

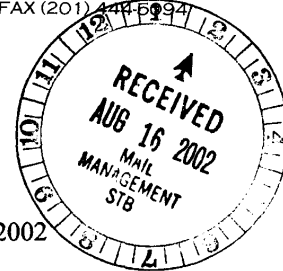
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August 15, 2002

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

RE; *Hi Tech Trans, LLC-Petition for a Declaratory Order- Hudson County,
New Jersey*
Finance Docket No. 34192

Dear Secretary Williams:

Enclosed please find one unbound copy and ten bound copies of a summons, complaint and motion brought on by Order To Show Cause in the United States District Court, District of New Jersey, Newark, on August 7, 2002 relating to the same situation addressed by the petitioner in the captioned action, except that the Court action includes the Essex County Utilities Authority and its chairman as a defendant. This step was taken as the Board does not have injunctive powers. The actions of the defendants are seriously impacting on the petitioner's operations. These documents are for the board's information. The motion papers inform the Court of the proceeding before the Board and of the Board's exclusive jurisdiction over the legal issues in question. The Court has set a briefing schedule in its order.

Thank you for your attention to this matter.

ENTERED
Office of Proceedings

AUG 16 2002

Part of
Public Record

Very truly yours,

John F. McHugh

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HI TECH TRANS, LLC,

Civil Action No. _____

Plaintiff,

vs.

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

Defendants.



**PLAINTIFF'S MEMORANDUM OF LAW IN
SUPPORT OF THE ISSUANCE OF A PRELIMINARY INJUNCTION**

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HI TECH TRANS, LLC,

Civil Action No. _____

Plaintiff,

vs.

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

Defendants.

PLAINTIFF'S MEMORANDUM OF LAW IN
SUPPORT OF THE ISSUANCE OF A PRELIMINARY INJUNCTION

PRELIMINARY STATEMENT

The legal precedents supporting this application for an
Order to Show Cause and Preliminary Injunction are among the

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foundations of constitutional law, well settled for a Century and three quarters. That this plaintiff is compelled to seek judicial assistance on such matters is astounding.

Defendants, in defiance of federal law, have granted private parties the exclusive right to transport waste from their counties in interstate commerce. They seek to criminally enforce those exclusive franchises to the exclusion of the Plaintiff, an entity specifically authorized to engage in interstate commerce by federal law. Plaintiff is irreparably harmed by the Defendants' denial of a constitutional right. Plaintiff has a high probability of success on the merits as this is precisely the issue finally resolved by the Supreme Court of these United States in Gibbons v. Ogden, 22 U.S. 1, 221 (1824). The public has the right to unobstructed access to all means of interstate commerce and, therefore, the application for a preliminary injunction is in the public interest.

This Court's jurisdiction and authority to issue the relief here requested is based on the federal nature of the issues and the specific mandate of Osborn v. Bank of United States, 22 U.S. 738, 868 (1824). Judicial intervention is sought in this matter to prevent HTT and the public from continuing to suffer irreparable harm through the attempts of the Defendants Hudson County Improvement Authority ("HCIA") and Essex County Utilities Authority ("ECUA") (collectively referred to as "Defendants")

who seek to enforce the exclusive franchises by threatening to impose criminal sanctions against HTT's customers. Defendants act under color of State law in bold violation of 42 U.S.C. § 1983.

The pattern of intimidation here complained of increased after Plaintiff filed a petition with the Surface Transportation Board for a Declaratory Order. In that petition HTT seeks a determination that its operation is not subject to local regulation and that customers utilizing its facilities can not be penalized for exercising a right granted to them by federal law. Shockingly, shortly after that petition was filed, HCIA employees began to call Hauling Customers in Hudson County and threaten them with the imposition of draconian fines if they were found to have transported waste to HTT. These threats are a direct attempt to penalize HTT for its seeking a review of Hudson County's regulations in the tribunal established by Congress for that purpose. These actions are separate violations of 42 U.S.C. § 1983. Plaintiff must seek relief in this Court as the Surface Transportation Board does not have injunctive power. The Essex and Hudson County Solid Waste Management Plans are complicated schemes whereby the counties, for fees, grant exclusive access to the waste transportation market in each county to one private entity. HTT is a Transload facility that operates in conformity with and under the

exclusive authority of 49 U.S.C. § 10102. Its operations are subject to regulation only by the Surface Transportation Board. Accordingly, the provisions of the county solid waste management plans at issue conflict with federal law with respect to HTT and such local regulations may not be enforced. The Counties' franchises are patently unconstitutional.

HTT has satisfied the requirements for the entry of a preliminary injunction to prevent further irreparable harm at Defendants' hand. Accordingly, HTT respectfully requests that this Court enter an Order providing as follows: 1) prohibiting Defendants from applying any state or local law relating to intermodal rail operations to HTT pending trial on the merits unless that action has been authorized by the Surface Transportation Board; 2) prohibiting Defendants from enforcing the Essex Solid Waste Management Plan ("SWMP") and the Hudson SWMP as they presently exist with respect to Plaintiff; and 3) restraining and enjoining Defendants and anyone acting in concert with them from interfering with, threatening, prosecuting or in any manner obstructing HTT's customers from utilizing the Transload Facility pending further Order of this Court.

STATEMENT OF FACTS

Plaintiff Hi Tech Trans, LLC is a limited liability company formed under the laws of the State of New Jersey, with its principal office and place of business at 91 Bay Avenue in the Oak Island Rail Yard, Newark, New Jersey (see Declaration of Ronald Klempner, August 1, 2002, Para. 1, hereinafter "Klempner, Para."). Defendants Hudson County Improvement Authority ("HCIA") and Defendant Essex County Utilities Authority ("ECUA") are corporate body politics of the State of New Jersey operating as independent and autonomous public entities (see Exhibits K, I, and J). Defendant Thomas P. Calvanico is the Executive Director of the HCIA and Defendant Mauro G. Tucci is the Chairman of the ECUA (see Exhibit C).

The Delaware and Hudson Railroad (DHRR) is a corporation duly organized under the laws of the state of Delaware, Exhibit B. It was formed in 1991 to acquire the assets of the former Delaware and Hudson Railway Company, a bankrupt railroad, the successor to the Delaware and Hudson Canal Company. In 1990, DHRR's parent, Canadian Pacific Limited purchased the assets and trackage rights of the former Delaware and Hudson Railway Company, a bankrupt carrier, which transaction was approved by the Interstate Commerce Commission, Canadian Pacific Limited---Purchase & Trackage Rights --Delaware & Hudson Railway Company (Finance Docket No. 31700) 7 I.C.C.95 (1990). One of the assets

acquired in that transaction was trackage rights into the Oak Island Rail Yard in Newark, N.J. (OIRY), See Exhibit B. Canadian Pacific Limited is now named the Canadian Pacific Railroad (CPR).

The right of CPR to trackage rights into Oak Island Yard was continued in the transaction wherein Conrail's assets were divided between Norfolk Southern Corp. (NS) and CSX Transportation Corp, (CSXT) a transaction approved by the Surface Transportation Board. Pursuant to those trackage rights, CPR has negotiated a lease of a portion of the Oak Island Yard from Contrail, an entity owned by NS and CSXT to operate certain terminal facilities and lines which serve major metropolitan areas, Exhibit B.

THE FACILITY AND ITS ACTIVITIES

CPR¹ has operated and continues to operate numerous multi-modal operations, including an intermodal operation such as containers of solid waste and other materials and various bulk loading of plastics, aggregates and other materials at the Oak Island Yard, both directly and through various licensees (see Exhibit "B"). Intermodal is a term used in the transportation industry to indicate that goods are being transported from one

¹ Both the Delaware and Hudson and the CPR will be referred to from this point on as "CPR" except where the distinction is needed for clarity.

point to another in one continuous trip utilizing more than one mode of transport pursuant to a single shipping document.

CPR entered into a license agreement (the "License Agreement") dated November 6, 2000 with HTT, whereby HTT would develop and operate a construction and demolition debris ("C&D" also at times referred to as "waste type 13") bulk waste loading facility (the "Transload Facility") at the OIRY. The license Agreement states the purpose as:

CPR desires to utilize a portion of the Railyard as designated for the transloading of non-hazardous construction and demolition debris ("C&D"). CPR desires to retain HTT to develop and operate the Premises for the benefit of CPR and for solicitation of Waste Products traffic and for the efficient transloading of Waste Products in transit for carriage on CPR."

(See Exhibit "B," Redacted License Agreement, Recitals, pg. 1). The License Agreement, Para 4(a) specifically limits HTT's activities as follows:

HTT will use the premises only for the Transfer of Waste Products from truck to rail cars operated by CPR. . .

In a statement filed with the Surface Transportation Board on HTT's petition for a Declaratory Order, above referred to, CPR characterized HTT's role as:

Hi Tech is a licensee of CPR. Pursuant to agreements between Hi Tech and CPR, High Tech obtains construction and demolition debris (C&D), transfers it from truck to rail at CPR's transload facility, and

then ships the C&D in interstate commerce on CPR's lines. Hi Tech is an integral component of CPR's movement of this particular type of freight by rail. Many producers of C&D cannot access rail transportation without the use of trucks. Furthermore CPR relies heavily upon Hi Tech to perform duties that are essential to the successful marketing of its rail services in the highly specialized area of C&D transportation"

Exhibit D.

HTT commenced operations of the Transload Facility on or about September 17, 2001 (see Exhibit "A").

HTT as a matter of courtesy, informed the New Jersey Department of Environmental Protection (NJDEP) in or about May of 2001, of the Agreements and of the planned development and operations at the Transload Facility (see Declaration of Ronald Klempner, July 31, 2002, Para 6 hereinafter "Klempner"). In or about November, 2001 and subsequent thereto, officials of the NJDEP advised HTT and its agents that the NJDEP would not require the Transload Facility to obtain a permit from the NJDEP to operate, Id.

The Transload Facility operates by the following procedure: 1) Trucks hauling C&D waste arrive at the facility; 2) The trucks discharge C&D into a "hopper" provided by HTT and located at the facility; and 3) The C&D is loaded directly into rail cars via the aforesaid "hoppers" in a continual throughput operation from truck to rail (Klempner, Para 5). C&D is neither stored nor processed at the Transload Facility, id.

CPR transports rail cars filled with C&D by HTT at the Transload Facility exclusively to out of state disposal facilities (Klempner, Para. 5). HTT arranges with appropriate rail served landfills, all located outside the State of New Jersey, as an accommodation to effectuate the ultimate disposal of the cargo for shippers as a service to attract customers to its railway services (see Exhibit "B" Recitals). Upon arrival at the designated out of state disposal facilities, C&D is offloaded from HTT's rail cars. The receiver of the cargo then sorts the various components of the C&D are removed from the rest of the material and recycled and/or put to beneficial reuse (Klempner Para 5).

The Transload Facility operates under the exclusive authority of 49 U.S.C. § 10102, and all rules and regulations of the Surface Transportation Board ("STB") (see Exhibits A).

In or about October 2001, NJDEP officials visited the Transload Facility (Klempner Para 6). Neither at that time nor at any subsequent time has the NJDEP informed HTT that any aspect of the Transload Facility and/or its operations are or were contrary to any health and safety requirements of the NJDEP. (Klempner Para. 6)

HTT serves customers in Hudson and Essex Counties by truck. Some customers are waste generators and some are haulers. HTT issues bills of lading for the CPR from the point of origin to

the point of destination, in most cases including a highway haul as well as the railway haul (Klempner Para 5).

HTT is a common carrier and not a contract carrier it will accept cargoes delivered to its facility by haulers which are unsolicited id.

HTT does not own any of the cargo in question, nor does it process any such cargo. HTT is engaged by the shippers solely to effectuate the transportation of such cargo (Klempner Para 6, Exhibit B License Para 4 (a)). At all times the cargo remains the property of the shipper until delivered to the landfill Klempner, supra.

THE HUDSON COUNTY SOLID WASTE MANAGEMENT PLAN

Upon information and belief, on or about March 11 1999, the Hudson County Board of Chosen Freeholders adopted a solid waste management plan ("Hudson SWMP") pursuant to which all C&D generated within Hudson County must be delivered to the Hackensack Meadowlands Development Commission 1-E North Area Landfill ("HMDC"), located in North Arlington, Bergen County, New Jersey, Exhibit K. HMDC is a disposal facility selected by Hudson County pursuant to a request for proposal ("Hudson RFP") (see Exhibit I contains relevant pages from the Hudson RFP, also see Exhibit K).

The Hudson SWMP was effectuated through an RFP and bid specifications for Solid Waste Disposal Services. The requirements of the Hudson RFP and bid specifications establish the types, requirements and qualifications of bidders which are entitled to bid for the opportunity to provide solid waste disposal services within Hudson County (see Exhibit I page ____). The requirements are both facially and in effect discriminatory against interstate commerce.

The bid specifications and RFP provide in pertinent as follows:

...In the event that a Successful Bidder's Disposal Facility(ies) for the provision of contingent Disposal Services is(are) located in excess of twenty (20) road miles from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. ...Where Bidder's Disposal Facility(ies) is(are) located in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton to the unit price bid by bidder, and a transportation services fee, to be calculated by multiplying \$0.1293 times the distance in road miles from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder's Disposal Facility to the average of the unit prices bid for each year over the five year term of the Disposal Services Agreement....
(See Exhibit I page 8-9").

The Hudson RFP further provides the following:

...The Successful Bidder shall own, lease or otherwise control, and operate and maintain one or more Disposal Facility(ies) capable of accepting at least 100,000 tons per year Processable Waste generated within Hudson County.... The Successful Bidder shall be responsible for obtaining all necessary permits, licenses and approvals required in connection with the provision of the Contingent Disposal Services detailed in these bid specifications, from all regulatory agencies having competent jurisdiction (see Exhibit I page 18).

The Hudson RFP delineates as part of the Hudson Solid Waste Management Plan that all solid wastes obtained from generators of the same must first be taken to a designated transfer station prior to allowing for shipment of solid wastes to a designated final disposal facility (see Exhibit I Page 1 and 7).

As part of the Hudson Solid Waste Management Plan, the shipment of solid wastes from a designated Transfer Station to a final Disposal Facility is to be exclusively accomplished by way of long haul trucking providers (see Exhibit I page 3 and 7). The Hudson Solid Waste Management Plan further expressly incorporates requirements which establish long haul trucking as the only acceptable method of delivering solid wastes from Designated Transfer Stations to the final Disposal Facilities (see Exhibit I page 3 and 7). The Hudson RFP also requires any competent bidder to possess NJDEP permits in order for its bid to be considered (see Exhibit I page ____). Upon information and belief, there is no requirement for either the local haulers

which collect solid wastes within Hudson or for the long haul truckers transporting solid wastes from the Transfer Station to the ultimate Disposal Facilities to possess an NJDEP permit.

Hudson County does not possess any indicia of ownership of own the C&D/Type 13 waste generated within Hudson County, nor does Hudson County own any facility for the transfer, transportation or disposal of the same (Klempner Para 10, see Exhibit I page 3). Nevertheless, Hudson County claims that it owns all C&D generated within Hudson County as the basis of its right to direct C&D generated within Hudson County to HMDC (see Exhibit "H").

Defendant HCIA is responsible for the implementation and enforcement of the SWMP (see Exhibit K). It has the power to issue citations for violations of the exclusive rights granted to contractors under the SWMP and the defendant employees are charged with investigating waste flows in the County, detecting violations of the County's contractual obligations and writing citations id.

The Hudson RFP and SWMP which ultimately resulted in the designation of the HMDC 1-E North Area Landfill as the sole destination of Hudson County generated type 13 waste, excluded, either expressly, by implication, by design or by omission, a rail transload facility, such as the Transload Facility (see Exhibits C, I pg. 7 and K).

HCIA does not pick up C&D waste nor does it provide any services in connection with the transportation of that waste nor does it own or lease or finance any facilities used to handle such waste (see Exhibit C, I pg. 7).

Under Hudson County's regulations, at issue, the waste generator must contract with a licensed hauler to transport the waste to the waste disposal facility designated by the HCIA, specifically HMDC (see Exhibit C). The sole disposal facility designated by the HCIA to receive all the C&D waste generated within Hudson County is not covered directly by the rail system (see Exhibit I pg. 7).

The County enacted administrative regulations which make delivery of waste to any other transfer station a violation of ordinances and state laws, and in so doing would impose draconian fines on any waste generator or hauler who is found to have delivered waste to any person or facility which is not authorized to receive waste by the HCIA, Exhibit C.

THE ESSEX COUNTY SOLID WASTE MANAGEMENT PLAN

Upon information and belief, on or about August 18th 1999 the Essex County Board of Chosen Freeholders adopted a solid waste management plan ("Essex SWMP") pursuant to which all C&D generated within Essex County must be delivered to a facility operated by Waste Management of New Jersey, Inc. (WMNJ) located at 666 Front Street, Elizabeth, Union County, New Jersey (see

Exhibit F). C&D received and processed at WMNJ is transported by truck to destinations located outside of the State of New Jersey (see Exhibit F). Upon information and belief, the Essex SWMP was approved by the NJDEP (see Exhibit F).

The Essex Solid Waste Management Plan was implemented by way of an RFP and accompanying bid specifications issued on March 23, 1998 (see Exhibit J. relevant pages of the Essex County RFP and bid specifications). The ECUA solicited bids for the provision of disposal services and/or transfer, transportation and disposal services for all solid wastes generated within Essex County (see Exhibit J). The requirements of the Essex RFP and bid specifications establish the types, requirements and qualifications of bidders which are entitled to bid for the opportunity to provide solid waste disposal services within Essex County (see Exhibit J pg. i).

The bid specifications provided in pertinent part as follows:

The Disposal Facilities utilized by the Contractor for the provision of Disposal Services in accordance with the Disposal Services Agreement, if awarded, and the Transfer Stations utilized by the Contractor for the provision of Combined Services in accordance with the Combined Services Agreement, if awarded, must be located within 15 miles of the Essex Resource Recovery Facility (see Exhibit J pg. iv).

See also id pg. 6.

The Essex Resource Recovery Facility refers to the waste to energy facility located at 183 Raymond Boulevard, Newark, New Jersey 07105 that is owned and operated by American Ref-Fuel Company of Essex, id. Pg 4.

The Bids Specifications further provide as follows:

With respect to the provision of Combined Services, Successful Bidder shall own, lease or otherwise have control of, and operate and maintain one or more transfer Stations capable of accepting at least 500,000 tons per year of Acceptable Waste.... (See Exhibit J pg. 20).

The Essex RFP delineates as part of the Essex Solid Waste Management Plan that all solid wastes obtained from generators of the same must first be taken to a designated transfer station prior to allowing for shipment of solid wastes to a designated final disposal facility (see Exhibit F).

As part of the Essex Solid Waste Management Plan, the shipment of solid wastes from a designated Transfer Station to a final Disposal Facility, either by design or effect, is to be exclusively accomplished by way of long haul trucking providers. The Essex Solid Waste Management Plan further expressly incorporates requirements which establish, either by design or effect, long haul trucking as the only acceptable method of delivering solid wastes from Designated Transfer Stations to the final Disposal Facilities.

The Essex RFP further requires any competent bidder to possess NJDEP permits in order for its bid to be considered (see Exhibit J, pg. 44, 44, 66, 76). Upon information and belief, there is no requirement for either the local haulers which collect solid wastes within Essex or for the long haul truckers transporting solid wastes from the Transfer Station to the ultimate Disposal Facilities to possess an NJDEP permit (see Exhibit "A").

As a further requirement relating to regulatory approvals, the Essex RFP requires:

At the time of bid submittal, the Transfer Station shall be operating pursuant to a valid NJDEP Solid Waste Facility ("SWF") permit, shall maintain compliance with the SWF and shall renew the SWF as necessary, as long as it is necessary for the term of the Combined Services Agreement (see Exhibit J pg. 44).

Upon information and belief, Essex County does not possess any indicia of ownership of the C&D generated within Essex County, nor does Essex County own any facility for the transfer, transportation or disposal of C&D. Nevertheless, Essex County claims that it owns all C&D generated within Essex County as the basis of its right to direct C&D generated within Essex County to WMNJ, Exhibit F).

Defendant ECUA is responsible for the implementation and enforcement of the SWMP, see Exhibit F. It has the power to

issue citations for violations of the exclusive rights granted to contractors under the SWMP and the defendant employees are charged by the Authority with investigating waste flows in the County, detecting violations of the County's contractual obligations and writing citations.

Upon information and belief, the Essex RFP excluded a rail transload facility, such as the Transload Facility, which operates under the jurisdiction of the STB, See Exhibit F. Upon information and belief, the Essex SWMP has been approved by the NJDEP, id. Essex County, through the ECUA seeks to maintain flow control over waste generated within that County, which results in revenue stream to the County.

ECUA does not pick up C&D waste nor does it provide any services in connection with the transportation of that waste nor does it own or lease or finance any facilities used to handle such waste see Exhibit J. The waste is generated by C&D sites in Essex County (see Exhibit F).

Under Essex County's regulations at issue, the waste generator must contract with a licensed hauler to transport the waste to the waste disposal and/or transfer facility designated by the ECUA. The disposal and transfer facilities designated by the ECUA to receive all the C&D waste generated within Essex County are not covered directly by the rail system.

The County enacted administrative regulations which make delivery of waste to any other transfer station or ultimate disposal facility a violation of ordinances and state laws, and in so doing would impose draconian fines on any waste generator or hauler who is found to have delivered waste to any person or facility which is not authorized to receive waste by the ECUA.

THE PUBLIC ENTITIES' INTERFERENCE WITH HTT'S OPERATIONS

After HTT began to contract for the transportation of waste generated in New Jersey, HCIA began to investigate the origins of waste arriving at the HTT facility (see Exhibit C). In response to HCIA's inquiries, HTT informed the defendants by letter of HTT's legal status and of the fact that it was not subject to HCIA's regulation, particularly one which denied County residents access to rail intermodal services, Exhibit E.

In spite of having been fully briefed on the applicable law, HCIA was unpersuaded and threatened to impose fines and penalties upon direct generators and haulers ("Hauling Customers") who bring C&D from direct generator customers in order to dissuade the delivery of C&D to the Transload Facility for ultimate disposal out of state. At that time Defendants responded to inquiries from Hauling Customers and direct generator customers advising them not to bring C&D to the Transload Facility. But, on information and belief, at that time

the Defendants took no overt action, simply rejecting the Plaintiffs legal arguments and responding to inquiries, Klempner Para, 7-13.

To end the dispute and to provide its customers with assurance that they would not be subject to fines, HTT filed a petition with the Surface Transportation Board for a Declaratory Order that its operation was not subject to such local regulation and that delivery of cargo to HTT could therefore not be penalized by HCIA; HTT Trans, LLC - Petition for a Declaratory Order - Hudson County, New Jersey, FD 34192 (see Exhibit "I," Petition). With the filing of that Petition employees of the HCIA began call or call on Hauling Customers in Hudson County and inform them that they would be subject to draconian fines if they were found to have transported waste to HTT, Klempner Para. 12. The result has been that increasing numbers of direct generator customers and Hauling Customers have been denied unfettered access to the interstate rail services rendered by HTT for waste generated within Hudson County (see Exhibit "A").

LEGAL ARGUMENT

POINT I

**THIS COURT SHOULD ISSUE THE REQUESTED PRELIMINARY
INJUNCTION BECAUSE THE REQUIREMENTS FOR ISSUANCE
OF INTERIM RELIEF ARE SATISFIED.**

This Court has the power to determine that an administrative regulation enacted by a County is repugnant to the constitution and to enjoin the enforcement of that regulation, Verizon Maryland, Inc. v. Public Service Commission of Maryland etc. ___ U.S. ___ Nos. 01-1531, 00-1711, 122 S. Ct. 1753, 1760 (May 20, 2002). Specifically, the Commerce Clause is "...a substantive 'restriction on permissible state regulation' of interstate commerce... (I)ndividuals injured by state action that violates this aspect of the Commerce Clause may sue and obtain injunctive and declaratory relief", Mark E. Dennis v. Margaret L. Higgins, 498 U.S. 439, 447, 111n S. Ct. 865, 870 (1991). Indeed, the principal that a state may not deny any citizen the right to trade freely in the commerce between the states has been the well settled law of this nation since 1824.

As stated in the case of Gibbons v. Ogden, *supra*, the issue presented by this motion is not new:

The acts of the Legislature of the State of New-York, granting to Robert R. Livingston and Robert Fulton the exclusive navigation of all the waters within the jurisdiction of that State, with boats moved by fire or steam, for a term of years, are repugnant to that clause of the constitution of the United States, which authorizes Congress to regulate commerce, so far as the said acts prohibit vessels licensed, according to the laws of the United States, for carrying on the costing trade, from navigating the said waters by means of fire or steam.

Gibbons v. Ogden, *Supra*.

In light of the seminal decision of the Supreme Court on the precise issue now before this court, the Plaintiff has: 1) a high probability of success on the merits; 2) established irreparable injury if the relief is denied; 3) established that granting preliminary relief will not result in cognizable harm to the nonmoving party; and 4) established that the preliminary relief is in the public interest. Where, as here, the actions sought to be enjoined bar the citizens of Hudson and Essex Counties from free access to the instrumentalities of interstate commerce, specifically authorized by Congress, authority deemed exclusive and sacrosanct by century and three quarters of Constitutional precedent, Plaintiff has fulfilled all the prerequisites for the issuance of a preliminary injunction as set forth in decisions of the Third Circuit. ACLU of New Jersey v. Black Horse Pike Reg. Board of Education, 84 F.3d 1471 (3rd Cir. 1996), citing Gerardi v. Pelullo, 16 F.3d 1363, 1373 (3rd Cir. 1994) (quoting SI Handling Systems, Inc. v. Heisley, 753 F.2d 1244, 1254 (3rd Cir. 1985)). See also S & R Corporation v. Jiffy Lube International, Inc., 968 F.2d 371, 374 (3rd Cir. 1992), citing Hoxworth v. Blinder, Robinson & Co., 903 F.2d 186, 197-198 (3rd Cir. 1990).

A. Plaintiff Will Suffer Irreparable Harm if the Preliminary Injunction is Not Entered.

Where, as here, the actions complained of deny citizens rights guaranteed to them by the Constitution and Laws of the United States, irreparable harm is established. See North Jersey Media Group, Inc. v. Ashcroft, ___ F. Supp. ___ N.. (D.N.J. Civ. A. 02-967(JWB) May 28, 2002) (enjoining the barring of the press and public from deportation hearings without a particularized determination that closure is necessary to advance an important government interest deemed a violation of the First Amendment, establishing irreparable harm) Jefferson Ltd. v. City of Columbus, ___ F. Supp. ___ 2002 WL 1583528 (S.D.Ohio 2002-CV-0055, May 6, 2002) (restriction on adult entertainment deemed violative of the First and Fourteenth amendments, establishing irreparable harm), Harris v. Gaddick , 593 F. Supp.128, 135 (M.D. Alabama 1984) (interference with the right to vote establishes irreparable harm).

Here, the Defendants have contacted the Plaintiff's customers and threatened them with fines if they ship C&D via the Plaintiff and, thus, by rail. Such action entitles the Plaintiff to injunctive relief. Medigen of Kentucky, Inc v. Public Service Commission, 787 F. Supp. 602, 610 (S.D.W. Va. 1992), is a nearly identical case where state employees called the plaintiff's customers and instructed them to ship via another carrier as that plaintiff was operating without State authority. The actions of the State's employees were found to

be under color of state law and, as such, an actionable violation of the plaintiff's constitutionally guaranteed right to participate in interstate commerce. These nearly identical facts entitled that plaintiff to a preliminary injunction.

In Dennis v. Higgins, *supra*, 445 S. Ct. 869, the Court made it clear that there is no priority of constitutional rights. All are equally protected from abridgement by local action by the Constitution and by 42 U.S.C. §1983. Irreparable harm is established merely by the abridgement of a constitutionally protected right. American Civil Liberties Union v. Reno, 217 F. 3d 162, k 179, *affd.* 521 U.S. 844 (3rd Cir. 1996); Jefferson Ltd. v. City of Columbus, *supra.*, Alton Box Board Co. et al v. City of Alton, Illinois, 1971 W.L. 764*2 (S.D. Ill. 1971) (threat of prosecution based upon unconstitutional law creates irreparable harm).

Therefore, since HTT is suffering deprivation of a constitutionally guaranteed right it has thus established irreparable harm.

B. Plaintiff Has A Legal Entitlement to Relief and a Likelihood of Success on the Merits

As is stated above, a local government's attempted trumping of federal rights is repugnant to well settled constitutional principals. The unassailable legal basis for the entry of the Order HTT requests is articulated at greater length in Points

II, infra. HTTP has a high probability of success on the merits.

C. Defendants Will Not Suffer any Harm if the Requested Injunction is Entered as the entry of the requested injunction is in the public interest.

The public interest will not be injured by the issuance of the preliminary relief requested as "neither the Government nor the public generally can claim an interest in the enforcement of an unconstitutional law", ACLU v. Reno, supra.

Based on the foregoing, Plaintiff HTTP respectfully requests that this Court enter the requested preliminary injunction.

POINT II

THE HUDSON AND ESSEX COUNTY SOLID WASTE MANAGEMENT PLANS CONFLICT WITH AND ARE NULLIFIED OR PREEMPTED BY FEDERAL LAW.

HTTP's entire operation fits within the definition of a rail carrier's operation and, as such, is fully authorized by federal law to operate. Under applicable federal law the plaintiff has the absolute right to operate free from local regulation. "By conferring exclusive jurisdiction over railroad matters to the STB the ICCTA imposes a binding obligation on the states not to regulate railroads with respect to those matters" Boston and Maine Corp v. Town of Ayer, ___ F. Supp ___ 2002 WL 1286098 (D. Mass. Civ. A. 99-12606*2, June 10, 2002) (granting attorneys fees to railroad under 42 U.S.C. § 1988(b) due to towns violation of 42 § 1983 in seeking to regulate the railroad).

The Constitution of the United States cedes to the Federal Government all authority over commerce. Congress has delegated its exclusive authority over rail transportation to the Surface Transportation Board, as successor to the Interstate Commerce Commission, 49 U.S.C. § 10101, et seq. The legal structure under which the STB regulates the nation's rail services is comprehensive and is exclusive. Congress manifested its specific intent to exclude the States from any role in the regulation of rail carriers in two provisions of this legislation. Congress, manifesting clear intent to minimize regulation of commerce, defined the term rail carrier broadly.

Pursuant to 49 U.S.C. § 11321(a) CPR is a rail carrier and is a "person participating in (an) approved or exempted transaction..." which "...is exempt from the anti trust laws and from all other law, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain and operate property and exercise control of the franchisees acquired through the transaction."

HTT is a rail carrier as that term is defined in 49 U.S.C. § 10102(5), to wit "a person providing common carrier railroad transportation for compensation" as HTT "regardless of ownership" is engaged in services related to that movement, i.e., the "receipt, delivery, elevation,"..." transfer in

transit,"...handling" of property, 49 U.S.C. § 10102(9)(B). HTT is an entity engaged exclusively in handling freight in a continuous intermodal rail move and the entirety of that movement including the pick up and delivery services extending into the defendant's counties is a rail move, Central States Motor Freight Bureau Inc. v. Interstate Commerce Commission, 924 F. 2d 1099,1102 (D.C. Cir. 1991).

Title 49 U.S.C. § 10501(b) provides that the authority of the Surface Transportation Board over "(1) transportation by rail carriers and the remedies provided in this part with regard to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services and facilities of such carriers' and (2) the construction, acquisition, operation, abandonment, or discontinuation of spur, industrial, team, switching, or side tracks or facilities, even if the tracks are located or intended to be located entirely in one state, is exclusive."

CPR trackage rights into Oak Island Yard result from a transaction approved the Board. CPR's choice to use HTT to extend its services to local customers in Hudson and Essex Counties is specifically exempt from any form of local regulation. 49 U.S.C. §11321(a) specifically proscribes any law which impedes the exclusive authority of the Surface Transportation Board See City of Auburn v. United States, 154

F.3d 1025, 1029 (9th Cir. 1998). The exemption from state law contained in the §11321, is to be interpreted broadly, See; Ex Norfolk & Western Ry. V. American Train Dispatchers, Assn. 499 U.S. 117, 127-34. (1991) "The... language in §11321(a) exempting carriers from ...State and municipal law is clear broad and unqualified". See also, CSX Transportation v. Georgia Public Service Commission, 944 F. Supp. 1573, 1585 (N.D. Ga. 1996). The congressional intent to preempt is express. Congress has made its intent to exempt rail operations from all State and Federal law other than the Interstate Commerce Commission Termination Act clear².

HTT's operations fall squarely within the definition of a rail carrier contained in § 10102(5) of the act. It is engaged solely interstate operations. It is exclusively governed under the federal jurisdiction of the STB and is absolutely entitled to be free from local regulation, Boston and Main v. Ayer, supra.

Where, as here, Hudson County seeks to impose criminal sanctions for exercising a right to use federally authorized transportation services, the County's regulations conflict absolutely with Federal Law and are both a nullity. Cipollone v. Liggett Group, Inc. 505 U.S. 504, 515 (1992), Teper v. Miller,

² In the ICC Termination Act Congress made it clear that it intended to retain the broad authority of the Board to approve inter-carrier transactions among railroads which including this exemption from all law which may tend to interfere. See H.R. Conf. Report 104-422 * 189, 1955 U.S.C.C.A.N. 850,**874.

82 F. 3d 989, 993 (8th Cir. 1993), Free v. Bland, 369 U.S. 663, 666 (1962) and violate 42 USC § 1983, Boston and Main v. Ayer, Supra. The actions of employees seeking "under color of state law" to enforce this unconstitutional law by intimidation also and separately violates 42 U.S.C. § 1983, Medigen of Kentucky Inc v. Public Service Commission, Supra.

If Hudson and Essex Counties may grant exclusive franchises within their territory a multiplicity of such regulations would cripple the nation's transportation system. The threat to the national interest requires nullification of local action whenever it affects interstate commerce even where the purpose of the action is not overtly discriminatory particularly where a multiple of such local actions have the potential of a national effect. Our courts have stated as follows:

We conclude that the ordinance's effects upon interstate commerce are far from trivial. Assuming, as we must, that all cities such as Columbus enacted flow control ordinances like the one at issue here, the interstate market in recyclable materials extracted from solid waste could be substantially diminished or impaired, if not crippled.

Over 20 States have enacted statutes authorizing local governments to adopt flow control laws. If the localities in these states impose the type of restriction on the movement of waste that Clarkstown has adopted, the free movement of solid waste in the stream of commerce will be severely impaired. Indeed, pervasive flow control would result in the type of balkanization the [Commerce] Clause is primarily intended to prevent. U & I Sanitation. V. City of Columbus, 205 F. 3d 1063, 1071 (8th Cir. 2000), citing



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164 Franklin Tpk.,
Waldwick, NJ 07463,
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New York, N.Y. 10004
212-483-0875

Attorneys for the plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HI TECH TRANS, LLC,

Civil Action No. 02-3781(FJH)

Plaintiff,

vs.

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

ORDER

Defendants.

This motion having come before this Court on the 7th day of
August, 2002 and after reading and carefully considering the submissions and
Plaintiff
arguments of the parties it is

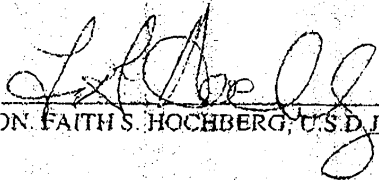
~~ORDERED~~ that pending further order of this Court, the defendants and all
persons or entities acting in concert with them are enjoined from

IT IS on this 7th day of August, 2002,

ORDERED that Plaintiff serve the instant Complaint and Order to Show Cause upon Defendants by 5:00 p.m. on August 9, 2002; and it is further

ORDERED that Defendants' opposition is due by 5:00 p.m. on September 9, 2002, and Plaintiff's reply is due by 5:00 p.m. on September 16, 2002.

If necessary, the Court will thereafter schedule a hearing on the matter.


HON. FAITH S. HOCHBERG, U.S.D.J.

W. Patrick Quast*
164 Franklin Tpk.,
Waldwick, N.J. 07463,
201-444-5990
Fax 201-444-5094

John F. McHugh
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875

Attorneys for the plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HI TECH TRANS, LLC,

Civil Action No. _____

Plaintiff,

vs.

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

ORDER TO SHOW CAUSE

Defendants.

Upon reading and carefully considering the Verified Complaint dated
August 1, 2002 and upon the Declaration of Ronald Klempner dated July 31, 2002, and
good cause having been shown. the defendants are

ORDERED TO SHOW CAUSE before the Hon. _____

In Room ____ of the Courthouse, at ____ .M. on the ____ day of _____,
2002 why an order should not be entered by this Court preliminarily enjoining the
defendants and all persons or entities action in concert with them from

1) applying any state or local law relating to any designation of a recipient of
Construction and Demolition Waste, also known as waste type 13 to Plaintiff or to
plaintiffs customers pending a further order of this Court or until such action by the
defendants has been authorized by the Surface Transportation Board;

2) prohibiting Defendants from enforcing the Essex Solid Waste Management
Plan ("SWMP") and the Hudson SWMP as they presently exist with respect to Plaintiff;
and

3) restraining and enjoining Defendants and anyone acting in concert with them
from interfering with, threatening, prosecuting or in any manner obstructing HTT's
customers from utilizing the Transload Facility pending further Order of this Court.

And it is further

Ordered that sufficient cause having been shown the Plaintiff may serve a
copy of this Order To Show Cause on the defendants not later than _____
2002 and any responding papers shall be served on the Plaintiff's attorney and filed with
the Court not later than _____ and the Plaintiff may reply by

_____.

J.S.C.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HI TECH TRANS, LLC,

Plaintiff,

vs.

SUMMONS IN A CIVIL CASE

CASE NUMBER _____

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

Defendants.

TO: Hudson County Improvement Authority
2 Journal Square Plaza, 8th Floor
Jersey City, N.J. 07306

YOU ARE HEREBY SUMMONED and required to serve upon
PLAINTIFF'S ATTORNEY, W. Patrick Quast, Esq., c/o John F. McHugh, Esq.
6 Water Street, Suite 401, New York, N.Y. 10004, 212-483-0875

an answer to the complaint which is herewith served upon you, within twenty days after
service of this summons upon you, exclusive of the day of service. If you fail to do so,
judgment by default will be taken against you for the relief demanded in the complaint.
You must file your answer with the Clerk of this Court within a reasonable time after
service.

CLERK

DATE

(BY) DEPUTY CLERK

RETURN OF SERVICE		
Service of the Summons and Complaint was made by me ¹		DATE
NAME OF SERVER (PRINT)		TITLE
<i>Check one box below to indicate appropriate method of service</i>		
☐ Served personally upon the defendant. Place where served: _____ _____		
☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ _____		
☐ Returned unexecuted: _____ _____ _____		
☐ Other (specify): _____ _____ _____		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct. Executed on _____ Date Signature of Server _____ Address of Server		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HI TECH TRANS, LLC,

Plaintiff,

SUMMONS IN A CIVIL CASE

vs.

CASE NUMBER _____

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

Defendants.

TO: Thomas P. Calvanico, Executive Director
Hudson County Improvement Authority
2 Journal Square Plaza, 8th Floor
Jersey City, N.J. 07306

YOU ARE HEREBY SUMMONED and required to serve upon
PLAINTIFF'S ATTORNEY, W. Patrick Quast, Esq., c/o John F. McHugh, Esq.
6 Water Street, Suite 401, New York, N.Y. 10004, 212-483-0875

an answer to the complaint which is herewith served upon you, within twenty days after
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HI TECH TRANS, LLC,

Plaintiff,

vs.

SUMMONS IN A CIVIL CASE

CASE NUMBER _____

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

Defendants.

TO: Essex County Utilities Authority
120 Fairview Avenue
Cedar Grove, N.J. 07009

YOU ARE HEREBY SUMMONED and required to serve upon
PLAINTIFF'S ATTORNEY, W. Patrick Quast, Esq., c/o John F. McHugh, Esq.
6 Water Street, Suite 401, New York, N.Y. 10004, 212-483-0875

an answer to the complaint which is herewith served upon you, within twenty days after
service of this summons upon you, exclusive of the day of service. If you fail to do so,
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(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HI TECH TRANS, LLC,

Plaintiff,

vs.

SUMMONS IN A CIVIL CASE

CASE NUMBER _____

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

Defendants.

TO: Mauro G. Tucci, Chariman
Essex County Utilities Authority
120 Fairview Avenue
Cedar Grove, N.J. 07009

YOU ARE HEREBY SUMMONED and required to serve upon
PLAINTIFF'S ATTORNEY, W. Patrick Quast, Esq., c/o John F. McHugh, Esq.
6 Water Street, Suite 401, New York, N.Y. 10004, 212-483-0875

an answer to the complaint which is herewith served upon you, within twenty days after
service of this summons upon you, exclusive of the day of service. If you fail to do so,
judgment by default will be taken against you for the relief demanded in the complaint.
You must file your answer with the Clerk of this Court within a reasonable time after
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HI TECH TRANS, LLC,

Plaintiff,

CIVIL ACTION NO.

vs.

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY
UTILITIES AUTHORITY, THOMAS P.
CALVANICO, individually and in his
capacity as the Executive Director of the
Hudson County Improvement Authority,
MAURO G. TUCCI, individually and in
his capacity as Chairman of the Essex
County Utilities Authority, and JOHN
DOE 3, employee or agent of The Essex
County Utilities Authority,

VERIFIED COMPLAINT

Defendants.

THE PARTIES

1. Plaintiff, Hi Tech Trans, LLC, and ("HTT") is a limited liability company formed under the laws of the State of New Jersey, with its principal office and place of business at 91 Bay Avenue in the Oak Island Rail Yard, Newark, New Jersey.
2. Defendant, Hudson County Improvement Authority ("HCIA"), located at 574 Summit Avenue, 5th Floor, Jersey City, New Jersey 07306, is a corporate body politic of the State of New Jersey, operating as an independent and autonomous public entity.
3. Defendant, Essex County Utilities Authority ("ECUA"), located at 900 Bloomfield Avenue, Verona, NJ 07044 is a corporate body politic of the State of New Jersey operating as an independent and autonomous public entity.

4. Defendant Thomas P. Calvanico is the Executive Director of the HCIA.
5. Defendant Mauro G. Tucci is the Chairman of the ECUA.

NON-PARTY ENTITIES

6. The Canadian Pacific Railroad ("CPR") is a corporation duly organized under the laws of Canada. CPR acquired the assets and rights of the Delaware and Hudson Railway Company in a transaction approved by the Interstate Commerce Commission in 1990, Canadian Pacific Limited-Purchase & Trackage Rights-Delaware & Hudson Railway Company, Finance Docket 31700. Pursuant to that approved transaction, CPR obtained trackage rights into Oak Island Yard in Newark, N.J.. In 1991 CPR formed the Delaware & Hudson Railroad Company to operate the assets acquired. The right to operate into Oak Island Yard was continued as part of the division of Conrail between Norfolk Southern Corp. and CSX Transportation Corp, a transaction approved by the Surface Transportation Board.. CPR has been engaged in interstate and foreign commerce for its entire corporate existence.

JURISDICTION

7. The complaint states causes of action under Article I, Section 8, the Fifth Amendment and the Fourteenth Amendment, Section One of the Constitution of the United States and under 42 U.S.C. Section 1983. This Court has subject matter jurisdiction pursuant to 42 U.S.C. 10102 and 28 U.S.C. Sections 1331 and 1367.

THE FACILITY AND ITS ACTIVITIES

8. CPR leases a portion of the OIRY which is used for various multi-modal operations, including an intermodal container operation and several bulk loading operations involving plastics, aggregates and other materials.
9. The CPR obtained trackage rights over the lines of the former Lehigh Valley Railroad from Eastern Pennsylvania to OIRY, a major classification yard in Newark, New Jersey as part of the Final System Plan which created Conrail pursuant to an act of the United States Congress.
10. The trackage rights of the CPR are restricted to intermodal operations i.e. transportation of goods utilizing more than one mode of transport, i.e. trucks and rails etc..
11. CPR entered into a license agreement (the "License Agreement") dated November 6, 2000 with HTT, whereby HTT would develop and operate a construction and demolition debris ("C&D" also at times referred to as "waste type 13") bulk waste loading facility (the "Transload Facility") at the OIRY restricted to loading such materials on railcars to be shipped by rail
12. The License Agreement provides:

HTT will use the premises only for the transportation of freight in interstate commerce by rail and for activities directly related thereto. It is agreed that HTT will confine its activities to the shipment of waste products.
13. According to publicly filed statements made by CPR, relating to the License Agreement:

HTT is a licensee of CPR. Pursuant to agreements between HTT and CPR, HTT obtains construction and demolition debris (C&D), transfers it from truck to rail at CPR's transload facility, and then ships the C&D in interstate commerce on CPR's lines. HTT is an integral component of CPR's movement of this particular type of freight by rail. Many producers of C&D cannot access rail transportation without the use of trucks. Furthermore CPR relies heavily upon HTT to perform duties that are essential to the

successful marketing of its rail services in the highly specialized area of C&D transportation.

14. CPR entered into a transportation agreement dated November 6, 2000 (the "Transportation Agreement") with HTT whereby CPR would transport rail cars to destinations served by CPR or to other rail carriers who interconnected with CPR. (The License Agreement and Transportation Agreement are collectively referred to as the "Agreements").
15. HTT informed the New Jersey Department of Environmental Protection (NJDEP) in or about May of 2001, of the Agreements and of the planned development and operations at the Transload Facility.
16. In or about November, 2001 and subsequent thereto, officials of the NJDEP advised HTT and its agents that the NJDEP would not require the Transload Facility to obtain a permit from the NJDEP to operate.
17. HTT commenced operations of the Transload Facility on or about September 17, 2001.
18. Intermodal freight service is the movement of cargo of any type via multiple transportation modes from an origin to destination pursuant to a single shipping agreement.
19. Intermodal freight movement is recognized by the STB and the rail industry to include movement of freight to the rail head, transloading of freight at the rail head and transporting freight by rail to distant locations.
20. The Transload Facility operates by the following procedure: 1. Trucks hauling C&D waste arrive at the facility; 2. The trucks discharge C&D into a "hopper" provided by HTT and located at the facility; 3. The C&D is loaded directly into rail cars via the

aforesaid “hoppers” in a continual throughput operation from truck to rail. C&D is neither stored nor processed at the Transload Facility.

21. CPR transports rail cars filled with C&D by HTT at the Transload Facility exclusively to out of state disposal facilities or to interchange points with other rail carriers en route to disposal facilities all currently outside the State of New Jersey.
22. HTT arranges with appropriate rail served landfills as an accommodation to effectuate the ultimate disposal of the cargo for shippers. Hi Tech believes this is a necessary service if its efforts to attract customers to railway services are to be successful.
23. Upon arrival at the designated out of state disposal facilities, C&D is offloaded from HTT's rail cars and various components of the C&D are removed from the rest of the material and recycled and/or put to beneficial reuse.
24. The Transload Facility operates in conformity with and under the exclusive authority of 49 U.S.C. 10102, and all rules and regulations of the Surface Transportation Board (“STB”).
25. The Transload Facility does not operate contrary to any health and safety requirements of the NJDEP.
26. In or about October 2001, NJDEP officials visited the Transload Facility. Neither at that time nor at any subsequent time has the NJDEP ever informed HTT that any aspect of the Transload Facility and/or its operations are or were contrary to any health and safety requirements of the NJDEP. Similarly, Plaintiff has never been cited for violations of any health and safety requirements of the NJDEP.
27. Rail carriers have substituted local trucking between the rail head and the customer in lieu of a direct rail spur into the customer as a means of providing rail service to its

customers. The STB has recognized that the foregoing means of providing rail service is proper and within the STB's jurisdiction.

28. The intermodal freight services undertaken at the Transload Facility have been operated directly by the railroad and also by other organizations licensed by the railroad to conduct operations on that leasehold to facilitate intermodal services.
29. Some of HTT's customers are C&D haulers ("hauling customers") which pick up C&D from generators of C&D. As to these customers, HTT provides a rail bill of lading for transport of the C&D delivered by the hauling customers to the Transload Facility.
30. Some of HTT's customers are generators of C&D ("direct generator customers"). As to direct generator customers, HTT provide those customers with a railroad bill of lading to a selected destination, and HTT arranges for a local trucking company to pick up the C&D from the direct generator customer and bring it to the Transload Facility.
31. HTT issues bills of lading for the CPR from the point of origin to the point of destination, in most cases including a highway haul as well as the railway haul. In all cases the highway mileage is minimal in comparison with the rail mileage, the former of which is less than 10 miles and the latter of which is over 600 miles. However, as HTT is a common carrier and not a contract carrier it will accept cargoes delivered to its facility by haulers which are unsolicited.
32. HTT does not own any of the cargo in question, nor do they process any such cargo.
33. HTT is engaged by the shippers solely to effectuate the transportation of such cargo.
34. At all time the cargo remains the property of the shipper until delivered to the landfill.
35. HTT does not store or process any cargo.

THE HUDSON COUNTY SOLID WASTE MANAGEMENT PLAN

36. Upon information and belief, on or about March 11 1999, the Hudson County Board of Chosen Freeholders adopted a solid waste management plan ("Hudson SWMP") pursuant to which all C&D generated within Hudson County must be delivered to the Hackensack Meadowlands Development Commission 1-E North Area Landfill ("HMDC"), located in North Arlington, Bergen County, New Jersey. HMDC is a disposal facility selected by Hudson County pursuant to a request for proposal ("Hudson RFP").
37. The Hudson SWMP was effectuated through an RFP and bid specifications for Solid Waste Disposal Services. The requirements of the Hudson RFP and bid specifications establish the types, requirements and qualifications of bidders which are entitled to bid for the opportunity to provide solid waste disposal services within Hudson County. The requirements are both facially and in effect discriminatory against interstate commerce.
38. The bid specifications and RFP provides in pertinent as follows:
- ...In the event that a Successful Bidder's Disposal Facility(ies) for the provision of contingent Disposal Services is(are) located in excess of twenty (20) road miles from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. ...Where Bidder's Disposal Facility(ies) is(are) located in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton to the unit price bid by bidder, and a transportation services fee, to be calculated by multiplying \$0.1293 times the distance in road miles from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder's Disposal Facility to the average of the unit prices bid for each year over the five year term of the Disposal Services Agreement....
39. The Hudson RFP further provides the following:
- ...The Successful Bidder shall own, lease or otherwise control, and operate and maintain one or more Disposal Facility(ies) capable of accepting at least 100,000 tons per year Processable Waste generated within Hudson County.... The Successful Bidder shall be responsible for obtaining all necessary permits, licenses and

approvals required in connection with the provision of the Contingent Disposal Services detailed in these bid specifications, from all regulatory agencies having competent jurisdiction.

40. The Hudson RFP delineates as part of the Hudson Solid Waste Management Plan that all solid wastes obtained from generators of the same must first be taken to a designated transfer station prior to allowing for shipment of solid wastes to a designated final disposal facility.
41. As part of the Hudson Solid Waste Management Plan, the shipment of solid wastes from a designated Transfer Station to a final Disposal Facility is to be exclusively accomplished by way of long haul trucking providers.
42. The Hudson Solid Waste Management Plan further expressly incorporates requirements which establish long haul trucking as the only acceptable method of delivering solid wastes from Designated Transfer Stations to the final Disposal Facilities.
43. The Hudson RFP further requires any competent bidder to possess NJDEP permits in order for its bid to be considered.
44. Upon information and belief, there is no requirement for either the local haulers which collect solid wastes within Hudson or for the long haul truckers transporting solid wastes from the Transfer Station to the ultimate Disposal Facilities to possess an NJDEP permit.
45. Upon information and belief, Hudson County does not own the C&D/Type 13 waste generated within Hudson County, nor does Hudson County own any facility for the transfer, transportation or disposal of the same. Nevertheless, Hudson County claims that it owns all C&D generated within Hudson County as the basis of its right to direct C&D generated within Hudson County to HMDC.

46. Defendant HCIA is responsible for the implementation and enforcement of the SWMP. It has the power to issue citations for violations of the exclusive rights granted to contractors under the SWMP and the defendant employees are charged with investigating waste flows in the County, detecting violations of the County's contractual obligations and writing citations.
47. The Hudson RFP and SWMP which ultimately resulted in the designation of the HMDC 1-E North Area Landfill as the sole destination of Hudson County generated type 13 waste, excluded, either expressly, by implication, design or by omission, a rail transload facility, such as the Transload Facility.
48. As part of its waste flow regime, Hudson requires that all recyclable material, sorted from solid waste handled and transported by a potential participant in the solid waste management regime, return such material, regardless of the disposal destination, back to the Hudson County designated facility which is the SWT&R Transfer Station and/or the HMDC.
49. Upon information and belief, the Hudson SWMP has been approved by the NJDEP.
50. Hudson County seeks to maintain flow control over waste generated within that County which results in a revenue stream to the HCIA.
51. HCIA does not pick up C&D waste nor does it provide any services in connection with the transportation of that waste nor does it own or lease or finance any facilities used to handle such waste.
52. The waste is generated by C&D sites in Hudson County.

53. Under Hudson County's regulations, at issue, the waste generator must contract with a licensed hauler to transport the waste to the waste disposal facility designated by the HCIA, specifically HMDC.
54. The sole disposal facility designated by the HCIA to receive all the C&D waste generated within Hudson County is not covered directly by the rail system.
55. The County enacted administrative regulations which make delivery of waste to any other transfer station a violation of ordinances and state laws, and in so doing would impose draconian fines on any waste generator or hauler who is found to have delivered waste to any person or facility which is not authorized to receive waste by the HCIA.
56. The administrative provision Hudson County seeks to enforce reads as follows:

All solid waste facility operators and transporters registered with the Department and operating within the County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the County Plan. Any facility operator or transporter who fails to comply with the provisions contained herein shall be deemed to be in violation of N.J.S.A. § 12:1E-1 et seq., in violation of N.J.S.A. 7:25-a et seq., and in violation of their registration to operate a solid waste facility or a collection system issued thereunder by the Department and shall be subject to the provisions and penalties of N.J.S.A. § 13:1E-9 and 12 and all other applicable laws.

The relevant provisions of N.J.S.A. § 13:1E-9 read as follows:

Any person who knowingly:

- (1) Transports any hazardous waste to a facility or any other place which does not have authorization from the department to accept such waste;
- (2) Generates and causes or permits to be transported any hazardous waste to a facility or any other place which does not have authorization from the department to accept such waste;

- (3) Disposes, treats, stores or transports hazardous waste without authorization from the department;

shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.A. 2C:43-3, shall be subject to a fine of not more than \$50,000.00 for the first offense and not more than \$100,000.00 for the second and each subsequent offense and restitution, in addition to any other appropriate disposition authorized by subsection b. of N.J.S.A. 2C:43-2.

The relevant provision of N.J.S.A. § 13:1E-12 read as follows:

Revocation or suspension of registration

The department, after hearing, may revoke or suspend the registration issued to any person engaged in the solid waste collection or solid waste disposal upon a finding that such person:

- a. Has violated any provision of this act or any rule, regulation, or administrative order promulgated hereunder; or
- b. Has violated any provision of any laws related to pollution of the waters, air or land surfaces of the State; or
- c. Has refused or failed to comply with any lawful order of the department.

57. The activities of the HCIA referenced above are conducted under regulations that are economic in nature and are unrelated to health and safety requirements.

THE ESSEX COUNTY SOLID WASTE MANAGEMENT PLAN

58. Upon information and belief, on or about August 18th 1999 the Essex County Board of Chosen Freeholders adopted a solid waste management plan ("Essex SWMP") pursuant to which all C&D generated within Essex County must be delivered to a facility operated by Waste Management of New Jersey, Inc. (WMNJ) located at 666 Front Street, Elizabeth, Union County, New Jersey. The aforesaid WMNJ facility is a transfer station

selected by Essex County pursuant to a request for proposal ("Essex RFP"). C&D received and processed at WMNJ is transported by truck to destinations located outside of the State of New Jersey. Upon information and belief, the Essex SWMP was approved by the NJDEP.

59. The Essex Solid Waste Management Plan was implemented by way of an RFP and accompanying bid specifications issued on March 23, 1998. The ECUA solicited bids for the provision of disposal services and/or transfer, transportation and disposal services for all solid wastes generated within Essex County. The requirements of the Essex RFP and bid specifications establish the types, requirements and qualifications of bidders which are entitled to bid for the opportunity to provide solid waste disposal services within Essex County. The requirements are both facially and in effect discriminatory against interstate commerce.

60. The bid specifications provided in pertinent part as follows:

The Disposal Facilities utilized by the Contractor for the provision of Disposal Services in accordance with the Disposal Services Agreement, if awarded, and the Transfer Stations utilized by the Contractor for the provision of Combined Services in accordance with the Combined Services Agreement, if awarded, must be located within 15 miles of the Essex Resource Recovery Facility.

61. The Essex Resource Recovery Facility refers to the waste to energy facility located at 183 Raymond Boulevard, Newark, New Jersey 07105 that is owned and operated by American Ref-Fuel Company of Essex.

62. The Agreement defines Transfer Stations as transfer stations located within 15 miles of the Essex Resource Recovery Facility that is utilized by the Contractor, for the provision of Combined Services in accordance with the Combined Services Agreement.

63. The Bids Specifications further provides as follows:

With respect to the provision of Combined Services, Successful Bidder shall own, lease or otherwise have control of, and operate and maintain one or more transfer Stations capable of accepting at least 100,000 tons per year of Acceptable Waste....

64. The Essex RFP delineates as part of the Essex Solid Waste Management Plan that all solid wastes obtained from generators of the same must first be taken to a designated transfer station prior to allowing for shipment of solid wastes to a designated final disposal facility.
65. As part of the Essex Solid Waste Management Plan, the shipment of solid wastes from a designated Transfer Station to a final Disposal Facility, either by design or effect, is to be exclusively accomplished by way of long haul trucking providers.
66. The Essex Solid Waste Management Plan further expressly incorporates requirements which establish, either by design or effect, long haul trucking as the only acceptable method of delivering solid wastes from Designated Transfer Stations to the final Disposal Facilities.
67. The Essex RFP further requires any competent bidder to possess NJDEP permits in order for its bid to be considered.
68. Upon information and belief, there is no requirement for either the local haulers which collect solid wastes within Essex or for the long haul truckers transporting solid wastes from the Transfer Station to the ultimate Disposal Facilities to possess an NJDEP permit.
69. The Essex RFP further requires as follows:

The Successful Bidder shall comply with all applicable laws and regulation in the States and localities in which the transportation services are to be provided. The Successful Bidder must comply with all applicable regulations, policies and interpretations of the NJDEP...and shall be responsible for assuring that all such licenses are hold by the Successful Bidder, to the extent required under the terms such NJDEP regulations... All vehicles and

containers, including tractors and trailers used for the provisions of transportation services shall be certified by the NJDEP, Division of Solid Waste Management and shall have a valid certified registration.

70. As a further requirement relating to regulatory approvals, the Essex RFP requires

At the time of bid submittal, the Transfer Station shall be operating pursuant to a valid NJDEP Solid Waste Facility ("SWF") permit, shall maintain compliance with the SWF and shall renew the SWF as necessary, as long as it is necessary for the term of the Combined Services Agreement.

71. As for transportation services, the RFP requires ...the Successful Bidders must comply with all applicable regulations, policies and interpretations of the NJDEP.

72. The Bid Specifications require that the following documentation be provided by a Successful Bidder

1. List of all equipment to be dedicated to the performance of the Transportation Services, including NJDEP registration numbers...
2. Copy of Certificate of Public Necessity and Convenience issued by the NJDEP...

73. Upon information and belief, Essex County does not own the C&D generated within Essex County, nor does Essex County own any facility for the transfer, transportation or disposal of C&D. Nevertheless, Essex County claims that it owns all C&D generated within Essex County as the basis of its right to direct C&D generated within Essex County to WMNJ.

74. Defendant ECUA is responsible for the implementation and enforcement of the SWMP. It has the power to issue citations for violations of the exclusive rights granted to contractors under the SWMP and the defendant employees are charged by the Authority with investigating waste flows in the County, detecting violations of the County's contractual obligations and writing citations.

75. Upon information and belief, the Essex RFP excluded a rail transload facility, such as the Transload Facility, which operates under the jurisdiction of the STB.
76. Upon information and belief, the Essex SWMP has been approved by the NJDEP.
77. Essex County, through the ECUA seeks to maintain flow control over waste generated within that County, which results in a revenue stream to the County.
78. ECUA does not pick up C&D waste nor does it provide any services in connection with the transportation of that waste nor does it own or lease or finance any facilities used to handle such waste.
79. The waste is generated by C&D sites in Essex County.
80. Under Essex County's regulations at issue, the waste generator must contract with a licensed hauler to transport the waste to the waste disposal and/or transfer facility designated by the ECUA.
81. The disposal and transfer facilities designated by the ECUA to receive all the C&D waste generated within Essex County are not covered directly by the rail system.
82. The County enacted administrative regulations which make delivery of waste to any other transfer station or ultimate disposal facility a violation of ordinances and state laws, and in so doing would impose draconian fines on any waste generator or hauler who is found to have delivered waste to any person or facility which is not authorized to received waste by the ECUA.
83. The administrative provision Essex County seeks to enforce reads as follows:

All solid waste facility operators and transporters registered with the Department and operating within the County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the County Plan. Any facility operator or transporter who fails to comply with the provisions contained herein shall be deemed to be in violation

of N.J.S.A. § 12:1E-1 et seq., in violation of N.J.S.A. 7:25-a et seq., and in violation of their registration to operate a solid waste facility or a collection system issued thereunder by the Department and shall be subject to the provisions and penalties of N.J.S.A. § 13:1E-9 and 12 and all other applicable laws.

The relevant provisions of N.J.S.A. § 13:1E-9 read as follows:

Any person who knowingly:

- (4) Transports any hazardous waste to a facility or any other place which does not have authorization from the department to accept such waste;
- (5) Generates and causes or permits to be transported any hazardous waste to a facility or any other place which does not have authorization from the department to accept such waste;
- (6) Disposes, treats, stores or transports hazardous waste without authorization from the department;

shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.A. 2C:43-3, shall be subject to a fine of not more than \$50,000.00 for the first offense and not more than \$100,000.00 for the second and each subsequent offense and restitution, in addition to any other appropriate disposition authorized by subsection b. of N.J.S.A. 2C:43-2.

The relevant provision of N.J.S.A. § 13:1E-12 read as follows:

Revocation or suspension of registration

The department, after hearing, may revoke or suspend the registration issued to any person engaged in the solid waste collection or solid waste disposal upon a finding that such person:

- d. Has violated any provision of this act or any rule, regulation, or administrative order promulgated hereunder; or
- e. Has violated any provision of any laws related to pollution of the waters, air or land surfaces of the State; or

Has refused or failed to comply with any lawful order of the department.

84. The activities of the ECUA referenced above are conducted under regulations that are economic in nature and are unrelated to health and safety requirements.

THE PUBLIC ENTITIES INTERFERENCE WITH HTT'S OPERATIONS

85. After HTT began to contract for the transportation of waste generated in New Jersey, HCIA began to investigate the origins of waste arriving at the HTT facility.
86. Upon information and belief, Defendants have threatened to impose fines and penalties upon direct generators and haulers ("Hauling Customers") who bring C&D from direct generator customers in order to dissuade the delivery of C&D to the Transload Facility for ultimate disposal out of state.
87. Upon information and belief, Defendants have communicated orally to Hauling Customers and direct generator customers not to bring C&D to the Transload Facility.
88. As a result of the threats and communications referred to above, many of HTT's Hauling Customers have refused to deliver C&D to the Transload Facility or transport waste on behalf of direct customers.
89. HTT filed a petition with the Surface Transportation Board for a Declaratory Order that its operation was not subject to such local regulation, HTT Trans, LLC - Petition for a Declaratory Order - Hudson County, New Jersey, FD 34192.
90. With the filing of that Petition the HCIA began to inform Hauling Customers in Hudson County that they would be subject to draconian fines if they were found to have transported waste to HTT. The result has been that increasing numbers of direct

generator customers and Hauling Customers have been denied unfettered access to the interstate rail services rendered by HTT for waste generated within Hudson County.

FIRST COUNT

91. Plaintiff hereby repeats and incorporates by reference each preceding paragraph as if set forth herein in its entirety.
92. No state may grant an exclusive right to any entity, which by its terms denies its citizens full access to the instrumentalities of interstate commerce. Any person or entity, authorized by Congress to provide transportation services in such commerce may not be denied access to the commerce of any place due to the grant of any such right by any local or state government.
93. The CPR acquired the assets and operating rights of the Delaware & Hudson Railway Company in 1990, a transaction approved by the Interstate Commerce Commission. This acquisition included operating rights into Newark, New Jersey. .
94. Pursuant to 49 U.S.C. § 11321(a) the CPR is a rail carrier and is a “person participating in that approved or exempted transaction...” and “...is exempt from the anti trust laws and from all other law, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain and operate property and exercise control of the franchisees acquired through the transaction.”
95. CPR has chosen to “operate property and exercise control of the franchise” utilizing the services of plaintiff for the purpose of obtaining and loading Construction and Demolition waste onto its trains on the CPR’s property.
96. Plaintiff is a rail carrier as that term is defined in 49 U.S.C. § 10102(5), to wit “a person providing common carrier railroad transportation for compensation” as Plaintiff

“regardless of ownership” is engaged in services related to that movement, i.e., the “receipt, delivery, elevation,”...“ transfer in transit,”...“handling” of property, 49 U.S.C. § 10102(9)(B).

97. Plaintiff is an entity engaged exclusively in handling freight in a continuous intermodal rail move and all aspects of that move, including pick up and delivery of cargos are exempt from local regulation by federal law.
98. Title 49 U.S.C. § 10501(b) provides that the authority of the Surface Transportation Board over “(1) transportation by rail carriers and the remedies provided in this part with regard to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services and facilities of such carriers’ and (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks or facilities, even if the tracks are located or intended to be located entirely in one state, is exclusive.”
99. 49 U.S.C. § 11321(a) specifically proscribes any law which impedes the exclusive authority of the Surface Transportation Board to approve transactions involving rail carriers or the operation of facilities and services pursuant to the Board’s orders, including exemptions. The statutory scheme established by Congress provides HTT as well as shippers seeking to utilize its services with the right to operate its interstate rail operations free from local regulation of any kind.
100. Defendants, under color of state law seek to prevent entities within their respective Counties from exercising a right established by statute for the benefit of such entities as well as for the benefit of entities such as Plaintiff by threatening the imposition of criminal sanctions, in violation of 42 U.S.C. 1983.

101. Plaintiff is suffering irreparable damage as the defendants, under color of state law, are denying the plaintiff rights guaranteed to it and to its customers under the Constitution and Laws of the United States.
102. By reason of the above HTT is entitled to a permanent injunction against the defendants, restraining them from taking any action under color of state law, which includes the ordinances and administrative regulations of Hudson County and Essex County, respectively, to deny any entity or person the right to utilize plaintiff's services the use of which by such entities and persons is guaranteed by the Constitution and Laws of the United States.
103. HTT is also entitled to an award of its costs and attorney's fees incurred in vindicating its rights under pursuant to 42 U.S.C. 1988(b).

WHEREFORE, the Plaintiff demands judgment as follows:

1. A Declaratory Judgment that the authority of the Surface Transportation Board over the operations of HTT and the operations of its shippers and haulers seeking to utilize HTT's services is exclusive;
2. A Declaratory Judgment that HTT's operations are exempt from the application of any state or local law including the administrative regulations here in issue relating to its intermodal rail operations;
3. A Declaratory Judgment that the defendants can take no action to enforce any such law unless that action has been authorized by the Surface Transportation Board; and
4. For an award of costs and attorneys fees accrued in the course of this action.
5. Such other relief as this Court deems just and equitable.

SECOND COUNT

104. Plaintiff hereby repeats and incorporates by reference each preceding paragraph as if set forth herein in its entirety.
105. The Commerce Clause of the United States Constitution has a negative or dormant component, which dictates that States may not erect barriers to interstate trade whenever Congress has not affirmatively acted to either authorize or forbid challenged State activity. USCA Const. Art. 1, § 8, CL.3.
106. A statute or regulation triggers heightened scrutiny under the dormant commerce clause whenever it has a discriminatory purpose or effect on interstate commerce.
107. A discriminatory statute is per se unconstitutional under the dormant commerce clause, save in a narrow class of cases in which a municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance legitimate state interests.
108. The requirements of the Hudson and Essex RFP's and bid specifications establish the types, requirements and qualifications of bidders which are entitled to bid for the opportunity to provide solid waste disposal services within Hudson Essex Counties. The requirements within the RFP's and bid specifications are both facially and in effect discriminatory against interstate commerce.
109. Due to HTT's solely interstate operations and the manner of its operation as an interstate rail carrier, it is exclusively governed under the federal jurisdiction of the STB. As such, it is under no obligation to obtain permits from the NJDEP or any other State or local entity in order to operate the Transload Facility. The ability to transport solid waste via rail to out of state disposal sites as part of interstate commerce, without additional State

or local permits, is a part of the rights HTT enjoys under the exclusive Federal jurisdiction of the STB.

110. As a prerequisite to participation in the Hudson and Essex SWMP's, HTT would be obligated to subject itself to laws, regulations and ordinances which are in addition to and different from those required for its lawful interstate operation under federal law pursuant to the STB. Voluntarily subjecting itself to the additional and different State and local regulations imposed under the Hudson and Essex RFP's, would result in waiver by HTT of its right to be governed by the exclusive federal jurisdiction of the STB and 49 U.S.C.10102.
111. Both the Essex and Hudson SWMP's mandate the utilization of local Transfer Stations as an integral mandatory component of their respective waste flow regimes. Both SWMP's expressly and by effect favor local Transfer Stations and final Disposal facilities over entities and facilities that operate exclusively in interstate commerce such as Plaintiff.
112. Both the Essex and Hudson SWMP's favor local facilities, at the expense of entities such as HTT which operate exclusively in interstate commerce, through the use of additional financial burdens not imposed upon local participants.
113. As part of its overtly discriminatory waste flow regime, Hudson imputes additional fees and tariffs to the fees entities such as HTT would otherwise charge, as a consequence of HTT's operation in interstate commerce and exclusive utilization of out of state disposal facilities. The additional artificial fee's imposed upon entities such as HTT impermissibly burden their ability to compete for the opportunity to participate in the Hudson and Essex SWMP's.

114. As part of its overtly discriminatory waste flow regime, Hudson requires that all recyclable material, sorted from solid waste handled and transported by a potential participant in the solid waste management regime, return such material, regardless of the disposal destination, back to the Hudson County designated facility which is the SWT&R Transfer Station and/or the HMDC. The clear intent and effect of this requirement is to unduly burden interstate commerce, overtly favor potential participants which are local to Hudson County, and discriminate against entities such as HTT which operate exclusively in interstate commerce.
115. The Essex County SWMP further impermissibly requires the utilization of final disposal sites located no more than fifteen miles from the ECRRF located within Essex County. Such a requirement on its face and by effect, illegally burdens interstate commerce and prospective plan participants such as Plaintiff which operate exclusively in interstate commerce.

WHEREFORE, the Plaintiff demands judgment as follows:

1. A Judgment declaring the Essex County SWMP invalid and unconstitutional insofar as it impermissibly burdens interstate commerce;
2. Declaratory Judgment enjoining enforcement of the Essex SWMP as it presently exists and;
3. Judgment declaring the Hudson County SWMP invalid and unconstitutional insofar as it impermissibly burdens interstate commerce;
4. A Declaratory Judgment enjoining enforcement of the Hudson SWMP as it presently exists and;
5. The award of such other relief as this Court deems just and equitable.

THIRD COUNT

116. Plaintiff hereby repeats and incorporates by reference each preceding paragraph as if set forth herein in its entirety.
117. Since in or about late 2001, Plaintiff has been in the business of operating the Transload facility at the OIRY.
118. The business relationships Plaintiff has developed with its customers since that time are of significant value and are the property of Plaintiff.
119. As set forth at length above, defendants have tortiously and/or intentionally interfered with Plaintiff's operations and with its lawful business relationships with its waste hauler and generating customers.
120. Defendants have threatened to fine and otherwise penalize any entity bringing solid waste to Plaintiff's facility for transport out of state.
121. Defendants' actions have been conducted with malicious intent to interfere with Plaintiff's business and prospective business relationships with its customers.
122. Defendant's actions were wrongful and without justification or excuse.
123. As the result of defendant's actions, Plaintiff has been irreparably harmed and has been substantially damaged.

WHEREFORE, Plaintiff demands judgment against defendants, jointly and severally, as follows:

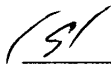
- 1.. For a preliminary and permanent injunction (1) restraining and enjoining defendants and anyone acting in concert with them from interfering with, threatening, prosecuting or in any manner obstructing Plaintiff's customers from utilizing the Transload Facility;

W/ Patrick Quast

164 Franklyn Tpk
Waldwick, N.J. 07463
201-444-5990

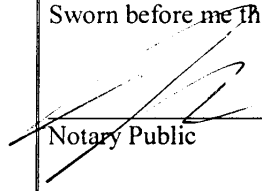
VERIFICATION

Ronald Klempner being first duly sworn deposes and says that he is a Managing Member of Hi Tech Trans, LLC and is familiar with the facts, that he has read the complaint and knows the facts set forth therein to be true of his own knowledge or where an averment is set forth on belief he is familiar with the industry and its operations generally and believes the averments to be true based upon that knowledge.



Ronald Klempner

Sworn before me this 2nd day of August, 2002



Notary Public

JOHN FRANCIS McHUGH
Notary Public, State of New York
No. 31-4886140
Qualified in New York County
Commission Expires February 2, 2002 

W.Patrick Quast*
164 Franklin Tpk.,
Waldwick, N.J. 07463,
201-444-5990
Fax 201-444-5094

John F. McHugh
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875

Attorneys for the plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HI TECH TRANS, LLC,

Civil Action No. _____

Plaintiff,

vs.

HUDSON COUNTY IMPROVEMENT
AUTHORITY, ESSEX COUNTY UTILITIES
AUTHORITY, THOMAS P. CALVANICO,
individually and in his capacity as the Executive
Director of the Hudson County Improvement
Authority, MAURO G. TUCCI, individually
and in his capacity as Chairman of the Essex
County Utilities Authority, and JOHN DOE 3,
employee or agent of The Essex County
Utilities Authority,

Defendants.

Ronald Kempner declares pursuant to 28 U.S.C. §1746 that the following
information is true under penalty of perjury and if called to testify in this matter I would
testify competently as follows:

1. I am a managing member of Hi Tech Trans, LLC. (HTT). It is a limited
liability company organized under the laws of New Jersey and having offices at 91 Bay

Avenue, Newark, N.J. and make this declaration in support of HTT's application for a preliminary injunction. No prior application for this relief has been made to any court.

2. In the course of developing the business plan for HTT I obtained three informal opinions from the Surface Transportation Board, all of which indicated that the proposed operation, i.e. to transport waste from a location in Northern New Jersey by rail to distant locations at the specific request of the originating owners of that waste, was an activity under the exclusive jurisdiction of the Surface Transportation Board Exhibit A.

3. I negotiated a license agreement with the Delaware and Hudson Railroad Corp. (DHRC) a wholly owned subsidiary of the Canadian Pacific Railroad Corp. (CPR) (D&H act in this transaction as CPR and are referred to herein as CPR) which was signed on or about November 6, 2000. In that agreement CPR agreed to license HTT to occupy a certain portion of the Oak Island railroad yard in Newark, N.J. (OIRY) to develop a facility to load Construction and Demolition waste onto rail cars. HTT and CPR also entered into a transportation agreement relating to rates to move HTT cars on its system and to car service and to assure HTT with sufficient access to cars to avoid any delay in the movement of the materials out of OIRY. Pursuant to the license agreement, HTT can conduct no other activity on the OIRY other than load C&D onto rail cars without CPR's consent. The specific language containing that restriction is quoted in the brief.

4. In June of 2000 HTT filed a petition with the STB to be recognized as a rail carrier. CPR informed us that the petition was unnecessary as we would be working to place cargo on their trains and as CPR was a rail carrier, separate authority for HTT was unnecessary. That petition was withdrawn.

5. The facility was constructed at OIRY. It is simple. Trucks of C&D are weighed in and then they dump their product into the hopper. The hopper's only function is to provide a direct transfer of the product from the truck into the rail car without any spillage. HTT controls dust with a water spray. Cargo is inspected only to assure conformity with our CPR license. After loading, the rail cars are moved by CPR directly or in interchange on a CPR bill of lading issued by HI Tech from the point of origin, i.e. the waste generator, to a landfill where the cargo is delivered to the Landfill Operator. Hi Tech is a common carrier and accepts waste from generators at the point of origin and from haulers at its facility. Some haulers solicit traffic for Hi Tech on a commission basis. Hi Tech transloads and ships and contracts for the receipt of cargos for its customers. Hi Tech does not own any of the materials it handles.

6. The New Jersey Department of Environmental Protection was provided with the details of the proposed Hi Tech operation and the two informal opinions from the STB I had obtained at that time, May of 2001, (See Exhibit A May 3, 2000 and October 19, 2000,). In October NJDEP inspectors visited the operation. Hi Tech has not received any violations. CPR also submitted a letter to the DEP dated March 6 2002 stating:

It is the practice of CP and DHRR to enter into license and operating agreements with local service companies to operate various functions in a rail yard on behalf of the railroads. DHRR has entered into such an agreement with Hi Tech Trans, LLC ("HTT") whereby, HTT has been licensed as DHRR's agent in the OIRY to operate truck to rail transloading operations for construction and demolition debris, soils and waste containers in the OIRY as part of CP's and DHRR's rail operations..

That letter including a redacted copy of the licensing agreement are Exhibit B. NJDEP informed HI Tech that it did not object to the operation.

7. The current problem started on October 16, 2001. On that day David Ruiz Jr. a Senior Enforcement Officer with the Hudson County Improvement Authority, (HCIA) which I am informed is a body politic under the laws of the State of New Jersey established by Hudson County to manage its waste disposal program, attempted to deliver a letter to HTT in the name of one of HTT's customers at the HTT office in Newark. HTT would not accept the letter for the absent customer, but our attorney, John F. McHugh, called Robert E. Barry, General Counsel of HCIA to determine what the problem may be.

8. MR. Barry informed Mr. McHugh that HCIA believed that HTT was accepting waste in violation of HCIA's rules. He forwarded a copy of the letter, Exhibit C. In that letter the defendant, Thomas P. Calvanico, informs Hi Tech LLC, mistakenly combined with Fiore Recycling, that State Law required all haulers of waste to deliver waste generated within Hudson County only to the County designated facilities, i.e. to transfer stations which have been granted an exclusive franchise to handle Hudson County Waste. One of the types of waste upon which the County had granted an exclusive franchise was No. 13 which is Construction and Demolition Waste, the product HTT handles as "an integral component of CPR's movement of this particular type of freight by rail".

Submission of Delaware and Hudson Railway Company, Inc. on Finance Docket 34192
June 5, 2002 Exhibit D.

9. HTT replied by John F. McHugh, explaining the authority under which HTT operated and providing Mr. Calvanico with copies of the Informal Opinions of the Surface Transportation Board. Exhibit E. (A similar letter was received from the Essex County Utilities Authority Exhibit F and replied to, Exhibit G). Hudson County soundly

rejected HTT's authority and insisted on proceeding to enforce its regulations, by letter dated January 29, 2002. Exhibit H.

10. I met with HCIA on February 15, 2002. The issues were discussed but it became evident at that meeting that despite the lack of a solid legal response to HTT's position, HCIA was not going to back down due exclusively to the fact that it derived substantial revenue from the franchise it had granted and it would take no action that conceded that that revenue stream was unlawful. HCIA asserted ownership of all C&D originating in Hudson County. However, they do not buy it, they do not pick it up from generators, they do not own any facilities for handling or transporting it. They simply dictate where it must be delivered by a generator.

11. Immediately after that meeting HTT determined to bring the matter to the Surface Transportation Board to request for a declaratory order. A petition for a Declaratory Order filed on April 4, 2002. The petition was amended¹ and responding papers were filed on June 5, 2002. HTT made a motion to strike part of the reply of the New Jersey Department of Environmental Protection as it claimed that no federal agency had authority to hear such a case relying on Federal Maritime Commission v South Carolina State Ports Authority, No. 01-46,535 ___ U.S. ___ (May 28, 2002) but ignoring Verizon Maryland, Inc. v. Public Service Commission of Maryland etc. ___ U.S. ___ Nos. 01-1531, 00-1711, 122 S. Ct. 1753, 1760 (May 20, 2002) which restated the rule that a Federal court can enjoin unconstitutional action by a state agency. The state also claimed that Hi Tech was not under the jurisdiction of the Surface Transportation Board.

¹ CPR was originally a party with the approval of the same gentleman who had signed the letter to the NJDEP and who had conducted all negotiations with HTT. However, after the filing CPR's general counsel objected and insisted that it be removed as a party and that statements in the petition, based upon Mr. Marsh's letter, be revised. However, CPR then reentered the case on June 5, 2002 asserting similar facts in slightly different language, Submission of Delaware and Hudson Railway Company, Inc. supra.

However, both under the license agreement, Exhibit B, and in fact, Hi Tech does nothing but solicit C&D business for CPR, including seeking out customers, sending trucks to pick up their cargos, moving the cargos to the OIRY, loading the cargo onto railcars, issuing a single bill of lading for the entire move, and arranging with a land fill to receive the cargo. These are all services needed to attract this business to the railroad and these are services CPR has chosen to provide through Hi Tech, as stated in their submission to the STB and in the License agreement.

12. Shortly after the filing of the petition in April, HTT began to hear from its haulers and waste customers that they had been called or visited by representatives of HCIA and were threatened with huge fines if they continued to deliver or transport waste to HTT for rail shipment. In May and June this campaign began to be felt in a reduction of traffic from both Hudson and Essex Counties and customers began to report receiving violation notices from both counties.

13. I personally spoke with Micheael Ciullo of East Coast Sanitation Company, Inc. East Coast is one of HTT's largest customers. He informed me that he has been called by representatives of both Hudson and Union Counties and was informed that his company would be subject to fines for each load of waste originating in those counties which East Coast has delivered to HTT. East Coast still delivers C&D waste to HTT but not from Hudson and Essex. Mr. Ciullo informed me that he does not want to incur liability for any more fines.

14. Our sales staff has received similar explanations from other waste generators in both Hudson and Essex Counties. Even haulers with whom we have entered into agreements where we pay commissions to them to solicit business for the rail operation

have been cited by both Hudson and Essex Counties. These truckers in particular are fully within the jurisdiction of the Board as they are our agents with regard to any business they can obtain.

15. I have obtained copies of the request for proposals upon which the current exclusive franchises were granted. I have had extensive experience in the waste industry and I can confidently inform the Court that the provisions of these RFPs exclude both rail operators and out of state operators from these counties, (copies of the relevant provisions are Exhibits I, Hudson County and Exhibit J, Essex County) as;

a. they have mileage provisions between a spot in each county and the proposer's operating transfer station imposing penalties for distance.

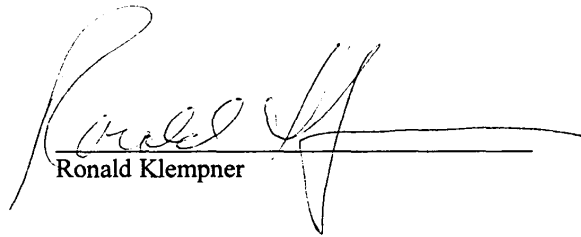
b. the designated county transfer station through which all waste must flow is, in each case, a truck to truck facility.

I note that the designated transfer stations provide no service except to move waste from one truck to another and to collect a fee per ton, a portion of which is paid to the respective defendant county authority. By designating a truck only facility, only truckers can economically handle the cargo. Further, bidders must be operating with substantial surplus capacity, another qualification which excludes all rail operators from filing a conforming proposal. And Essex County requires a New Jersey Department of Environmental Protection permit. A rail car replaces ten long haul truck trips and saves 40% of the fuel uses and emissions generated in moving waste to remote landfills.

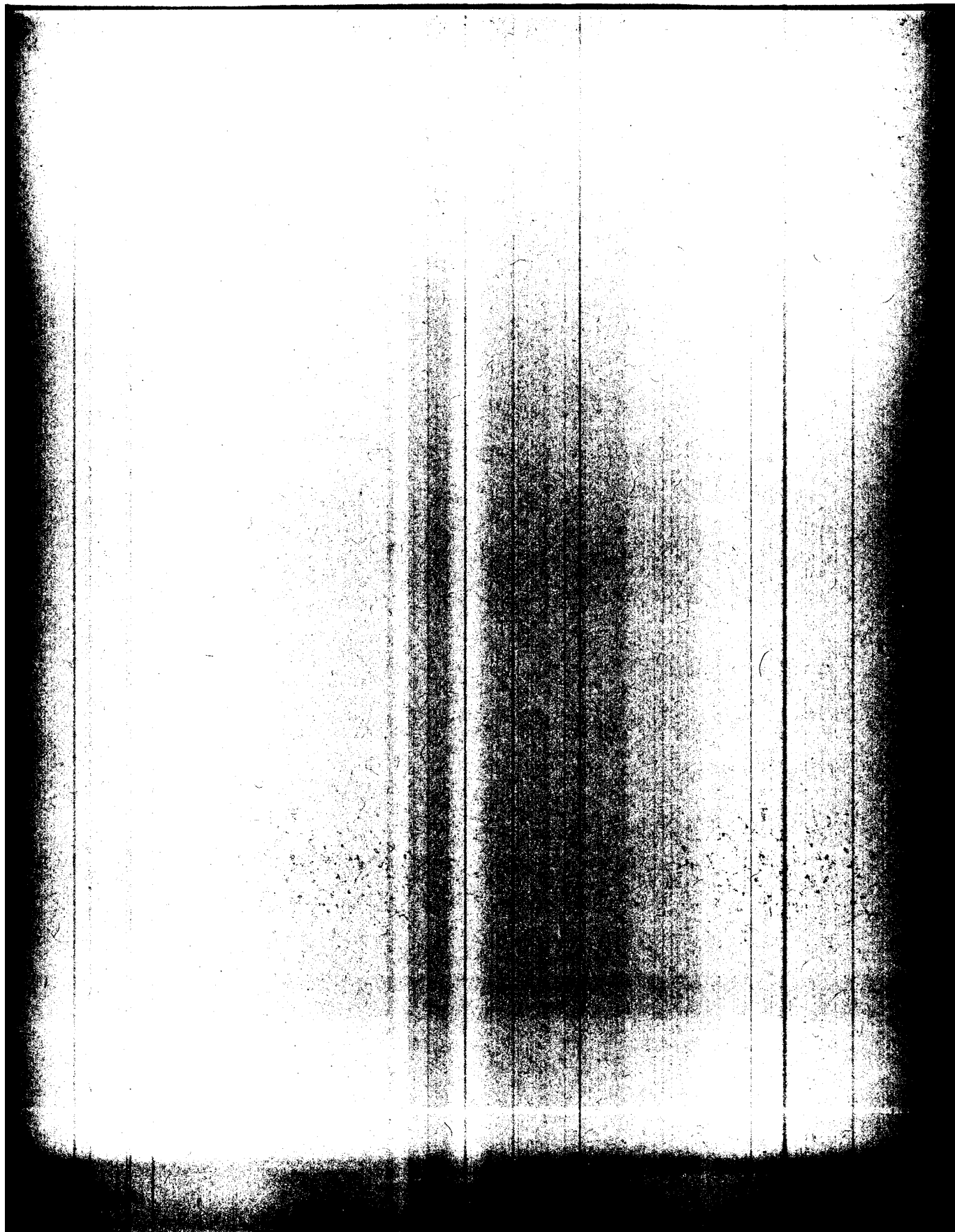
16. However, for the purposes of this motion for a preliminary injunction, HTT seeks only to restrain any effort to enforce the regulations in question pending resolution of the central issue, whether the defendants can grant and enforce with criminal sanctions exclusive franchisees granted by County created authorities to private entities for a price, to engage in interstate commerce within Hudson County and Essex County.

Wherefore I respectfully request that this motion be granted and that the preliminary injunction be issued.

Dated, Newark, N.J.
July 31, 2002



Ronald Klempner





Surface Transportation Board
Washington, D.C. 20423-0001

May 3, 2000

Office of the Secretary

Mr. Ronald Klemptner
Hi Tech Trans, LLC
843 Red Road
Teaneck, NJ 07666

Dear Mr. Klemptner:

This responds to your letter of April 24, 2000, requesting an informal opinion regarding the scope of Federal preemption of state and local environmental and zoning permitting requirements for the proposed development and operation of a truck-to-rail transshipment facility by Hi Tech Trans, LLC (HHT) at the Oak Island Rail Yard (OIRY) in Newark, NJ.

HTT plans to file with the Surface Transportation Board (STB or Board) for authority to operate as a common carrier. Under an agreement with the Delaware and Hudson Railway (DHR), a Class II carrier currently using the OIRY for rail storage, transfer and transport, HTT will lay rail for mobile pieces of equipment and asphalt for trucks to enable the transloading of bulk cargo from truck to rail gondola cars. HTT will also install and operate switches and connecting tracks to facilitate the movement of rail cars around the yard. DHR will transport the loaded rail gondola cars to their destinations.

Although you do not specify in your letter the exact nature of the local zoning and permitting requirements to which this project might be subject, I assume that the local authorities could deny any permit application you might file thereby preventing the project from going forward. It is my informal opinion that this action is preempted by the ICC Termination Act of 1995 (ICCTA) (49 U.S.C. 10101 *et seq.*)

Under 49 U.S.C. 10501(b) jurisdiction of the Board over rail transportation is exclusive and State laws are expressly preempted. Preemption, of course, does not withdraw from State and local governments the power to impose appropriate health and safety regulations and the police powers reserved to the States by the Tenth Amendment to the Federal Constitution. But the local law is preempted when the challenged statute or regulation stands as an obstacle to authorized interstate rail transportation. See STB Finance Docket No. 33200, *Cities of Auburn and Kent, WA - Petition for Declaratory Order*, served July 2, 1997 (copy enclosed).

Section 10501(b) states:

"The jurisdiction of the Board over-

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to rail transportation are exclusive and preempt the remedies provided under Federal or State law."

The term "transportation" includes any facility related to the movement of passengers or property by rail, and services related to that movement. See 49 U.S.C. 10102(9).

In *Soo Line Railroad Co. v. City of Minneapolis*, 38 F.Supp.2d 1096 (D.Minn., 1998), the court enjoined the City from utilizing local regulations to bar demolition of five buildings located on railroad property as part of the carrier's proposed redevelopment of a rail yard. The court said "when section 10501(b) grants the STB exclusive jurisdiction over 'transportation by rail carriers' it logically includes the yard, property, facilities and any intermodal equipment used in connection with a railroad, or related to the movement of passengers or property".

Faced with a similar issue in *Norfolk Southern Ry. Co. v. City of Austell, GA*, No CIVAI:97-CV-1018-RLV, (N.D.Georgia, 1997) (copy enclosed), the court said, "the local regulation, via a zoning ordinance and a land-use permitting requirement, of the construction, development, and operation of an intermodal facility, a facility which is operated in order to transfer containers or trailers of cargo between trains and tractor-trailers so that the cargo may be shipped in interstate commerce, certainly appears to come within the 'regulation of rail transportation' which is explicitly preempted by section 10501(b)". This case seems to be nearly identical to the case you submit to me for an informal opinion.

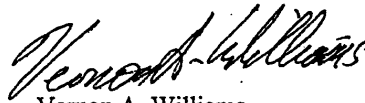
A case dealing with preemption is currently pending before the Board in STB Finance Docket No. 33466. Please look for that case when it comes out on our web site at www.stb.dot.gov. I cannot give you a date of release at this time, but a press release will accompany the case when it is served.

You also ask if the proposed project is exempt from the Board's regulation under 49 U.S.C. 10906. In my informal opinion the operation of a transloading facility by a rail carrier falls within that exemption. I have said that the operation of HTT's proposed project falls clearly within the Board's jurisdiction under 49 U.S.C. 10501(b)(2). 49 U.S.C. 10906 provides a

statutory exemption from the licensing requirements of part 109 for the "construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching or side tracks." Tracks used to enable transloading operations fall within that category.

This is an informal staff opinion and is not binding on the Board.

Sincerely,



Vernon A. Williams
Secretary

Enclosures



Surface Transportation Board
Washington, D.C. 20423-0001

October 19, 2000

Office of the Secretary

Mr. Ronald A. Klempner
Hi Tech Trans, LLC
843 Red Road
Teaneck, NJ 07666

Dear Mr. Klempner:

This responds to your letter of September 29, 2000, requesting an informal opinion on, first, whether or not the operations of a proposed truck-to-rail transloading facility are subject to 49 U.S.C. 10906.

The operations you describe in your letter seem substantially similar to those you described in your letter to me of April 24, 2000, i.e. that the facility is to be used for rail storage, and for transfer and transport of commodities in interstate commerce. The essential difference is that no new rail will be built, but existing rail and structures will be used.

My initial informal opinion is, therefore, unchanged. The operation of a transloading facility by a rail carrier falls within the 10906 exemption. I said in my earlier letter that the operation of the proposed project falls clearly within the Board's jurisdiction under 49 U.S.C. 10501(b)(2). 49 U.S.C. 10906 provides a statutory exemption from the licensing requirements of part 109 for the "construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching or side tracks." Tracks used to enable transloading operations fall within that category.

You also ask if New Jersey state permitting requirements set forth in Title 13 of N.J.S.A. 13:1E-126 et seq. and in the regulations contained in N.J.A.C. 7:26-3.6 are pre-empted under the ICC Termination Act. It is my informal opinion that they are preempted by that Act. Although preemption does not withdraw from State and local governments the power to impose appropriate health and safety regulations and the police powers reserved to the States by the Tenth Amendment to the Federal Constitution.

But the local law is preempted when the challenged statute or regulation may stand as an obstacle to interstate operations. Clearly "permitting" by a state presents such an obstacle because the state could deny the permit application and thereby prohibit the interstate operations. See *City of Auburn v. Surface Transportation Board*, 154 F.3d 1025 (D.C. Cir. 1998), STB Finance Docket No. 33200, *Cities of Auburn and Kent, WA - Petition for Declaratory Order*,

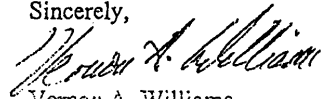
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served July 2, 1997, and STB Finance Docket No. 33466, *Borough of Riverdale - Petition for Declaratory Order - New York, Susquehanna and Western Rail Corporation*, served December 15, 1999.

This is an informal staff opinion and is not binding on the Board.

Sincerely,

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is fluid and cursive, with the first name "Vernon" being more prominent.

Vernon A. Williams
Secretary



Office of the Secretary

Surface Transportation Board
Washington, D.C. 20423-0001

October 3, 2001

Mr. Ronald A. Klempner
Hi Tech Trans, LLC
843 Red Road
Teaneck, New Jersey 07666

Dear Mr. Klempner:

This responds to your most recent letter requesting an informal opinion on questions regarding your truck-to-rail transloading facility (Facility) within the Oak Island Rail Yard in Newark, New Jersey. This request follows your two previous requests for informal opinions and my responses in letters dated October 19, 2000 and May 3, 2000.

The two questions which you have asked in your most recent letter are:

1. Can the New Jersey Department of Environmental Protection (NJDEP) require that gondola rail cars which are transporting non-hazardous waste materials be granted a permit or license from the NJDEP and pay a fee to the NJDEP in connection with such licensing?
2. Can the NJDEP set up a check point outside the Facility to stop and delay trucks which are utilizing the Facility in order to check on the trucks' compliance with the NJDEP's A-901 program, which is labeled by the NJDEP as a form of economic regulation, when the NJDEP does not, and historically has not, set up similar check points outside truck-to-truck transfer stations which do not involve rail movements?

Your first question refers, first, to a permit or license requirement and payment of a fee to NJDEP for gondola rail cars transporting non-hazardous waste materials. As discussed more fully in my letter to you dated May 3, 2000, state or local permitting requirements are generally preempted where they interfere with interstate commerce by giving the state or local body the authority to deny the carrier the right to construct facilities or conduct operations. If the failure to obtain a permit from the NJDEP might prevent the gondola cars from being transported at all,

Mr. Ronald A. Klempner

Page 2

then, in my informal opinion, the statute would be preempted. Under 49 U.S.C. 10501(b), the Board's jurisdiction over rail transportation is exclusive and state laws and regulations are generally preempted. This preemption, of course, does not remove the ability of state and local governments to impose appropriate health and safety regulations and exercise their Constitutionally-protected police powers. But state or local law or regulation is preempted when the challenged statute or regulation stands as an obstacle to authorized interstate rail transportation. City of Auburn v. United States, 154 F.3d 1025 (9th Cir. 1998), cert. denied, 527 U.S. 1022 (1999). It must be remembered, however, that only a court can make a dispositive determination as to whether a particular state activity is preempted.

In addition, the New Jersey statute apparently contemplates the paying of a fee in connection with the licensing. If the "fee" imposed by state regulation on gondola rail cars transporting non-hazardous waste material is interpreted by a court to be a "tax" on rail property or operations, the fee could run afoul of 49 U.S.C. 11501(b), which provides:

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

- (1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.
- (2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.
- (3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.
- (4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

The purpose of this statutory section is to eliminate state or local government taxation practices that discriminate against railroads. Clinchfield R.R. v. Lynch, 784 F.2d 545 (4th Cir. 1986). Further analysis by an experienced tax practitioner would be required to determine whether this provision, particularly section 11501(b)(4), would have any application to the fee you describe.

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Mr. Ronald A. Klempner
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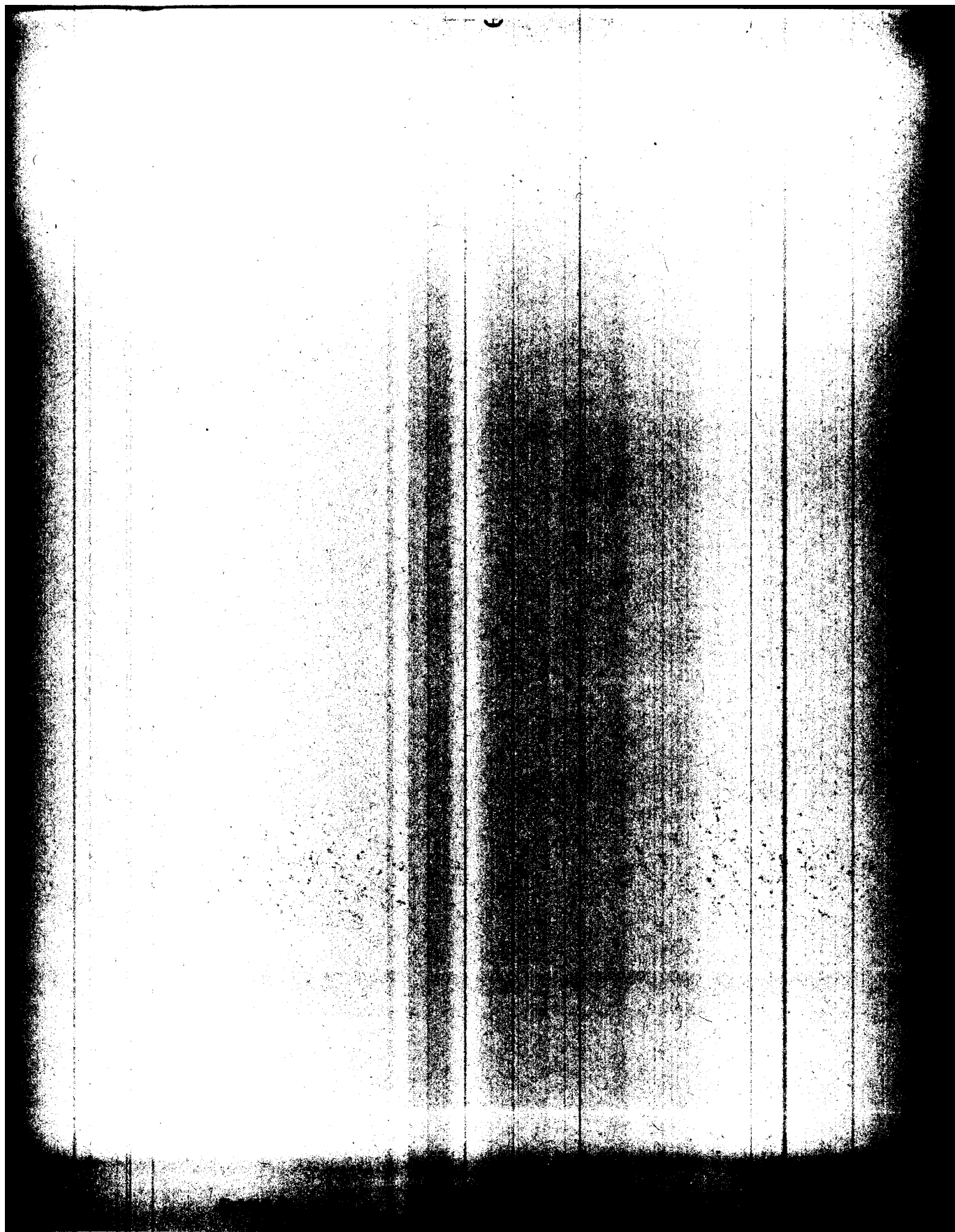
Your second question concerns the possibility that the state agency would apply another state program ("the A-901 Program") in such a way as to hinder truck traffic moving over public roads into the Facility. I am not familiar with this state program. Further, it is not clear from your letter that the State of New Jersey has begun any such effort, so your question may still be hypothetical at this point. Should such a situation arise, it would likely be analyzed by a court under the framework which I have described in my previous letters. A state or local law or regulation, if applied in such a way as to unduly interfere with interstate commerce, is preempted under 49 U.S.C. 10501(b).

This is an informal staff opinion and is not binding on the Board.

Sincerely,



Vernon A. Williams
Secretary



MAR 13 2002 09:40 FR DELAWARE AND HUDSON 518 383 7222 TO 912012670885 P.02/11



**CANADIAN
PACIFIC
RAILWAY**

Eastern Network

PO Box 8002
200 Clifton Corporate Park
Clifton Park NY
12065

Tel (518) 383-7200
Fax (518) 383-7250

March 6, 2002

Mr. John A. Castner, P.E., P.P.
Director
Division of Solid and Hazardous Waste
New Jersey Department of Environmental Protection
401 East State Street
P. O. Box 414
Trenton, NJ 08625-0414

RE: Hi Tech Trans, LLC

Dear Mr. Castner:

Canadian Pacific Railway ("CP") and its wholly owned subsidiary, Delaware and Hudson Railway ("DHRR"), lease land and trackage in the Oak Island Rail Yard ("OIRY") under a long term land lease from the Consolidated Railroad Corporation ("Conrail"). CP, DHRR and Conrail are all Class I railroads registered under the jurisdiction of the United States Surface Transportation Board ("STB") (successor to the United States Interstate Commerce Commission). Conrail, CP and DHRR historically and currently have used the OIRY for rail storage, transfer and transport, including intermodal and transloading of containers and bulk materials from trucks to flat cars and gondolas.

It is the practice of CP and DHRR to enter into license and operating agreements with local service companies to operate various functions in a rail yard on behalf of the railroads. DHRR has entered into such an agreement with Hi Tech Trans, LLC ("HTT"), whereby, HTT has been licensed as DHRR's agent in the OIRY to operate a truck-to-rail transloading operation for construction and demolition debris, soils and waste containers in the OIRY as part of CP's and DHRR's rail operations at OIRY. A copy of that Agreement is attached (redacted).

If I can be of any further assistance, please do not hesitate to call.

Very truly yours,

David R. Marsh
Manager of Sales

Encs.

OPERATIONAL LICENSE AGREEMENT

THIS AGREEMENT made this 6th day of ~~October~~ ^{November}, 2000, by and between HI TECH TRANS, L.L.C, a limited liability corporation duly organized under the laws of the State of New Jersey ("HTT") and the DELAWARE AND HUDSON RAILWAY COMPANY, INC., a Delaware corporation, doing business as "Canadian Pacific Railway" ("CPR"),

RECITALS:

WHEREAS, pursuant to an agreement dated April 25, 1979 with Consolidated Rail Corporation ("Conrail"), CPR operates an Intermodal Facility in the Oak Island rail yard in Newark, New Jersey, (the "Railyard"); and

WHEREAS, CPR desires to utilize a portion of the Railyard as designated on Exhibit A (the "Premises") for the transloading of non-hazardous construction and demolition debris ("C&D") and non-hazardous contaminated soils ("Soils"), and intermodal transloading of containerized sludges and solid waste ("Containerized Waste") (C&D, Soils and Containerized Waste are hereinafter collectively referred to as "Waste Products"); and

WHEREAS, HTT is engaged in the transportation of Waste Products from various loading terminals to landfills and treatment facilities, accepting such Waste Products from any customer and specializes in the efficient handling and transloading of Waste Products and the management of the entire transportation service for the customer; and

WHEREAS, CPR desires to retain HTT to develop and operate the Premises for the benefit of CPR and for the solicitation of Waste Product traffic and for the efficient transloading of Waste Products in transit for the carriage by CPR which development shall take place on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein the parties do hereby agree as follows:

1. LICENSE. CPR hereby grants to HTT and HTT accepts a non-exclusive, priority license to access and use the Premises. This includes the construction of facilities described herein, store equipment and conduct truck operations as necessary to efficiently transfer Waste Products from truck to rail and in accordance with the terms and conditions of this Agreement.
2. TERM. This Agreement shall be effective as of the date of execution by both parties.

4. USE OF THE PREMISES. During the term of this Agreement, HTT agrees as follows:

(a) HTT shall use the Premises only for the transfer of Waste Products from truck to railcars operated by CPR. For purposes of this Agreement, the term "Waste Products" shall mean, C&D, STCC Code 40-291-54, Municipal Solid Waste, STCC Code 40-291-73, Soils STCC Code 40-291-01, Soils, STCC 40-291-02 and Bio Solids, STCC Code 40-291-89.

(b) HTT shall use only that portion of the Premises depicted at the attached Exhibit A of this Agreement.

(c) HTT may not assign, sell or otherwise allow other persons to utilize the Premises without the prior written permission of CPR which permission shall not be unreasonably withheld or delayed.

(f) HTT shall not handle Waste Products from any hauler, motor carrier or other person party or entity on the Premises who is not duly licensed and authorized to operate under applicable federal, state or local law.

(g) HTT and its subcontractors shall adhere to CPR's standard safety policies then in effect based on rule books, and revisions thereto, as provided to HTT by CPR.

5. CONDITION OF THE PREMISES.

(a) HTT promises: 1) not to damage or misuse the Premises or allow its employees or guest to do so; 2) not to make any structural changes to the Premises without the prior written consent of the CPR; 3) to immediately notify the CPR of any conditions on the Premises that are dangerous to human health or safety, or that may damage the Premises. 4) that if HTT vacates

MAR 13 2002 09:41 FR DELAWARE AND HUDSON 518 393 7222 TO 912012070986 P.06/11

the Premises, all non-mobil facilities will be left in good condition, except for ordinary wear and tear and shall become the sole property of CPR; and 5) not to permit waste of the Premises.

(b) HTT, at its expense, subject to sub-section 4 (d), above, shall be solely responsible for all necessary repairs, maintenance and upkeep of the Premises.

(c) HTT shall not permit any liens to encumber the Premises for any labor or material furnished in connection with any work performed or claimed to have been performed in or about the Premises.

(d) If the Premises are destroyed or damaged so they are unfit to occupy due to any cause, HTT will be responsible for returning the Premises to a condition such that CPR may continue its operations.

6. NON-EXCLUSIVE LICENSE. The Parties understand that the HTT will not have exclusive possession and enjoyment of the Premises. HTT may use the Delancy Street access route and CPR's scale at the Premises contemporaneously with the CPR's rail and intermodal operations, provided that the HTT may not make use of any of the facilities at the Premises in a manner which interferes with CPR's use of the Premises. A use is deemed to interfere if it has a material detrimental impact on CPR's ability to conduct its normal business practice.

MAR 13 2000 09:41 FR DELAWARE AND HUDSON 510 383 7222 TO 912012870805 P.07/11

7. LIABILITY OF PARTIES.

8. INDEMNIFICATION BY BOTH PARTIES.

9. INSURANCE.

10. MAINTENANCE.

11. TERMINATION.

Upon termination HTT shall cease using the Premises and shall remove its property therefrom. Except for termination by reason of breach, upon termination, the parties obligations to each other shall immediately cease and, except for money then currently due and owing, the parties financial obligations to the other shall cease.

12. BINDING EFFECT; ASSIGNMENT. The terms and conditions of this contract are hereby made binding upon and shall inure to the benefit of the parties and their respective

MAR 13 2002 09:41 FR DELAWARE AND HUDSON 518 383 7222 TO 912012870886 P.09/11

heirs, executors, administrators, successors, and assigns. HTT shall not assign its rights and interest hereunder without the prior written consent of CPR. HTT shall not seek nor will be granted any assignment that would deprive CPR of any commercial or financial benefit or opportunity relating to use or occupancy of the Premises

13. COMPLIANCE WITH FEDERAL, STATE AND MUNICIPAL REGULATIONS. HTT agrees to use the Premises in strict conformance with all applicable rules, regulations and ordinances of federal, state and municipal authorities.

14. ENTIRE AGREEMENT; AMENDMENTS. This Agreement constitutes the entire agreement between the parties; and no other agreement prior to this Agreement or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein. Any purported amendment shall not be effective unless it shall be set forth in writing and executed by both parties

15. NOTICE.

16. ARBITRATION.

MAR 13 2007 09:41 FR DELAWARE AND HUDSON 518 383 7322 TO 912012870886

P.10/11

17. CONTINGENCIES.

IN WITNESS WHEREOF, the parties hereto have caused their signatures to be duly executed on the Effective Date.

HI TECH TRANS, LLC

By

Its

By

Its

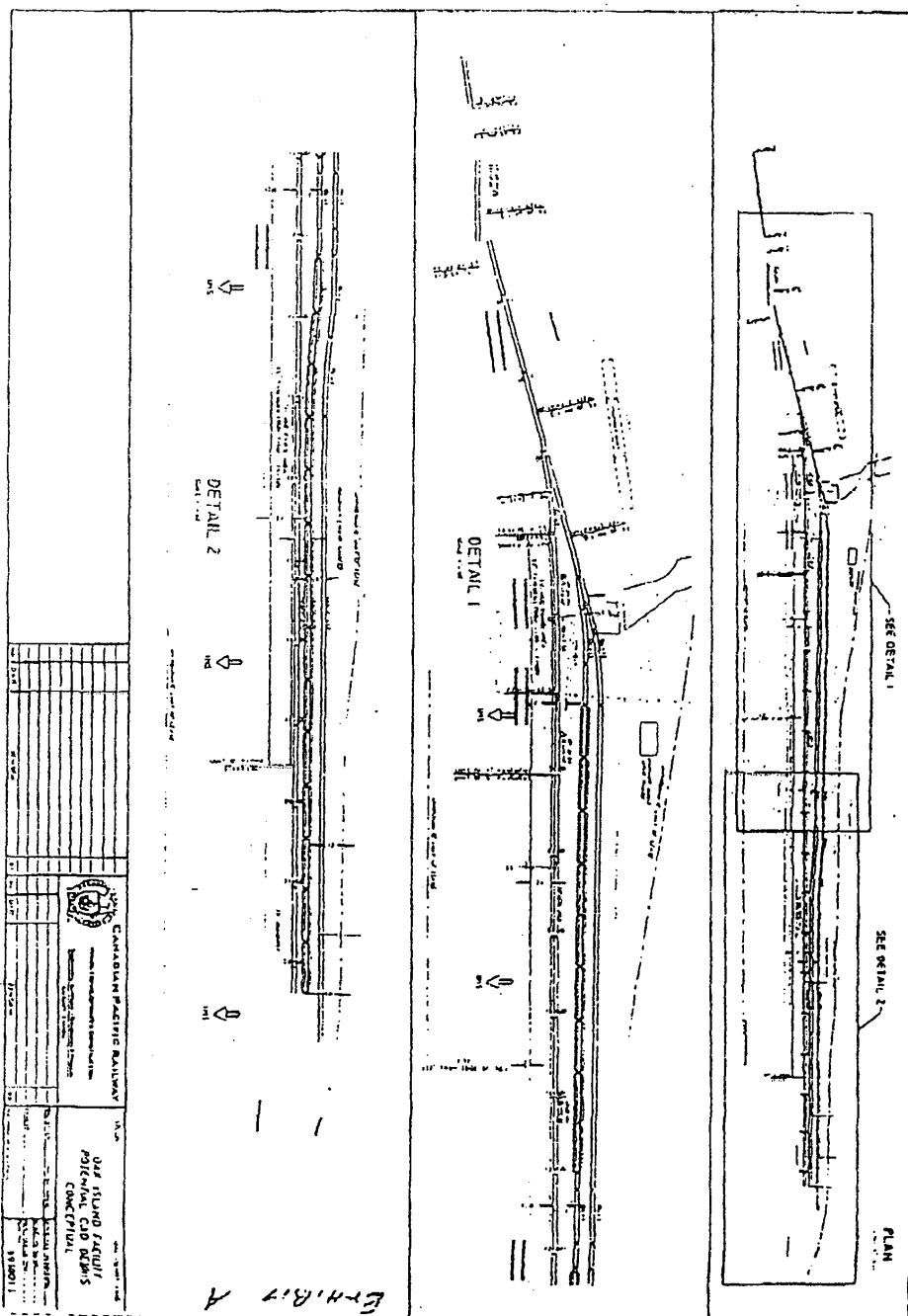
DELAWARE & HUDSON RAILWAY
COMPANY, INC.

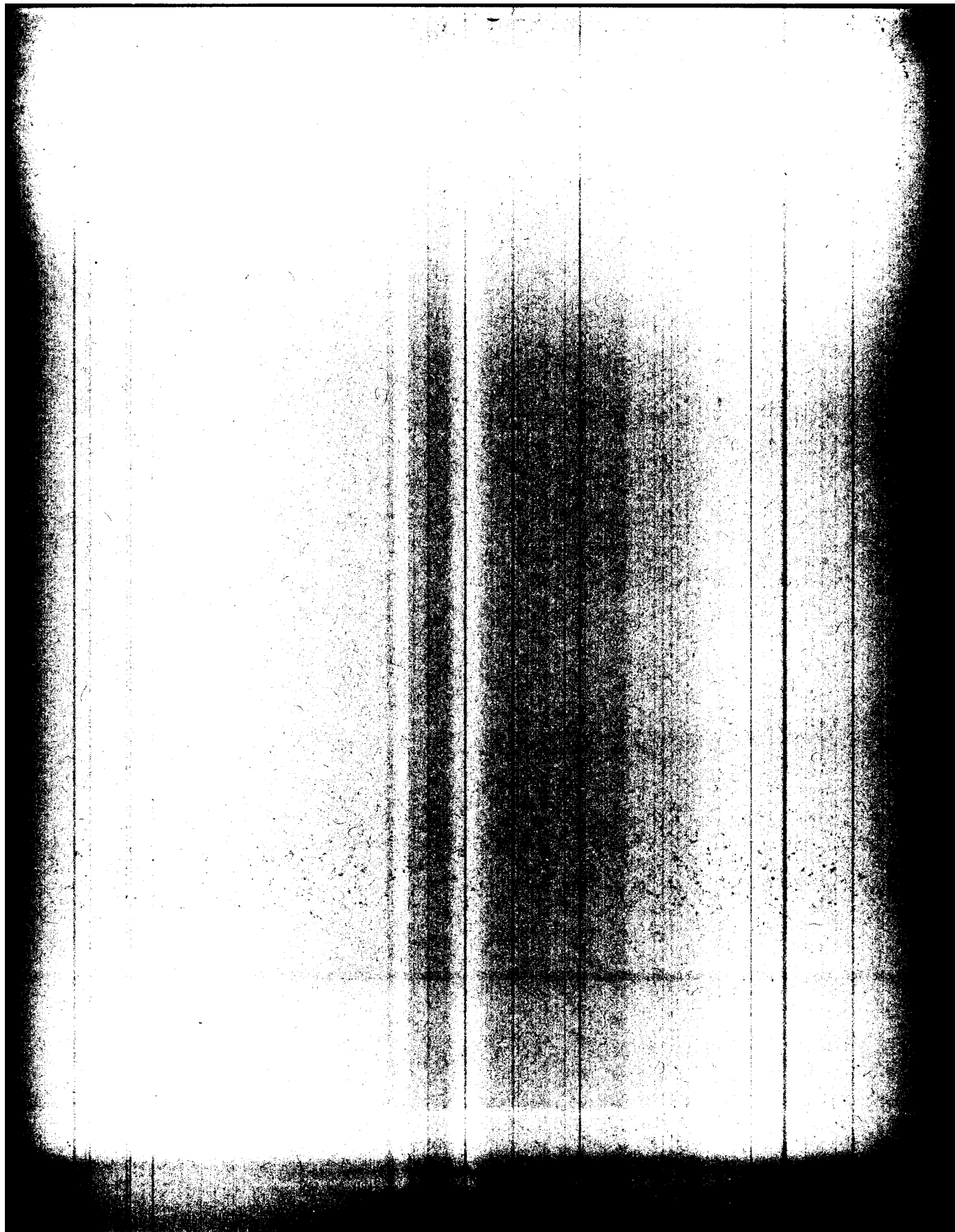
By

Its

By

Its





Oct 16 01 09:38p

p. 5

SENT BY: MCHUGH & BARNES, PC;

212 483 0876

; OCT-16-01 4:15PM;

PAGE 4/5



Commissioners

John L. Shianick, Chairman
Martin A. Budnick, Vice Chairman
James E. Byrnes, Treasurer
John J. Duffy, Secretary
Thomas H. Donnelly
Frank M. Valcarino, Esq.

Executive Director

Thomas P. Calvanico, Esq.

General Counsel

Robert E. Barry, Esq.

October 16, 2001

Hi Tech LLC/T. Fiore Recycling
91 Bay Street
Oak Island, Newark, N.J.

To Whom It May Concern:

This letter shall serve to introduce Michael Novembre and David Ruiz, Special Enforcement Officers of the Hudson County Improvement Authority.

Pursuant to the June 8, 1999 Certification of the New Jersey Department of Environmental Protection ("DEP"), all Hudson County generated solid waste types 10, 13 (including 13C), 23, 25 & 27 (excluding asbestos and asbestos containing materials) ARE subject to regulatory waste flow and are to be delivered to the Hudson County Improvement Authority's designated facilities as follows:

- 1) All waste types 10 and 25 generated from within Hudson County collected either by a municipality or through a contract with a municipality are directed to the SWT&R Transfer Station in Newark, New Jersey for processing and transfer for transport by Hudson-JV to the Grand Central Landfill.
- 2) All waste type 10 and 25 generated from within Hudson County not collected either by a municipality or through a contract with a municipality but, instead, is collected from nonmunicipal generators pursuant to contracts between the generators and private solid waste collectors (e.g., all commercially generated solid waste) are directed to the Union County Resource Recovery Facility (UCRRF) in Rahway, New Jersey.
- 3) All waste types 13, 23, and 27, and grits and screening generated from within Hudson County are directed to the HMDC 1-E North Area Landfill in North Arlington, New Jersey.

Oct 16 01 09:41p

p.6

SENT BY: MCHUGH & BARNES, PC;

212 483 0876

; OCT-16-01 4:16PM;

PAGE 5/5
0003/003

- 4) All waste type 271 (Incinerator ash) generated from within Hudson County is directed to the Grand Central Landfill.

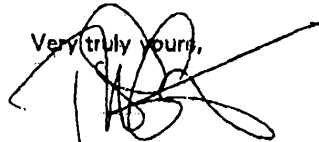
In addition, pursuant to an Interlocal Services Agreement with the Hudson Regional Health Commission ("HRHC"), the HCIA's Enforcement Division acts as enforcement agent and conducts investigations for purposes of monitoring compliance and enforcing the Solid Waste Management Act pursuant to N.J.S.A. 26:3A2-25. In such capacity, the HCIA has the power to issue summonses to, or to institute actions in Superior Court against, any person who diverts solid waste to facilities in violation of the regulatory waste flow directive.

Please be advised that it has come to the attention of this Authority that Hudson County generated waste types as above listed have been delivered to your facility for processing and/or disposal. Accordingly, and pursuant to the requirements of N.J.A.C.7:26-2.13(b), this letter requests your compliance with N.J.A.C.7:26-2.13(b) and make your daily records immediately available to this Authority's representative.

At this time this Authority is requesting the daily records and O&D forms, for the period covering August 1, 2001 to present.

Your attention and cooperation to this matter is appreciated.

Very truly yours,



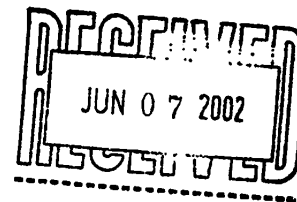
THOMAS P. CALVANICO, ESQ.
Executive Director

TPC/er



LEONARD, STREET AND DEINARD

PROFESSIONAL ASSOCIATION



June 5, 2002

Carolyn V. Wolski
612-335-1641
carolyn.wolski@leonard.com

VIA FEDERAL EXPRESS

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

***Re: Hi Tech Trans, LLC – Petition for a Declaratory Order – Hudson County, NJ
STB Finance Docket No. 34192***

Dear Secretary Williams:

Enclosed for filing please find the original and ten (10) copies of the Submission of Delaware and Hudson Railway Company, Inc.

Please call if there are any questions.

Very truly yours,

LEONARD, STREET AND DEINARD
Professional Association

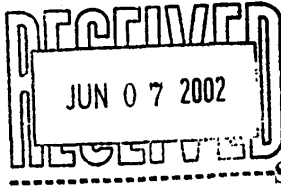
Carolyn V. Wolski

cc: William M. Tuttle, Esq.
John McHugh, Esq.

150 SOUTH FIFTH STREET SUITE 2300 MINNEAPOLIS, MINNESOTA 55402 TEL 612-335-1500 FAX 612-335-1657

LAW OFFICES IN MINNEAPOLIS, SAINT PAUL, MANKATO, SAINT CLOUD AND WASHINGTON, D.C.

WWW.LEONARD.COM



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET 34192

HI TECH TRANS, LLC
- PETITION FOR A DECLARATORY ORDER -
HUDSON COUNTY, NEW JERSEY

SUBMISSION OF DELAWARE AND HUDSON RAILWAY COMPANY, INC.

Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway (CPR) is making this submission in support of the petition of Hi Tech Trans, LLC (Hi Tech).

Petitioner Hi Tech is a licensee of CPR. Pursuant to agreements between Hi Tech and CPR, Hi Tech obtains construction and demolition debris (C&D), transfers it from truck to rail at CPR's transload facility, and then ships the C&D in interstate commerce on CPR's lines. Hi Tech is an integral component of CPR's movement of this particular type of freight by rail. Many producers of C&D cannot access rail transportation without the use of trucks. Furthermore, CPR relies heavily upon Hi Tech to perform duties that are essential to the successful marketing of its rail services in the highly specialized area of C&D transportation.

CPR believes that the services provided by Hi Tech have a significant public benefit. Hi Tech's operations have had the effect of removing numerous heavily loaded, long-distance trucks from the heavily congested New Jersey portion of the interstate highway system.

The local regulations at issue, if enforced, would effectively bar C&D producers and shippers from access to rail transportation. This type of regulation will reduce rail system earnings, jeopardize the ability of the railway system to carry out its obligations as a common carrier, and lead to further congestion and physical degradation of the highway system.

CPR requests that Hi Tech's Petition be granted and that the Hudson County regulations at issue be declared unenforceable to the extent they deem delivery of C&D waste by rail to be unlawful.

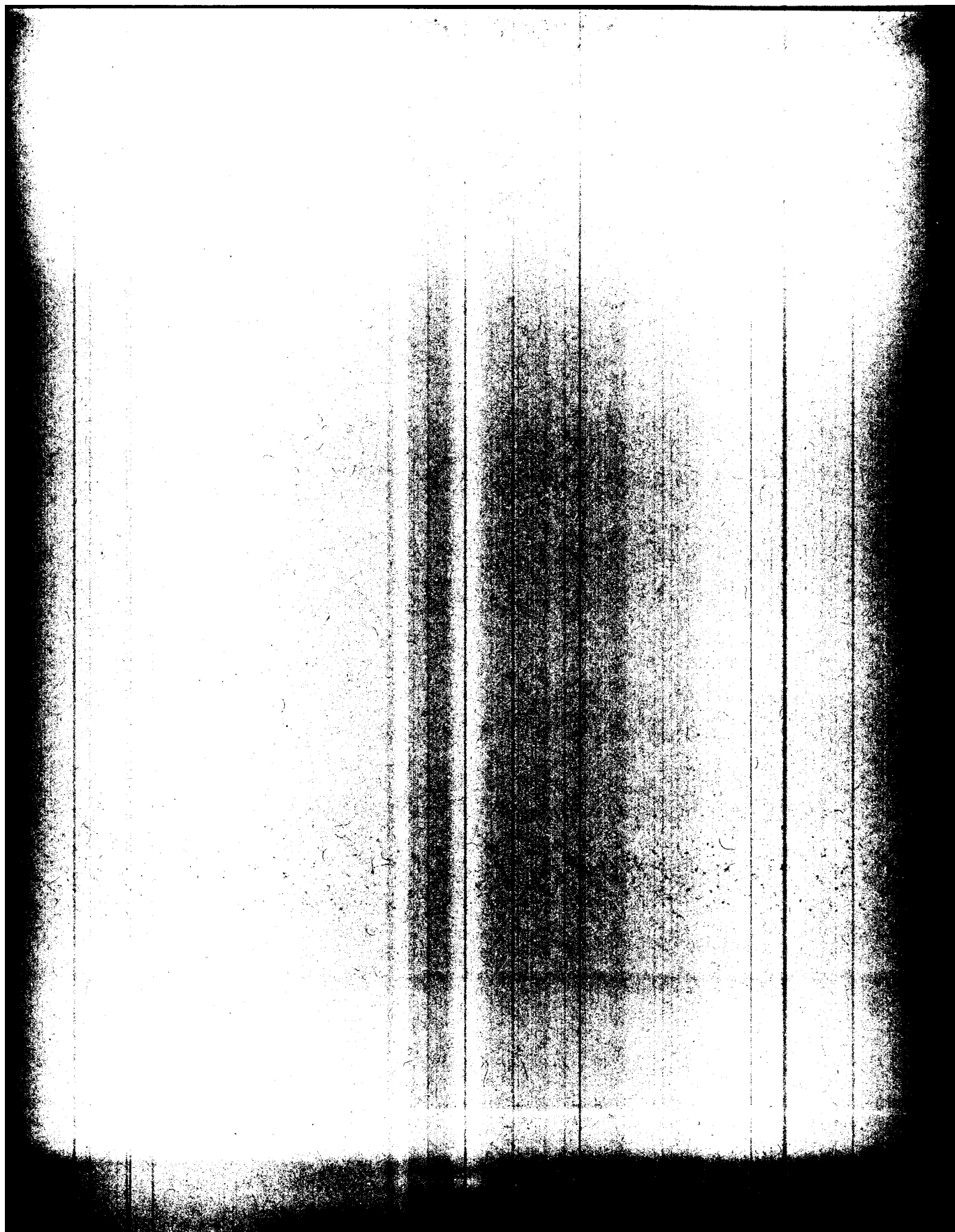
Respectfully submitted,

Dated: June 5, 2002


Carolyn V. Wolski (MN # 199874)

Leonard, Street and Deinard, P.A.
Suite 2300
150 South Fifth Street
Minneapolis, MN 55402
Telephone: 612-335-1500

Attorneys for Delaware and Hudson
Railway Company, Inc.



McHugh & Barnes, P.C.

20 Exchange Place
New York, NY 10005-3201

Phone: (212) 483-0875

Fax: (212) 483-0876

John F. McHugh
Elisa Barnes*
Monica Connell

Of Counsel
W. Patrick Quast*
164 Franklin Tpk.,
Waldwick, N.J. 07463,
201-444-5990
Fax 201-444-5094

* also admitted in New Jersey

October 17, 2001

Mr. Robert E. Barry, Esq.
General Counsel
Hudson County Improvement Authority
574 Summit Avenue, 5th Floor
Jersey City, New Jersey 07306

By Fax Only: 201-795-0240

Re: Hi-Tech Trans, LLC

Dear Mr. Barry:

Reference is made to our telephone discussion of yesterday afternoon and to the letter which you faxed to me. I understand that David Ruiz, Jr. a Senior Enforcement Officer of your Authority sought to deliver that letter yesterday afternoon to Ted Fiore at Hi-Tech Trans, LLC. Mr. Fiore's company is a customer of Hi-Tech. He was not present. I note that the letter you faxed to me is addressed to HI Tech LLC/T. Fiore Recycling. For the record, Hi-Tech Trans, LLC has no relationship with T. Fiore Recycling other than that of a service provider and a customer. As I attempt to explain below, Hi-Tech Trans, LLC is a facility entirely engaged in providing rail transportation of cargos via the Canadian Pacific Railroad and as such it is exempt from the regulations mentioned in your letter, as are the truckers whose customers chose to use these rail services. Neither direct nor indirect regulation is permitted under federal law.

With reference to the inquiry in your letter, Hi-Tech Trans does not handle waste types 10, 23, 25, 27, or 271 nor is Hi-Tech aware of any type 13 waste which has been received from or generated in Hudson County.

I previously provided you with three informal opinion letters from the Surface Transportation Board, dated May 3, 2000, October 19, 2000 and October 3, 2001. Each opined that the Hi-Tech operation is a rail operation and is thus exempt from

local regulation pursuant to the provisions of 49 U.S.C. §10501(b). I noted that the Board's opinion is consistent with all prior case authority. The District Court in Oregon recently dealt with the issue of flow control, holding that it was local regulation of commerce and therefore forbidden by the Federal Aviation Administration Authorization Act, which deregulated trucking. See: AGG Enterprises, Inc. V. Washington County, ____ F. Supp. 2d ____, 2000 WL 361892 Docket No. CIV 99-1097 (D. Oregon 2001). Hi-Tech Trans is operating in connection with a railroad operation, but the analysis of preemption done by the District Court under the FAAAA is consistent with all prior authority on preemption, i.e. cases that have held that the Interstate Commerce Commission Termination Act specifically exempts all rail related transportation activity from local regulation. The AGG case found that the transportation of waste by truckers is also exempt from local control, specifically from flow control.

49 U.S. C. §10501(b) grants to the Surface Transportation Board exclusive jurisdiction over transportation by rail carriers and that the remedies provided in the Act with respect to regulation of rail transportation are exclusive and preempt the remedies provided under any other Federal or any State Law. 49 U.S.C. § 11321(a) which defines the scope of the authority of the Surface Transportation Board and then states that "a rail carrier...is exempt from the antitrust laws and from all other law, including state and municipal law, as necessary to let that rail carrier...hold, maintain and operate property...acquired through..." (a transaction approved or exempt from approval by the Board) See: City of Auburn v. United States, 154 F.3d 1025, 1029 (9th Cir. 1998). The courts of the United States have held that the exemption from state law contained in the §11321, is to be interpreted broadly, See; Ex Norfolk & Western Ry. V. American Train Dispatchers, Assn. 499 U.S. 117, 127-34. (1991) "The... language in §11321(a) exempting carriers from ...State and municipal law is clear broad and unqualified". See also, CSX Transportation v. Georgia Public Service Commission, 944 F. Supp. 1573, 1585 (N.D. Ga. 1996).

The Oregon District Court held that the FAAAA reviews the argument that local government retains the right to regulate MSW "curbside collection" activity as it involved waste products which have no value and thus, are not "property" as referred to in that law. However, that court found that even under the County's argument the exemption from the Act's comprehensive ban on local regulation, if it exists at all, does not reach the transportation of mixed waste by a trucker. The court reasoned that as recyclables have value and are property a waste load which includes recyclables is exempt. But the Court then entirely rejects the County's argument that waste is not property, relying upon Nuclear Diagnostic Laboratories 131M.C.C. 578 (1979) in holding:

...I conclude that both the source-separated loads and the MSW loads when collected from commercial and industrial accounts are property as the word is used in the FAAAA. The local or state regulation of these loads is thus preempted by the FAAAA,...

20000WL 361892, *7. The ICC Termination Act, under which the Hi-Tech facility is operating, has no similar reference to property and is a far broader grant of authority to the STB than the Oregon District Court was dealing with. It specifically exempts rail activity from any form of local regulation or law.

With reference to the breath of the preemption of local law I note that there have been several cases directly on point. A recent decision by the Board involves a closely similar situation in New Jersey, Borough of Riverdale v. The New York Susquehanna and Western, STB Docket No. 33466 (9/9/99). In that matter the town brought an action against the railroad to enforce local zoning and environmental laws. The Board ruled that subject only to verification of the fact that the use involved was related to transportation services, the local laws were preempted by Federal Law and could not be enforced, see also, CSX Transportation, Inc. v. Georgia Public Service Commission, 944 F. Supp. 1573 (N.D. Georgia 1996) (local regulation of station agencies).

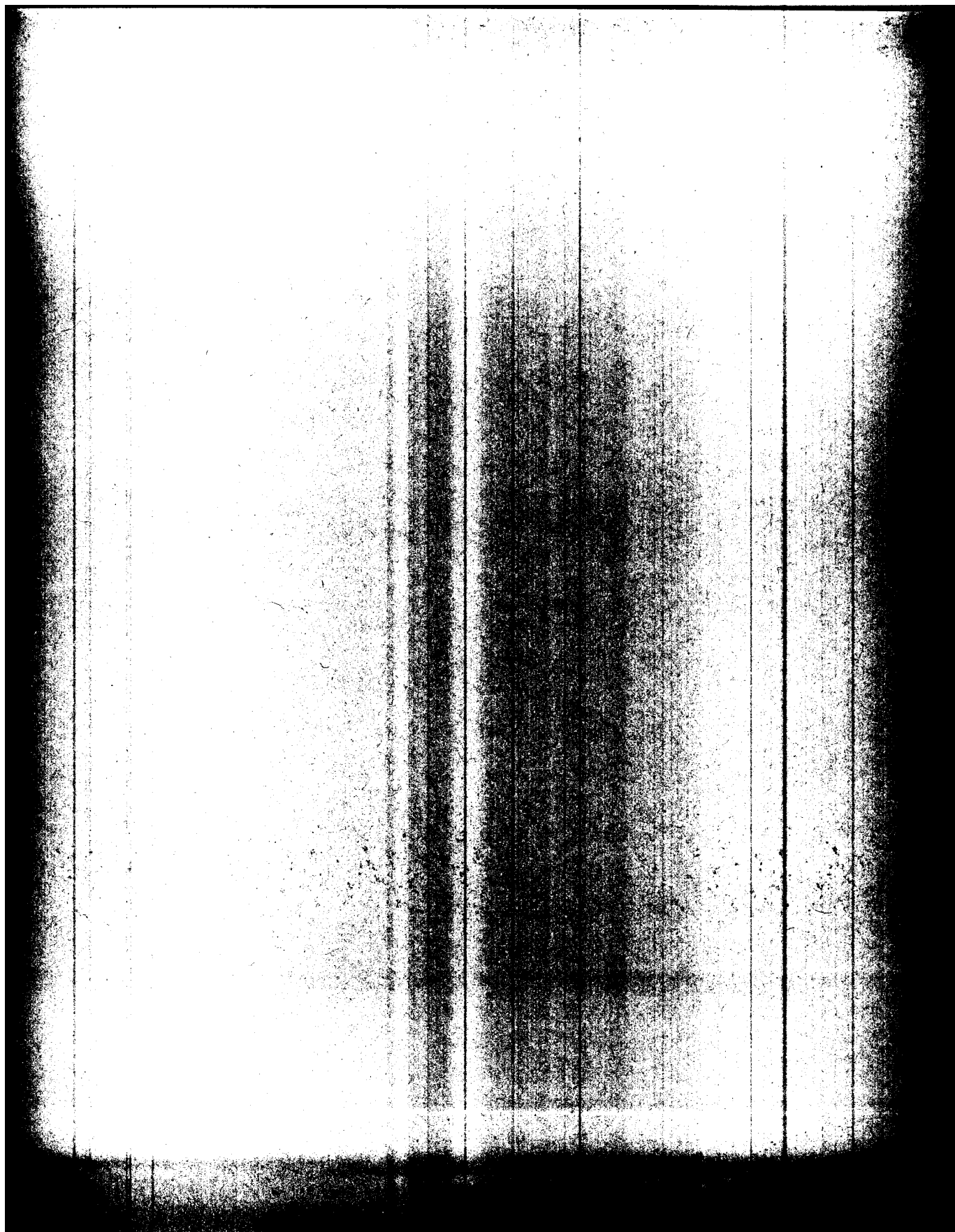
Therefore, Hi-Tech Trans, LLC is operating a facility which loads rail cars for shipment in interstate commerce on the Canadian Pacific Railroad on facilities leased by the Canadian Pacific for rail purposes. It does not own the products it ships nor is it either an originator nor receiver of the materials. It does not hold any materials on the property. They are merely passing from truck to rail car in a continuous flow to a distant location. Under the ICC Termination Act, Hi-Tech's activity and the activities of truckers delivering to Hi-Tech are exempt from local regulation.

We are presenting you with a summary of the authority under which both Hi-Tech and its Canadian Pacific rail bound customers are operating. Hopefully, this will satisfy any doubts or questions you may have. Our client's right to operate is clear and is supported by substantial legal authority and precedent as is that of its customers. Any attempt to interfere with Hi-Tech or with truckers seeking to deliver property to Hi-Tech will irreparably damage Hi-Tech and the Canadian Pacific and they will be forced to seek an injunction and damages. To limit damages you would incur, should you wish to test any of the precedents or laws we rely upon, may I suggest that you give me notice and that we work out an orderly way to seek such review without exposing your organization to such damages.

Hopefully this more fully explains our position.

Very truly yours,

John F. McHugh



**THE ESSEX COUNTY UTILITIES AUTHORITY**900 Bloomfield Avenue, Verona, New Jersey 07044
Tel. 973-887-2380 Fax. 973-857-8381**Commissioners**Leroy I. Robinson, Secretary
Antonio M. Calcado, Treasurer
Carmine Casciano
Carol G. Scantlebury**RECEIVED**
NOV 7 2001BY:.....*[Signature]*.....

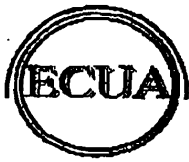
November 2, 2001

Mauro G. Tucci
ChairmanBarry L. Rubin
Executive DirectorHi-Tech LLC/T. Fiore Recycling
91 Bay Street
Oak Island, Newark, New Jersey

Dear Sir or Madam:

Pursuant to the provisions of the New Jersey Solid Waste Management Act, constituting Chapter 39 of the Pamphlet Laws of 1970, of the State of New Jersey, and the acts amendatory thereof and supplemental thereto, the County of Essex, New Jersey (the "County") has been designated as a Solid Waste Management District and as such, is charged with the responsibility of adopting and providing for the implementation of the Essex County District Solid Waste Management Plan (the "County Plan") to provide for the disposal of solid waste generated within the geographic boundaries of the County. This Authority has been designated as the implementing agency of the County Plan. Pursuant to the Certification of the New Jersey Department of Environmental Protection approving an amendment to the County Plan, all Essex County-generated solid waste I.D. Type 13 (including 13C) are subject to regulatory waste flow and must be delivered to Waste Management of New Jersey, Inc.'s transfer station at 666 Front Street in Elizabeth, New Jersey.

It has come to the attention of this Authority that Essex County-generated waste has been delivered to your facility for processing and/or disposal. Accordingly, and pursuant to the requirements of N.J.A.C. 7:26-2.13(b), this letter requests your compliance with N.J.A.C. 7:26-2.13(b) and that you make your daily records immediately available to this Authority's representative.



THE ESSEX COUNTY UTILITIES AUTHORITY

900 Bloomfield Avenue, Verona, New Jersey 07044
Tel. 973-857-2350 Fax. 973-857-8361



Commissioners

Leroy I. Robinson, Secretary
Antonio M. Calcedo, Treasurer
Carmine Casciano
Carol G. Scantlebury

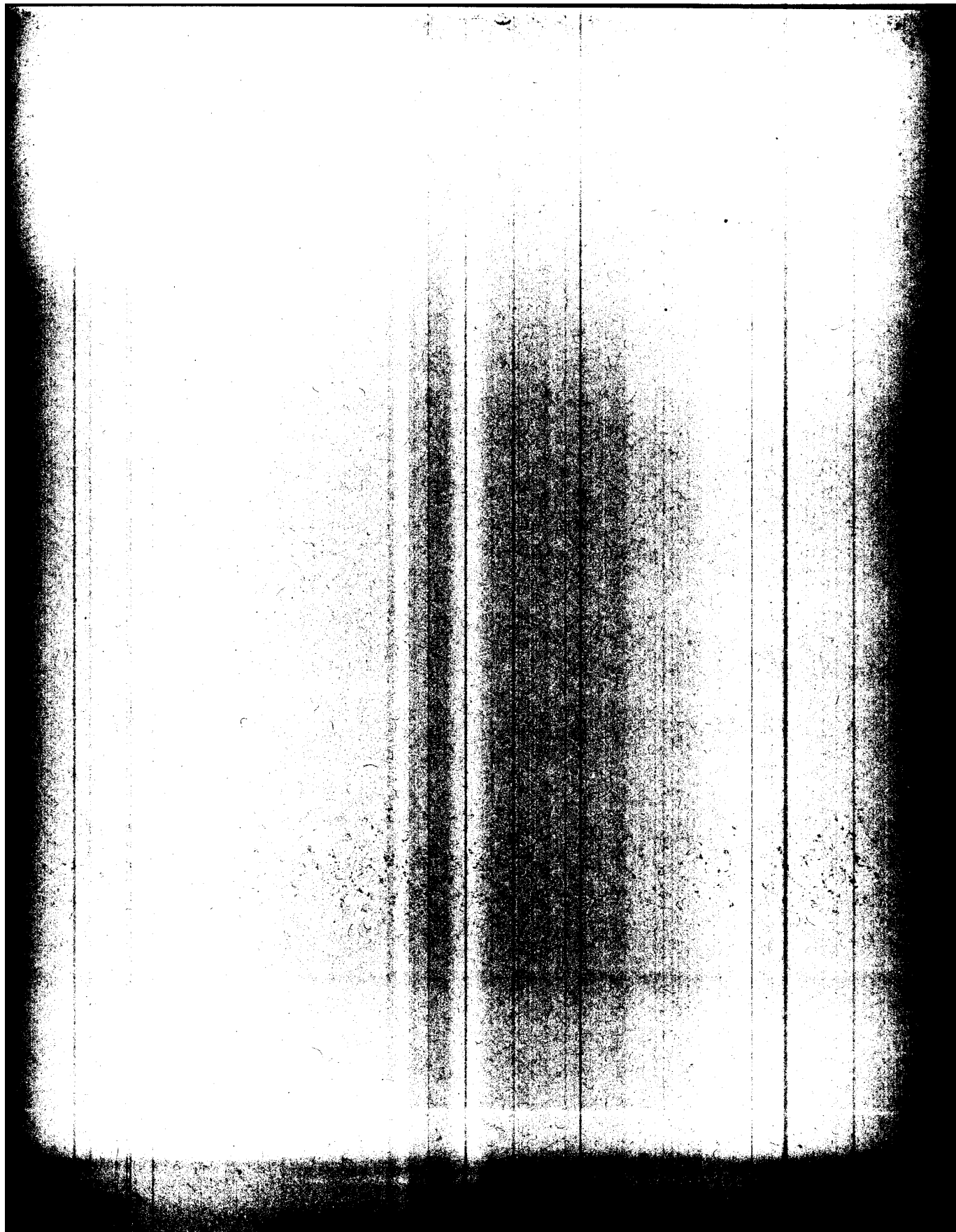
Mauro G. Tucci
Chairman

Barry L. Rubin
Executive Director

At this time, the daily records and O&D forms, for the period covering August 1, 2001 to the present, are requested. Please contact the undersigned within a week of the date of this letter to arrange for a mutually convenient time whereby such records may be retrieved. Your attention and cooperation to this matter is appreciated.

Very truly yours,

Barry L. Rubin
Executive Director



McHugh & Barnes, P.C.

20 Exchange Place
New York, NY 10005-3201

Phone: (212) 483-0875

Fax: (212) 483-0876

John F. McHugh

Elisa Barnes*

Monica Connell

Of Counsel

W. Patrick Quast*

164 Franklin Tpk.,
Waldwick, N.J. 07463,

201-444-5990

Fax 201-444-5094

* also admitted in New Jersey

November 9, 2001

Barry L. Rubin
Executive Director
The Essex County Utilities Authority
900 Bloomfield Avenue
Verona, New Jersey, 07044

Re: Union County and Hi-Tech Trans, LLC

Dear Mr. Rubin:

Reference is made to your letter addressed to our client, HI-Tech Trans, LLC dated, November 2, 2001. I note that your letter is also addressed to T. Fiore Recycling. Hi-Tech Trans, LLC and T. Fiore Recycling have no relationship to one another other than as customer and service provider.

The regulations you cite do not apply to Hi-Tech Trans, LLC. Before opening for business, Hi-Tech Trans received three informal opinion letters from the Surface Transportation Board, dated May 3, 2000, October 19, 2000 and October 3, 2001. Each opined that the Hi-Tech operation is a rail operation and is thus exempt from local regulation pursuant to the provisions of 49 U.S.C. §10501(b). The Board's opinion in those letters was consistent with all prior case authority. Following are copies of these opinion letters.

With specific regard to flow control, on April 6, 2001 The United States District Court for Oregon enjoined the enforcement of Washington County's flow control regulations, in an action brought by a trucker. The court held that County Regulations seeking to control waste trucking, were local regulation of commerce and therefore specifically forbidden by the Federal Aviation Administration Authorization Act of 1994, which deregulated trucking, 49 U.S.C. §14501 et seq. See: AGG Enterprises, Inc. V. Washington County, ____ F. Supp. 2d ____. 2000 WL 361892, Docket No. CIV 99-

1097 (D. Oregon 2001). Hi-Tech Trans is operating in connection with a railroad operation, but the analysis of preemption done by the Oregon District Court under the FAAAA is consistent with all prior authority on transportation industry preemption, i.e. cases that have held that the Interstate Commerce Commission Termination Act specifically exempts all rail related transportation activity from local regulation.

49 U.S. C. §10501(b) grants to the Surface Transportation Board exclusive jurisdiction over rail carriers. It further provides that the remedies provided in the Act with respect to regulation of rail transportation are exclusive and preempt any other Federal or any State Law. 49 U.S.C. § 11321(a) which defines the scope of the authority of the Surface Transportation Board and then states that "a rail carrier...is exempt from the antitrust laws and from all other law, including state and municipal law, as necessary to let that rail carrier...hold, maintain and operate property...acquired through..." (a transaction approved or exempt from approval by the Board) See: City of Auburn v. United States, 154 F.3d 1025, 1029 (9th Cir. 1998). The courts of the United States have held that the exemption from state law contained in the §11321, is to be interpreted broadly, See; Ex Norfolk & Western Ry. V. American Train Dispatchers, Assn. 499 U.S. 117, 127-34. (1991) "The... language in §11321(a) exempting carriers from ...State and municipal law is clear broad and unqualified". See also, CSX Transportation v. Georgia Public Service Commission, 944 F. Supp. 1573, 1585 (N.D. Ga. 1996).

The Oregon District Court reviewed the Washington County's argument that local government retains the right to regulate waste transport as it involves products which have no value and thus, waste is not "property" as referred to in the FAAAA. However, that court found that even under the County's argument, the exemption from the Act's comprehensive ban on local regulation, if it exists at all, does not reach the transportation of mixed waste by a trucker. The court reasoned that, as recyclables have value and are property, a waste load which includes recyclables is exempt. But the Court then entirely rejected the County's argument that waste is not property, relying upon Nuclear Diagnostic Laboratories 131 I.C.C. 578 (1979) in holding:

...I conclude that both the source-separated loads and the MSW loads when collected from commercial and industrial accounts are property as the word is used in the FAAAA. The local or state regulation of these loads is thus preempted by the FAAAA,...

20000WL 361892, *7. The ICC Termination Act, under which the Hi-Tech facility is operating, has no similar reference to property and is a far broader grant of authority to the STB than the Oregon District Court was dealing with. It specifically exempts rail activity from any form of local regulation or law. That exemption includes trucking provided in connection with a rail haul, See 49 USC 13503 (a)(1)(B)(i).

With reference to the breath of the preemption of local law, I note that there have been several cases directly on point. A recent decision by the Board involves a closely similar situation in New Jersey, Borough of Riverdale v. The New York Susquehanna and Western, STB Docket No. 33466 (9/9/99). In that matter the town

brought an action against the railroad to enforce local zoning and environmental laws. The Board ruled that subject only to verification of the fact that the use involved was related to transportation services, the local laws were preempted by Federal Law and could not be enforced, see also, CSX Transportation, Inc. v. Georgia Public Service Commission, 944 F. Supp. 1573 (N.D. Georgia 1996) (local regulation of station agencies is preempted).

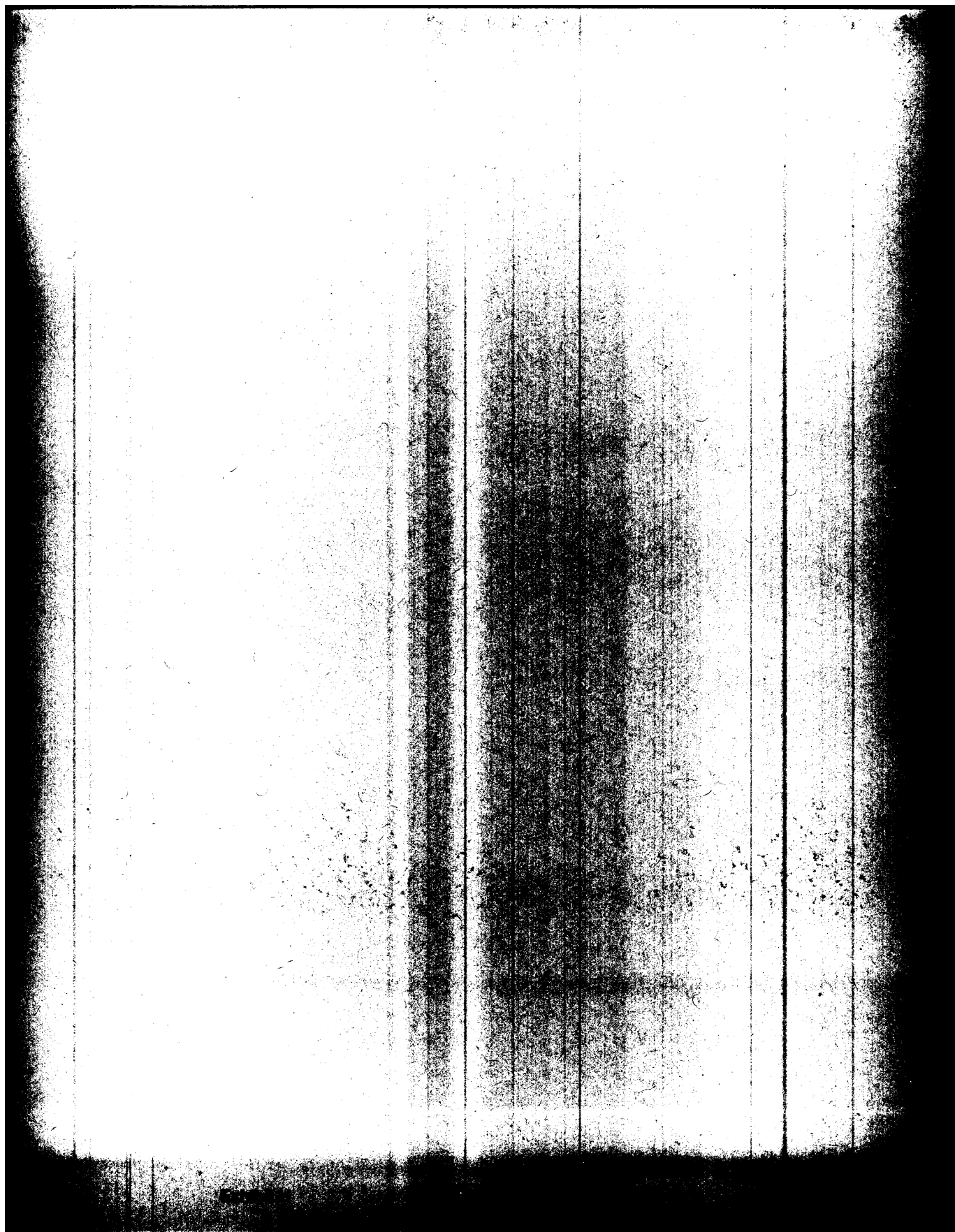
Therefore, Hi-Tech Trans, LLC is operating a facility which loads rail cars for shipment in interstate commerce on the Canadian Pacific Railroad on facilities leased by the Canadian Pacific for rail purposes. It does not own the products it ships nor is it either an originator nor receiver of the materials. It does not hold any materials on the property. They are merely passing from truck to rail car in a continuous flow to distant locations all, as I understand, outside New Jersey. Its activity is well within the which includes things related to the movement of goods or people regardless of ownership including "services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property." 49 U.S.C. §10102 (9)(B). Under the ICC Termination Act, Hi-Tech's activity and the activities of truckers delivering to HI-Tech are exempt from local regulation.

We are presenting you with a summary of the authority under which both Hi-Tech and its Canadian Pacific rail bound customers are operating. Hopefully, this will satisfy any doubts or questions you may have. Our client's right to operate is clear and is supported by substantial legal authority and precedent as is that of its customers. Any attempt to interfere with Hi-Tech or with truckers seeking to deliver property to Hi-Tech will irreparably damage Hi-Tech and the Canadian Pacific and they will be forced to seek an injunction and damages. To limit damages your client would incur, should you wish to test any of the precedents or laws we rely upon, may I suggest that you give me notice and that we work out an orderly way to seek such review without exposing your organization to such damages.

Hopefully this more fully explains our position.

Very truly yours,

John F. McHugh



— LAW OFFICES —
**DeCOTIUS, FITZPATRICK,
 GLUCK & COLE, LLP**

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 500 FRANK W BURR BOULEVARD
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Writer's Direct Dial No 201-907-5202

EDWARD N FITZPATRICK (1940-2000)

M ROBERT DeCOTIUS
 ALFRED C DeCOTIUS
 MICHAEL H GLUCK
 MICHAEL R COLB
 ERIC D WISLER
 JONATHAN L WILLIAMS
 WILLIAM R. MAYER
 MICHAEL A DeCOTIUS
 J D LEE LOREN
 CHRISTOPHER M WALRATH
 MICHAEL G LUCHINI
 JOSEPH M DeCOTIUS
 WILLIAM MARLA
 BENJAMIN CLARKE
 JAMES G. PEARSON
 LOUIS N RADONE
 JEFFREY D SMITH
 JUDY A VERRONE

JEREMY C ADEST
 ANTHONY J ARNONE
 GINA M BATTIS
 AVIS BISHOP-THOMPSON
 GINA BILANDI CARLE
 MICHAEL K CHONC
 RUPAL RUPAREL DALAL
 VICTORIA A FLYNN
 SUSAN FRUCHTMAN
 PETER G KIELY
 CHINA LADNER

ANDREW F AKUNSON
 ANDREW BAYER
 GREGORY J BRYCELOCK
 JERROLD B BIRNEY
 FRANCIS J BORIN
 JEFFREY W CAPPOLA
 DAVID A CLARK
 KEVIN A CONTI
 HOWARD J EICHENBAUM
 MADALINE R FERRARO
 DANIEL J FITZPATRICK
 MATTHEW J GIACUMBE
 RONALD H GORDON
 LISA K HALPERIN
 ROCCO F IOSSA
 KEVIN M KINSILLA
 ANTHONY F LABUS
 JOHN J LANGAN, JR
 GAETANO C LANCIANO
 ELIZABETH C LITTEN
 WILLIAM K LUNDSTEN

KORRETO S MIGLIORIELLO
 KERRY J MORGAN
 DAWN O'CONNOR
 ROBERT A ORTIZ, JR
 BRUCE W PADULA
 PATRICIA J RYAN
 RYAN J SCERBO
 GEORGE A SORIAL
 JENNIFER L SCHWARTZ
 PETER A TUCCI, JR
 JUDY YI

K BRIAN McLAUGHLIN
 G RICHARD McLEAN
 ISABEL MIKANDA
 BART C MONCELLI
 THOMAS E NAPOLITANO
 KATHLEEN A NEWELL
 PAULETTE L PITT
 FRANCIS X REGAN
 RICHARD F X REGAN
 RICHARD M SALASER
 CATHERINE S TAMASIK
 SUSAN E VOLAKET
 PAUL S WERTHER

Of Counsel:
 RONALD E CALISSI
 NORMAN S KAUFF
 JAMES R NAPOLITANO
 MARIA M SMYTH

Also Admitted in NY
 Also Admitted in PA

January 29, 2002

via telecopier and regular mail

John F. McHugh, Esq.
 McHugh & Barnes
 20 Exchange Place
 New York, New York 10005-3201

**Re: Hi-Tech Transportation, LLC
 Solid Waste Transfer Station**

Dear Mr. McHugh:

This office serves as Special Counsel to the Hudson County Improvement Authority. Your letter of October 17, 2001 has been referred to me for review and response. Kindly accept my apology for the inordinate delay in forwarding this reply.

Having reviewed your correspondence, the various letters from the Secretary of the United States Surface Transportation Board, and the federal statutes and case law referenced therein, I must respectfully disagree with the conclusion that the operation by Hi-Tech Transportation, LLC, of a transfer station in the Oak Island Rail Yard in Newark and the delivery of Type 13C, construction and demolition material, by solid waste haulers are exempt under federal law from regulation by the HClA.

It is the position of the HClA that it lawfully may exercise waste flow control over solid waste types 10, 13 (including 13C), 23, 25, and 27 generated within Hudson County,

LAW OFFICES
DECOTIIS, FITZPATRICK,
GLUCK & COLE, LLP

John F. McHugh, Esq.
January 29, 2002
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having procured solid waste disposal services in a manner that did not discriminate against interstate commerce. In obtaining solid waste transfer station, transportation and landfill services for the disposal of Hudson County solid waste, the HCIA has acted consistent with the Commerce Clause and in accordance with the applicable decisions of the federal courts, including Atlantic Coast Demolition Co., Inc. v. Atlantic County Board of Chosen Freeholders, et al., 112 F.3rd 653 (3rd Cir. 1997). Consequently, the HCIA maintains an absolute ownership interest in these Hudson County solid waste types.

In your correspondence, the Federal District Court of Oregon decision in AGG Enterprises, Inc. v. Washington County, 2000 WL 361892 (D. Ct. 2001) was cited as dispositive of the issue of waste flow control where interstate commerce is involved. However, my reading of the opinion reveals that, contrary to the situation extant in Hudson County, the circumstances involved local licensure requirements and not a restriction on the disposal of solid waste collected from a particular area. In response to the plaintiff's reliance on U&I Sanitation, 205 F.3rd 1063, (8th Cir. 2000), the court specifically stated in section 10 of its opinion that the ordinances of Washington County and the City of Beaverton were not flow control ordinances

There is no dispute that the court addressed the issue of preemption in rendering its decision and found the ordinances were preempted by the Federal Aviation Administration Authorization Act of 1994. However, in declaring an ownership interest in the solid waste types listed above that are generated in Hudson County, the HCIA is by no means attempting to regulate the rates, classifications, rules, practices, routes, services, and facilities of a rail carrier reserved to the jurisdiction of the Surface Transportation Board under the Interstate Commerce Commission Termination Act. The informal opinion expressed by the Secretary of the Surface Transportation Board in a letter of May 3, 2000 to Mr. Klempner of Hi-Tech that "local zoning and permitting requirements" are preempted by the ICC Termination Act is certainly less than definitive when it is read following the Secretary's acknowledgment that Mr. Klempner was not specific as to the "exact nature" of local regulation. As an aside, it is difficult to assess the applicability of the various letters from the Surface Transportation Board without the corresponding letters from your client requesting informal opinions and describing the activities of the facility at Oak Island.

As a result of national procurements of solid waste disposal services that fully took into consideration the interstate commerce concerns of solid waste companies located outside the boundaries of New Jersey, the HCIA is not acting as a market regulator in directing Hudson County solid waste to its contractors for disposal; rather, it is acting as a participant in the solid waste disposal market. In fact, the provision of solid waste disposal

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John F. McHugh, Esq.
January 29, 2002
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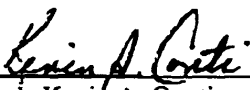
services by the HCIA constitutes interstate commerce since Hudson County solid waste is shipped via long-haul trailer to landfill facilities in Pennsylvania. Furthermore, the HCIA's consequent ownership of Hudson County-generated waste entitles it exercise control over this waste from the point of generation to ensure its proper disposal and the health, safety and welfare of the citizens of Hudson County.

The actions of the HCIA are intended to enforce its ownership interest in this waste, starting at the moment of collection. The delivery to and receipt of this waste at transfer station sites contravene the waste flow control ordinances enacted in accordance with Atlantic Coast and approved by the New Jersey Department of Environmental Protection.

Consistent with the decisions of the federal courts and State law, the HCIA hereby demands that Hi-Tech make available for inspection by HCIA representatives all daily records and origination and destination forms for waste generated in Hudson County. In the event such documentation is not produced for inspection by the HCIA within ten (10) days from the date of this letter, it is the HCIA's intention to take all measures necessary to compel delivery of such Hudson County waste to its contract facilities and prevent its unlawful diversion to facilities not included in the Hudson County District Solid Waste Management Plan.

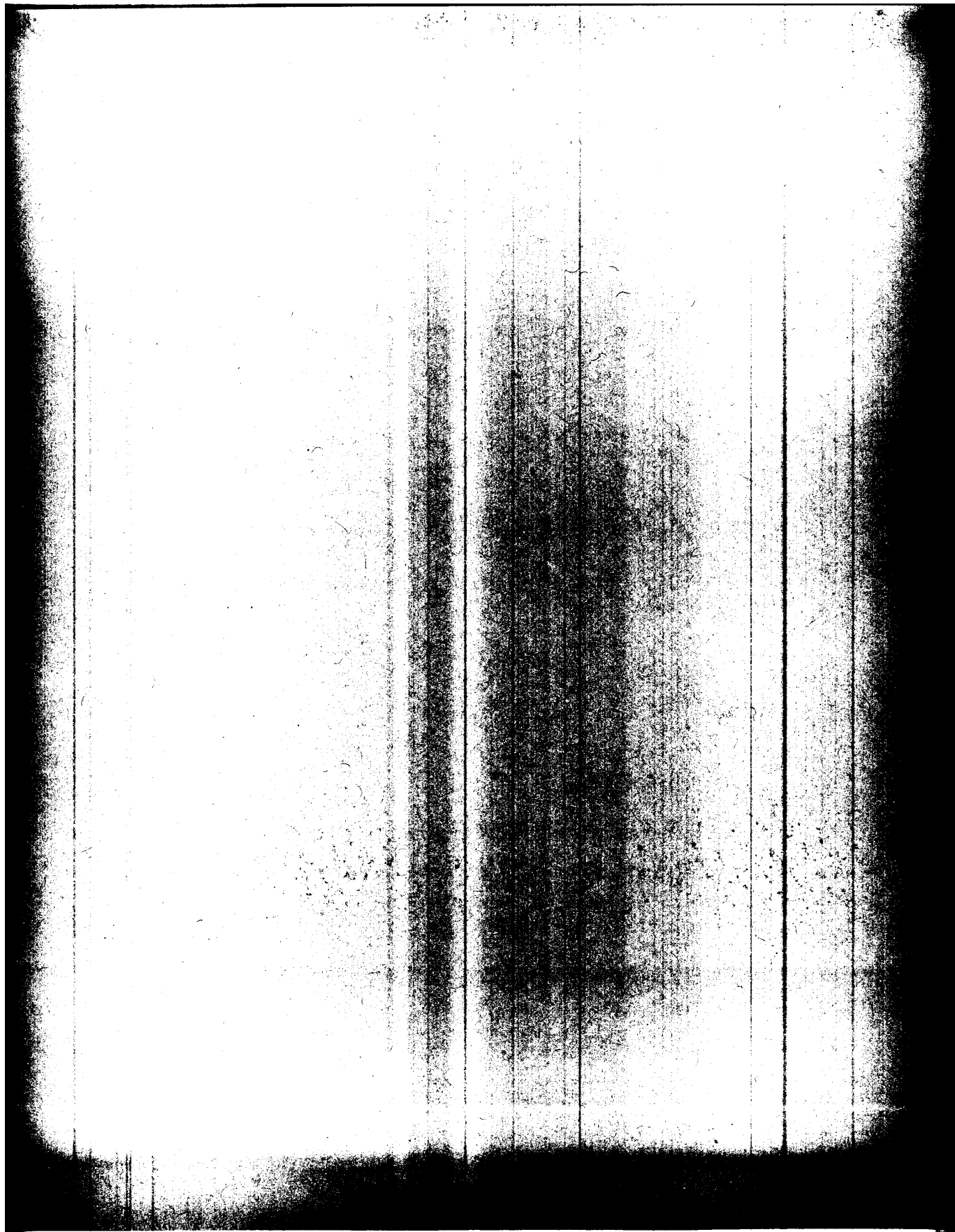
I concur that it may be beneficial for representatives of the HCIA and Hi-Tech to meet for purposes of discussing our disparate positions. Should you still wish to meet, kindly contact me at your earliest convenience to make the necessary arrangements.

Very truly yours,
DeCotiis, FitzPatrick, Gluck & Cole, LLP

By: 
Kevin A. Conti

KAC/mo

cc: T. Calvanico, Executive Director
R. Barry, General Counsel
J. Williams, Esq.





HUDSON COUNTY IMPROVEMENT AUTHORITY
2 Journal Square Plaza - 8th Floor
Jersey City, N.J. 07306

(201) 795-4555
Fax (201) 795-0240

Commissioners

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Martin A. Budinick, Vice Chairman
Frank M. Vaccarino, Esq., Treasurer
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John J. Duffy

County Executive

Robert C. Janiszewski

Executive Director

Thomas P. Calvanico, Esq.

October 6, 1998

TO: All Bidders

FROM: The Hudson County Improvement Authority

RE: Request for Bids for Solid Waste Disposal Services
Addendum No.1 to Request for Bids

On September 22, 1998, the Hudson County Improvement Authority (the "HCIA") issued a Request for Bids for Solid Waste Disposal Services for the provision of contingent Disposal Services for all Processible Waste (or a portion thereof, but not less than 100,000 tons annually) and all Non-Processible Waste generated within Hudson County.

In accordance with the provisions of Section 1.13 of the Bid Specifications, the HCIA is issuing this Addendum No. 1 in order to make various changes and/or clarifications to the Bid Specifications. This Addendum No. 1 includes a copy of the transcript from the non-mandatory pre-bid conference held on October 1, 1998.

A handwritten signature in black ink, appearing to read "T. Calvanico", is written over a horizontal line.

Thomas P. Calvanico, Esq.
Executive Director

er
Enclosure

cc: Jonathan L. Williams, Esq.

The Hudson County Improvement Authority
Appendix B - Cost Proposal Forms
Page 1 of 6

FORM B-1**COST PROPOSAL FOR PROVISION OF DISPOSAL SERVICES
FOR PROCESSIBLE WASTE, UNDER ALTERNATIVE A**

The undersigned Bidder hereby proposes to comply with all the requirements and perform all the work described in the Bid Specifications and other Contract Documents contained herein for the prices set forth below.

<u>Year</u>	<u>Unit Charge (\$/Ton)</u>
1	_____
2	_____
3	_____
4	_____
5	_____

Note: The Unit Charge must include all labor, materials and equipment necessary to dispose of all Processible Waste (or a portion thereof, but not less than 100,000 Tons annually) at the Disposal Facility(ies); if such Disposal Facility(ies) is located more than twenty (20) road miles from the intersection of Tonnelle and Manhattan Avenues, in Jersey City, New Jersey, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

The Unit Charge shall also include the cost of disposal and/or recycling residue and all host community benefits that the Disposal Facility(ies) is obligated to, or will in the future agree to pay, or is otherwise required to pay to the jurisdiction where the Disposal Facility(ies) is located, in accordance with N.J.S.A. 13:1E-281, or other applicable law. For the purpose of this paragraph, "all Processible Waste" means 415,000 Tons annually.

The Hudson County Improvement Authority
Appendix B - Cost Proposal Forms
Page 2 of 6

**THE AUTHORITY DOES NOT WARRANT OR GUARANTEE THE AMOUNT OR
COMPOSITION OF PROCESSIBLE WASTE TO BE AVAILABLE FOR DISPOSAL.**

Name of Bidder: _____
Address: _____
Authorized Signature: _____
Print Name and Title: _____

The Hudson County Improvement Authority
Appendix B - Cost Proposal Forms
Page 3 of 6

ALL BIDDERS MUST COMPLETE SECTION I, BELOW.

SECTION I

DISPOSAL FACILITY(IES)*

1. Identify the Disposal Facility(ies) which Bidder proposes to utilize in providing contingent Disposal Services to the Authority in accordance with the Bid Specifications:

Name of Facility: _____

Address of Facility: _____

2. The amount of Processible Waste, in Tons, for which Bidder proposes to provide contingent Disposal Services to the Authority at the Disposal Facility(ies) identified in Paragraph 1, above:

Yearly: _____ Tons (in no event less than 100,000 Tons per year)

3. The distance of the Disposal Facility(ies) (identified in this Section I) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey is _____ road miles (if in excess of twenty (20) road miles, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

Name of Bidder: _____

Address: _____

Authorized Signature: _____

Print Name and Title: _____

*In the event that Bidder proposes to provide more than one Disposal Facility, Bidder must complete Section I for each proposed Disposal Facility.

The Hudson County Improvement Authority
Appendix B - Cost Proposal Forms
Page 4 of 6

FORM B-2**COST PROPOSAL FOR PROVISION OF DISPOSAL SERVICES
FOR ALL NON-PROCESSIBLE WASTE, UNDER ALTERNATE B**

The undersigned Bidder hereby proposes to comply with all the requirements and perform all the work described in the Bid Specifications and other Contract Documents contained herein for the prices set forth below.

<u>Year</u>	<u>Unit Charge (\$/Ton)</u>
1	_____
2	_____
3	_____
4	_____
5	_____

Note: The Unit Charge shall include all labor, materials and equipment necessary to dispose of all Non-Processible Waste at the Disposal Facility; if such Disposal Facility is located more than twenty (20) road miles from the Intersection of Tonnelle and Manhattan Avenues, in Jersey City, New Jersey, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the Intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

The Unit Charge shall also include the cost of disposing and/or recycling residue and all host community benefits that the Disposal Facility is obligated to, or will in the future agree to pay, or is otherwise required to pay to the jurisdiction where the Disposal Facility is located, in accordance with N.J.S.A. 13:1E-281, or other applicable law. For the purpose of this paragraph, "all Non-Processible Waste" means 100,000 Tons annually.

THE AUTHORITY DOES NOT WARRANT OR GUARANTEE THE AMOUNT OR COMPOSITION OF NON-PROCESSIBLE WASTE TO BE AVAILABLE FOR DISPOSAL.

The Hudson County Improvement Authority
Appendix B - Cost Proposal Form
Page 5 of 6

Name of Bidder: _____
Address: _____
Authorized Signature: _____
Print Name and Title: _____

The Hudson County Improvement Authority
Appendix B - Cost Proposal Forms
Page 6 of 6

ALL BIDDERS MUST COMPLETE SECTION I, BELOW.

SECTION I

DISPOSAL FACILITY(IES)*

1. Identify the Disposal Facility which Bidder proposes to utilize in providing contingent Disposal Services to the Authority in accordance with the Bid Specifications:

Name of Facility: _____

Address of Facility: _____

The Disposal Facility must have sufficient, uncommitted, permitted capacity to dispose of all Non-Processible Waste generated in Hudson County, projected to be (up to 100,000 Tons annually, 650 Tons daily, 3,000 Tons weekly, and 10,000 Tons monthly).

2. The distance of the Disposal Facility (identified in this Section I) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey is _____ road miles (if in excess of twenty (20) road miles, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) ~~times~~ the distance in road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

Name of Bidder: _____

Address: _____

Authorized Signature: _____

Print Name and Title: _____

*In the event that Bidder proposes to provide more than one Disposal Facility, Bidder must complete Section I for each proposed Disposal Facility.

SCHEDULE 1**COST PROPOSAL FOR PROVISION OF DISPOSAL SERVICES
FOR PROCESSIBLE WASTE, UNDER ALTERNATE A**

The undersigned Bidder hereby proposes to comply with all the requirements and perform all the work described in the Bid Specifications and other Contract Documents contained herein for the prices set forth below.

<u>Year</u>	<u>Unit Charge (\$/Ton)</u>
1	_____
2	_____
3	_____
4	_____
5	_____

Note: The Unit Charge must include all labor, materials and equipment necessary to dispose of all Processible Waste (or a portion thereof, but not less than 100,000 Tons annually) at the Disposal Facility(ies); If such Disposal Facility(ies) is located more than twenty (20) road miles from the intersection of Tonnelles and Manhattan Avenues, in Jersey City, New Jersey, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the intersection of Tonnelles and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

The Unit Charge shall also include the cost of disposal and/or recycling residue and all host community benefits that the Disposal Facility(ies) is obligated to, or will in the future agree to pay, or is otherwise required to pay to the jurisdiction where the Disposal Facility(ies) is located, in accordance with N.J.S.A. 13:1E-281, or other applicable law. For the purpose of this paragraph, "all Processible Waste" means 415,000 Tons annually. **THE AUTHORITY DOES NOT WARRANT OR GUARANTEE THE AMOUNT OR COMPOSITION OF PROCESSIBLE WASTE TO BE AVAILABLE FOR DISPOSAL.**

Name of Bidder: _____

Address: _____

Authorized Signature: _____

Print Name and Title: _____

ALL BIDDERS MUST COMPLETE SECTION I, BELOW.

SECTION I

DISPOSAL FACILITY(IES)*

1. Identify the Disposal Facility(ies) which Bidder proposes to utilize in providing contingent Disposal Services to the Authority in accordance with the Bid Specifications:

Name of Facility: _____

Address of Facility: _____

2. The amount of Processible Waste, in Tons, for which Bidder proposes to provide contingent Disposal Services to the Authority at the Disposal Facility(ies) identified in Paragraph 1, above:

Yearly: _____ Tons (in no event less than 100,000 Tons per year)

3. The distance of the Disposal Facility(ies) (identified in this Section I) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey is _____ road miles (if in excess of twenty (20) road miles, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

Name of Bidder: _____

Address: _____

Authorized Signature: _____

Print Name and Title: _____

*In the event that Bidder proposes to provide more than one Disposal Facility, Bidder must complete Section I for each proposed Disposal Facility.

SCHEDULE 2**COST PROPOSAL FOR PROVISION OF DISPOSAL SERVICES
FOR ALL NON-PROCESSIBLE WASTE, UNDER ALTERNATE B**

The undersigned Bidder hereby proposes to comply with all the requirements and perform all the work described in the Bid Specifications and other Contract Documents contained herein for the prices set forth below.

<u>Year</u>	<u>Unit Charge (\$/Ton)</u>
1	_____
2	_____
3	_____
4	_____
5	_____

Note: The Unit Charge shall include all labor, materials and equipment necessary to dispose of all Non-Processible Waste at the Disposal Facility; If such Disposal Facility is located more than twenty (20) road miles from the Intersection of Tonnelle and Manhattan Avenues, in Jersey City, New Jersey, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the Intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

The Unit Charge shall also include the cost of disposing and/or recycling residue and all host community benefits that the Disposal Facility is obligated to, or will in the future agree to pay, or is otherwise required to pay to the jurisdiction where the Disposal Facility is located, in accordance with N.J.S.A. 13:1E-281, or other applicable law. For the purpose of this paragraph, "all Non-Processible Waste" means 100,000 Tons annually. **THE AUTHORITY DOES NOT WARRANT OR GUARANTEE THE AMOUNT OR COMPOSITION OF NON-PROCESSIBLE WASTE TO BE AVAILABLE FOR DISPOSAL.**

Name of Bidder: _____
Address: _____
Authorized Signature: _____
Print Name and Title: _____

ALL BIDDERS MUST COMPLETE SECTION I, BELOW.

SECTION I

DISPOSAL FACILITY(IES)*

1. Identify the Disposal Facility which Bidder proposes to utilize in providing contingent Disposal Services to the Authority in accordance with the Bid Specifications:

Name of Facility: _____

Address of Facility: _____

The Disposal Facility must have sufficient, uncommitted, permitted capacity to dispose of all Non-Processible Waste generated in Hudson County, projected to be (up to 100,000 Tons annually, 650 Tons daily, 3,000 Tons weekly, and 10,000 Tons monthly).

2. The distance of the Disposal Facility (identified in this Section I) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey is _____ road miles (if in excess of twenty (20) road miles, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

Name of Bidder: _____

Address: _____

Authorized Signature: _____

Print Name and Title: _____

*In the event that Bidder proposes to provide more than one Disposal Facility, Bidder must complete Section I for each proposed Disposal Facility.

REQUEST FOR BIDS
FOR
SOLID WASTE DISPOSAL SERVICES

ISSUE DATE: September 22, 1998

DUE DATE: October 15, 1998

ISSUED BY:

**THE HUDSON COUNTY IMPROVEMENT AUTHORITY
COUNTY OF HUDSON, NEW JERSEY
2 Journal Square, Eighth Floor
Jersey City, New Jersey 07306**

**THE HUDSON COUNTY IMPROVEMENT AUTHORITY
COUNTY OF HUDSON, NEW JERSEY**

**NOTICE TO BIDDERS
FOR SOLID WASTE DISPOSAL SERVICES**

Notice is hereby given that sealed bids will be received by The Hudson County Improvement Authority (the "HCIA" or the "Authority") at its Administrative Offices, 2 Journal Square, Eighth Floor, Jersey City, New Jersey 07306, on **October 15, 1998 at 11:00 a.m.** On such date and at the above time and place, in accordance with the provisions of the New Jersey Local Public Contracts Law, such bids will be publicly opened and read aloud for the following contracts:

Alternate A: The HCIA is soliciting bids for the provision of contingent Disposal Services for all Processible Waste (or a portion thereof, but not less than 100,000 tons annually) generated within Hudson County.

AND/OR

Alternate B: The HCIA is soliciting bids for the provision of contingent Disposal Services for all Non-Processible Waste generated within Hudson County.

The Bid Specifications do not restrict or limit the geographic location of Disposal Facility(ies) to be utilized by the Successful Bidder(s) for the provision of contingent Disposal Services under either Alternate A or B. However, in the event that a Successful Bidder's Disposal Facility(ies) for the provision of contingent Disposal Services is(are) located in excess of twenty (20) road miles from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services (under either Alternate A or B) where Bidder's Disposal Facility(ies) is (are) located in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station) to the unit price bid by Bidder, and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

The contract for contingent Disposal Services shall be for a term of five (5) years, commencing upon execution of the contingent Disposal Services Agreement, and ending five (5) years thereafter, unless earlier terminated in accordance with the terms thereof. Although the Agreement term shall commence as of the date of execution of the Agreement, the services to be performed by the Successful Bidder(s) shall not commence until thirty (30) days after the issuance of a Notice to Proceed by the Authority, which Notice may be issued at any time during the term of the Agreement. The issuance of a Notice to Proceed shall be contingent upon a determination by the Authority, at the Authority's sole option and discretion, that an event has occurred which has or will disrupt or adversely affect the manner in which the Authority presently provides solid waste disposal services, and that such event requires the implementation of the contingent Disposal Services. In the interest of sound solid waste disposal planning, the Authority desires to procure

"Contractor" - refers to the Successful Bidder(s) or its successor and assigns, that is/are selected by the HCIA to execute the Disposal Services Agreement, and who will provide the contingent Disposal Services in accordance with the terms thereof.

"County" - refers to the County of Hudson, New Jersey.

"County System" - refers to the current manner in which the Authority provides solid waste disposal services, i.e., through (1) transfer station services provided by SWT&R in Newark, New Jersey for the processing and transfer of Acceptable Waste, under the Authority's contract with SWT&R, (2) transportation of such Acceptable Waste by long-haul vehicles operated by the Authority's contract transporter, Hudson-J.V., to (3) the ultimate disposal site, Alliance Landfill in Taylor, Pennsylvania, under the terms of the Authority's Landfill Agreement with Empire Sanitary Landfill, Inc.

"DEP" or "NJDEP" - refers to the New Jersey Department of Environmental Protection, or any successor agency.

"Designated Transfer Station" - refers to Solid Waste Transfer & Recycling, Inc. ("SWT&R") in Newark, New Jersey.

"Designated Transporter" - refers to Hudson-J.V., a joint venture between Gary W. Gray Trucking, Inc. and Empire Sanitary Landfill, Inc. (now Alliance Landfill).

"Disposal Facility(ies)" - refers to the permitted sanitary landfill, waste-to-energy facility or other solid waste facility, designated by the Bidder on Section I of the Cost Proposal Form, to be utilized by the Bidder for the disposal of Processible Waste under Alternate A and/or Non-Processible Waste under Alternate B, and any residue therefrom.

"Disposal Services" - refers collectively to the contingent Disposal Services required to be performed by the Successful Bidder(s) pursuant to the Disposal Services Agreement, and these Bid Specifications in connection with the disposal of Processible Waste under Alternate A and/or in connection with the disposal of Non-Processible Waste under Alternate B, and any residue therefrom.

"Disposal Services Agreement" - refers to the "Agreement to Provide Solid Waste Disposal Services" executed or to be executed by and between the Authority and the Contractor(s) setting forth the terms and conditions relating to the disposal of Processible Waste and/or Non-Processible Waste at the Disposal Facility(ies) proposed by the Bidder(s).

"Event of Default" - refers to the non-performance of the Contractor under the terms of the Disposal Services Agreement as more particularly described in the Disposal Services Agreement.

"Facilities" - means the Disposal Facility(ies) provided under and in accordance with the Disposal Services Agreement.

"Local Public Contracts Law" - refers to the New Jersey Local Public Contracts Law of the State of New Jersey (N.J.S.A. 40A:11-1 et seq.) and the acts amendatory thereof and supplemental thereto.

"Processible Waste" - refers to all non-recycled Acceptable Waste that is generated within the geographic boundaries of the County and which is not Non-Processible Waste.

"Non-Processible Waste" - refers to all non-recycled Acceptable Waste that is generated within the geographic boundaries of the County and characterized as I.D. Type 13 and the non-processible portion of I.D. Type 27, or other Acceptable Waste which any Waste-to-Energy Facility proposed for use by a Successful Bidder under this Bid is prohibited from accepting by permit or other Applicable Law.

"Notice to Proceed" - refers to the written notice issued by the Authority, to the Successful Bidder, requiring the Bidder to commence performance under the Disposal Services Agreement upon thirty (30) days after receipt of such notice, and at the Unit Charge then in effect. The Authority shall issue the Notice to Proceed, at the Authority's sole option, upon the occurrence of a Contingent Event.

"Recyclable Materials" - refers to those materials designated in the Hudson County District Recycling Plan to be source separated for recycling pursuant to Section 3 of P.L. 1987, C.102, or those materials designated as recyclable pursuant to NJDEP regulations.

"Residue" - means the solid wastes remaining after receipt and processing at the Bidder's Disposal Facility(ies) under Alternate A and/or Alternate B and which require disposal and/or recycling in accordance with Applicable Laws.

"Resource Recovery Facility(ies)" - refers to any Waste-to-Energy Facility that is to be utilized by the Successful Bidder(s) for disposal of Processible Waste in connection with the provision of contingent Disposal Services under Alternate A.

"Successful Bidder(s)" - refers to the lowest, responsible Bidder(s) selected by the HCIA to provide for contingent Disposal Services and who will execute the Disposal Services Agreement.

"Term" - means the five (5) years beginning on the Commencement Date and ending five (5) years after the Commencement Date, unless earlier terminated pursuant to these Bid Specifications or the Disposal Services Agreement.

"tpd" - refers to Tons per day.

"tpy" - refers to Tons per year.

"Ton" - means a short ton of 2000 pounds.

SECTION 1

GENERAL INFORMATION

1.1 Introduction and Purpose

The HCIA is the County's implementing agency, for implementation of the Hudson County District Solid Waste Management Plan (the "County Plan"). The HCIA is required, pursuant to the Solid Waste Management Act, to adequately plan for the disposal of all solid waste generated within the County. The current County Plan provides for the disposal of all solid waste Types 10, 13, 23, 25 and 27 (excluding asbestos-containing materials) generated within the County through a system consisting of the transfer, transportation, and disposal at an out-of-state landfill. Pursuant to the County System, in-County generated solid waste is delivered by local collection vehicles to the SWT&R transfer station in Newark, where, under the Authority's contract with SWT&R, the solid waste is processed and transferred onto long-haul trailers operated by the Authority's contract transporter, Hudson-J.V., and transported to the Alliance Landfill in Taylor, Pennsylvania, for ultimate disposal, pursuant to the Authority's Landfill Agreement.

As part of responsible, solid waste planning the HCIA believes it prudent to acquire contingent Disposal Services which can be implemented within 30 days after the issuance of a Notice to Proceed by the HCIA. The issuance of such Notice to Proceed shall be contingent upon a determination by the Authority, within its sole discretion and at its sole option, that a Contingent Event has occurred. Thus, the HCIA is soliciting Bids for the provision of contingent Disposal Services to ensure the continuous, uninterrupted provision of solid waste disposal services in a reliable, cost-effective and environmentally sound manner in any contingency, including, but not limited to, the loss of a component of the County System.

The HCIA intends to award a Disposal Services Agreement for all Processible Waste (or a portion thereof, but not less than 100,000 Tons annually) generated within Hudson County, under Alternate A, and/or for all Non-Processible Waste generated within Hudson County, under Alternate B, to the lowest, responsible Bidder(s). The Agreement shall commence upon execution of the Disposal Services Agreement by the Successful Bidder(s) and the Authority, and shall run for a period of five (5) years, unless earlier terminated in accordance with the provisions thereof.

Although the Term of the Agreement shall commence upon execution, the services to be performed by the Successful Bidder(s) shall not commence until thirty (30) days after the issuance of a Notice to Proceed by the Authority, which Notice may be issued at any time during the Term of the Agreement. Upon such commencement of services, the Successful Bidder(s) shall be compensated at the then applicable Unit Charge "UC." For example, in accordance with Appendix B (Proposal Forms), Bidders are required to propose a UC for each of the five (5) years of the Term of the Agreement; therefore, if the Authority issues a Notice to Proceed in the third year of the Term, the Successful Bidder(s) shall be compensated at the UC for that year, and at the applicable UC for each subsequent year remaining under the Term (i.e., the fourth and fifth years).

These Bid Specifications have been prepared by the Authority in order to solicit technical, contractual and cost Bids with respect to the provision of contingent Disposal Services, as defined herein, upon the terms and conditions set forth herein.

The information provided in this Introduction is summary in nature and is not intended to provide a full explanation of the terms and conditions of the Bid Specifications. All Bidders must read all of the Bid Documents (as set forth in Section 5 below) to be fully informed of the terms and conditions applicable to (a) the submittal of Bids for the provision of contingent Disposal Services, and (b) the execution of the appropriate contractual agreements relating thereto.

THE AUTHORITY DOES NOT AND WILL NOT WARRANT OR GUARANTEE THE AMOUNT OR COMPOSITION OF SOLID WASTE TO BE AVAILABLE FOR THE PROVISION OF CONTINGENT DISPOSAL SERVICES IN ANY GIVEN DAY, WEEK, MONTH OR YEAR OR IN THE AGGREGATE PURSUANT TO ANY CONTRACTUAL AGREEMENT AWARDED UNDER THESE BID SPECIFICATIONS. NOTHING CONTAINED IN ANY OF THE BID DOCUMENTS SHALL BE CONSTRUED TO GUARANTEE OR WARRANT SUCH AMOUNTS OR COMPOSITION. TONNAGE AMOUNTS SET FORTH HEREIN CONSTITUTE EITHER HISTORIC FLOW RATES OR ESTIMATES OF FUTURE FLOW RATES AND MAY NOT BE INDICATIVE OF ACTUAL FLOW RATES TO BE EXPERIENCED IN THE FUTURE. ADDITIONALLY, THE AUTHORITY CANNOT AND DOES NOT WARRANT OR GUARANTEE THAT A NOTICE TO PROCEED UNDER THE CONTINGENT DISPOSAL SERVICES AGREEMENT WILL BE ISSUED AND THAT THE SUCCESSFUL BIDDER(S) WILL BE CALLED UPON TO PERFORM ANY SERVICES FOR WHICH IT WOULD BE ENTITLED TO COMPENSATION.

1.2 Scope

Alternate A: The HCIA is soliciting bids for the provision of contingent Disposal Services for all Processible Waste (or a portion thereof, but not less than 100,000 Tons annually) generated within Hudson County.

AND/OR

Alternate B: The HCIA is soliciting bids for the provision of contingent Disposal Services for all Non-Processible Waste generated within Hudson County.

A BIDDER MAY SUBMIT BIDS FOR ALTERNATE A AND/OR ALTERNATE B.

1.3 Geographic Limitations

The Bid Specifications do not restrict or limit the geographic location of Disposal Facility(ies) to be utilized by the Successful Bidder(s) for the provision of contingent Disposal Services under either Alternate A or B. However, in the event that a Successful Bidder's Disposal Facility(ies) for the provision of contingent Disposal Services is(are) located in excess of twenty

(20) road miles from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services (under either Alternate A or B), where Bidder's Disposal Facility(ies) is (are) located in excess of 20 road miles from such Intersection, the Authority shall add a transfer station services fee of \$10.50 per Ton (representing the HCIA's current cost of such services at its Designated Transfer Station) to the per Ton unit price bid by Bidder, and shall add a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

[Example: Assuming that a Bidder's Disposal Facility is a landfill located 100 road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey, and that such Bidder bids a unit price of \$22.00 per ton for disposal, for evaluation purposes only, Bidder's bid is \$45.43 (\$22.00 per ton (disposal) + \$10.50 per ton (transfer station services) + (\$0.1293 x 100 miles) (transportation services)).]

1.4 Term

The contingent Disposal Services Agreement shall be for a term of five (5) years, beginning on the Commencement Date, unless earlier terminated.

1.5 Commencement of Services under Contingent Disposal Services Agreement

The Successful Bidder(s) shall be required to commence performance of services under the contingent Disposal Services Agreement within thirty (30) days of receipt of a Notice to Proceed issued by the Authority. The Authority may issue a Notice to Proceed at any time during the Term of the Agreement. The issuance of such Notice to Proceed shall be contingent upon a determination by the Authority, within its sole discretion and at its sole option, that an event has occurred that has the likelihood of disrupting or otherwise materially and adversely affecting the continued, uninterrupted provision of solid waste disposal services through the current County System.

For example, pursuant to a March 25, 1998 Order of the Superior Court of New Jersey, Law Division, Hudson County, entered in the matter of American Ref-Fuel Company of Essex County v. Hudson County Improvement Authority, Empire Sanitary Landfill, Inc. d/b/a Alliance Landfill, and U.S. Systems Corp., Docket No. HUD-L-1764-98 ("American Ref-Fuel"), the Landfill Agreement, as amended, was invalidated as violative of the Local Public Contracts Law. The Order was stayed pending conclusion of final appellate proceedings. The Authority and Empire (two of the signatories to the Landfill Agreement, as amended) filed appeals, which are presently pending before the Superior Court of New Jersey, Appellate Division. Consequently, because of the stay of the Order, the Authority continues to dispose of solid waste at Alliance Landfill pursuant to the Landfill Agreement, as amended, and may continue to do so unless and until the Order is affirmed at the conclusion of all appeals. Thus, if the March 25, 1998 Order were so affirmed, leaving the

- B. New Jersey Regulatory Agency and Other Approvals. The Authority will use all reasonable efforts (with the assistance and cooperation of the Successful Bidder(s)) to obtain such New Jersey regulatory agency or other approvals that are required to be obtained by the Authority in order to carry out or give effect to the provisions of these Bid Specifications and the transactions contemplated hereunder and under the Disposal Services Agreement; provided however, such obligation and responsibility shall not include obtaining any permits, licenses or approvals required to be obtained by the Successful Bidder(s) in order to perform any of the contingent Disposal Services. Except as otherwise therein provided, the Disposal Services Agreement(s) (and the activities contemplated thereunder) will be effective upon receipt of all applicable regulatory approvals obtained by the Authority.
- C. Award of Contracts. Except to the extent that the Authority exercises any of its rights set forth in Section 1.4 or Section 1.5.1 hereof, the Authority shall enter into the Disposal Services Agreement (under Alternate A and/or Alternate B) with the Successful Bidder(s) after selecting the lowest responsible Bidder(s) to perform such contingent Disposal Services, in the manner and to the extent provided in these Bid Specifications.
- D. Payments Relating to Provision of Contingent Disposal Services. The Authority will make payment to the Contractor(s) of the costs of providing the contingent Disposal Services in the amounts and at the times provided in the Disposal Services Agreement. The Contractor(s) shall only be entitled to compensation upon the issuance of a Notice to Proceed by the Authority, and commencement of Disposal Services by Contractor(s).

1.17 Successful Bidder's Responsibilities

- A. Financial Criteria. Throughout the Term of the Disposal Services Agreement, the Successful Bidder(s) (or its/their Guarantor) shall meet the Minimum Financial Criteria set forth in Section 4.2.
- B. Disposal Services. The Successful Bidder(s) shall provide (i) contingent Disposal Services for Processible Waste under the terms of Alternate A and/or (ii) contingent Disposal Services for Non-Processible Waste under the terms of Alternate B, in each case in accordance with all Applicable Laws and in accordance with the terms and conditions set forth in these Bid Specifications and the terms of the Disposal Services Agreement.
- C. Ownership or Lease of Disposal Facilities. The Successful Bidder(s) shall own, lease or otherwise control, and operate and maintain one or more Disposal Facilities capable of accepting at least 100,000 Tons per year of Processible Waste generated within Hudson County under Alternate A, or at least 100,000 Tons per year of Non-Processible Waste generated within Hudson County under Alternate B. The Disposal Facility(ies) shall be operated in accordance with all applicable permits and

regulations relating to the Disposal Facility(ies) and in accordance with the terms and conditions of the Disposal Services Agreement. In particular, if the Disposal Facility(ies) are located outside of Hudson County or the State of New Jersey, they must be capable of accepting waste generated within Hudson County without violating any federal, state or local laws, rules, regulations or orders.

- D. Vehicles and Equipment. The Successful Bidder(s) shall be responsible for providing vehicles and equipment of such type and in such quantity as are required to fulfill its obligations under the Disposal Services Agreement; provided however, that such vehicles and equipment shall satisfy, at a minimum, the minimum technical requirements set forth in Section 3 hereof. The Successful Bidder(s) shall also be responsible for the operation, maintenance and repair of all such vehicles and equipment in accordance with the manufacturer's specifications and in a manner sufficient to ensure that such vehicles and equipment are capable of providing all of the required contingent Disposal Services, as set forth in these Bid Specifications and in conformance with the terms and conditions of the Disposal Services Agreement.
- E. Permits. The Successful Bidder(s) shall be responsible for obtaining all necessary permits, licenses and approvals required in connection with the provision of the contingent Disposal Services detailed in these Bid Specifications, from all regulatory agencies having competent jurisdiction. The Successful Bidder(s) shall also be responsible for maintaining or, if necessary during the Term of the Disposal Services Agreement, renewing said permits. In the event that the Successful Bidder(s) has not obtained the necessary regulatory permits and/or approvals to fully perform the contingent Disposal Services required by the terms of the Disposal Services Agreement within sixty (60) days of the expiration of the current permits, the Successful Bidder(s) shall be in default under the terms of the Disposal Services Agreement and will be subject to the payment of damages therefor.
- F. Compliance with Previously Executed Construction and/or Operation Agreements. The Successful Bidder(s) shall be responsible for satisfaction of and compliance with all provisions of any construction and/or operation agreements and all other ancillary agreements previously executed by the Successful Bidder(s) for or with respect to the Facilities (including any leases or host municipality agreements and/or financing documents), including without limitation, performance guarantees and payment obligations.
- G. Regulatory and Other Approvals. The Successful Bidder(s) (with the assistance and cooperation of the Authority) shall be responsible for satisfying the procedures (regulatory, governmental or other), if any, required for or with respect to the Disposal Services Agreement and the Successful Bidder's obligations thereunder in any jurisdiction with respect to the provision of contingent Disposal Services and in the jurisdiction in which the Facilities are located, (including execution and/or maintenance of a host community agreement that specifically authorizes the

ALL BIDDERS MUST COMPLETE SECTION I, BELOW.

SECTION I

DISPOSAL FACILITY(IES)*

1. Identify the Disposal Facility(ies) which Bidder proposes to utilize in providing contingent Disposal Services to the Authority in accordance with the Bid Specifications:

Name of Facility: _____

Address of Facility: _____

2. The amount of Processible Waste, in Tons, for which Bidder proposes to provide contingent Disposal Services to the Authority at the Disposal Facility(ies) identified in Paragraph 1, above:

Daily: _____ Tons (in no event less than 650 Tons per day)

Weekly: _____ Tons (in no event less than 3,000 Tons per week)

Monthly: _____ Tons (in no event less than 10,000 Tons per month)

Yearly: _____ Tons (in no event, less than 100,000 Tons per year)

3. The distance of the Disposal Facility(ies) (identified in this Section I) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey is _____ road miles (if in excess of twenty (20) road miles, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

Name of Bidder: _____

Address: _____

Authorized Signature: _____

Print Name and Title: _____

*In the event that Bidder proposes to provide more than one Disposal Facility, Bidder must complete Section I for each proposed Disposal Facility.

FORM B-2

**COST PROPOSAL FOR PROVISION OF DISPOSAL SERVICES
FOR ALL NON-PROCESSIBLE WASTE, UNDER ALTERNATE B**

The undersigned Bidder hereby proposes to comply with all the requirements and perform all the work described in the Bid Specifications and other Contract Documents contained herein for the prices set forth below.

<u>Year</u>	<u>Unit Charge (\$/Ton)</u>
1	_____
2	_____
3	_____
4	_____
5	_____

Note: The Unit Charge shall include all labor, materials and equipment necessary to dispose of all Non-Processible Waste at the Disposal Facility; if such Disposal Facility is located more than twenty (20) road miles from the Intersection of Tonnelle and Manhattan Avenues, in Jersey City, New Jersey, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

The Unit Charge shall also include the cost of disposing and/or recycling residue and all host community benefits that the Disposal Facility is obligated to, or will in the future agree to pay, or is otherwise required to pay to the jurisdiction where the Disposal Facility is located, in accordance with N.J.S.A. 13:1E-281, or other applicable law. For the purpose of this paragraph, "all Non-Processible Waste" means 100,000 Tons annually. **THE AUTHORITY DOES NOT WARRANT OR GUARANTEE THE AMOUNT OR COMPOSITION OF NON-PROCESSIBLE WASTE TO BE AVAILABLE FOR DISPOSAL.**

The Hudson County Improvement Authority
Appendix B - Cost Proposal Forms
Page 6 of 7

Name of Bidder: _____

Address: _____

Authorized Signature: _____

Print Name and Title: _____

ALL BIDDERS MUST COMPLETE SECTION I, BELOW.

SECTION I

DISPOSAL FACILITY(IES)*

1. Identify the Disposal Facility which Bidder proposes to utilize in providing contingent Disposal Services to the Authority in accordance with the Bid Specifications:

Name of Facility: _____

Address of Facility: _____

The Disposal Facility must have sufficient, uncommitted, permitted capacity to dispose of all Non-Processible Waste generated in Hudson County, projected to be (up to 100,000 Tons annually, 650 Tons daily, 3,000 Tons weekly, and 10,000 Tons monthly).

2. The distance of the Disposal Facility (identified in this Section I) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey is _____ road miles (if in excess of twenty (20) road miles, the HCIA intends to utilize the services of its Designated Transfer Station and Designated Transporter. Therefore, solely for the purposes of evaluating the Bids for contingent Disposal Services where the Bidder's Disposal Facility(ies) is (are) in excess of twenty (20) road miles from such intersection, the Authority shall add a transfer station services fee of \$10.50 per ton (representing the HCIA's current cost of such services at its Designated Transfer Station), and a transportation services fee, to be calculated by multiplying \$0.1293 (representing the HCIA's current per ton mile cost of such transportation services provided by its Designated Transporter) times the distance in road miles (one way) from the intersection of Tonnelle and Manhattan Avenues in Jersey City, New Jersey to the Bidder(s)' Disposal Facility(ies) to the average of the unit prices bid for each year over the five year Term of the Disposal Services Agreement.

Name of Bidder: _____

Address: _____

Authorized Signature: _____

Print Name and Title: _____

*In the event that Bidder proposes to provide more than one Disposal Facility, Bidder must complete Section I for each proposed Disposal Facility.

AGREEMENT TO PROVIDE SOLID WASTE DISPOSAL SERVICES

By and Between

and

THE HUDSON COUNTY IMPROVEMENT AUTHORITY

Dated: _____

HCIA Bid Specifications
Disposal Services Agreement

Appendix C





The Essex County Utilities Authority

120 Fairview Avenue, Cedar Grove, New Jersey 07009
Tel. 973-857-2330 Fax. 973-857-9361



COMMISSIONERS

Antonio M. Calcedo, Treasurer
Carmine P. Casciano
Albert Coutinho
Donald L. O'Connor, Vice Chairman
Leroy I. Robinson, Secretary

CHAIRMAN

Mauro G. Tucci

March 23, 1998

TO: Potential Bidders

FROM: Michael C. Cortese, Director of Finance and Administration

RE: The Essex County Utilities Authority
Solicitation of Bids for the Provision of Solid Waste Transfer, Transportation
and/or Disposal Services

The Essex County Utilities Authority (the "Authority"), in its capacity as the implementing agency for the Essex County Solid Waste Management District, is soliciting bids from firms interested in providing transfer, transportation and/or disposal services with respect to solid waste generated in Essex County.

Procurement of the required transfer, transportation and/or disposal services is being undertaken by the Authority pursuant to and in accordance with the provisions of the New Jersey Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.). A copy of the Bid Specifications is enclosed.

Sealed bids will be received by the Authority at its Administrative Offices, 120 Fairview Avenue, Cedar Grove, New Jersey on Tuesday, April 14, 1998 at 11:00 a.m. (EST). Such bids will be publicly opened and read aloud at that time for the following contracts:

Option No. 1: The Authority is soliciting bids for the provision of either (A) Disposal Services, or (B) transfer, transportation and disposal services (hereinafter referred to as "Combined Services") for all solid waste generated within Essex County. Such contract will be awarded if the Authority is successful in its Declaratory Judgment Action (as evidenced by a Court Determination) and the existing County Service Contract relating to use of the Essex County Resource Recovery Facility is declared null and void as a result of the Atlantic Coast decision; and

The Disposal Facility(ies) utilized by the Contractor for the provision of Disposal Services in accordance with the Disposal Services Agreement (under Option No. 1, Alternative (A)), if awarded, and the Transfer Stations utilized by the Contractor for the provision of Combined Services in accordance with the Combined Services Agreement (under either Option No. 1, Alternative (B) or Option No. 2), if awarded, must be located within fifteen (15) miles of the Essex Resource Recovery Facility.

The contract for Disposal Services or Combined Services under either Option No. 1 or Option No. 2 shall be for a term of five (5) years commencing on or about June 1, 1998 and ending five years after the commencement date, unless earlier terminated.

BIDDERS MUST SUBMIT BIDS ON OPTION NO. 1 AND OPTION NO. 2 DESCRIBED ABOVE. Bidders may submit bids for Alternative (A) (Disposal Services only) and/or Alternative (B) (Combined Services) under Option No. 1. Bidders may "team" with other firms and submit joint bids for Combined Services under Option No. 1(B) and/or Option No. 2.

Bids must be submitted in writing on the forms furnished by the ECUA in the Bid Specifications. Bids must be accompanied by a bid security in the amount of \$20,000. A separate bid security must be provided for each option. If a bidder submits a Bid for more than one Alternative Bid under Option No. 1, a separate bid security must be provided for each Alternative Bid submitted. The Bid Security shall be in the form of a certified check, cashier's check or bid bond payable to the ECUA. Should a successful Bidder fail to enter into a contract and give such performance security as may be specified in the Bid Specifications with good and sufficient surety for the faithful performance of such Contract, the Bidder shall pay to the ECUA an amount which is equal to the difference between the amounts specified in the Bidder's bid and such greater amount that the ECUA, in good faith, may contract with another party to perform the services required by said Bid, which amount shall not exceed \$20,000.

Successful Bidder(s) will be required to submit performance security, either in the form of a performance bond or letter of credit in a sum determined in accordance with the Bid Specifications. At the time of Bid submission, all Bidders will be required to submit a consent of either a surety or bank indicating that such surety or bank will provide the performance bond or letter of credit, as appropriate, if the Bidder is selected to perform the services and awarded a contract. The Successful Bidder(s) must furnish the Certificate(s) of Insurance required by these Bid Specifications and Contract Documents. In order to be deemed responsive, all Bids also shall be submitted in accordance with, and accompanied by, any other information and documents specified in or required by the Bid Specifications.

Bidders are required to comply with the affirmative action and non-discrimination provisions of P.L. 1975, C. 127 and, where applicable, the requirements of P.L. 1963, C. 150 with respect to the payment of prevailing wages.

Resource Recovery Facility to be delivered to the landfills provided under the Ash Disposal Contract.

Declaratory Judgment Action - refers to the action filed by the Authority and presently pending in the New Jersey Superior Court, Law Division, under the caption, (County of Essex, New Jersey vs. Port Authority of New York and New Jersey et al, Docket No. ESX-L-8197-97), to determine the rights, obligations and liabilities that exist among the parties in connection with the County Service Contract and the Ash Disposal Contract.

DEP, NJDEP or the Department - refers to the New Jersey Department of Environmental Protection, or any successor agency.

Disposal Facility(ies) - refers to the sanitary landfill, waste-to-energy facility or other solid waste facility utilized by the Contractor for the disposal of Acceptable Waste (under Option No. 1) or Non-Processible Waste (under Option No. 2).

Disposal Services - refers collectively to the services required to be performed by the Successful Bidder(s) pursuant to the Disposal Services Agreement, and these Bid Specifications in connection with the disposal of Acceptable Waste under Alternative Bid (A).

Disposal Services Agreement - refers to the "Agreement to Provide Solid Waste Disposal Services" executed or to be executed by and between the Authority and the Contractor setting forth the terms and conditions relating to the disposal of Acceptable Waste at the Disposal Facility(ies) proposed by the Bidder. The Disposal Services Agreement will be executed only with respect to the provision of Disposal Services under Alternative Bid(A).

Essex Resource Recovery Facility - refers to the waste-to-energy facility located at 183 Raymond Boulevard, Newark, New Jersey 07105, that is owned and operated by American Ref-Fuel Company of Essex.

Event of Default - refers to the non-performance of the Contractor under the terms of the Disposal Services Agreement or Combined Services Agreement, as more particularly described in the Disposal Services Agreement or the Combined Services Agreement.

Facilities - means either (a) the Disposal Facility(ies) provided under and in accordance with the Disposal Services Agreement, or (b) the Transfer Station(s) and Disposal Facility(ies) provided under and in accordance with the Combined Services Agreement.

Governmental Body - means, as appropriate, any one or several of, any Court of competent jurisdiction, the United States of America, the States of New Jersey and/or any state in which the Facilities are located or which validly exerts appropriate jurisdiction over the Contractor or its activities relating to the Facilities or any agency, authority, regulatory body or

Local Public Contracts Law - refers to the New Jersey Local Public Contracts Law, constituting Chapter 198 of the Pamphlet Laws of 1971, of the State of New Jersey and the acts amendatory thereof and supplemental thereto.

Non-Processible Waste - refers to all non-recycled solid waste that is generated within the geographic boundaries of the County and characterized as I.D. Type 13, 25, the non-processible portion of I.D. Type 27 and that portion of Acceptable Waste that cannot be accepted at or processed by the Essex Resource Recovery Facility.

Option No. 1 - refers to the provision of Disposal Services under Alternative Bid (A) or Combined Services under Alternative Bid (B).

Option No. 2 - refers to the provision of Combined Services for Non-Processible Waste only in the event that the ECUA is unsuccessful in the Declaratory Judgment Action.

Port Authority - refers to the Port Authority of New York and New Jersey.

Recyclable Materials - refers to those materials designated in the Essex County District Recycling Plan to be source separated for recycling pursuant to Section 3 of P.L. 1987, C.102.

Resource Recovery Facility(ies) - refers to any Waste-to-Energy Facility (including the Essex County Resource Recovery Facility) that is to be utilized by the Successful Bidder(s) for disposal of (a) Acceptable Waste in connection with the provision of Disposal Services or Combined Services under Option No. 1, or (b) Non-Processible Waste in connection with the provision of Combined Services under Option No. 2.

Successful Bidder(s) - refers to the lowest, responsible Bidder(s) selected by the ECUA to provide for Disposal Services or Combined Services and who will execute the Disposal Services Agreement or the Combined Services Agreement.

Term - means the five (5) years beginning on the Commencement Date and ending five (5) years after the Commencement Date, unless earlier terminated pursuant to these Bid Specifications or the Disposal Services Agreement or the Combined Services Agreement.

tpd - refers to Tons per day.

tpy - refers to Tons per year.

Ton - means a short ton of 2000 pounds.

Transfer Station(s) - refers to such transfer station(s) located within fifteen (15) miles of the Essex Resource Recovery Facility that is utilized by the Contractor, for the provision of

Combined Services (under Alternative Bid (B) or Option No. 2) in accordance with the Combined Services Agreement.

Transfer Station(s) Receiving Times - refers to the standard operating hours at the Transfer Station(s) during which Acceptable Waste may be delivered for processing and loading into trailers or containers for transportation to the Disposal Facility(ies). Such Receiving Times may be modified from time to time upon mutual agreement of the Authority and the Successful Bidder(s).

Unacceptable Waste - refers to any material that is not Acceptable Waste.

USEPA or EPA - refers to the United States Environmental Protection Agency, or any successor agency.

Waste-to-Energy Facility - refers to a facility employing large scale mass-burn technology to combust solid waste to produce energy.

SECTION 1

GENERAL INFORMATION

1.1 INTRODUCTION

1.1.1 Purpose

The Essex County Utilities Authority ("ECUA" or "Authority"), the implementing agency under the Essex County District Solid Waste Management Plan, is soliciting Bids under the following options:

Option No. 1: The ECUA is soliciting bids for either the provision of (i) Disposal Services (under Alternative Bid (A)), or (ii) transfer, transportation and disposal services (under Alternative Bid (B)) (hereinafter referred to as "Combined Services") for all Acceptable Waste generated within Essex County. Such contract will be awarded only if the ECUA is successful in its Declaratory Judgment Action (as evidenced by a Court Determination) and the existing County Service Contract and Ash Disposal Contract are declared null and void as a result of the Atlantic Coast decision; and

Option No. 2: The ECUA is soliciting bids for the provision of Combined Services for that portion of Acceptable Waste generated within the geographic boundaries of Essex County that cannot be accepted and processed at the Essex Resource Recovery Facility (the "Non-Processible Waste"). Such contract will be awarded only if the ECUA is unsuccessful in its Declaratory Judgment Action (as evidenced by a Court Determination) wherein the existing County Service Contract and Ash Disposal Contract are declared to be valid and enforceable under the Atlantic Coast decision.

The Disposal Facility(ies) utilized by the Contractor for the provision of Disposal Services in accordance with the Disposal Services Agreement (under Option No. 1, Alternative Bid (A)), if awarded, and the Transfer Station(s) utilized by the Contractor for the provision of Combined Services in accordance with the Combined Services Agreement (under either Option No. 1, Alternative Bid (B) or Option No. 2), if awarded, shall be located within fifteen (15) miles of the Essex Resource Recovery Facility.

Through the award of one or more contracts to the Successful Bidder(s), the Authority desires to ensure the provision of Disposal Services or Combined Services in a reliable, cost-effective and environmentally sound manner.

These Bid Specifications have been prepared by the Authority in order to solicit technical, contractual and cost Bids with respect to the provision of Disposal Services or Combined Services upon the terms and conditions set forth herein.

- B. Operation of Transfer Station(s). With respect to the provision of Combined Services, the Successful Bidder(s) shall own, lease or otherwise have control of, and operate and maintain one or more Transfer Station(s) capable of accepting at least 500,000 tons per year of Acceptable Waste under Option No. 1. (however, bids may be submitted for Disposal Services or Combined Services for a portion of the Acceptable Waste in the amount of 100,000 tons or integral multiples thereof) or at least 100,000 tons per year of Non-Processible Waste under Option No. 2.

Each Bidder may submit a Bid under Option No. 1 only that contemplates the use of multiple, separate Transfer Station(s) owned, leased or otherwise controlled by, and operated and maintained by the Bidder, provided that the capacity available at each of such Transfer Station(s) for the processing of Acceptable Waste shall not be less than 2,000 tons per week and 100,000 tons per year of Acceptable Waste. In addition, each of such Transfer Station(s) shall comply with the requirements contained in these Bid Specifications.

The Transfer Station(s) shall be operated in accordance with all applicable permits and regulations relating to the Transfer Station(s) and in accordance with the terms and conditions of the Combined Services Agreement. In particular, if the Transfer Station(s) are located outside of Essex County and/or outside the State of New Jersey, they must be capable of accepting waste generated in Essex County without violating any federal, state or local laws, rules, regulations or orders.

In addition, in the case of the provision of Combined Services, the Successful Bidder(s) shall have the control of or use of sufficient equipment and Disposal Facilities to transport and dispose of the amount of Acceptable Waste or Non-Processible Waste delivered to the Transfer Station(s) pursuant to the Combined Services Agreement.

- C. Ownership or Lease of Transfer Station(s). The Successful Bidder(s) shall own the Transfer Station(s) or be a lessee pursuant to a lease, the term of which shall not expire before five (5) years following the Commencement Date or otherwise legally control the Transfer Station(s). Should the term of the lease expire prior to expiration of the Disposal Services Agreement or the Combined Services Agreement, the Bidder(s) must demonstrate, with the Bid, the ability to extend the lease.
- D. Disposal Facility(ies). The Successful Bidder(s) shall provide (i) Disposal Services under the terms of Option No. 1, Alternative Bid (A), or (ii) disposal services as part of the provisions of Combined Services under the terms of Option

No. 2, Alternative Bid (B) or Option No. 2, in each case in accordance with all applicable permits and regulations and in accordance with the terms and conditions set forth in these Bid Specifications and the terms of the Disposal Services Agreement/Combined Services Agreement, as the case may be.

- E. Ownership or Lease of Disposal Facilities. The Successful Bidder(s) shall own, lease or otherwise control, and operate and maintain one or more Disposal Facilities capable of accepting at least 500,000 tons per year of Acceptable Waste under Option No. 1 or at least 100,000 tons per year of Non-Processible Waste under Option No. 2. The Disposal Facility(ies) shall be operated in accordance with all applicable permits and regulations relating to the Disposal Facility(ies) and in accordance with the terms and conditions of the Disposal Services Agreement or the Combined Services Agreement, as the case may be. In particular, if the Disposal Facility(ies) are located outside of Essex County or the State of New Jersey, they must be capable of accepting waste generated within Essex County without violating any federal, state or local laws, rules, regulations or orders.
- F. Vehicles and Equipment. The Successful Bidder(s) shall be responsible for providing vehicles and equipment of such type and in such quantity as are required to fulfill its obligations under the Disposal Services Agreement or the Combined Services Agreement; provided however, that such vehicles and equipment shall satisfy, at a minimum, the minimum technical requirements set forth in Section 3 hereof. The Successful Bidder(s) shall also be responsible for the operation, maintenance and repair of all such vehicles and equipment in accordance with the manufacturer's specifications and in a manner sufficient to ensure that such vehicles and equipment are capable of providing all of the required Disposal Services or Combined Services, as set forth in these Bid Specifications and in conformance with the terms and conditions of the Disposal Services Agreement or the Combined Services Agreement, as the case may be.
- G. Permits. The Successful Bidder(s) shall be responsible for obtaining all necessary permits, licenses and approvals required in connection with the provision of the Disposal Services or Combined Services detailed in these Bid Specifications, from all regulatory agencies having competent jurisdiction. The Successful Bidder(s) shall also be responsible for maintaining or, if necessary during the Term of the Disposal Services Agreement or the Combined Services Agreement, renewing said permits. In the event that the Successful Bidder(s) has not obtained the necessary regulatory permits and/or approvals to fully perform the Disposal Services or the Combined Services required by the terms of the Disposal Services Agreement or Combined Services Agreement within sixty (60) days of the expiration of the current permits, the Successful Bidder(s) shall be in default under the terms of the

Disposal Services Agreement or Combined Services Agreement and will be subject to the payment of damages therefor.

- H. Compliance with Previously Executed Construction and/or Operation Agreements. The Successful Bidder(s) shall be responsible for satisfaction of and compliance with all provisions of any construction and/or operation agreements and all other ancillary agreements previously executed by the Successful Bidder(s) for or with respect to the Facilities (including any leases or host municipality agreements and/or financing documents), including without limitation, performance guarantees and payment obligations.
- I. Regulatory and Other Approvals. The Successful Bidder(s) (with the assistance and cooperation of the Authority) shall be responsible for satisfying the procedures (regulatory, governmental or other), if any, required for or with respect to the Disposal Services Agreement or the Combined Services Agreement and the Successful Bidder's obligations thereunder in any jurisdiction with respect to the provision of Disposal Services or the Combined Services and in the jurisdiction in which the Facilities are located, (including execution and/or maintenance of a host community agreement that specifically authorizes the acceptance of out-of-state waste if the Transfer Station(s) and/or the Disposal Facility(ies) are located in a state other than New Jersey) and in any jurisdiction exercising regulatory powers with respect to the Successful Bidder(s).
- J. Billing, Recordkeeping and Reporting. The Successful Bidder(s) shall prepare reports and maintain all records relating to activities under the Disposal Services Agreement or Combined Services Agreement, including the preparation of all invoices for costs required to be paid by the Authority under the terms of the Disposal Services Agreement or the Combined Services Agreement, as the case may be.

1.7 EXAMINATION OF CONTRACT DOCUMENTS; FAMILIARITY WITH THE SERVICES REQUIRED TO BE PERFORMED

- A. It is the responsibility of each Bidder before submitting a Bid (a) to examine the Bid Specifications and the Contract Documents thoroughly, (b) to become familiar with and consider all federal, state and local laws, regulations, ordinances, permits, approvals and orders that may affect the cost, performance or furnishing of the Disposal Services or the Combined Services, and (c) to notify the ECUA of all conflicts, errors or discrepancies in the Bid Specifications and/or Contract Documents.

SECTION 3

TECHNICAL AND REGULATORY REQUIREMENTS

3.1 INTRODUCTION

Bids submitted for Disposal Services under Option No. 1, Alternative Bid (A) or the disposal portion of the Combined Services under Option No. 1, Alternative Bid (B) and in Option No. 2 utilizing Landfills or Waste-to-Energy Facilities must meet all technical requirements for the applicable technology, as described herein.

Bids submitted for Combined Services under Alternative Bid (B) and under Option No. 2 utilizing Transfer Station(s), transportation services/equipment, Landfills and/or Waste-to-Energy Facilities must also meet all technical requirements for the applicable technology, as described herein.

3.2 TECHNICAL REQUIREMENTS RELATING TO TRANSFER STATION(S)

3.2.1 Transfer Station(s) Requirements

In connection with any Bid for the provision of Combined Services (whether under Alternative Bid (B) under Option No. 1 or under Option No. 2), the Successful Bidder(s) is obligated to provide one or more existing, fully-permitted, fully-operational Transfer Station(s) with sufficient, undedicated and available permitted capacity to accept and process for transportation of 500,000 tons per year of Acceptable Waste under Option No. 1 (however, bids may be submitted for Disposal Services or Combined Services for a portion of the Acceptable Waste in the amount of 100,000 tons or integral multiples thereof) or 100,000 Tons per year of Non-Processible Waste under Option No. 2. The Transfer Station(s) must be capable of processing the types and quantities of Acceptable Waste or Non-Processible Waste, as the case may be, for the Term of the Disposal Services Agreement or Combined Services Agreement.

Each Bidder may submit a Bid under Alternative Bid (B) under Option No. 1 only that contemplates the use of multiple, separate Transfer Station(s) owned, leased or otherwise controlled by, and operated and maintained by the Bidder, provided that the capacity available at each of such Transfer Station(s) for the processing of Acceptable Waste shall not be less than 2,000 tons per week and 100,000 tons per year of Acceptable Waste. In addition, each of such Transfer Station(s) shall comply with the requirements contained in these Bid Specifications.

In the event that the lowest responsible bidder cannot accommodate Essex County Solid Waste Flow projections, which for the purposes of this Section 3.2 shall be at least 500,000 tons per year of Acceptable Waste under Alternative Bid (B) under Option No. 1 or 100,000 Tons per

year of Non-Processible Waste under Option No. 2, the Authority may elect to do any one of the following as the Authority, in its sole discretion, deems to be in its best interests:

- (A) Reject all Bids;
- (B) Accept the lowest responsible Bid and re-advertise for services to accommodate the balance of capacity, if any, which remains after subtracting, from 500,000 tons (under Alternative Bid (B) under Option No. 1) or 100,000 tons (under Option No. 2), the lowest responsible Bidder's capacity; or
- (C) Accept the two lowest responsible Bids and re-advertise for services to accommodate the balance of capacity, if any, which remains after subtracting, from 500,000 tons (under Alternative Bid (B) under Option No. 1) or 100,000 tons (under Option No. 2), the two lowest Bidders' combined capacity; or
- (D) Accept the three lowest responsible Bids and re-advertise for services to accommodate the balance of capacity, if any, which remains after subtracting, from 500,000 tons (under Alternative Bid (B) under Option No. 1) or 100,000 tons (under Option No. 2), the three lowest Bidders' combined capacity.
- (E) Accept additional Bidders in the order in which they qualify as lowest responsible Bidders, to the extent necessary to reach 500,000 tons per year (under Alternative Bid (B) under Option No. 1) or 100,000 tons per year (under Option No. 2) tons capacity.

Any Bid that utilizes a Transfer Station(s) in providing Combined Services (whether under Alternative Bid (B) under Option No. 1 or Option No. 2), must evidence satisfaction of and compliance with the minimum technical facility requirements set forth below.

1. Scale Facility. The Transfer Station(s) shall include a permanent truck scale facility with inbound and outbound scales and having a minimum design capacity of sixty (60) tons. A sufficient number of scales shall be provided to maintain efficient traffic flow and prevent excessive queuing of packer trucks and/or transfer trailers. The scale facility shall have a computerized accounting, reporting and recording system capable of providing receipts clearly delineating gross, tare and net weights, time and date, transaction number and vehicle identification number. The scale facility and related instrumentation shall meet all applicable permit and regulatory requirements as may be required by the applicable host jurisdiction. The scale facility shall have been constructed in accordance with the regulations of the New Jersey Department of Law and Public Safety, Office of Weights and Measures (or such other regulations as may be required by the applicable host jurisdiction) and shall have been, and continue to be, periodically re-

Non-Processible Waste (under Option No. 2) from the Transfer Station(s) in a manner which satisfies the requirements described above.

- (3) Compliance with Disposal Facility(ies) Rules and Regulations. In the performance of the Transportation Services, the Successful Bidder(s) shall comply with all applicable rules and regulations of the Facility(ies).
- (4) Compliance with Applicable Law. The Successful Bidder(s) shall comply with all applicable laws and regulation in the states and localities in which the Transportation Services are to be provided. The Successful Bidder(s) must comply with all applicable regulations, policies and interpretations of the NJDEP (or such other host jurisdiction), as well as court decisions concerning licensure in the State of New Jersey (or such other host jurisdiction) and shall be responsible for assuring that all such licenses are held by the Successful Bidder(s), to the extent required under the terms of such NJDEP regulations (or applicable regulatory agency in the host jurisdiction) and court decisions.
- (5) Provision of Sufficient Vehicles and/or Containers. The Successful Bidder(s) must be capable, and must demonstrate its capability, to transport all Acceptable Waste (under Option No. 1, Alternative Bid (B)) or Non-Processible Waste (under Option No. 2) delivered to the Transfer Station(s) on a daily basis and to transport the same to the Disposal Facility(ies) identified in the Bid. If providing Transportation Services by truck, the Successful Bidder(s) must dedicate a minimum of (a) 125 vehicles per week for performance of the Transportation Services under Alternative Bid (B) of Option No. 1 (assuming two (2) trips per day per vehicle, and assuming a load of approximately 20 tons of Acceptable Waste), and (b) 50 vehicles per week under Option No. 2 (assuming two (2) trips per day per vehicle and assuming a load of approximately 20 tons of Non-Processible Waste).
- (6) Vehicle and Container Requirements. Transport vehicles and containers shall be roll-off containers, top loading vehicles. All vehicles shall be capable of being completely covered. The Bidder, at the time of submission of its Bid, shall provide a certificate showing that it owns, leases, or controls all the necessary equipment required by these Bid Specifications and, if the Bidder is not the actual owner or lessee of any such equipment, such certificate shall state the source from which the equipment shall be obtained, and such certificate shall be accompanied by a certificate from the owner or person in control of the equipment stating that such person owns, leases or controls such equipment and will make the same available to the Bidder for use in providing the Transportation Services for the Term of the Combined Services Agreement. In addition, the Bidder's vehicles and containers shall conform with, and be subject to, the following:

- (i) All vehicles and containers, including tractors and trailers, used for the provision of Transportation Services shall be certified by the NJDEP, Division of Solid Waste Management (or applicable regulatory agency in the host jurisdiction), and shall have a valid certified registration (or such other registration as required by the applicable host jurisdiction). In the event that the vehicles and containers intended to be used for the provision of Transportation Services have not, as of the date established for submittal of bids, received valid certified registrations, all such registrations must be received (and evidenced thereof delivered to the Authority) on or prior to the date that the Authority designates the Successful Bidder(s) and is prepared to execute the Combined Services Agreement. In the event that the Successful Bidder(s) is not able to provide evidence of receipt of such valid registrations by such date, the Authority reserves the right, at its sole option, not to award the Combined Services Agreement to such Bidder.
 - (ii) The Authority shall have the right to inspect outbound vehicles and containers carrying all Acceptable Waste (under Alternative Bid (B) under Option No. 1) or all Non-Processible Waste (under Option No. 2) and, if in its reasonable judgment, a vehicle or container does not conform to Applicable Laws, the Successful Bidder(s) shall supply a conforming vehicle to carry the nonconforming vehicle's load within four (4) hours.
 - (iii) All vehicles and containers shall be covered at all times from completion of loading until weighing at the Disposal Facility(ies) provided for Combined Services under Alternative Bid (B) under Option No. 1 or under Option No. 2). The Successful Bidder(s) shall have means of ensuring that the vehicles and containers do not litter the highway.
 - (iv) All vehicles and containers shall have gasketed doors and, shall be watertight to prevent seepage of water or wet Acceptable Waste or Non-Processible Waste onto roadways.
- (7) Cover and Tarp Removal; Labor. The Successful Bidder(s) shall be responsible for (i) the provision of all tarps, container covers and ties and/or seals required to assure that the containers are covered during transport, and (ii) ensuring that all containers are covered subsequent to loading of the container and prior to exiting the Transfer Station(s) loading area.

3.3.3 Operating Requirements for Transportation Services.

The Successful Bidder(s) shall:

- 1) pick up and remove all Acceptable Waste (under Alternative Bid (B) under Option No. 1) or all Non-Processible Waste (under Option No. 2) from the Transfer Station(s) during the Transfer Station(s) Receiving Times;
- 2) ensure that all containers are properly covered subsequent to loading and prior to exiting the Transfer Station(s);
- 3) if necessary, clean off any excess Acceptable Waste (under Alternative Bid (B) under Option No. 1) or Non-Processible Waste (under Option No. 2) from the vehicles and/or containers prior to exiting the waste loading area at the Transfer Station(s) after the Acceptable Waste (under Alternative Bid (B) under Option No. 1) or Non-Processible Waste (under Option No. 2) is loaded onto such trailers;
- 4) deliver to and unload Acceptable Waste (under Alternative Bid (B) Option No. 1) or Non-Processible Waste (under Option No. 2) at the Disposal Facility(ies) utilized in providing Combined Services (under Alternative Bid (B) under Option No. 1 or under Option No. 2) during the permitted operating hours on Monday through Saturdays;
- 5) take all actions which are required to unload Acceptable Waste (under Alternative Bid (B) under Option No. 1) or Non-Processible Waste (under Option No. 2) delivered to the Disposal Facility(ies) utilized in providing Combined Services (under Alternative Bid (B) under Option No. 1 or under Option No. 2);
- 6) maintain books and records and produce reports in the manner and at the times required by the Combined Services Agreement;
- 7) comply with all permit and other environmental obligations and limitations relating to the transportation of any Acceptable Waste (under Alternative Bid (B) under Option No. 1) or Non-Processible Waste (under Option No. 2) at the Transfer Station(s) and the Disposal Facility(ies), whether such Transportation Services utilize truck or rail; and
- 8) provide a staging and storage area for transportation vehicles or containers within a reasonable distance from the Transfer Station(s) site to ensure that Acceptable Waste (under Alternative Bid (B) under Option No. 1) or Non-Processible Waste (under Option No. 2) may be removed in a timely and efficient manner.

3.3.4 Additional Requirements for Transportation by Rail of Acceptable Waste or Non-Processible Waste.

In the event that a Bidder for the provision of Combined Services proposes to provide Transportation Services, in whole or in part, by rail, in addition to meeting the requirements set forth in Section 3.3.2 and Section 3.3.3 hereof (except for those requirements which, by their terms are explicitly applicable to transportation by truck only) the Successful Bidder(s) shall be responsible for (at its own cost and expense):

- 1) procuring the rights to use railroad containers and equipment;
- 2) entering into any necessary leasing or operating agreements with a railroad company or companies;
- 3) providing sufficient railcars and/or containers to transport the Acceptable Waste (under Alternative Bid (B) under Option No. 1) or Non-Processible Waste (under Option No. 2) to the railroad terminal located closest to the disposal facilities utilized to provide the Combined Services by the Bidder;
- 4) if necessary, providing a sufficient number of transport vehicles to haul containers to and from the Transfer Station(s) to and from the points of origin of the rail service, as well as sufficient transport vehicles to haul the containers to and from the point of rail termination to the disposal facilities utilized to provide the Combined Services by the Bidder; and
- 5) complying with all applicable regulations, policies and interpretations of the NJDEP (or regulatory agency of applicable host jurisdiction), as well as court decisions concerning licensure in the State of New Jersey (or such other host jurisdictions) and for assuring that all such licenses are held by the Bidder, to the extent required under the terms of such regulations and court decisions.

All Bidders submitting a Bid for the provision of the Combined Services shall identify the trucks, containers and railroad equipment to be used by the Bidder on Form A-8, Equipment and Facility Certification for Bidders. In addition, if all or a portion of the Acceptable Waste (under Alternative Bid (B) under Option No. 1) or Non-Processible Waste (under Option No. 2) is to be transported by rail, all such Bidders must submit, with the Bid, evidence of a legally binding commitment (in the form of a contract, lease or similar agreement) with a railroad company (or companies) and any other entity necessary to ensure continuous movement by rail of the Acceptable Waste (under Alternative Bid (B) under Option No. 1) or Non-Processible Waste (under Option No. 2) from the Transfer Station(s) to the Disposal Facility(ies) proposed by the Bidder.

3.4 TECHNICAL REQUIREMENTS RELATING TO LANDFILLS AND/OR WASTE-TO-ENERGY FACILITY(IES)

environmental compliance or inspection reports for the previous three years (including any Notices of Violations) shall be submitted to the ECUA.

3.5 REQUIREMENTS RELATING TO REGULATORY APPROVALS

3.5.1 Operation of Transfer Station(s)

The Successful Bidder(s) shall be responsible for compliance at all times with all applicable local, state and federal laws and regulations relating to the provision of Combined Services. As such, the Successful Bidder(s) is obligated to obtain and/or maintain all necessary permits, licenses and approvals in order to permit the uninterrupted provision of such Combined Services.

At the time of Bid Submittal, the Transfer Station(s) shall be operating pursuant to a valid NJDEP Solid Waste Facility (SWF) Permit (or such other permits as may be required by the applicable host jurisdiction), shall maintain compliance with the SWF (or such other permits as may be required by the applicable host jurisdiction), and shall renew the SWF (or such other permits as may be required by the applicable host jurisdiction), as necessary, for the Term of the Combined Services Agreement. Acceptance of Acceptable Waste (under Alternative Bid (B) under Option No. 1) or Non-Processible Waste (under Option No. 2) shall not cause the Transfer Station(s) to exceed the approved, permitted daily capacity as stipulated in the SWF Permit or applicable permit. The Transfer Station(s) shall have acquired municipal site plan approval and each shall be a facility that is included in the host jurisdiction's Solid Waste Management Plan (SWMP) (or such other plan as may be required by the applicable host jurisdiction).

If, during the Term of the Combined Services Agreement, additional permits are required, or compliance with additional governmental requirements are required, the Successful Bidder(s) is obligated to apply for such additional permits, licenses or approvals or comply with such additional requirements on a timely basis.

At the time the Bid(s) is(are) submitted, the Bidder(s) will be required to demonstrate an ability to satisfy the requirements of these specifications and the Combined Services Agreement with respect to regulatory approvals or licenses. Specifically, copies of all permits and approvals shall be provided to the Authority, at the time the Bid(s) is(are) submitted, together with inspection reports, Notices of Violation (NOVs), if any, and Monthly Tonnage Reports, for the previous three years or comparable reports/notices if the Transfer Station is located outside of the State of New Jersey. Additionally, a summary of all contracted daily, monthly and yearly capacity shall also be provided to the Authority at the time the Bid(s) is(are) submitted.

3.5.2 Operation of Landfill

The Successful Bidder(s) shall be responsible for ensuring compliance at all times with all applicable local, state and federal laws and regulations relating to the design, construction and operation of any Landfill(s) utilized in connection with the provision of Disposal Services or Combined Services. As such, the Successful Bidder(s) must demonstrate (at the time of Bid submission and thereafter) that all necessary permits have been obtained or will be obtained for sufficient permitted and uncommitted capacity to provide for disposal of all Acceptable Waste (under Option No. 1) or Non-Processible Waste (under Option No. 2) at such Landfill(s).

If, during the Term of the Disposal Services Agreement or the Combined Services Agreement, additional permits, licenses or approvals are required or compliance with additional governmental requirements are required, the Owner/Operator is obligated to apply for such additional permits, licenses or approvals or comply with such additional requirements on a timely basis.

At the time the Bid is submitted, the Bidder will be required to demonstrate (as part of the Technical Bid) its ability to satisfy the requirements of the Bid Specifications and the Disposal Services Agreement or Combined Services Agreement or with respect to regulatory permits, licenses or approvals. Specifically, copies of all applicable permits, licenses or approvals must be provided to the Authority as part of the Bid. If the Landfill(s) is(are) located in a state that has enacted statutory or other guidelines or limitations on the disposal of solid waste generated from outside such state, the Bid must include evidence of the ability of the Owner/Operator to comply with the terms of such statutory or other guideline with respect to disposal of Acceptable Waste/Non-Processible Waste at the Landfill(s).

3.5.3 Transportation

The Successful Bidder(s) shall be responsible for compliance at all times with all applicable local, state and federal laws and regulations relating to the transportation of Acceptable Waste (under Alternative Bid (B) under Option No. 1) or Non-Processible Waste (under Option No. 2) to the disposal facility utilized by the Bidder in providing Combined Services. As such, the Successful Bidder(s) is obligated to obtain and/or maintain all necessary permits, approvals and/or registrations necessary to transport the Acceptable Waste/Non-Processible Waste to the disposal facility. The Successful Bidder(s) must comply with all applicable regulations, policies and interpretations of the NJDEP (or such other State environmental agency of the host jurisdiction), as well as court decisions concerning licensure in the State of New Jersey (or such other applicable host jurisdiction) be responsible for assuring that all such licenses are held by the Bidder, to the extent required under the terms of such NJDEP regulations and court decisions (or such other applicable host jurisdiction).

If, during the Term of the Combined Services Agreement, additional permits, licenses or approvals are required or compliance with additional governmental requirements are required, the

- (1) a complete copy of a site plan drawn at a scale no smaller than 1"= 50' which identifies the location of all equipment, buildings, truck scale, trailer staging area, and areas for other activities related to the receipt, storage, processing and transfer of all solid waste materials. The site plan shall also indicate the routing of vehicles within the Transfer Station and between the Transfer Station facility and nearby roadways serving the Transfer Station site;
- (2) a complete copy of any Environmental Health and Impact Statements, if any, prepared in connection with the Transfer Station (not including technical appendices, unless otherwise specifically requested);
- (3) a complete copy of all applicable permits, licenses and approvals, with all conditions and any other permits issued in connection with the Transfer Station;
- (4) if permit applications are presently pending with respect to the Transfer Station, a complete copy of all such permit applications;
- (5) if permit applications are presently pending with respect to the Transfer Station, a complete copy of all comment letters issued by any applicable regulatory agencies;
- (6) a certification of all other commitments (formal or informal) for disposal of solid waste at the Transfer Station, including customer name, contracted daily or annual capacity, total customer waste processed to date and the contract expiration date;
- (7) if the Transfer Station is located in the State of New Jersey, evidence of the Successful Bidder's approved A901 Registration as required by N.J.S.A. 13:1E-126 et seq., or other such equivalent approval as may be required pursuant to applicable regulations of other host jurisdictions;
- (8) copies of the Monthly Tonnage Reports for the previous three (3) years;
- (9) a copy of the most recent certification of the Transfer Station's weigh scale facility as required by the New Jersey Department of Law and Public Safety, Office of Weights and Measures or equivalent regulatory authority from other host jurisdictions; and
- (10) if the Transfer Station is located in the State of New Jersey, a copy of the certified amendment to the District Solid Waste Management Plan including the subject Transfer Station in the Solid Waste Management Plan of the district where the Transfer Station is located.

4. All vehicles or containers shall be covered at all times from completion of loading at the Transfer Station until weighing at the disposal facility provided as part of the Combined Services. The Bidder shall have means of ensuring that the vehicles or containers do not litter the highways.

5. All vehicles and containers shall have gasketed doors and shall be watertight to prevent seepage of water or wet Acceptable Waste or Non-Processible Waste onto the roadways.

6. The Successful Bidder(s) must have been engaged in the business of transporting solid waste for a period of one (1) year prior to the date established for the submittal of Bids.

5.3.7.2.2 Additional Technical Submittal Requirements Applicable to Transportation By Rail

If railroad transport is to be incorporated into a Bid for the provision of Combined Services, the Bidder must maintain control and responsibility of the transportation of the Acceptable Waste or Non-Processible Waste from the Transfer Station(s) until ultimate delivery to the Disposal Facility(ies) proposed by the Bidder.

All rail transport containers shall be capable of being completely covered. The Bidder shall, at the time of submission of its Bid, provide evidence showing ownership, lease, or control of all the necessary equipment required by the Bid. If the Bidder is not the actual owner or lessee of any such equipment, such Bid shall state the source from which the equipment shall be obtained, and shall be accompanied by a certificate from the owner or person in control of the equipment that the same will be provided to the Bidder for the duration of the Term of the Combined Services Agreement.

- (1) All rail transportation equipment (including containers) used in connection with provision of the transportation services shall be certified by NJDEP, Division of Solid Waste Management, or other regulatory agency of the host jurisdiction, and shall have a valid certified registration. In the event that the vehicles and containers intended to be used for the provision of Transportation Services have not, as of the date established for submittal of bids, received valid certified registrations, all such registrations must be received (and evidence thereof delivered to the Authority) on or prior to the date that the Authority designates the Successful Bidder(s) and is prepared to execute the Combined Services Agreement. In the event that the Successful Bidder(s) is not able to provide evidence of receipt of such valid registrations by such date, the Authority reserves the right, at its sole option, not to award the Combined Services Agreement to such Bidder.

- (2) If a container (or other equipment) does not conform to applicable laws, the Bidder shall supply a conforming container (or equipment) to carry the nonconforming container's load within two (2) hours.
- (3) All containers shall be covered at all times from completion of loading until unloading. The Bidder shall have means of ensuring that the containers do not litter the railways.
- (4) All vehicles, trailers and/or containers shall have gasketed doors and shall be watertight to prevent seepage of water or wet Acceptable Waste or Non-Processible Waste onto the railways.

5.3.7.2.3 Documents to be Submitted with Technical Proposals for Transportation Services

- (1) List of all equipment to be dedicated to the performance of the Transportation Services, including NJDEP registration numbers or other applicable registration numbers from the host jurisdiction, except to the extent otherwise provided above.
- (2) Copy of Certificate of Public Necessity and Convenience issued by the NJDEP or other applicable permit, license or approval from the host jurisdiction.
- (3) Copy of ICC Carrier's Certificate; and
- (4) Certification that the Bidder owns and/or controls all equipment to be used in the performance of the Transportation Services, and if the Bidder does not own such equipment, a copy of any lease or license agreements that entitle the Bidder to direct the use of the equipment during the Term of the Combined Services Agreement.

5.3.7.3 Disposal Facility(ies) Utilized in Providing Combined Services or Disposal Services

5.3.7.3.1 General Provisions

The Technical Bid, which shall be submitted as Volume II of the Bid, must describe in detail the proposed technical aspects of the Disposal Facility(ies) to be utilized in providing Combined Services or Disposal Services. The Technical Bid may not either attach the minimum technical requirements described in Section 3 hereof to the Bid or make any cross-reference thereto in lieu of a discussion of such requirements in the Technical Bid. The Technical Bid must be an independent document that contains, among other things, adequate information, data and conceptual design drawings to clearly and completely demonstrate that (a) the Bidder

between such Landfills of the amount of Acceptable Waste or Non-Processible Waste to be disposed), the Authority will (for purposes of the above calculation) utilize the average of the distances to such Landfills;

8. the distance of the Landfill(s) from a public groundwater supply and a statement as to whether or not such Landfill(s) is (are) located directly over an aquifer which is used for potable drinking water purposes; and
9. the date of purchase or lease of the Landfills (or the real property upon which same are constructed) and identification of the person or entity from whom such Landfills (or such real property) was acquired or leased.

5.3.7.3.2 Content of Technical Proposal and Document Requirements Relating to Disposal Facility(ies) Utilized in Providing Disposal Services or Combined Services

In addition to the above requirements, the Technical Bid must provide all relevant technical information concerning the Disposal Facility(ies) proposed to be utilized in providing Disposal Services (under Alternative Bid (A) under Option No. 1) or Combined Services (under Alternative Bid (B) under Option No. 1 or under Option No. 2). As such, the Bid shall submit the following documents as part of its Technical Bid:

1. a complete copy of the technical specifications, drawings and technical design and proposal for the Disposal Facility(ies) covered by the Bid;
2. a complete copy of any Environmental Health and Impact Statements (or an equivalent document) prepared in connection with the Disposal Facility(ies) covered by the Bid (not including technical appendices, unless otherwise specifically requested);
3. a complete copy of any permits, licenses or approvals issued in connection with the Disposal Facility(ies) covered by the Bid;
4. a complete copy of all operating rules and regulations relating to the Disposal Facility(ies) covered by the Bid;
5. if permit applications are presently pending with respect to the Disposal Facility(ies) covered by the Bid, a complete copy of all such permit applications;
6. if permit applications are presently pending with respect to the Disposal Facility(ies) covered by the Bid, a complete copy of all comments letters issued by an applicable regulatory agencies;

13. For all corporations, a certified copy of the corporate by-laws and the articles of incorporation, plus a certificate of good standing.
14. Any applicable permits, licenses or approvals. The Successful Bidder(s) must comply with all laws, applicable regulations, policies and interpretations of the NJDEP or other regulatory agency of host jurisdiction, as well as court decisions concerning permitting in the State of New Jersey or other host jurisdiction, and shall be responsible for assuring that all such permits are held by the Bidder to the extent required under the terms of such regulations, court decisions or otherwise.
15. Technical information required by Section 5.3.7.
16. Written explanation as to basis for calculations reflected in part A of Form A-9.

C) Additional information to be provided in connection with the provision of Transportation Services as part of Combined Services Bids:

1. NJDEP Certificate of Public Convenience and Necessity and Transporter's Registration Number or equivalent required by the applicable regulatory agency jurisdiction, except to the extent otherwise provided in these Bid Specifications.
2. ICC Carrier's Certificate, if applicable.
3. Any other permits, licenses or approvals applicable to the Bidder's provision of Transportation Services. The Successful Bidder(s) must comply with all applicable regulations, policies and interpretations of the NJDEP or other State environmental agency of host jurisdiction, as well as court decisions concerning licensure in the State of New Jersey or other host jurisdiction and shall be responsible for assuring that all such licenses are held by the Bidder, to the extent required under the terms of such NJDEP regulations and court decisions in the State of New Jersey or other host jurisdiction.
4. Identification of storage/staging area for transportation vehicles, containers and/or equipment.

5. If trucks or containers are not owned by Bidder, copies of any subcontracts or leases authorizing Bidder's use of same for the Term of the Combined Services Agreement.
6. If any portion of the Transportation Services are to be provided by rail, Bidder must clearly demonstrate its right and ability to move the Acceptable Waste or Non-Processible Waste in an environmentally sound manner in accordance with all applicable laws and regulations from the Transfer Station to the disposal facility(ies) designated by the Successful Bidder(s) and the Authority. Accordingly, the Bidder must identify the rail terminals of origin and final destination, and submit, at a minimum, an executed contract with a railroad company to allow for use of a rail terminal and to provide operational, loading and equipment services. In addition, if the point of final destination is not at the disposal facility(ies) at which the Acceptable Waste or Non-Processible Waste is to be disposed, the Bidder must identify the distance from the point of final destination and the disposal facility(ies), and identify the trucks and/or firms that will transport the Acceptable Waste or Non-Processible Waste to the disposal facility(ies).
7. Statement of Relevant Experience (Form A-7).
8. Equipment and Facility Certification (Form A-8).
9. Any Bidder that is proposing to transport Acceptable or Non-Processible Waste by rail and by truck must submit all of the information and submittals set forth in Sections 3.3.4 and 5.3.7.2.2.

D) Additional information to be provided with respect to Disposal Facility(ies) to be utilized in providing Disposal Services (under Alternative Bid (A) under Option No. 1) or Combined Services (under Alternative Bid (B) under Option No. 1 or under Option No. 2):

1. Copy of Host Agreement or Agreements with respect to the Disposal Facility(ies) proposed to be used by the Bidder.
2. A description of the technical aspects of the Disposal Facility(ies) and the operating protocols as set forth in Section 5.3.7.3.2.
3. A complete copy of the technical specifications, drawings and technical design and proposal for the Disposal Facility(ies).



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IN THE MATTER OF CERTAIN AMENDMENTS
TO THE ADOPTED AND APPROVED SOLID
WASTE MANAGEMENT PLAN OF THE
HUDSON COUNTY SOLID WASTE
MANAGEMENT DISTRICT

CERTIFICATION
OF THE MARCH 11, 1999
AMENDMENT TO THE HUDSON COUNTY
DISTRICT SOLID WASTE MANAGEMENT PLAN

BY ORDER OF THE COMMISSIONER:

A. Introduction

The New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) established a comprehensive system for the management of solid waste in New Jersey. The Act designated all twenty-one (21) of the state's counties, and the Hackensack Meadowlands District, as Solid Waste Management Districts, and mandated that the Boards of Chosen Freeholders and the Hackensack Meadowlands Development Commission develop comprehensive plans for waste management in their respective districts. On January 27, 1982, the Department of Environmental Protection (Department or DEP) approved, with modifications, the Hudson County District Solid Waste Management Plan (County Plan).

The Act requires that all district plans be based on and accompanied by a report detailing the existing waste disposal situation in the district, and a plan which includes the strategy to be followed by the district in meeting the solid waste management needs of the district for a ten-year planning period. The report must detail the current and projected waste generation for the district, inventory and appraise all facilities in the district, and analyze the waste collection and transportation systems which serve the district. The disposal strategy must include the maximum practicable use of resource recovery techniques. In addition to this strategy, the plan must designate sufficient available suitable sites for the disposal of the district's waste for a ten-year period.

The Act further provides that a district may review its County Plan at any time and, if found inadequate, a new County Plan must be adopted. The Hudson County Board of Chosen Freeholders (County Freeholders) completed such a review and on March 11, 1999, adopted an amendment to its approved County Plan.

The amendment represents the County's supplemental response to the May 1, 1997 decision of the United States Court of Appeals for the Third Circuit which declared unconstitutional New Jersey's historic system of solid waste flow control. [See Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County et al., 112 F.3d 652 3d Cir. 1997, cert. den. November 10, 1997]. Specifically, each solid waste management district must reevaluate its solid waste disposal strategy in light of this recent court decision and, if necessary, initiate appropriate amendments thereto.

In general, the Department refers the County to the solid waste regulations at N.J.A.C. 7:26-1 et seq. to the extent they relate to specific procedural and substantive issues addressed in this and subsequent amendments. In addition, this certification is in no way intended by the DEP to represent a legal determination regarding the effect of the Atlantic Coast decision on any specific contract between public and/or private parties.

The amendment includes within the County Plan specified waste flows to the following solid waste disposal facilities based upon the completion of nondiscriminatorily bid contracts:

- *Waste types 13, 23, and 27, asbestos, and grits and screenings to the Hackensack Meadowlands Development Commission (HMDC) J-E Landfill;
- *Up to 100,000 tons annually of waste types 10 and 25 to the Union County Resource Recovery Facility (UCRRF); and
- *Up to 300,000 tons annually of waste types 10 and 25 as well as incinerator ash to the Grand Central Landfill in Pennsylvania.

The amendment was received by the Department on March 24, 1999 and copies were distributed to various administrative review agencies for review and comment, as required by law. The DEP has reviewed this amendment and has determined that the amendment adopted by the County Freeholders on March 11, 1999 is approved as provided in N.J.S.A. 13:1E-24.

B. Findings and Conclusions with Respect to the Hudson County District Solid Waste Management Plan Amendment

Pursuant to N.J.S.A. 13:1E-24a(1), I have studied and reviewed the March 11, 1999 amendment to the County Plan according to the objectives, criteria, and standards developed in the Statewide Solid Waste Management Plan and I find and conclude that this plan amendment is consistent with the Statewide Solid Waste Management Plan. In this regard, the County Freeholders are notified of the issues of concern relative to the March 11, 1999 amendment which are included in Section B.2. below.

In conjunction with the review of the amendment, the Department

circulated copies to sixteen administrative review agencies and solicited their review and comment. Pursuant to N.J.S.A. 13:1E-24a(2) and (3), these agencies included various bureaus, divisions, and agencies within the Department. All agencies contacted are as follows:

Division of Water Quality Management, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Division of Compliance and Enforcement, DEP
Division of Solid and Hazardous Waste, DEP
Office of Air Quality Management, DEP
Green Acres Program, DEP
Land Use Regulation Element, DEP
New Jersey Turnpike Authority
New Jersey Advisory Council on Solid Waste Management
Department of Agriculture
Department of Health
Department of Transportation
Department of Community Affairs
U.S. Environmental Protection Agency
Hackensack Meadowlands Development Commission

1. Agency Participation in the Review of the March 11, 1999 Amendment

The following agencies did not object to the proposed amendment:

Division of Water Quality Management, DEP
Division of Compliance and Enforcement, DEP
Green Acres Program, DEP
Department of Agriculture
Department of Transportation
Department of Community Affairs

The following agencies did not respond to our requests for comment:

Office of Air Quality Management, DEP
Division of Parks and Forestry, DEP
Division of Fish, Game and Wildlife, DEP
Land Use Regulation Element, DEP
New Jersey Advisory Council on Solid Waste Management
New Jersey Turnpike Authority
Department of Health
U.S. Environmental Protection Agency

The following agencies provided substantive comments as shown in Section B. of the certification document:

Division of Solid and Hazardous Waste, DEP
Hackensack Meadowlands Development Commission

2. Issues of Concern Regarding the March 11, 1999 Amendment**Issue: Previously Adopted Atlantic Coast Amendment**

On November 13, 1997, the County Freeholders adopted an amendment proposing its initial response to the Atlantic Coast decision. Within its December 30, 1997 certification of the amendment, the DEP approved the concept of regulatory flow control based upon a nondiscriminatory procurement strategy, a disposal contract with Empire Landfill (now Alliance Landfill and known as the 1990 Landfill Agreement), a transportation services agreement with Hudson J-V, and an enforcement strategy. The Department remanded for further consideration and evaluation the imposition of an environmental investment charge, and approved with modification a transfer station services agreement with Solid Waste Transfer and Recycling, Inc. (SWT&R) in Newark, contingent upon receipt by the DEP of documents awarding a nondiscriminatory bid contract. In a subsequent certification dated May 27, 1998, the Department approved the nondiscriminatory procurement contract with SWT&R of Newark, Essex County, as presented in an amendment adopted on February 11, 1998.

Issue: American Ref-Fuel Litigation

An appeal of the Department's December 30, 1997 certification was filed by American Ref-Fuel company of Essex County in the matter entitled Hudson County District Solid Waste Management Plan, Superior Court, Appellate Division, Docket No. A-3290-97T, challenging that portion of the November 13, 1997 plan amendment that relied on the 1990 Landfill Agreement with Empire Landfill on the grounds that the 1990 Landfill Agreement should have been publicly bid in accordance with the Local Public Contracts Law.

Additionally, American Ref-Fuel initiated subsequent litigation in the Superior Court of New Jersey, Hudson County, in the matter entitled American Ref-Fuel Company of Essex County v. Hudson County Improvement Authority, Empire Sanitary Landfill, Inc. d/b/a Alliance landfill and U.S. Systems Corp., Docket No. HUD-L-1764-98, in which the Law Division entered an Order on March 25, 1998, invalidating the 1990 Landfill Agreement, as well as a subsequent amendment thereto known as the 1998 Amendment Agreement, but stayed the Order pending conclusion of appeals. The Hudson County Improvement Authority (HCIA) and Empire filed appeals in the Superior Court, Appellate Division, bearing Docket Numbers A-005080-97T3 and A-005011-97T3, respectively.

Issue: Nondiscriminatory Procurement Process

In response to the noted litigation, the HCIA initiated a procurement process, pursuant to the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) seeking contingent solid waste

disposal services to ensure the continued, uninterrupted provision of solid waste disposal services to in-county generators. The contingent disposal services contract, for a term of five (5) years unless terminated earlier in accordance with the terms thereof, commences on the date of execution, but the services do not commence until thirty (30) days after the issuance of a Notice to Proceed by the HCIA that may be issued at any time during the term of the contract. The issuance of a Notice to Proceed is contingent upon a final determination of the American Ref-Fuel litigation affirming the decision of the Law Division, Hudson County, invalidating the Landfill Agreement as violative of the Local Public Contracts Law and thereby causing the HCIA to be unable to utilize the Empire Landfill under the Landfill Agreement.

On September 22, 1998, HCIA issued bid specifications calling for receipt of bids on October 27, 1998 for the provision of contingent solid waste disposal services for processible waste types 10 and 25 (under Alternate A), and for nonprocessable waste types 13, 23 and 27, and grits and screenings (under Alternate B).

The request for both bids was advertised locally in The Jersey Journal, throughout New Jersey through The Star Ledger, and nationally through The New York Times, and Waste News. Therefore, this procurement process was open to all bidders, regardless of geographical location.

On October 27, 1998, HCIA awarded a contract to Ogden Martin Systems of Union, Inc. for disposal of 100,000 tons annually of processible waste at the UCRRF in Rahway, Union County as the lowest responsible bidder under Alternate A. Also on October 27, 1998, the HCIA awarded a contract to HMDC for disposal of all nonprocessable waste at the HMDC's 1-E North Area Landfill in North Arlington, Bergen County as the lowest responsible bidder under Alternate B.

On November 4, 1998, HCIA issued bid specifications calling for receipt of bids on November 30, 1998 for disposal services to cover the balance of up to 300,000 tons annually of processible waste generated within the County not delivered to the UCRRF. This request for bids was advertised in The Jersey Journal and The Star Ledger, and copies of the bid specifications were provided to all firms, including out-of-state facilities, that received the September 22, 1998 bid specifications. On December 17, 1998, the HCIA awarded a contract to Waste Management of Pennsylvania, Inc. as the lowest responsible bidder for disposal of up to 300,000 tons annually of processible waste at the Grand Central Landfill, located in Pen Argyle, Pennsylvania.

The Department has reviewed the HCIA's nondiscriminatory procurement process to determine if it is consistent with the criteria established in the Atlantic Coast decision. Since the

HCIA has sufficiently demonstrated that it secured all disposal contracts in a nondiscriminatory manner, within Section C. of the certification the Department approves the following waste flows:

*All waste types 10 and 25 generated from within Hudson County not collected either by a municipality or through a contract with a municipality but, instead, is collected from nonmunicipal generators pursuant to contracts between the generators and private solid waste collectors (e.g., all commercially generated solid waste) up to 100,000 tons annually are directed to the UCRRF. The 100,000 amount has been determined by review of historical data collection which reveals this to be the amount of waste types 10 and 25 commercially collected on an annual basis.

*All waste types 10 and 25 generated from within Hudson County collected either by a municipality or through a contract with a municipality up to 300,000 tons annually are directed to the SWT&R Transfer Station for processing and transfer for transport by Hudson-JV to the Grand Central Landfill.

*All waste types 13, 23, and 27, and grits and screenings generated from within Hudson County are directed to the HMDC 1-E North Area Landfill.

*All waste type 27I (incinerator ash) generated from within Hudson County is directed to the Grand Central Landfill.

Issue: Materials Recovery Operations

In its May 27, 1998 certification, in response to prior directives of the DEP to address materials recovery, the Department approved the HCIA's interim policy of addressing materials recovery. Specifically, that all transporters of type 13C waste generated from within the County and all transporters serving commercial premises within the County have the option of delivering such waste to a DEP approved materials recovery facility provided that the residue therefrom is delivered to the SWT&R Transfer Station.

The March 11, 1999 amendment further clarifies the HCIA's materials recovery policy. Namely, that generators and/or transporters of waste types 10 and 25 that are not municipally collected or collected pursuant to municipal contract shall have the option to deliver such waste to a DEP approved materials recovery facility provided, however, that (1) such generator and/or transporter shall immediately notify the HCIA of the name and location of the materials recovery facility to which such commercially generated waste is delivered and (2) all residue therefrom is delivered to the Union County Resource Recovery Facility. In the case of waste types 13, 23, and 27, the option to deliver such waste to a DEP approved materials recovery facility is also available provided, however, that (1) such generator and/or transporter shall immediately notify the HCIA of

screenings generated by a sewage treatment plant or appurtenances located within Hudson County may be directed to the HMDC Landfill. However, if the plant or appurtenances are located outside of Hudson County, grits and screenings may not be directed to the HMDC Landfill pursuant to the March 11, 1999 amendment. Concerning the acceptance of asbestos at the HMDC 1-E Landfill, the HMDC states asbestos materials "...were specifically exempted from the bid documents and our contract with the HCIA. We strenuously oppose the post-bid inclusion of this material into the regulated waste stream." The DEP concurs with the HMDC that the HCIA did not specifically identify waste type 27A (asbestos) within its nondiscriminatory procurement documents. Therefore, since the HCIA did not conduct a nondiscriminatory procurement process for the disposal of asbestos, within Section C. of this certification the Department is constrained from approving asbestos within those waste types subject to flow control in Hudson County.

Certification of the Hudson County District Solid Waste Management Plan Amendment

In accordance with N.J.S.A. 13:1E-1 et seq., specifically N.J.S.A. 13:1E-21, which establishes specific requirements regarding the contents of the district solid waste management plans, I have reviewed the March 11, 1999 amendment to the approved County Plan and certify to the County Freeholders that the March 11, 1999 amendment is approved as further specified below.

The County Plan inclusion of the HCIA's nondiscriminatory procurement process to secure disposal services is approved. Specifically, since the HCIA has adequately demonstrated that it secured all disposal contracts in a nondiscriminatory manner, the HCIA may commence the delivery of all Hudson County generated waste as follows:

*All waste types 10 and 25 not collected either by a municipality or through a contract with a municipality but, instead, is collected from nonmunicipal generators pursuant to contracts between the generators and private solid waste collectors (up to 100,000 tons annually) are directed to the Union County Resource Recovery Facility located at 1499 Routes 1 and 9 North (Lots 8 and 9, Block 338) in the City of Rahway, Union County.

*All waste types 10 and 25 collected either by a municipality or through a contract with a municipality (up to 300,000 tons annually) are directed to the SWT&R Transfer Station located at 442 Frelinghuysen Avenue (Lot 24, Block 3516) in Newark, Essex County for processing and transfer for transport by Hudson-JV to the Grand Central Landfill in Pen Argyle, Pennsylvania.

*All waste types 13, 23, and 27, and grits and screenings are

directed to the HMDC 1-E North Area Landfill located at 100 Baler Boulevard (Lot 1, Blocks 175-183; 185-189) in North Arlington, Bergen County and in Kearny, Hudson County (Lot 10, Block 149).

*All waste type 27I (incinerator ash) is directed to the Waste Management of Pennsylvania, Inc. Grand Central Landfill located on Pen Argyle Road, in Pen Argyle, Plainfield Township, Northampton County, Pennsylvania.

D. Other Provisions Affecting the Plan Amendment

1. Contracts

Any contract renewal or new contract for solid waste collection or disposal which is inconsistent with this amendment to the County Plan and which was executed prior to the approval of this amendment and subsequent to the effective date of the Solid Waste Management Act (July 29, 1977), and which shall further be for a term in excess of one year, shall immediately be renegotiated in order to bring same into conformance with the terms and provisions herein set forth. Any solid waste collection operation or disposal facility registered by the Department and operating pursuant to a contract as herein described, shall be deemed to be in violation of this amendment and of the County Plan if such renegotiation is not completed within ninety (90) days of the effective date of this amendment provided, however, that any such registrant may, upon application to the Department, and for good cause shown, obtain an extension of time to complete such renegotiation.

2. Compliance

All solid waste facility operators and transporters registered with the Department and operating within the County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the County Plan. Any facility operator or transporter who fails to comply with the provisions contained herein shall be deemed to be in violation of N.J.S.A. 13:1E-1 et seq., in violation of N.J.A.C. 7:26-1 et seq., and in violation of their registration to operate a solid waste facility or a collection system issued thereunder by the Department and shall be subject to the provisions and penalties of N.J.S.A. 13:1E-9 and 12 and all other applicable laws.

3. Types of Solid Wastes Covered by the District Solid Waste Management Plan

The provisions of the County Plan shall apply to all solid wastes defined in N.J.S.A. 13:1E-3 and N.J.A.C. 7:26-2.13 including waste types 10, 13, 23, 25, and 27 and all applicable subcategories and

shall not apply to liquid and hazardous wastes. All nonhazardous materials separated at the point of generation for sale or reuse are subject to regulation in accordance with N.J.A.C. 7:26A-1 et seq.

4. Certification to Proceed with Implementation of Amendment

This document shall serve as the certification of the Commissioner of the Department to the County Freeholders and pursuant to N.J.S.A. 13:1E-24c. and f., the County shall proceed with the implementation of the approved amendment certified herein.

5. Definitions

For the purpose of this amendment and unless the context clearly requires a different meaning, the definitions of terms shall be the same as those found at N.J.S.A. 13:1E-3 and -99.12, N.J.A.C. 7:26-1.4, -2.13, and N.J.A.C. 7:26A-1.3.

6. Effective Date of the Amendment

The amendment to the County Plan contained herein shall take effect immediately.

7. Reservation of Authority

Nothing contained herein shall be construed as a limitation on any other action taken by the Department pursuant to its authority under the law. The County Plan, including any amendment made thereto, shall conform with the Statewide Solid Waste Management Plan, with appendices, which includes the Department's planning guidelines, rules, regulations, orders of the Department, and also includes the compilation of individual district plans and amendments as they are approved.

E. Certification of Approval of the Amendment by the Commissioner of the Department of Environmental Protection

In accordance with the requirements of N.J.S.A. 13:1E-1 et seq., I hereby approve the amendment, as outlined in Section C. of this certification, to the Hudson County District Solid Waste Management Plan which was adopted by the Hudson County Board of Chosen Freeholders on March 11, 1999.

Date _____

Robert C. Shinn, Jr., Commissioner
Department of Environmental Protection