See STB Finance Docket No. 34060, *Midwest Generation, LLC—Exemption from 49 U.S.C. § 10901—for Construction in Will County, IL*, (Served March 20, 2002); ICC Finance Docket No. 32630, *Omaha Public Power District—Construction Exemption in Otoe County, NE* (Served May 2, 1995). By removing uncertainty as

to the transportation aspects of the project, a favorable initial decision would aid HolRail in development of project planning and allow it to commit additional resources.

HolRail recognizes the requirement for the Board to undertake an independent environmental evaluation in connection with the proposed exemption, as set forth at 49 C.F.R. § 1105. Accordingly, on October 14, 2003, Holcim representatives consulted with the Board's Section of Environmental Analysis ("SEA") with respect to preparation of an environmental analysis by a third-party consultant. Holcim will continue to pursue its environmental obligations in conjunction with this petition for exemption, including preparation of necessary reports, and will cooperate with the Board to resolve any issues in an expeditious manner.

WHEREFORE, petitioner, HolRail LLC, respectfully requests that the Board issue the exemption herein requested to allow the construction and operation of a two-mile line of rail.

Respectfully submitted,



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Counsel for HolRail LLC

November 13, 2003

EXHIBIT A

MAP



Legend:	
	PROPOSED TRACK
	EXISTING TRACK
	EXISTING HO TRACK
	NS RIGHT-OF-WAY
	PROPERTY LINE
	ROADS
	PROPOSED ALTERNATE RAIL

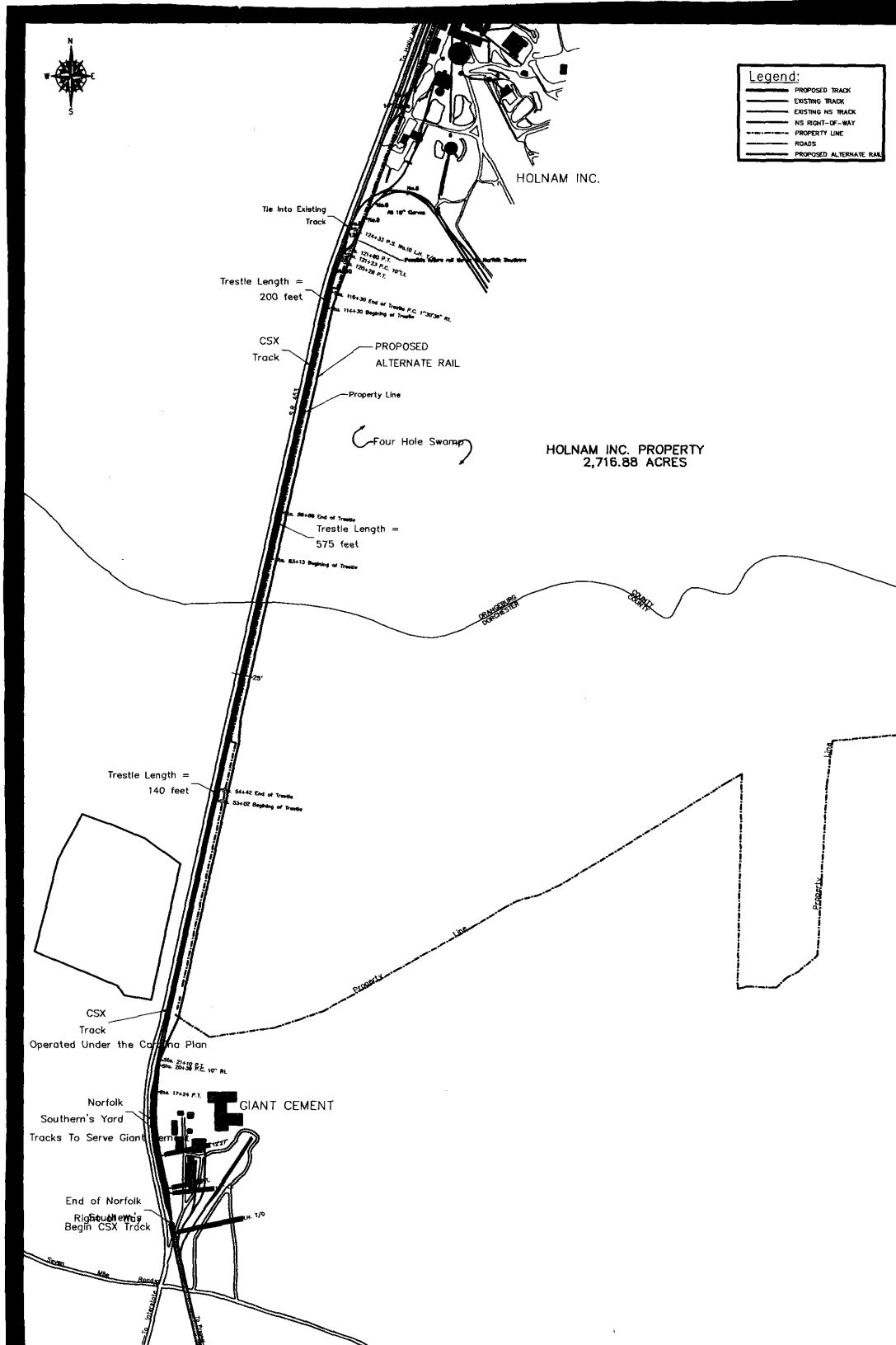


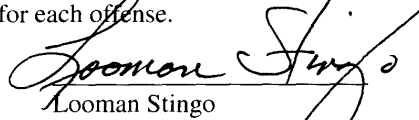
EXHIBIT B
AERIAL PHOTOGRAPH

10-15-01 3011006



VERIFICATION

I, Looman Stingo, Senior Vice-President, Logistics, of Holcim (US) Inc., hereby verify under the penalty of perjury that all of the facts set forth in the attached Petition for Exemption are true and correct to the best of my knowledge. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. § 1001 by imprisonment up to five years and fines up to \$10,000 for each offense.


Looman Stingo

November 12, 2003