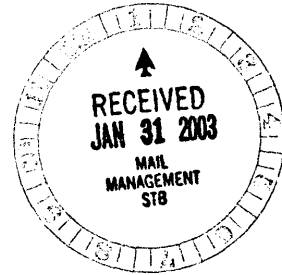


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207147

December 31, 2002

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W. Room 715
Washington, D.C. 20423

FD 34281

RE: LB Railco, Inc.- Lease and Operation Exemption -
Providence and Worcester Railway Company

Honorable Sir:

Enclosed please find the unbound original and ten bound copies of LB Railco's reply to the Motions of the Town of Millbury and the National Solid Waste Mnagement Association for filing as well as a disk with the text thereon.

Thank you for your attention to this matter.

Very truly yours,

John F. McHugh

Cc: Mary Jude Pigsley, Esq
John J. Goldrosen, Esq.
Michael Creasey
Stephen M. Richmond
Michael W. Sowyrda

ENTERED
Office of Proceedings

JAN 31 2003

Part of
Public Record

CERTIFICATION

On this 30 st day of January 2003 I served a copy of this application for
an extension of time on:

Stephen M. Richmond, Esq.
Bowdich & Dewey, LLP
161 Worcester Rd.
Framingham, MA 101701-9320

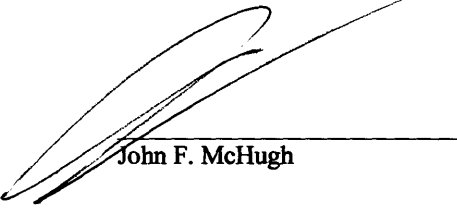
Michael Creasey
Blackstone River Valley National Heritage Corridor Commission
One Depot Square
Woonsocket, RI 02895

Mary Jude Pigsley
Senior Regional Counsel
Massachusetts Department of Environmental Protection
627 main Street
Worcester, MA 01608

John J. Goldrosen, Esq.
Kopelman & Paige, P.C.
31 St. James Ave.
Boston, MA 02116

Michael W. Sowyrda
Peters and Sowyrda
255 Park Ave.
Worcester, Mass.01608

By regular United States Mail.

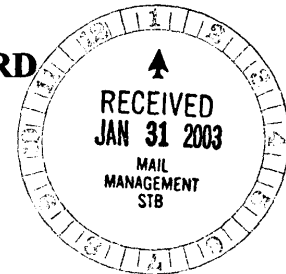


John F. McHugh

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34281

LB RAILCO, INC.
-- LEASE AND OPERATION EXEMPTION --
PROVIDENCE AND WORCESTER RAILWAY COMPANY



ENTERED
Office of Proceedings

JAN 31 2003

NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.42

Part of
Public Record

**LB Railco's Reply to the Motions of the Town of Millbury and of the National Solid
Waster Management Association et al.**

LB Railco Inc. filed a notice of exemption declaring that no environmental assessment is required. The facility in issue, a terminal where construction and demolition waste and non-hazardous contaminated soils would be transferred from trucks to the Petitioner's rail cars for shipment by it to consignees out-of-state, will load, at the most, seven rail cars a day. That translates into 30 to 35 truck trips a day. The facility is accessible via two routes and traffic will divide at each road junction, thus, other than on the driveway to the facility itself, the facility will not produce enough vehicle movements per day to be deemed significant. Further the facility will generate seven loaded and seven empty car movements per day, at the most. The Providence and Worcester trains passing the site every day handle well over a hundred cars and the yard in Worcester handles hundreds also. Thus, the Notice of Exemption filed by LB Railco is correct, the facility will have no significant impact on the environment. The stay should be lifted.

The most significant fact raised in the current motions is the admission by the Industry Parties that the opening of LB Railco's facility would significantly reduce tipping fees for construction and demolition waste and non-hazardous contaminated soils in eastern and central Massachusetts. It is submitted that that admission establishes that regulations such as those the objecting parties seek to use to bar this operation entirely, are a burden on interstate commerce in that they have created a monopoly in favor of these trucking interests all, or a significant number of whom, are grand fathered and thus exempt from the restraints they seek to impose on the petitioner. Therefore, it is respectfully suggested that as this motion makes no point that has not been covered previously, no further comment it needed.

Petitioner affixes hereto satellite photographs of the site and surrounding areas taken about two years ago when the current Mc Cracken Road Bridge over the site and the River was under construction. These photos cover the entire distance from the site along the P&W line to the south end of the Worcester yards. These photographs are instructive in that they show the site to be, as stated by the landowner in her motion, surrounded by highway facilities, including abutments and embankments walling it off from the Blackstone River for most of its riverfront area. The photographs show the McCracken Road overpass under construction. The photos from the Site to the North accurately show its proximity to other activity, the Massachusetts Turnpike, photos N 3 and N4 and to the Providence and Worcester's Worcester yards, Photos, N5-N8. These photographs establish that the facility has multiple access, that it is within a mile to the Turnpike, that there are no residences near the site or on the route to the Turnpike and that it is about two miles from the Worcester Yards. It also establishes, by looking at the

traffic seen in the yards, that the *maximum* seven cars a day to be handled at the site will result in an insignificant increase in traffic. Therefore on neither the highway nor the railway will traffic increase to levels deemed by the Board to be significant. This is to be a small operation.

Petitioner has received the Motion by Elizabeth Aubin and the Petitioner respectfully adopts her statements relating to the historical significance of this property and the background relating to the States efforts to preserve its use as a transload facility.

Under zoning by-law referred to in the Notice of Exemption, the landowner has the right to restore a prior nonconforming use within two years. For that reason, LB Railco was asked to seek operating authority before the end of November 2002. Petitioner's activity on the land, up until the Board imposed the current stay, was simply to clear debris, which had been collecting there since the lumber transload operation ceased.

The Town's current objections to LB Railco's Notice of Exemption are disingenuous. The land has been used as a transload facility for thirty years (Aubin Motion Pg. 2). Certainly the remote threat created by trucks visiting the property is eclipsed by the thousands of trucks, which pass the site each day, all within 200 feet of the other bank of the river, on Rt. 146 and over the River on McCracken Road. LB Railco has offered to install ground water collection tanks and separators if that would satisfy the Town's concerns. The Town's consultant failed to mention that offer in the Town's new motion to deny LB Railco operating authority. The offers made by LB Railco were in a letter dated November 20, 2002. There is no excuse for the consultant's failing to mention that the ground water problem could be resolved by the installation of

these tanks, tanks i.e. separators, which even the consultant admits, are the solution for this problem if it exists. Thus, the Town's objection that LB Railco's Notice was fraudulent due to the environmental risk posed by dripping oil from trucks is simply incorrect. The possibility of that oil contaminating the River or the water table is so remote as to not merit any serious consideration by the Board. Certainly such a risk cannot be deemed significant. Further, the same contention as to locomotives is similarly incorrect. Locomotives will operate only on P&W owned portion of the terminal, on an existing track and are not a change from the existing situation nor do they constitute an environmental risk. Further locomotives, which leak oil, would violate FRA safety regulations.

The Town also complains that rainwater will build up in the box to be used to transfer the cargos from truck to rail. LB Railco represented that this also presented no significant environmental risk. The problem described by the Town's consultant, would require a complete breakdown of all the procedures that LB Railco has designed into the operation. Indeed, product would not stay in the unloading box for longer than it takes to place it in rail cars. If it were raining that hard, the operation would stop in any case. The dam effect described in the Consultants "report" is again a highly improbable event, one guarded against by the operating plan for the facility. Again the environmental risk in issue certainly cannot be described as significant.

Again, however, both as to any leakage from the transloading container and as it may apply to oil, this problem was specifically dealt with in LB Railco's November 20th letter. Obviously the Town consultant's report is neither independent, unbiased or scientific.

The Industry participants also complain that dust contamination will occur, as the facility is not covered. While LB Railco has no objection and would agree to cover the operation, it is clear that none of its attempts to meet such objections with reasonable steps to deal with legitimate concerns have been satisfactory. The Board should, if it deems the remote possibility of dust generated by this facility causing any significant environmental damage, condition lifting the stay upon installation of a cover over the operation.

Therefore, I respectfully request that the Notice of Exemption filed by LB Railco in this matter be deemed effective forthwith and that any environmental conditions that Board should impose be limited to directing LB Railco to incorporate the environmental protective steps it has already proposed both within its original submission to the State and in its November 20, 2002 letter to the Town and that its Notice be deemed proper as no significant environmental effect will result from this facility.

Respectfully submitted

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212-483-0875

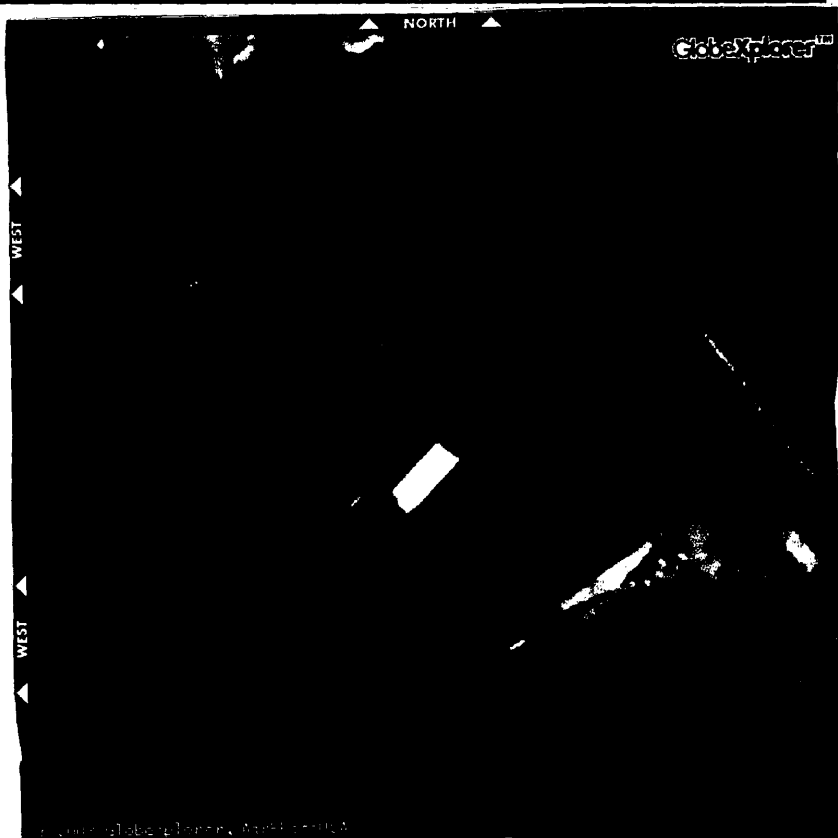
Verification

John F. McHugh verifies under penalty of perjury that the representations made above are true to best of his personal knowledge and belief based upon his familiarity with this project.

Site



NI



N2



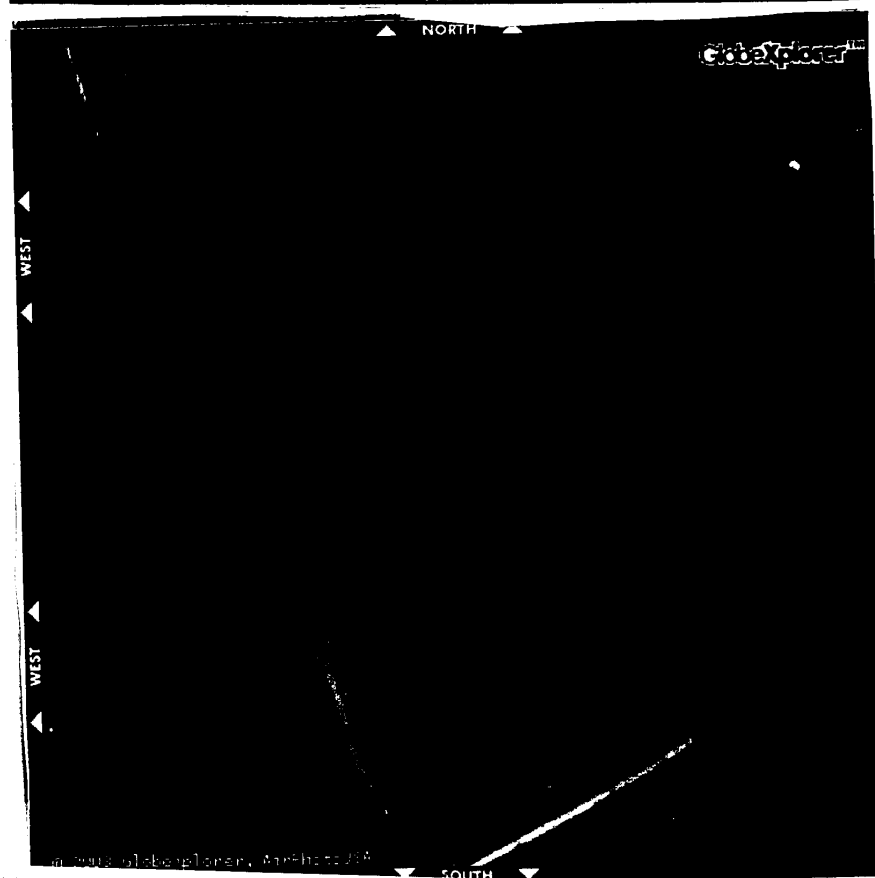
N3



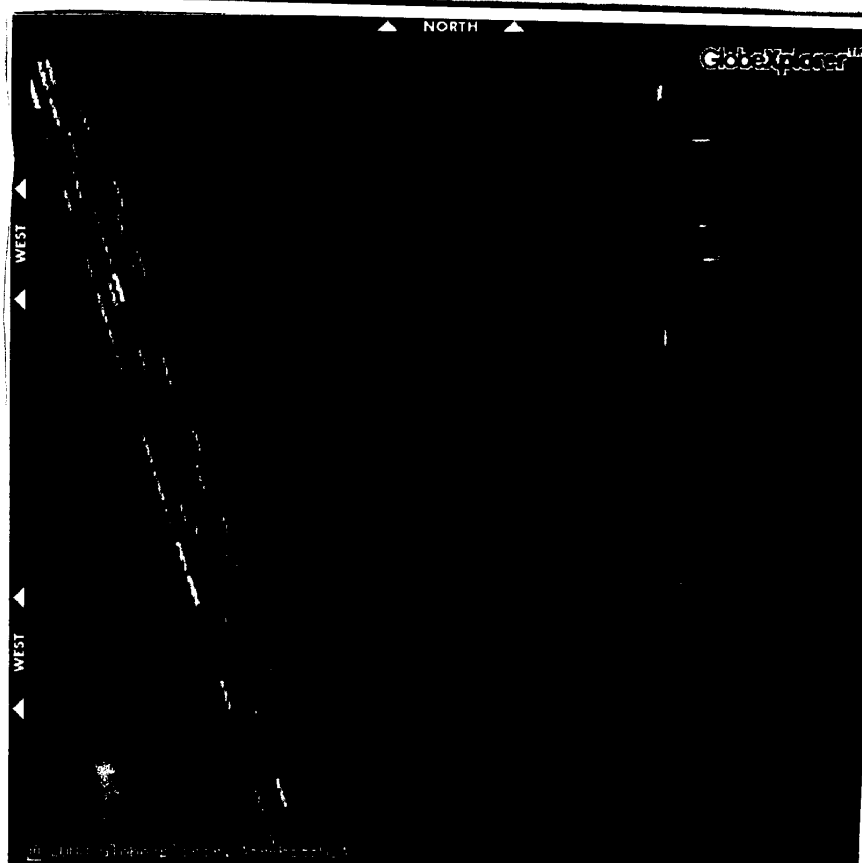
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N5



N6



N7



N8

