

SERVICE DATE – JANUARY 12, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35141

U S RAIL CORPORATION—CONSTRUCTION AND OPERATION EXEMPTION—
BROOKHAVEN RAIL TERMINAL

Digest:¹ This decision finds that Brookhaven Rail, LLC, and Brookhaven Rail Terminal have complied with the Board’s conditions of its 2010 decision.

Decided: January 11, 2018

On September 9, 2010, the Board granted an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10901 for U S Rail Corporation (U S Rail), a Class III rail carrier, to construct and operate an 18,000-foot rail line (the Line) on a 28-acre parcel in Brookhaven, Suffolk County, N.Y., subject to certain environmental conditions. U S Rail Corp.—Constr. & Operation Exemption—Brookhaven Rail Terminal (2010 Decision), FD 35141 (STB served Sept. 9, 2010). Brookhaven Rail, LLC (Brookhaven Rail), a successor to U S Rail, now provides service on the Line to the Brookhaven Rail Terminal (BRT).² In a letter filed on March 14, 2014, the Town of Brookhaven, N.Y. (the Town) requested that the Board reopen the proceeding, arguing among other things that Brookhaven Rail and BRT (collectively, Respondents) were not complying with the three environmental conditions imposed by the Board in the 2010 Decision.³

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² U S Rail assigned its construction and operation authority involving the parcel together with a leasehold interest in the underlying property to U S Rail New York, LLC (U S Rail NY). U S Rail NY was subsequently renamed Brookhaven Rail, LLC, by its equity-owner, Oakland Transportation Holdings LLC. See Gabriel D. Hall—Corp. Family Transaction Exemption—U S Rail N.Y., LLC, FD 35458 (STB served Jan. 7, 2011); Nev. 5, Inc.—Control Exemption—GTR Leasing LLC, FD 35635 (STB served June 15, 2012).

³ In a related proceeding, Respondents filed a petition for declaratory order requesting a finding from the Board that the construction and operation of rail track in Yaphank, Suffolk County, N.Y., are: (1) subject to the Board’s jurisdiction and as a result entitled to preemption of state and local permitting and preclearance requirements; and (2) exempt from the Board’s licensing and environmental regulation because the track is a spur pursuant to 49 U.S.C. § 10906. The Board held that proceeding in abeyance, as the issues raised by Respondents were

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On July 8, 2015, the Board denied the Town's request to reopen the proceeding on the grounds that the environmental conditions were not satisfied. In particular, the Board found that Respondents had fully complied with two of the three previously imposed environmental conditions, and substantially complied with the remaining condition concerning their spill prevention, control, and countermeasures (SPCC) plan. The Board stated that the final condition would be met when Respondents notify the Board's Office of Environmental Analysis that Respondents' SPCC plan is compliant with Article 12 of the Suffolk County Sanitary Code, or that Suffolk County has found that such compliance is not required.

On October 9, 2015, Respondents submitted a "Notification of Compliance with Board's Remaining Environmental Condition and Motion to Close the Proceeding," claiming that the final condition had been met. On October 28, 2015, the Town replied in opposition. However, on November 16, 2015, Respondents submitted a pleading that stated the parties were engaged in settlement negotiations and asked the Board to extend Respondents' deadline to file a motion to strike the Town's reply. The Board granted that extension and two subsequent extensions requested by Respondents.

On April 28, 2016, Respondents filed a motion asking the Board to close the proceeding, stating that Respondents and the Town had entered into a settlement and that Respondents expected the Town to withdraw its opposition shortly. The Town replied on May 12, 2016, stating that the processes required under the settlement had not yet been completed.

On November 15, 2017, the Town submitted a pleading indicating that it now consents to Respondents' request to enter a decision and close the proceeding due to the settlement. Also, the Town states that it withdraws its opposition to Respondents' October 9, 2015 pleading claiming compliance with the Board's environmental conditions.

The Board finds that there are no remaining issues regarding Respondents' compliance with the Board's environmental conditions. Accordingly, this proceeding will be closed.

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already pending before a federal district court. Brookhaven Rail Terminal—Pet. for Declaratory Order, FD 35819 (STB served Aug. 28, 2014).

On April 13, 2016, Respondents filed a motion in Docket No. FD 35819 stating that they had resolved their dispute with the Town regarding the issues raised in that docket, and that the court had referred to the Board the issue of whether the track in question was spur track. The Board ultimately issued a declaratory order finding that the track constitutes spur track under 49 U.S.C. § 10906. Brookhaven Rail Terminal—Pet. for Declaratory Order, FD 35819 (STB served Aug. 30, 2016).

It is ordered:

1. Respondents have complied with the Board's environmental conditions.
2. This proceeding is closed.
3. This decision is effective on its date of service.

By the Board, Board Members Begeman and Miller.