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210474

April 2, 2004

ENTERED  
Office of Proceedings

APR - 2 2004

Part of  
Public Record

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

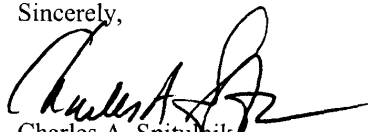
Re: *James Riffin, d/b/a The Northern Central Railroad – Acquisition and  
Operation Exemption – Lines of Railroad in York County, Pennsylvania and  
Baltimore County, Maryland, Finance Docket No. 34484*

Dear Sir:

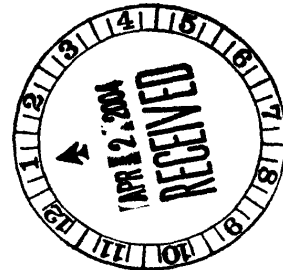
I am enclosing an original and ten (10) copies of the Petition of the State of Maryland to Revoke the Verified Notice of Exemption in the above referenced proceeding. Please date stamp the extra copy of this document and return to our messenger. In addition, we are enclosing a 3.5" diskette with this document.

Thank you for your assistance.

Sincerely,

  
Charles A. Spitulnik

Enclosure



210474

Before the  
Surface Transportation Board

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Office of Proceedings

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Finance Docket No. 34484

Part of  
Public Record

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JAMES RIFFIN, d/b/a THE NORTHERN CENTRAL RAILROAD -  
ACQUISITION AND OPERATION EXEMPTION - LINES OF RAILROAD IN  
YORK COUNTY, PENNSYLVANIA AND BALTIMORE COUNTY, MARYLAND

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PETITION OF THE STATE OF MARYLAND  
TO REVOKE THE VERIFIED NOTICE OF EXEMPTION

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EXPEDITED HANDLING REQUESTED

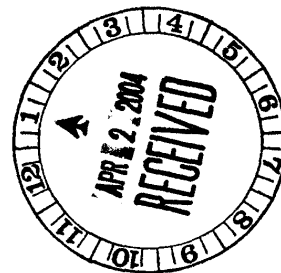
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Counsel for the State of Maryland

Dated: April 2, 2004



**Before the  
Surface Transportation Board**

**Finance Docket No. 34484**

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**JAMES RIFFIN, d/b/a THE NORTHERN CENTRAL RAILROAD –  
ACQUISITION AND OPERATION EXEMPTION –LINES OF RAILROAD IN  
YORK COUNTY, PENNSYLVANIA AND BALTIMORE COUNTY, MARYLAND**

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**PETITION OF THE STATE OF MARYLAND  
TO REVOKE THE VERIFIED NOTICE OF EXEMPTION**

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**EXPEDITED HANDLING REQUESTED**

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The State of Maryland (“Maryland”), through counsel and pursuant to 49 U.S.C. § 10502(d) and the Surface Transportation Board (“STB”) regulations at 49 C.F.R § 1150.32 (c) hereby files this Petition to Revoke (“Petition”) the Verified Notice of Exemption filed on March 8, 2004 (“NOE”) and the amendment to the Verified Notice of Exemption filed on March 22, 2004 (“NOE Amendment”) filed by James Riffin d/b/a The Northern Central Railroad (“Riffin”). In support thereof Maryland states as follows:

**I. Applicable Law**

A notice of exemption that contains false or misleading information is void *ab initio* and can be revoked. See 49 CFR § 1150.32(c); *Atlantic Western Transportation, Inc.--Continuance in Control Exemption- Georgia Midland Railroad, Inc.*, STB Finance Docket No. 34468 (Service Date: March 12, 2004); *Iowa, Chicago & Eastern Railroad Corporation--Acquisition and Operation Exemption--Lines of I&M Rail Link, LLC*, STB Finance Docket No. 34177 (Service Date: July 22, 2002). The party seeking revocation has the burden of proof, and petitions to

revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. *See, e.g., Minnesota Comm. Ry., Inc.--Trackage Exempt.--BN RR Co.*, 8 I.C.C.2d 31, 35 (1991).

## **II. Argument**

### **A. The NOE is misleading because Maryland does not intend to convey the lines that are located in Maryland and described in the NOE to Riffin.**

The NOE is misleading, at least insofar as it refers to lines in Maryland. It creates the impression that Riffin will purchase or otherwise acquire an interest in the lines he describes there. Maryland is not now in negotiations with Riffin over any such sales, and has no intention to enter into any such discussions.

Riffin states the following in the NOE:

**The Applicant proposes (a) to acquire and operate 20.9 miles of abandoned (circa 2002) line (Conrail's Former Line Code 1224) between MP 35.1 (The Maryland/Pennsylvania Line) and MP 56 (Grantley) all Lines Located In York County, Pa; (b) to acquire and operate approximately 2.0 miles of abandoned (circa 1988) (Conrail's Former Line Code 1224) between MP 14.2 (Cockeysville) and MP 16.2 (Ashland), all lines in Baltimore County, Maryland; and (c) to acquire and operate approximately 0.9 miles of abandoned (circa 1976) line (Conrail's Former Line Code 1224) between MP 24.3 (Blue Mount) And MP 25.2 (Blue Mount Quarry) all Lines Located In Baltimore County, Maryland. Applicant proposes to interchange with the Genesee and Wyoming Railroad. Applicant proposes to commence these activities within 90 days from the date this Verified Notice of Exemption is filed.**

*See* NOE at p. 2 (Emphasis added). Maryland owns the following rail lines that are the subject of this NOE: (b) the 2.0 miles of line between MP 14.2 and MP 16.2 ("Cockeysville/Ashland Line"); and (c) the approximately 0.9 miles of line between MP 24.3 and MP 25.2 ("Blue Mount/Blue Mount Quarry Line"). In a document dated March 11, 2004, and filed at this Board on March 22, 2004, Riffin states the following about the line segments in Maryland:

MP 24.3 to MP 25.2: Scott Matthews, a non-carrier, owner of the right-of-way. [Riffin proposes to lease the right-of-way from Mr. Matthews. The right-of-way reverted back to Mr. Matthews' family when the right-of-way was abandoned in 1976.]

MP 14.2 to MP 15.1: Joshua F. D. Cockey, a non-carrier. [The senior heir of Frances F.D. Cockey, T. Gist Cockey, and Joshua F. Cockey, all of whom were the original owners of the right-of-way. Title to the right-of-way reverted back to its original owners when the right-of-way was abandoned in 1988 – 1990.]

MP 15.1 to MP 15.4 and MP 15.7 to MP 16.2: The heirs of William Jessop, a non-carrier. [William Jessop was the original owner of the two right-of-way segments. Title to the right-of-way segments reverted back to the original owner when the right-of-way was abandoned in 1976.]

MP 15.4 to MP 15.7: The heirs of George Jessop, a non-carrier. [George Jessop was the original owner of the right-of-way. Title to the right-of-way reverted back to the original owner when the right-of-way was abandoned in 1988 – 1990.]

*NOE Amendment at 1.*

Maryland owns those line segments and has entered into no negotiation with Riffin about the sale of any of them, and has no intent, plan or desire to convey, sell or otherwise grant title or access to Riffin with respect to any of them. As a result, the following statements in the NOE are misleading:

- 1) That Riffin proposes to acquire the Cockeysville/Ashland Line;
- 2) That Riffin proposes to acquire the Blue Mount/Blue Mount Quarry Line;
- 3) That Riffin proposes to interchange with the Genesee and Wyoming Railroad to the extent any interchange with the Genesee and Wyoming Railroad is contingent on or relies upon Riffin acquiring the Cockeysville/Ashland Line and/or the Blue Mount/Blue Mount Quarry Line; and
- 4) That Riffin proposes to commence the activities indicated in the NOE as they relate to the Cockeysville/Ashland Line and/or the Blue Mount/Blue Mount Quarry Line within 90 days from the date the NOE is filed.

Maryland does not dispute the accuracy of statements that Riffin proposes to engage in any of those activities because Riffin may well have formed the intent to engage Maryland in those discussions. However, these statements are misleading because they create the false impression that Maryland will participate and that Riffin will, in fact, acquire the Cockeysville/Ashland Line and/or the Blue Mount/Blue Mount Quarry Line. Given Maryland's lack of interest in undertaking those transactions, Riffin is creating a false impression about the likelihood that they will occur. Because these statements are misleading, the NOE is void *ab initio*, at least insofar as they relate to the lines in Maryland. As a result, the NOE should be revoked. 49 CFR § 1150.32(c).

**B. The NOE Amendment is misleading because Riffin fails to demonstrate or establish that he can legally obtain title to the Cockeysville/Ashland Line and/or the Blue Mount/ Blue Mount Quarry Line.**

The NOE Amendment is misleading in that Riffin claims he will obtain title to or acquire the Cockeysville/Ashland Line and/or the Blue Mount/Blue Mount Quarry Line, but fails to establish or submit any evidence that would support these allegations and/or assertions. Rather, Riffin simply serves up a series of unsubstantiated and conclusory allegations in support of his assertions that he will obtain title to or acquire the Cockeysville/Ashland Line and/or the Blue Mount/Blue Mount Quarry Line.

First, Riffin assumes that that ownership of the Cockeysville/Ashland Line and/or the Blue Mount/ Blue Mount Quarry Line reverted back to the original owners after the right-of-way was abandoned in 1976. *See* NOE Amendment at p. 1. His leap to the conclusion that he will be able to attain title to those segments falls far short of the other side of the very deep chasm he is attempting to traverse. He fails to provide any documentation that the abandonment within the

meaning of 49 U.S.C. § 10903 has occurred which would allow title to the Cockeysville/Ashland Line and/or the Blue Mount/Blue Mount Quarry Line to revert back to the original owners.

Second, assuming *arguendo* that an abandonment did occur (and Maryland asserts that it did not) and the Cockeysville/Ashland Line and/or the Blue Mount/Blue Mount Quarry Line did revert back to the heirs of the original owners, Riffin has failed to demonstrate, via documentation or any other means, that all of the heirs have, in fact, consented to the transfer of the Cockeysville/Ashland Line and/or the Blue Mount/Blue Mount Quarry Line to Riffin. For example, Riffin, with respect to MP 15.1 to MP. 15.4, MP 15.7 to MP 16.2 and MP 15.4 to MP. 15.7, names the alleged original owners of the land on which the lines at issue are located. *See* NOE Amendment at p.1. He indicates that the permission of one heir of the purported original property owner on each segment will be sufficient to confer sufficient interest in the property to permit him to undertake his plans to build and/or operate a rail line. Nowhere in this pleading or in any court in the State of Maryland has he confirmed that all of the heirs of the original owners have consented to the transfer of an interest in the property to him. Furthermore, Riffin alleges, with respect to MP 24.3 to MP 25.2, that “Riffin proposes to lease the right-of way”, but fails to provide any documentation evidencing any type of lease arrangement or prospective lease arrangement. *Id.* Therefore, the NOE Amendment is misleading in that it creates the false impression, via conclusory and unsubstantiated statements, that Riffin will in fact acquire the Cockeysville/Ashland Line and/or the Blue Mount/Blue Mount Quarry Line.

**III. Expedited consideration is required because of an imminent hearing in the matter styled *State of Maryland, Department of the Environment v. James Riffin et al.*, Circuit Court for Baltimore County, Case No. 03-C-03-013144**

Maryland is seeking expedited consideration of this matter by the Board because Riffin is using his claim to railroad status as a means of obstructing the efforts of the Maryland Department of the Environment (“MDE”) to prevent harm to human health and the environment

at two sites in Baltimore County. At one site, Riffin is asserting the preemptive force of the Board's jurisdiction to block MDE's efforts to conduct indoor air quality sampling in an office building that Riffin operates. The building – which is partially leased out to a print shop, a sign maker, and a information technology firm – was constructed on contaminated property and MDE believes that elevated concentrations trichloroethylene, dichlorethane, and other contaminants in the soil may be affecting air quality within the building. After Riffin refused the Department access, the Department filed suit, which Riffin moved to dismiss on the grounds that the § 10501 of the ICCTA preempts all State environmental laws. *State of Maryland, Department of the Environment v. James Riffin et al.*, Circuit Court for Baltimore County, Case No. 03-C-03-013144. A hearing on Riffin's motion is scheduled for April 26, 2004.

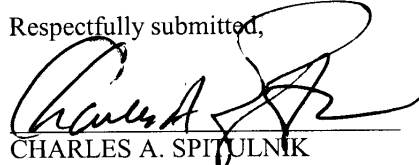
At another site in Baltimore County, Riffin is preparing to clear, grade, and fill the 100-year floodplain of Beaver Dam Run and has refused to obtain the requisite permit under the Maryland Waterway Construction Act, *MD. CODE ANN., ENV'T ART. § 5-501 et seq.* As with the first site, Riffin is claiming that he is building a railroad and, therefore, all State environmental laws are preempted by the Board's exclusive jurisdiction under § 10501 of the ICCTA. While this second site is not yet in litigation, Mr. Riffin's plans threaten imminent environmental harm and his continuing refusal to comply with State law may soon result in legal action..

### **III. Conclusion**

Riffin is attempting to create a fiction that he has become a railroad by making a series of misleading statements about property or property interests he wants to acquire. He is then building on these misstatements a purported shield that he attempts to use to prevent the enforcement of valid public safety laws of the State of Maryland. The Board must revoke the

notice of exemption to prevent Riffin from continuing the assault of misstatements he has unleashed. In view of the foregoing, the State respectfully requests the STB to grant this Petition to Revoke the Verified Notice of Exemption filed by James Riffin *d/b/a* The Northern Central Railroad on an expedited basis.

Respectfully submitted,

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

CHARLES A. SPITULNIK

ALEX MENENDEZ

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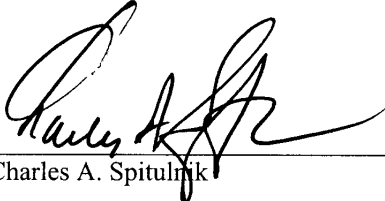
Counsel for the State of Maryland

Dated: April 2, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of April, 2004, a copy of the foregoing PETITION  
OF THE STATE OF MARYLAND TO REVOKE THE VERIFIED NOTICE OF EXEMPTION  
was served by first class mail, postage prepaid, upon:

James Riffin d/b/a The Northern Central Railroad  
1941 Greenspring Drive  
Timonium, MD 21093

  
\_\_\_\_\_  
Charles A. Spitulnik