

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875

JAMES A. FLETCHER
(312) 252-1509
jfletcher@fletcher-sippel.com

June 17, 2004

211367
Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

VIA FEDERAL EXPRESS

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

ENTERED
Office of Proceedings
JUN 18 2004
Part of
Public Record



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

Dear Secretary Williams:

By decision served in the above-captioned proceeding on August 14, 2003, the Director of the Office of Proceedings declined to institute a declaratory order proceeding requested by petitioner Hi Tech Trans LLC ("HTT") and found that HTT's operation of a rail transloading facility at the Oak Island Yard of Delaware & Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway ("CPR") did not fall within the preemptive scope of 49 U.S.C. § 10501. On August 25, 2003, HTT filed an appeal of the Director's decision pursuant to 49 C.F.R. § 1011.2(a)(7).

In the meantime, the New Jersey Department of Environmental Protection ("NJDEP"), relying on the Director's decision, ordered HTT to cease and desist from operating the Oak Island Yard facility. The cease and desist order was stayed pending HTT's appeal of the NJDEP decision. As the Board is aware from NJDEP's June 14, 2004 letter filing herein, the New Jersey Superior Court, Appellate Division, on June 11, 2004 affirmed the NJDEP decision, thus lifting the stay of the cease and desist order against HTT.

HTT hereby respectfully withdraws its appeal of the Director's decision. Since that decision was issued, CPR and HTT have worked to restructure the arrangements relating to the Oak Island Yard facility and recently entered into new agreements which supercede those upon which the Director's decision -- and HTT's appeal -- were predicated. HTT has since sold all of its assets comprising the facility to CPR and the Oak Island Yard rail transloading facility is today owned by CPR and is operated by HTT under the supervision and control of CPR, with

FLETCHER & SIPPEL LLC

Mr. Vernon A. Williams

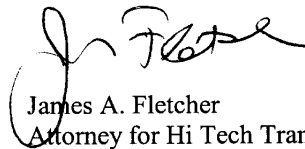
June 17, 2004

Page 2

Hi Tech acting as CPR's contractor and agent. As such, the facility falls squarely within the parameters for Board jurisdiction explicitly outlined in the Director's decision. The changed circumstances relating to the Oak Island Yard facility render HTT's appeal essentially moot. And given recent developments in New Jersey state court, any renewed pursuit of the prior arrangements at Oak Island Yard would not be practical.

Ten copies of the letter are enclosed for filing at the Board. An 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. I certify that a copy of this letter has been served on all parties of record in this matter.

Respectfully submitted,



James A. Fletcher
Attorney for Hi Tech Trans LLC

JAF:tjl

Enclosures

cc: Edward D. Greenberg, Esq. (via fax and first class mail)
Benjamin Clarke, Esq. (via fax and first class mail)
All Other Parties of Record (via regular mail)