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June 5, 2009

Victoria J. Rutson, Chief
Section of Environmental Analysis
Surface Transportation Board
395 E. Street, S.W.
Suite 1100
Washington, DC 20423-0001

Re: STB Finance Docket No. 35116
R.J. Corman Railroad Company/Pennsylvania Lines, Inc.
Construction and Operation Exemption -- Clearfield County, PA

Dear Ms. Rutson:

We are writing on behalf of People Protecting Communities ("PPC") in response to the April 28, 2009, letter from Ronald Lane on behalf of R J Corman Railway Co. ("Petitioner" or "Corman") contending that the proposed RRLC Landfill project near Gorton, Pennsylvania, should not be treated as a connected action.

The position Corman advocates ignores the *factual* reality that the railroad and the proposed landfill are a single, connected action. Without the landfill, there will be no railroad and the Board should not conclude that the eleventh hour discovery of additional, alleged customers somehow renders the two actions unconnected. The railroad was first proposed as a possible alternative means to provide access to the landfill on April 19, 2004 (Attachment 1),¹ at

¹ Exhibit 1 (excerpt) PPC EIS Scoping Comments (Feb 24, 2008)(sic). The exhibits were labeled with an incorrect year. The date was actually 2009.

which time the landfill hoped to obtain approval for the construction of a new interstate exit as the primary access to the landfill. The railroad was presented as part of the Resource Recovery, LLC Tewar Landfill and Industrial Park, Master Plan, Draft dated July 23, 2004, as follows:

The Railroad Access Project

Resource Recovery LLC, in cooperation with local rail service providers, will replace the rail service to the site that was utilized during coal mining operations several years ago, and abandoned when that mining concluded. The rail will provide a means for the delivery of waste to the site, delivery of raw materials to the industrial park, and the export of manufactured products from the site.

Id. at p. 5. At this time, the primary access to the landfill project was to be provided by a proposed interstate interchange. In fact, it was only on May 20, 2008, four years later, when, it became clear that the interstate exit would not receive the necessary approvals due to determinations that the interchange and landfill industrial park project² would be inconsistent with regional transportation and land use plans,³ that Corman submitted its application for this rail line.

Corman's position lacks logic. Corman concedes that it will need to consider the impacts of the landfill, which is a reasonably foreseeable impact of building the rail line. The decision in *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8th Cir. 2003) is on point in that regard. There, the Eighth Circuit vacated the Surface Transportation Board's approval of construction of a rail line to serve western coal mines because of the Surface Transportation Board's (STB) failure to consider the reasonably foreseeable impacts of increased coal consumption in the east that would result from construction of the railroad. Here, likewise, the impacts of the landfill are direct results of the construction of the rail line, which will provide access to the landfill. Among the impacts of the landfill will be the destruction of or adverse effects upon wetlands within the jurisdiction of the Army Corps of Engineers ("Corps") and requiring a permit from the Corps under section 404 of the Clean Water Act, 33 U.S.C. §1344. See Attachments 2, 3, and 4. The relevant federal and

² As noted above, the original proposed project included the rail spur and the railroad now proposed by Corman.

³ Specifically on July 19, 2005, the Centre County Planning Office conducted a consistency review of the I-80 Point of Access Study ("POA") at the request of Federal Highway Administration and recommended that the Centre County Planning Commission find that the landfill/industrial park/I-80 interchange is inconsistent with the Centre County Comprehensive Plan. This determination was upheld by the Centre County Planning Commission in August 2005. The Planning Commission action was upheld by a unanimous vote of the Centre County Board of Commissioners September 2005.

state agencies have already determined that this will require consideration of alternatives to the landfill, including the no action alternative.

This situation, where multiple federal approvals will be required for actions that are interrelated, is the quintessential situation where the actions should be treated as connected and alternatives to the interrelated actions will need to be considered in conjunction with one another. Indeed, by letter dated November 5, 2005, the United States Fish and Wildlife Service ("USFW") recommended to a representative of the landfill owner, Resource Recovery LLC ("RRLC"), that all phases of the project, landfill, industrial park, rail spur, interchange, landfill expansion be treated as a single and complete project for agency review. See Attachment 5. The Department of Transportation, through the Federal Highway Administration ("FHA") appears to have agreed with that recommendation and to have determined that impacts of the landfill including wetlands impacts and landfill alternatives would be considered in connection with the application for an interstate interchange. By letter dated January 19, 2007, FHA indicated that the Corps would likely be the lead agency in the National Environmental Policy Act ("NEPA") process for both the landfill and the interchange. See Attachment 6. Thus, it appears that the Department of Transportation determined that the interchange and the landfill should be treated as a connected action. An identical conclusion is warranted with respect to the alternative rail access. For these reasons, and the reasons cited in PPC's February 23, 2009 letter, the landfill and the railroad are part of a single connected action and should be considered as such in the NEPA process.

The cases cited by Corman are entirely distinguishable from the present case. The first case cited by Corman, *Department of Transp. v. Public Citizen*, 541 U.S. 752 (2004), does not govern the scope of the "alternatives" analysis, as Corman contends. It concerns a matter not in dispute here – whether a "major federal action" had occurred sufficient to require preparation of an environmental impact statement.

The facts in the second case, *Quechan Indian Tribe of the Fort Yuma Indian Reservation v. U.S. Dept. of Interior*, 547 F. Supp. 2d 1033, 1043 (D. Ariz. 2008), are also easily distinguishable. The inquiry there was whether a proposed oil refinery was directly or indirectly caused by a title transfer of a federal reclamation project to a municipal irrigation district, such that the Bureau of Reclamation ("BOR") was required to take into consideration the effects of the refinery in its environmental impact statement regarding the title transfer. The court found that there was no causal connection between the title transfer and a third party proposal to locate an oil refinery on the transferred lands. Here, the proposed landfill is anything but a "third party proposal" with no causal connection to the rail line reactivation. More importantly, however, the court in *Quechan* did not end its inquiry there and went on to determine that the title transfer and the refinery were not "connected actions." In doing so the court looked to the governing CEQ regulations, not to *Public Citizen*, as Petitioners would have us believe. The decision that that the title transfer and refinery were not "connected actions" had nothing to do with BOR's statutory authority, or lack thereof, over the refinery. As Petitioner's acknowledge in their letter, the court decided that the title transfer and the refinery were not "connected actions" because of three specific factors: (i) the title transfer did not automatically trigger the refinery project, (ii)

the refinery project may proceed on private land without the title transfer, and (iii) the title transfer and refinery are not interdependent parts of a larger action. See Petitioner's letter (citing *Quechan*, 547 F. Supp. 2d at 1043). Here, there would be no railroad without the landfill and no landfill without the railroad and the railroad was originally proposed as part of the landfill project.

Similarly, in the *Southwest Gulf* decision, also cited by Petitioners, one of the critical factors to the Board's decision that the quarry and rail line were not connected actions was that the quarry could be developed regardless of the Board's decision on the proposed rail line. See *Southwest Gulf Railroad – Construction and Operation Exemption – In Medina County, TX*, Finance Docket No. 34284, Decision served December 18, 2008. Here, regardless of whether the Board has any statutory authority over the construction or operation of the landfill, the facts of the matter are that (1) the landfill cannot proceed without the Board's approval of the rail line and an additional federal approval by the Army Corps of Engineers and (2) the rail line cannot proceed without the landfill as its customer and a source of its financing.

Petitioners' claim that the landfill can proceed without reactivation of the rail line does not reflect reality. There is no adequate access to the site of the proposed landfill and industrial park without either the railroad or the new interchange. Access would be through Snow Shoe Township and the uses and transportation are inconsistent with the Snow Shoe Township Zoning. The current access roads are dirt roads and Snow Shoe will not permit modification of the roads to service an inconsistent use. The landfill proposal was originally premised on obtaining approval from the United States and Pennsylvania Departments of Transportation for the construction of a new exit from Interstate I-80. Because that authorization cannot be given due to inconsistent land use, the landfill cannot proceed without rail access.

Similarly, the rail line will not be developed without the landfill. Corman's May 19, 2008, Petition for Exemption of R.J. Corman Railroad Company/Pennsylvania Lines Inc. states that RRLLC will pay the majority of the costs of construction of the railroad construction and reconstruction. See Attachment 7 at 6. It is safe to infer from this that, if the landfill is not developed, the financing for the railroad reconstruction will disappear. The mere fact that Corman is now identifying other potential customers who may (or may not) use the railroad if it is built is irrelevant.

In fact, it appears that many of businesses that have suddenly come out of the woodwork to claim they will use the rail line are either illusory or hypothetical. Even if these are developed and receive permits, it further appears that even collectively they would not produce sufficient business to support a rail line without the landfill. This is reflected in the letter to you from Mr. Kenneth L. Hall (Attachment 8), who bases his conclusions on his long involvement in the coal, oil and gas business in the area. His letter addresses each of the proposed businesses and demonstrates through additional evidence that they could not support the railroad and are either hypothetical or unlikely.

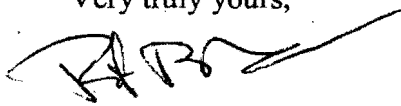
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Thus, the facts all lead to the conclusion that the proposed rail line is an interdependent part of the larger action including the landfill and depends on the landfill for its justification. They should be considered connected actions in the NEPA review.

Very truly yours,



Robert B. McKinstry, Jr.

RBM/sts
Enclosures

cc: JoAnn Gillette
Ronald A. Lane, Esquire
Jeffrey D. Lapp, U.S.E.P.A., Region III
Jennifer Kagel, U.S. Fish & Wildlife Service
Michael Dombroskie, U.S. Army Corps of Engineers
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Ms. Nancy Sutley, Chair Council on Environmental Quality