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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34501

**JAMES RIFFIN, J/b/a THE NORTHERN CENTRAL RAILROAD -
ACQUISITION AND OPERATION EXEMPTION**

COMMENTS OF THE STATE OF MARYLAND

~~ENTERED
Office of Proceedings
MAY 15 2004
Part of
Public Record~~

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Attorneys for the State of Maryland

Dated: May 18, 2004

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SURFACE TRANSPORTATION BOARD



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**JAMES RIFFIN, d/b/a THE NORTHERN CENTRAL RAILROAD –
ACQUISITION AND OPERATION EXEMPTION**

COMMENTS OF THE STATE OF MARYLAND

The State of Maryland ("Maryland"), through counsel hereby files these comments with respect to the Verified Notice of Exemption filed in this proceeding on April 28, 2004 ("*Pennsylvania NOE*").¹ As Maryland explains more fully below, Mr. James Riffin, the individual that filed that *Pennsylvania NOE*, has a track record with the State that raises concerns about his intent to continue to attempt to flout both Federal and State laws based on his assertion that he has become a rail carrier providing transportation that is subject to this Board's jurisdiction. Maryland presents these Comments to the Board both in the interest of protecting the health and safety of the citizens of the State, and in the interest of protecting the integrity of this Board's processes. Maryland submits that before the *Pennsylvania NOE* can become effective, the Board should undertake an investigation of the representations made in that Notice, and take action to require Mr. Riffin to comply with the instructions included in the decision issued recently in *James Riffin d/b/a The Northern Central Railroad* --

¹ Maryland has filed today a Motion for Leave to File Comments and is submitting this document for filing in anticipation of a favorable ruling on that Motion.

Acquisition And Operation Exemption -- In York County, Pa. and Baltimore County, Md.,
STB Finance Docket No. 34484 (Service Date: April 20, 2004).

I. BACKGROUND

On March 8, 2004 James Riffin d/b/a The North Central Railroad ("Mr. Riffin" or "NCR") filed a Verified Notice of Exemption ("*Maryland NOE*") in the matter styled *James Riffin d/b/a The Northern Central Railroad -- Acquisition and Operation Exemption -- In York County, Pa., and Baltimore County, Md.,* STB Finance Docket No. 34484. The *Maryland NOE* was served and published in the Federal Register on April 7, 2004. See 69 FR 18420. In the *Maryland NOE* Mr. Riffin sought to invoke the Board's class exemption procedures under 49 C.F.R. §1150.31 for authority to acquire and operate: (a) approximately 20.9 miles of rail line between milepost 35.1 (located at the Maryland/Pennsylvania line), and milepost 56, in York County, PA; (b) approximately 2.0 miles of abandoned rail line between milepost 14.2 and milepost 16.2, in Baltimore County, MD ("Cockeysville/Ashland line"); and (c) approximately 0.9 miles of abandoned rail line between milepost 24.3 and milepost 25.2, in Baltimore County, MD ("Blue Mount/Blue Mount Quarry line"). NCR asserted in the *Maryland NOE* that it would interchange with the Genessee and Wyoming Railroad at Grantly, in York County, PA. The Notice also claimed that the Cockeysville/Ashland and Blue Mount/Blue Mount Quarry lines were part of an abandoned right-of-way ("ROW") that NCR would acquire and operate and that the underlying land had reverted back to the original owners or their heirs, from whom it would acquire the rights to the ROW.

On April 20, 2004, in response to a Petition to Revoke filed by Maryland on April 2, 2004, the Board revoked the *Maryland NOE* and stated:

While NCR claims that it can overcome impediments to its ownership of property at issue in this proceeding, Maryland has raised sufficient concerns here, not only regarding NCR's ability to obtain title to property, but also regarding NCR's proposal in general, to make it inappropriate for NCR to use the expedited class exemption procedures in this case.

James Riffin d/b/a The Northern Central Railroad -- Acquisition And Operation

Exemption -- In York County, Pa, and Baltimore County, Md., STB Finance Docket No. 34484 (Service Date: April 20, 2004) ("Revocation Decision"). Now, NCR once again seeks to use the expedited class exemption procedure under 49 C.F.R. § 1150.31 with respect to the *Pennsylvania NOE*.

Maryland is filing these Comments as a direct result of Mr. Riffin's actions both prior to the *Revocation Decision* and since that time. Before the *Revocation Decision*, NCR was preparing to clear, grade and fill the 100-year floodplain of Beaver Dam Run ("Beaver Dam Site") without obtaining the required permit under the Maryland Waterway Construction Act. Maryland then served NCR with a site complaint relating to these actions. NCR also obstructed the efforts of the Maryland Department of the Environment ("MDE") to conduct indoor air quality sampling in an office building he operates. Accordingly, MDE filed suit in the Circuit Court for Baltimore County (Case No. 03-C-03-013144) ("State Court Action") relating to NCR's efforts to obstruct the MDE, which NCR moved to dismiss on the ground that NCR is a rail carrier providing transportation subject to this Board's jurisdiction and that as a result 49 U.S.C. § 10501 preempted all State environmental laws.

On April 26, 2004 the State Court ruled that the Board's jurisdiction did not preempt Maryland State law. Specifically, the Court held that even if NCR was a railroad the Board's jurisdiction did not preempt MDE's efforts at conducting indoor air

quality sampling because MDE's indoor air quality sampling would not affect rail operations. Accordingly the Court ordered that NCR allow MDE access to its office building. A Copy of the Court's Order is attached hereto as Exhibit 1.

On that same day, Mr. Riffin filed a Notice of Removal seeking to remove the case to Federal Court by arguing, once again, that the Board has exclusive jurisdiction over NCR's activities and that Maryland State law is preempted. A copy of the Notice of Removal and Supporting Memorandum is attached hereto as Exhibit 2. Now, with the attempt to remove the State Court proceeding to federal court, it appears that Mr. Riffin is once again attempting to wrap himself and his putative railroad in the cloak of this Board's jurisdiction via the *Pennsylvania NOE*.

II. COMMENTS

As was the case in the *Maryland NOE*, Mr. Riffin appears to be interested in operating a dinner train on the line that is the subject of the *Pennsylvania NOE*. Also like the *Maryland NOE*, Mr. Riffin is attempting to use the expedited class exemption procedures. The Board clearly stated that its expedited class exemption procedures was not appropriate in the *Maryland NOE* because "Maryland has raised sufficient concerns here, not only regarding NCR's ability to obtain title to property, but also regarding NCR's proposal in general, to make it inappropriate for NCR to use the expedited class exemption procedures in this case" *Revocation Decision* at p. 3. (emphasis added). Furthermore, the Board stated that:

Given that there are substantial factual and legal issues raised and that the Board has a responsibility to protect the integrity of its processes, under the particular circumstances presented here, the Board will revoke the notice of exemption. Should NCR choose to pursue its proposal, it should provide more detailed information, in the form of a petition for an individual exemption under 49 U.S.C. 10502 and 49 CFR 112f, or a full application under 49 U.S.C. 10901

and 49 CFR 1150, as those procedures are designed to elicit a more complete record.

Revocation Decision at p.3 (emphasis added).

This proceeding is no different. The proposed activity outlined in the *Pennsylvania NOE* along with the Board's rationale in the *Revocation Decision* requires that, at the very least, Mr. Riffin must either file a petition for an individual exemption under 49 U.S.C. § 10502 and 49 CFR § 1121, or a full application under 49 U.S.C. §10901 and 49 CFR § 1150. In view of Mr. Riffin's track record, the Board must have that additional information in order to confirm that his proposal is *bona fide* and feasible, and that the putative railroad will have the wherewithal required to create a safe work and operating environment.

Despite this Board's specific direction to Mr. Riffin in the *Revocation Decision*, the *Pennsylvania NOE* fails to provide verifiable information relating to the proposed operation, thus presenting the same questions about the legitimacy of his use of the expedited class exemption procedure.² For example, Mr. Riffin states in the *Pennsylvania NOE* that:

No agreement [with respect to acquisition of the right-of-way that is the subject of the *Pennsylvania NOE*] has been reached. York County, PA, the owner of the right-of-way has sent a lease proposal to Riffin, which Riffin is reviewing.

Pennsylvania NOE at p. 1 (emphasis added). However, counsel for Maryland has contacted York County personnel to determine the status of the transaction. York County provided Maryland's counsel with a letter dated April 6, 2004 from David S. Craun,

² In addition to the questions about the use of the class exemption due to lack of verification of statements made both in the *Pennsylvania NOE* and in prior proceedings, Mr. Riffin's prior communications with this Board that indicate his intention to operate a dinner train on track that is now wholly within a single State and therefore unrelated to interstate commerce raises questions about the Board's jurisdiction over the operation proposed for the subject line. See *Napa Valley Wine Train, Inc. Petition for Declaratory Order*, STB Finance Docket No. 31136 (Service Date: September 19, 1991).

County Solicitor to James Riffin ("York County Letter") relating to the proposed transaction. Specifically, that letter indicates that Mr. Riffin attended a Board of Commissioner's Workshop on April 12, 2004 and requested information about County requirements for a lease. See *York County Letter* attached hereto as Exhibit 3. Based on this request, York County forwarded to Mr. Riffin the County Letter that included the expired lease agreement that York County previously had with Northern Central Railway, Inc.³ as an exemplar and stated that:

...consistent with the general lease terms and operating regulations, please submit a written business plan, including a description of your proposed business activities, annual income, annual expenses, capital investment requirements, and construction and permanent financing, if any.

York County Letter. Furthermore, counsel for Maryland has been advised by York County personnel that, as of the date of this filing, the County has not yet forwarded a lease proposal to Mr. Riffin for the operations identified in the *Pennsylvania NOE* and that, to the best of their knowledge, he has not submitted the requested documentation that would provide a basis for sending him such a proposal.

Another example of incomplete information in the *Pennsylvania NOE* arises out of the statement there that "the proposed activities will not affect any historic structures." However, at least four historic structures are located on the line at issue along the York County Heritage Rail Trail. The York County Heritage Rail Trail was established in 1992, covers 176 acres, is 21 miles long, and connects to Maryland's 20-mile long Northern Central Railroad Trail. See <http://www.york->

³ What also seems to be unclear in the *Pennsylvania Notice of Exemption* is whether Mr. Riffin has the authority to operate as "Northern Central Railroad". A search of the Pennsylvania Corporate records does not identify a "Northern Central Railroad" that is registered to do business in the State. However, there is a registration for a "Northern Central Railway, Inc." as a foreign business corporation, which appears to be the entity that had previously contracted with York County for operation of train service on the subject lines. Despite the similarity in name between the former contractor with York County and Mr. Riffin's "doing business" entity, there is no evidence of a connection between Mr. Riffin and that other corporation.

[county.org/gov/Parks/RailTrail.htm](http://www.york-county.org/gov/Parks/RailTrail.htm) (a copy of the web page is attached hereto as Exhibit 4). Specifically, the the York County Heritage Rail Trail contains the following historic structures: 1) Colonial Courthouse; 2) Hanover Junction; 3) New Freedom Train Stations and 4) Howard Tunnel. See <http://www.york-county.org/gov/Parks/RailTrailHistory.htm> (a copy of the web page is attached hereto as Exhibit 5). The *Pennsylvania NOE* does not explain how the necessary repair or rehabilitation of the line and the proposed operation, which seeks to operate on a line that is either adjacent to or part of the York County Heritage Rail Trail, would not "affect any historic structures."

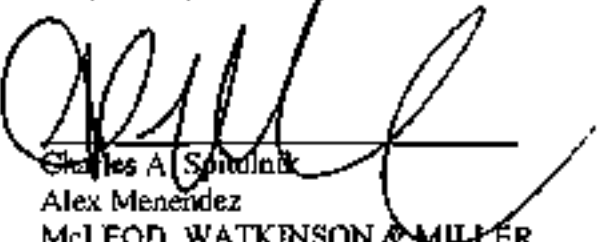
As was the case with the *Maryland NOE*, the *Pennsylvania NOE* raises more questions than it answers. Despite receiving specific instructions from this Board in the *Revocation Decision*, Mr. Riffin has elected not to follow those instructions but has submitted instead another Notice that includes far less information than the Board has indicated it would like to see from him with respect to transactions into which he proposes to enter. Different from the situation in the *Maryland NOE*, Maryland does not have direct, first hand knowledge that the information included in the *Pennsylvania NOE* is false or misleading. Maryland does believe, however, that the document raises more questions than it answers, and that it presents the same potential for abuse of the Board's jurisdiction as the *Maryland NOE*.

III. CONCLUSION

Maryland is concerned that the *Pennsylvania NOE* appears to present this Board with yet another scheme by Mr. Riffin in which he may attempt to improperly use the Board's process to once again argue that he and his putative railroad are protected from State laws by the cloak of this Board's jurisdiction. Moreover, and despite the Board's

clear direction in the *Revocation Decision*, the *Pennsylvania NOE* does not provide this Board with sufficient verified or verifiable facts that would allow Mr. Riffin to use the expedited class exemption procedures in this case or to give rise to the Board's asserting jurisdiction over either Mr. Riffin, NCR or the line he proposes to acquire.

Respectfully submitted,



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(202) 842-2345

Attorneys for the State of Maryland

Dated: May 18, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May, 2004, a copy of the foregoing
COMMENTS OF THE STATE OF MARYLAND was served by first class mail, postage
prepaid, upon:

James Riffin d/b/a The Northern Central Railroad
1941 Greenspring Drive
Timonium, MD 21093



Alex Menendez

1

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
1800 Washington Blvd.
Baltimore, Maryland 21230

Plaintiff,

v.

JAMES RIFFIN, et al

Defendants

IN THE
CIRCUIT COURT

FOR

BALTIMORE COUNTY,

MARYLAND

Case No. 03-C-03-013144

ORDER

Upon consideration of Defendants' Motions To Dismiss For Lack Of Jurisdiction, Not A Real Party In Interest and Failure To State A Cause of Action, the Maryland Department of the Environment's (MDE's) Response thereto, and after oral argument, it is this 29 day of June, 2004

ORDERED:

James Riffin's Motion To Dismiss For Lack Of Jurisdiction is **DENIED**.

AND IT IS FURTHERED ORDERED:

James Riffin will give MDE full unimpeded access to the building located at 1941 Greenspring Drive, Timonium Maryland, for purposes of monitoring indoor air quality.

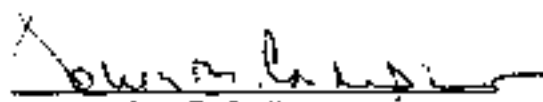
AND IT IS FURTHERED ORDERED:

In the event that MDE determines that further remedial action of the site is necessary to address a potential hazard to the public and/or the environment, MDE shall notify

FILED MAY 03 2004

this Court with the appropriate Motion for Access. This Court will retain jurisdiction over this matter.

cc: all parties


Judge Robert E. Cadigan
Baltimore County Circuit Court

True Copy Test
SUSANNE WENDEL Clerk
for 
Associate Clerk

2

CIVIL COVER SHEET

RDB-04-1342

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS STATE OF MARYLAND
MARYLAND DEPT OF ENVIRONMENT

DEFENDANTS JAMES RIFFIN

(b) County of Residence of First Listed Plaintiff PRINCE GEORGES
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant BALTIMORE County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Michael Forluny STE 604B
1000 WASHINGTON Blvd
BALTIMORE MD 21230 (410) 537-3421

Attorney (If Known) PRO SE
441 GREENHURST DR
TIMONIUM MD 21093 (443) 414 620

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
Citizen of This State ☒ 1 ☒ 2 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 5
Citizen of Another State ☐ 2 ☐ 3 Incorporated and Principal Place of Business in Another State ☐ 3 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 6 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Motor Air ☐ 140 Negligence ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 160 Maritime Act ☐ 170 Recovery of Overpayment of Veterans' Benefits ☐ 180 Stockholders' Suits ☐ 190 Other Contract ☐ 200 Contract Product Liability	☐ 210 AIRPLANE ☐ 211 Airplane Product Liability ☐ 220 Assault, Battery & Slander ☐ 230 Federal Employers' Liability ☐ 240 Marine ☐ 241 Marine Product Liability ☐ 250 Motor Vehicle ☐ 251 Motor Vehicle Product Liability ☐ 260 Other Personal Injury	☐ 267 Personal Injury—Adopt. Ad. Practice ☐ 268 Personal Injury—Product Liability ☐ 269 Aviation Product Liability ☐ 270 Other Torts ☐ 271 Torts to Land ☐ 272 Other Personal ☐ 273 Property Damage ☐ 274 Property Damage ☐ 275 Other	☐ 412 Appeal 28 USC 158 ☐ 413 Writ ☐ 414 Writ ☐ 415 Writ ☐ 416 Writ ☐ 417 Writ ☐ 418 Writ ☐ 419 Writ ☐ 420 Writ ☐ 421 Writ ☐ 422 Writ ☐ 423 Writ ☐ 424 Writ ☐ 425 Writ ☐ 426 Writ ☐ 427 Writ ☐ 428 Writ ☐ 429 Writ ☐ 430 Writ ☐ 431 Writ ☐ 432 Writ ☐ 433 Writ ☐ 434 Writ ☐ 435 Writ ☐ 436 Writ ☐ 437 Writ ☐ 438 Writ ☐ 439 Writ ☐ 440 Writ ☐ 441 Writ ☐ 442 Writ ☐ 443 Writ ☐ 444 Writ ☐ 445 Writ ☐ 446 Writ ☐ 447 Writ ☐ 448 Writ ☐ 449 Writ ☐ 450 Writ ☐ 451 Writ ☐ 452 Writ ☐ 453 Writ ☐ 454 Writ ☐ 455 Writ ☐ 456 Writ ☐ 457 Writ ☐ 458 Writ ☐ 459 Writ ☐ 460 Writ ☐ 461 Writ ☐ 462 Writ ☐ 463 Writ ☐ 464 Writ ☐ 465 Writ ☐ 466 Writ ☐ 467 Writ ☐ 468 Writ ☐ 469 Writ ☐ 470 Writ ☐ 471 Writ ☐ 472 Writ ☐ 473 Writ ☐ 474 Writ ☐ 475 Writ ☐ 476 Writ ☐ 477 Writ ☐ 478 Writ ☐ 479 Writ ☐ 480 Writ ☐ 481 Writ ☐ 482 Writ ☐ 483 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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b.) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 3(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. **Residence (citizenship) of Principal Parties.** This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. **Requested in Complaint. Class Action.** Place an "X" in this box if you are filing a class action under Rule 23, F.R.C.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

MDE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STATE OF MARYLAND
DEPARTMENT OF THE
ENVIRONMENT
Plaintiff

v.

JAMES RIFFIN
Defendant

CIVIL ACTION NO.:

* * * * *

NOTICE OF REMOVAL

Now comes your Defendant, James Riffin, d/b/a The Northern Central Railroad, who moves this Honorable Court, pursuant to 28 U.S.C. § 1441 (a), Order this matter be removed to the U.S. District Court for Maryland, and for reasons states:

1. 28 U.S.C. §1441 (1) states:

"(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

2. 28 U.S.C. § 1331 states:

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

3. A Complaint for Injunctive Relief (Case No. 03-C-03-013144) was filed by the Plaintiff against Defendant in the Circuit Court for Baltimore County, on November 26, 2003. The Complaint requested the Circuit Court order the Defendant grant Plaintiff access to a parcel located at 1941 Greenspring Drive, Timonium, Maryland ("Site"), so that the Plaintiff may sample the air inside the building situated on the Site, monitor the Site, and perform on-site

remedial and/or removal actions, if required. (The Plaintiff alleged groundwater at the Site contained dichloroethane, dichloroethene, and trichloroethylene; alleged vapors from these volatiles may be migrating into the on-site building; and alleged these vapors, if present in the on-site building, would be harmful to the occupants of the on-site building.)

4. Defendant filed a Motion to Dismiss for Lack of Jurisdiction on February 9, 2004, alleging the Site was a railroad facility, and as such, pursuant to 49 U.S.C. 10501(b), was subject to the exclusive jurisdiction of the Surface Transportation Board ("Board"), and that all non-Board remedies had been preempted by the Interstate Commerce Commission Termination Act ("ICCTA").

5. Plaintiff filed a Motion for Summary Judgment on April 6, 2004, wherein it argued the Site was not subject to the exclusive jurisdiction of the Board, or in the alternative, even if it was subject to the jurisdiction of the Board, the Plaintiff's proposed regulation of the Site was not preempted by the ICCTA. This Motion contained four Certificate of Analysis - Volatiles, for four groundwater samples the Plaintiff had previously collected. All four of these Certificates indicated dichloroethane and dichloroethene had not been detected. The samples were not tested for the presence of trichloroethylene.

6. Defendant filed an Answer to Plaintiff's Motion for Summary Judgment on April 26, 2004, arguing the volatiles mentioned in Plaintiff's Complaint had not been detected in the Site's groundwater, many material facts were in dispute, and that therefore, summary judgment was not appropriate, and reiterating Defendant's Motion to Dismiss for Lack of Jurisdiction.

7. Two issues have been raised, which require interpretation of Federal laws:

A. Is the Site subject to the exclusive jurisdiction of the Board?

B. Are the regulatory actions of the Plaintiff preempted by the ICCTA?

8. Since the issue of the Board's jurisdiction is to be determined by an analysis of Federal laws, and since the District Courts of the United States have, pursuant to 28 U.S.C. § 1331, original jurisdiction over all civil actions arising under the laws of the United States, and since this is a civil action, it would be appropriate to remove this case to the U.S. District Court for Maryland.

9. Federal case law has held the determination of the jurisdiction of the Surface Transportation Board is to be determined by a court, not the Surface Transportation Board. (See the attached Memorandum for citations.)

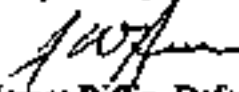
10. On April 26, 2004, the Circuit Court for Baltimore County, ruled the ICCTA does not preempt Maryland State law with regard to environmental testing of railroad facilities, granted Plaintiff's injunction, and ordered Riffin grant Plaintiff access to the Site for the purpose of testing the air in the on-site building.

11. Riffin believes this ruling is contrary to the rulings in *City of Auburn v. U.S. Government*, 154 F.3d 1025 (9th Cir. 1998), *Wisconsin Central Ltd. v. The City of Marshfield*, 160 F. Supp. 2d 1009 (W.D. Wis. 2000), *Soo Line R. Co. v. City of Minneapolis*, 38 F. Supp. 2d 1096, (D. Minn. 1998), *CSX Transp., Inc. v. Georgia Public Serv. Com'n*, ("CSX") 944 F. Supp. 1573, 1580 - 1585 (N.D. Ga. 1996), and *CSX Transp., Inc. v. City of Plymouth*, 92 F. Supp. 2d 643 (E.D. Mich. 2000).

WHEREFORE, for the reasons stated above, your Defendant would pray this Honorable Court:

- A. Order the above entitled case be removed to the U.S. District Court for Maryland, and
- B. For such other and further relief as may be appropriate.

Respectfully submitted,


James Riffin, Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 26th day of April, 2004, a copy of the foregoing Motion to Remove, was mailed to Michael V. Forlini, Assistant Attorney General, Maryland Department of the Environment, 1800 Washington Boulevard, Suite 6048, Baltimore, Maryland 21230.


James Riffin

RECEIVED

APR 27 2004

MD. Dept of the Environment
Office Of The Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STATE OF MARYLAND
DEPARTMENT OF THE
ENVIRONMENT
Plaintiff

v.

JAMES RIFFIN
Defendant

RECEIVED
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BY _____
CIVIL ACTION NO. _____

MEMORANDUM IN SUPPORT OF DEFENDANT'S
NOTICE OF REMOVAL

James Riffin dba The Northern Central Railroad, Defendant in the above entitled case ("Riffin"), herewith files this Memorandum in Support of Defendant's Notice of Removal, and says:

1. Attached is the Affidavit of James Riffin d/b/a The Northern Central Railroad, which is incorporated by reference herein as if fully stated herein.

**1. THE JURISDICTION OF THE SURFACE TRANSPORTATION BOARD
IS TO BE DETERMINED BY A COURT,
NOT THE SURFACE TRANSPORTATION BOARD**

2. In *Chevron, U.S.A., Inc. v. Natural Resources Defense*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed. 2d 694 (1984), the Supreme Court made the following comments:

"When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress

has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. Footnote 9. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

"The power of an administrative agency to administer a congressionally created ... program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." *Morton v. Ruiz*, 415 U.S. 199, 231, 94 S.Ct. 1055, 1072, 39 L.Ed.2d 270 (1974). If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Sometimes the legislative delegation to an agency on a particular question is implicit, rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.

We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations

"has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations." (Citations omitted.) *Chevron* at 2783-2784.

Footnote 9: "The judiciary is the final authority on issues of statutory

construction and must reject administrative constructions which are contrary to clear congressional intent. (Citations omitted.) *Chevron* at 2783. (Emphasis added.)

3. In *United Transp. Union v. Surface Transp. Bd.*, 183 F.3d 606 (7th Cir. 1999), the court had occasion to review the jurisdiction of the Surface Transportation Board in light of the *Chevron* case just cited. The court made the following findings:

A. "The § 10906 exception states that the Board "does not have authority" over "construction, acquisition, operation, abandonment, or discontinuance of spur . . . track" but this does not mean that the Board lacks jurisdiction over such transactions. That would flatly contradict the unambiguous statutory language providing that the Board has "exclusive" jurisdiction over the "construction, acquisition, operation, abandonment, or discontinuance" of spur track. 49 U.S.C. §10501 (b)(2). Statutory provisions are to be interpreted to be consistent with one another. *Chicago Rail Link*, 169 F.3d at 480. It is unreasonable to interpret one provision as eliminating another unless the language requires it. *United States v. Kirschenbaum*, 156 F.3d 784, 790 (7th Cir. 1998). Here the language does not require it. The §10906 no-authority language means no authority, not no jurisdiction. These sorts of transactions involving spur track do not call for the Board authorization which is required for construction, acquisition, or operation of extended or additional rail line under §10901 and § 10902, but the Board nonetheless retains exclusive jurisdiction under § 10501 (b) (2). (Emphasis in original.)

B. "We therefore apply *Chevron*. Under the first step of a *Chevron* analysis, courts do not defer to even reasonable agency interpretation if "Congress has spoken directly to the precise point at issue," *Chevron*, 467 U.S. at 842, 104 S.Ct. 2778; i.e., if the statutory language, with or without the support of legislative history, is clear, unambiguous, and directly governs the challenged decision. If the statute is "silent or ambiguous with respect to the specific issue," we proceed to the second step, deferring to reasonable agency interpretation of unclear statutory language. *Id.* at 843, 104 S. Ct. 2778."

4. In *CSX Transp., Inc. v. Georgia Public Serv. Com'n*, *op. cit.*, at 1584, the court made the following comment in its footnote 8:

"2. Although the Court agrees with the STB's interpretation of the ICC Termination Act, and finds it persuasive, the Court does not agree with plaintiffs that it is entitled to deference under *Chevron*. First, the Court notes that the law is unsettled as to the application of *Chevron* to an agency's determination of its own jurisdiction. *Teper*, *op. cit.* Also, *Chevron* is only applicable "where the plain meaning of the express terms of a statute is unclear." *Chevron* at 2782. Because the Court finds that Congress has spoken directly to the issue of the preemptive effect of the ICC Termination Act, the *Chevron* framework is irrelevant." (Emphasis added.)

5. In *Teper*, the court was asked to ascertain whether the Federal Election Campaign Act ("FECA") preempted a Georgia statute which prohibited a Georgia legislator (*Teper*) from accepting contributions to finance his run for a federal office. The Federal Election Commission ("FEC") has the authority to promulgate regulations to effect the provisions of the FECA. The statute specifically states it preempts all state laws with respect to election to Federal office. The FEC promulgated a regulation, stating the FECA preempted all state laws with respect to election to Federal office. One of the circuit judges stated, under *Chevron*, preemption was manifest in the Act itself. Consequently, the opinion of the FEC regarding its jurisdiction, was irrelevant, and not due deference by the court. Another circuit judge raised the following interesting issue:

If a statute was ambiguous with regard to an agency's preemptive jurisdiction, and the agency decided its jurisdiction preempted state law, a catch-22 situation would ensue: Preemption will be found only when there is a clear and manifest Congressional intent to preempt. Under *Chevron*, an agency's decision will be deferred to only if the statute is silent or ambiguous. If the statute is clear, there is no need for the agency to render an opinion. If the statute is unclear, there can be no clear and manifest Congressional intent to preempt. So the agency's position on preemption, if it sides with preemption, becomes untenable, while if it sides with no preemption, is supportable. Thus the statement in footnote 8 in paragraph 8 *supra*, that the law is unsettled as to the application of *Chevron* to an agency's determination of its own

jurisdiction.

II. PREEMPTION GUIDELINES

6. In *CSX Transp., Inc. v. Georgia Public Serv. Com'n*, ("CSX") 944 F. Supp. 1573, 1580 - 1585 (N.D. Ga. 1996), that court stated: "Preemption doctrine is rooted in the Supremacy Clause of the United States Constitution, *Teper v. Miller*, 82 F.3d 989, 993 (11th Cir. 1996). See U.S. Const. Art. VI, cl. 2. Because it requires that conflicts between state and federal law be resolved in favor of federal law, the Supremacy Clause prohibits the enforcement of any state law that conflicts with a valid federal statute. *Taylor v. General Motors Corp.*, 875 F.2d 816, 821 (11th Cir. 1989).

7. The Eleventh Circuit discussed the proper framework for resolving preemption questions in *Teper v. Miller*, *supra*. In *Teper*, the court recognized that there are three categories of preemption: (1) express preemption, where Congress defines explicitly the extent to which its enactments preempt state law; (2) field preemption, where Congress's regulation of a field is so pervasive or the federal interest so dominant that an intent to occupy the entire field can be inferred; and (3) conflict preemption, where state law stands as an obstacle to the accomplishment of the full purposes and objectives of a federal statute. *Id.* At 993. The Court noted that the overriding principle which should guide any preemption analysis is whether Congress intended to preempt state law. *Id.* See *Medtronic v. Lohr*, 518 U.S. 470, 485, 116 S. Ct. 2240, 2255, 135 L.Ed. 2d 700 (1996) (stating that purpose of Congress is "ultimate touchstone" in every preemption case) (citing *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516, 112 S. Ct. 2608, 2617, 120 L.Ed. 2d 407 (1992)); and *Illinois Commerce Commission v. ICC*, 879 F.2d 917, 921 (D.C.Cir. 1989) (noting that critical question in any preemption analysis is "whether Congress intended that federal regulations supersede state law").

8. The intent of Congress to expressly preempt state law is "primarily discerned from the language of the preemption statute and the statutory framework surrounding it." *Medtronic, supra*. The policy behind the federal statute, as well as its legislative history, may also be relevant in determining whether Congress intended the statute to preempt state law. *Id.*

9. In *CSX Transp., Inc. v. City of Plymouth*, 92 F. Supp. 2d 643 (E.D. Mich. 2000) [wherein the City of Plymouth attempted to regulate how long a train blocked a highway crossing], the court cited the following from *United States v. Locke*, 529 U.S. 104, 120 S. Ct. 1135, 1147-1148 (2000), (a case involving maritime preemption):

"As *Rice* indicates, an "assumption" of nonpreemption is not triggered when the State regulates in an area where there has been a history of significant federal presence." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 67 S. Ct. 1146, 91 L. Ed. 1447 (1947). *Locke* at 1147.

"Congress has legislated in the [area of maritime commerce] from the earliest days of the Republic, creating an extensive federal statutory and regulatory scheme." *Locke* at 1148.

"Important for our purposes here, the Court expressly stated:

"The state laws now in question bear upon national and international maritime commerce, and in this area there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers. Rather, we must ask whether the local laws in question are consistent with the federal statutory structure, which has as one of its objectives a uniformity of regulation for maritime commerce. *Locke* at 1148. *City of Plymouth* at 648.

The City of Plymouth court then stated:

"There can be no doubt that just as Congress has regulated ships and vessels since the beginning of the Republic, it has similarly done so with respect to our Nation's rail system. Both Congress and the courts have traditionally recognized a need to regulate railroad operations at a national level. Enacted in 1887, the Interstate Commerce Act, ch. 104, 24 Stat. 379 (1887), has been described as "among the most pervasive and comprehensive of federal regulatory schemes." *Chicago and N.W. Transp.*

Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 318, 101 S. Ct. 1124, 67 L.Ed. 2d 258 (1981). *City of Plymouth* at 648.

After citing numerous Acts of Congress that affect railroads, the City of Plymouth court then concluded:

"These decisions and Acts of Congress, as well as the numerous federal regulations which pertain to this area, have created "an extensive federal statutory and regulatory scheme." *Locke* at 1148. Accordingly, in this area, as in *Locke*, where the state statute at issue bears upon an area traditionally regulated by the federal government, "there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers." *Id.* *City of Plymouth* at 649.

"To the extent the state law is viewed as having the effect of requiring the railroad to undergo substantial capital improvements, the Court finds that the law is preempted by the Interstate Commerce Commission Termination Act." *City of Plymouth* at 658.

III. ICCTA PREEMPTION

10. The ICC Termination Act ("ICCTA") contains an express preemption clause. As was stated in *CSX Transp., Inc. v. Georgia Public Serv. Com'n*, *op. cit.* (p. 1581): "It is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations." In the *CSX* case, the Defendants tried to argue the ICCTA's preemption clause preempted state remedies only when federal remedies are provided under the ICCTA. The court responded to this argument as follows:

"Defendants' argument reflects a misunderstanding not only of the plain language of section 10501 (b)(2), but also of the ICC Termination Act generally. The most natural reading of section 10501(b)(2) is that the federal remedies provided by the ICC Termination Act are the only remedies available as to the regulation of rail transportation, and that the federal remedies are exclusive of state remedies except where

the ICC Act has expressly provided otherwise. (Emphasis added.) See S.Rep. No. 176, 104th Cong., 1st Sess. 14 (1995) (explaining that ICC Termination Act "should not be construed to authorize states to regulate railroads in areas where federal regulation has been repealed by the bill"); and H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 167 (1995), U.S. Code Cong. & Admin. News 1995, pp. 793, 852 (stating that "integrated into the statement of general jurisdiction is the delineation of the *exclusivity* of federal remedies with respect to the regulation of rail transportation") (emphasis added). *CSX Transp., Supra*, at 1581.

11. Since the ICCTA clearly states all Federal and State remedies are preempted by the ICCTA, under the guidelines enumerated in *Chevron*, the court is prohibited from deferring to the Board's interpretation of the limits of its jurisdiction and preemption.

12. The ICCTA grants exclusive jurisdiction to the Surface Transportation Board over "(1) transportation by rail carriers, . . . and . . . (2) the . . . operation . . . of . . . facilities." USC 10501 (b)(1) & (2). "Transportation" as used in section 10501 (b)(1) is defined very expansively in the ICCTA to include:

"(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and (B) 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) (A) & (B). (Emphasis added.)

13. The court in *CSX Transp., Inc. v. Georgia Public Serv. Com'n*, *op. cit.*, stated:

"As discussed, it is clear to the Court that Congress intended the preemptive net of the ICC Termination Act to be broad by extending exclusive jurisdiction to the STB over anything included within the general and all inclusive term "transportation by rail

carriers." 49 U.S.C. 10501 (b)(a). The Court will not ignore Congress's use of broad terms which include railroad agencies, such as "transportation by rail carriers" and "services" related to rail transportation, merely because Congress specifically denoted its intent to preempt state regulatory authority of wholly intrastate spur and side tracks in the same code section. Intrastate spur and side tracks were explicitly excluded from federal jurisdiction in the ICC Termination Act's predecessor, the Staggers Rail Act. *See Illinois Commerce Commission v. ICC*, *supra*, at 921. (Recognizing that intrastate spur abandonments were explicitly placed within exclusive jurisdiction of states and outside jurisdiction of ICC under Staggers Rail Act). Thus Congress's specificity as to intrastate tracks does not detract from its use of widely inclusive terms such as "transportation by rail carriers" in the ICC Termination Act's preemption clause and statement of the STB's exclusive jurisdiction. There is no basis on which to argue that Congress intended to carve out regulatory control over agencies as an exception to its otherwise broad preemption of state regulation of railroad operations."

14. In implementing its deregulatory policy, the ICCTA made several changes to its predecessor, the Staggers Rail Act. The ICCTA deleted language from the policy statement of the Staggers Rail Act dealing with regulatory cooperation between the federal and state governments, and removed sections of the Staggers Rail Act providing for joint federal and state regulatory bodies. *See S.Rep. No. 176, 104th Cong., 1st Sess. 44 (1995) (discussing ICC Termination Act's deletion of former 49 U.S.C. §§ 10101, 10341-10344 and describing former sections as outdated). CSX Transp., Inc. v. Georgia Public Serv. Com'n, op. cit. at 1584.*

"Perhaps the most significant change to the Staggers Rail Act, which the Court has already discussed, is the ICC Termination Act's express removal from the states of jurisdiction over wholly intrastate railroad tracks. With the extension of exclusive federal jurisdiction over wholly intrastate tracks, one of the few railroad matters previously within the jurisdiction of the state, the ICC Termination Act evinces an intent by Congress to assume complete jurisdiction, to the exclusion of the states, over the regulation of railroad operations. *See H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 167 (1995), U.S. Code Cong. & Admin. News 1995, p. 852 (explaining that only state*

regulation of non-rail matters, for example in state criminal statutes, is not preempted by ICC Termination Act because state regulation of nonrail matters does not "generally collide with the scheme of economic regulation (and deregulation) of rail transportation")." *CSX, Id.* at 1584. (Emphasis added.)

15. In its *CSX* opinion, the court made the following additional comments:

A. "Congress's authority to regulate even intrastate aspects of the operation of railroads is beyond question." P. 1585. Cites omitted.

B. "Congress has authority to regulate even intrastate aspects of the operation of railroads because railroads are instrumentalities of interstate commerce. See *United States v. Bishop*, 66 F.3d 569, 588 (3d Cir. 1995) (holding that Congress can regulate motor vehicles as an instrumentality of interstate commerce and stating "the Supreme Court has made clear that airplanes, railroads, highways and bridges constitute instrumentalities of commerce which Congress can regulate under the commerce clause"). Congress has more authority to regulate instrumentalities of interstate commerce because instrumentalities of interstate commerce, as the means of transporting goods and people across state lines, have an inherently substantial effect on interstate commerce. *Id.*"

16. In *Soo Line R. Co. v. City of Minneapolis*, 38 F. Supp. 2d 1096, (D. Minn. 1998), (wherein the City of Minneapolis objected to the railroad's demolition of some of its structures,) that court stated:

"Thus, 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." *Id.* at 1099. (Emphasis added.)

"The regulatory framework of the ICCTA so pervasively dominates the field in which the City is attempting to act that, in addition to express preemption, congressional intent to occupy the field can also be inferred. See 49 C.F.R. §§ 1105.1 - 1105.12." *Id.* at 1100.

"The language of the Act expresses Congress' clear intent to preempt state and local regulatory authority over the construction, development, and operation of railroad facilities in general, and intermodal facilities in particular." *Id.* at 1101. (Emphasis added.)

17. In *City of Auburn v. U.S. Government*, 154 F.3d 1025 (9th Cir. 1998), the BNSF railroad desired to reopen an abandoned rail line that went through Washington State's Stampede Pass. The City of Auburn attempted to subject this project to its environmental permitting laws, arguing that its requirements were environmental regulation, rather than economic regulation, claiming this is a "traditional state police power" that Congress did not intend to preempt.

In that case, the court held "there is nothing in the case law that supports Auburn's argument that, through the ICCTA, Congress only intended preemption of economic regulation of the railroads. All the cases cited by the parties find a broad reading of Congress' preemption intent, not a narrow one." *Id.* at 1030.

"However, the pivotal question is not the nature of the state regulation, but the language and congressional intent of the specific federal statute. (Cites omitted.) (Preemption of state law is compelled if Congress' command is explicitly stated in the federal statute's language or implicitly contained in its structure or purpose.)" *Id.* at 1031.

"Additionally, given the broad language of §10501(b), the distinction between "economic" and "environmental" regulation begins to blur. For if local authorities have the ability to impose "environmental" permitting regulations on the railroad, such power will in fact amount to "economic regulation" if the carrier is prevented from constructing, acquiring, operating, abandoning, or discontinuing a line." *Id.* at 1031.

Regarding the legislative history of a statute, the court stated:

"However, while "[l]egislative history can be a legitimate guide to a statutory purpose obscured by ambiguity ... in the absence of a clearly expressed legislative intention to the contrary, the language of the statute itself must ordinarily be regarded as conclusive." *Burlington Northern R.R. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461, 107 S.Ct. 1855, 95 L.Ed.2d 404 (1987) (internal quotations omitted). "The starting point in statutory interpretation is 'the language [of the statute] itself,' " *United States v. James*, 478 U.S. 597, 604, 106 S.Ct. 3116, 92 L.Ed.2d 483 (1986), and where statutory command is straightforward, "there is no reason to resort to legislative history." *United States v. Gonzales*, 520 U.S. 1, 117 S.Ct. 1032, 1035, 137 L.Ed. 2d 132 (1997)." *City of Auburn* at 1029-1030.

The court then concluded: "State and local permitting laws regarding railroad operations are preempted by the plain language of the ICCTA, and the statutory framework surrounding it." *City of Auburn* at 1033.

18. In *Wisconsin Central Ltd. v. The City of Marshfield*, 160 F. Supp. 2d 1009 (W.D. Wis. 2000), the city attempted to condemn a portion of the railroad's property in order to realign a highway. Had the city been successful, the railroad would have had to relocate a portion of one of its passing tracks. The city argued the relocation of railroad property is not its regulation. The court made the following statements:

"The ICCTA does not define "regulation" in section 10102. Nevertheless, the plain meaning is apparent. "Regulation" is the "act or process of controlling by rule or restriction" See Black's law Dictionary." *Wisconsin Central Ltd.* at 1013. (Emphasis added.)

"The Court holds that condemnation is regulation. In using state law to condemn the track, defendant is exercising control - the most extreme type of control - over rail transportation as it is defined in section 10102 (9). The City is impermissibly attempting to subject to state law property that Congress specifically put out of reach. Congress' preemptive language and intent is paramount, and the nature of the

preempted state regulation is irrelevant. See *City of Auburn (supra)*.” *Wisconsin Central Ltd.* at 1013-1014. (Emphasis added.)

“Environmental laws - statutes of general application - have been found to be expressly preempted under the ICCTA when applied to facilities and property constituting rail transportation. See *City of Auburn (Supra)*, *Id.* at 1014. (Emphasis added.)

19. In *Flynn v. Burlington Northern Santa Fe Corp. (BNSF)*, 94 F. Supp. 2d 1186 (E.D. Wash. 2000), the BNSF railroad wanted to build a refueling facility over an aquifer. Flynn, a Spokane county resident, filed suit challenging the county's issuance of conditional use permits for the construction of the refueling facility. The court ruled it did not have subject matter jurisdiction over the case, since the Plaintiffs did not have standing and federal question jurisdiction did not exist. The court then dismissed the suit, noting: “A dismissal for lack of subject matter jurisdiction is not a judgment on the merits.” *Flynn* at 1193.

In its opinion, the court made the following comments (which had no bearing on the court's decision to dismiss the suit):

“In contrast, manufacturing activities and other facilities owned by railroads which are not integrally related to the railroad's provision of interstate rail service, i.e., non-transportation facilities, are not subject to STB jurisdiction or subject to federal preemption. *Borough of Riverdale - Petition for Declaratory Order - The New York Susquehanna & Western Railway Corp.*, 1999 WL 715272, STB Finance Docket No. 33466 at 10 (9/9/99) [“Riverdale II”]. Such facilities, like other non-railroad property, are subject to state and local regulation. *Id.*” *Flynn* at 1189.

IV. NO PREEMPTION CASES

20. A few courts, after reviewing the specific facts of a case, have found state laws have not been preempted. A review of those cases follows:

21. The main issue in *In re Appeal of Vermont Railway* ("Vermont"), 769 A.2d 648 (Vt. 2000) was a salt shed, which was located on property previously owned by Cliffside Leasing. Cliffside Leasing was not a railroad. Vermont railroad merged with Cliffside Leasing, thereby acquiring the salt shed property. Prior to this merger, permits had been issued which subjected the storage of salt in the salt shed, and the trucking activities associated with the distribution of salt from the salt shed, to certain expressly defined conditions. After the merger, Vermont railroad argued, pursuant to ICCTA, it was no longer subject to any of these preexisting conditions. At trial, many of these conditions were struck, the court having concluded the conditions were preempted by ICCTA. The trial and appellate courts left in place: (A) conditions which controlled the route trucks exiting the facility were to take; (B) pending completion of the Champlain Parkway, the number of trucks which could exit the facility on a daily basis; (C) the hours during which trucking could occur; and (D) conditions designed to avert potential contamination from the salt shed, such as curbing requirements and requirements that salt be handled on impervious surfaces. The court reasoned these conditions affected the trucking activities taking place at the property, and the manner in which the salt was stored on the property. It further reasoned these preexisting conditions did not interfere with Vermont's railroad operations.

The Supreme Court of Vermont, after reviewing *Hillsborough County, Fla. v. Automated Med. Labs, Inc.*, 471 U.S. 707, 716, 105 S.Ct. 2371, 85 L.Ed.2d 714 (1985), started with the presumption that "state and local regulation of health and safety matters can constitutionally coexist with federal regulations." Unfortunately, the Vermont court was not aware *United States v. Locke*, 529 U.S. 104, 120 S. Ct. 1135, 1147-1148 (2000), had been decided 9 months prior to the date the Vermont court made its decision. As discussed in paragraph 5, *supra*, *Locke* held that "there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers."

Even though the parties in this case argued the court was obligated to give deference to the STB's interpretation of the scope of the preemption provision of the ICCTA, the court, mindful of the *Chevron* ruling, found:

"This rationale, however, does not support the argument that an agency's interpretation of a statutory provision implicating constitutional questions merits deference, for agencies are in no better position to resolve constitutional questions than the courts. Therefore, while decisions of the STB regarding the preemptive effect of the ICC Termination Act may be persuasive, we are not bound by the Board's interpretation of that particular provision.

On appeal, the railroad argued the conditions associated with the salt shed violated the Commerce Clause. The appellate court did not address this argument, having noted the railroad was precluded from raising Commerce Clause issues on appeal, since it had failed to raise these issues at the trial level. The Vermont Supreme Court then affirmed the ruling of the trial court.

22. In *Florida East Coast Ry. v. City of West Palm Beach*, ("FEC") 266 F.3d 1324 (11th Cir. 2001), FEC had a rail yard situated in a residential neighborhood. Rinker, an aggregate distributor, had a distribution center 8 blocks away. FEC and Rinker desired to do a like-kind property exchange. With this in mind, FEC leased its rail yard property to Rinker. After the exchange, FEC's involvement with the property was limited to bringing loaded rail cars to the property, then removing the rail cars after they were unloaded. Rinker unloaded the cars, washed and graded the aggregates, loaded the aggregates onto trucks, then hauled the aggregates to various sites in Florida. Rinker also paid all electricity, water, and landscape maintenance expenses associated with the property. The City of W. Palm Beach cited FEC and Rinker for operating an industrial plant in a residential neighborhood, and for operating a business without an occupational license. The court held that since Rinker was not a railroad, and since the railroad's only involvement with Rinker's activities, was the delivery of rail cars to Rinker's site, Rinker's activities were not subject to the jurisdiction of the STB, and therefore, its activities were not preempted by the ICCTA.

23. In *Boston and Maine Corp. v. Town of Ayer*, 330 F.3d 12 (1st Cir. 2003), the railroad wanted to build a car unloading facility on land that was situated in an Aquifer Protection Area. The Town of Ayer attempted to impose 36 conditions on this proposed facility, then totally banned the facility on the basis that it was a prohibited noisome nuisance. The STB issued a

"guidance" decision, but did no fact finding. For procedural reasons, the trial court never addressed the preemption or Commerce Clause issues that had been raised. Ultimately, the parties reached an agreement, then dismissed all issues of their appeal, except the issue of attorney's fees. The appellate court held the railroad was not entitled to attorney's fees.

The STB's "guidance" decision found state and local regulation to be permissible "where it does not interfere with interstate rail operations, and localities retain certain police powers to protect public health and safety." The STB gave three guidelines for permissible state and local regulation:

A. Non-discriminatory enforcement of requirements such as building and electrical codes generally are not preempted. However, the code enforcement agency cannot require a railroad obtain a permit prior to doing any work.

B. A town may seek enforcement of voluntary agreements a railroad has entered into with a town.

C. Section 10501(b) should not be interpreted as intending to interfere with the role of state and local agencies in implementing federal environmental statutes.

24. In *CFNR Operating Co. v. City of American Canyon*, 282 F. Supp. 2d 1114 (N.D. Cal. 2003), Apex operated a bulk transfer facility on property leased from a railroad (CFNR). The railroad delivered rail cars containing pumice and cement to Apex's facility. Apex transferred the pumice and cement to its trucks, then trucked the pumice and cement to a local customer. The City of American Canyon ("City") had issued a number of citations against Apex for dust, traffic and water run-off. Apex applied for a conditional land-use permit from the City, which the City denied. The railroad filed a complaint seeking declaratory and injunctive relief to prevent the City from interfering with its activities and operations.

Without ruling on the merits, the court stated it appeared the City's actions were directed against Apex's non-railroad business activities, rather than at CFNR's railroad

operations. The court indicated this factual situation appeared to be similar to that in *Florida East Coast RY v. City of West Palm Beach, op. cit.* The court then stated:

"Taken to its logical conclusion, plaintiff's argument would mean that any trucking company who picks up goods from a railroad terminal for delivery to a customer would be free from local regulation. Congress, however, could not have intended such an expansive interpretation of the ICCTA's reach." *CFNR* at 1119.

The court stated *CFNR* had not persuaded it of the possibility of irreparable harm. "To the extent that the claimed harm is economic, including the potential loss of revenues and the present contract, and the escalating fines imposed by the citations, damages would appear to be an adequate remedy." The claims of *CFNR* were prospective, and therefore speculative, and thus did not rise to the level of irreparable harm. The court then denied the request for preliminary injunction, and set the matter for trial.

V. SURFACE TRANSPORTATION BOARD RULINGS

25. **Riverdale I:** STB Finance Docket No. 33466, Decided September 9, 1999. The Borough of Riverdale filed a Petition for a Declaratory order seeking a determination regarding the extent to which certain facilities constructed and operated in Riverdale by The New York, Susquehanna and Western Railway Corporation (NYSW) are covered by ICCTA preemption. The NYSW did not file a response to the Borough's Petition.

The railroad built a corn processing facility on its property, which was adjacent to residentially zoned properties. The railroad did not obtain Borough permits prior to constructing the facility. The Borough brought civil suit against the railroad. The trial court ruled the railroad was not bound by local zoning regulations as to land use and utilization, since they had been preempted by ICCTA. The court further added that the Borough "shall not use regulatory measures regarding safety, environmental or health matters as a device for getting rid of NYSW's [Riverdale facilities]." Nor, in the court's words, could the Borough "preclude or interfere with [NYSW's] operation of the facilities." *Riverdale I* decision at 3.

The Board reviewed prior Board and court decisions, then gave its preliminary conclusions, which it stated could change:

- A. The Borough cannot apply its local zoning ordinances to property used for NYSW's railroad operations.
- B. Local land use restrictions are preempted by the ICCTA.
- C. State or local laws that would impose a local permitting or environmental process as a prerequisite to the railroad's maintenance, use, or upgrading of its facilities are preempted by ICCTA.
- D. Local entities cannot require that railroads seek building permits prior to constructing or using railroad facilities. Local authorities can take actions that are necessary and appropriate to address any genuine emergency on railroad property, and that railroads are not exempt from certain local fire, health, safety and construction regulations and inspections.

The Board then ordered the parties submit filings for its consideration.

26. *Riverdale II*: STB Finance Docket No. 33466, Decided February 23, 2001. The parties settled all of their differences. Consequently, there was no longer any basis for the Board to review this situation.

The Board interpreted the court's ruling in *Flynn v. Burlington Northern Santa Fe Corp. (BNSF)* to be that a railroad would have to comply with local codes for electrical, building, fire, and plumbing, unless the codes restrict the railroad from conducting its operations or unreasonably burden interstate commerce. The Board's reasoning on the issue of local codes for electrical, building, fire and plumbing was somewhat circuitous and flawed.

In *Riverdale I*, the Board speculated that a railroad may be subject to local electrical, building, fire and plumbing codes. The court in *Flynn* altered the Board's comments by stating the railroad "will be required" to comply with local building, etc. codes, citing *Riverdale I* as authority. The Board in *Riverdale II* then altered the *Flynn* court's remarks and stated: the

court "found" that the railroad would have to comply with local building, etc. codes. A close reading of *Flynn* will reveal the court did not find that a railroad had to comply with local building, etc. codes. The court found that it did not have subject matter jurisdiction over the case, then granted the railroad's Motion to Dismiss. The issue of whether a railroad must comply with local building, plumbing, electrical or fire codes, had no bearing on the court's finding that the court did not have subject matter jurisdiction in this case.

CONCLUSION

The Site has been leased to Riffin, a Maryland railroad company, to be used as a railroad facility; Riffin's railroad company is using the Site to store and maintain property and equipment related to the movement of passengers or property by rail; Riffin pays for the electricity, water and heat used at the site; Riffin maintains the site; the other tenants at the Site provide services related to the movement of passengers or property by rail; Riffin's lease stipulates Riffin is the only defendant who may grant access to third parties for the purpose of collecting air or ground samples or to perform on-site remedial and/or removal actions.

49 U.S.C. 10501 (b) states:

"The jurisdiction of the Board over - (1) transportation by rail carriers ... and (2) the construction, acquisition, operation ... of ... facilities ... is exclusive. ... [T]he remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law."

49 U.S.C. 10102 (9) broadly defines "transportation" to include:

"(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.”

Unlike the situation in *In re Appeal of Vermont Railway* (salt shed case), *Florida East Coast Ry* (Rinker aggregates distribution), and *CFNR Operating Co.* (Apex pumice and cement distribution), as Riffin's Affidavit states, the material and equipment being handled, maintained and stored at the Site belongs to Riffin, and relates to the movement of property or passengers by rail. Unlike the above three cases, the services provided by Docu Print Imaging (printing), Signations (sign making) and Tech-Team (back office support) are utilized by Riffin's railroad, and thus relate to the movement of property or passengers by rail. And unlike the above three cases, Riffin pays the cost of providing electricity, heat and water for the Site and is responsible for maintaining the Site.

The Site is one of Riffin's railroad facilities. All of the preemption cases make it clear, the regulation of railroad facilities falls within the exclusive domain of the Surface Transportation Board. As was stated in the *Wisconsin Central Ltd.* case at 1013 (¶ 18, *supra*):

“Regulation” is the “act or process of controlling by rule or restriction.”

The Plaintiff is attempting to “control” the Site, by asking the Court to order Riffin (A) grant Plaintiff access to the Site; (B) grant Plaintiff permission to sample the air at the Site; and (C) grant Plaintiff authority to order Riffin to pay the costs of studying, testing and remediating the Site, all at Riffin's considerable expense.

The Plaintiff is impermissibly attempting to subject to state law, property that Congress specifically put out of reach. *Wisconsin Central Ltd.* at 1013-1014. Plaintiff is also attempting to impermissibly impose all costs of studying, testing and remediating the Site onto Riffin, which, as the *City of Plymouth* case spells out (at 658) (see the last ¶ of ¶5, *supra*), is prohibited by the ICCTA.

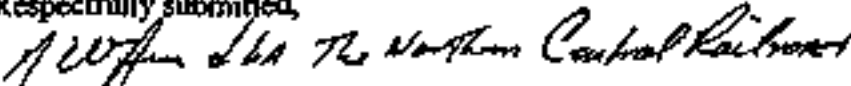
The Board's remedies with respect to the regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law. The operation of Riffin's railroad facility at the Site and the remedies with respect to the regulation of that rail transportation use lie exclusively with the Surface Transportation Board, and preempt all other Federal and State remedies, including the remedies sought by the Plaintiff.

As was noted earlier, the Congressional exemption of rail carriers from state and municipal regulation was "clear, broad and unqualified." *Norfolk & Western Ry. Co. v. American Train Dispatcher Ass'n*, 499 U.S. 117, 127-134; 111 S. Ct. 1156; 113 L.Ed. 2d 95 (1991). "It is difficult to imagine a broader statement of Congress' intent to preempt state regulatory authority over railroad operations." *CSX Transp. Inc. v. Georgia Public Service Comm'n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996). Not only did Congress exempt railroad operations from state regulatory authority, it also exempted railroad operations from other Federal regulatory authority (such as the U. S. Environmental Protection Agency).

THEREFORE, no court has no jurisdiction over the regulation of this railroad facility.

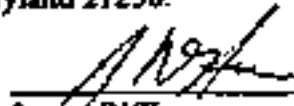
WHEREFORE, for the reasons set forth hereinabove, the Defendant respectfully requests that this Court grant him the relief sought as aforesaid (dismissal with prejudice of the Complaint for Injunctive Relief).

Respectfully submitted,


James Riffin dba The Northern Central Railroad
Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 26th day of April, 2004, a copy of the foregoing Defendant's Memorandum in Support of Defendant's Notice of Removal, was mailed to Michael V. Forlini, Assistant Attorney General, Maryland Department of the Environment, 1800 Washington Boulevard, Suite 6048, Baltimore, Maryland 21230.


James Riffin

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

State of Maryland
Plaintiff

v.

James Riffin, et al
Defendant

Civil No. RDB-04-CV-1342

STANDING ORDER CONCERNING REMOVAL

IT IS HEREBY ORDERED that all parties removing actions to this court, shall, no later than fifteen (15) days after filing a removal, file and serve a statement under the case and caption that sets forth the following information:

1. The date(s) on which each defendant was served with a copy of the summons and complaint.
2. In actions predicated on diversity jurisdiction, an indication of whether any defendants who have been served are citizens of Maryland.
3. If removal takes place more than thirty (30) days after any defendant was first served with a copy of the summons and complaint, the reasons why removal has taken place at this time and the date on which the defendant(s) was (were) first served with a paper identifying the basis for such removal.
4. In actions removed to this court predicated on diversity jurisdiction in which the action in state court was commenced more than one year before the date of removal, the reasons why this action should not be summarily remanded to state court.
5. Identification of any defendant who was served in the state court action prior to the time of removal who did not formally join in the notice of removal and the reasons why such defendant did not join.

IT IS FURTHER ORDERED that all defendants to the action who joined in the notice of removal shall file such statement within the time period set forth herein, although the parties may file a joint statement so long

as such statement is approved by counsel for each party.

IT IS FURTHER ORDERED that the removing defendant(s) shall serve a copy of this Order on all other parties to the action who did not receive electronic notification of the filing of this order no later than the time they file and serve a copy of the statement required by this Order. Any party who learns at any time that any information provided in the statement(s) filed pursuant to this Order is incorrect shall immediately notify the court in writing to said effect.

IT IS FURTHER ORDERED that within seven days from the date the notice of removal is filed with this Court, the removing defendant(s) shall file a disclosure as described in Local Rule 103.3 (D. Md.). All other parties shall file the disclosure within seven days from the date a copy of this Order is served upon them.

IT IS SO ORDERED.

4/27/04

Date

/s/

Richard Bennett

UNITED STATES DISTRICT JUDGE

3

THE COUNTY COMMISSIONERS OF YORK COUNTY

BOARD OF COMMISSIONERS
LOUIS MITRICK, PRESIDENT
DOUGLAS E. KILGORE, VICE PRESIDENT
STEVE CHRONISTER, COMMISSIONER



SOLICITOR
DAVID S. CRAUN
ADMINISTRATOR-CHIEF CLERK
CHARLES R. NOLL

COUNTY ADMINISTRATIVE OFFICES
One West Marketway, 4th Floor
York, Pennsylvania 17401
(717) 771-8884
FAX (717) 771-9804

April 16, 2004

James Riffin
1941 Greenspring Drive
Timonium, MD 21093

Mr. Riffin:

As discussed in the Board of Commissioners' Workshop on Monday, April 12, 2004, I am responding to your request for information about County requirements for lease of the Northern Central Rail Line.

First, I am providing a copy of the expired Lease Agreement with the Northern Central Railway. It contains the Agreement between the County and the Commonwealth, and Operating Regulations for the Rail Corridor. Some of the lease provisions were negotiated specifically to meet the needs of the previous tenant and will not necessarily be included in future leases.

Second, consistent with the general lease terms and operating regulations, please submit a written business plan, including a description of your proposed business activities, annual income, annual expenses, capital investment requirements, and construction and permanent financing, if any.

The County looks forward to your response and will expeditiously review it.

If you have any questions, please contact me at 717.771.9306, fax at 717.771.9804, or email at dsdraun@york-county.org.

Regards,

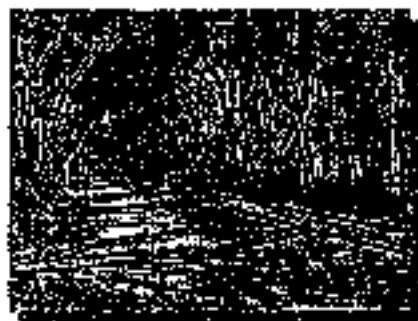
David S. Craun
County Solicitor

Attachment

4



Heritage Rail Trail County Park



Facilities: Picnic Area Horse equestrian Bicycles

Features

Established in 1992 and covering 176 acres, the Heritage Rail Trail County Park is 21 miles long and runs north from the Mason Dixon line just south of the Borough of New Freedom through Glen Rock, Hanover Junction, and Seven Valleys in the Colonial Courthouse in the City of York. The trail connects to Maryland's 20-mile long Northern Central Railroad Trail. In addition to the Colonial Courthouse, three historic structures are located on the trail; Hanover Junction and New Freedom Train Stations and Howard Tunnel. Since the railway is operational, please stay clear of tracks at all times and cross only at established crossings. Take a tour of the trail on the computer.



Activities

The most popular activities on the trail are hiking, jogging, bicycle riding, and horseback riding.

Join us this summer for a 12 to 15 mile ride on the trail. Each ride has a different starting place. Starting time is 6:30 p.m. Sunset Scramble Bike Ride

You may also enjoy a 9 mile moonlight ride. For more information click on the Moonlight Bike Ride.

A Museum is now open on the first floor of the renovated Hanover Junction Train Station. The

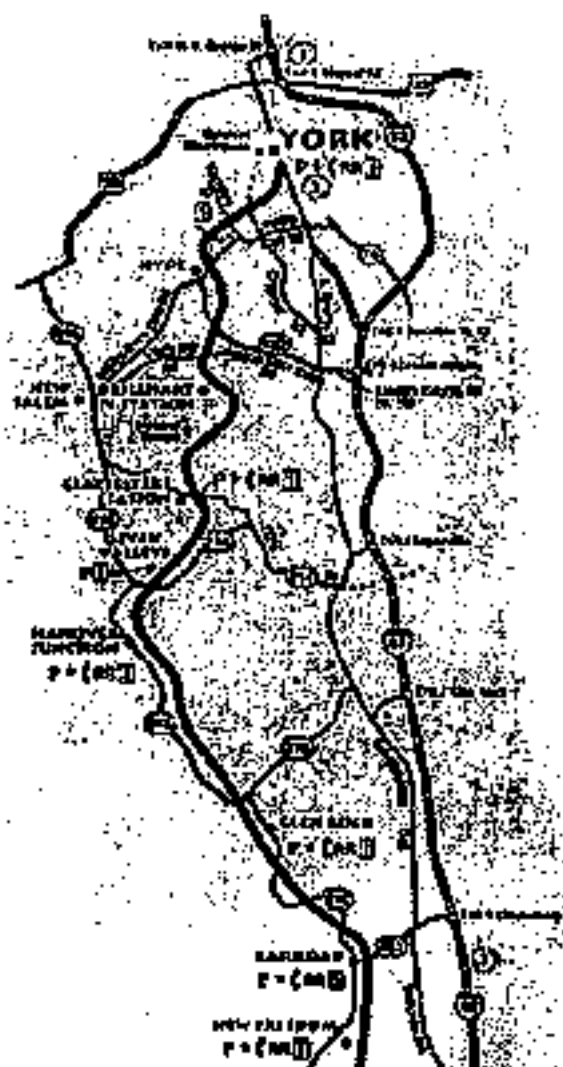
days and hours that the museum is open to the public can be found at the following link.
[Museum](#)

The newly restored New Freedom Train Station is complete. Click here to see the dates and times this station will be open. [New Freedom Train Station](#)

Regulations

Park regulations are posted at all parking lots and road crossings. Alcoholic beverages, camping, fires, weapons, and motorized vehicles are prohibited. All pets must be leashed when on the trail and owners must clean up after their pets. Users should stay on the trail, as the land on both sides is privately owned. In addition, courtesy rules are posted to remind users to respect other users. York County Parks promotes "Carry In, Carry Out" with respect to trash. Please take home what you bring.

Parking



York City - (From North) from I-83 use old exit #10 or new exit #22 (North George St.). Follow N. George St. south for approx. 3 miles to W. Philadelphia St. Turn right on W. Philadelphia St. Follow 2 blocks to Pershing Ave. Follow to Parking Area. (From South) From I-83 use old exit #5 or new exit #15 (S. George St.). Follow north approx. 3 miles to W. Princess St. Turn left on W. Princess St. Follow 2 blocks to Pershing Ave. Turn right on Pershing Ave. Follow 3 blocks to Parking Area. (For more info. on city parking go to www.yorkonline.org) (Free parking is available all on weekends and after 6 p.m. Low cost parking is available at all other times)

Brillharts Station - I-83 to old exit #4 or new exit #14 (Leader Heights Rd.). Follow Leader Heights Rd. west approx. 1/2 mile to Indian Rock Dam Rd. Follow Indian Rock Dam Rd. approx. 2 miles. Turn left onto Days Mill Rd. Follow approx. 1 mile to parking lot. From Rt. 34: Follow Rt. 616 south approx. 3 miles to George St. Turn left onto George St. (E) (In York New Salem) Follow George St. (E) approx. 1/2 mile. Turn right onto Days Mill Rd. Follow approx. 1 mile to parking lot on right

Glafelter Station - I-83 to old exit #5 or new exit #10 (Loganville) Follow signs to Rt. 214. Take Rt. 214 west for approx. 4 miles to Glafelter Station Rd. Turn right on Glafelter Station Rd. Parking area is approx. 1 mile on the right

Seven Valleys - I-83 to old exit #9 or new exit #10 (Loganville) Follow signs to Rt. 214. Take Rt. 214 west to the borough of Seven Valleys. Parking lot is on right at Eysers machine Shop.

Hanover Junction - I-83 to old exit #3 or new exit #10 (Loganville) Follow signs to Rt. 214 west for approx. 5 miles to Rt. 616 south (Right Turn) Follow Rt. 616 south. Parking lot is on the left. From Rt. 34: Take Rt. 616 south. Parking lot is approx. 6.5 miles on left

Glen Rock - I-83 to Glen Rock old exit #2 or new exit #8 (Glen Rock). Follow Rt. 214 west for approx. 4.5 miles to Glen Rock. Right on Water St. Cross railroad tracks and turn right. Follow for approx. 1 mile. Rail Trail Parking lot is on the right

Railroad - I-83 to old exit #1 or new exit #4 (Shreepsbury) Take 251 West Parking is 3 miles on the right

New Freedom Station - I-33 to exit 41 or new exit 84 (Shrewsbury) West on Rt. 851 to Railroad Borough. Turn left onto 851 West to New Freedom. Turn left on Franklin St. The parking lot is a block on the left corner of Front and Franklin Sts.

Trail Distances from the Colonial Courthouse - South		Trail Distances from Maryland Line - North	
York County Colonial Courthouse -	0.00 miles	Maryland State Line -	0.00 miles
Richland Avenue Overpass -	1.35 miles	New Freedom Train Station -	1.50 miles
Hyde -	2.60 miles	Railroad Parking Lot -	3.00 miles
Days Mill Road Crossing -	4.10 miles	Glen Rock Parking Lot -	3.00 miles
Howard Tunnel -	5.85 miles	Hanover Junction Train Station -	6.25 miles
Glatfelters Station Parking Lot -	7.60 miles	Seven Valleys Bridge Overpass -	6.25 miles
Seven Valleys Bridge Overpass -	9.60 miles	Glatfelters Station Parking Lot -	10.50 miles
Hanover Junction Train Station -	10.6 miles	Howard Tunnel -	11.50 miles
Glen Rock Parking Lot -	14.85 miles	Days Mill Road Crossing -	11.50 miles
Railroad Parking Lot -	18.10 miles	Hyde -	13.50 miles
New Freedom Train Station -	19.60 miles	Richland Avenue Overpass -	15.25 miles
Maryland State Line -	21.10 miles	York County Colonial Courthouse -	17.00 miles
			18.50 miles
			19.75 miles
			21.10 miles
			21.10 miles

[Link to Pennsylvania Rails to Trails](#)

[Link to](#)

Allegheny Trail Alliance

York County Rail Trail Authority

[Link to](#)

www.yorkcountyrails.org

E-mail: info@yorkcountyrails.org

[Cycling in Maryland](#)

To Report an Emergency or Law Violation please note your location and dial 911

To obtain additional information please write or call:

York County Parks
400 Mundis Race Road
York, PA 17402
(717) 840-7440



Please send your Comments and Questions
about York County Parks to parks@york-county.org

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Historic Sites found along the Heritage Rail Trail

History of the Trail:

The 19th century saw the growth of the Northern Central Railroad, a vital link between Washington, D.C., Harrisburg, upstate New York and Lake Ontario. Its passage through York County brought prosperity to the area's farmers, merchants and manufacturers and spurred the growth of communities like Glen Rock, Hanover Junction and the town of Railroad.

The railroad was also a prime target for the Confederate Army prior to the Battle of Gettysburg, as Rebel troops cut telegraph wires and destroyed bridges in their efforts to isolate Washington from the rest of the Union. After the tragic Battle, President Lincoln traveled via the Northern Central to the



Gettysburg battlefield, his train stopping in Hanover Junction on November 18 and 19, 1863. The station was restored to its 1863 Civil War appearance in 2001 and a Civil War museum is open to the public.



The historic railroad stations in New Freedom and Hanover Junction today serve as reminders of our past. They are both listed on the National Register of Historic Places. New Freedom Station was restored to its 1935 appearance in 2003 and a railroad museum is open to the public. Both stations offer space for tenants. New Freedom is the highest point on the trail. It is downhill to both Maryland and York from here.

Approximately 5.5 miles south of the Colonial Courthouse is the Howard Tunnel. It is the oldest continuously operational railroad tunnel in the world. The brick lined, 370 foot tunnel originally opened for traffic in 1838. The tunnel was rehabilitated in 2003.



Following the declared bankruptcy of the Penn Central Railroad in 1970 and the major destruction of the rail line in 1972 by Hurricane Agnes, the County of York purchased the rail corridor in 1990 through a special agreement with the Pennsylvania Department of Transportation. Construction of the trail was completed in August 1999.

Visit the [Friends Groups](#) page.

