

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

BROOKHAVEN RAIL LLC –	)	
PETITION FOR EXEMPTION FROM	)	
REQUIREMENTS OF 49 U.S.C. § 10909	)	Docket No. FD 36399
	)	

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**REPLY IN OPPOSITION OF THE
CITIZENS CAMPAIGN FOR THE ENVIRONMENT**

CITIZENS CAMPAIGN FOR THE
ENVIRONMENT

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The Citizens Campaign for the Environment (the “Campaign” or “CCE”) hereby replies in opposition to the “Petition for Exemption from Requirements of 49 U.S.C. § 10909” that Brookhaven Rail LLC (“BHR” or “Brookhaven Rail”) filed with the Surface Transportation Board (“Board” or “STB”) on July 27, 2020 (the “Petition” or “Pet.”). BHR seeks an exemption under 49 U.S.C. § 10502 to be relieved from complying with the requirements at 49 C.F.R. Part 1155, subpart C, for obtaining an exemption under 49 U.S.C. § 10909 from state and local siting requirements to construct, own, and operate a solid waste rail transfer facility on a parcel that is part of the Brookhaven Rail Terminal (the “BRT”), in Yaphank, part of the Town of Brookhaven, on Long Island, New York (the “Town”).

The Campaign’s Reply is accompanied by Verified Statements from: (1) Adrienne Esposito, the Executive Director for the Campaign (“Esposito V.S.”); (2) Dr. John F. Betak and Stephen Sullivan, experts in the rail transportation of solid waste (“Betak/Sullivan V.S.”); (3) Dr. Christopher Gobler, the Endowed Chair of Coastal

Ecology and Conservation at the Stony Brook University School of Marine and Atmospheric Sciences, an expert on aquatic ecosystems and the impacts and risks that development activities pose to Long Island's sole source aquifer and water resources ("Gobler V.S."); and (4) Dr. David Tonjes, an expert in Long Island solid waste and Research Associate Professor at Stony Brook University in the College of Engineering and Applied Sciences, Department of Technology and Society ("Tonjes V.S.").

I. INTRODUCTION AND SUMMARY

Through its novel and unprecedented Petition, BHR seeks to override and preempt state and local land use and zoning law to establish the largest waste transfer station in the State of New York, if not the country. While styled as a non-controversial, limited petition for a permit for transloading by rail under the Clean Railroads Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 (the "CRA"), the Petition is, in reality, a thinly-veiled attempt by a major regional waste management company cloaking itself as a railroad to independently manage and engage in expansive new waste sorting, processing, recycling, and transloading operations.

Under its proposal, one solid waste industry operator will acquire a monopoly on the processing of municipal solid waste ("MSW") and construction and demolition debris ("C&D") from all of Long Island and portions of New York City. The Petition and underlying project is highly contentious and embroiled in controversy. BHR's Petition seeks the first application of § 10909 for a proposed facility that is

massive in scale, for which there has been no demonstration of actual need. The facility would dramatically alter the handling of MSW and C&D throughout Long Island and at least portions of New York City and present substantial risks to the environment, including the supply of safe drinking water to the residents of Long Island. Its operations rely on a wholly inadequate rail operating plan over the busiest and congested commuter railroad in North America, and also threaten the operation of local roads and highways. Not surprisingly, the proposal has attracted strong opposition from CCE and other segments of the community.

Perhaps most importantly, BHR's Petition is completely unnecessary and, at a minimum, entirely premature. Congress recognized in passing the CRA that land use and zoning, as well as solid waste management planning, are first and foremost the responsibility of state and local governments, and made the Board the avenue of last resort for the very limited purpose of siting facilities in limited circumstances. BHR asserts that the Board must act immediately to displace that local authority that it feebly claims is unreasonably blocking its project. However, the Town of Brookhaven's September 11, 2020 filing with the Board makes clear that the Town "is prepared to promptly and fully review, consider and take action concerning local approvals as may be appropriate when presented with such an Application by BHR." Town of Brookhaven, Sept. 11, 2020 filing, at 5. Until the Town has a chance to act, its zoning cannot be found

to unreasonably burden or discriminate against the facility. § 10909(d)(6). The Board must reject the Petition for this reason alone.

As explained below, the Petition is also incomplete and misleading in a number of material respects, and should be denied for multiple reasons:

First, the first application of § 10909 should not be through an exemption of rules for approval mandated by Congress that require the filing of full applications for permits. Use of an exemption as requested by BHR would deprive the Board of the information required to discharge the Board's obligations under § 10909(c)(1) and (d) of the CRA before overriding local zoning requirements.

Second, BHR does not meet any of the requirements of § 10502 for an exemption, because BHR's plan to transform a landfill that handles processed C&D and ash monofill, and not MSW, into a massive transfer facility that will possess a monopoly on the processing, transloading, recycling, and rail transportation of MSW and C&D from Long Island and portions of New York City, is in no way limited in scope. BHR's requested exemption would also undermine the National Rail Transportation Policy ("RTP") in key respects. The sole purpose of BHR's exemption is to maximize, and not minimize, Federal regulatory control by overriding local zoning and siting regulation. BHR also seeks to bypass Board consideration of whether BHR will operate transportation facilities and equipment without detriment to the public health and safety.

Further, exemption petitions under § 10502 exemptions are disfavored where a matter presents controversy or complexity. BHR's filing presents both, in spades.

Third, there is no need, much less an urgent one, for Board action at this time. BHR asserts that the Town of Brookhaven supports its facility, but will not be able to act in time to permit the facility before the Brookhaven Landfill's expected closure, which BHR claims will create a solid waste "capacity crisis." However, the Town has informed the Board its September 11, 2020 filing that it can and will act promptly on any local land-use, zoning, or related petition that is brought before it, but BHR has elected not to do so to date. Accordingly, BHR can and should first proceed to seek approval to site its facility before the Town under its governing procedures, and not before the STB, as the CRA envisions.

BHR's further claim that Long Island has no other options for dealing with a solid waste "crisis" and any delay in authorizing its facility will result in an imminent public health emergency is completely unfounded. As explained by Dr. Tonjes and Dr. Betak/Mr. Sullivan, the Landfill receives no MSW today (or for decades), and has already established plans and funding sources to fully address the receipt and disposal of the residual MSW ash that the Town will continue to receive following the closure of the existing space. Also, through its §10909 petition, BHR proposes to receive over **double** the amount of total solid waste currently received at the Landfill and over **five times** the amount of processed C&D currently received at the Landfill. Long Island already has 70

existing C&D processing facilities and other existing transfer stations and recycling facilities that can more than handle the Landfill's existing C&D receipts after the Landfill's closure.

Fourth, BHR's submission does not meet the standards under § 10909 for approval and makes only a token effort to satisfy the statutory requirements. BHR cannot meet the § 10909(d)(6) requirement that the existing zoning unreasonably burdens and discriminates against railroad transportation and transfer of solid waste because it can seek a zoning change or special permit that the Town is prepared to act upon within a reasonable time frame as verified in the Town's September 11, 2020 filing. Further, there can be no discrimination because the Town's zoning does not single out BHR or preclude its potential use of the parcel in question. Not all burdens or discrimination can be presumed to be unreasonable, as BHR has done.

BHR claims to satisfy the lack of unreasonable risk to the public health, safety, or environment under § 10909, because the proposed facility is allegedly similar to previously studied operations. However, as Ms. Esposito explains, the Town's Principal Environmental Analyst wrote to the Board's Office of Environmental Analysis ("OEA") in late July 2020, stating that BHR's waste facility "was never envisioned for the site" and that BHR's facility actually "conflicts with the action studied in the aforesaid VDEIS [Voluntary Draft Environmental Impact Statement]," for a Home Depot terminal. The letter, which the Town filed in this docket on September 11, 2020, further

notes numerous concerns with the proposed facility, including waste sewage, ground water impacts, groundwater plumes, and air quality impacts. Dr. Betak/Mr. Sullivan and with Dr. Gobler further confirm that BHR's proposed facility differs substantially from what was studied previously and presents different and far more severe impacts and risks.

Fifth, BHR's Petition fails on substantive grounds. BHR overstates the benefits and ignores the adverse impacts of its proposal. As Dr. Gobler explains, the proposed facility significantly threatens public health, safety, and the environment, including the safety of Long Island's water supply as it sits in a highly environmentally sensitive location. The proposal presents a serious and substantial risk of contaminating the Upper Glacial Aquifer, part of the aquifer system, that is the sole source of Long Island's drinking water, along with damage to the Carmans River watershed (a NYS designated Scenic and Recreational River) and the Bellport Bay, where it threatens an important wild hard clam population. Also threatened are the Northern Long Eared Bat and the Eastern Box Turtle, which are both listed as threatened species.

Additionally, BHR claims it will address Long Island's solid waste disposal needs by taking trucks off the road, but that benefit is illusory because every ton of waste that BHR would ship by rail will first arrive by truck, and each truck that arrives will make a return trip after it deposits its waste at the facility. The facility will not eliminate truck hauls, but only concentrate and increase them in the area of Brookhaven, and nearly all of the trucks will come from the west of the facility, resulting in longer truck-trips and

requiring large truck staging areas. BHR's projections amount to having a new truck arrive every two minutes, meaning there will be a truck arriving or leaving every minute at any choke points. The inevitable accidents and breakdowns will be devastating, especially in an area already prone to congestion.

The rail impact may be even more severe. As explained by Dr. Betak/Mr. Sullivan, the proposed operations cannot be made under the existing regional passenger and railroad system constraints. The trains are to be interchanged and operated over the heavily congested Long Island Railroad ("LIRR") and the Metro North commuter rail systems, the busiest systems of their kind in North America. The proposed operations will have very limited windows for operations and face substantial terminal, yard, and road operation constraints. The projections will substantially interfere with the existing operations of the New York & Atlantic ("NY&A"). While NY&A has recently informed LIRR that it anticipates "as many as 10 cars per day," from the facility, the volumes that BHR projects are six times that level. That magnitude of increase will disrupt both freight and passenger operations on Long Island and block numerous grade crossings. The odor from loaded railcars stalled at choke points near LIRR commuter stations is likely to be overwhelming. These matters are nowhere addressed in BHR's Petition.

Sixth, BHR's request to have its requested exemption conditionally approved before the environmental review is completed violates § 10909 and deviates from the Board's standard procedures.

Seventh, BHR's requested clarification of the treatment of its proposed recycling activities within the scope of its land use exemption is defective. As a threshold matter, as explained by Dr. Betak/Mr. Sullivan, the proposed activities are not transportation to be conducted by a railroad as required under § 10909. BHR has not showed that the facility is necessary for, and thus integral, to rail transportation. To the contrary, much of the planned activities, including the preload sorting, segregating, recycling, and baling of solid waste, along with expected shredding, has nothing to do with rail transloading or rail transportation. Additionally, BHR states that Winters Brothers, and not BHR, will control and manage all operations and contractual arrangements for the facility. The planned activities do not qualify as transportation conducted by a railroad. The Petition should be denied for this reason alone.

BHR's Petition also confirms that much of this material will be transloaded by truck. As explained by Dr. Betak and Mr. Sullivan, material that both arrives and leaves by truck does not involve rail transportation at all and is an ancillary activity that cannot be the beneficiary of any Board land-use exemption. Also, while BHR argues that the CRA reduced the scope of the Board's regulatory powers, BHR avoids specifying what materials will be recycled and how they will be processed, making it impossible to determine if they are covered by § 10909 in the first place. Further, BHR makes no reasonable showing that Congress intended to include recycled and shredded materials

and shredding itself, and its request for its novel interpretation is inappropriate in a petition for exemption for which it seeks expedited treatment.

Eighth, BHR's proposal is problematic in other respects. For example, BHR's statements on its willingness to comply with all state and local law, other than siting regulations, are inadequate. For example, insofar as the facility's operation might have downstream impacts on land and rail transportation beyond the Town, the Town may well lack the ability and motivation to take appropriate action, other governmental authorities may lack authority as well, and BHR or the NY&A might seek to claim that interference with downstream rail transportation is preempted. The Town may not have any ability to restrict the facility from receiving and handling hazardous materials, § 10908(c), which present additional risks. BHR also suggests that Phase 3 of its project will substantially expand the scope of its activities to include non-waste commodities, through the construction of six additional tracks serving multiple new on-site shippers, in which event the CRA appears to have no effect at all. § 10908(d). BHR might also deviate from its estimates in terms of the volume and types of material handled, the number of trucks received, the number of rail cars loaded, etc. These are all serious matters, but they are not addressed in BHR's Petition.

In short, BHR has not adequately addressed the required elements for a § 10909 permit, and what it has said is at best problematic in numerous respects. BHR's Petition is wholly inadequate and cannot be granted. If BHR wishes to proceed, it should

file a full application that complies with the Board's regulations and the statutory requirements. However, it should first be required to proceed before the Town, which says it is willing and able to address its siting request in the first instance, pursuant to established zoning and land use rules.

II. IDENTITY AND INTEREST OF THE CITIZENS CAMPAIGN FOR THE ENVIRONMENT

As explained in the Esposito V.S. at 2-3, a small group of citizens concerned about public involvement in 1985 formed the Campaign, <https://www.citizenscampaign.org/>, to advance stronger environmental policy. The Campaign now has 120,000 members, with multiple offices in the New York area, including Long Island, Albany, and Hamden, CT. The Campaign continues to devote itself to public participation in the political process and advancing its strong environmental agenda.

The Campaign works to identify key environmental concerns in communities across New York State and Connecticut. The Campaign has been successful in advancing programs that benefit the natural environment and public health. Its efforts have resulted in greater awareness and protection of drinking water quality, preservation of open spaces, protection of beaches, bays, rivers, and Great Lakes waters, advancing renewable energy, and a reduction in pollutants that impair our air and water resources.

The Campaign is thus vitally concerned with how Long Island handles disposal of its solid waste and preserves the Upper Glacial Aquifer that lies underneath Long Island and provides its drinking and other water. The Campaign is particularly concerned about the risks presented by BHR's proposed solid waste rail transfer facility.

The Campaign's strong belief is that issues associated with the disposal of MSW, C&D, and other products generated on Long Island and New York City should be addressed locally in a coordinated manner on a regional basis. The local citizens have the most at stake, they are better informed about the options and trade-offs, and the local governments and officials are accountable to them. It is far better that local matters be decided locally rather than in Washington, D.C.

The Campaign recognizes that the CRA and § 10909 provide a limited, alternate mechanism for a railroad to obtain siting authority. However, § 10909 establishes a stringent standard that is to be applied and specific factors that are to be considered before such a siting exemption can be granted. The Campaign does not believe that BHR meets and or can meet the requirements of § 10909 at all. Even assuming for the sake of argument that § 10909 authority could be granted, it should be done only on the basis of a full showing and application of its standard and factors, rather than as an expedited exercise based on a paltry factual record as BHR seeks.

III. BHR's PETITION AND THE REQUIREMENTS OF § 10909

As noted, BHR declined to make a formal application under § 10909 and 49 C.F.R. Part 1155. Instead, its filing consists of 112 pages, but those pages consist of a 34-page petition, two verified statements of six pages each from company/in-house witnesses, and various attachments including a 30-page “So-Ordered Stipulation and Settlement.” There are no submissions from independent experts and no third-party studies. In other words, it is not a well-supported, full submission. BHR also has made separate environmental submissions, but its Petition requests that its substantive request be considered and acted upon separately from and prior to completion of the environmental review. Petition at 32-33.

BHR seeks to avoid having to obtain siting and/or zoning permits from the local authority, *i.e.*, the Town, acting under delegated authority of the State of New York, which BHR asserts, incorrectly, is impossible to obtain. The CRA does authorize the Board to exempt BHR from local siting restrictions. § 10909(a) and (a)(1). “The Board may issue a land-use exemption for a solid waste rail transfer facility that is or is proposed to be operated by or on behalf of a rail carrier if -- ... a rail carrier that owns or operates such a facility petitions the Board for such an exemption.”

However, the CRA establishes a specific standard for review before such exemptions can be granted:

The Board may only issue a land-use exemption if it determines that the facility at the existing or proposed location does not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, **the Board shall weigh the particular facility's potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.**

§ 10909(c)(1) (emphasis added). The CRA also establishes specific factors that the Board must consider in making the determination that is required before the Board can issue a land-use exemption of the sort requested by BHR:

(d) Considerations.—When evaluating an application under this section, the Board shall consider and give due weight to the following, as applicable:

(1) the land-use, zoning, and siting regulations or solid waste planning requirements of the State or State subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) the land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) regional transportation planning requirements developed pursuant to Federal and State law;

(4) regional solid waste disposal plans developed pursuant to State or Federal law;

(5) any Federal and State environmental protection laws or regulations applicable to the site;

(6) any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

(7) any other relevant factors, as determined by the Board.

§ 10909(d). The Board's regulations specifically require the application to include:

Statement. A statement that sets forth, based on currently available information, the reasons why the Board should grant a land-use-exemption permit to the applicant under the standards in 49 U.S.C. 10909(c), (d) and the regulations in this part. Specifically, the applicant shall include an explanation of whether the laws, regulations, or other requirements affecting siting of the facility from which exemption is sought, on their face or as applied, unreasonably burden the interstate transportation of solid waste by railroad or discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility, and, if so, why.

49 C.F.R. 1155.21(b).

BHR devotes just over one page of its Petition (pp. 21-22) to its claim that its filing meets the requirements for a § 10502(a) exemption, just over two pages (pp. 22-24) to its claim that applying the full requirements of § 10909 and Part 155 are not necessary to carry out the rail transportation policy at § 10101, less than a page (p. 24) to its claim that the Town's zoning law unreasonably burdens interstate transportation of solid waste by rail and discriminates against such transportation and a solid waste rail transfer

facility, and a page and third (pp. 25-26) to its claim that the proposed facility does not pose an unreasonable risk to public health, safety, or the environment.

As explained *infra*, none of BHR's claims has a meaningful foundation.

IV. ARGUMENT

A. THE STB'S FIRST AUTHORIZATION UNDER § 10909 SHOULD NOT OCCUR THROUGH AN EXEMPTION PROCEDURE

BHR seeks the Board's first exercise of its authority under the CRA to override local siting regulation for a solid waste rail transfer facility. Petition at 21. As even BHR acknowledges (*id.* at 22), Congress enacted the CRA in response to the abuses that occurred when railroads, and solid waste operators masquerading as railroads, would rely on the general preemption under § 10501(b) to override local control over solid waste rail transfer facilities. The CRA allows the Board to override state and local siting restrictions such as zoning, but only after first determining that the location "does not pose an unreasonable risk to public health, safety, or the environment." § 10909(c)(1). To make that determination, the Board must "weigh the particular facility's potential benefits to and the adverse impacts" with respect to six specific factors as well as "any other relevant factors as determined by the Board." *Id.* & (d)(1)-(7). Following the CRA's enactment, the Board engaged in a thorough rulemaking in EP 684 and adopted interim and then final regulations at 49 C.F.R. Part 1155 regarding what § 10909 applications must contain. *Solid Waste Rail Transfer Facilities*, EP 684 (STB served

Nov. 14, 2012) (“2012 EP 684”).¹ One of those factors is whether the existing siting imposes unreasonable burdens or potentially discriminates against the rail transportation or the facility. § 10909(d)(6); 49 C.F.R. § 1155.21(b).

BHR’s Petition seeks to bypass the Board’s normal regulatory requirements, which BHR describes as “complicated and detailed.” Petition at 21. BHR’s requested exemption might have some plausibility if the Board had previously applied § 10909 to individual situations and had accumulated a body of precedent interpreting and applying the requirements of § 10909 to such situations. That precedent would provide guidance as to whether BHR’s request was so clearly compliant that regular scrutiny was not needed. But there is no precedent, as there has been no previous attempt to obtain local siting authority preemption under § 10909. For that reason alone, BHR’s Petition is improper and should be rejected.

Furthermore, the Board indicated throughout its EP 684 decisions that CRA matters would be determined on a case-by-case basis. The Board specifically declined to address a request to “define the phrases ‘unreasonably burdens’ and ‘discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility,’” and explained that “[t]hese phrases, however, are best defined on a case-by-case basis.”

¹ The Board’s initial issuance in EP 684 was *Notice of Proposed Rulemaking: Adopting of Interim Rules* (STB served Jan. 14, 2009) (“2009 EP 684”), and its second issuance was *Revised Interim Rules with Request for Comments* (STB served March 24, 2011) (“2011 EP 684”).

2011 EP 684, at 22. These are critical elements specified by statute, § 10909(d)(6), and the Board's implementing regulations, 49 C.F.R. § 1155.21(b), and it appears impossible to grant § 10909 authority unless they are satisfied. They should not be deemed satisfied on an exemption basis when they have never been previously applied to an actual application. BHR should not be allowed to use the exemption process, as it attempts to do here, as a means of avoiding or overriding the very review standards that the Board established through a full, multi-year rulemaking in EP 684. To grant BHR's Petition would be to deprive the Board of the information that the Board requires to discharge its obligations under § 10909(c)(1) and (d) of the CRA. That alone requires denial or rejection of BHR's petition.

B. BHR DOES NOT MEET ANY OF THE REQUIRED ELEMENTS FOR A § 10502 EXEMPTION

Section 10502 establishes minimum requirements that must be met before the Board can act via exemption instead of through its regular requirements. The petitioner must show that regular application of Board regulation "(1) is not necessary to carry out the transportation policy of section 10101 ... and (2) either -- (A) the transaction or service is of limited scope; or (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power." § 10502(a). Approval requests sought through petitions for exemption must be complete and fully demonstrate that an exemption is appropriate, and "[i]t is incumbent upon applicants to provide the Board with the information necessary for an informed decision." *Union Pac.*

R.R. et al. -- Acquisition and Discontinuance of Service Exemption – In Council Bluffs, Iowa, FD 35220 (STB served Sept. 22, 2010), at 4. BHR’s Petition is incomplete, it cannot meet any of the required elements, and it does not even partially, much less fully, demonstrate that an exemption is appropriate in this instance.

First, BHR cannot show that full application of § 10909 is not needed to carry out the national transportation policy. BHR claims that grant of the exemption would “minimize the need for Federal control over the rail transportation system,” § 10101(a)(2), because the Board’s authority under the CRA is so modest. Petition at 23. However, BHR has it exactly backwards. In a typical case, the exemption is appropriate because the proponent lacks any sort of market power, such that normal market oversight would be an empty gesture. BHR’s situation presents the opposite. The entire purpose of the exemption from § 10909 is to render null the Town’s local zoning requirements and land use restrictions. Section 10909 has no other effect, and such preemption is BHR’s sole purpose for its Petition. The exemption thus does not minimize Federal control, but instead *maximizes* it: Federal regulation under the CRA has no other consequence. BHR’s requested § 10502 exemption is thus fundamentally incompatible with the inherent purpose § 10909. *Esposito V.S.* at 5. The requested relief would also not promote a “fair” regulatory decision under § 10101(2) since it removes BHR’s obligation to make a full showing, thereby preventing the Board from making an informed decision

regarding the factors that the CRA requires the Board to consider, at least some of which can only be decided on a case-by-case basis.

Second, BHR's requested exemption violates the national policy "to operate transportation facilities and equipment without detriment to the public health and safety." § 10101(8). Congress specified how the Board was to evaluate the public health and safety impacts of such a rail transfer facility in § 10909(c)(1) and the factors that the Board must consider in § 10901(d). The Board implemented those requirements in adopting its regulations at 49 C.F.R. Part 1155. BHR's requested exemption would bypass those required elements, which is another reason that the requested exemption cannot possibly be granted.

Third, BHR's proposal is massive in scope, seeking to receive, process, recycle, and transfer 6,000 tons of MSW and C&D debris per day. As explained by Dr. Tonjes and Dr. Betak/Mr. Sullivan, and discussed further below, the Brookhaven Landfill receives **no MSW** today, and has not for decades. Tonjes V.S. at 3; Betak/Sullivan V.S. at 4-6; Esposito V.S. at 6; Gobler V.S. at 3. Additionally, BHR proposes to dramatically expand the scale of the existing Landfill by receiving at its proposed facility over **double** the amount of total solid waste currently received at the Landfill. Esposito V.S. at 1-2; Tonjes V.S. at 3-4. BHR's proposal would transform and massively expand a landfill that receives C&D and ash monofill for storage into a solid waste rail transfer facility that

will have a monopoly on the rail transportation of MSW, C&D, and other solid waste from all over Long Island and even portions of New York City. Esposito V.S. at 7.

The existing Brookhaven Landfill already imposes health and economic burdens on Yaphank and the Town, which will be magnified if the STB exempts the facility. For example, the Town of Brookhaven filed a lawsuit in 2015 in federal district court seeking \$15 million in damages from the operators of BRT for what the Town called “the environmental destruction” caused by illegal sand mining and other actions at the terminal. Esposito V.S. at 13. BHR’s lone purpose in pursuing the project is the breadth of the market it seeks to capture. The requested exemption fails for these reasons as well.

Additionally, § 10502 exemptions are to be used where a matter presents neither controversy nor complexity. The Board has repeatedly rejected petitions for exemptions when they involve contested facts and novel issues, or larger projects raising community impact and public interest concerns. *E.g., Tex. C. R.R. Infrastructure, Inc. & Tex C. R.R., LLC – Petition for Exemption – Passenger Rail Line Between Dallas and Houston, Tex.*, FD 36025 (STB served July 16, 2020), at 13-15 (requiring submission of full application for rail construction and operation where considerable issues were raised by affected communities, where the matter involved a large scale project, and where substantial public interest and the potential community impact concerns had been raised) (“*Texas Central*”); *Riverview Trenton R.R. – Acquisition & Operation Exemption –*

Crown Enterprises, Inc., FD 33980 (STB served Feb. 15, 2002), at 7 (“the procedures are designed to meet the need for expeditious handling of a large number of requests that are rarely opposed” and not where a matter “has attracted substantial controversy and opposition”); *James Riffin D/B/A The N. C. R.R. – Acquisition & Operation Exemption – in York County, PA, and Baltimore County, MD*, FD 34482 (STB served Apr. 20, 2004), at 3 (“the class exemption process is not appropriate for controversial cases in which a more detailed record is required than is produced through a notice of class exemption”). BHR’s filing presents contested facts, novel issues, and a large-scale project raising substantial community impact and public interest concerns.

BHR is seeking the first application of § 10909; that factor alone is sufficient to prevent use of an exemption, as explained above. In addition, BHR’s proposed operation is massive in scope as it seeks to control the handling of C&D, MSW, and other waste throughout Long Island and at least portions of New York City. The scope of the proposal alone makes expedited review as an exemption inappropriate. *Texas Central* at 13-15 In addition, there is a long history of controversy and litigation over the site and activities conducted on it, as evidenced by BHR’s own filing, the opposition by Sills Road Realty LLC (“Sills”) in both the instant docket and FD 36398 (and BHR’s opposition to Sills own filings), the previous and ongoing court litigation between BHR and Sills, and the sustained history of litigation between the Town of Brookhaven and BHR. That litigation implicates, among other things, BHR’s

representations in its petition for its basic ability to own, construct, and operate the solid waste rail transfer facility for which it seeks authorization. The location of a solid waste rail transfer facility atop the aquifer that supplies fresh water for Long Island also presents significant public interest, community impact, and controversy, as explained further below.

These are all additional reasons for the Board to deny the petition and insist on a full filing and associated full showing, if the BHR proposal is to be considered at all.

C. BHR's CLAIMS THAT THERE IS AN URGENT NEED FOR BOARD ACTION AND THAT ITS PROPOSAL HAS THE TOWN's SUPPORT ARE BOTH ERRONEOUS AND IRRELEVANT

BHR appears well aware that it is seeking the first authorization under § 10909, that a vigorous opposition was expected at least from Sills, and that its showing is cursory in a number of key respects. BHR's answer to those and other deficiencies is to present a situation that requires urgent action and to claim that it has the active support, or at least acquiescence, of the Town of Brookhaven in the proposed facility, particularly as the Town would, by its own admission, be unable to review a rezoning request within a reasonable period of time. BHR seeks to create the impression that prompt Board action is a matter of vital necessity in order to stave off an ecological disaster on Long Island. Petition at 3-4, 7-9, 10, 14-16, 17-19, 25-26. Such claims are both wrong, even assuming they are relevant or can overcome the other deficiencies in BHR's submission.

1. There Is No Need, Let Alone an Urgent Need, for BHR's Facility

As explained by Ms. Esposito, Dr. Tonjes, and Dr. Betak/Mr. Sullivan, there is no need, much less an urgent one, for a facility to transfer MSW for removal off of Long Island. Esposito V.S. at 6-7; Tonjes V.S. at 2-7; Betak/Sullivan V.S. at 4-7. The Brookhaven Landfill accepts no MSW, and neither Brookhaven nor any other Long Island landfill has received any MSW for several decades. Instead, MSW has been incinerated as a source of energy and the remaining ash stored in landfills such as Brookhaven or recycled and used for other purposes. When existing storage capacity becomes depleted, the practice is to expand to additional land, as Brookhaven is in the process of doing now.

The Town of Brookhaven has obtained State funding to expand its landfill storage capacity on nearby land to create a new 5.5 million cubic yard Ashfill, along with the construction of an Enhanced Ash Recycling Facility, on 45 acres that will provide at least 12 additional years of disposal capacity beyond the remaining life of the Brookhaven Landfill. Tonjes V.S. at 3; Betak/Sullivan V.S. at 5-6; Esposito V.S. at 6-7. As Ms. Esposito explains: "BHR does not mention this long-term management approach for MSW at all and treats the Town's planned alternative Ashfill and ash recycling facility as if they do not exist." Esposito V.S. at 7. There is no basis, certainly none identified by BHR, to conclude that plan is inadequate.

BHR also cannot show that the project is needed at all, let alone urgently needed, for lost C&D disposal capacity following the closure of the Brookhaven Landfill. As Dr. Tonjes and Dr. Betak/Mr. Sullivan explain, the Brookhaven Landfill receives far more modest quantities than BHR and/or Winter Bros. propose to handle. BHR's Petition proposes receiving 6,000 tons of MSW and C&D per day at the proposed facility, **over five times** the amount of C&D currently received at the Brookhaven Landfill daily, and much of the Landfill receipts consist of automotive shredder residue ("car fluff") (which does not qualify as waste that is covered by the CRA in first place under § 10908(e)(2)(F)). No C&D processing currently occurs at Brookhaven, and there are already dozens of other permitted, active C&D process facilities elsewhere on Long Island. Tonjes V.S. at 4; Betak/Sullivan V.S. at 6-7. There are already 37 permitted C&D processing facilities on Long Island, and over 40 other existing transfer stations and recycling facilities that can accept C&D on Long Island. Betak/Sullivan V.S. at 6-7.

As explained by Dr. Tonjes: "in order to fill its proposed 6,000 tons per day capacity, the BHR facility would need to capture all C&D and other wastes disposed at the Brookhaven landfill, and all of the exported MSW currently generated on Long Island. It makes little sense from a local and regional solid waste management and community planning perspective to have one massive facility controlled by one private operator seek to handle such substantial volumes, with no demonstrated need for a project of such a large scale." Tonjes V.S. at 5. As Ms. Esposito aptly notes: "BHR's proposed

facility is . . . not a replacement of lost C&D disposal capacity following the closure of the Brookhaven Landfill. Instead, it is a planned massive expansion of Winters Brothers already expansive existing operations, and an attempt by one company to monopolize the solid waste management market.” Esposito V.S. at 7.

There is no crisis, and BHR’s real plan is not to promote recycling of C&D waste, but instead to establish a local monopoly in the receipt, processing, recycling, and transportation of solid waste to distant landfills.

2. BHR’s Petition Does Not (Yet) Have the Town’s Support or Approval

BHR’s statement that its Petition has the Town of Brookhaven’s support and that its proposed facility already has local environmental approval through the prior VDEIS is also erroneous. Peter E. Fontaine, the Town’s Principal Environmental Analyst in its Division of Environmental Protection, wrote to the Board’s Office of Environmental Analysis on July 31, 2020, regarding BHR’s filing in FD Nos. 36398 and 36399, and stated that BHR’s facility “*was never envisioned* for the site” and that BHR’s facility actually “*conflicts* with the action studied in the aforesaid VDEIS [Voluntary Draft Environmental Impact Statement],” for a Home Depot terminal. Letter at 3 (emphasis added). The letter notes numerous environmental concerns with the proposed facility, including sewage waste, ground water impacts, groundwater plumes, and air quality impacts. As Dr. Gobler attests, water and sewage impacts are especially critical

as the transfer facility would sit atop the Upper Glacial Aquifer, the critical source of drinking and fresh water for all of Long Island.

The Town, through Mr. Fontaine's letter, makes clear that the environmental review to date, such as the VDEIS, did not contemplate or take into account BHR's proposal to handle solid waste at its rail transfer facility. "A solid waste rail transfer facility (SWTF) was never envisioned for the site but rather a general industrial/transportation/rail transloading/industrial warehousing facility use, and the proposed action conflicts with the action studied in the aforesaid VDEIS [Voluntary Draft Environmental Impact Statement]." Letter at 3. A rail terminal that handles domestic goods or standard railcars or containers presents very different risks and concerns than one that will handle solid waste, especially when, as BHR plans here, the trash will not be confined to containers throughout the transfer process.

The limitations of the prior environmental analysis are discussed further by Dr. Betak/Mr. Sullivan. They explain that 50% of the development was to be non-railroad-related, and the 50% that was railroad-related was for inbound, not outbound, construction products and consumer freight that would be trucked short distances and that did not create risks of noise, dust, odor, and seepage. Betak/Sullivan V.S. at 13-14. The particular risks associated with handling MSW and other waste were not addressed in the earlier analysis, nor are they addressed in BHR's Petition. Furthermore, BHR's proposed handling of C&D is not detailed, but it does mention the use of tarps. Betak/Sullivan

explain that tarps have been known to leave trails of disturbed waste and debris along the rail lines when operating through communities and public spaces, such as commuter stations platforms, *i.e.*, exactly where BHR's cars will go when on the NY&A (and the other carriers that will handle BHR's cars). Additional problems arise with the inevitable derailments and other failures, matters that BHR does not adequately address, if it addresses them at all. *Betak/Sullivan V.S.* at 11-15.

BHR also relies, heavily and repeatedly, on the Town's prior indication that it would be unable to act on a request by BHR for rezoning or a special use permit within a reasonable period time. The Town unequivocally stated otherwise in its September 11, 2020 filing. Based on an updated legal analysis from its counsel, the Town found that it retained a vital and primary role and jurisdiction over the proposed facility, including local land-use, zoning, and environmental control.

The Town further stated that should BHR seek a change of zoning or other permits for the facility, "the Town is prepared to promptly and fully review, consider and take such action concerning local approvals as may be appropriate when presented with such an Application by BHR." There is thus no semblance of any necessity for BHR to proceed before the Board under the CRA. The Town is far more knowledgeable and is in a better position than the Board to make a decision that takes into account potential benefits and adverse impacts of BHR's proposed facility, including issues of solid waste management. As Ms. Esposito advises:

Waste management is established under New York law as the responsibility of local municipalities, and each planning unit is required to establish local Solid Waste Management Plans focused on waste reduction, recycling, and disposal. On Long Island, Towns and Villages often work together on an inter-municipal basis to manage their waste management programs. Waste reduction and recycling are the best means to manage C&D and MSW waste, although incineration of MSW with energy recovery is widely used on Long Island. Similarly, land use and zoning are planned and implemented at the local agency level, using the established comprehensive plan, zoning code, and permitting system.

Municipalities and regional agencies are in the best position to work with the private sector in reducing conflicts with planning and zoning codes, and to reduce conflicts through such means as promoting context-sensitive solutions for site and building design, establishing buffers between industrial and sensitive land uses, and taking other steps to ensure that local and regional sustainable development strategies are met and environmental impacts are minimized. This long-established system recognizes that local citizens and their governments have the most at stake and are in the best position to know and understand the problems, options, and trade-offs associated with siting of new facilities and the various alternatives for handling solid waste, and to make the best decisions that protect the public health, safety, and environment.

Esposito V.S. at 3-4. Dr. Tonjes also recognizes the substantial implications of the proposal on the ability of local governments to plan for and manage local waste, and that “[h]aving a more complete review process including local governments that have stakes in these issues and have been delegated authority to plan for and manage local wastes by

the New York State Department of Environmental Conservation will allow for a forthright and candid discussion of the need for the facility to occur” Tonjes V.S. at 6-7. Furthermore, the Town is not subject to the various legal limitations and requirements that the CRA imposes upon the Board.

Even if BHR’s various claims of Town support could be and were substantiated, which they cannot, they would not allow the Board to override the Town’s siting restrictions unless all the requirements of the CRA were satisfied, and they would not allow the Board to proceed on the basis of an exemption unless all the requirements of 10502 were met. As shown elsewhere in this Reply, those requirements are not satisfied. BHR’s contentions as to the necessity for the Board to act under the CRA through an exemption are thus irrelevant in addition to lacking any foundation in fact.

D. THE TOWN’S ZONING LAW DOES NOT UNREASONABLY BURDEN OR DISCRIMINATE AGAINST RAILROAD TRANSPORTATION AND TRANSFER OF SOLID WASTE UNDER § 10909(d)(6)

As noted *supra*, one of the bedrock requirements for a showing that a CRA permit is warranted is a demonstration that the existing siting requirements impose “unreasonable burdens ... on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility.” 10909(d)(6). The Board’s regulations require a specific showing to that effect. 49 C.F.R. 1155.21(b). Furthermore, the Board declined a request to define what type of showing is

required in advance and stated instead that “[t]hese phrases, however, are best defined on a case-by-case basis.” 2011 EP 684, at 22.

BHR devotes all of a paragraph to this issue, claiming that the requirement is satisfied because the Town’s current zoning law “indisputably prohibits” its proposed facility. Petition at 24. BHR cites a single precedent, from over twenty years ago, in support of its legal position, *Borough of Riverdale—Pet. for Decl. Order—The New York Susquehanna & Western Ry. Corp.*, FD 33466 (STB served Sept. 9, 1999), at 7 (Petition at 24 n.68).

BHR’s showing is wholly inadequate. First, *Riverdale* predates the CRA by almost a decade and plainly does not apply the CRA’s standard for unreasonable discrimination and burden. Instead, it applies the Board’s general preemption standard, which is the same standard that the CRA was enacted to displace when the siting of a solid waste rail transfer station is at stake. *Riverdale* can provide no support for BHR’s position, yet BHR cites no other authority.

Furthermore, BHR’s position is that any (and thus every) zoning law that would prohibit or restrict such a facility necessarily does so unreasonably. That cannot be correct. By using the word “unreasonable,” the CRA necessarily recognized that some discrimination and burdens could be reasonable. The Board also recognized the same in stating that the standard needed to be applied on a case-by-case basis. Furthermore, determining the presence of unreasonable discrimination/burden (§ 10909(d)(6)) is a sub-

consideration in determining whether the proposed facility poses an unreasonable risk in terms of the potential benefits and adverse impacts (§ 10909(c)(1)). Through these provisions, Congress clearly indicated that the Board is not to make its own free-standing assessment of whether there is an unreasonable risk, but must first determine whether the burdens or discrimination that may be imposed by the local siting authority is actually *unreasonable*. BHR's construction effectively wipes out and precludes any such case-by-case review and determination of unreasonableness.

The Town's existing zoning does not single out BHR in any way, and BHR makes no such contention. Its proposed facility is simply one of a number of potential uses that are not compatible with the existing zoning. If BHR's reasoning were correct, any zoning restriction on a solid waste rail transfer facility would *ipso facto* impose an unreasonable burden and discrimination, and the CRA would be tantamount to a prohibition on such zoning restrictions in general. That cannot be the case, and the CRA would read very different if it were.

It should be self-evident that there are some locations where siting of a solid waste rail transfer facility is unreasonable, such as where such an activity presents a substantial risk of contaminating a critical source aquifer, just as there must be some locations where location would be reasonable. Similarly, facilities that consist of nothing more than the transfer of closed waste containers from truck to rail do not pose the same risks and potential adverse impacts as facilities that involve tipping, sorting, and

processing of solid wastes that include toxic wastes. That determination needs to be on a case-by-case basis, based on a full review of a full showing. But that sort of full showing is what BHR seeks to circumvent by filing an exemption petition and not a full application, which is another reason why its Petition must be denied.

Furthermore, the Town, through its September 11, 2020 filing, has now unequivocally stated its openness to considering a request by BHR for a zoning change or special use permit. BHR cannot presume that denial of its request is a foregone conclusion. Similarly, the Board cannot presume that such a denial, if it occurs, is necessarily unreasonable. Review of the decision can be undertaken only after there is an actual decision. The Town will, no doubt, be mindful of the possibility of further litigation at the Board and/or elsewhere following its decision, but its determination should proceed in the first instance, and only then be viewed on the merits. Allowing the Town to decide on an actual application by BHR will promote and facilitate local accountability to those that will experience the benefits and burdens associated with any action. *Esposito V.S.* at 4-5. Moreover, as stated above, the CRA clearly provides that a denial of BHR's request should not be deemed to be inherently unreasonable.

E. BHR HAS VASTLY OVERSTATED THE ENVIRONMENTAL BENEFITS AND UNDERSTATED THE ADVERSE ENVIRONMENTAL IMPACTS OF ITS PROPOSED FACILITY

The CRA calls for the Board to weigh the potential benefits and adverse impacts of a proposed solid waste rail transfer facility with regards to the public health,

safety, and environment. § 10909(c)(1). The showing in BHR's Petition is entirely inadequate to find that the balance favors the project.

As Dr. Gobler and Ms. Esposito confirm, this is a critical regional public health and environmental issue as the site is on the Upper Glacial Aquifer, the critical source of drinking and fresh water for all of Long Island. Gobler V.S. at 1-6, Esposito V.S. at 2-3, 10; Tonjes V.S. at 8-9. Dr. Gobler explains the serious adverse impacts that the project will have on groundwater and surface quality. The location of the planned facility is in a highly environmentally sensitive location, "*including a depth to ground water of only 6 – 20 feet below ground surface, meaning contaminants at this location will rapidly be transported to the aquifer below ground surface.*" Gobler V.S. at 1. As Dr. Gobler summarizes, this means "anything that spills into the ground at this site, including expected substantial amounts of volatile organic compounds ('VOCs') and other hazardous contaminants from solid wastes, will be transported to groundwater in a matter of hours." *Id.*

The proposed facility will receive waste containing a wide variety of contaminants and chemicals that contain VOCs. Gobler V.S. at 3; Tonjes V.S. at 7-8; Betak/Sullivan V.S. at 14. Some of the contaminants included with the solid waste include chloroform trichloroethene, toluene, unknown VOCs, unknown VOC acids, unknown VOC alkanes, phenol, antimony, hexavalent chromium, cyanide, ammonia, and nitrate. Gobler V.S. at 3. In addition, the Brookhaven Transfer Station has filed

numerous reports of the receipt MSW containing radioactive materials. Gobler V.S. at 3; Tonjes V.S. at 8.

As Dr. Gobler confirms, the planned operations at the facility will result in a substantial risk of contaminating the Upper Glacial Aquifer, part of the aquifer system, that is the sole source of the Long Island's drinking water, along with damage to the Carmans River watershed (a NYS designated Scenic and Recreational River) and the Bellport Bay, where it threatens an important wild hard clam population. Gobler V.S. at 4-6. Besides this serious public health threat to an expansive population, it also threatens the Northern Long Eared Bat and the Eastern Box Turtle, which are both listed as threatened species. Esposito V.S. at 9.

Also, as explained *supra*, BHR's claim that there is an urgent need for the facility to handle MSW generated on Long Island is incorrect. The claim that "[t]he solid waste rail transfer facility proposed by BHR and Winters has many of the same characteristics of a transloading facility for other commodities" (Petition at 26) ignores the critical fact that the facility will handle MSW, C&D, and other solid waste, the waste will not be confined to closed containers, and that a waste transfer facility was outside the scope of and actually conflicts with the prior VDEIS, as stated in the Fontaine letter.

BHR claims that its facility will be helpful by taking trash trucks off the road. Petition at 13, 26. That benefit is illusory because every ton of waste that BHR would ship by rail will first arrive by truck, and each truck that arrives will make a return

trip after it deposits its waste at the facility. The facility will not eliminate trash hauls of waste, but will instead concentrate and increase them in the area of Brookhaven.

The effects of that concentration are substantial and likely to cause substantial problems. BHR projects that deliveries will average 400 trucks per day by the fifth year. Petition at 13-14. Since the facility will receive trucks for 14 hours per day (*id.* at 13), that rate amounts to 28.6 trucks per hour, or one every two minutes. Because every truck that enters must also leave, there will be a truck every minute at any common loaded/empty choke points. Any accident or other breakdown will cause cascading traffic delays and backups. Long Island is already subject to severe traffic congestion and delay, and BHR's facility will make those problems worse, especially near Brookhaven. The odor from the stalled trash trucks will exacerbate the problems.

In addition, as Dr. Betak/Mr. Sullivan attest, many inbound solid waste trucks carry unacceptable materials, such as refrigerators, tires, roofing, mattresses, and couches, that are rejected, and the materials must be trucked back out to an alternative site. Additionally, since many such prohibited materials are not spotted until the waste sorting process commences, the facility must extract and separate out the materials and then have them trucked out for alternative disposal. This adds additional inbound and outbound trucking movements, a number of which may be carrying hazardous materials that cannot be accepted in standard MSW or C&D landfills. Betak/Sullivan V.S. at 2-3.

Dr. Betak/Mr. Sullivan also describe the fact that the proposed solid waste transfer activities will necessarily involve substantial environment, public health, and safety issues caused by noise, dust, odor, and seepage issues involved with the operations. As they attest, “in our experience, we have yet to see a waste transfer facility that successfully maintains and contains all loose debris, odors and seepage,” yet the Petition and proposed site plan do not address anywhere how containment and cleanup will occur with issues of dust, wind-blown materials, or seepage that may occur.

Betak/Sullivan V.S. at 14. Dr. Tonjes confirms:

Transfer stations, even when well managed, are not seen as being welcome neighbors. Solid wastes tend to create odors; even C&D, which contain little in the way of putrescible materials, tends to smell. Although the operating regulations for transfer stations try to address these issues by requiring facilities to be operated under a roof and to create clean floors each night, all transfer stations I am aware of stink mightily. And this is to be the largest of its kind. In addition, rail is most efficient when trains are long. This may mean that full cars will be staged on site until a sufficient number have accumulated. No matter how air-tight the container, smells from waste are usually unavoidable, and as the wastes age the odors get worse

Tonjes V.S. at 8.

As further explained by Dr. Betak/Mr. Sullivan, BHR’s proposal to move solid waste by rail presents additional problems that may be even more severe. BHR projects it will assemble loaded railcars into blocks of up to 32 cars for delivery to the NY&A, “rising to a constant two trains per day by the end of year two of operations.”

Petition at 14. If one assumes 32 railcars per train, two trains per day, and trains six days a week, then the volume reaches 19,868 railcars per year ($2 \times 32 \times 6/7 \times 365$). The NY&A total volume is around 30,000 carloads per year.

<https://www.anacostia.com/railroads/nya>. The NY&A has limited ability to handle such a 67% increase in traffic, and the impact is likely to include substantial (further) delays for commuters and other passengers. While BHR submitted a letter from the NY&A to the Long Island Railroad (“LIRR”), the passenger railroad over which the NY&A operates, that letter indicates that “[a]nticipated rail car volumes are as many as 10 cars per day.” That is only one-sixth the volume that BHR projects, and BHR has not even shown that LIRR has approved that level of additional traffic. *Betak/Sullivan V.S.* at 7.

Dr. Betak/Mr. Sullivan further explain that the LIRR is the busiest commuter railroad in North America, carrying over 300,000 passengers daily on approximately 750 daily trains. Its central artery, which BHR’s traffic would use, is often congested. BHR’s cars probably could not move via car float and would instead need to be routed to Selkirk, near Albany, before heading to the Midwest. Doing so would require fitting into the operations of LIRR, Metro North, and CSX. The interaction with CSX would be particularly problematic because BHR contemplates a short unit train, and CSX has strongly moved to Precision Scheduled Railroading (“PSR”), creating issues of basic compatibility. Dr. Betak/Mr. Sullivan soundly conclude that BHR’s proposed shipments will likely be disruptive to freight and passenger

operations on Long Island and elsewhere, and also block numerous grade crossings on Long Island, which creates additional public safety issues and also creates public health issues in terms of stalled MSW cars. Betak/Sullivan V.S. at 7-10.

In addition, Dr. Betak/Mr. Sullivan describe the substantial terminal operations problems that will confront the BHR, but which are nowhere addressed by BHR. The lack of initial storage or ladder track will require frequent shuttling between the facility and NY&A's Fresh Pond Yard, which will present large demands on already tight windows. The Fresh Pond Yard itself also appears to lack adequate storage space. BHR has also not addressed numerous fleet requirements. However, Dr. Betak and Mr. Sullivan further observe that there are better locations for transloading solid waste, including Farmingdale (can transload up to 5,000 tons daily), Lindenhurst (permitted for up to 900 tons daily), and 13 potential additional sites. Betak/Sullivan V.S. at 10-13.

Notably, BHR's Petition does not address any of these consequences. These consequences represent potential, if not likely, adverse impacts on the public health, safety, and environment to be considered under 10909(c)(1) and (d). BHR's failure to do so represents another reason that its Petition must be denied.

F. BHR’S PROPOSAL TO CONDITIONALLY APPROVE ITS PROPOSAL DEVIATES FROM STANDARD BOARD PRACTICE AND UNDERMINES PROPER APPLICATION OF § 10909

The significant environmental and public health problems presented by the proposed facility are further exacerbated by BHR’s request to have its requested exemption conditionally approved before, and subject to, completion of the Board’s environmental review. Petition at 32-33. The Board generally refrains from issuing a conditional grant of approval absent “unique or compelling circumstances” because “one possible outcome of the environmental review is the denial of the . . . proposal notwithstanding the prior conditional grant.” *Six Cnty. Ass’n of Governments – Constr. & Operation Exemption – A Rail Line Between Levan & Salina, Utah*, FD 34075 (STB served Sept. 3, 2015), at 2 n.4 (citing *Alaska R.R. – Constr. & Operation Exemption – Rail Line Between Eielson Air Force Base (North Pole) & Fort Greely (Delta Junction), Alaska*, FD 34658 (STB served Oct. 4, 2007)). Therefore, this type of bifurcated procedure under the Board’s “fast-track” exemption procedures is used only where a proposal is very limited and does not raise significant issues, and even then, only in unique and compelling circumstances. For the many reasons stated elsewhere in this Reply, BHR’s Petition presents numerous substantial issues that warrant denial of the conditional exemption request, even if it were otherwise available.

In any event, conditional exemption is especially improper in the context of § 10909. In the case of a normal rail construction, the environmental review occurs only

because the requested authorization constitutes a “major Federal action” that is subject to the National Environmental Policy Act (“NEPA”). Environmental review under NEPA is procedural, not substantive, in the sense that it regulates the agency’s decision-making process and requires the agency to take into account the environmental consequences of its action. However, NEPA does not specifically require the consideration of specific factors or how they are to be weighed, and the agency has considerable discretion as to how it chooses to address such matters.

Under § 10909, the consideration of whether the facility poses an unreasonable risk to public health, safety, or the environment, and the weighing the potential benefits and adverse impacts on the public health, safety, and environment, is substantive and fundamental, and not merely procedural as under NEPA. Before the Board can override local siting requirements, the agency must “weigh the particular facility’s potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.” § 10909(c)(1). In making that decision, the Board must weigh six specific factors as well as other factors that the Board considers relevant. § 10909(d). Those specific considerations and findings based upon them are mandatory and not a matter of agency discretion.

Furthermore, the Board contemplated in EP 684 and specified in its rules that the Board’s substantive decision would not be made until the environmental review

was completed. The CRA instructed the Board to adopt implementing regulations establishing the process for § 10909 applications, including a timeline that required the Board to approve or deny an exemption “within 90 days after the full record for the application is developed.” § 10909(b)(3). The Board adopted such a timeline in EP 684. In developing that timeline, the Board specified that the environmental record would be available before the agency made its substantive decision and that the record would be considered in making that decision. “In reaching its final decision on the merits, the Board would consider the information in the environmental record developed during the NEPA process, in addition to the application and responsive filings.” 2011 EP 684, at 9. The Board’s regulations regarding the § 10909 procedural schedule at 49 C.F.R. § 1155.26(a) similarly provide that only after the Final EIS or other final environmental documentation is issued, and the 45-day period for comments ends, does the 90-day statutory period for issuance of the Board’s decision begin. This specified procedure is entirely incompatible with BHR’s request to obtain a substantive approval first subject to the outcome of the subsequent environmental review.

In essence, BHR is asking the Board to put the cart before the horse. BHR’s Petition cannot be granted for this reason as well.

G. BHR HAS NOT SHOWN THAT ITS ACTIVITIES WILL CONSTITUTE TRANSPORTATION BY A CARRIER AS REQUIRED BY § 10909

BHR devotes five pages (15%) of its 34-page filing to its request that the Board clarify that recycling activities are included within its requested § 10909 exemption. Petition at 27-32. However, BHR provides little detail about what products it will recycle and how. More fundamentally, BHR does not make a convincing, or even plausible, showing that its activities constitute transportation by or on behalf of a rail carrier as required by § 10909.

The Petition states that Winter Brothers plans to receive and unload trucks of unprocessed MSW and C&D debris on to the floor of a new transfer station building, and then further sort the materials into recyclables and waste. Newell V.S. at 3-4. C&D waste for disposal will be loaded onto railcars, recyclables will be sorted and separated by commodity and “transported by either rail or truck depending on the market in which they are sold.” *Id.* Additionally, the Petition confirms that “Winters Bros. will manage both operational requirements and contractual arrangements for the acceptance of inbound waste commodities delivered by truck, as well as making all necessary arrangements for the rail shipment of processed MSW, C&D and marketable recyclables from the Facility. BHR will coordinate with Winters Bros. to provide rail services in conjunction with the loading of and movement of rail cars within the Facility.” *Id.* at 3.

As stated, the bulk of the activity will be carried out by Winters Brothers. BHR's own activities appear limited to moving loaded and empty railcars, a function that the CRA excludes from its definition of a solid waste rail transfer facility.

§ 10908(e)(1)(H).

As explained by Dr. Betak and Mr. Sullivan, the planned activities do not qualify as transportation conducted by a railroad. Betak/Sullivan V.S. at 2-4. First, the activities are proposed to be conducted by Winters Brothers, a non-railroad, which will manage all of the operations, including contracting for all inbound and outbound truck and rail shipments. As such, the proposed operations would not be conducted by a railroad, or even under the legitimate agency or control of the railroad, but rather, by a solid waste processing company performing its own business. Numerous cases limit the independence that the operator may enjoy and still fall within the Board's jurisdiction. *E.g., New York & Atlantic Ry. v. S.T.B.*, 635 F.3d 66 (2d Cir. 2011); *Town of Babylon and Pinelawn Cemetery—Pet. for Declaratory Order*, FD 35037 (STB served Sept. 26, 2008); and *Borough of Riverdale*, FD 35299 (STB served Aug. 5, 2010) (transloading operation qualifies for federal preemption only where railroad is responsible for making improvements to the facility and railroad determines the rates, engages in contracting, and controls operating procedures at facility).

BHR at least recognizes the existence of this threshold issue when it states “[i]f necessary, BHR will adjust the parties’ contractual relationship and their

responsibilities to accommodate any Board concerns that the arrangement would lead to some activities not being conducted by or under the auspices of a rail carrier and therefore not under the Board's jurisdiction." Petition at 28 n.71. However, the Petition does not specify what the relationship is, *e.g.*, no contracts have been submitted for the Board's review. This lack of clarity by itself precludes grant of BHR's Petition, particularly as the CRA was passed in large part to address situations where solid waste operators masqueraded as railroads.

Dr. Betak/Mr. Sullivan further explain how BHR's facility will engage in extensive handling and manipulation of MSW and C&D waste and that much of the activity is not necessary for and thus not integral to rail transportation. Betak/Sullivan V.S. at 3-4. Significantly, BHR fails to make clear that the recyclables will even depart by rail, stating instead that they will be shipped by rail or truck. Petition at 11; Newell V.S. at 4 ("recyclable commodities will be transported by either rail or truck depending on the market in which they are sold"); Betak/Sullivan V.S. at 3-4. Since all incoming waste materials will arrive by truck, there will be no rail transfer if the recyclables also depart by truck. Such recycling will be an ancillary activity that cannot qualify for rail transportation at all. The CRA does not contemplate that an entity can use a railroad as a bootstrap for allowing a trucking-only activity to evade local siting requirements.

Otherwise, BHR appears to recognize that its activities (or, more accurately, those of Winters Brothers) will consist of shredding and other activities that

might add value and amount to the sort of manufacturing that was found to be beyond the scope of transportation in *NE Transrail*.² Accordingly, BHR presents various arguments to the effect that *NE Transrail* no longer applies or has somehow been obviated by the CRA. Those arguments include: (a) the CRA reduced the scope of the STB's preemption with respect to waste; (b) that the inclusion of terms "separated," "processed," and "treated" in § 10908 include conversion and thus shredding; (c) that use of the terms "separated" and "processed" either expanded by implication or recognized a broader category of activities; and (d) the public interest favors an expanded view of recycling. Petition at 31-32.

BHR's creative and diverse arguments only highlight the fact that Congress was in a position to be aware of the *NE Transrail* decision, which was decided the year before the CRA was enacted, and chose not to disturb it. Moreover, the CRA was enacted, by BHR's own admission, to end the abusive exploitation of Board preemption.

BHR's convoluted argument that Congress expanded that preemptive power (by overruling *NE Transrail*) even as it narrowed it through the CRA strains credulity, especially in the absence of any supporting treatment in the legislative history. The same is true of BHR's claims that shredding and manufacturing was encompassed in

² *New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Ry.—Construction, Acquisition and Operation Exemption—in Wilmington and Woburn, MA*, FD 34796 (STB served July 10, 2007).

“separated” and “processed,” as Congress could have easily added those additional terms if it so desired. Furthermore, the issue is not whether recycling may be socially desirable (something that can be decided at the local level), but the scope of the Board’s power to override local decisions. BHR is simply seeking something that Congress did not clearly authorize.

In short, BHR has not presented adequate reasons for its preferred overruling of *NE Transrail*. BHR has also failed to show that its activities will even be shipping the materials at issue by rail. Under the circumstances, the Board must closely scrutinize whether the proposed activities actually involve the transportation of waste by railroad subject to the Board’s jurisdiction, and absent a clear finding that it does, which its Petition fails to make, must deny the Petition. The Board must also deny BHR’s requested clarification outright or, at a minimum, defer the issue to another day, when an applicant brings a better substantiated set of facts for the Board’s determination.

H. BHR’s PETITION IS DEFICIENT AND PROBLEMATIC IN OTHER RESPECTS

BHR’s Petition suffers from other deficiencies and unanswered questions that prevent the Board from being able to grant it.

For example, BHR states repeatedly that it is seeking only to override local zoning restrictions and that it intends to abide by all other local law. As noted *supra*, questions attach to other aspects of its operations, including downstream impacts. In particular, if a train with BHR cars blocks a grade crossing, leaks waste, or emits bad

odors at a commuter train station or a school, will the Town or any other governmental authority have any recourse? Since the cars will be in the possession of the NY&A or some other carrier besides the BHR for most of their travel, will the BHR reserve any power to alter the conduct or accept financial responsibility? These are substantial questions, yet BHR does nothing to address them.

BHR also suggests that Phase 3 of its project will include the expansion of the scope of its activities to include six additional tracks that will serve multiple on-site shippers. Will BHR accept that the Town has any control over such activities, such as hours of operation, or will BHR take the position that such activities constitute transportation that falls under the general preemption of § 10501(b)? The issue calls into question the veracity of BHR's representations upon which it seeks not merely its § 10909 authorization, but also its § 10502 exemption, yet it is not addressed.

Similar issues attach to what happens if BHR exceeds its projected volumes. Does BHR intend to turn away business, or will it accept such additional volumes as a matter of business economics or the common carrier obligation? The same question arises with respect to expanding its hours of operation and the handling of hazardous materials. These are significant issues, but they are not addressed.

BHR is careful, however, to ask for Board guidance in other respects, such as any need to explain BHR's role in the handling of waste, as noted *supra*. Another example is its request that if the Board finds that its exemption approach is inadequate,

then the Board direct BHR with respect to what further information might be needed, as opposed to requiring a new “petition.” Petition at 27. The BHR has it backwards. In deciding to proceed with a petition instead of a full application, BHR assumed the risk that its petition might be found wanting, particularly given what BHR included and did not include in its Petition, the inadequacy of its showing under key elements of § 10909, and the many factual omissions and distortions in its filing, not the least of which is the need for its facility in the first place. To the extent BHR is entitled to any guidance, it is that the proper course is to submit the full application required by the CRA and the Board’s Rules.

V. CONCLUSION

BHR’s Petition cannot be granted; it does not even come close. It has established none of the elements required for a § 10502 exemption and none of the

elements required for a permit under § 10909. The Board has no choice but to deny or reject BHR's Petition.

Respectfully submitted,

CITIZENS CAMPAIGN FOR THE
ENVIRONMENT

By: /s/ Peter A. Pfohl
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Dated: September 16, 2020

*Attorneys for Citizens Campaign
for the Environment*

Verified Statement of
Adrienne Esposito, Executive Director
Citizens Campaign for the Environment

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

BROOKHAVEN RAIL LLC –	)	
PETITION FOR EXEMPTION FROM	)	
REQUIREMENTS OF 49 U.S.C. § 10909	)	
	)	

Docket No. FD 36399

VERIFIED STATEMENT OF ADRIENNE ESPOSITO

My name is Adrienne Esposito. I am the Executive Director of the Citizens Campaign for the Environment (“CCE”), <https://www.citizenscampaign.org/>. CCE’s main office is at 225A Main Street, Farmingdale, NY 11735, and we have additional offices in Albany, Buffalo, and Syracuse, New York, as well as Hamden, Connecticut. We have worked throughout New York and Connecticut on local, regional, and national efforts to reduce solid waste and increase recycling.

Brookhaven Rail LLC (“BHR”) has filed a petition for exemption (the “Petition”) with the Surface Transportation Board (“STB” or “Board”) to obtain local siting authority under the Clean Railroads Act (“CRA”) for a new Solid Waste Transfer Station (“Transfer Station”) it proposes to locate in Yaphank, part of the Town of Brookhaven, New York. CCE opposes the Petition, which requests the Board to override local siting restrictions to enable a railroad to establish the largest waste transfer station in New York State, if not the Country.

The Petition is premised on the 2024 closure of the Brookhaven Landfill, and an exacerbated “garbage crises” on Long Island. However, the proposed Transfer Station seeks not only to replace the existing Brookhaven Landfill, but dramatically

expand its scale by over **doubling** the volume of waste currently received by the Landfill, including the receipt and processing of Municipal Solid Waste, which the Landfill does not accept. This proposal seeks to take over the handling of nearly the entirety of all of Long Island's waste at one facility, and also receive waste from New York City and beyond.

This massive project raises significant concerns. Long Island is designated as a sole-source aquifer, where residents get 100% of our drinking water from groundwater. The proposal threatens that water and raises additional community impact, air quality, traffic congestion, and other environmental concerns, and entails the encroachment and potential degradation of an existing conservation easement. BHR's Petition is incomplete and misleading in several important respects and those omissions and distortions should prevent the Board from granting BHR's Petition. Accordingly, I am submitting this Verified Statement in support of the reply in opposition to the BHR Petition that CCE is filing with the Board.

BACKGROUND ON CCE AND ITS INTEREST

CCE is a 120,000 member, non-profit, non-partisan advocacy organization, established in 1985, that works to empower communities and advocates solutions that protect public health and the natural environment throughout New York State and the surrounding region. CCE works to identify key environmental concerns in communities and has been successful in advancing programs that benefit the natural environment and public health. Its efforts have resulted in greater awareness and protection of drinking water quality, preservation of open spaces, protection of beaches, bays, rivers, and Great

Lakes waters, advancing renewable energy, and a reduction in pollutants that impair our air and water resources.

Increasing reduction, reuse, and recycling of waste and the protection of our surface and drinking water on Long Island are core priorities for CCE. CCE is vitally concerned with how Long Island handles disposal of its solid waste and preserves the purity of our aquifer system that lies underneath Long Island. CCE is very concerned about the potential risks presented by BHR's proposed solid waste rail transfer facility.

The Petition Seeks to Usurp Local Control over Solid Waste Management and Land Use on Long Island

Issues associated with the disposal of municipal solid waste ("MSW"), construction and demolition debris ("C&D"), and other waste products generated on Long Island and New York City need to be addressed by local stakeholders, waste experts, and municipalities in a coordinated manner on a regional basis.

Waste management is established under New York law as the responsibility of local municipalities, and each planning unit is required to establish local Solid Waste Management Plans focused on waste reduction, recycling, and disposal. On Long Island, Towns and Villages often work together on an inter-municipal basis to manage their waste management programs. Waste reduction and recycling are the best means to manage C&D and MSW waste, although incineration of MSW with energy recovery is widely used on Long Island. Similarly, land use and zoning are planned and implemented at the local agency level, using the established comprehensive plan, zoning code, and permitting system.

Municipalities and regional agencies are in the best position to work with the private sector in reducing conflicts with planning and zoning codes, and to reduce conflicts through such means as promoting context-sensitive solutions for site and building design, establishing buffers between industrial and sensitive land uses, and taking other steps to ensure that local and regional sustainable development strategies are met and environmental impacts are minimized. This long-established system recognizes that local citizens and their governments have the most at stake and are in the best position to know and understand the problems, options, and trade-offs associated with siting of new facilities and the various alternatives for handling solid waste, and to make the best decisions that protect the public health, safety, and environment.

CCE recognizes that the CRA gives the Board limited power to override local siting restrictions that would otherwise prevent construction and operation of solid waste rail transfer facilities, provided specified factors and considerations are met. However, the purpose and design of the CRA was to **close** legal loopholes allowing railroads to establish waste transfer facilities with little or no review at the state or federal level, and generally restore state and local oversight over the facilities.

BHR needs to go through the local process with the Town of Brookhaven to seek either a zoning change or a special use permit. These processes are set up by the Town to allow for public input and stakeholder engagement. I am a member of the Suffolk County Planning Commission, and thus very familiar with the zoning and permitting practices in Brookhaven and other towns in Suffolk and Nassau Counties on Long Island. A zoning change typically takes longer to obtain than a special use permit,

but both can be granted in a matter of months if an applicant can make a strong and convincing showing and demonstrate community support, particularly if the proposal presents a sound solution to a vital local need. The issue here is not with the Town's concerns or approval process, but with the substantial land use, environmental, and community impact issues presented by BHR's proposal.

Also, the petition for exemption as filed by BHR seeks expedited processing and reduced review by the Board, contrary to the CRA requirements that railroads must complete and submit a full application when seeking to obtain a land-use exemption, allowing for full opportunity for the public to participate and be heard. BHR's Petition does not meet the factors required for an expedited exemption in general, nor does CCE believe that it would meet the normal CRA application requirements. The requested relief will not minimize Federal control over the rail transportation system. Instead, it will maximize such control. BHR's requested permit will have no effect other than to cause Federal control to override the local siting process and standards, and to override local control over solid waste management.

Approval of BHR's Facility is Not Necessary to Solve Any Solid Waste "Crisis"

BHR asserts that the Board must approve its Petition because the expected closure of the Brookhaven Landfill at the end of 2024 will create a garbage disposal "crisis" that must be addressed, and that only BHR can solve through the construction and operation of its proposed new Transfer Station. However, BHR's Petition ignores the fact that on Long Island, it is the 13 Towns and two Cities that have been designated as the local Solid Waste Planning Units with the authority to plan for and manage local

wastes for the approximately 2.8 million people residing in Nassau and Suffolk Counties. Additionally, BHR's proposal does not actually reasonably address or solve the purported "crises" that BHR presents.

BHR's Petition grossly overstates the need and potential benefits of its proposed facility and understates its adverse effects. BHR's attempts to present a picture that Long Island has no other options for managing its MSW and that any delay in authorizing its facility will result in an imminent public health emergency. Such claims are unfounded. There is no immediate need to transport MSW off Long Island by rail or otherwise. As a result of the Long Island Landfill Law of 1983, the Landfill accepts no MSW today, and it has not accepted MSW for over three decades. The long-standing practice on Long Island, consistent with solid waste management plans, is to reduce and recycle solid waste, and then incinerate MSW on Long Island with energy recovery, and store it as ash monofill.

The entirety of the Town of Brookhaven's 216,000 tons of MSW is already handled through a long-term agreement with Covanta Energy, which receives, transfers, and processes the MSW for the Town at its resources recovery facility in Westbury. As a result of that process, the Brookhaven Landfill accepted 351,274 tons of processed MSW ash in 2019, over 40 percent of all of the materials received at the landfill during the year. BHR has stated no plans to accept and transload by rail any of this residual ash.

The Brookhaven landfill is nearing the limits of its existing storage capacity. However, the Town has proposed to expand its landfill storage capacity on nearby land to create a new 5.5 million cubic yard Ashfill, along with the construction of

an Enhanced Ash Recycling Facility, on 45 acres that will provide at least 12 additional years of disposal capacity beyond the remaining life of the Brookhaven Landfill. BHR does not mention this long-term management approach for MSW at all and treats the Town's planned alternative Ashfill and ash recycling facility as if they do not exist. Long Island needs a plan that holistically addresses the challenges of waste. A proposed large-scale Solid Waste Facility and an Ashfill, both located in the hamlet of Yaphank is a sizable burden for the community. The critical question lingers - do we need both an ashfill and BHR? A holistic plan would allow for the community and stakeholders to drive critical solutions to solid waste challenges and not the development proposal that can pass through the permit process the quickest.

Additionally, BHR's Petition proposes receiving 6,000 tons of unprocessed C&D per day at the proposed Transfer Station, **over five times** the amount of processed C&D currently received at the Brookhaven Landfill. BHR's proposed facility is therefore not a replacement of lost C&D disposal capacity following the closure of the Brookhaven Landfill. Instead, it is a planned massive expansion of Winters Brothers already expansive existing operations, and an attempt by one company to monopolize the solid waste management market. Moreover, there are already at least two dozen permitted, active C&D processing facilities and many on Long Island, many of which recycle, rather than dispose of, C&D debris, and many additional transloading facilities in more convenient locations that accept C&D.

**Local Land Use and Zoning Requirements Do Not
Unreasonably Discriminate Against or Burden the Proposed Project**

One of the factors that the CRA instructs the Board to consider is whether the existing local zoning unreasonably discriminates against and/or burdens the proposed facility and rail transportation of waste. BHR's Petition claims that the Town of Brookhaven does so simply because its existing zoning does not allow the proposed facility. That is simply false. The Town's zoning is not specifically directed to BHR's proposed use in any way. There are many potential uses of the site that would be impermissible with the existing zoning. Anyone proposing such an impermissible use could, like BHR, seek to obtain a zoning change or a special use permit. CCE is confident that the Town would seek to judge such applications on their merits. In fact, the Town has recently confirmed this in its September 11, 2020 filing with the Board:

In view of the Town's primary role and jurisdiction over local land-use, zoning and its environmental control over "*natural recourses within the Town*", should BHR and its affiliates, as Applicant, petition the Town Board for a change of zone or seek other Permits required and appropriate to authorize the Proposed Project including the SWRTF, the Town is prepared to promptly and fully review, consider and take such action concerning local approvals as may be appropriate when presented with such an Application by BHR.

The Town of Brookhaven confirms that it will carefully and promptly review any such application brought before it.

Even if BHR changes its mind and elects to proceed to obtain approval before the Town, as the Town has suggested, a denial or negative determination would not, by itself, show the Town had imposed unreasonable burdens on or discriminated

against the facility. Such burdens may well be reasonable and appropriate in view of the risks and adverse consequences presented by the proposed use. BHR seems instead to have assumed that the presence of any burden or restriction is unreasonable, even as BHR's Petition presents only a cursory analysis of its proposal and minimizes or ignores many of its important aspects. Again, whether the proposal makes sense in terms of its potential benefits and adverse impacts is a determination that is better made locally by the affected citizens through their elected officials. A decision not to approve the proposal should not automatically be presumed to represent unreasonable discrimination or an unreasonable burden.

The Proposed Facility Presents Significant Environmental Impacts

Review of BHR's filing shows that BHR has devoted very little effort and attention to the environmental aspects of its approval. The CRA instructs the Board to weigh the potential benefits and adverse impacts of the proposal on the public health, safety, and environment before granting its approval, and the CRA further specifies particular factors that the Board is to consider. As explained in the accompanying Verified Statement of Dr. Chris Gobler, the Endowed Chair of Coastal Ecology and Conservation at the Sony Brook University School of Marine and Atmospheric Sciences, the parcel on which the Transfer Facility is to be sited is an environmentally significant and sensitive property, with highly permeable soils and shall depth to groundwater. Additionally, there are two species of concern that inhabit the property, the Northern Long Eared Bat and the Eastern Box Turtle, and both are listed as threatened.

As verified by Dr. Gobler, BHR's proposal presents a substantial risk of contaminating the Upper Glacial Aquifer, part of the aquifer system, that is the sole source of Long Island's drinking water. Project run-off will also likely discharge into and damage the ecosystems of the Carmans River watershed (a NYS designated Scenic and Recreational River) and the Bellport Bay, and create biotoxins that can accumulate in and adversely impact an important wild clam population.

BHR's proposed facility potentially threatens public health, safety, and the environment, including the safety of Long Island's water supply and local transportation. CCE is particularly concerned about the size and scale of BHR's proposed facility and its impact on the local community. The facility would be the single largest such facility in the State of New York. While BHR claims that one of the benefits of its proposal will be taking trucks off the road, all incoming waste will arrive by truck. The facility will not eliminate truck movements of waste on Long Island. Instead, it will cause them to be concentrated in Yaphank, Brookhaven. BHR's own projections indicate that a truck will be arriving approximately every two minutes, which means a truck will need to either arrive or leave every minute on average. If there are breakdowns, accidents, or other delays at or nearby the facility, a huge logjam is certain to occur, disrupting traffic throughout the area. BHR also neglects to mention or estimate the substantial outbound truckloads that will transport rejected C&D, recyclables, and other separated commodities that are unsuitable for transportation by rail.

BHR also seems to envision that its rail shipments will quickly reach over 19,000 railcars per year, both incoming and outgoing. The New York and Atlantic

Railway, the freight operator over the Long Island Railway, currently handles only about 30,000 railcars per year. The additional rail traffic seems likely to disrupt both freight and passenger operations on Long Island and beyond, as further described by Dr. Betak/Mr. Sullivan. There are numerous grade crossings that could become blocked for sustained periods, creating additional public safety problems. Trains carrying MSW stalled at the Fresh Pond Yard, near train stations, communities, and schools would create additional significant problems. However, there is nothing in BHR's petition itself that acknowledges these important consequences in any way, much less addresses them.

For the most part, BHR simply relies upon the prior environmental review that was focused on previously planned development of nearby parcels, as well as this parcel. However, that prior environmental review was for a different type of project and is not adequate for the facility and operations proposed by BHR. BHR also seeks to rely heavily on the fact that the Board's Office of Environmental Analysis ("OEA") will be conducting its own review of the environmental aspects pursuant to the National Environmental Policy Act ("NEPA"). CCE understands that OEA regularly conducts reviews of new rail construction and abandonment, but OEA does not appear to have conducted a review of a new proposed solid waste rail transfer facility in the past twelve years since the CRA was enacted, as BHR's proposal is the first under the CRA. OEA will rely heavily on the services of a third-party provider that BHR has selected and will fund. It is not clear that OEA or its contractor have substantial knowledge about the unique conditions on Long Island.

Additionally, the review under NEPA is generally only procedural, making sure that alternatives are considered, but not substantive. However, the review of the potential benefits and adverse impacts on the public health, safety, and environment required under the CRA is substantive. Accordingly, the consideration of the potential benefits and adverse impacts of the proposed facility on the public health, safety, and environment should be done by the Board itself, and not merely delegated to the OEA or sub-delegated to OEA's contractor.

The Proposed Activities are Outside of the STB's Jurisdiction

Under the proposal, all receiving, processing, and loading of materials onto railcars is to be handled by Winters Brothers, a large regional solid waste management company that BHR states "will manage both operational requirements and contractual arrangements for the acceptance of inbound waste commodities delivered by truck, as well as making all necessary arrangements for the rail shipment of processed MSW, C&D and marketable recyclables from the Facility" As Dr. Betak/Mr. Sullivan confirm, Winter Brothers is not a railroad, and will be performing its own business independently on the property. The substantial waste sorting and processing activities that Winters Brothers will conduct are not railroad transportation and are not integral to rail transportation, and therefore should not be deemed a solid waste rail transfer facility under the CRA or subject to STB permitting.

BHR's Assertions on Compliance with State and Local Laws Are Inadequate

BHR states that it intends to comply with all state and local laws other than the Town of Brookhaven's siting restrictions. However, zoning and siting restrictions are

the best means for preventing problems from occurring in the first place. If there are problems with BHR's operations and activities, such as contamination of the water supply, they may be very difficult or impossible to fix afterwards.

There are critical lessons learned from the first (existing) Brookhaven Rail project. Brookhaven Rail Terminal ("BRT") made many promises to follow local environmental laws. However, the owners instead sand mined the property, did not comply with local environmental protection laws and subsequently had to be sued by Brookhaven Town. The Town of Brookhaven filed in U.S District Court in 2015 and demanded \$15 million in damages from the operators of BRT for what the Town called "the environmental destruction" caused by illegal sand mining and other actions at the terminal in Yaphank. Local zoning and Town guidance can put in place safeguards to prevent this type of environmental destruction from happening again.

In addition, the scope of BHR's commitments and the ability to force BHR to honor them are less than clear. BHR does propose to limit the hours of some aspects of its operations, but how will the Town be able to ensure compliance? If the volume grows beyond the projected levels, or if there are adverse impacts from that traffic growth, will the Town be able to do anything? Suppose that the volume of waste shipments causes congestion on the Long Island Railroad. Will the Town have any ability to address the situation, particularly if the impacts are felt elsewhere? Suppose that BHR decides to handle freight other than waste at its facility. Will the Town have any ability to enforce local restrictions on non-waste activities? Furthermore, the facility may want or even be asked to handle hazmat waste products. Could the Town restrict

such activities, or could BHR even be compelled to receive such waste, especially as BHR plans as Phase 3 of its project to locate a number of new shippers on the site, conducting unspecified new business activities? These are all important questions, but they are not answered or even addressed in BHR's filing.

Use of Exemption and Bifurcation Procedures is Wholly Inappropriate

CCE is particularly concerned about BHR's request to have the Board the proposal considered under the agency's "fast-track" exemption procedures.

We understand that such procedures are used only where a proposal is very limited and does not raise significant issues. BHR's Petition does not present such a proposal.

The proposed facility is massive in scope and will be the single largest waste transfer facility in the State of New York. The first issuance of such a CRA permit should not occur under an expedited procedure, especially as the CRA requires a fact-intensive review of the stated factors and criteria. The Board's exemption procedure is not a proper mechanism for reviewing BHR's proposal.

CCE is also concerned that BHR has even requested that the Board use a bifurcated procedure to consider the proposal. BHR has asked the Board to undertake its substantive review first on an expedited basis, but the approval that BHR expects to receive at that stage would not become final until the environmental review is completed. This bifurcated approach is contrary to the analysis that the CRA requires and, I understand, even the Board's own regulations. It is another reason that BHR's petition should not be granted.

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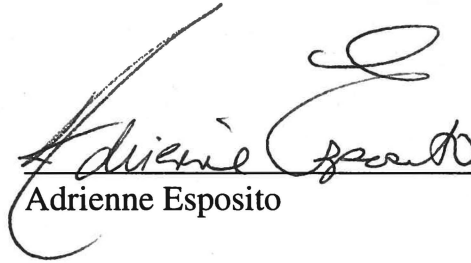
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In short, BHR's petition is incomplete and misleading in numerous respects. It does not provide a viable basis for consideration of the many important issues presented by its proposal. The Board should reject or deny the BHR Petition.

VERIFICATION

I, Adrienne Esposito, verify that I have read the foregoing Verified Statement, I know the contents thereof, and that the facts are true as stated to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this statement.



Adrienne Esposito

Executed on September 15, 2020

Joint Verified Statement of
John F. Betak, Ph.D. & Stephen Sullivan

BEFORE THE SURFACE TRANSPORTATION BOARD

***BROOKHAVEN RAIL LLC – PETITION FOR EXEMPTION FROM
REQUIREMENTS OF 49 U.S.C. § 10909***

DOCKET No. FD 36399

JOINT VERIFIED STATEMENT OF

**JOHN F. BETAK, PH.D.
STEPHEN SULLIVAN**

We are John F. Betak and Stephen Sullivan. Dr. Betak is the Managing Member of Collaborative Solutions LLC, based in Albuquerque, New Mexico, specializing in freight and rail operations, management, consulting, administration, and research. In his 40+ years of experience in freight rail matters, Dr. Betak served as an Assistant Vice President at Consolidated Rail Corporation (Conrail). Dr. Betak managed Conrail's corporate industrial development and short line marketing groups. As part of his responsibilities for Conrail, Dr. Betak developed and managed a new Business Group – Non-Hazardous Municipal Solid Waste (MSW) – that established a new industry-wide business model for the transportation of solid waste, including developing a pricing structure, new equipment types, and addressing the complex operations and numerous environmental impacts and community concerns that revolve around the handling of waste materials. Dr. Betak also served as part of the team that developed the plan leading to the restructuring of Conrail and its return to profitability. He is a Senior Researcher and Research Fellow in the Center for Advanced Infrastructure and Transportation at Rutgers University, a Senior Research Fellow in the Center for Risk Management and Insurance at the University of Texas at Austin and a Senior Associate in the National Rail Consulting Group. Attached to this Statement is a copy of Dr. Betak's biography.

Stephen Sullivan is an independent consultant, with over 40 years of experience in the railroad industry. He most recently was employed by RL Banks and Associates (RLBA), a railroad consulting firm providing economic, operational and engineering counsel. Prior to joining RLBA, Mr. Sullivan served for thirteen years as Vice President and Executive Director of the American Short Line & Regional Railroad Association (ASLRRA), comprised of 95 private and public railroad companies and their suppliers. Prior to working at the ASLRRA, Mr. Sullivan held various operations, planning and corporate strategy management position at Conrail. For Conrail, he served as Director of Corporate Strategy, acting as an operations and geography expert throughout a \$12 billion merger, leading managers in areas of financial analysis, asset management, technology application, and budgeting. Mr. Sullivan also held many other titles at Conrail, including Director of Planning and Strategy, Manager of Strategic Planning, Manager of

Commercial Planning, Manager of Industrial Development, District Superintendent of Operations, and Supervisor of Rules and Operating Practices. He began his career in the railroad industry as a brakeman in New York City.

We have been requested by the Citizens Campaign for the Environment (CCE) to review and comment on the Petition for Exemption filed by Brookhaven Rail LLC (BHR), in Docket No. FD 36399 (Petition), seeking approval from the Surface Transportation Board (STB or Board) for an exemption from the requirements of 49 U.S.C. § 10909 and the Board's governing land-use-exemption-permit rules to construct and establish a new solid waste rail transfer facility in the Town of Brookhaven, New York.

This statement is based on our review of available pertinent materials, including the Exemption Petition filed by BHR; the Voluntary Draft Environmental Impact Statement (VDEIS) prepared in 2016 addressing a separate and distinct proposal for rail terminal and transloading activities at or near the site of the proposed solid waste transfer facility that fails to discuss, identify, or in any way address solid waste receipt, processing and transfer; and other relevant documents; and our professional experience, including our extensive employment and work for the railroad industry with knowledge of the regional transportation system and connecting rail lines and operations; our involvement in and knowledge of railroad industrial terminals, specifically, solid waste transfer facilities; our familiarity with relevant railroad laws, rules and regulations, and industry norms and standards; and our education and training.

In summary, based on our review, (1) the proposed project is not subject to the Clean Railroads Act (CRA), 49 U.S.C. § 10908, because the activities to be conducted are unrelated to railroad operations and service and will not be conducted by a railroad; (2) there is no demonstrated need for the proposed waste transfer and transloading facility; (3) the substantial size and scope of the proposed solid waste transfer and related operations will overburden the regional commuter and freight rail system for handling the traffic; and (4) the heavy reliance by BHR in support of its Petition on a prior environmental review of a separate and distinct activity at the site that has nothing to do with the processing and transfer of MSW and Construction and Demolition waste (C&D) as presently proposed is unhelpful and irrelevant.

A. This Project is Not Transportation Conducted by a Railroad

The Petition states that Winter Brothers plans to receive and unload trucks of unprocessed MSW and C&D debris on to the floor of a new transfer station building, and then further sort the materials into recyclables and waste. (Newell V.S. at 3-4). In particular, it states that materials placed on a tipping floor where “[t]he C&D will be processed to extract recyclable material using sorting and separation equipment.” C&D waste for disposal will be loaded onto railcars, recyclables will be sorted and separated by commodity and “transported by either rail or truck depending on the market in which they are sold.” (*Id.*). The Petition further provides that “Winters Bros. will manage both operational requirements and contractual arrangements for the acceptance of inbound waste commodities delivered by truck, as well as making all necessary arrangements for

the rail shipment of processed MSW, C&D and marketable recyclables from the Facility. BHR will coordinate with Winters Bros. to provide rail services in conjunction with the loading of and movement of rail cars within the Facility.” (Pet. at 3).

Unlike the simple transload of construction products and consumer goods and other commodities shipped by rail onto truck, the handling and processing of unprocessed solid waste requires specialized knowledge and expertise unique to the solid waste industry. The processing of MSW and C&D requires special closed structures, where waste is tipped onto a specially constructed concrete pad. Inbound trucks originate from various locations, including from MSW transfer stations and construction sites located across the region. Once received, unprocessed construction debris is deposited on the floor. However, many landfills will not accept various types of materials, such as refrigerators, tires, roofing, mattresses, and couches. If a truck comes in carrying such materials, its load is rejected, and the materials must then be sent to an alternative site. However, many such prohibited materials are not spotted until the sorting process commences. In that case, the facility must extract and segregate out the materials and have them trucked out for alternative disposal.

In our opinion, such processing of waste by a specialized waste and recycling processor, including sorting, segregating, and baling prior to loading into railcars is a separate and distinct activity and has nothing to do with rail transloading or rail transportation. Also, the preload sorting and recycling of solid waste to extract and recover materials of value, with the segregated materials then trucked out and sold at a profit, is a separate activity that has nothing to do with rail transloading or rail transportation. Additionally, the sorting of solid waste to segregate materials that do not comply with requirements of the disposal site is a solid waste function, not a transportation function. This is the very type of activity that is and could be performed at a municipally run solid waste transfer station. Indeed, as referenced above, the Town of Brookhaven currently has a permitted Transfer Station that collects all of the Town’s MSW. This MSW is then shipped by truck to Covanta Energy-Hempstead (Covanta-Hempstead) for processing and incineration

Based on our experiences and knowledge of the types of activities proposed, we do not believe the activities proposed to be conducted would be deemed a solid waste rail transfer facility under the CRA. First, the activities are proposed to be conducted by Winters Brothers, a non-railroad solid waste industry participant, which will manage all of the operations, and contract for all inbound and outbound truck and rail shipments. BHR explains that it will simply move empty and loaded railcars within the facility and in connection with the New York & Atlantic Railway Company (NY&A). As such, the proposed operations would not be conducted by a railroad, or even under the legitimate agency or control of the railroad, but rather, by a solid waste processing company that is performing its own business independently on property it controls.

Second, many of the activities at the facility do not appear necessary for, and thus integral to, rail transportation. For example, solid waste is proposed to be shipped by truck and dumped on the facility floor. Neither MSW nor C&D debris are proposed to be

shipped in sealed, leak-tight intermodal containers to the transloading facility, and then simply moved from trucks onto railcars. Such operations would reduce the incidence of nuisance conditions (e.g., dust, odor, seepage, etc.) and pollution, and thus pose little threat to the environment because the waste remains, at all times, in sealed containers. In contrast, BHR's proposed processing activities of dumping, sorting, recycling, compacting, and baling go beyond railroad transloading operations in which the containerized waste is simply transferred from truck to rail. Such activities carry increased environmental risks.

Third, BHR proposes to engage in substantial processing activities in order to recover recyclable materials (e.g., metals), much of which it says will be shipped out by truck. However, the CRA covers solid waste rail transfer service. In our opinion, such proposed sorting, processing, and recycling activities involve neither the transportation of waste nor the transportation of waste by rail.

In our opinion, the mere fact that the proposed solid waste and related processing activities may have incidental benefits to the rail transportation facets of BHR's business does not equate those activities with transloading, nor does it make those activities integral to rail transportation.

B. There is No Need for the Proposed Facility

BHR explains that its exemption petition should be granted because its proposed new solid waste rail transfer facility "is badly needed to help address a severe lack of landfill and other capacity to handle the approximately 7,100 tons per day of solid waste produced by the Island's inhabitants" with the expected upcoming closure of the existing Brookhaven Landfill at the end of 2024. Pet. at 2-3, 7. According to BHR, its project is critical to permit an expected 6,000 tons of MSW and C&D debris to be transported off of Long Island by railroad and sent for disposal in landfills instead of by thousands of trucks that otherwise would be necessary to transport such waste to landfills.

BHR's Petition is premised on the purported lack of alternative means of disposal of MSW and C&D debris generated by the residents and businesses of the Town of Brookhaven and other localities on Long Island, and the inability of the Town to timely approve siting/permitting of the proposed facilities prior to the closure of the Brookhaven Landfill at the end of 2024. However, the Petition completely fails to show that there is an actual solid waste "crisis" situation as alleged, and to the contrary, there are many existing alternatives to address the closure of the Landfill.

1. There is No Need for the Facility to Transload MSW

While BHR asserts that its new Transfer Station is necessary to take in all of the waste that will be displaced by the upcoming closure of the Brookhaven Landfill, including significant MSW volumes, that is incorrect because the Landfill receives **no** MSW today. As a result of the Long Island Landfill Law of 1983, the Brookhaven Landfill and other landfills on the island have been prohibited from accepting MSW for the past three

decades. The Island's long-term preferred management approach is to process the MSW at one of four major resources recovery facilities (RRF) located on Long Island, that collectively process over 1,175,000 tons of solid waste, annually, or over 4,824 tons, daily.¹ A significant amount of this solid waste also comes from off Long Island, including from Brooklyn and Connecticut. This "waste-to-energy" process converts waste to non-hazardous ash residue and recyclable metal, while generating electricity for operational use and return to the grid.

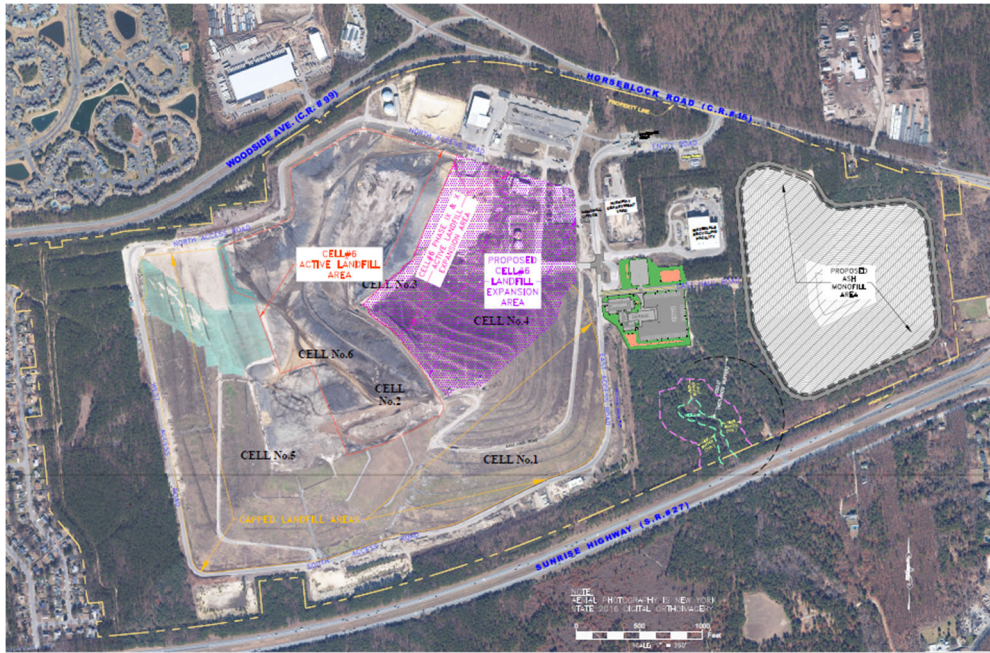
All of the MSW from Brookhaven residents (approximately 216,000 tons/year) is received at the Brookhaven Transfer Station, and under a long-term agreement with Covanta Energy, the MSW is transferred to the Hempstead Resource Recovery Facility (Covanta-Hempstead) and incinerated. The resulting ash, together with significant ash from other municipalities, is then placed in the Brookhaven Landfill through an inter-municipal agreement ("ash-for-trash" deal). While BHR speaks of a MSW "crisis" for the Town of Brookhaven, and other Long Island communities, it fails to mention that Brookhaven and other localities already have long-term arrangements to process the Island's MSW, which will continue even after the closure of the Brookhaven Landfill.

Also, the Town of Brookhaven's 2019 Long Island Landfill Annual Report (Brookhaven Landfill Annual Report) reflects that the Town received 351,274 tons of processed MSW ash in 2019.² Notably, BHR's Petition does not contemplate truck-to-rail transloading of **any** of this ash, nor any other of the residual ash processed at the Island's RRFs. We are unaware of any significant volumes of MSW residual ash being transported by rail from Long Island.

Additionally, the Town of Brookhaven has **already** taken concrete steps to address the future disposal and recycling of its residual MSW ash following the closure of the Landfill. The Town recently sought and was awarded a \$20 million grant by the New York Department of State as part of its Municipal Consolidation and Efficiency Plan (MCEP). This Plan includes the construction of a major new Regional Ashfill and the construction of an Enhanced Ash Recycling (EAR) Facility on 45 acres at the Brookhaven Landfill site, depicted in the Town-produced schematic below:

¹ These include the Hempstead Resource Recovery Facility, the Huntington Resource Recovery Facility; the MacArthur Resource Recovery Facility, and the Babylon Resource Recovery Facility. *See 2019 Combustion and Thermal Treatment Facility Annual Reports*, NYSDEC (filed Feb. 2020).

² Relevant excerpts of the Brookhaven Landfill Annual Report is included at Attachment A.



The Town of Brookhaven reports that the new Ashfill will provide approximately 5.5 million cubic yards of capacity for ash disposal, and at least 12 additional years of disposal capacity beyond the remaining life of the existing Brookhaven Landfill. This new major MSW processing facility and Regional Ashfill, together with the existing RRFs, appear to be more than sufficient to address the impacts on MSW disposal of the Brookhaven Landfill closure.³

2. There is No Need for the Facility to Transload C&D Debris

BHR's further statement that its new Transfer Station is necessary to take in all of the C&D debris that will be displaced by the upcoming closure of the Brookhaven Landfill, is also incorrect and highly misleading. First, BHR states that it initially plans on receiving 2,000 tons daily of unprocessed, "mostly C&D" materials," which volume will be greatly expanded thereafter, along with the receipt of MSW.

However, the most recent Brookhaven Landfill Annual Report shows that the Town Landfill receives far less than that proposed amount, or 1,159 tons daily of C&D materials. More importantly, the Landfill currently receives **no** unprocessed C&D debris, as it instead only receives processed C&D materials. BHR fails to explain how its proposal will address the receipt and disposal of previously processed C&D post-Landfill closure. For example, the Town receives over 1,500 tons daily of automotive shredder residue ("car fluff") and alternate operating cover for the Landfill, most of which appears to be processed C&D, from approximately 17 private vendors. However, BHR has not indicated whether it will receive and seek to transload to rail any of these commodity volumes once the Landfill closes.

³ A full summary and description of the project by the Town of Brookhaven is set forth in a recent project Request for Proposal set forth in Attachment B (excerpts).

While BHR asserts that there is a critical, unfilled need for C&D processing and transloading with the upcoming closure of the Brookhaven Landfill, the Landfill performs no such C&D processing today, it only receives processed C&D materials. Notably, there are already 37 permitted, active C&D processing facilities on Long Island serving the C&D processing requirements of the Island's inhabitants. https://www.dec.ny.gov/docs/materials_minerals_pdf/listpermcdprocess.pdf. New York Department of Environmental Conservation reports that there are also over 40 other existing transfer stations and recycling facilities, and in total, 70 facilities that can accept C&D on Long Island. Once processed, much of these materials can be recycled into valuable manufactured products and aggregate, including C&D metals, C&D concrete, C&D wood, C&D shingles, C&D asphalt, and C&D drywall, and not landfilled. While over 75% of the C&D debris collected in this country is recycled,⁴ BHR appears to instead seek to receive and process, and send by rail to landfills, the vast majority of the C&D that it receives at the Brookhaven site on the grounds that such landfilling is supposedly "critical" and the only way to solve Long Island's solid waste recycling and disposal problems. That is incorrect. The Landfill takes in a limited amount of C&D debris, all of which can be handled by other existing C&D facilities, and there is no "crisis" or need for the project to address the loss of capacity caused by the closure of the Landfill.

C. The Proposed Facility Will Overburden A Complex Regional Commuter and Rail Freight System

The proposed project's massive size and scope, with BHR's professed desire to handle all of Long Island (and potentially substantial portions of New York City's waste), and lack of documented plan from BHR to handle that level of traffic, raise considerable planning and operating concerns. Under the proposal, there appear to be no limits on volume, or ability to control where the waste is originated (e.g., there is a potential for substantial New York City waste traffic). In our opinion, the proposed skeletal railroad operating plan simply will not work, and the proposed operations are incapable of being reasonably implemented within the existing regional commuter and freight railroad system. While BHR submits a letter from NY&A to LIRR on April 17, 2020 where it references the proposed operations, the letter states that its "[a]nticipated rail car volumes are as many as 10 cars per day with future opportunities for 20 or more rail cars per day." However, that is **less than one-sixth** the volumes that BHR is proposing in its Petition of two trains each of 32 cars/day, and even then, BHR has not shown that the LIRR has approved even the operation of 10 cars a day over its system.

1. BHR's Proposed Train Operations Are Infeasible within the Existing Transportation System

The NY&A operates exclusively over the Long Island Railroad (LIRR), whose principal responsibility is commuter service. Nowhere in the Petition is there a discussion

⁴ See *Construction and Demolition Debris Management in the United States, 2015*, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery (March 2020). https://www.epa.gov/sites/production/files/2020-03/documents/final_cd-eol-management_2015_508.pdf.

of the complexities of the proposed operations in the regional rail freight system. LIRR and Metro North are a part of the Metropolitan Transportation Authority (MTA), North America's largest transportation network, serving a population of over 15 million people. The LIRR is the busiest commuter railroad in North America, carrying over 300,000 passengers daily, many of them daily commuters, on approximately 750 daily trains. In order to reach the proposed facility, NY&A must traverse the central artery of the LIRR in Nassau and Suffolk Counties. This portion of the system is often congested, and there has been substantial local and national press attention to service problems caused by this congestion. This and the need to conduct repairs or attend to disabled trains on a limited, one and two track main line, with limited weight capacity, creates considerable issues for the movement of freight rail of the size and scope proposed by BHR. In order to serve the Brookhaven Facility, NY&A has only limited windows in which to operate, when track maintenance or repairs are not occurring.

a. The Proposed Operations Cannot Be Made Under the Existing Railroad System Constraints

Long Island is effectively landlocked. Although the NYNJ Rail (NYNJ, formerly Cross Harbor) railcar float between New York and New Jersey has recently been improved, it offers only limited opportunities for traffic moving from Long Island across the Hudson River. NY&A interchanges with NYNJ by operating over a connecting track between Fresh Pond Yard in Queens and the rail float facility at 65th Street in Brooklyn. While a shorter distance in miles to the Midwest than the all-rail route via the Hell Gate Bridge, physical constraints along this line as-well-as yard capacity/expansion impediments on the NYNJ in Brooklyn restrict this route from handling the projected volumes of MSW trains anticipated in the Brookhaven proposal. Rail floats are maritime operations with their own unique challenges and regulations, further adding to, and compounding the conditions and constraints mentioned previously in this statement.

What's more, any train movements of MSW via this route would need to be sequenced and coordinated with other rail traffic using the car float operations, adding another layer of complexity and consideration to the timely movement of waste off of Long Island and the regular cycling of railcars back into Brookhaven for loading. Therefore, most of the rail freight destined to/from Long Island and to and from the Midwest, including outbound solid waste, must complete a 48-hour, 300-mile detour via Fresh Pond Yard, all the way to Selkirk, New York, located just a few miles south of Albany. Additionally, much of the East-of-Hudson track is publicly owned and used by MTA-Metro North for passenger rail service, and operating windows are further limited.

Because much of the MSW and C&D can be expected to be shipped to the Midwest (e.g., Ohio or Pennsylvania), that traffic must contend with these severe operating limitations, including substantial detours. At a minimum, while awaiting open operating windows, these "trash trains" must sit in urban yards and create substantial nuisance and community impact concerns.

To illustrate how the proposed unit waste trains have to fit into at least three other railroads' operations (LIRR, Metro North and CSX), with which there is no apparent mention of any discussions, we first consider potential operational issues and then provide illustrations of how these issues will ripple through both the operations of the waste transfer facility, but also how the other parties will be impacted. These examples start with operating philosophies and then describe the ripple effects through terminal operations, road operations and finally fleet requirements, as noted in the following bullets.

- Operating Philosophy
 - PSR vs. Unit Train trip plans
 - Spot on arrival vs full train O and D
 - Release cutoffs
 - Local Serving Yard Operations
 - Notification of car arrival and "CP"
 - Cars on hand and sequencing of delivery
 - Demurrage
- Terminal Operations - Customer
 - Transfer Site
 - Loading
 - Unit vs. multi-car vs. single car
 - Capacity in 24hrs
 - Unit capacity on site
 - Switching operation on site
 - Interchange capacity
 - Landfill
 - Unloading
 - Unit vs. multi-car vs. single car
 - Capacity in 24hrs
 - Unit capacity on site
 - Switching operation on site
 - Interchange capacity
- Road Operations
 - Terminal time – Local Serving Yard
 - Windows of Operation
 - Interchange/Inspections
 - Holdback Capacity Locations
- Fleet Requirements
 - Equipment ownership and responsibilities
 - Cycle time
 - o/s spares
 - holding and storage locations

To begin, consider one likely scenario, the movement of MSW and/or C&D to a landfill in Ohio. To simplify, assume that landfill is served by CSX. As is well known, CSX has vigorously pursued adoption of the Precision Scheduled Railroad (PSR) philosophy. As noted in the petition, BHR intends to adopt a Unit Train operating philosophy. There are inherent incompatibilities in these two operating philosophies. First, in the case of PSR, the driving force is velocity through the system and yards, minimizing dwell times in yards, and maximizing crew efficiency. Thus, this requires spotting cars on arrival versus full trains to Origin and Destination. The intent of Unit Train operations is to deliver and pick-up full trains and maximize utilization of the equipment – which is owned by either the landfill or the waste transfer company, and not the railroad.

Under PSR, the movement of the cars is driven by the cutoff time for departure through or out of the yard. It is entirely likely that a block of waste cars could be moved out of the yard on a train at a time that neither the landfill nor the waste transfer facility could receive or dispatch. In short, the block of waste cars could depart on a train going somewhere, but not necessarily to the Origin or Destination. That is because of the local serving yard operations wherein the notification of car arrival starts the clock for when the car (or block in this case) and Constructive Placement (CP) occur. That impacts the number of cars on hand and the sequencing of delivery. If none of these constraints meet the timing and placement/pull needs of the Origin or Destination, the block either leaves on the next train out to wherever that may be for that train, or the block is held at the yard, but then demurrage accrues until such time as the block moves out to be placed or sent to its scheduled destination. Demurrage charges can become very costly, very quickly.

All the above lead us to the terminal operations for the customer, whether it is the transfer site or the landfill, road operations, and fleet requirements. Without drilling into each of these in the abstract, we again consider the scenario of MSW and/or C&D moved to a CSX-served landfill in Ohio. According to the Petition:

- BHR proposes to operate 6 days a week, 52 weeks a year = 312 days/yr.
- BHR proposes to ship out two 32-car trains day = 64 cars/day, or 19,968 loaded cars/year (64 cars x 312 days).

This means the proposed operation will add 19,968 empty return cars annually that, when added to 19,968 loads going out, will increase the total proposed new traffic on the LIRR by 39,936 annually. NY&A reports that it currently handles 30,000 carloads/year. In short, the proposed new facility is stating it will more than double the traffic on the NY&A system with just its own operations. As referenced above, NY&A references the ability to possibly handle only up to 10 cars per day, less than one-sixth of the anticipated volumes proposed by BHR of 64 cars per day. In short, this proposed volume will likely disrupt both freight and passenger operations on Long Island, and block numerous grade crossings, and is far above what NY&A currently handles.

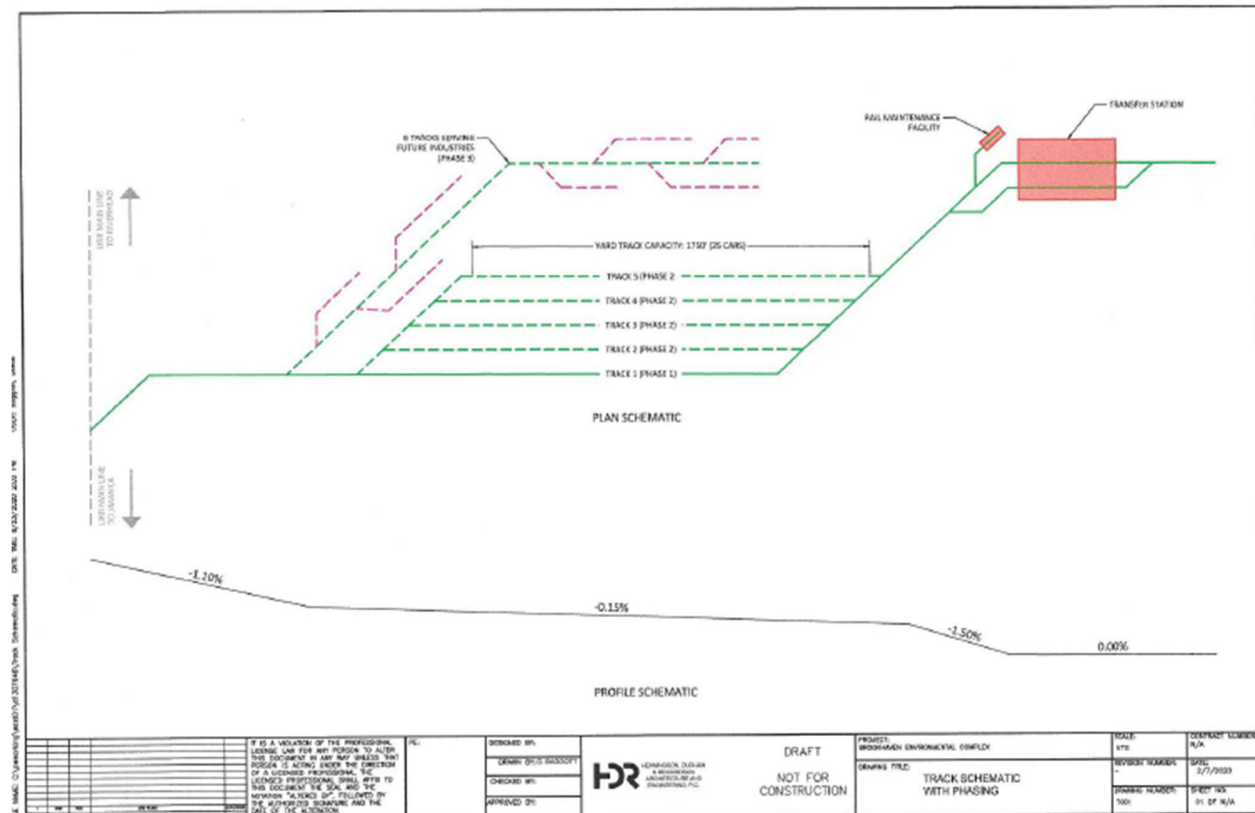
b. The Proposed Operations Cannot Be Made Under the Existing Railroad Terminal, Yard, and Road Operation Constraints

There are several other constraints that preclude the proposed operations. First, there are considerable terminal operations constraints. In this case we focus on the transfer – the proposed Parcel D site for the new transfer station. At least initially, based on Exhibit C to the Petition (see below) there does not appear to be any storage track off the new spur track serving the Facility, which spur Mr. Newell says will consist of approximately 11,000 ft. (Newell at 3). Ladder storage track is to be constructed in Phase 2 at some undetermined future date. That means, at least initially until the Phase 2 storage track is built, in order to move two trains a day, NY&A crews will need to make the round trip from its Fresh Pond Yard four times per day: two round trips to pick up two loaded, and two round trips to deliver two empties, adding further constraints. All of which will have to occur in the allowed NY&A operating window for freight operations over the LIRR.

Second, there are considerable road operations constraints. First, consider the holding and storage capability at Fresh Pond. Nowhere in the Petition is there reference to the ability of Fresh Pond Yard to accommodate all these cars. It appears very doubtful. Based on a 2018 study prepared for NYCDOT, “there is no available unused space within the railroad ROW.” Lower Montauk Branch Passenger Rail Study, Prepared for New York City Department of Transportation (Jan. 2018) pp. I-65 to I-66. *Id.* at I-68 to I-69: “During a 2017 field visit, the railroad noted that this yard has nearly continuous movement of operations. A search using Google Maps shows the railyard is being utilized at near full capacity.” (See image below.) Additionally, this yard accommodates the cars of four railroads. *Id.* at I-76 “The Fresh Pond Yard has continuous movement of operations due its location at the intersection of the Lower Montauk Branch, the Fremont Secondary, and the Bay Ridge Branch. This is a critical shipping facility for goods in and out of Long Island. The New York & Atlantic Railway, CSX, the Canadian Pacific Railway, and the Providence and Worcester Railroad maintain freight shipping operations here.” In short, it is highly unlikely these unit trains will be able to be stored at Fresh Pond and there is no evidence there will be capacity at the proposed facility based upon the evidence on the Petition.



Further, Mr. Newell (at 3-4) says that additional track will be built to serve future shippers, in Phases 2-3. The map below shows that in Phase 3, BHR intends to construct at least six additional tracks to serve a number of future industries, adding further operational and congestion concerns with this project.



In short, based upon the evidence provided in the Petition, there is no holdback capacity at the facility nor at the local NY&A serving yard – Fresh Pond.

Third, there are considerable windows of operation constraints. Since there is neither capacity at Fresh Pond nor on the proposed transfer facility site, these four new trains will have to transit the LIRR under NY&A operating windows to Fresh Pond then furtherance over Metro North through the Oak Point Link. That line serves not only Metro North, but also CSX and P&W, as well as CP Rail through a haulage agreement. All these operations have windows of operation within which any NY&A traffic has to fit. None of these constraints are mentioned in the Petition. Further, nowhere in the Petition is there mention of how activities such as Programmed Maintenance, Emergency Maintenance, and interruptions of operations due to such things as train derailments will be addressed.

Finally, there are considerable fleet requirements issues left unexplained. There is no mention in the Petition of who will own the Unit Train sets. Based upon current railroad operating philosophies, it will not be the railroads. Therefore, it will either be the transfer facility or the landfills. For simplicity, assume it will be the transfer facility. Ownership –

most likely via lease – requires having spares to insert into the fleet whenever equipment is bad ordered or undergoes scheduled maintenance. Where are these spares going to be held? Where and who will do the scheduled maintenance – there is no indicated repair facility at the proposed transfer facility. In all likelihood, therefore, the fleet owner will seek private car repair facility maintenance to avoid the very expensive Class I maintenance – even if available. Therefore, equipment being maintained or repaired will go offline to wherever the repair facility is located. That requires time and spares to fill in for the offline equipment. There is no mention of storage and holding facilities for these spares. It certainly is not evident on the proposed site plan. Nor is there any indication in the Petition how these issues will impact cycle time of the equipment and how these will be slotted into the operating plan – of which there is no mention in the Petition. Thus, from our perspective, there are substantial operational issues that impact other railroads and entities, such as the landfills, holding yards elsewhere in New York State for loaded or empty waste cars waiting to enter into the train sequencing, communities within which the held trains will be situated, and likely NYSDEC concerns that will need to be addressed that have not been considered in the Petition and should be considered in the Board's review.

Despite these substantial rail infrastructure and system complexities, should expanding transloading of some of Long Island's waste by rail still be desired, there are alternative transload sites and options. For example, Coastal Distribution LLC operates at NY&A's Farmingdale Yard, and can transload up to 5,000 tons of solid waste daily. One World Recycling in Lindenhurst is also permitted to handle up to 900 tons of waste per day. The State of New York has identified an additional 13 sites for potential truck/rail transfer that may be suitable for solid waste transloading. See *NYSDOT Consideration of Potential Intermodal Sites for Long Island Appendices* (June 9, 2011). In addition, while somewhat volume constrained at present, the NYNJR car float offers additional capacity for truck-to-rail transloading of solid waste, although, as noted above, these additional capabilities are not sufficient to address the anticipated volumes as proposed in the Petition. These alternatives need to be carefully examined but have not been examined yet at all.

D. The Board Should Not Rely on a Prior Environmental Review of a Separate and Distinct Activity at the Site Having Nothing to Do with the Proposed Processing and Transfer of MSW and C&D Debris

BHR states that a previous finding of no significant environmental impact of "conceptual plans" previously considered for the operation of rail transloading facilities on the same Parcel D memorialized in a Voluntary Draft Environmental Impact Statement (VDEIS) reflect that the proposed project will have little environmental impact. This prior review considered similar transloading activities to be conducted on nearby Parcels B and C, and "also incorporated potential expansion plans for Parcel D." (Pet. at 15-16). These conceptual plans presumed 50 percent of development would be non-railroad related. The other 50 percent rail-related components considered transloading of freight, but substantially different commodities. In particular, the conceptual plans that were reviewed considered the transloading of inbound construction products, lumber, stone,

and other consumer goods, moving in traditional flat cars, containers, and boxcars, and hopper cars. These materials would be placed in the yard, and then trucked short distances from the yard to local customers.

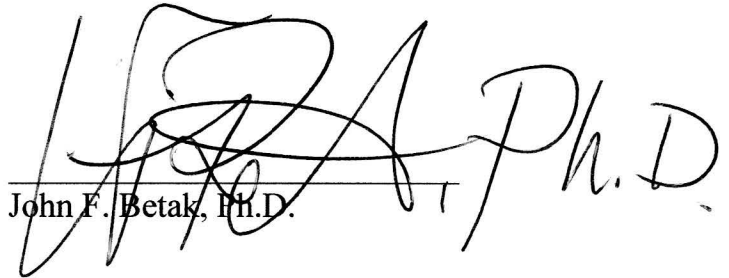
In our opinion, this prior environmental analysis of the conceptual plans of the prior proposed project is unhelpful and irrelevant. There are substantial differences between the planning and operation of a solid waste transfer and transloading facility and a building materials transloading facility. A transfer and transload station of the large size and scope proposed by BHR poses considerable operational complexities and public health and safety issues, including levels of noise, dust, odor, seepage, and radiation issues. In our experience, we have yet to see a waste transfer facility that successfully maintains and contains all loose debris, odors and seepage. We do not see in the Petition or the proposed site plan anything that addresses how containment and cleanup will occur should there be issues of dust, wind-blown materials or seepage that may occur. It seems, therefore, that is inappropriate to exempt this facility from such local, state or other regulatory permitting, oversight, and approval of activities that have little or nothing to do with railroad operations.

Also, unlike the loading of previously processed construction or similar consumer products, MSW must be baled and wrapped through use of special equipment and placed by crane in special covered gondola railcars or sealed containers. C&D is loaded into gondola railcars with specialized bale-clamps connected to cranes. The loads must be carefully placed to ensure that they are properly secured, and the weight equally distributed, to meet railroad safety requirements. While BHR mentions placing tarps over railcars, tarped MSW in railcars has been known to leave trails of distributed waste and debris along the rail lines operating through communities and public spaces such as commuter station platforms when tarps fail or become unsecured. Further, C&D if not properly loaded and secured, can shift and also create problems with regard to derailis or other equipment failures that then impede and/or block other scheduled movements over those tracks. Unfortunately, the Petition makes no mention of those sorts of operational problems, how BHR would mitigate them with their operation, and what measures they would have in place to address them if they occurred off-property on the LIRR, Metro North, NYNJR or CSX.

In summary, in our opinion, (1) this project is not railroad transportation conducted by a railroad; (2) there is no “need” for this facility, (3) the project will overburden the rail system; and (4) the prior environmental analyses heavily relied on in the Petition are irrelevant.

VERIFICATION

I, John F. Betak, Ph.D., verify that I have read the foregoing Statement, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.

 Ph.D.
John F. Betak, Ph.D.

Executed on September 17, 2020

VERIFICATION

I, Stephen Sullivan, verify that I have read the foregoing Statement, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.


Stephen M. Sullivan

Executed on September 12, 2020

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Albuquerque, NM

GENERAL TRANSPORTATION OVERVIEW

Dr. Betak is a senior consultant with 50+ years diversified, international experience in management, consulting, administration and research in corporations, non-profits and major North American universities. He has been successfully engaged in management consultancy and coaching in both the private and public sectors. He has managed numerous major projects in non-profit, private sector and university settings. His expertise has been applied in transportation, information technology and telecommunication industries, infrastructure, real property, low- and moderate- income housing and community development, education in primary, secondary and tertiary levels and health-related enterprises.

As a senior management member, Dr. Betak participated in the Operating Committee and Strategic Management Team of Consolidated Rail Corporation, a Class I freight railroad. These responsibilities encompassed all aspects of the day-to-day and long-term management of the enterprise, including implementing significant organizational changes to improve operations, safety and profitability. Among his many duties, Dr. Betak developed and managed a new Business Group in Conrail – Non-hazardous Municipal Solid Waste (MSW). This Business Group established a new industry-wide business model for the transportation of MSW, including the development of a pricing structure, developing new equipment types and addressing the numerous environmental and community concerns that revolve around the handling of waste materials.

Dr. Betak's consulting areas of expertise include transportation systems (both freight and passenger), strategic planning, business case evaluation, economic development policy, asset and real property management, organization structuring and development, process reengineering and continuous improvement. He has provided research design and data acquisition, storage, retrieval and analysis consultation in a variety of private and public sector settings – both domestically and internationally. He has also practiced in assisting start-up enterprises and community and organizational development within disadvantaged communities and populations. Dr. Betak has taught research design, transportation

management and project evaluation and assessment in university settings. He has implemented a large number of programs in transportation, housing and pharmaceutical enterprises in both the private and non-profit sectors. He has taught continuous improvement practices to senior-, mid- and front-line managers in the United States and Europe in organizations that range from large manufacturing companies through service sector firms to educational institutions. He has provided executive coaching and management development in a variety of corporate and public sector settings. His consulting practice has involved a variety of projects in Africa, Asia, Europe, Middle East, North America and Russia.

EDUCATION

- B.S. Geography, Arizona State University, 1964
- M.C.P., City and Regional Planning, The Ohio State University, 1966
- Ph.D., Geography – Urban and Transportation Systems and Artificial Intelligence (Pattern Recognition, Storage, Retrieval and Analysis for Visual Displays), Northwestern University, 1970

PROFESSIONAL RECOGNITION AND AFFILIATIONS

Total Quality Institute, Founding Member and Certified Facilitator

American Railway Development Association (Past President)

The American Railway Engineering and Maintenance-of-Way Association (Member of Committee 1 – Roadway and Ballast and Committee 24 – Education and Training)

PUBLICATIONS, PRESENTATIONS AND CURRENT RESEARCH

Dr. Betak is the author/co-author of over 70 journal articles, chapters, book reviews, technical reports and papers. He has been the presenting author/panelist in more than 70 technical symposia, conferences and seminars in North America, Asia and Europe. His most recent research focuses on Big Data analytics to extract causal relationships in equipment and infrastructure failures and develop conditional probability estimates for optimizing maintenance and capital investment decision-making. He is currently involved in a project addressing the economic impacts of cleanup and disposal of abandoned uranium mine (AUM) waste materials. His most recent published works have addressed how Big Data analytics can be used to improve railroad operations and safety, as well as different market mechanisms for transferring financial risks in construction. This is a continuation of his interest of investigating the life-cycle of railroad roadway and rail materials as an integrated system, the integration of sustainability, life cycle analysis, risk analysis and management and financial performance into the daily management and practice of operating railroads and quantifying the economic benefits of rail infrastructure projects.

SENIOR RAILROAD MANAGEMENT RESPONSIBILITIES

Consolidated Rail Corporation (Conrail)

Dr. Betak developed/managed the corporate industrial development, plant rationalization and line sales, short line marketing, non-hazardous solid waste business group, real estate portfolio and Geographic Information System for Conrail. He was a member of the

Strategic Management Team and Operating Committee. He was one of the senior team members involved in implementing continuous quality improvement throughout the company.

Dr. Betak was one of the authors of the reorganization and restructuring plan for Conrail that led to the passage of the Northeast Rail Services Act (NERSA), the Federal legislation, in combination with the Staggers Act, which resulted in restructuring the freight rail industry in the United States. This restructuring of the freight rail industry led to the resurgence of the industry and a dramatic turnaround in the economic health and well being of the industry as a whole.

For Conrail, Dr. Betak developed and managed plant rationalization, line sales and asset management programs that helped turn the company from one losing \$1 million per day into a company making a profit of over \$1 million per day within approximately an 18 month time span. These programs became models for the industry nationwide as all other Class I railroads adopted similar processes and programs for addressing non-performing assets and developed improved operations and rationalizing physical plants to better match assets to changing economic times.

In this capacity, Dr. Betak hi-railed and walked thousands of miles of mainline and secondary track, industrial serving yards and track, industrial switching track and industry sidetracks. He oversaw the preparation of the System Diagram Maps for designation of lines for abandonment and sale under NERSA. He spent innumerable hours meeting with public officials, industry owners and state and federal legislators on issues related to the viability of rail service to individual industrial properties as well as communities as a whole.

Dr. Betak's Line Sales and Short Line Marketing groups were responsible for the creation of the modern short line and regional railroad industry in the U.S. He and his teams negotiated hundreds of line sales, operating agreements, joint track usage and commercial relationships connecting short line and regional railroads and their customers.

As the head of the industrial development and real estate groups within Conrail, Dr. Betak was responsible for securing \$100 million of new business annually through the location, relocation and expansion of intermodal terminals, logistics, warehousing and distribution facilities, ports, manufacturing and assembly plants and every other kind of facility wherein transportation costs, service and accessibility were an important part of the decision process. In this work, he dealt with and negotiated with private and public decision-makers (including every major site selection and relocation consulting firm in North America) in Canada, Japan, Korea and the United States on the location, relocation and expansion of numerous facilities – large and small.

In this capacity he oversaw and participated in hundreds of site and facility searches and decisions, both for Conrail and its customers. These negotiations and decisions encompassed all aspects of service operations, commercial viability and feasibility, track design and installation – including sidetrack agreements and service agreements and equipment availability.

As a Member of the Operating Committee and Strategic Management Team, Dr. Betak was involved in the day-to-day decisions regarding railroad operations, investments (plant and equipment) and the development of long-term business strategies for the Company.

Dr. Betak managed the Capital Improvement Program for Conrail. In this capacity, he reviewed and participated in all decisions regarding physical plant and equipment improvements for the company (\$1 billion annually).

Dr. Betak, along with Conrail's Cost Accounting Department, developed new Branch Line Accounting methods that became the industry standard for identifying activity-based costs, and revenues, attached to specific segments of railroad.

Dr. Betak personally, and with his departmental team, negotiated hundreds of cost-sharing agreements with industry, state and local entities for plant investment. All of these negotiations required multi-attribute trade-offs between costs and desired outcomes.

Dr. Betak managed the Corporate Real Estate Department and a Wholly-Owned Real Estate Subsidiary. He was responsible for ensuring the orderly acquisition, leasing and disposition of corporate real property assets – Rights of Way, Real Estate, Office Buildings, etc. – a multi-billion dollar portfolio.

Dr. Betak sponsored and managed the development and implementation of a Corporate-wide GIS as the backbone architecture for the Corporation's entire information and data systems; integrating operating, costing, marketing, personnel, inventory, etc. systems into a single, enterprise-wide system for real-time Dashboard management and operations information.

Dr. Betak developed and managed a new Business Group in Conrail – Non-hazardous Municipal Solid Waste (MSW) – that established a new industry-wide business model for the transportation of MSW, including the development of a pricing structure, developing new equipment types and addressing the numerous environmental and community concerns that revolve around the handling of waste materials.

Dr. Betak was directly involved in implementation of a Corporate-Wide Continuous Quality Improvement program that led to dramatic improvements in processes and consequent capital and operating savings, while improving the services to customers. In this effort, Dr. Betak spent substantial time working with organized labor in establishing improved processes and practices – including safety-related initiatives.

OTHER ILLUSTRATIVE RAIL-RELATED PROJECTS & PRESENTATIONS

Applying Topic Modeling to Railroad Grade Crossing Accident Report Text. *2015 Joint Rail Conference Proceedings*, March 23-26, San Jose, CA. Trefor Williams, John Betak and Christie Nelson.

Using Data Visualization to Analyze Grade Crossing Accidents. *2015 Joint Rail Conference Proceedings*, March 23-26, San Jose, CA. Trefor Williams, James Abello, John Betak and David Desimone.

Text Mining Analysis of Railroad Accident Investigation Reports. *Proceedings of the 2016 Joint Rail Conference JRC2016*. Columbia, SC, April 12-15. Trefor P. Williams, John F. Betak and Bridgette Findley.

Text Mining Analysis of Railroad Accident Investigation Reports. *Proceedings of the 2016 Joint Rail Conference JRC2016*. Columbia, SC, April 12-15. Trefor P. Williams and John F. Betak.

Identifying Themes in Railroad Equipment Accidents Using Text Mining and Text Visualization. *ASCE International Conference on Transportation and Development 2016 Proceedings*. Houston, TX. June 26-29. Trefor P. Williams and John F. Betak.

Visualization of Railroad Equipment Accident Causes Using Data Visualization Systems and GIS. *Proceedings of 2017 Joint Rail Conference JRC2017*. Philadelphia, PA, April 4-6. Trefor P. Williams and John F. Betak.

Integrating Automated Analyses of Track Defect Data with Track Inspection and Maintenance Scheduling. *Proceedings of the First International Conference on Rail Transportation*. Chengdu, China, July 10-12. John F. Betak and Trefor P. Williams.

A Comparison of LSA and LDA for the Analysis of Railroad Accident Text. *Procedia Computer Science*, Volume 130, 98-102. Trefor Williams and John Betak.

A Comparison of LSA and LDA for the Analysis of Railroad Accident Text. *Journal of Ubiquitous Systems & Pervasive Networks*, No.1, 11-15. Trefor Williams and John Betak.

Use of Big Data for Optimizing Maintenance, Service and Capital Planning. *Proceedings of AREMA 2020 Virtual Conference and Expo*. John F. Betak, Christie L. Nelson and Trefor P. Williams.

Vulnerability assessments of Transport Infrastructure through modeling of risks interconnectivity. *93rd Annual TRB Conference*, January 12-16, 2014. Nadereh (Nady) Moini and John F. Betak.

The New Silk Road - International Rail Transport between Europe and Asia. *93rd Annual TRB Conference*, January 12-16, 2014. Maria Boile, John Betak, Annie Kortsari, Maria Chatziathanasiou.

Freight Facility Location Analysis to Support Port Related Activity – Economic and Transportation Drivers and Factors Affecting Site Selection. *International Association of Maritime Economists (IAME) Conference 2013 Proceedings*. Marseilles, France.

The Railroad Engineering Sustainability Lifecycle. Drs. Betak, Bhasin and El Mohtar described and presented to the Engineering Track of the 100th Annual Meeting of the American Short Line and Regional Railroad Association.

Sustainability, Life Cycle Analysis and Financial Performance, RR101. Drs. Betak, Brockett and Golden described and presented to the Finance and HR Track of the 100th Annual Meeting of the American Short Line and Regional Railroad Association.

ILLUSTRATIVE RAIL-RELATED PROJECTS – CURRENT AND PROPOSED

John F. Betak. Sub-contractor to Global Information Systems LLC. on *Planning for Short Line Partnerships*. Volpe National Transportation Systems Center. December 2019-August 2020.

John F. Betak, Sub-contractor/SME for Global Information Systems LLC, on Consolidated Rail Infrastructure and Safety Project for Louisville and Indiana Railroad Company (LIRC): *Developing and Implementing a Mobile Device Emergency Responder Access App for the Louisville and Indiana Railroad Company*. January 2020-January 2021.

John F. Betak. NCHRP Panel Member – NCHRP Project 08-124: *Quantifying the Impacts of Corridor Management*. November 2018-August 2021.

John F. Betak. NCHRP Panel Member – NCHRP Project 08-36, Task 144: *Transportation Asset Management and Effective Organizational Models for Program Implementation*. April 2017-March 2018. In final review process.

Trefor P. Williams, **John F. Betak** and Christie Nelson, in collaboration with Conrail and Carload Express. *Application of Advanced Analytic and Risk Techniques to Railroad Operations Safety and Management*. UTC-Region 2, CAIT.

John F. Betak and Trefor P. Williams. *Optimizing Conditioned-Based Maintenance and Investment in Shared Freight and Passenger Corridors*. Collaborative Solutions, LLC, The University of Texas at Austin and Rutgers University.

Other projects include government to government marketing re catastrophic event risks assessment and management; risk assessment and management for freight rail operations; GIS applications in railroad risk assessment and management; consulting on rail-served property development; economic and fiscal impact analyses; and expert witness cases on railroad operations, economics and real estate.

Stephen Sullivan

Railroad Operations Experience

Education

BA, Economics, College of William and Mary, 1977

Professional Development and Certifications

Corporate Finance, the Wharton School, University of Pennsylvania

Executive Management, Penn State University

Project Management, Drexel University

Modal Analysis, University of Texas – Texas Research Development Foundation

Years of Transportation Experience

40

Qualifications

Managing Director (retired) – RL Banks and Associates - Premier multidisciplinary consulting firm providing economic, operational and engineering counsel related to the freight and passenger railroad industry, including inter-city, high speed, commuter and light rail operations.

Prior to joining RLBA in 2013, Mr. Sullivan served for thirteen years as Vice President and Executive Director of the American Short Line & Regional Railroad Association (ASLRRA), a trade association comprised of 950 private and public sector railroad companies and their suppliers headquartered in Washington, DC. Mr. Sullivan directed initiatives and staff strategic alliances, financial management, administration, industrial safety and security, technology development/deployment, training, legislative and regulatory matters. Mr. Sullivan also developed new business processes, including technical process integrations that increased revenues and membership six to eight percent annually. In addition, Mr. Sullivan spearheaded railroad security/anti-terrorism challenges with Federal agencies at all levels, developing and implementing a comprehensive post-911 security plan re the industry's 550 railroads, directed, from concept to application, the design and deployment of a first-of-its-kind railroad risk mitigation process/model, and guidelines that apply generally and specifically to the safe transportation of crude by rail (CBR). For his efforts, he has received commendations and letters of appreciation from The White House, the Department of Transportation, the United States Coast Guard and the Department of Defense.

Prior to working at the ASLRRA, Mr. Sullivan held various operations, planning and corporate strategy management positions at Conrail, Inc., formerly a \$7 billion corporation and premier Northeast and Midwest freight railroad, headquartered in Philadelphia, PA. While Director of Corporate Strategy at Conrail, Mr. Sullivan acted as operations and geography expert throughout a \$12 billion merger, leading managers in areas of financial analysis, asset management, technology application and budgeting. Mr. Sullivan also held many other titles at Conrail, including Director of Planning and Strategy, Manager of Strategic Planning, Manager of Commercial Planning, Manager of Industrial Development, District Superintendent of Operations and Supervisor of Rules and Operating Practices. He began his career in the railroad industry as a brakeman in New York City.

Over the course of his career, Mr. Sullivan developed working relationships with Class I railroads, short lines, Amtrak, commuter railroads, state, local and federal government agencies as well as suppliers. He prepared position papers and testimony on behalf of Class II and Class III railroads and testified before Congress on railroad infrastructure and capital investment. He has utilized his extensive railroad operations knowledge and experience on a variety of simulation, litigation support and strategic planning projects. Other initiatives include working with industry leaders to develop a CBR risk mitigation seminar and continued analysis on the changing regulations affecting the shipment of crude oil in tank cars.

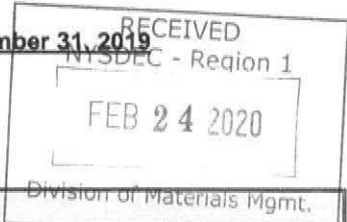
ATTACHMENT A

LONG ISLAND LANDFILL ANNUAL/QUARTERLY REPORT

Submit the Annual Report no later than March 1, 2020.

A. This annual report is for the year of operation from January 01, 2019 to December 31, 2019

B. Quarterly Report for: ☒ Quarter 1 ☐ Quarter 2 ☐ Quarter 3 ☐ Quarter 4



SECTION 1 - FACILITY INFORMATION

FACILITY INFORMATION			
FACILITY NAME: Town of Brookhaven Landfill Cell 6			
FACILITY LOCATION ADDRESS: 350 Horseblock Road	FACILITY CITY: Brookhaven	STATE: NY	ZIP CODE: 11719
FACILITY TOWN: Brookhaven	FACILITY COUNTY: Suffolk	FACILITY PHONE NUMBER: 631-451-9010	
FACILITY NYS PLANNING UNIT: (A list of NYS Planning Units can be found at the end of this report). Brookhaven (Town)			NYSDEC REGION #: 1
360 PERMIT #: 1-4722-00030/0019	DATE ISSUED: 11/15/15	DATE EXPIRES: 11/17/20	NYS DEC ACTIVITY CODE OR REGISTRATION NUMBER:
FACILITY CONTACT: Christopher Andrade	☒ public ☐ private	CONTACT PHONE NUMBER: 631-451-9013	CONTACT FAX NUMBER: 631-451-6391
CONTACT EMAIL ADDRESS: candrade@brookhavenny.gov			
OWNER INFORMATION			
OWNER NAME: Town of Brookhaven	OWNER PHONE NUMBER: 631-451-9013	OWNER FAX NUMBER: 631-451-6391	
OWNER ADDRESS: 1 Independence Hill	OWNER CITY: Farmingville	STATE: NY	ZIP CODE: 11738
OWNER CONTACT: Christopher Andrade	OWNER CONTACT EMAIL ADDRESS: candrade@brookhavenny.gov		
OPERATOR INFORMATION			
OPERATOR NAME:	☒ same as owner	☒ public ☐ private	
PREFERENCES			
Preferred address to receive correspondence: ☐ Facility location address ☐ Other (provide):		☒ Owner address	
Preferred email address: ☐ Facility Contact ☐ Other (provide):		☒ Owner Contact	
Preferred individual to receive correspondence: ☐ Other (provide):		☒ Facility Contact ☐ Owner Contact	

Did you operate in 2019? ☒ Yes; Complete this form.

☐ No; Complete and submit Sections 1 and 21. If you no longer plan to operate and wish to relinquish your permit/registration associated with this solid waste management activity, also complete the "Inactive Solid Waste Management Facility or Activity Notification Form" located at: <http://www.dec.ny.gov/chemical/52706.html>.

SECTION 6 - SOLID WASTE DISPOSED

Provide the tonnages of solid waste disposed. Exclude Beneficial Use Determination Material amounts reported in Section 5.
Specify the methods used to measure the quantities disposed and the percentages measured by each method:

☒ % Scale Weight

☐ % Estimated

☐ % Truck Count

☐ % Other (Specify: _____)

Type of Solid Waste	Tip Fee (\$/Ton)	January (tons)	February (tons)	March (tons)	April (tons)	May (tons)	June (tons)	July (tons)
Ash (MSW Energy Recovery)	Attachment #2	29,148.97	25,480.60	25,069.00	25,401.57	32,668.12	29,630.67	33,657.38
Construction & Demolition Debris (mixed)		32,547.26	25,664.19	28,334.13	32,197.55	31,776.63	31,912.70	31,265.29
Car Fluff		7,308.48	6,217.91	6,151.61	8,792.27	7,705.30	10,818.31	9,750.26
Other (specify)	mixed debris	835.25	466.26	840.14	1,085.47	519.05	736.89	396.80
	mixed fill	710.85	537.09	312.02	295.81	223.75	422.35	210.58
Total Tons Disposed		70,550.81	58,366.05	60,706.90	67,795.82	72,892.85	73,520.92	75,280.31

Type of Solid Waste	August (tons)	September (tons)	October (tons)	November (tons)	December (tons)	Total Year (tons)	Daily Avg. (tons)
Ash (MSW Energy Recovery)	32,567.43	28,127.50	31,976.56	28,645.08	28,901.29	351,274.17	1,159.32
Construction & Demolition Debris (mixed)	33,211.57	30,400.87	33,615.20	28,445.44	23,042.54	362,413.37	1,196.08
Car Fluff	9,921.86	8757.24	10,498.31	8,778.36	8,954.64	103,654.55	342.09
Other (specify)	478.14	718.72	756.28	478.62	656.88	7,968.50	26.30
	572.44	337.41	293.51	2,216.04	634.99	6,766.84	22.33
Total Tons Disposed	76,751.44	68,341.74	77,139.86	68,584.22	62,190.34	832,121.26	2,746.27

Reprinted (12/19)

SECTION 7 – SERVICE AREA OF SOLID WASTE RECEIVED

Please identify where the waste is coming from. The total tons received reported below should equal the total tons received in Section 6 (Solid Waste Disposed). DO NOT REPORT IN CUBIC YARDS!

- If the waste *WAS* received from another solid waste management facility, please write in the name *and address* of the facility along with the appropriate state, county and planning unit/municipality.
- If the waste *WAS NOT* received from another solid waste management facility, please write in "*Direct Haul*" along with the appropriate state, county and planning unit/municipality where the waste was generated.

Specify transport method and percentages of total waste transported by each:

100 % Road % Rail
 % Water % Other (specify: _____)

Explain which waste types and service areas below are included in these transport methods _____

SERVICE AREA OF SOLID WASTE RECEIVED					
TYPE OF SOLID WASTE	SOLID WASTE MANAGEMENT FACILITY FROM WHICH IT WAS RECEIVED (Name & Address) OR "Direct Haul"	SERVICE AREA STATE OR COUNTRY	SERVICE AREA COUNTY OR PROVINCE	SERVICE AREA NYS PLANNING UNIT (See Attached List of NYS Planning Units)	TONS RECEIVED
Ash (MSW Energy Recovery)	Hempstead RRF	NY			214,098.25
	Huntington RRF	NY			81,679.88
	Islip RRF	NY			55,496.04
Construction and Demolition Debris (mixed)	see attachment #3	NY			355,265.88
	local C&D drop off (Brookhaven, NY)				7,147.49
Emergency Authorization Waste (Storm Debris)					
Other (specify)	Car fluff: Gershow (Medford NY)				103,654.55
	Mixed Fill/Mixed Debris (various governmental bodies, Suffolk Co.)				14,779.17
TOTAL RECEIVED (tons):					832,121.26

Attachment #3

	J	F	M	A	M	J	J	A	S	O	N	D	total
BNL (09BL)	25.57	11.63	49.83		55.01		23.59	26.69	21.35	20.75	34		268.42
SCDPW	42.06	51.06	31.52	8.74	181.02	31.04			2.49	26.89			374.82
Gershow	497.73	572.77	613.18	618.47	204.77	1259.72	1251.89	1545.44	1347.25	1593.73	1113.41	916.95	11535.31
Omni of Babylon	2051.59	665.99	430.22	980.85	586.72	592.45	441.9	402.5	517.39	545.86	349.66	238.41	7803.54
S&M Prompt	401.54	329.3	321.09	378.12	431.41	426.42	450.09	453.13	422.26	411.61	191.42	114.33	4330.72
Winters	770.65	314.22	1924.1	4207.47	4892.87	4904.02	4259.78	4799.53	4120.26	4284.48	3572.06	2618.04	40667.48
Town of Southampton	129.25	73.77	169.29	221.56	209.8	154.68	131.73	138.46	144.73	86.84	115.7	76.8	1652.61
Excel Demo	2579.26	2400.81	2253.58	2668.23	3856.08	2502.14	711.14	768.73	601.87	2724.58	2186.13	2140.31	25392.86
Paragon			179.62	33.47	141.18				26.96	82.93	24.98	158.06	647.2
Try Recycling	4442.54	2136.2	2257.77	2039.71	515.01	2260.57	2747.54	2920.96	3463.83	2708.45	1607.13	1290.85	28390.56
Excel Recycling	7171.48	3427	4408.6	4107.95	4621	4484.95	4654.41	6031.81	5786.8	5234.85	4728.17	3628.96	58285.98
Omni Westbury								193.88	71.61	74.19			339.68
EmilNorsic	1580.14	996.46	989.59	1235.36	1349.39	994.58	913.76	1048.97	1176.97	1403.05	1273.16	1132.85	14094.28
S&P Carting	1053.32	1048.31	892.45	1399.98	1561.77	1051.88	1059.68	738.03	794.71	1146.34	1030.42	900.04	12676.93
Town of Southold	229	181.51	242.45	335.87	292.12	269.42	313.06	250.98	232.1	279.4	228.33	173.73	3027.97
Liotta	1559.61	1781.84	1493.34	790.1	386.57	1137.68	658.3	790.82	1237.48	1465.45	884.06	1184.17	13369.42
Cooper Tank	657.63	514.21	616.22	585.96	351.78	607.54	560.4	737.79	407.51	679.04	504.06	487.03	6709.17
Paumonok	4594.39	3882.17	4249.51	5415.62	5311.54	3923.64	5526.61	4558	3468.05	3685.17	3449.09	2246.68	50310.47
Brooklyn	53.87	435.04	331.66										820.57
Allocco	2534.86	2512.74	2607.48	2615.63	2388.56	3045.53	3345.46	4046.51	3635.79	4035.4	4399.48	3357.62	38525.06
Peconic	815.43	523.51	568.4	838.22	835	953.73	1034.79	626.57	618.32	641.58	691.49	506.15	8653.19
Patriot	71.43	1475.18	1249.22	539.71	209.9	141.28							3686.72
GreatNorthern Fibers	704.61	1643.09	2016.48	2475.14	2561.53	2421.58	2639.6	2732.11	1427.5	1900.97	1614.87	1354.61	23492.09
Dosiak											149.85	81.73	231.58
total C&D	31965.96	24976.81	27895.6	31496.16	30943.03	31162.85	30723.73	32810.91	29525.23	33031.56	28147.47	22607.32	355286.63

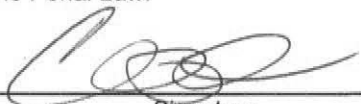
SECTION 21 - SIGNATURE AND DATE BY OWNER OR OPERATOR

Owner or Operator must sign, date and submit one completed form to the appropriate Regional Office (See attachment for Regional Office addresses, email addresses and Materials Management Contacts).

The Owner or Operator must also submit one copy by email, fax or mail to:

New York State Department of Environmental Conservation
Division of Materials Management
Bureau of Solid Waste Management
625 Broadway
Albany, New York 12233-7260
Fax 518-402-9041
Email address: SWMFannualreport@dec.ny.gov

I certify, under penalty of law, that the data and other information identified in this report have been prepared under my direction and supervision in compliance with a system designed to ensure that qualified personnel properly and accurately gather and evaluate this information. I am aware that any false statement I make in such report is punishable pursuant to section 71-2703(2) of the Environmental Conservation Law and section 210.45 of the Penal Law.


Signature

2/21/20
Date

Christopher Andrade
Name (Print or Type)

Commissioner
Title (Print or Type)

candrade@brookhavenny.gov
Email (Print or Type)

1 Independence Hill
Address

Farmingville
City

NY 11738
State and Zip

(631) 451-6222
Phone Number

ATTACHMENTS: ☒ YES ☐ NO
(Please check appropriate line)

ATTACHMENT B

TOWN OF BROOKHAVEN, NEW YORK



REQUEST FOR PROPOSALS ***RFP 19-01***

The Division of Purchasing on Behalf of the Department of Recycling and Sustainable Materials Management is Seeking Qualified Professional Consulting Services for the Administration Management of the Town's Proposed New Solid Waste Management Facility

RFP SCHEDULE

- This RFP is available for download at www.brookhavenny.gov: Click on Bids & RFPs.
- **RFP Time Line:**
 - Ad Date: January 17, 2019
 - Technical Questions Due By: January 31, 2019
 - Must be emailed to Town Contacts.
 - Addendum Q&A Issued: No later than February 7, 2019
 - Proposal Due Date: February 28, 2019 by 4:30 PM
 - **LATE PROPOSALS WILL BE REJECTED**
- The Proposer is responsible to assure that the proposal is delivered to the Office of the Division of Purchasing at Town Hall, by the stated due date and time.

Contact Information

Kathleen C. Koppenhoefer, Deputy Commissioner, kkoppenhoefer@brookhavenny.gov
Geri A. Manzolillo, Principal Purchasing Agent, gmanzolillo@brookhavenny.gov
Patricia Mazzei, Sr. Purchasing Agent, pmazzei@brookhavenny.gov
Christine Schroder, Principal Stenographer, cschroder@brookhavenny.gov

TOWN OF BROOKHAVEN
Department of General Services
Division of Purchasing
One Independence Hill
Farmingville, NY 11738
(631) 451-6252

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I. INTRODUCTION

A. PURPOSE

The Town of Brookhaven is soliciting proposals from qualified Proposers to perform SEQR, permitting, planning, design and project management for the Ashfill Project in coordination with the Town of Brookhaven Department of Recycling and Sustainable Materials Management. The Town has identified a 45-acre parcel immediately east of the Recycling Center and Maintenance Garage (see Attachment A) as the proposed location of the new facility.

The Vendor's proposal must meet the requirements established by the Town as described on the following pages as well as the requirements of the New York State Department of Environmental Conservation (NYSDEC) as set forth in Title 6 NYCRR Part 360 – 366 (Part 360). If a Vendor wishes to submit an alternate proposal, the review of such a proposal is at the Town's sole discretion.

B. BACKGROUND

The Town of Brookhaven has been awarded New York State Department of State funding to implement a transformative solution to the solid waste problem facing communities throughout Long Island. As part of its Municipal Consolidation and Efficiency Plan (MCEP) also referred to as "Brookhaven United," the Town of Brookhaven proposed a two part solution that included the construction of a new Regional Ashfill and the construction of an Enhanced Ash Recycling (EAR) Facility, both of which will be sited at the Town of Brookhaven's existing Solid Waste Complex in Yaphank.

Three of the four Waste-to-Energy facilities (WTEs) operating on Long Island utilize the Brookhaven Landfill for ash disposal. The Town of Hempstead had a 20 year "Ash for Trash" inter-municipal agreement (IMA) that has been subsequently succeeded by a similar agreement with Covanta Hempstead. Brookhaven has also had long-standing IMAs with the Towns of Islip, Huntington and Smithtown for their ash disposal.

This project is funded by New York State Municipal Consolidation and Efficiency Competition (MCEC) as a direct result of the Town having won the \$20 million-dollar MCEC grant and is subject to the standards of the granting agency.

PLEASE SEE EXHIBIT D "MWBE REQUIREMENTS" FOR DETAILED INFORMATION ON MEETING THIS STANDARD.

Leveraging MCEP grant funds, the Town seeks to design, permit, and construct an Ashfill** that is proposed to be sited at the Town's Solid Waste Complex in Yaphank. The proposed Ashfill will provide approximately 5.5 million cubic yards of capacity (air space) and would serve the Towns of Brookhaven, Hempstead, Huntington, Smithtown, and Islip. The new Ashfill will provide approximately 12 to 15 additional years of disposal capacity beyond the 6 years of remaining life at the existing Brookhaven Landfill.

In addition to the new Ashfill, the Town of Brookhaven expects to solicit **future** proposals to establish an Enhanced Ash Recycling (EAR) Facility on the grounds of the Town's Solid Waste Complex in Yaphank. The EAR Facility will seek to maximize ash recycling opportunities thereby further increasing the ashfill's life expectancy. The EAR Project is not part of the current Request for Proposals.

**** In addition to ash, the Town would like to explore the feasibility of accepting other relatively inert and / or beneficial use determination (BUD) materials such as street sweepings, certain dredge spoils, cut rubber tires and / or crushed glass.**

II. SCOPE OF WORK

Task 1: State Environmental Quality Review (SEQR) Process Overview

The project is subject to State Environmental Quality Review (SEQR, 6 NYCRR Part 617) and is classified as a Type I Action. Due to the nature of the project it is expected to require the completion of an Environmental Impact Statement. In support of this project and to satisfy the requirements of SEQR, the selected Proposer will work with the Town to complete the following:

- Prepare the Environmental Assessment Form (EAF) and supporting narrative;
- Develop a Draft Environmental Impact Statement (DEIS) Scope;
- Develop the DEIS;
- Prepare the Final Environmental Impact Statement (FEIS);
- Prepare a Draft of the Finding Statement for the Lead Agency's consideration
- Participate in a series of public meetings (Scoping Meeting, DEIS).

Deliverables: EAF, Scoping Document, DEIS, FEIS and Draft Finding Statement.

Task 2: Conceptual Design Development

The selected Proposer will work with the Town to develop alternative designs with the intent of maximizing landfill (ashfill) airspace, minimizing construction costs (the Town desires to construct the facility in stages), and complementing existing site topographic and geologic features. Siting requirements as set forth in Title 6 NYCRR Subpart 363-5 should be considered. As part of this task alternative concept level base grade and final grade designs for use in initial overfill planning will be prepared. An evaluation of the conceptual designs will be compiled and an assessment / or analysis of the following:

- Geotechnical considerations; leachate volume management,
- Stormwater conveyance and volume management,
- Landfill gas collection and control,
- Site infrastructure, and
- Soil management and overfill considerations.

At the completion of the conceptual alternatives analyses preferred attributes from the concepts will be combined into one selected concept that will be developed into the final permit design. These attributes will be collected into a design basis memorandum that will be used to guide permit-level design development.

Deliverables: Design Basis Memorandum; Concept Plans to guide Permit-Level Design Development

Task 3: Permit Application Requirements

After selection of a conceptual design, the Town will authorize the successful Proposer to prepare final design documents, including those required by NYSDEC, and as listed within Title 6 NYCRR Subpart 363-4 Permit Application Requirements.

Task 3A: Engineering Design Drawings and Report

Engineering Drawings shall be prepared in accordance with 6NYCRR Part 360 Section 363-4.2. Maps and drawings must include:

- Regional Map (363-4.2(a)(1))
- Vicinity Map (363-4.2(a)(2))
- Site Plan (363-4.2(a)(3))

Engineering drawings of the proposed ashfill in both plan and cross-sectional views, depicting: how the facility will be constructed, operated and closed; and areas of potential environmental impact. In addition, the engineering drawings must address the requirements set forth in Subpart 363-4, Sections 363-4.2(a) and 363-4.2(b).

The Engineering Report shall be prepared in accordance with Section 363-4.3 and must include:

- Site Description and Analysis (363-4.3(a))
- Landfill Liner Subbase Settlement Analysis (363-4.3(b))
- Structural Integrity and Overall Slope Stability Analysis (363-4.3(c))
- Seismic Stability Analysis (363-4.3(d))
- Description and Analysis of the leachate collection and removal system (363-4.3(e))
- Design Information for a Stormwater / Run-Off Conveyance System (363-4.3(f))
- Facility Closure and Post Closure Design Plan (363-4.3(h))

Deliverables: Engineering drawings and report in accordance with 6NYCRR Part 363 and an approvable Part 360 Permit Application The permit application to construct and operate a solid waste landfill will be submitted to NYSDEC.

Task 4: Hydrogeologic Investigation Work Plan and Report

The selected Proposer shall prepare a Hydrogeologic Investigation Report in conformance with Section 363-4.4 of Subpart 363-4. The Proposer must employ current, standard, and generally accepted procedures in obtaining the required hydrogeologic information. The work plan is anticipated to include / address the following elements:

- Description of the Geology and Hydrology (363-4.4(a)(1))
- Raw Field Data, Analytical Calculations, Maps, Flow Nets, Cross-Sections, Interpretations and Conclusions (363-4.4(a)(2))
- Literature Search (363-4.4(d))
- Surficial Geologic Mapping (363-4.4(e))
- Water Well Surveys (363-4.4(g))
- Geophysical and Geochemical Surveys (as required by NYSDEC)
- Tracer Studies (as required by NYSDEC)
- Monitoring Wells and Piezometers (363-4.4(k))
- Geologic Sampling (363-4.4(l))
- Logs (363-4.4(m))

Deliverables: Hydrogeologic Investigation Report in conformance with Subpart 363-4.

Task 5: Drainage Design / Stormwater Pollution Prevention Plan (SWPPP)

The selected Proposer shall prepare a stormwater management plan to control and convey stormwater runoff within the property. The overall stormwater management plan will be designed in conjunction with the phasing plans such that stormwater will be sufficiently controlled during the various stages of the ashfill development. The stormwater management systems will be presented in a stand-alone report intended to meet both the Part 363 requirements and the Multi-Sector permit requirements for a stand-alone document that addresses stormwater management of the facility during construction and operations. The plan will include calculations utilized to design the proposed stormwater management systems as well as drawings depicting cross-sectional details and layouts of the system.

The selected Proposer shall prepare and submit for approval to the Town a Stormwater Pollution Prevention Plan (SWPPP) in conformance with Chapter 86 of the Town of Brookhaven Town Code and the NYS SPDES General Permit for Stormwater Discharges from Construction Activity.

Deliverables: Drainage Report; SWPPP for Part 363, and Town Code, and Multi-Sector permit applications

Task 6: Construction Quality Assurance / Construction Quality Control Plan

The selected Proposer shall prepare a CQA / CQC Plan in conformance with Section 363-4.5 of Subpart 363-4. The Plan must address the observations and tests that will be used before, during and upon completion of construction to ensure that the construction materials and activities meet the requirements of Subpart 363-6. For each phase of construction (e.g., baseliner and final cover), the following will be detailed: responsibilities and authorities; personnel qualifications; inspection activities; sampling strategies; and documentation.

Deliverables: CQA/CQC Plan in conformance with Subpart 363-4.5

Task 7: Facility Manual

The selected Proposer shall prepare a Facility Manual in conformance with Section 363-4.6 of Subpart 363-4. The Facility Manual must: refer to the engineering drawings and reports and as appropriate; describe the anticipated day-to-day operations throughout the active life of the landfill; address appropriate sequencing of all major landfilling activities; demonstrate how the landfill will meet the operating and reporting requirements enumerated in Subparts 363-7 and 363-8; and include the following minimum information:

- Sustainability Plan (363-4.6(a))
- Post-Construction Plan (363-4.6(b))
- Fill Progression and Placement Plan (363-4.6(c))
- Waste Control Plan (363-4.6(d))
- Cover Material Management Plan (363-4.6(e))
- Environmental Monitoring Plan (363-4.6(f))
- Site Analytical Plan (363-4.6(g))
- Water Quality Analysis Tables (363-4.6(h))
- Leachate Management Plan (363-4.6(i))
- Odor Control Plan (363-4.6(j))
- Gas Monitoring and Emission Control Plan (363-4.6(k))
- Winter & Inclement Weather Operation Plan (363-4.6(l))
- Radioactive Waste Detection Plan (363-4.6(n))
- Emergency Response Plan (363-4.6(o))
- Conceptual Closure, Post-Closure Care, Custodial Care, and End Use Plan (363-4.6(p)) The item shall also conform with Subpart 363-9 Closure, Post-Closure, and Custodial Care.

Deliverables: Facility Manual inclusive of an Environmental Monitoring Plan in conformance with Subpart 363-4.6.

Task 8: Project Management Services / General Engineering Support

The selected Proposer as well as the Town will participate in a series of project coordination meetings with NYSDEC to maintain proper progression and communication. A project manager will be identified by the selected Proposer who will manage the various requirements needed for this project to ensure the process advances in an efficient and responsive manner. For budget purposes, Proposers should assume a minimum of six (6) project coordination meetings with NYSDEC, six (6) public meetings and coordination / design meetings with the Commissioner of the Department of Recycling & Sustainable Materials Management on a bi-monthly basis.

Deliverables: Project Coordination; Public Meetings



Verified Statement of
Christopher J. Goble, Ph.D.

BEFORE THE SURFACE TRANSPORTATION BOARD

***BROOKHAVEN RAIL LLC – PETITION FOR EXEMPTION FROM
REQUIREMENTS OF 49 U.S.C. § 10909***

DOCKET NO. FD 36399

**VERIFIED STATEMENT OF
CHRISTOPHER J. GOBLER, PHD**

I am a Professor and Endowed Chair of Coastal Ecology and Conservation at Stony Brook University as well as the Director of the New York State Center for Clean Water Technology and Chair of the New York State Shellfish Restoration Council. I have been researching and studying water issues for more than thirty years and have published more than 200 peer-reviewed papers in international scientific journals on the subject. The purpose of this Verified Statement is to describe the extent to which groundwater and surface water quality may be negatively impacted by the proposed construction of the rail line and solid waste transfer facility (“SWTF”) on “Parcel D” at the Brookhaven Rail Terminal Site (“BRT”). I have reviewed the VDEIS, which does not address, discuss, or even identify the possibility of an SWTF at the site, as well as more than two dozen associated documents.

In summary, as discussed below, the location of Parcel D is in a highly environmentally sensitive location, and the geology and topography make it so the construction of a SWTF would create a series of serious groundwater, drinking water, and surface water threats within the region. In addition the proposed site of the SWTF has a *depth to ground water of only 6 - 20 feet below ground surface*.[III](#), meaning contaminants at this location will rapidly be transported to the aquifer below as hydraulic gradients for the Long Island upper glacial aquifer range from 40

– 230 feet per day^[2]. Stated another way, anything that spills into the ground at this site, including expected substantial amounts of volatile organic compounds (“VOCs”) and other hazardous contaminants from solid wastes, will be transported to groundwater in a matter of hours.

The proposed rail line and SWTF is to be constructed on Parcel D, which is located within an area that is environmentally significant and sensitive, such that the proposed activity would pose a risk to groundwater, drinking water, and surface water quality. The proposed SWTF is to be the largest facility of its type in the State of New York, eventually receiving upwards of 6,000 tons of materials by the 5th year of operation. It will receive both construction and demolition debris (“C&D”) and municipal solid waste (“MSW”) , which is not allowable at the neighboring Brookhaven Landfill and thus creates the potential for a novel suite of contaminants to enter the groundwater at this site. Currently, Parcel D is mostly undeveloped and forested land. It is well known that such pristine forest provides an important role in removing contaminants before they enter groundwater^[3]. It is located within a deep flow recharge area, and within an area that has highly permeable soils and a shallow depth to groundwater, ranging from 6 to 20 feet below ground surface.^[4] All of Parcel D is located within Groundwater Management Zone VI as delineated in the Suffolk County Sanitary Code. As described and cited within the VDEIS, *The Long Island Comprehensive Waste Treatment Management Plan* defines the northern portion of Parcel D as located within the Zone III Hydrogeologic Zone, and the southern portion of Parcel D is located within the Zone VI. These two Hydrogeologic Zones are described as follows:

The Zone III Hydrogeologic Zone, as defined by the 208 Study, is characterized as the Highest Grade Reservoir. This zone is generally of high water quality and is associated with the Upper Glacial, Magothy, and Lloyd aquifers. Hydrogeological Zone VI is characterized as a shallow flow system and is thus designated as a surface water impact area. Groundwater and surface water inputs impact the water quality in Moriches Bay and the eastern portion of Great South Bay

High priorities for both zones are consideration of wastewater and stormwater management to minimize sources and transport of nutrients, metals, and organic chemicals to groundwater. ^[5]

Some of the expected outcomes from this new facility can be gleaned from experiences with the near-by Brookhaven Landfill. For many years, the Brookhaven Landfill has presented a series of serious environmental concerns regarding volatile organic compounds (“VOCs”) and other compounds that have leached into the ground and contaminated the groundwater region. Some of these contaminants include chloroform trichloroethene, toluene, unknown VOCs, unknown VOC acids, unknown VOC alkanes, phenol, antimony, hexavalent chromium, cyanide, ammonia, and nitrate^[6]. Many of these compounds were present at levels exceeding state groundwater standards^[6]. In fact, the Brookhaven Transfer Station has also regularly filed reports of received wastes containing radioactive materials. Importantly, the proposed SWTF at Parcel D will take in more than double the daily waste intake at the Brookhaven Landfill and, in addition, will take in and process MSW, which the Brookhaven Landfill does not, creating the potential for a wide-range of additional contaminants from items such as tires, paint, batteries, electrical appliances, fluorescent lamps, aerosol spray cans, chemicals, and fertilizers which collectively may contain and leach VOCs, polychlorinated biphenyls, and heavy metals. In addition, the proposed location of the SWTF within the southern portion of Parcel D with a shallow depth to groundwater (6 – 12 feet)^[7] will have a fueling station, rail scales, truck scales, a transfer station, a garage, and parking lots with over 300 parking spaces.^[8] There are expected to be a large number of vehicles on site and arriving and departing from this site on a frequent basis that will likely result in the releases of further contaminants including VOCs such as benzene, toluene, xylene, hydraulic fluids, and battery acids.

Beyond all of the above listed chemicals, it is important to note that US EPA and NYSDEC continue to identify new chemicals of emerging concern with regard to groundwater. One such example is 1,4-dioxane, a stabilizer in chlorinated solvents that is highly persistent in groundwater and a likely carcinogen found at higher levels on Long Island than anywhere else in the US. A decade ago, this was an unregulated contaminant that was infrequently measured in groundwater. Today, NYS Department of Health will finalize a one part per billion standard for this compound before the end of the year. Given the commonality of groundwater contamination with 1,4-dioxane on Long Island and its use as a stabilizer in chlorinated solvents and the

contamination of groundwater in the region with the chlorinated solvents, there may be 1,4-dioxane contamination in the region that could be exacerbated by this new facility.

Threats to drinking water

Given the potential for this new site to contaminate groundwater in the region, there is the potential for local drinking water supplies to become contaminated. Long Island has a sole-source aquifer and homes in the region are wholly reliant on regional groundwater as their drinking water supply. Comments filed by the Suffolk County Department of Health Services Division of Environmental Quality have stated that “The Office of Water Resources (OWR) has noted that there are existing non-community and private supply wells downgradient of the project area. The potential impacts to groundwater and downgradient existing non-community and private supply wells will need to be evaluated.^[9] In addition, Suffolk County Water Authority has indicated that this site is within the two-year travel time of the of their Patchogue/Yaphank well field which serves hundreds of homes in the region^[10]. As described above, groundwater associated with the Brookhaven landfill is contaminated with dozens of metals, VOCs, and other compounds that have serious public health risks, and therefore the proposed activities at Site D have the potential to have an even greater concentration and diversity of contaminants as it will host a SWTF which the Brookhaven Landfill does not have.

Threats to surface waters

Recently, Suffolk County completed the most in-depth and comprehensive study of groundwater-surface water coupling ever performed on Long Island, specifically its Subwatersheds Wastewater Plan^[11]. Part of this study involved dividing Suffolk County into more than 200 subwatersheds within which the travel time and direction of groundwater to surface waters was determined^[11]. This was achieved using a highly precise and sophisticated groundwater model developed by the consulting firm, CDM Smith. This study demonstrated that the proposed project at Site D lies mostly within the 2 – 10-year travel time of groundwater, with the northern most region being in the 10 – 25 year travel time zone^[11]. This means that groundwater from this site will begin discharging into surface waters, specifically the lower Carmans River and Bellport Bay, in 2 – 10 years. This generates multiple concerns with regard to the impact of this project on aquatic life and aquatic resources. As noted previously, transfer

stations have been historically associated with extremely high levels of nitrogen^[12] and, in fact, the Brookhaven Landfill has been shown to not only be enriched in nitrogen, but to cause exceedingly high levels of nitrogen in the creek which it discharges, Beaverdam Creek^[13]. The entire premise and purpose of Suffolk County's recent Subwatersheds Wastewater Plan is to reduce the loading of nitrogen from land to sea in Suffolk County due to the damaging effects nitrogen overloading can have on aquatic ecosystems^[11]. Pristine forest, as is currently present on the site in question, typically absorbs nitrogen and allows little if any nitrogen to penetrate into groundwater^[3]. Conversely, simply removing the vegetated regions on site D will reduce its nitrogen absorbing capacity. Converting it to impermeable surfaces will also assure surface run-off of nitrogen that will be rapidly directed to groundwater and, in a few years, surface water^[3]. In addition, high levels of nitrogen associated with run-off from this new transfer station is likely to contaminate groundwater in this region that will discharge into and damage the ecosystems of the Carmans River and Bellport Bay.

Beyond nitrogen, the other contaminants that may stem from the new transfer station and SWTF described above will also ultimately discharge into Carmans River and Bellport Bay where they have the potential to contaminate marine life. In addition, high levels of nitrogen discharging into this region could stimulate harmful algal blooms that create biotoxins that can accumulate in shellfish^[14]. While this is of broad concern, there are two particular issues that are highly troublesome. Firstly, in 2017, Governor Andrew Cuomo initiated the Long Island Shellfish Restoration Program which has planted tens of millions of clams and oysters across Long Island. One of the five sites selected for this plan was Bellport Bay where in 2019, Stony Brook University completed the planting of more than one million adult hard clams within specifically designated 'hard clam spawner sanctuaries' while Cornell University planted tens of millions of small oysters. Overall, the Governor has invested more than \$10M in this plan. Given that groundwater from the activity at site D will discharge into Bellport Bay, any contaminants associated with those activities that enter the groundwater will threaten the health and well-being of these hard clam spawner sanctuaries.

A final concern is for the ability of contaminants emanating from this site and discharging into Bellport Bay to concentrate in the wild hard clam population in this region.

This could also cause the indirect occurrence of biotoxins from excessive nitrogen discharge. In 2012, following Hurricane Sandy, a new ocean inlet opened in Bellport Bay that had contributed toward this bay having one of the most robust hard clam harvests on Long Island. During the summer of 2020, at least a half dozen baymen could be regularly seen harvesting hard clams in this bay. Again, given that groundwater from the activity at site D will discharge into Bellport Bay, any contaminants associated with those activities could ultimately accumulate in harvested hard clams in Bellport Bay and become a public health threat.

References

[¹] See VDEIS at 126 (Figure 16, “Depth to Groundwater for Parcel D”).

[²] (Buxton and Modica, 1992)

[³] Valiela, I., Geist, M., McClelland, J., & Tomasky, G. (2000). Nitrogen loading from watersheds to estuaries: verification of the Waquoit Bay nitrogen loading model. *Biogeochemistry*, 49(3), 277-293.

[⁴] Based on the soil survey within the Voluntary Draft Environmental Impact Statement for the Proposed Brookhaven Rail Terminal Expansion (Rev. Aug. 2017) (“VDEIS”), the development would be primarily on a riverhead sandy loam, such that “[p]ermeability is moderately rapid in the surface layer and in the subsoil are very rapid in the substratum.” VDEIS at 3.1.1.1. Additionally, GIS data indicates the “depth to groundwater on Parcel D ranges from approximately 2 feet to 60 feet bgs [below ground surface] It should be noted that the shallower depths to groundwater are extremely localized and are due to two depressions on the southern and central portion of Parcel D (see Figure 16).” VDEIS at 125.

[⁵] VDEIS at 127 citing *The Long Island Comprehensive Waste Treatment Management Plan*.

[⁶] Tonjes, D. J. (2010). Ambient water quality in the Upper Glacial aquifer near the Town of Brookhaven landfill, Suffolk Co., NY.

[⁷] See VDEIS at 126 (Figure 16, “Depth to Groundwater for Parcel D”).

[⁸] *Compare* Petition for Exemption, *Brookhaven Rail LLC – Construction & Operation Exemption – In Suffolk County, NY*, STB Docket No. FD 36398 (filed June 25, 2020) at Exhibit C with VDEIS at 126 (Figure 16, “Depth to Groundwater for Parcel D”).

[⁹] EI26926 Suffolk County DHS comments on the Proposed Brookhaven Rail Terminal Expansion

[¹⁰] Suffolk County Water Authority correspondence with Town Planner, Craig Tillinghast, Town of Brookhaven. November 8 2019.

[¹¹] Suffolk County Subwatersheds plan, July 2020

[¹²] Gobler, C. J., & Boneillo, G. E. (2003). Impacts of anthropogenically influenced groundwater seepage on water chemistry and phytoplankton dynamics within a coastal marine system. *Marine Ecology Progress Series*, 255, 101-114.

[¹³] SCDHS, 2008, Beaver Dam Creek, Brookhaven, NY: Status and Trends in Water Quality, Suffolk County Department of Health Services, Yaphank, NY, 60 pp. + appendices.

[¹⁴] Hattenrath, T. K., Anderson, D. M., & Gobler, C. J. (2010). The influence of anthropogenic nitrogen loading and meteorological conditions on the dynamics and toxicity of Alexandrium fundyense blooms in a New York (USA) estuary. *Harmful Algae*, 9(4), 402-412.

[¹⁵] Petition for Exemption, STB Docket No. FD 36399 (filed July 20, 2020), Exh. D at 3-5 (Negative Declaration for proposed Brookhaven Rail Terminal).

VERIFICATION

I, Christopher J. Gobler, Ph.D., verify under penalty of perjury that I have read my Verified Statement, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.



Christopher J. Gobler, Ph.D.,

Executed on September 16, 2020

Biosketch:

CHRISTOPHER J. GOBLER, PhD
ASSOCIATE DEAN AND PROFESSOR
SCHOOL OF MARINE AND ATMOSPHERIC SCIENCES
STONY BROOK UNIVERSITY
SOUTHAMPTON, NY 11968
christopher.gobler@stonybrook.edu

EDUCATION

1999	Ph.D.	Coastal Oceanography	Stony Brook University
1995	M.S.	Marine Environmental Science	Stony Brook University
1992	B.A.	Biology	University of Delaware

POSITION

2015 – : Director of the New York State Center for Clean Water Technology at Stony Brook University
2014- 2018: Associate Dean of Research, School of Marine and Atmospheric Sciences, Stony Brook University

2012- : Professor, Director of Academic Programs on the Stony Brook - Southampton campus, School of Marine and Atmospheric Sciences, Stony Brook University

2005 – 2012: Associate Professor, Director of Academic Programs on the Stony Brook - Southampton campus, School of Marine and Atmospheric Sciences, Stony Brook University

1999 – 2006: Assistant and Associate Professor of Marine Science and Biology, Southampton College, Long Island University, Southampton, NY.

COMMUNITY INVOLVEMENT

More than 250 public presentations since 2000.

More than 250 presentations to scientists since 1995

HONORS AND AWARDS

2016 - 2025: Founding member of the GlobalHAB Scientific Steering Committee established by the Intergovernmental Oceanographic Commission of UNESCO.

2016: Environmental Champion award, US EPA

2015: Congressional briefing to the US House of Representatives and the US Senate on “The Challenge of Ocean Acidification”, organized by Environmental Defense Fund

2014: Dennis Puleston Environmental Achievement Award by the Pine Barrens Society

2104: Congressional briefing to the US House of Representatives and the US Senate on “The Challenge of Ocean Acidification”, organized by NOAA

2013: Congressional Testimony before the US House of Representatives subcommittee on Water Resources and Environment hearings on the 2013 Water Resources Development Act

2012: Environmental Equinox Award, Citizens Campaign for the Environment, NY, USA

2011: Discovery of the Year Award by NPR affiliate, WCAI, Climatide,

2009: Bay Guardian Award, Water Keepers Alliance, USA

2008 - 2014: Elected member of the US National Harmful Algal Bloom Committee, commissioned by United States Congress;

TEN (10) PUBLICATIONS

CJ Gobler, CS Young, J Goleski, A Stevens, J Thickman, RB Wallace 2019. Accidental ecosystem restoration? Assessing the estuary-wide impacts of a new ocean inlet created by Hurricane Sandy. Estuarine, Coastal and Shelf Science 221, 132-146

Young, CS, Peterson, BJ, **Gobler, CJ**. 2019. The bloom forming macroalgae, *Ulva*, outcompetes the seagrass, *Zostera marina*, under high CO₂ conditions. *Estuaries and Coasts*, 1-16

Young, CS, **Gobler, CJ**. 2018. The ability of macroalgae to mitigate the negative effects of ocean acidification on four species of North Atlantic bivalve. *Biogeosciences* 15 (20), 6167-6183

Gobler CJ, OM Doherty Griffith AW, Hattenrath-Lehmann TK, Y Kang, Litaker W. 2017. Ocean warming since 1982 has expanded the niche of toxic algal blooms in the North Atlantic and North Pacific oceans. *Proceedings of the National Academy of Sciences of the United States of America* 114 (19), 4975-4980

Young CS, **Gobler CJ**. 2017. The organizing effects of elevated CO₂ on competition among estuarine primary producers. *Scientific Reports*.

Gobler CJ, Baumann H. 2016. Hypoxia and acidification in ocean ecosystems: Coupled dynamics and effects on marine life. *Biology Letters*, 12(5), 20150976.

Young CS, **Gobler CJ**. 2016. Ocean Acidification Accelerates the Growth of Two Bloom-Forming Macroalgae. *PLoS One* 11(5): e0155152.

Wallace RB, **Gobler, C.J.** 2015. Factors controlling blooms of microalgae and macroalgae (*Ulva rigida*) in a eutrophic, urban estuary: Jamaica Bay, NY, USA. *Estuaries and Coasts* 38(2), 519-533.

Tang, YZ, Kang Y, Berry DL, **Gobler CJ**. 2014. The ability of the red macroalga, *Porphyra purpurea* (Rhodophyceae) to inhibit the proliferation of seven common harmful microalgae. *Journal of Applied Phycology* 27(1), 531-544.

Tang YZ, **Gobler CJ.**, 2011. Allelopathic effects of the green macroalgae, *Ulva lactuca*, on seven common harmful algal bloom species. *Harmful Algae* 10: 480–488

GRADUATE STUDENTS:

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Current: Ryan Wallace (PhD), Ben Kramer (PhD); Megan Ladds (PhD), Stephen Tomasetti (PhD), Peter Sylvers (PhD), Brooke Morrel (MS), Mark Lusty (MS), Timothy Curtin (MS), Rebecca Rodgers (MS)

Verified Statement of
David J. Tonjes, Ph.D.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36399

**BROOKHAVEN RAIL LLC
EXEMPTION FROM REQUIREMENTS OF 49 U.S.C. § 10909
IN SUFFOLK COUNTY, NEW YORK**

VERIFIED STATEMENT OF DAVID TONJES IN REPLY

My name is David J. Tonjes. I am employed as a Research Associate Professor at Stony Brook University in the College of Engineering and Applied Sciences, Department of Technology and Society. I am fully familiar with solid waste issues on Long Island, including generation, management, environmental impact, energy potentials and technologies, as well as associated groundwater impacts. A copy of my resume is attached to this statement.

I submit this statement in opposition to the petition by Brookhaven Rail LLC (“BHR”) for an exemption from the requirements of 49 U.S.C. § 10909, which I am advised would permit BHR to obtain an expedited review and exemption from statutorily required and local land use review procedures in connection with a proposed solid waste rail transfer station (“Transfer Station”) to be located at the Brookhaven Rail Terminal in Yaphank.

I am also advised that the primary reason given for BHR's application for an exemption for this facility is a soon-to-be crisis in the management of municipal solid waste (MSW) and construction and demolition debris (C&D) associated with the closure of the Town of Brookhaven Landfill in 2024. BHR claims that local review processes will not be completed timely to allow its transfer station to alleviate the problems that may arise with the closure of the landfill.

However, as fully set forth below, 1) this proposed facility is not justified by Long Island disposal needs that may follow on the closure of the Brookhaven Landfill; 2) such a large waste management facility, in its proposed location, has the potential to affect the environment and so harm people, other organisms, and potentially Long Island's sole source aquifer; 3) the best argument for using rail waste transport on Long Island (reduction in impacts from truck traffic) is inapplicable to the proposed facility located in Yaphank.

Instead, careful and sound reviews by local authorities of the proposed project can lead to mitigation of potential impacts, and reconsideration of an overly large facility for the potential need.

1. Is there a need for a rail transfer facility of this size?

BHR claims the exemption at issue is "necessitate[d]" by the "imminent closure of the Brookhaven Landfill." (Flower V.S., p. 3). BHR claims that the Facility "must be constructed and operational prior to the Town of Brookhaven's landfill's "anticipated closure in 2024 in order to provide replacement capacity" for the landfill. (10909 Petition, p. 33). Specifically, BHR claims that the Transfer Facility will take in over "6,000 tons per day of C&D as well as MSW." (Flower V.S., p. 5).

However, these claims of a need for such a large facility in light of the landfill closure are not well grounded.

First, the rail facility is proposed to manage MSW; but the Brookhaven Landfill accepts no MSW, although public perceptions are that all landfills manage MSW. All MSW brought to the Brookhaven Landfill site is managed through the Town's own transfer station. It is packaged into transfer trailers and brought to the Covanta waste-to-energy facility in Westbury. Under the Long Island Landfill Law (ECL 27-2704), in fact, the landfill is forbidden to accept municipal solid waste. No MSW has been landfilled at the site for 25 years. Thus, the closure of the Brookhaven Landfill creates no additional or urgent need for the disposal of MSW and creates no additional or urgent need for a MSW transfer station.

The Brookhaven Landfill does dispose of several waste streams relevant to the proposed use of the BHR transfer station. It manages C&D, processed C&D (used as cover material), and wastes generated by a variety of municipal bodies and agencies that are permitted to be disposed under the Long Island landfill Law. Cell 6 of the landfill has been in operation since 2004. From 2004 through 2019, Cell 6 received 5,282,054 tons of C&D, 4,777,001 tons of processed C&D, and 1,185,215 tons of other acceptable materials from municipal agencies. This is 12,376,135 tons of C&D in sum and a grand total of 13,561,350 tons. This excludes MSW incinerator ash, which is a substantial waste stream managed at the facility, but not one which will be managed through the proposed transfer station (the Town seems to have plans to site a new ashfill on the existing landfill property). On an annual basis, the facility manages an average of approximately 850,000 tons. Calculated on a daily basis, that is 2800 tons per day in total (the calculation excludes Sundays and 12 major holidays a year, using 301 days a year). Even if this is all C&D, which it is not, this is less than 50% of the proposed BHR facility

capacity, meaning the operators will need to solicit other sources of material if their intention is to use the facility at its full capacity. This facility is clearly not intended to merely serve as a replacement for the landfill.

The source of materials received at the landfill also needs to be considered. The “other materials” received at the landfill consist largely of C&D that originates west of the landfill. For some landfill users the convenience of the landfill (no long trips for drivers, no worries about the vagaries of trans-New York City traffic, etc.) may outweigh lesser costs at off-Long Island facilities. However, for BHR to attract all of the current Brookhaven landfill wastes, it would need to offer a lower tip fee than alternative locations. The savings associated with rail transportation would need to exceed the costs incurred in packaging wastes for delivery to the transfer station. It is not clear that operators in western Suffolk County, Nassau County, Queens and Brooklyn will find the proposed facility cheap enough to commit to using it as their primary disposal point, because it may be difficult for the BHR operators to find such inexpensive disposal sites that the cost of rail shipment plus disposal is less than the costs of trucking to what are relatively cheap disposal sites within one day’s drive of Long Island.

There are also other existing rail based transfer stations on Long Island already, including One World Recycling in Lindenhurst, Coastal Distribution in Farmingdale, and Excel Recycling in Medford, which transport such C&D off Long Island. These facilities would be competitors. They are all located west of the Yaphank site.

Currently Long Island disposes of somewhere between 750,000 and 1 million tons per day of MSW off-Long Island. About half of these wastes are generated by two municipalities, North Hempstead and Oyster Bay, both located in Nassau County. It would be illogical for these municipalities to use a transfer station located east of their own transfer stations as an

intermediate disposal point, or that loading, unloading, and then loading the MSW again would make much economic sense. Commercial wastes are also shipped off-Long Island – as near as I can tell, something less than 500,000 tons per year. At least 75% of those wastes are generated west of the proposed transfer station. It would need to make economic sense to ship wastes east then reload them into rail cars for shipment back west to the kinds of facilities that can be accessed by truck already, or to other facilities far beyond. Let's assume the current Long Island exported MSW waste stream is 1 million tons per year, which is approximately 3,300 tons per day (based on 301 operating days a year). This means that in order to fill its proposed 6,000 tons per day capacity, the BHR facility would need to capture all C&D and other wastes disposed at the Brookhaven landfill, and all of the exported MSW currently generated on Long Island. It makes little sense from a local and regional solid waste management and community planning perspective to have one massive facility controlled by one private operator seek to handle such substantial volumes, with no demonstrated need for a project of such a large scale.

This also incorrectly assumes that waste generation on Long Island will remain the same as it is today. For decades, various elements of the C&D waste stream have been diverted from disposal. Concrete and asphalt are rarely disposed on Long Island anymore. In other areas of the country, gypsum board and asphalt shingles have robust recovery markets. There has been an active movement towards “deconstruction” of buildings, where care is taken as they are torn down so that all kinds of materials (including wood framing, roofs, and fixtures) can be re-used. This is best undertaken with older housing stock (pre World War II) where the materials used for construction are still greatly appreciated for their high quality (perhaps 10%-20% of buildings on Long Island, although potentially a higher percentage in parts of Brooklyn and Queens). In addition, visual inspection of C&D shows that a good portion is not building materials but items

such as carpet and furnishings, and also includes large plastic containers and other packaging associated with material delivery to the job sites. These types of materials have some potential for recovery today. Thus, more aggressive recovery operations could reduce the need for disposal of much of what is currently being landfilled as C&D on Long Island. The lack of aggressive recovery of C&D is partially due to system inertia and partly because markets have not developed to meet what is poor demand (since the materials are not being offered to potential reusers). The proposed Transfer Facility instead seeks to send the vast majority of these materials to landfills.

In addition, the New York State Solid Waste Management Plan calls for aggressive reductions in MSW disposal over the next decade or so, intending to reduce MSW disposal by up to 90% from 2010. Whether due to implementation of the State Plan or other forces, residential disposal in the Town of Brookhaven has decreased by 10% since 2003 (over 20% considered on a per capita basis). Long Island has an existing fixed incinerator infrastructure associated with local municipalities (although all are operated by a private company, Covanta), totaling to about 1.6 million tons per year. If waste generation continues to decline and recycling efforts are rejuvenated, then there could be even less need for off-Long Island disposal of MSW. This would make it harder for BHR to fill its transfer station. Thus, the closure of the Brookhaven Landfill alone will not generate the need for the proposed facility, and it is not clear that there will continue to be the same demand for solid waste and C&D disposal capacity on Long Island, even in the near future.

Having a more complete review process including local governments that have stakes in these issues and have been delegated authority to plan for and manage local wastes by the New York State Department of Environmental Conservation will allow for a forthright and candid

discussion of the need for the facility to occur. Close examination of the need for such a facility seems essential, and may benefit the operators of BHR. For instance, the Town of Islip in the mid-1980s proposed to build two WTE incinerators to address its perceived disposal needs. The Town faced fierce opposition, and after much public scrutiny reduced its project to a single facility. By the mid-1990s the Town had more capacity than need for its residential wastes; it met its needs by coercing private sector carters into delivering wastes to the facility. If both proposed facilities had been built, the Town would have faced a severe fiscal crisis to pay off its capital commitments. Pushing BHR to justify the scope of this project through local and State review processes (instead of exempting it under federal rail rules) could, in the end, be much appreciated by the company if the perceived need for the facility is not actually borne out.

2. What impacts may result from this facility?

New York State has several hundred pages of regulations intended to mitigate the potential negative impacts of solid waste management facilities. Transfer stations are among the facilities that are subject to the regulations. This is because the materials we discard are not benign. Some materials are putrescible – that is, they are subject to rot, releasing gases and liquids that need to be managed. Some wastes contain hazardous materials that can negatively impact human and health and other organisms in the environment should they not be managed properly, primarily materials designated as toxic wastes by the federal and state government. While typically less than 0.5% of the waste stream, including packaging, these still present a significant risk as they often are household pesticides, some household cleaners, automotive fluids, pesticides and herbicides used in landscaping, and sometimes soils and woods affected by pesticides for termites. Pressure treated lumber can also be an issue. Most of these wastes will impact a facility like a transfer station if compaction of waste handling were to damage the

containers or packaging for these materials. Notably, there have also been inbound and outbound incidents reported involving radioactive material at the Brookhaven Transfer Station, and even if not a direct contamination threat, this material still needs to be tracked. Because this facility is proposed to be the largest such facility on Long Island; indeed, the largest in New York State, it will take special management and mitigation to ensure that all operations meet State and local regulations.

Transfer stations, even when well managed, are not seen as being welcome neighbors. Solid wastes tend to create odors; even C&D, which contain little in the way of putrescible materials, tends to smell. Although the operating regulations for transfer stations try to address these issues by requiring facilities to be operated under a roof and to create clean floors each night, all transfer stations I am aware of stink mightily. And this is to be the largest of its kind. In addition, rail is most efficient when trains are long. This may mean that full cars will be staged on site until a sufficient number have accumulated. No matter how air-tight the container, smells from waste are usually unavoidable, and as the wastes age the odors get worse.

Long Island has a sole source aquifer – that is, we get all our drinking water from the ground under our feet. It was the acknowledged impact of landfills on the aquifer that caused the Long Island Landfill law to be passed in 1983; the ban on the disposal of MSW in local landfills was intended to minimize the effect of garbage on local water resources. The Suffolk County Department of Health Services expends much of its efforts to try to minimize the impact of the development of local lands and the effects of our lives on our water resources, to ensure that we can safely drink the water we pump up from underground. Transfer stations, especially those engaged in substantial sorting, crushing, shredding, and related processing activities, can cause threats to human health and the environment. Therefore, the State and local regulations require

special precautions be taken: all waste must be managed under a roof, the wastes must be removed from the transfer station every day, and care must be taken to collect and manage liquids generated from the collection and processing of wastes and spilled onto the floors, because of the potential spillage of hazardous materials. This location is in the Deep Recharge Zone. This portion of Long Island was identified in the fundamental study of Long Island groundwater management, the 208 Study by Lee Koppleman in 1978, because precipitation falling on the ground here can flow into the deeper two aquifers. These deeper two aquifers were identified as the future water resources for Long Island, because current land uses have degraded water quality in the shallowest aquifer. Any run-off or leachate from the transfer station could have negative impacts on the future water supplies for Long Island.

Truck traffic at the facility will be substantial. At least 250 trucks will arrive at the site every day if all wastes are delivered by transfer trailer; if packer trucks are used, the number will be more like 500 trucks a day. If a mix of transfer trailers and packer trucks deliver wastes, the number is likely to be between 350 and 400. Assuming a 10 hour work day (6 am – 4 pm), that will require managing more than 1 truck every two minutes on average. There will be a need for large staging areas. Trucks in the waste business are not often the most pristine vehicles due to the environments they traverse; the run-off from these paved surfaces is likely to be more impaired than typical roadway run-off. Many of the recharge basins on Long Island, which are constructed to manage road run-off by absorbing the water into the subsurface, have contaminated soils from asphalt pavement chemicals (including a number of identified human carcinogens), tire wear, leaks of vehicle chemicals like oils and fuels, and other debris from vehicles, and this is likely to be the case here. This also poses some degree of threat to the deeper aquifers' water quality.

Therefore, there is significant potential for impact from this facility to human health and the environment. A complete review process can carefully review the potential and at a minimum ensure mitigation of the potential impact is in place before any effect is realized, not after.

3. Will this facility actually reduce Long Island truck traffic?

One of the compelling reasons for expanding rail transport of waste on Long Island is the seemingly obvious argument that shipping waste by rail will reduce the number of trucks on Long Island roads. But will that actually be the case?

This facility is being sized to ship 6,000 tons per day of waste by rail. If transfer trailers were used to ship that amount of waste from Yaphank off Long Island, then about 250 trucks would be needed (500 trips a day, since the trucks would need to return). All of this traffic would be on the Long Island Expressway to one of the Long Island Sound bridges (via the Clearview Expressway and/or the Brooklyn-Queens Expressway) or to the Verrazano Bridge via the Brooklyn-Queens Expressway. All of these roads have terrible traffic conditions, exacerbated by the large number of trucks needed to move the things Long Islanders use (and then discard).

Removing these 500 trucks in place of unseen rail cars that do not need local roads may be a great help in addressing our traffic issues. But, how will the wastes that fill the rail cars get to BHR in Yaphank? If the primary waste is C&D, then much of the waste will arrive in transfer trailers from locations in Brooklyn and Queens – perhaps 150-200 trips east each day on the Long Island Expressway, and then the same number back west each day. BHR itself notes most C&D managed on Long Island comes from New York City sources (See Flower V.S., p. 4.). Most MSW on Long Island is generated west of the facility, and will need to be trucked to the

facility before it can start its rail trip. I estimate that 350-400 trucks a day will access the facility, and nearly all of them will come from the west to the facility. So, the number of trucks on Long Island roads will not be reduced by the facility; the road mileage on Long Island roads, depending on where the trucks formerly went, may decrease or may increase. MSW trucks coming from the Town of North Hempstead transfer station in Port Washington will drive more on Long Island roads going to the proposed rail facility than if they were driving directly to an off-Long Island landfill; the same is true for trucks from the Winter Brothers' Glen Cove facility and a host of other transfer stations throughout Nassau County, Queens, and Brooklyn.

A thorough, close review could determine the potential for achieving less truck traffic on Long Island, but no such review has been conducted by BHR yet to date. If diminished truck traffic could be shown through careful study to the satisfaction of local authorities, then the facility would be much more likely to be seen as a good neighbor, which is rarely the case for large solid waste facilities such as this. So, a careful examination of this issue could prove to be beneficial to BHR; a close evaluation is more likely to occur when using and accessing local expertise.

Summary:

The need for a large rail transfer station in Yaphank by 2024 has not been shown in BHR's Petition; such a facility could have consequential impacts on the local environment; and the obvious rationale for rail transport of wastes (decreases in local road traffic) is not supported by the proposed facility located in the central part of eastern Suffolk County. By requesting a waiver of local reviews and instead insisting on only federal oversight, BHR will avoid the needed knowledgeable and locally-specific review to address the questions I have raised. Therefore, its request for a waiver should not be granted.

Verification

I, David J. Tonjes, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed: September 15, 2020



David J. Tonjes, PhD

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Skills

Communication: excellent, fast technical and general writer and editor, good engaging speaker

Analysis: technical abilities (statistics, scientific background, modeling), academic training

Synthesis: multi- and cross-disciplinary skills, out-of-the-box and big picture vision

Leadership: best with individuals and small groups; fosters independence

Pragmatic, flexible thinker who can learn a lot about new topics quickly; voracious, wide reader

Skill Areas

Solid waste: generation, management, environmental impact, energy potentials, technologies

Groundwater: Long Island systems and pollution, some modeling

Coastal environments: pollutant effects, salt marshes, NY metropolitan region

Broad general scientific experience in the major disciplines coupled with great curiosity

Professional Employment History

2019 - present	<i>Graduate Program Director</i>	Department of Technology and Society
2018 - 2019	<i>Masters Degree Program Director</i>	Stony Brook University
2015 - present	<i>Research Associate Professor</i>	Stony Brook, NY
2015 - 2018	<i>Undergraduate Program Director</i>	
2006 - 2015	<i>Assistant Professor</i>	
2008 - 2016	<i>Consulting Scientist</i>	Cashin Associates, PC
2001 - 2007	<i>Senior Scientist</i>	Hauppauge, NY
1999 - 2006	<i>Lecturer</i>	Marine Sciences Research Center
1999 - 2001	<i>Research Scientist</i>	SUNY at Stony Brook
1990 - 1998	<i>Research Assistant & Teaching Assistant</i>	Department of Technology and Society & Marine Sciences Research Center
1984 - 1989	<i>Mathematics Teacher</i>	Oceanside High School, Oceanside, NY Milton Olive School, Wyandanch, NY Bellport Middle School, Bellport, NY

Education

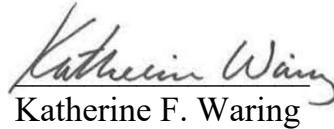
1998	PhD (Coastal Oceanography)	SUNY at Stony Brook
1997	MPhil (Coastal Oceanography)	SUNY at Stony Brook
1991	MS (Technological Systems Management)	SUNY at Stony Brook
1987	MS (Computer Science)	New York Institute of Technology
1979	BA (Liberal Arts)	St. John's College (MD)

Some Recent Project Areas

Landfill gas modeling	Recycling processes
US waste generation	Food waste management
Solid waste composition	"Multi-model" modeling strategies

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2020, I caused a true and correct copy of the foregoing Reply in Opposition of the Citizens Campaign for the Environment to be served by U.S. Mail, postage prepaid, or by more expedited means upon all parties of record.

A handwritten signature in cursive script, reading "Katherine Waring", is written over a horizontal line.

Katherine F. Waring

An Attorney for

Citizens Campaign for the Environment