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June 26, 2003

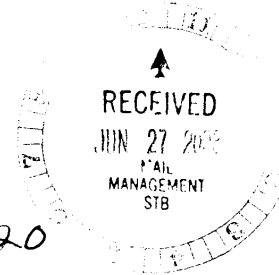
VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20006

ENTERED
Office of Proceedings

JUN 27 2003

Part of
Public Record



Re: **Finance Docket No. 34192 > 208220**
Hi Tech Trans LLC -- Petition For
Declaratory Order -- Hudson County, NJ

Finance Docket No. 34192 (Sub-No. 1) > 208221
Hi Tech Trans LLC -- Petition for Declaratory Order --
Rail Transload Facility at Oak Island Yard, Newark, NJ

Dear Secretary Williams:

On June 17, 2003, Hi Tech Trans LLC ("Hi Tech") filed a petition for emergency order and other relief in the above-captioned proceedings at the Board. Simultaneously, Hi Tech filed a petition for a declaratory order in Finance Docket No. 34192 (Sub-No. 1). Hi Tech promised to keep the Board advised of developments with respect to Hi Tech's dispute with the New Jersey Department of Environmental Protection ("DEP"). The purpose of this letter is to advise the Board of extra-legal developments since the two petitions were filed, arising from DEP's actions which, if they continue, may effectively nullify any action the Board may take.

As explained in Hi Tech's petitions, on May 28, 2003 DEP issued a cease and desist order requiring that Hi Tech shut down a rail transloading facility at Oak Island Yard in Newark, New Jersey within 20 days. The 20-day period provided in the cease and desist order expired on June 17. In order to avoid the destruction of its business (with its numerous customer, vendor and creditor relationships), Hi Tech has to continue to operate the rail transloading facility. Moreover, while DEP has chosen so far not to seek injunctive relief to close the Oak Island Yard facility, Hi Tech has been accruing potential liability for civil penalties at the rate of up to \$200,000 per day for each day that rail transloading operations continue. Hi Tech's customers also face threatened liabilities. The potential exposure to such large civil penalties may at some point compel Hi Tech to close the transload facility.

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As indicated previously, DEP's issuance of the cease and desist order was taken without any prior notice or indication of violations despite two years of operations of the rail transload facility and repeated dialogue with DEP.

While DEP has not begun any formal enforcement action against Hi Tech regarding the cease and desist order, DEP has engaged in other activities. A DEP inspector was sent to Hi Tech's office at Oak Island Yard two days last week, ostensibly to "observe" Hi Tech's operations. The inspector was not able to explain why he was present at the yard other than to recite that he was supposed to "observe" the rail transloading operation.

Second, on at least three occasions since June 17, individuals in an unmarked vehicle (but with an orange mars light on top) have been photographing trucks entering and leaving Oak Island Yard in the course of delivering construction and demolition debris to the rail transloading facility operated by Hi Tech.

Third, Hi Tech has been advised by at least one customer that the customer has been subpoenaed by DEP for records relating to the customer's use of the Oak Island Yard rail transloading facility. Hi Tech believes other customers may have received similar subpoenas.

Fourth, several customers have advised Hi Tech that they have been informed by DEP representatives that they should not continue to do business with Hi Tech since it is operating an "illegal" facility. Hi Tech believes that such contact with its customers is continuing.

All of these actions have had -- as they were apparently intended to have -- a drastic chilling effect on Hi Tech's business. Since June 17, when the 20-day period provided in the cease and desist order expired, business at the Oak Island Yard rail transload facility operated by Hi Tech has declined substantially. Hi Tech believes that its customers are now questioning whether they can do business with Hi Tech and whether they may be subject to sanctions themselves if they continue to do so. DEP's actions, if continued unabated, will likely result indirectly in what DEP is apparently hesitant to do directly: closing the rail transloading facility at Oak Island Yard and putting Hi Tech out of business.

As indicated in Hi Tech's pending petitions, after receiving the DEP cease and desist order on May 28, Hi Tech commenced an action in the United States District Court for the District of New Jersey seeking to enjoin DEP from enforcing that order. Last Thursday, the district court issued an order in which the court decided to abstain from deciding the case. Hi Tech has taken an appeal from that order to the United States Court of Appeals for the Third Circuit. Unfortunately, unless and until the Third Circuit reverses the district court's order and

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remands the case to the district court, Hi Tech will not be able to get a hearing on the merits of its request for injunctive relief.

We have obtained a copy of the DEP letter filed with the Board on June 19, 2003 in which DEP indicates that it intends to take the full time allotted under the Board's rules for responding to Hi Tech's petitions. The tenor of the letter suggests that there is no urgency that would warrant the Board considering Hi Tech's petitions on an expedited basis or granting any type of emergency relief to Hi Tech. In light of DEP's own actions "on the ground" in New Jersey, we do not think that is at all the case. We are concerned that by its actions and delay tactics, DEP is attempting to put Hi Tech out of business before the Board can act. The Board's exclusive and preemptive jurisdiction over rail transloading facilities is quite literally meaningless if a state is permitted to eliminate a vital rail facility while the Board waits for the state to file pleadings in the ordinary course.

We will continue to update the Board with additional information as events occur.

Ten copies of this letter are enclosed for filing at the Board. One extra copy also is enclosed, and I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope.

Very truly yours,



James A. Fletcher
Attorney for Hi Tech Trans, LLC

JAF:tjl
Enclosures

cc: Edward D. Greenberg, Esq. (via Federal Express)
Benjamin Clarke, Esq. (via Federal Express)
Parties of record