

CORRECTED VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35141

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

**MOTION FOR EXTENSION OF TIME TO FILE MOTION TO STRIKE OR
OTHERWISE RESPOND TO TOWN'S FILING**

 GRANTED Office of Proceedings	DECISION ID NO.: <u>44959</u>
	DECIDED DATE: <u>12/14/15</u>
	SERVICE DATE: <u>12/14/15</u>
	APPROVED: <u>Rachel O Campbell</u> Director
☐	

David T. Ralston, Jr.
Zachary L. Coffelt
Foley & Lardner LLP
3000 K Street, N.W., Suite 600
Washington, D.C. 20007

*Counsel for Brookhaven Rail Terminal
and Brookhaven Rail, LLC*

Dated: November 16, 2015

BEFORE THE
SURFACE TRANSPORTATION BOARD

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U S RAIL CORPORATION—CONSTRUCTION AND OPERATION EXEMPTION—
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Brookhaven Rail Terminal (“BRT”) and Brookhaven Rail, LLC (“Brookhaven Rail”) (collectively, “Respondents”), respectfully move pursuant to 49 C.F.R. § 1104.7 for additional time to move to strike or otherwise respond to the filing of the Town of Brookhaven (“Town”) dated October 27, 2015.¹ Respondents have prepared a motion to strike the Town October 27th filing that demonstrates the Town October 27th Filing: (1) is not authorized by the Surface Transportation Board (“Board”)’s July 8, 2015 decision (“Board July 8th Decision”),² which solely directed Respondents to notify the Board’s Office of Environmental Analysis (“OEA”) that Respondents’ spill prevention, control, and countermeasures plan (“SPCC Plan”) satisfied

¹ *Objections of Town of Brookhaven, New York*, dated October 27, 2015 (“Town October 27th Filing”).

² *U S Rail Corporation—Construction And Operation Exemption—Brookhaven Rail Terminal*, STB Finance Docket 35141 (STB served July 8, 2015). Therein the Board stated that Respondents were in compliance with two of the three environmental conditions (EC No. 1 and EC No. 3) imposed by the Board in its 2010 Decision, and noted that while Respondents were in substantial compliance with the remaining environmental condition (EC No. 2), it directed Respondents to notify the Board’s OEA when Respondents’ SPCC Plan satisfied SCSC Article 12. Board July 8th Decision at 1, 6. The Board made it clear that upon accomplishing the foregoing, Respondents “will have fully met the third condition.” *Id.* at 1. Furthermore, the Board denied the Town’s motion to reopen, for the second time, on any other grounds other than Respondents’ compliance with the foregoing directive. *Id.*

Article 12 of the Suffolk County Sanitary Code (hereinafter referred to as “SCSC Article 12”); (2) raises an alleged SCSC Article 12 compliance matter altogether collateral to the Board July 8th Decision and Respondents’ Notification of Compliance filed in response thereto; and (3) represents an untimely petition for reconsideration of the Board July 8th Decision under 49 C.F.R. § 1115.3.

Recent developments have, however, possibly rendered moot the need for Respondents to file the motion to strike that has been prepared. Late last week, the Town and Respondents reached a tentative settlement outline of their dispute pending before the United States District Court for the Eastern District of New York, subject to approval of the settlement outline and final settlement agreement by the Town’s Board. *Town of Brookhaven v. Sill Road Realty LLC, et al*, Civ. No. 2:14-cv-02286-GRB, Order dated November 13, 2015, Exhibit A hereto (“Order”). Among the settlement outline’s provisions is that the parties will cooperate to complete any pending STB proceedings, which presumably will lead to the Town’s withdrawal of the Town October 27th Filing. Assuming that occurs (and that the Town Board approves the settlement outline and final agreement), the need for Respondents to move to strike that filing would be moot. It is anticipated that the parties will need up to 30 days to complete the settlement process envisioned by the Minute Order, and execute upon it. Accordingly, Respondents move the Board for an extension of time to move to strike or otherwise respond to the Town October 27th Filing to a date certain of December 16, 2015.³

³ Respondents are operating under the premise that the Board’s 20-day rule of 49 C.F.R. § 1104.13 applies to the instant motion to strike. Under that rule, the motion to strike would be due today, November 16, 2015. Respondents appreciate that 49 C.F.R. § 1104.7(a) requires that an extension of time to file be made 10 days in advance of the due date, but as explained above, the basis for the request to extend the time to file did not arise until November 13, 2015, and this motion is brought the next business day. Accordingly, Respondents request that the Board waive that requirement under the instant circumstances.

CONCLUSION

For all the foregoing reasons, Respondents respectfully extend the time for Respondents to move to strike or otherwise respond to the Town October 27th Filing until a date certain of December 16, 2015.

Dated: November 16, 2015

Respectfully submitted,

*Brookhaven Rail Terminal and Brookhaven
Rail, LLC*

By: 

David T. Ralston, Jr.
Zachary L. Coffelt
Foley & Lardner LLP
3000 K Street, N.W.
Washington, D.C. 20007

*Counsel for Brookhaven Rail Terminal and
Brookhaven Rail, LLC*

EXHIBIT A

From: <ecf_bounces@nyed.uscourts.gov>

Date: November 13, 2015 at 7:32:24 PM EST

To: <nobody@nyed.uscourts.gov>

Subject: Activity in Case 2:14-cv-02286-GRB Town of Brookhaven v. Sills Road Realty LLC et al Status Report Order

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 11/13/2015 at 7:32 PM EST and filed on 11/13/2015

Case Name: Town of Brookhaven v. Sills Road Realty LLC et al

Case Number: 2:14-cv-02286-GRB

Filer:

Document Number: No document attached

Docket Text:

ORDER UPON COMPLETION OF SETTLEMENT CONFERENCE - Following extended court-supervised negotiations, the parties have drafted an outline for a settlement that would resolve this action, conditionally lift the injunction subject to reinstatement, allowing pursuit of development while making provision for appropriate environmental protections. Subject to the provision of additional information, the defendants have agreed in principle to these terms and Town officials have agreed to recommend the terms to the Town Board. Plaintiff is to provide a status report to the Court on 11/20/15. Ordered by Magistrate Judge Gary R. Brown on 11/13/2015. (Brown, Gary)

2:14-cv-02286-GRB Notice has been electronically mailed to:

Kevin Patrick Mulry kmulry@farrellfritz.com, courtnotifications@farrellfritz.com

Robert M. Calica rcalica@rcblaw.com

Judah Serfaty jserfaty@rcblaw.com

Yonaton Aronoff yaronoff@foley.com, amccarthy@foley.com

Alisha L. McCarthy amccarthy@foley.com

2:14-cv-02286-GRB Notice will not be electronically mailed to:

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2015, I caused to be served the foregoing *Motion for Extension of Time to File Motion to Strike or Otherwise Respond to Town's Objection to Town's Filing* by first-class mail, postage prepaid, upon the following Parties of Record in this proceeding:

TO: Judah Serfaty, Esq.
Rosenberg Calica & Birney LLP
100 Garden City Plaza, Suite 408
Garden City, NY 11530

Robert M. Calica, Esq.
Rosenberg Calica & Birney LLP
100 Garden City Plaza, Suite 408
Garden City, NY 11530

NYS Dept. of Transportation
50 Wolf Road
Albany, NY 12232
Attn: Robert A. Rybak, Esq.

Lyngard Knutson, Esq.
Region 2 E.P.A.
290 Broadway, 25th Floor
New York, NY 10007

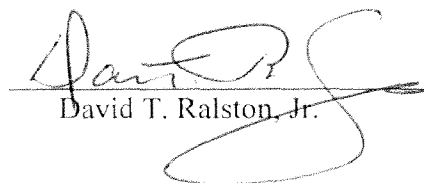
NYS Dept. of Environmental Conservation
New York Natural Heritage Program
Albany, NY 12233-4757
Attn: Tara Seoane

Field Office Supervisor
U.S. Fish and Wildlife Service
Long Island Field Office
340 Smith Road
Shirley, NY 11967

MTA Long Island Rail Road
Jamaica Station
Jamaica, NY 11435-4380
ATTN: Helena E. Williams

New York & Atlantic Railway
68-01 Otto Road
Glendale, NY 11385
ATTN: Paul Victor

James H. M. Savage
1750 K. St., N.W.
Suite 350
Washington, D.C. 20006



David T. Ralston, Jr.