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October 26 2010

Surface Transportation Board
Attn: Danielle Gosselin
Section of Environmental Analysis
395 E Street, SW
Washington, DC 20423

Re: STB Finance Docket # 35116

Dear Ms. Gosselin:

This firm represents Resource Recovery, LLC (Resource) with respect to land use and development issues regarding its property in Centre County, Pennsylvania, which is the subject of the above-referenced docket.

This letter is submitted in response to comments provided by JoAnn Gillette, on or about September 28, 2010, concerning the No-Build Alternative (Local Road System Upgrade) set forth in the Draft EIS.

Ms. Gillette first claims that the local road network is incapable of being used to access Resource's property because improvements necessary to accommodate anticipated traffic are "inconsistent" with local and regional "transportation plans" and would not be approved. As such, she claims that the Local Road System Upgrade is not a "legitimate alternative". Ms. Gillette's assertions are incorrect, not supported by facts or law, and should be disregarded.

The Draft EIS states that the No-Build Alternative was considered because the road upgrades are "feasible from an engineering perspective and because RJCP views it as the default access alternative should the Proposed Action be denied." (Draft EIS, p. 2-18). As Ms. Gillette does not identify how the upgrades are allegedly inconsistent with local and regional transportation plans, the precise basis for her claims is unclear. However, all of the roads in question are existing public roads that are capable, from an engineering perspective, of being upgraded.

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The proposed upgrades will be consistent with the standards set forth in Snow Shoe Township's Road Ordinance and Pennsylvania Department of Transportation regulations. Additionally, the Snow Shoe Township Comprehensive Plan specifically envisions construction of transportation upgrades in areas where existing minor streets provide inadequate access to major routes. (Snow Shoe Tp. Comp. Plan, p. 33). In any event, even if the proposed upgrades were "inconsistent" with future municipal transportation plans (which is not the case), such plans are merely guidelines, not legally binding municipal regulations. See, Saenger v. Planning Commission of Berks County, 308 A.2d 175 (Pa. Cmwlth. 1973). Further, the actions of a governing body cannot be challenged or invalidated on the basis that they are inconsistent with the provisions of a comprehensive plan. 53 P.S. § 10303(c). Thus, if upgrades proposed by the No-Build Alternative are determined to be necessary, they can receive required approvals, notwithstanding any alleged inconsistencies with local and regional transportation plans.

Furthermore, in Pennsylvania, the right to access a property abutting a public road is recognized as an incident of ownership or occupancy of the land, and is a constitutionally protected property right. Wolf v. Commonwealth of Pennsylvania, 422 Pa. 34, 220 A.2d 868 (1966). As such, an abutting owner's right of access right cannot be taken by a local municipality unless just compensation is made under the law. Id., 220 A.2d at 871. The ability of the municipality to curtail this right of access through exercise of the police power has been recognized only where other access exists and the owner has been afforded the opportunity to be heard. See, Hardee's Food Systems, Inc. v. Department of Transportation, 495 Pa. 514, 434 A.2d 1209, 1211 (1981).

In this instance, Resource has a continuing constitutionally protected right to access its property using Gorton Road, an existing local road abutting its property. To the extent that Gorton Road, or other local roads, will require improvement to accommodate future use, such improvements can feasibly be made. Thus, Ms. Gillette's implication that the property cannot be accessed using the local road system is incorrect.

Finally, Ms. Gillette's claim that an agreement between Resource and Snow Shoe Township precludes use of Gorton Road for trash hauling is incorrect. The Cooperation Agreement Ms. Gillette is referring to was terminated in or about September of 2008, and is no longer in effect. Even if the agreement were still in effect, it was a private agreement between two parties capable of being revised, altered or terminated by the parties. In short, it is not relevant to the Board's consideration of the No Build Alternative in the Draft EIS.

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Thank you for your consideration of this response.

Sincerely,

STEVENS & LEE

A handwritten signature in cursive script, appearing to read "Charles M. Suhr".

Charles M. Suhr

cc: Resource Recovery, LLC
Kevin Starner