

LAW OFFICE

McLEOD, WATKINSON & MILLER

MICHAEL R. McLEOD
WAYNE R. WATKINSON
MARC E. MILLER
RICHARD T. ROSSIER
CHARLES A. SPITULNIK
RICHARD PASCO
ALEX MENENDEZ
PAUL D. SMOLINSKY

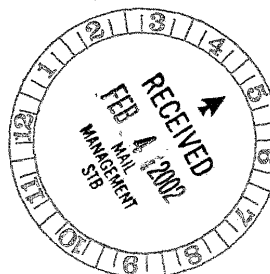
204684
ONE MASSACHUSETTS AVENUE, N.W.
SUITE 800
WASHINGTON, D.C. 20001-1401
(202) 842-2345
TELECOPY (202) 408-7763

KATHRYN A. KLEIMAN*
OF COUNSEL
(*Admitted in Virginia only)

ROBERT RANDALL GREEN
LAURA L. PHELPS
GOVERNMENT RELATIONS

JOSEPH T. CONNOR
FINANCIAL ANALYST

February 4, 2002



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: *New York City Economic Development Corporation, Acting on Behalf of
the City of New York, New York - - Adverse Abandonment of Rail Line and
Facilities Operated by the New York Cross Harbor Railroad, Inc. in
Brooklyn, New York, Docket No. AB No. 596*

Dear Sir:

I am enclosing an original and ten (10) copies of New York City Economic Development Corporation's Reply to Protest of New York Cross Harbor Railroad and Joint Protest of Local Shippers, for filing in the above-referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger. Please note that a 3.5" diskette is enclosed with this document.

Sincerely,

Charles A. Spitulnik
Charles A. Spitulnik

ENTERED
Office of the Secretary

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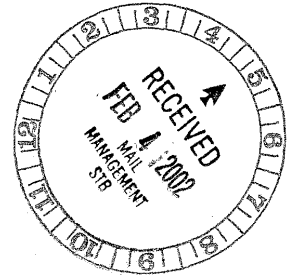
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Public Record

Enclosures

cc: All parties on the Certificate of Service

Before the
Surface Transportation Board

STB Docket AB-No. 596



**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, ACTING ON
BEHALF OF THE CITY OF NEW YORK, NEW YORK --
ADVERSE ABANDONMENT OF RAIL LINE AND FACILITIES
OPERATED BY THE NEW YORK CROSS HARBOR RAILROAD, INC.
IN BROOKLYN, NEW YORK**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION'S REPLY TO
PROTEST OF NEW YORK CROSS HARBOR RAILROAD AND JOINT PROTEST OF
LOCAL SHIPPERS**

I. INTRODUCTION

New York City Economic Development Corporation, acting on behalf of the City of New York, New York ("NYCEDC") hereby responds to the Protests filed by the New York Cross Harbor Railroad, Inc. ("NYCH") and a consortium of shippers that includes American Warehouse Inc., Davidson Pipe Supply Co. Inc., Interdynamics, Inc., Dorann Resources, LTD., Cropsey Scrap Iron & Metal Corp., Franklin Poly Corp., and Midwood Lumber & Millwork, Inc. (collectively referred to as "Local Shippers").

NYCEDC filed an Application for Adverse Abandonment with respect to a portion of the rail and marine service operated by NYCH that utilizes rail tracks and terminal facilities owned by the City of New York in Brooklyn, New York known as the Bush Terminal Yards and the Float Bridge Facility and related tracks at the Harborside Industrial Center ("First Avenue Rail Yard") which contain a specific float bridge used by NYCH ("51st Street Float Bridge")¹. The protests filed in this matter by NYCH ("NYCH Protest") and the Local Shippers ("Local Shippers' Protest") fail to demonstrate that the public convenience and necessity requires the

¹ In NYCEDC's Application for Adverse Abandonment, the 51st Street Float Bridge and the portions of the First Avenue Rail Yard that are the subject of the Application are referred to as the "Tracks and Facilities". NYCEDC will continue that usage here, referring specifically to the Float Bridge or to the yard facilities, respectively, only when the reference is solely to that portion of the property that is the subject of this proceeding.

continued operation of the Tracks and Facilities, and the Board should grant NYDEC's application for adverse abandonment. The public convenience and necessity lies in not permitting NYCH to continue to operate that portion of its existing service that utilizes the Tracks and Facilities that are the subject of this proceeding.

NYCEDC has no "ulterior motive" lurking behind its abandonment application, as NYCH would have this Board believe. Simply put, if NYCH had complied with the terms of its agreement as operator and had not continually breached its obligations as outlined in the Application for Adverse Abandonment in this proceeding, NYCEDC would not be seeking abandonment authority. NYCEDC does not deny that it plans "to redevelop and expand marine terminals and reconfigure the subject rail facilities to accommodate those changes." Those plans, however, do not drive NYCEDC's actions here. NYCEDC has concluded that the time has come to exercise its rights under its permit agreement with NYCH and under state law and evict a tenant whose actions are not in compliance with the obligations that tenant has undertaken. This action will not burden interstate commerce. The shippers who currently use the Tracks and Facilities have other options. This application should be approved.

II. STATEMENT OF FACTS

NYCEDC incorporates by reference the Statement of Facts it submitted with its Memorandum in Support of its Application for Adverse Abandonment and the facts stated in the NYCEDC Opposition to Motion to Reject the Notice of Intent, Adverse Abandonment Application, and Supplement to Application, and Reply to Petition for Extension, filed on December 17, 2001. In addition, NYCEDC states the following.

Despite NYCH's and the Local Shippers' claims to the contrary, the facts set forth in the attached Verified Statement of Seth O. Kaye ("V.S. Kaye") demonstrate that proposed abandonment will not have the devastating economic impact that the protests foretell. For

example, the statement by American Warehouse, Inc ("AWI"), included in the Verified Statement of Sabato Catucci, included in the Local Shippers' Protest in support of NYCH, that AWI will be "put out of business" is false. AWI is the operator of and conducts its business from the Red Hook Marine Terminal, a 65-acre site in South Brooklyn (several miles north of the First Avenue Rail Yard), and the Marsh Street Terminal, Port Newark, New Jersey. AWI currently has an occupancy permit with NYCEDC to use three warehouses at the South Brooklyn Marine Terminal ("SBMT")² for the storage of cocoa beans. V.S. Kaye at ¶ 11. A rail spur owned by South Brooklyn Railway that connects to the First Avenue rail line serves SBMT. Id. Currently, NYCH has an agreement with South Brooklyn Railway to use its tracks in order to transport cocoa from SBMT to the First Avenue Rail Yard, and then to New Jersey. Id.

While, in the past, AWI has used the SBMT warehouses for additional storage capacity because of rehabilitation of the pier on which the warehouses are located AWI has chosen not to occupy and has not paid rent for the SBMT warehouses since April 2001³. Id. at ¶ 12. AWI has already advised NYCEDC that it does not intend to continue use of those warehouses. Id. at ¶ 17. Further, NYCEDC expects to lease SBMT to a new operator by the end of this year. Id. at ¶ 14. AWI appears to have made an independent decision not to rely on NYCH's services and will not be put of business by the approval of this adverse abandonment application.

According to Mr. Catucci's Verified Statement, AWI moves 976 carloads annually on the First Avenue Line. The total volume along First Avenue Rail line is reported at 1117 carloads annually. V.S. Kaye at ¶ 18. Outside of AWI, individual company thru-put volume is low. The volume ranges from 11 carloads to 40 carloads per company per year. Id. With AWI no longer

² AWI's main operation is not at SBMT but at Red Hook Container Terminal, and AWI's main cocoa bean storage and distribution Facilities are located along the Brooklyn Waterfront in warehouses leased from the Port Authority of New York and New Jersey. Id. at ¶ 8.

using the SBMT, NYCH's business along First Avenue will decrease by AWI's 976 carloads to 141 carloads annually, unless it can get more customers. Id. at ¶ 20. This reduction in business indicates a lesser degree of negative economic impact on Brooklyn waterfront businesses than NYCH and Local Shippers claims.

Furthermore, the statements by Cropsey Scrap Iron & Metal Corp. and Dorann Resources, Ltd. in their statements filed as part of the Local Shippers' Protest that trucking is their sole alternative means of transport if NYCH is not available, ignores the facts. Both Cropsey Scrap Iron & Metal Corp. and Dorann Resources rely on NYCH for outbound movement of scrap metals (60 carloads annually). Both, according to their own statements, already move their outbound loads by truck to the NYCH facility in the First Avenue Rail Yard. As Mr. Kaye points out in his Verified Statement, the differential distance to move the trucks to the 65th Street Rail Yard facility is quite small. V.S. Kaye at ¶ 22. For these shippers, the loss of the NYCH alternative would not make a difference because of the availability of another transload yard within roughly equivalent driving distance.

For the other shippers, even if NYCH is no longer able to use the 51st Street Float Bridge, NYCH's operation along the First Avenue rail line will still be available. NYCEDC is continuing to make every effort to arrange for NYCH to continue in business through the use of the 65th Street Rail Yard and the two new float bridges located there. NYCEDC will make every effort to encourage the parties to come to terms for NYCH's operation at and use of the 65th Street Rail Yard that are commercially reasonable and are comparable to the costs that NYCH incurs at the First Avenue Yard. Id. at ¶ 6. NYCEDC is encouraging Delaware & Hudson Railway Company, Inc. and Canadian Pacific Railway Corporation, its parent (collectively

³ AWI's decision preceded the decision to proceed with the abandonment NYCEDC seeks in this proceeding. AWI took this action based on the dust, disruptions, threat of vermin infestation, and other issues associated with the rehabilitation of the pier and its effects on the storage of the cocoa beans. V.S. Kaye at ¶ 13.

“CP”), which it is hoped will shortly enter into an agreement with NYCEDC to operate the 65th Street Rail Yard, to make such an arrangement with NYCH. Similarly, NYCEDC is encouraging the New York & Atlantic Railway (“NY&A”), which has the right pursuant to an agreement with the Long Island Rail Road to use the tracks that connect the 65th Street Rail Yard to the rail line on First Avenue rail line that NYCH uses to reach its customers, to grant NYCH the right to use their facilities on commercially reasonable terms. Id. at ¶ 6.

Moreover, according to NYCEDC’s Executive Vice President Seth O. Kaye, NYCEDC intends continued use of and improvements to the First Avenue rail line. Id. at ¶ 21. As part of its program to improve the water-to-rail transport of goods along the Brooklyn waterfront, NYCEDC is conducting planning and design studies for installing or upgrading rail facilities at the City’s marine terminals and along First Avenue. Approximately \$17 million have been made available for this construction. Even after this abandonment is approved and NYCH no longer uses the First Avenue Rail Yard, NYCH will continue to have the right to use this rail line.

III. ARGUMENT

In adverse abandonment proceedings the primary issue is whether the present or future public convenience and necessity requires or permits the proposed abandonment. The Board considers the impact of the proposed abandonment on the community and the customers. Ultimately, as NYCH argues, the Board must consider the relative burdens that continuation and cessation of service would have on the carrier, on the owner-lessor of the line, and on the public. In this case, the burden on the community and the relatively low impact on the shipping public (in view of the transportation alternatives that remain) lead to the conclusion that the statutory standard has been satisfied.

NYCH alleges that it “has searched NYCEDC’s application and supporting papers to ascertain the basis for the drastic relief it seeks” but “cannot determine whether the basis for

NYCEDC's eviction efforts and this abandonment proceeding is certain alleged misdeeds by former NYCH officials or a desire to abandon and salvage trackage along the Brooklyn waterfront so the property can be redeveloped for some higher and more lucrative use." Neither statement is accurate. Simply put, NYCEDC seeks abandonment in this matter because the public convenience and necessity require it. Despite NYCH's assertions to the contrary, NYCEDC has clearly demonstrated that the public convenience and necessity permits the abandonment of a portion of the NYCH operations at the First Avenue Rail Yard. The negative impact, if any, associated with NYCH's role as the current and future operator of the Tracks and Facilities; NYCH's continuing contractual breaches as operator of the Tracks and Facilities which have made resolving issues relating to the Tracks and Facilities untenable; and the minimal impact the abandonment of the Tracks and Facilities will have on the shipping public, all demonstrate that NYCEDC's application should be approved.

A. The present and future public convenience and necessity require abandonment of the Tracks and Facilities.

NYCH's claim that NYCEDC is motivated by "animosity" or "a desire to redevelop," see NYCH Protest at 5, is misguided. NYCEDC is motivated by the facts. These demonstrate that the public convenience and necessity require the abandonment of the portions of NYCH's operations at the Tracks and Facilities that are the subject of this Application. For example, NYCH has failed, despite its obligations as the operator of the yard, to maintain the Tracks and Facilities. Pursuant to the terms of the permit agreement between NYCEDC and NYCH, NYCH:

... at all times during said term, shall put, keep, and maintain the premises, and every part thereof, and the structures thereon to be erected thereon, in good and sufficient repair and condition.

See The City of New York, Department of Ports and Terminals, Permit between New York Cross Harbor Railroad and the City of New York ("Permit") dated September 1, 1984 at ¶ 12,

attached to V.S. Kaye as Exhibit 1.⁴ As a direct result of that failure, the 51st Street Float Bridge is now in a significant state of disrepair and restoring it may be cost prohibitive. The operator of an unsafe float bridge is not in the public interest.

Furthermore, even though NYCH now claims that it is in "better" financial condition, it is not yet self-sufficient. In its Protest, at page 12, NYCH states that it believes that it will become a financially stable, profitable carrier. Thus, by its own admission, it is not yet in that financial position. Like the American public that learned to mistrust President Herbert Hoover's repeated admonitions that prosperity was just around the corner, NYCEDC is hesitant to rely on anything but facts. The facts do not support NYCH's statements.

Given the current state of the Tracks and Facilities, NYCH's lack of financial stability suggests that it would be contrary to the public interest to continue to allow NYCH to have responsibility to operate or maintain the Tracks and Facilities. Furthermore, it is not prudent to wait until NYCH is in a better financial position because: 1) there are no guarantees that NYCH will become more financially secure; and 2) the Tracks and Facilities, including the 51st Street Float Bridge, are in their current condition because of NYCH's failure to maintain them responsibly in the first place. Moreover, the 65th Street Rail Yard is an updated facility. Its two float bridges are two years old, and would provide a better, safer operation to substitute for NYCH's current operations using the dilapidated 51st Street Float Bridge located at the First Avenue Rail Yard.

NYCH cites the case of Western Stock Show Assn. – Aban. Exemption-In Denver, CO, 1 S.T.B. 113, 131 (1996) as "very pertinent." However, the decision there does not help NYCH's cause. In Western Stock the applicant, a non-profit association organized for educational

⁴ The term of the Permit was from September 1, 1984 to August 31, 1985, however paragraph 48 of the Permit states that NYCH is a month-to-month tenant of the premises under the same provisions of the permit if NYCH remains in

purposes, asked the Interstate Commerce Commission ("ICC") to find that the public convenience and necessity require or permit the discontinuance of service by three railroads (the Burton Northern Railroad Company ("BN"), the Union Pacific Railroad Company ("UP"), and the Denver Terminal Railroad Company ("DTRC")), over two lines of railroad track adjacent to the applicants facilities. The track at issue involved approximately 6,400 feet of main line track and 4,000 feet of siding. Two railroads and three shippers filed protests to the applications. DTRC opposed the applicant's request that the ICC authorize the discontinuance of its trackage rights. BN opposed, in part, the applicant's similar request concerning BN's trackage rights. One of the shippers supported the positions of DTRC and BN and it opposed applicant's proposed abandonment. UP did not file a statement.

On December 10, 1993 the applicant and DTRC had entered into an agreement that gave DTRC the right to operate over the subject lines until October 31, 1994. Id. The agreement expired without the parties being able to reach a renewal agreement, and DTRC continued to operate over the lines. Id. In support of its application the applicant argued that:

(1) shippers would not be harmed by a loss of DTRC's service; (2) DTRC was unwilling or unable to obtain insurance coverage adequate to protect WSSA and the public; (3) the carrier is in default of its contractual obligation to make certain periodic payments; (4) the carrier is unwilling or unable to pay any rental for the use of WSSA's property, and (5) DTRC's operation over the involved lines is not economically viable.

Id. With respect to the shippers the applicant argued that "the area was served by city streets that provide ready access to the major highways." Id. The ICC held that the applicant "failed to satisfy its burden of establishing that the public convenience and necessity require the proposed discontinuance of DTRC's operations." Id.

constant possession of the Premises to date. NYCH has remained in possession of the premises. See Permit at ¶48 and V.S. Kaye at ¶ 3.

NYCH can not make the same factual claims as the railroad in the Western Stock case. First, DTRC asserted that abandonment was improper, among other reasons, because no track rehabilitation was required. Id. at 132. Not so here. In the instant action, rehabilitation of the 51st Street Float Bridge is required to permit continued operation. Moreover, that rehabilitation is required because NYCH has not maintained it. In Western Stock the railroads did not have this responsibility. The negative public impact associated with allowing a railroad to continue mismanaging and allowing a facility like the float bridge that is an instrumentality of interstate commerce was not an issue.

Moreover, the carrier in Western Stock was operating at a profit. NYCH is not financially secure. Worse, the potential desertion of the largest (by far) shipper from this line, an action that was planned before NYCEDC commenced the instant action, raises serious questions about the viability of NYCH's operation at the First Avenue Rail Yard.

In addition, the ICC in Western Stock stated that there was no showing that the railroad's "operations are endangering the public or violating a duty to it." Id. Again, the same can not be said with respect to NYCH. NYCH has, in the past, seriously endangered the public and violated its public duties as a result of its action. The environmental pollution and the failure to comply with City safety codes all suggest that NYCH has created a threat to the public safety. Moreover, the condition of the 51st Street Float Bridge has deteriorated to a point where NYCEDC's property management personnel have a concern that NYCH operations there continue to create a public hazard. V.S. Kaye at ¶ 4.

NYCH also claims that granting the abandonment in this matter "would have a tremendous adverse effect on the NYCH and the customers who depend on it." See Verified Statement of NYCH President, Ronald W. Bridges at ¶ 14 attached as Exhibit A to NYCH Protest. Mr. Bridges states that the customers who depend on the Tracks and Facilities "would

likely lose all their rail service and NYCH would lose their business” and the potential “revenue loss” could be so large that it “would threaten the very existence of NYCH for its remaining customers as well as for the cross harbor ferry service.” *Id.*

Mr. Bridge’s conclusions are overstated and his statement fails to establish how, in fact, this “tremendous adverse effect” would occur. Abandoning NYCH’s operations on the Tracks and Facilities will not have a “tremendous adverse affect.” The availability of the City’s 65th Street Rail Yard which can be accessed by the First Avenue rail line provides a more enhanced and suitable facility for NYCH if it can negotiate interchange agreement with CP and NY&A.⁵ As a result, the shippers who assert their reliance on rail service to be able to remain in business will continue to have rail service available upon completion by NYCH of the necessary arrangements with these two companies. When the low risk of harm to these companies is balanced against the potential risk of continued operation by NYCH over the increasingly unsafe 51st Street Float Bridge, the only possible result is an approval of NYCEDC’s application.

B. NYCEDC has attempted on numerous occasions in the past to resolve issues with NYCH but can no longer afford to do so due to NYCH continual breaches of its obligations as operator of the Tracks and Facilities.

Despite NYCH’s allegations to the contrary, NYCEDC and the public have given NYCH every opportunity but can no longer afford to allow NYCH to remain in control of and responsible for the Tracks and Facilities because NYCH has continually shown that it cannot be trusted to be a "careful steward of the land on the City's waterfront." NYCH continues to violate its agreement and cannot meet its obligations as operator of the Tracks and Facilities.⁶

⁵ As stated previously, NYCEDC will make every effort to facilitate the interchange agreements to the 65th Street Rail Yard for NYCH.

⁶ NYCH inquires, rhetorically no doubt, why NYCEDC is offering NYCH the use of the 65th Street Rail Yard if NYCH is such a bad corporate citizen. See NYCH Protest at 14. The reason is simple. NYCEDC values the presence of NYCH’s operation. If NYCEDC did not view NYCH in this way, the instant case would have been brought long since. NYCH’s continuing course of conduct, detailed in this Reply and NYCEDC’s application, demonstrates why NYCEDC’s patience has grown thin.

The violations by NYCH that NYCEDC has cited previously are not the railroad's only violations of its obligations. NYCEDC learns of new problems at every turn. A May 23, 2001 memorandum from Turner Construction Company to Jack Powers in NYCEDC's Property Management Division, describes and includes photographs of "structures" that NYCH placed on the property without permits. A copy of that Memorandum is attached to V.S. Kaye at Exhibit 2. The memorandum and photos document a structure that NYCH described as an "offloading platform" that is described as having roof joists that are "too few in number and too small in size", and having a roof that appears to be "lacking any cross bracing to prevent twisting and collapse". See V.S. Kaye at Exh. 2, page 1 and attached photos. Moreover, neither NYCEDC nor any one else in the City issued permits for this "structure" which has subsequently been dismantled.

Even the record of this proceeding reveals new information. The Declaration of Peter Davidson of Davidson Pipe Supply Co., attached to the Local Shippers' Protest at Exhibit 3, demonstrates that NYCH is violating its obligations as operator of the Tracks and Facilities by allowing the storage of pipe at the rail yard. This is an intermodal facility, not a storage facility. Yet, Mr. Davidson specifically states that one of the reasons he protests the abandonment is because his company "stores pipes in New York Cross Harbor's yard due to lack of sufficient storage space at its own business." *Id.* at ¶ 2.

Notwithstanding NYCH's constant assertions in its conversations with NYCEDC that it has "turned the corner" and that these incidents of mismanagement are in the past, the condition of the 51st Street Float Bridge, NYCH's failure to maintain it and the continuing violations of its obligations as operator of the Tracks and Facilities demonstrates that NYCH cannot be trusted to be a "careful steward of the land on the City's waterfront" and that the public necessity mandates that NYCEDC application for abandonment be granted. The facts clearly demonstrate that NYCH still cannot meet its obligations as the operator of the Tracks and Facilities. In other words, NYCH may have "turned the corner," but NYCEDC has learned from its dealings with NYCH that if you turn the right number of corners, eventually you end up in the same place.

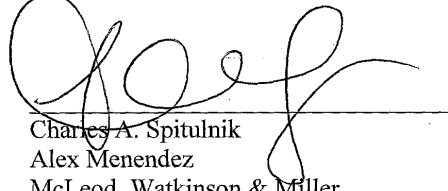
IV. CONCLUSION

NYCEDC would like to believe that NYCH has become a financially sound and operationally trustworthy tenant for the Tracks and Facilities. NYCEDC would like to be able to come to this Board and state that the 51st Street Float Bridge is in sufficiently good shape that no dollars are required to put it into condition where its operations are safe and reliable. NYCEDC has no evidence to support either of those. Unfortunately, although NYCEDC wishes the new management of NYCH success, the company's history and current facts do not provide a basis to believe that NYCEDC can allow the present relationship to continue. That is not to say that NYCEDC does not wish NYCH and the shippers who use its services to continue to have the NYCH option available. Neither NYCH nor the shippers explains why the 65th Street Rail Yard alternative that the City is working to make available to NYCH is not adequate for their needs. None of the shippers who have participated here have explained why using any of the other carriers that currently serve the region on the east side of the harbor, which include CP, NY&A and CSX Transportation, Inc., would not provide an adequate alternative to NYCH service.

While NYCH attempts to rely on the ICC's holding in the Western Stock Show Association case as a shield against NYCEDC's actions here, that reliance is misplaced. The facts are not similar. The facts in the earlier case did not justify a conclusion by the ICC that the public convenience and necessity permitted the abandonment. The problems created by NYCH's past conduct and the uncertainties about its future must be weighed against the minimal potential for disruption of interstate commerce. The other transportation alternatives available to move the very few carloads that will continue to move on the First Avenue rail line after AWI moves its shipments elsewhere suggest that the harm to interstate commerce will be minimal if it exists at all. The conclusion is inescapable that the public convenience and necessity do not support NYCH's continued operation of the facilities that are the subject of this proceeding.

WHEREFORE, and in view of all of the foregoing, NYCEDC respectfully requests that its application for adverse abandonment be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Charles A. Spitulnik', is written over a horizontal line.

Charles A. Spitulnik
Alex Menendez
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
(202) 842-2345

Counsel for the New York City Economic
Development Corporation

Dated: February 4, 2002

**Before the
Surface Transportation Board**

Docket AB-No. 596

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, ACTING ON
BEHALF OF THE CITY OF NEW YORK, NEW YORK ---
ADVERSE ABANDONMENT OF RAIL LINE AND FACILITIES OPERATED
BY THE NEW YORK CROSS HARBOR RAILROAD, INC.
IN BROOKLYN, NEW YORK**

VERIFIED STATEMENT OF SETH O. KAYE

I, Seth O. Kaye, state as follows:

1. I am Executive Vice President at New York City Economic Development Corporation, ("NYCEDC"), the applicant in this proceeding.
2. I have personal knowledge of the facts contained in this declaration.
3. New York Cross Harbor Railroad, Inc. ("NYCH") has remained in possession of the Bush Terminal Yards and the Float Bridge Facility and related tracks at the Harborside Industrial Center ("First Avenue Rail Yard") as a month to month tenant as set forth in The City of New York, Department of Ports and Terminals, Permit between New York Cross Harbor Railroad and the City of New York ("Permit") dated September 1, 1984 at ¶ 48. A copy of the Permit is attached to this Verified Statement as Exhibit 1.
4. Under the terms of the Permit, NYCH has the obligation to maintain the First Avenue Rail Yard and the equipment located there, including the float bridge that NYCH currently uses. NYCEDC Property Management staff has visually inspected the float bridge at the First Avenue Rail Yard and has determined that it is in poor

condition and has been poorly maintained. Substantial investment will be required to permit continued safe operation of this equipment.

5. In or about May of 2001, NYCEDC requested that Turner Construction Company ("Turner") perform a site visit at the First Avenue Rail Yard. Turner observed a "temporary off loading platform" that NYCH constructed and installed." NYCH constructed and installed this "platform" without obtaining the required permits. The platform was poorly constructed, presented a potential safety hazard and ultimately had to be dismantled. A copy of Turner's memorandum including photographs showing the structure that NYCH constructed, are attached as Exhibit 2.
6. NYCEDC is continuing to make every effort to arrange for NYCH to continue in business through the use of the 65th Street Rail Yard and the two new float bridges located there. NYCEDC is encouraging Delaware & Hudson Railway Company, Inc. and Canadian Pacific Railway Corp. its parent (collectively "CP"), which it is hoped will shortly enter into an agreement with NYCEDC to operate the 65th Street Rail Yard, to make such an arrangement with NYCH. Similarly, NYCEDC is encouraging the New York & Atlantic Railway ("NY&A"), which has the right pursuant to an agreement with the Long Island Rail Road to use the tracks that connect the 65th Street Yard to rail line on First Avenue that NYCH uses to reach its customers, to grant NYCH the right to use their facilities on commercially reasonable terms.
7. The City of New York (the "City"), through NYCEDC, will oversee the operation of the two new float bridges at the 65th Street Rail Yard, and will permit NYCH or any other operator to use that equipment on a non-exclusive basis with payment of a

nominal fee subject to completion of the normal New York City regulatory reviews and processes.

8. American Warehousing, Inc. ("AWI"), which has provided a statement in protest of the abandonment requested in this proceeding, has leased several facilities from the City through the Department of Business Services (the "AWI Leases"). AWI's major cocoa bean storage and distribution is conducted from warehouses along the Brooklyn waterfront leased from the Port Authority of New York & New Jersey.
9. NYCEDC provides management services with respect to these AWI Leases.
10. Upon information and belief, AWI is operator of and conducts its business from the Red Hook Container Terminal, a 65-acre site in South Brooklyn (several miles north of the First Avenue Rail Yard), and the Marsh Street Terminal, Port Newark, New Jersey. AWI has a separate agreement with NYCH to barge cargo between Red Hook Terminal and New Jersey.
11. AWI currently has an occupancy permit with the City, which expires in November 2002, to use three warehouses at the South Brooklyn Marine Terminal ("SBMT") for the storage of cocoa beans. A rail spur owned by South Brooklyn Railway that connects to the First Avenue rail line serves SBMT. Upon information and belief, NYCH has an agreement with South Brooklyn Railway to use those tracks in order to transport cocoa from SBMT to the First Avenue Rail Yard, and eventually across the float bridge to New Jersey.
12. Historically, AWI has used the SBMT warehouses for additional storage capacity only, so that the SBMT warehouses are not in full use all year; but intermittently, as needed.

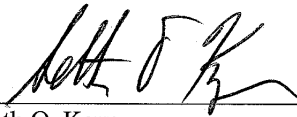
13. Due to the rehabilitation of the pier on which the SBMT warehouses are located, AWI has chosen not to occupy and has not paid rent for the SBMT warehouses since April 2001.
14. Moreover, the decision not to occupy the SBMT warehouses was made prior to the institution of this action to seek abandonment of a portion of NYCH's operations at the First Avenue Rail Yard. In fact AWI has stated to NYCEDC staff that because of the dust, disruptions, threat of vermin infestation, and other issues associated with the rehabilitation of the pier, AWI could not use the SBMT warehouses for storage and meet the Cocoa Board's handling standards.
15. The City expects to lease the warehouses at SBMT to a new operator by the end of this year.
16. AWI is aware of this situation.
17. AWI has advised NYCEDC's Property Management Division that AWI will vacate the SBMT by the end of January 2002.
18. The individual company thru-put volume on the First Avenue rail line is approximately 1117 cars annually, which includes the 976 carloads of AWI traffic described in the Verified Statement of Sabato E. Cattucci, the Chief Executive Officer of AWI that was submitted in this proceeding.
19. The individual company thru-put volume on the First Avenue rail line by companies other than AWI ranges from 11 carloads to 40 carloads per company per year.
20. Once the AWI traffic disappears from this line due to AWI ceasing its business at the SBMT warehouses, NYCH's business at the First Avenue Rail Yard will decrease to 141 carloads annually, unless NYCH can get more customers.

21. NYCEDC intends continued use of and improvements to the First Avenue rail line. As part of its program to improve the water-to-rail transport of goods along the Brooklyn waterfront, NYCEDC is conducting planning and design studies for installing or upgrading rail facilities at the City's marine terminals and along First Avenue. Approximately \$17 million have been made available for this construction. Even after this abandonment is approved and NYCH no longer uses the First Avenue Rail Yard, NYCH will continue to have the right to use this rail line.
22. Dorann Resources, Ltd. ("Dorann") and Cropsey Scrap Iron and Metal Corp. ("Cropsey") both allege they would be harmed by this abandonment. Dorann and Cropsey currently truck their material to the First Avenue Rail Yard. It would be substantially similar for Dorann and Cropsey to truck their respective materials to the 65th Street Rail Yard. In fact, it is actually a shorter distance for Cropsey to truck its material to the 65th Street Rail Yard (5.29 miles) than to the First Avenue Rail Yard (5.75 miles). With respect to Dorann the distance to the 65th Street Yard of 3.2 miles is only slightly longer than the distance to the First Avenue Rail Yard, which is 2.66 miles. See map attached hereto as Exhibit 3.
23. Further, affiant sayeth naught.

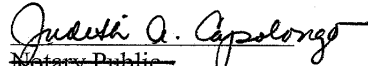
VERIFICATION

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

Seth O. Kaye, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.


Seth O. Kaye

Subscribed and sworn to before
me this 1st day of February 2002


~~Notary Public~~

Mt Commission Expires: October 23, 2003

JUDITH A. CAPOLOGO
Commissioner of Deeds, City of New York
No. 5-1425
Cert. Filed in New York County 2003
Commission Expires October 23, 2003



Battery Maritime Building, New York, N.Y. 10004
Telephone: 212-806 6737

SUSAN FRANK
COMMISSIONER

TO: Ann D'Alessio Re: New York Cross Harbor
THRU: Audrey Lasher Railroad
FROM: Heidi M. Horn Permit #59030
Account #352
DATE: January 23, 1986

Please issue a holdover retroactive to September 1, 1985
for the above referenced tenant.

This month-to-month status will remain in effect until
certain legal issues are resolved. However, the assignment
and also the expected transfer of jurisdiction to the
Department of Sanitation.

Rent shall be increased by 10% to \$26,400.00 per annum,
payable monthly. All other conditions will remain the same.

cc: Audrey Lasher
E. Weinstein
M. Gotlieb
D. Walker
S. Byrne
H. Horn

Battery Maritime Building
New York, N.Y. 10004

Dated: January 28, 1986

Account Number: 84-09-59030 (#-352)

Effective Date of Holdover: September 1, 1985

PERMITTEE Name and Address:

New York Cross Harbor Railroad Terminal Corporation

P.O. Box 182

Brooklyn, New York 11232

PREMISES: Approximately the location:

The Bush Terminal Yards (aka "First Avenue Yards") and the floatbridge

facility and related tracks at the Harborside Industrial Center (aka
"Brooklyn Army Terminal")

RENTAL: \$ 2,000.00 per Month XXXXX- now payable Monthly'

INSURANCE: Bodily Injury 3,000,000.00

Property Damage 1,000,000.00

BOND: X Not-Required: _____ (as checked)

A month-to-month status will be in effect until legal issues are

resolved. Rent is being increased by 10% which makes the charge for

use of property \$26,400.00 per annum, payable monthly.

Last permit No. 84-09-59030 (or Lease) was effective from September 1, 1984

and expired on August 31, 1985

Audrey Lasher
Audrey Lasher, Assistant Commissioner

cc:
Dockmaster
Insurance & Bond
R. Torres
J. Greenberg
Permit file
Central file

The City of New York

84-09-59030

DEPARTMENT OF PORTS AND TERMINALS

No.

Battery Maritime Building, New York, NY 10004 Tel. (212) 248-

Parties This Permit, made on the _____ day of _____, 19____, between The City of New York, hereinafter called Permittee, acting by its Commissioner of Ports and Terminals, hereinafter called Commissioner, and

of New York Cross Harbor Railroad Terminal Corp.
P.O. Box 182
Brooklyn, New York 11232

hereinafter called Permittee.

Term For and in consideration of the charges, covenants, terms and conditions hereinafter to be paid, performed, kept and observed, Permittee does hereby issue this permit to Permittee to use, occupy the hereinafter described property, for the period commencing on September 1, 1984, and terminating on August 31, 1985, subject to termination and revocation as hereinafter provided.

Premises All that certain property, situated in The County of _____ Kings _____, City of New York, described as follows:

The Bush Terminal Yards (aka "First Avenue Yards") and the Floatbridge Facility and related tracks at the Harborside Industrial Center (aka "Brooklyn Army Terminal"), as shown on Exhibit "A" annexed hereto,

hereinafter called the premises, together with the right to enter thereupon for the purpose of this permit.

Use of Property On the following TERMS AND CONDITIONS which Permittee hereby covenants, promises and agrees to and with Permittee to keep and perform:

(1) a. Permittee shall use the premises for Railroad Floatbridge and intermodal Terminal purposes,

only, and for no other purpose except with the prior written approval of the Commissioner in each instance.

b. In the event of a breach or threatened breach by Permittee of the provision of this Article, Permittee shall have the right of injunction and/or may reenter the premises as provided herein. Permittee may also maintain an action for damages arising out of such breach.

Charge for use of Premises (2) Permittee shall well and truly, and without any manner of deduction, abatement, fraud, or delay, pay or cause to be paid to Permittee, its successors or assigns, at the office of the Commissioner, during the term of this permit, a charge at the rate of \$ 2,000.00 (Two Thousand Dollars) Per Month payable Monthly in advance to the Cashier of the Department of Ports and Terminals.

a. If the rent, additional rent and all arrears (including prior 2% charges) are not paid in full by the 10th day of the month following the month in which it shall become due, or if arrears past due, an additional rental charge of two percent (2%) of the total of such rent, additional rent and arrears shall be added thereto and shall be payable and collectible as additional rent with the next monthly rental installment.

Bond (3) Permittee shall furnish as security for the payment of rent and for the faithful performance by Permittee of all the terms, covenants and provisions of this permit, ~~either a certified check equal to two months rent or a bond as approved by the City Collector in an amount equal to ten (10) months rent or (b) a certified check equal to two (2) months rent and securities of the City of New York, the market value of which shall be in an amount equal to four (4) months rent or (c) a certified check equal to six (6) months rent.~~

A certified check or bonds or securities equal to six (6) months rent.

Notices (4) All notices or orders to be given by Permittee to Permittee shall be served either by personal service upon Permittee or by posting same in a conspicuous place upon the said property or by ordinary first class mail addressed to Permittee at P.O. Box 182, Brooklyn, New York 11232

Any notice by Permittee to Permittee shall be served by certified or registered mail addressed as follows: Commissioner of Ports and Terminals, City of New York, Battery Maritime Building, New York, N.Y. 10004.

Water, Gas, Heat, Electricity and Sewer Charges (5) Permittee shall pay all sewer charges and for all water, gas, heat, and electricity consumed and used in the premises, and shall procure at Permittee's own cost and expense, all meters, permits, approvals, and licenses necessary to effectuate this provision.

Permittee will in no event make any charge to or accept any money, commission, premium, bonus, or other valuable consideration from any person, firm or corporation for the sale of water, gas, heat, electricity or for any sewer charges in excess of the rates actually charged to or paid therefor by Permittee, and Permittee shall make no charge to or accept any money from any person, firm, or corporation for any handling services rendered by Permittee in connection with any such sale of water, gas, heat, electricity or for any sewer charges in excess of a reasonable sum expended by Permittee.

Permittee shall deposit, upon execution and delivery hereof, with the City Collector the sum of \$ _____ as security for payment of all water and sewer charges for water used or consumed on the property. The said sum shall be based on an estimate of consumption of water for the previous year. If the amount of such deposit has not been determined as of the date of the execution of this Permit, Permittee waives none of its rights to receive such deposit when the aforesaid estimate is determined. The City Collector shall apply such deposit to the payment of all unpaid water and sewer charges for water used or consumed on the property up to the date of termination or expiration of this Permit and refund to Permittee the remaining balance, if any.

Insurance (6) a. Permittee shall furnish Permittee with liability insurance during the term hereof issued by a responsible company or companies approved by the Commissioner naming as the insured the Permittee or the Permittee and Permittee against any claims, suits, demands or judgments by reason of personal injuries including death and for any claims of damage to property occurring on or in proximity to the premises, including, but not limited to, the premises under water and marginal street, wharf or place, or arising out of or as a result of the use of occupancy thereof by Permittee. Such liability insurance shall provide limits of at least \$ 1,000,000.00 for property damage per occurrence and of at least \$ 3,000,000.00 for one person, or more than one person, injured or killed in any one occurrence. The said policy or policies may provide that there be no subrogation against Permittee.

APPROVED AS TO TERMS

8/2/84

b. Permittee shall also for the benefit of Permittor, the premises and structures on the premises insured against loss or damage by fire, floating ice, collision, action of the elements and such other hazards, casualties and contingencies, in an amount equal to the estimated replacement value as fixed herein, without deduction for depreciation, including the cost of the removal of the debris. Policies providing for such insurance shall be issued by such insurance company or companies as are satisfactory to the Commissioner, and shall insure Permittor solely and unconditionally, without restriction or regard as to whether or not Permittee carries additional or other insurance.

c. At the commencement of the term hereof, an engineer, appraiser or other representative of the Commissioner shall inspect and examine the premises for the purpose of determining the replacement value, without deduction for depreciation, including the cost of the debris, and such replacement value is hereby fixed in the amount of \$ _____ and insurance in this amount shall be furnished by Permittee.

d. Permittee, however, shall be, continue and remain liable for any uninsured destruction, loss or damage from any cause arising from the premises, and shall be responsible for the cost of any such loss or damage for which Permittee is not insured. In the event of any such loss or damage for which Permittee is not insured, Permittee shall, at its sole cost and expense, promptly repair or replace the property so lost or damaged in accordance with plans and specifications approved by the Commissioner.

e. All policies of insurance required by this article shall maintain the terms and conditions of policies and endorsements available for such risks. Should other different or additional types of insurance become available, Permittee agrees to furnish such new policies on demand of the Commissioner. Permittee further agrees to execute and deliver any additional instruments and to do or cause to be done all acts and things that may be required by Permittor properly and fully to insure Permittor against all damage and loss as herein provided for and to effectuate and carry out the intents and purposes of this permit.

f. All insurance policies and insurance required to be furnished hereunder shall be issued by a responsible company or companies approved by the Commissioner and all insurance policies shall be subject to approval by the Commissioner as to form and sufficiency of coverage and shall be filed in the Office of the Commissioner. All insurance policies shall be filed before Permittee enters into possession of the premises, with premiums paid in full and so marked. Each policy shall contain a provision stating that it cannot be cancelled or materially altered without the approval of the Commissioner. If Permittee neglects, or refuses, or is unable to obtain any of the insurance required in this permit, then Permittor may procure same, wherever available, at the expense of Permittee. All amounts due from Permittee to Permittor, under this article, shall be deemed additional charges for use of the premises payable with and collectible as such charges.

Requirements of Law (7) Permittee shall comply with and observe and this permit shall be subject to the Waterfront Commission Act (Laws of 1953, Chapters 882, 883, as amended), and to any and all other laws, regulations and orders of the Department of Ports and Terminals and of any and all administrations, departments, bureaus and boards of the federal, state and city governments.

Acceptance of Payments No Waiver (8) The acceptance of payments by Permittor for any period or periods after a default of any of the terms, covenants, or conditions herein contained to be performed, kept, and observed by Permittee, shall not be deemed a waiver of any right on the part of the Commissioner to cancel this permit for failure by Permittee to perform, keep, or observe any of the terms, covenants or conditions of this permit. No waiver of default by Permittor of any of the terms, covenants or conditions hereof to be performed, kept and observed by Permittee shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Permittee.

Erection of Structures (9) Permittee shall not erect nor maintain nor permit to be erected or maintained upon the premises structures of any kind other than those now on the premises or specifically authorized by this permit, without the prior consent in writing of the Commissioner. Permittee, at the Commissioner's option, upon twenty-four hours' notice so to do, shall remove any and all structures, signs or encumbrance that have been placed by it upon the premises without such consent of the Commissioner. In case of Permittee's failure to remove the same, the Commissioner may remove such structures, signs or encumbrance, and Permittee shall pay the cost of such removal and of the storage of the material, as additional rent, or Permittor may, if Permittor so elects, deal with it as though it was abandoned property.

Condemnation (10) In the event that the premises or any part thereof are required, whether by Permittor or any other agency of Government, for a public use or condemned for a public use, Permittee shall give any and all claims to an award for its permit or other damage or alleged damage by reason of such condemnation or requirement.

Unconditional Right of Revocation (11) Permittee expressly agrees that Permittor, by the Commissioner, shall have the unconditional right to revoke this permit and terminate the period thereof, upon twenty-four hours' notice to Permittee, any provision of this permit to the contrary notwithstanding. In the event of such revocation and termination, Permittee shall remain liable for the due and full performance of all the terms, covenants and conditions of this permit on the part of Permittee to be performed up to the time of such revocation and termination.

Any and all obligations and/or liabilities of Permittee under this Permit shall survive the expiration of the term of this Permit or other cancellation or termination thereof.

Repairs, Painting, Rebuilding (12) Except as otherwise provided herein, Permittee, at its own cost and expense, at all times during the said term, shall put, keep, and maintain the premises, and every part thereof, and the structures thereon or to be erected thereon, in good and sufficient repair and condition. The Commissioner shall be the sole judge of the amount of repairs, maintenance, and painting necessary under the terms of this permit.

Fees and Expenses (13) If Permittee shall default in the performance of any covenant on Permittee's part to be performed by virtue of any provision in any article in this permit contained, the Commissioner may immediately, or any time thereafter, without notice, perform the same for the account of Permittee in the name of, or as agent of, Permittee, or otherwise. If Permittor at any time elects to pay any sum of money, or do any act which will require the payment of any sum of money, by reason of Permittee's failure to comply with any provision hereof, or if Permittor is compelled to incur any expenses, in instituting, prosecuting, or defending any action or proceeding instituted by reason of any default of Permittee hereunder, the sum or sums so paid by Permittor with all interest, costs and damages, shall be deemed to be additional rent hereunder and shall be due from Permittee to Permittor on the first day of the month following the incurring of such respective expenses.

Waiver of Liability (14) Permittor shall not be liable for any damage, injury or liability that may be sustained by Permittee or any other person whatsoever, or to their goods and chattels from any cause whatsoever, arising from or out of the occupancy of the premises, including but not limited to damage by the elements, leakage, obstruction, or other defect of water pipes, gas pipes, soil pipes, electric apparatus, other leakage in or about the premises or in and from any other part of the structure or structures of which the premises are part, or the condition of the premises or any part thereof, and Permittee hereby expressly releases and discharges Permittor from any and all demands, claims, actions and causes of action arising from any of the aforesaid.

Indemnification (15) Permittee shall forever indemnify and save harmless Permittor for and against any and all liability, claims, penalties, damages, expenses and judgments arising from injury during the term hereof to any person or persons including death or any property of any nature, occasioned wholly or in part by any act or acts, omission or omissions of Permittee, or of the employees, guests or agents of the Permittee and also for any matter, act, use or occupancy arising out of or as a result of this permit, occurring on or in proximity to the premises, including, but not limited to, the lands under water and marginal street, wharf or place.

Surrender (16) Permittee shall peaceably and quietly leave, surrender, and yield up unto the possession of said Permittor, without any fraud or delay, the premises together with all structures, additions, alterations, changes, or replacements made thereon, except such thereof made by Permittee as the Commissioner shall require to be removed by Permittee, at the end of said term or other sooner termination thereof, and the premises, structures, and improvements thereon shall then be well and sufficiently repaired, painted and in good order and condition.

In the event the premises at the end of the said term or other sooner termination thereof are in a state of disrepair resulting from the failure of Permittee to repair, paint, and maintain the premises during said term, then and in that event or either of such events, Permittee shall be required to sufficiently repair, paint and place the premises in good order and condition as though all of such work had properly been done during such term.

No Right of Redemption (17) Permittee hereby expressly waives any and all rights of redemption granted by or under any present or future laws, whether in the event of Permittee being evicted or dispossessed for any cause, or in the event of Permittor obtaining possession of the premises, by reason of the violation by Permittee of any of the covenants and conditions of this permit or otherwise.

Access (18) Permittee, at all times during the term, shall permit inspection of the premises by Permittor's agents or representatives and shall permit inspection thereof by or on behalf of prospective future occupants. Permittee shall, at the Commissioner's direction, allow an adjoining owner desiring to excavate on his property or Permittor desiring to excavate a nearby street, to enter the premises and shore up an intervening wall during such excavation.

Right of Entry (19) In the event that this permit shall be terminated as provided in this permit or by summary proceedings, notice of revocation, or otherwise, or in the event that the premises, or any part thereof, shall be abandoned by Permittee, or shall become vacant during the said term, Permittor, or its agents, servants, or representatives, may, immediately or any time thereafter, reenter and resume possession of the premises or such part thereof, and remove all persons and property therefrom, either by summary dispossession

	proceedings or by a suitable action or proceeding at law or in equity or by force or otherwise, without being liable for any damage therefor. No reentry by Permittee shall be deemed an act of breach of a surrender of this permit.
Assignment or Mortgage	(20) Permittee shall not at any time assign, sublet, mortgage, or pledge this permit or any part thereof, or in any way charge or encumber the rights or property granted herein, or any part thereof, whether for wharfage or any other purpose without the prior written consent of the Commissioner.
Advertising	(21) a. No advertisement, notice, or sign shall be placed outside or inside of the premises except such as shall have been affixed to any of the structures, appurtenances, or any other part of the premises at the written approval of the Commissioner. b. The Commissioner may require Permittee to place signs on the side or inside of the premises, appropriate sign or signs designating the premises as City owned under the jurisdiction of the Department of Ports and Terminals, and Permittee shall at its own cost and expense maintain such sign or signs.
Binding on Heirs	(22) Each and every of the terms, covenants and provisions of this permit shall inure to the benefit of and be binding upon the parties hereto and, except as herein otherwise provided, upon their respective legal representatives, successors, and assigns.
Waiver of Trial by Jury	(23) Permittee hereby expressly waives all rights to a trial by jury in any summary proceeding hereafter instituted by Permittee in respect to the premises and in any action hereafter brought to recover rent becoming due hereunder or in any proceeding involving the terms, covenants or conditions of this permit connected with this permit, including, but not limited to, counterclaim or action or any cause of action directly or indirectly arising out of or in any way affecting the relationship of Permittee and Permittee's use or occupancy of the premises.
Waiver of Notice	(24) Permittee hereby expressly waives and renounces all rights to any notice to surrender, possession, or of an intention of the Commissioner to enter, reenter or resume possession under a writ of habeas corpus, law or decision now or hereafter in force, or of instituting legal proceedings to that end.
Survival Rights	(25) The provisions of this permit relating to waiver of a jury trial and the right of reentry upon revocation shall survive the expiration date of this permit.
Waiver of Immunity	(26) Upon the refusal of a person, when called before a grand jury, governmental department, a commission, agency or any other body which is empowered to compel the attendance of witnesses and examine them under oath, to testify concerning a transaction, contract, lease, permit or license entered into with The City of New York (City), the State, or any political subdivision thereof, or a public authority or with any public department, agency or official of the State or a political subdivision thereof, upon being advised that neither his or her statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding: a. Such person, or any firm, partnership, corporation or other entity related to the aforesaid testimony of which he or she was at the time of the testimony a member, partner, director, officer, fiduciary, principal or employee may be disqualified for a period not to exceed five years after such refusal from submitting bids for entering into or obtaining any contract, lease, permit or license with or from the City or submitting bids for or entering or obtaining any contract, lease, permit or license which will be paid in whole or in part out of monies under the control of or collected by the City, and b. Any and all such existing City contracts, leases, permits or licenses that said refusal to testify concerned may be cancelled or terminated by the City of the contracting agency and/or be subject to such other action appropriate under the circumstances thereof, in the discretion of the City for cause after a hearing, without the City incurring any penalty or damages on account of such cancellation or termination, but any monies owing for goods delivered, work done, rentals, permit or license fees due, prior to the cancellation or termination, shall be paid by the City. c. The term license or permit as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right. d. Any disqualification, cancellation or termination hereunder shall be made by the City commissioner or agency head who is or would be a party to the contract, lease, permit or license that is the subject of the aforesaid disqualification, cancellation and/or termination, after a hearing upon not less than two (2) days' written notice to the parties involved.
Telephones, Vending Machines	(27) No telephone booths, merchandise vending machines or concessions shall be installed on the premises without prior written permission of the Commissioner. If, after obtaining such written permission from the Commissioner, Permittee places or installs any telephone booths, merchandise vending machines or concessions thereon, Permittee shall pay to Permittee fifty percent (50%) of all gross revenues derived by it from these operations, whether such telephone booths, merchandise vending machines or concessions are presently installed or in operation, or are hereafter installed or operated. Such fifty percent (50%) of all sums so collected shall be the property of Permittee, and shall be remitted by Permittee as additional rent to Permittee on each of the days fixed for the payment of charges under this permit. The Commissioner may require Permittee to keep records in such form as he designates relating to collection of any of the aforesaid moneys; and the books and records of Permittee with respect to such collections shall be open to inspection by the Commissioner and the Comptroller of The City of New York and their designees at all reasonable times for the purpose of determining any amounts due to Permittee.
Removal of Structures and Improvements by Permittee	(28) a. All existing structures and improvements on the premises owned by Permittee at the commencement of the term hereof and all structures erected and improvements made by Permittee on the premises during the term hereof shall remain the property of Permittee and shall be removed by Permittee and the premises restored to its original condition by Permittee, at its sole cost and expense, immediately upon the expiration or sooner termination of this permit or any reissuance thereof, and if Permittee fails or neglects to do so, the Commissioner shall have the right to remove the said structures and improvements and effect restoration of the premises or any part thereof at the expense of Permittee. b. However, Permittee hereby agrees that at any time, on or before the expiration or sooner termination of this permit or any reissuance thereof, upon written notice to Permittee by the Commissioner, served in the manner provided by Article (4) hereof, ownership of and title to any and all or any part or portion of such structures and improvements shall pass to and vest in Permittee upon such expiration or sooner termination of this permit or any reissuance thereof without cost to Permittee.
Default	(29) If any default be made in the payment of the said charges or any part thereof, or if any default be made in the performance of any of the covenants and agreements herein contained, or if the premises shall become vacant, Permittee may in addition to the right to reenter without notice, and in addition to the right to regain possession by means of summary proceedings or any other method permitted by law, upon resuming possession, let or otherwise permit the use of the premises without terminating this permit, or in any manner affecting the obligation of Permittee to pay, as damages, the amount herein covenanted to be paid as charges, in which event, however, there shall be credited to the account of Permittee the amount received from such new occupancy after deducting the expenses of such proceedings as may have been necessary in order to regain possession under this provision, as well as the costs of arranging such new occupancy; and the execution of a new lease or permit for the same property, regardless of the term and/or provisions thereof, shall not terminate Permittee's liability or obligations hereunder which shall, in all events, remain in full force and effect for the full term of this permit. If Permittee shall leave once vacated the premises, Permittee may not reenter.
Damages Collectible as Periodic Charges	(30) In the case of the reentry or taking of possession by Permittee in the manner, or by means, provided or referred to in Article (29) of this permit, the amount of damages or deficiency shall become due and payable on the first day of each month, as soon as the amount of such damage or deficiency shall have been ascertained in the manner herein provided, and separate actions may be maintained monthly to recover the damage or deficiency then due, without waiting until the end of the term. No notice or demand shall be necessary in order to maintain such action.
Capital Improvements for Fire Prevention	(31) Permittee shall have the right, if it so chooses, to install capital improvements consisting of sprinkler system, fire holes and fire walls. Permittee agrees to pay as additional charge eight percent (8%) per annum of the actual cost of each such improvement. The charge shall be certified by the Chief Engineer of the Department of Ports and Terminals as the date of completion of any of said improvements shall be the date when said additional charge shall commence with respect to such improvement. Said additional charge shall be paid in equal installments on the same dates when charges are due and payable under the provisions of this permit. Permittee shall not be entitled to any reduction or diminution in charges by reason of loss of use, delay or inconvenience due to installation of any capital improvement.
Legality of Use	(32) Permittee makes no representation as to the legality of the use of the premises for the Permittee's intended purposes. In the event any use or proposed use is declared illegal by a court of competent jurisdiction, Permittee covenants and agrees that Permittee, its agents, officers, employees and Commissioner, or any person whatsoever, shall not be liable for any damages arising out of or related to such illegal use or proposed use.
Marginal Notes	(33) The marginal notes are inserted for references only and in no way define, limit, or describe the scope or intent of this permit, or affect this permit in any way.

(34) Permittee shall comply with 1403.3-2.25 of the Administrative Code of The City of New York. Permittee shall not permit or cause to be permitted on the Premises devices and activities which are subject to the provisions of the New York City Noise Control Code to be operated, conducted, constructed or manufactured which cause a violation of the Noise Control Code.

Any such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the Department of Environmental Protection of The City of New York, or its successor.

(35) This permit may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by Permittee and Permittee.

(36) Permittee covenants and agrees not to discriminate upon the basis of race, sex, age, color, creed or national origin in the use or occupancy of the demised premises or in improvements erected on or to be erected thereon, or in part thereof and will state in all solicitations or advertisements for employees placed by or on behalf of the Permittee that all equally qualified applicants will be afforded equal employment opportunities without discrimination on because of race, sex, age, color, creed or national origin.

(37) Permittee agrees to pay all real estate taxes and assessments levied on such structures and improvements so owned by Permittee, presently existing or subsequently erected by Permittee on the demised premises throughout the term of this permit or any reissuance thereof. All real estate taxes and assessments and the penalties thereon remaining unpaid shall be deemed additional rent and Permittee shall have the right to enforce collection thereof in the same manner as though there was a default in the payment of rent hereunder.

(38) Permittee accepts the premises "as is" and will not at any time make any claim that the premises or structures thereon are not, or at the time of the commencement of the term hereof, were not well painted and in suitable repair or condition for the uses and purposes of this permit, nor will Permittee at any time make any claim for or by way of reduction of charge, or otherwise, for loss of wharfage or other damage arising from or consequent upon any repairs or dredging that Permittee may do or cause to be done pursuant to the provisions of this permit or in consequence of the occupation of the premises by Permittee, or its agents or contractors.

The provision contained in this article that Permittee accepts the premises "as is" relates to the condition of the premises as they were when Permittee first entered into possession thereof.

(39) Permittee shall not interfere with the access of other permittees at the Brooklyn Army Terminal.

(40) Permittee shall pay additional charges for the use of the premises as set in Exhibit B annexed hereto.

(41) Permittee shall provide and/or contribute to the cost of providing security at the Brooklyn Army Terminal as set forth in Exhibit C annexed hereto.

(42) This Permit is subject to any and all rights of New York Dock Railway Company under that certain lease dated August 23rd, 1973.

(43) A. If, during the term of this Permit, any lands under water within or adjacent to the Premises shall become obstructed in whole or in part by the sinking of any waterborne craft Permittee, shall promptly remove such obstruction or cause the same to be removed without cost or expense to Permittee.

(44) This Permit is subject to the approval of the Concessions Review Committee pursuant to Executive Order No. 9 (1973) issued by the Mayor of the City of New York.

(45) This occupancy permit contains the entire agreement between the parties and cannot be changed, modified or terminated orally, but only by an instrument in writing executed by Permittee and Permittee.

(46) New York City Public Development Corporation shall have the right to enforce any and all of the terms and conditions of this Permit with respect to that portion of the Premises which is part of the Riverside Industrial Center (aka "Brooklyn Army Terminal") except for the collection of charges due under this Permit.

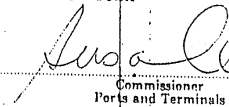
(47) This permit states the entire and integrated agreement between Permittee and Permittee and supersedes all prior negotiations, representations or agreements, either written or oral. This Permit may not be altered, modified or amended except as described in Article Thirty-Five (35) above.

Continued.

IN WITNESS WHEREOF, the parties hereunder have caused this permit to be executed the day and year first above written.

THE CITY OF NEW YORK

By

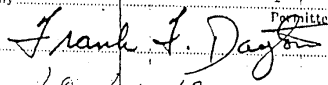


Commissioner
Ports and Terminals

New York Cross Harbor Railroad
Terminal Corp.

Company

By



Permittee

Address

P.O. Box 182
St. Regis, N.Y.

Zip No. 11232

Telephone (212)

788-3690

Affix
Corporate
Seal

New York Cross Harbor Railroad Terminal Corp.

(48) MONTHLY TENANCY If Permitter does not terminate the tenancy, and if Permittee remains in possession of the Premises after the end of the Term, Permittee shall remain in occupancy on a month-to-month basis under the same provisions of this Permit except Permittee agrees that commencing one (1) full year after the effective date of Permit, Permitter at its sole option may upon written notice to Permittee, increase the rent for the first year of the month-to-month term by an amount not to exceed fifteen percent (15%) of the rent for the prior year. Nothing contained in this Permit shall prevent Permitter and Permittee from agreeing to a different rent or prevent Permitter from giving a thirty (30) day notice of termination of the tenancy.

EXHIBIT "C"

SECURITY

1. Permittee shall maintain in one 24-hour seven-day week security guard at the 58th Street gate to the Brooklyn Army Terminal and another such guard in the area between Buildings A & B and the southern boundary of the Brooklyn Army Terminal.
2. Permittee shall rehabilitate the existing fences between Buildings A and B in the Brooklyn Army Terminal (as necessary) and between the Brooklyn Army Terminal and the 65th Street Yards.
3. Permittee shall be liable for any damage to the Brooklyn Army Terminal, or any property therein, caused by any failure to comply with this Exhibit "C".

Turner Construction Company

TCCo. Contract No. 6444
EDC Contract No. 4910009

MEMORANDUM

To: Jack Powers
From: Gregory R. Mahunik
Date: May 23, 2001
CC: GEP, File
Subject: First Avenue Rail Yard
Temporary Loading Platform

As requested by EDC on Monday May 21, 2001, Turner made a site visit on Tuesday May 22, 2001 to the First Avenue Rail Yard in order to review the construction of a "temporary" off loading platform that was installed by Cross Harbor Rail Road. In my description I use the term "temporary" as the structure is not constructed in a permanent manner. The structure basically consists of two flatbed trailers with a wood frame supporting a metal roof. See attached Exhibit A, photo number one.

A closer inspection of the truck end reveals that it is supported on trailer stands with stacked railroad ties as a "safety" to prevent collapse. See photo number two.

The layout of the roof joists appear to have been thought out but the supporting members appear to be too few in number and too small in size. The perimeter roof support shows visible signs of bending/warping and also appear to be lacking any cross bracing to prevent twisting and collapse. See photos number three and four.

The tenant is apparently using a forklift to unload the freight cars into tractor-trailers. See photo number 5. They have constructed a ramp to enable the forklift to access the flatbeds. The ramp does not appear to have a firm attachment to the flatbed but appears to be just set onto the top of the bed. See photos number 6, 7 and 8.

There is also currently an employee working out of a minivan performing the loading.

Based upon our review of this structure we recommend that the tenant provide EDC with a copy of their permits for the structure, which we don't believe, are available. Unless an approved permit is submitted we recommend immediate dismantling of the structure. If permits are provided we recommend review of the permits, and if the structure is not in conformance immediate dismantling of the structure. In any case all use of this structure should stop immediately until it can be determined to be safe.

Photo No. 1



Photo No. 2



Photo No. 3



Photo No. 4

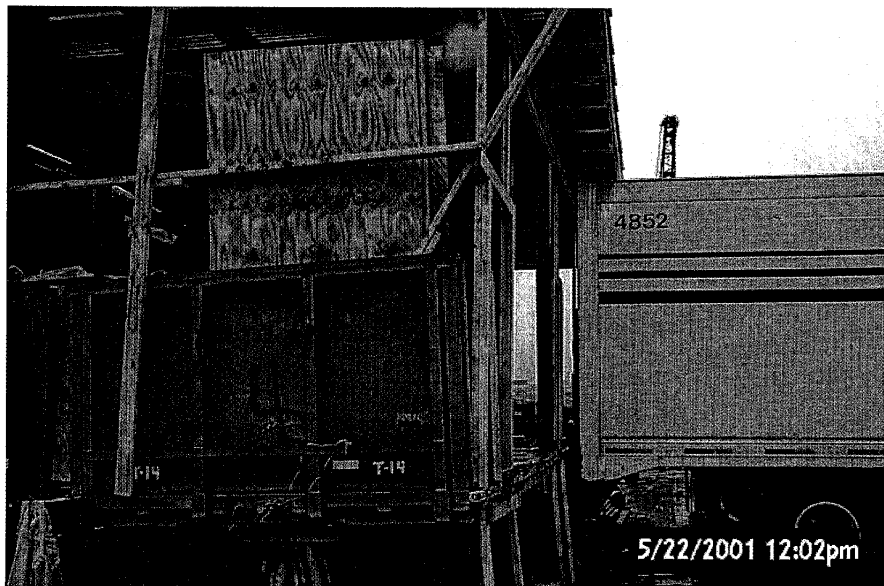


Photo No. 5

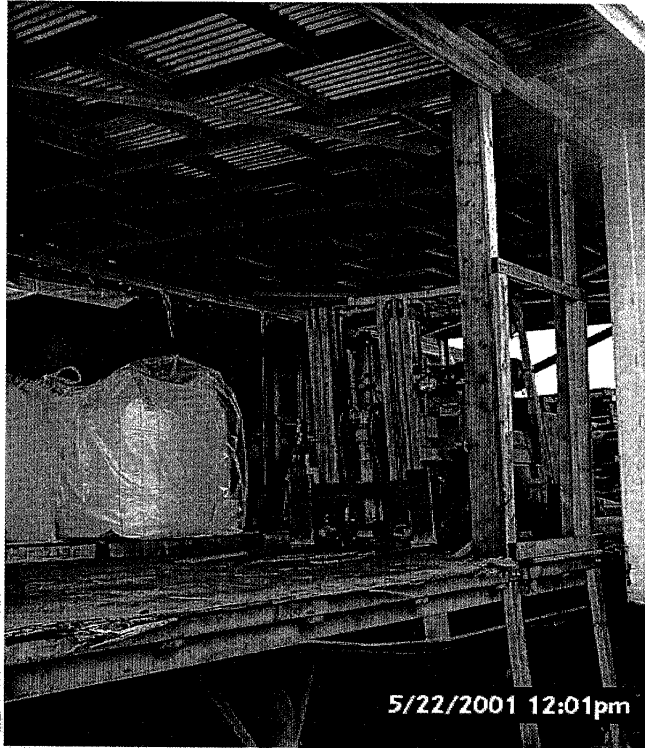


Photo No. 6

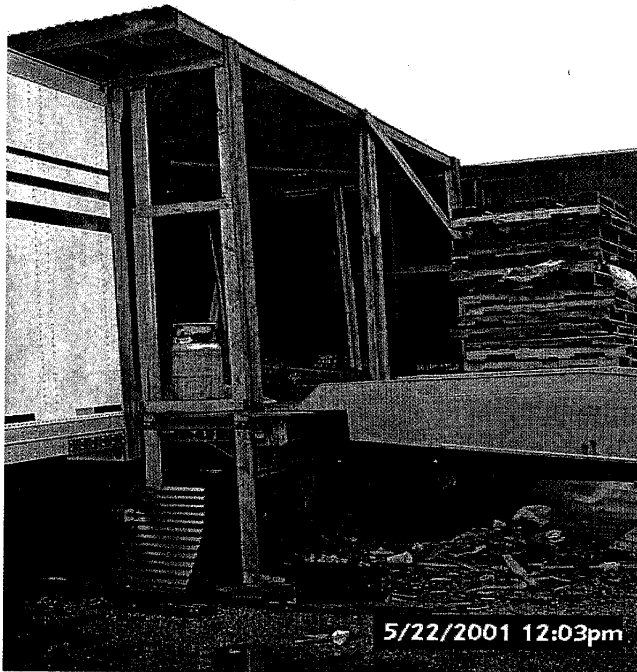


Photo No. 7



Photo No. 8

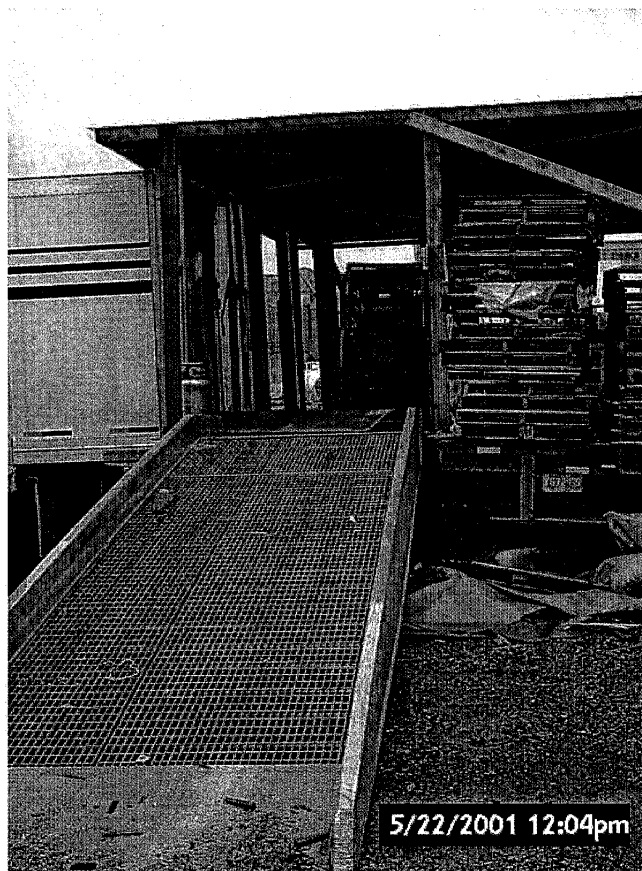
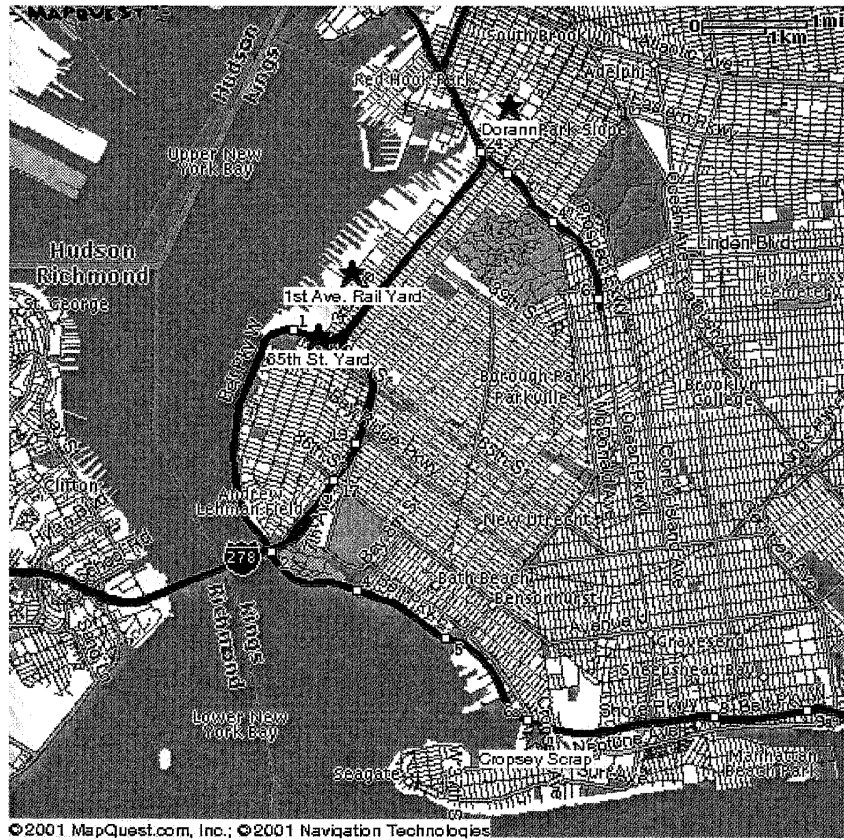


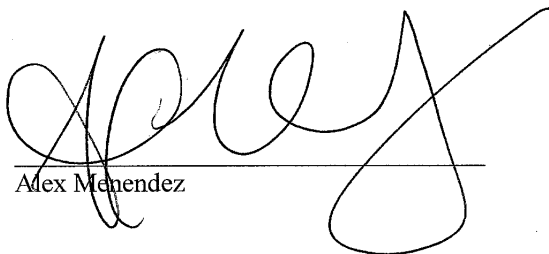
Exhibit 3



CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION'S REPLY TO PROTEST OF NEW YORK CROSS HARBOR RAILROAD AND JOINT PROTEST OF LOCAL SHIPPERS, to be served by hand delivery upon John Heffner, Esquire, counsel for New York Cross Harbor Railroad, Inc., and by first class mail with postage prepaid and properly addressed on all other parties of record on the STB's Service List in this proceeding.

Dated this 4th day of February, 2002.



Alex Menendez