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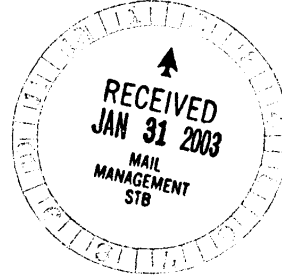
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January 31, 2003

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



Re: *New York City Economic Development Corporation, Acting on Behalf of
the City of New York, New York - - Adverse Abandonment of Rail Line and
Facilities Operated by the New York Cross Harbor Railroad, Inc. in
Brooklyn, New York, Docket No. AB No. 596*

Dear Sir:

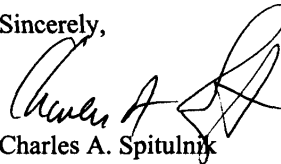
I am enclosing an original and ten (10) copies of the Status Report of New York City Economic Development Corporation for filing in the above-referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger. Please note that a 3.5" diskette is enclosed with this document.

ENTERED
Office of Proceedings

JAN 31 2003

Part of
Public Record

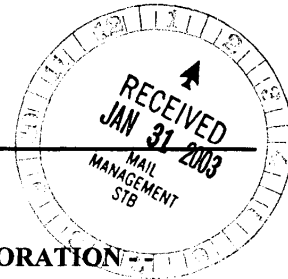
Sincerely,


Charles A. Spitulnik

Enclosures

cc: All parties on the Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB DOCKET NO. AB-596

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION -
ADVERSE ABANDONMENT - -
NEW YORK CROSS HARBOR RAILROAD
IN BROOKLYN, NY

STATUS REPORT OF
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

In an order served in this proceeding on December 27, 2002, this Board granted the request of New York Cross Harbor Railroad ("NYCH") that this Board continue to hold this proceeding in abeyance. Over the objection of the New York City Economic Development Corporation ("NYCEDC"), the applicant in this proceeding, this Board concluded that "the request to hold the proceedings in abeyance for some additional time to permit the parties to attempt to resolve their differences is reasonable, and the proceeding will be held in abeyance until January 31, 2003." *Decision*, Service Date December 27, 2002, *slip op.* at 1. The Board also directed the parties to notify it in writing of the status of those discussions as of that date. NYCEDC submits this Status Report in response.

No further discussions have taken place. By letter dated January 9, 2003 (a copy of which is attached as Exhibit 1) undersigned counsel advised NYCH of NYCEDC's willingness to negotiate about either (1) NYCH voluntarily relinquishing its rights to operate at the facilities that are the subject of this proceeding; and/or (2) use of the float bridges at the recently renovated 65th Street Yard once NYCH has executed an agreement with CP Rail for use of the

65th Street Yard. NYCEDC has been steadfast in its willingness to discuss use of the 65th Street Yard by NYCH.

NYCEDC has contracted with CP Rail for that company to be the operator of that yard. In that agreement with CP Rail, NYCEDC required CP Rail to permit others to use the yard. According to the last communication NYCEDC has received from counsel for NYCH, NYCH has received a draft agreement from CP Rail. That communication occurred before the Board issued its December 27 *Decision*. Since that time, NYCEDC has received no indication from NYCH that an agreement with CP Rail has been finalized. In communications with NYCH and this Board, NYCEDC has been quite clear that it will negotiate an agreement for use of the float bridges once NYCH can demonstrate that it has an agreement in place for use of that yard. Without an agreement for use of that yard, NYCH can not use the float bridges because there is no way to get traffic to or from them on the ground in Brooklyn. NYCEDC has no role in the negotiation of that agreement because it is between CP Rail and NYCH.

In its November 14 letter in this proceeding (at page 2), NYCEDC made the following points, all of which remain true at this point:

- (3) Despite repeated requests from NYCEDC, NYCH has produced no document that purports to be a signed agreement between NYCH and CP Rail or NY&A for use of the 65th Street Yard;
- (4) The delay in NYCH's ability to gain access to the float bridges at 65th Street is directly attributable to NYCH's failure to secure an agreement and then produce it to NYCEDC for use of the 65th Street Yard.

....

NYCEDC wants to make sure that NYCH has access to the 65th Street Yard before it expends the City's resources negotiating an agreement or managing the Vendex process that all contractors with the City or any of its agencies must complete. NYCH's inability to secure a written

agreement for use of the 65th Street Yard during these many months suggests that the City's caution in this regard is well founded.

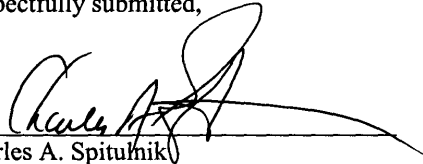
Letter dated and filed in this proceeding on November 14, 2002, from Charles A. Spitulnik, Counsel for NYCEDC, to Hon. Vernon A. Williams.

NYCEDC began this proceeding in 2001 because of its view that the public convenience and necessity did not require the continued tenancy at the facilities that are the subject of this proceeding of a railroad that demonstrated over the course of its use of those facilities that it was not a worthy steward of the public lands and the public trust that accompany a license from the City to use its property. NYCEDC has been willing for NYCH to have the right to use the 65th Street Yard because a railroad other than NYCH would have the right and obligation to maintain the property, a right and obligation that NYCH has repeatedly demonstrated over the course of its tenancy at the 1st Avenue/51st Street Yard that it can not and will not honor. Recent developments at property NYCH leases in New Jersey suggests that NYCH, although under new internal leadership, like the proverbial zebra has not changed its stripes. The article attached at Exhibit 2 (reprinted from http://abclocal.go.com/wabc/news/WABC_012803_njwaste.html) confirms that the same issues New York City has confronted continue to arise on the other side of the harbor. NYCH continues to demonstrate that it is not worthy of the public trust and its right to operate the rail facilities that are the subject of this proceeding should be revoked, as NYCEDC has requested. These reports support NYCEDC's continuing unwillingness to negotiate on any basis other than that which has already been communicated to NYCH and to this Board.

To summarize the status of discussions, NYCEDC has repeated its expressed willingness for negotiations to commence. None have occurred. The existence of an agreement that will permit NYCH to use the 65th Street Yard is a precursor to any negotiations. NYCH has not produced such an agreement.

WHEREFORE, NYCEDC respectfully requests this Board to move to decision in this proceeding as expeditiously as possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

Charles A. Spitulnik
Alex Menendez
McLEOD, WATKINSON & MILLER
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
(202) 842-2345

Counsel for the New York City Economic
Development Corporation

Dated: January 31, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the STATUS REPORT OF NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, to be served by hand delivery upon John Heffner, Esquire, counsel for New York Cross Harbor Railroad, Inc., and by first class mail with postage prepaid and properly addressed on all other parties of record on the STB's Service List in this proceeding.

Dated this 31st day of January, 2003.



Charles A. Spitulnik

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GOVERNMENT RELATIONS

(**Admitted in Ohio only)
(***Admitted in New York only)

January 9, 2003

By Fax (202/371-2240) and First Class Mail

John D. Heffner, Esquire
555 Twelfth Street, NW
Suite 950N
Washington, D.C. 20004

Re: STB Docket No. AB-596, *New York City Economic Development Corporation – Adverse Abandonment – New York Cross Harbor Railroad in Brooklyn, NY*

Dear John:

We have received the order of the STB served on December 27, 2002 in the above-referenced proceeding. In that order, the Board agreed to hold this proceeding in abeyance until January 31, 2003 "to permit the parties to attempt to resolve differences."

NYCEDC remains, as we have advised you and the STB consistently, willing to negotiate with New York Cross Harbor Railroad ("NYCH"). Specifically,

- If NYCH wishes to agree voluntarily to relinquish its rights to operate at the 1st Avenue/51st Street facility that is the subject of this proceeding, then NYCEDC remains willing to discuss that.
- If NYCH wishes to pursue the attempts it has made to relocate its operations on the Brooklyn waterfront to the newly renovated 65th Street yard, NYCEDC has already reached an agreement with CP Rail that permits NYCH to gain access to that yard. However, as we have advised you and the STB previously, the agreement for use of the yard at 65th Street by NYCH is a matter that must be resolved between CP Rail and/or New York and Atlantic (which has contracted with CP Rail to conduct the operations at 65th Street, and which is the carrier that will take traffic from and bring traffic to that yard), on the one hand, and NYCH on the other. NYCEDC need not be and should not be a party to that discussion because it is a matter that relates to normal business relationships between rail

MCLEOD, WATKINSON & MILLER

John D. Heffner, Esquire
January 9, 2003
Page 2

carriers. To the best of our knowledge, NYCH and CP Rail have not yet completed and executed that agreement for NYCH to operate in the yard.

- If NYCH wishes to use the float bridges at 65th Street, NYCEDC remains willing, as we have advised you and the STB previously, to negotiate an agreement for those float bridges. NYCEDC will enter those negotiations once NYCH demonstrates that it has signed an agreement with CP Rail (or NY&A, as appropriate) that will permit NYCH to operate in that yard. There is no dispute at this time between NYCH and NYCEDC as to the use of the float bridges at 65th Street because NYCH has not yet provided NYCEDC with a basis for entering negotiations.
- I understand that NYCH has been discussing the terms of an interchange or switching agreement with NY&A for handling of traffic that NYCH brings to the 65th Street yard. I do not know the status of that agreement.

I look forward to the opportunity to discuss these issues with you at your convenience.

Sincerely,



Charles A. Spitulnik

cc: Seth O. Kaye
Alice Cheng

Investigators Discover Toxic Waste Dumped In Jersey City Rail Yard



(Jersey City-WABC, January 28, 2003) — Investigators made what they are calling a horrifying discovery at a Jersey City rail yard Tuesday. Officials say the 54-acre site was littered with illegal toxic sludge, sewage and waste. [Jeff Rossen](#) reports from Jersey City with details.

 [See Photos From The Story](#)

 [Watch the Story](#)

Jersey City officials filed a cease and desist order against New York Cross-Harbor Railroad Tuesday after investigators discovered the owners of the site have allegedly been illegally dumping solid waste, sludge and sewage all over the property on Linden Avenue.

Investigators say New York Cross-Harbor Railroad operates the Jersey City site, a 54 acre rail yard. City officials say they found unsealed containers of waste all over the huge complex.

The city's dealings with the company started back in April when the health department told the company to stop dumping toxic waste on the site. Officials say neighbors and workers in the area have called the city in the past couple of weeks, complaining about a horrible odor. That led investigators back to the site, where they found more evidence of illegal dumping.

Investigators say the "illegal landfills" were three feet high, in some cases, filled with sewage and waste.

Mayor Glen Cunningham, Jersey City: "Health officials determined this to be a definite risk and nuisance. Here's what we have ordered them to do. One, remove all unsealed containers holding sludge and similar refuse. Two, remove and lawfully dispose of all landfill materials based upon an approved sampling plan."

We spoke with the owner of New York Cross-Harbor Railroad by phone Tuesday afternoon. He said, "We have a difference of opinion with Jersey City about what railroads can and can't do. We transport processed biosolids, which is fully legal. We have never dumped it on our property."

It was unclear Tuesday afternoon, if any material investigators found at the rail yard is dangerous to people living or working in the area. City officials say it may be. The DEP is scheduled to visit the site this week so they can dig up samples to be tested.

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Source:

http://abclocal.go.com/wabc/news/WABC_012803_njwaste.html