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GOVERNMENT RELATIONS

October 4, 2004

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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, Finance Docket No. 34501*

Dear Sir:

I am enclosing an original and ten (10) copies each of:

- 1) Motion of the State of Maryland for Leave to File a Reply to the Answer to Petition of the State of Maryland to Revoke Verified Notice of Exemption;
- 2) Reply of the State of Maryland to Answer of James Riffin d/b/a The Northern Central Railroad to Petition to Revoke Verified Notice of Exemption; and 2/2/43
- 3) Motion of the State of Maryland to Strike the Notice of Intent to Construct, Operate and Maintain a Railroad Facility

in the above referenced proceeding. Please date stamp the extra copies of these documents and return to our messenger. In addition, we are enclosing a 3.5" diskette with this document.

Thank you for your assistance.

Sincerely,

Alex Menendez

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Office of Proceedings

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Part of
Public Record

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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FINANCE DOCKET NO. 34501

**JAMES RIFFIN, d/b/a THE NORTHERN CENTRAL RAILROAD – ACQUISITION
AND OPERATION EXEMPTION – IN YORK COUNTY, PA**

**REPLY OF THE STATE OF MARYLAND
TO ANSWER OF JAMES RIFFIN d/b/a THE NORTHERN CENTRAL RAILROAD
TO PETITION TO REVOKE VERIFIED NOTICE OF EXEMPTION**

2/2/43

Communications with respect to this
document should be addressed to:

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Washington, DC 20001
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Counsel for the State of Maryland

Dated: October 4, 2004

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

4
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FINANCE DOCKET NO. 34501

**JAMES RIFFIN, d/b/a THE NORTHERN CENTRAL RAILROAD – ACQUISITION
AND OPERATION EXEMPTION – IN YORK COUNTY, PA**

**REPLY OF THE STATE OF MARYLAND
TO ANSWER OF JAMES RIFFIN d/b/a THE NORTHERN CENTRAL RAILROAD
TO PETITION TO REVOKE VERIFIED NOTICE OF EXEMPTION**

The State of Maryland hereby submits its reply to James Riffin's Answer To Petition Of The State Of Maryland To Revoke Verified Notice Of Exemption ("Answer") filed on or about September 14, 2004.¹ In his Answer, Mr. Riffin moves to dismiss Maryland's Petition to Revoke on the grounds that Maryland lacks standing to challenge an NOE filed with respect to track in Pennsylvania and did not timely file its Petition. For the reasons set forth below, Mr. Riffin's motion should be denied.

I. Background Facts

Maryland petitioned to revoke Mr. Riffin's Verified Notice of Exemption ("Pennsylvania NOE") because Mr. Riffin is improperly using the Board's publication of that Notice in an effort to insulate himself from Maryland's environmental and health and safety laws. Recent inspections have revealed that Mr. Riffin has begun large-scale earth-moving and construction activities within the 100-year floodplain and stream channel of Beaver Dam Run – a water of the

¹ Maryland has today filed a Motion for Leave to File a Reply to a Reply, and is submitting this document in anticipation of a favorable ruling on that Motion.

State protected as a natural trout fishery and public drinking water supply. Mr. Riffin's activities at the site, which is located at 10919 York Rd., Cockeysville, Maryland, are causing sediment pollution of the stream in violation of at least four Maryland laws. When State and County inspectors confronted Mr. Riffin with his many violations, Mr. Riffin responded by stating that he was aware that he was violating Maryland law but that he was a railroad and would continue with the construction activity regardless of what steps Maryland or Baltimore County might take.

Unable to gain Mr. Riffin's compliance or cooperation, Maryland and Baltimore County instituted an action in the Circuit Court for Baltimore County to compel Mr. Riffin to install sediment controls, stabilize the site, and reverse the environmental damage that he had already caused. In order to stop Mr. Riffin immediately, the State and County sought a temporary restraining order against Mr. Riffin, which the court granted on August 30, 2004. On September 9, 2004, the Circuit Court held a hearing on the preliminary injunction, in which Mr. Riffin argued that the Notice of Exemption published by the Board in this proceeding made him a railroad and, as a result, the ICCTA preempted the State and local laws at issue. Unconvinced, the Circuit Court issued a preliminary injunction against Mr. Riffin ordering him to stabilize the site, install sediment controls, and remove the stockpiled materials that posed the greatest flood risk.²

After the hearing, and despite the issuance of a preliminary injunction, Mr. Riffin refused to remove anything from the site. Instead, Mr. Riffin filed suit in U.S. District Court against past and present counsel for MDE and the County seeking an injunction prohibiting counsel from

² While the motion for a preliminary injunction was pending, Mr. Riffin removed the case to federal district court which, on September 8, 2004, ruled that the ICCTA did not completely preempt the State and local pollution control laws at issue and remanded the case to the State court.

enforcing the Preliminary Injunction and other State and County laws against him. The federal court dismissed the suit *sua sponte* the day after it was filed and before the defendants were even served, a decision that Mr. Riffin has indicated he would appeal to the Fourth Circuit.

Throughout the process, Mr. Riffin consistently maintained that it was the Board's publication of the Notice of Exemption in this proceeding that placed him beyond the reach of all State and local police powers.

II. Argument

A. Maryland has Standing to File the Petition to Revoke.

Mr. Riffin's conduct leaves no room for doubt that he is using this Notice of Exemption to flout Maryland's environmental laws to the detriment of the citizens of Maryland. Many of those citizens – comprising the population of Baltimore City and much of Baltimore County – rely on Beaver Dam Run and the reservoir it feeds for their drinking water and fire protection services. It is hard to imagine an interest more central to the State and County than protecting the health and safety of its citizens, not to mention the integrity of its laws.

Courts use a three-part test to determine whether a party has standing to bring an action: (1) the party must personally have suffered an actual or threatened injury caused by the defendant's alleged conduct, (2) the injury must be fairly traceable to the defendant's challenged conduct, and (3) the injury must be one that is likely to be redressed through a favorable decision. *Simmons v. ICC*, 900 F.2d 1023, 1026 (7th Cir., 1990), citing *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472, 70 L. Ed. 2d 700, 102 S. Ct. 752 (1982). In the instant action, Mr. Riffin's claims, which he bases on the Notice of Exemption in this proceeding: (1) have caused Maryland actual injury; (2) are

traceable to the illegal conduct that has occurred in the state of Maryland, and (3) would be redressed through a revocation of the Notice of Exemption.

Mr. Riffin states in the Answer that Maryland lacks standing because the “line in Pennsylvania does not affect the state of Maryland.” Answer at p. 2. His own conduct belies that statement. While it is true that the line at issue in this proceeding is not located in Maryland, Mr. Riffin’s abuse of the Board’s jurisdiction has had a direct and substantial effect on Maryland. As Maryland detailed in its Petition to Revoke, he is using the Notice of Exemption in this proceeding to attempt to justify his continuous violations of Maryland’s environmental laws. These activities include grading and construction activities in environmentally sensitive areas that run afoul of at least four Maryland laws.³

The claim that Maryland lacks standing is simply wrong. Maryland is being affected in a direct and substantial manner in that the attempted use of the Notice of Exemption in this proceeding as a shield against the state environmental laws is causing potentially severe and irreparable damage to Maryland, not Pennsylvania, lands. The decision by a state court to issue a preliminary injunction prohibiting Mr. Riffin from conducting the grading and construction activities confirms the impact and potential damage that Mr. Riffin’s activities are causing. Notwithstanding the fact that a court of competent jurisdiction has enjoined him from continuing his activities, he is attempting to argue that the ICCTA preempts Maryland, not Pennsylvania, state laws and specifically permits him to defy an injunction entered by a Maryland court.

³ See MD. CODE ANN., ENV’T ART. § 4-101 *et seq.* (sediment control laws requiring the installation of silt fences and other sediment control devices); § 4-413 (sediment pollution of Maryland waters); § 5-503 (requiring a permit for conducting activities within the waters of the State, including the 100-year floodplain), § 9-322 (requiring a permit for discharges of pollutants to waters of the State).

Maryland clearly has a stake here and has standing to file its Petition to Revoke.

B. Maryland's Petition to Revoke was Timely.

Nor is there any merit to Mr. Riffin's claim that Maryland's Petition to Revoke was untimely. Mr. Riffin asserts that:

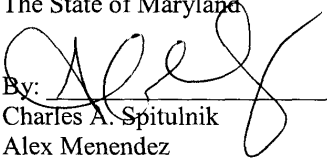
Maryland had an opportunity to file its Petition to Revoke shortly after Riffin filed his PA NOE. Since Maryland's Petition to Revoke contains the same concerns raised by Maryland in its Comments, there is no good reason why Maryland could not have filed its Petition to Revoke at the same time it filed its Comments.

Answer at p. 5. It is true that Maryland filed comments opposing the Notice of Exemption in this proceeding, fearing that Mr. Riffin would attempt to use this Board's jurisdiction to insulate himself and his planned "dinner/excursion train" from Maryland's environment laws. However, because Mr. Riffin had not yet attempted to wield the Notice of Exemption as a shield against state environmental laws, Maryland could not have filed a Petition to Revoke based on speculation alone. Once Maryland learned that Mr. Riffin was, in fact, abusing the Board's jurisdiction, it filed its Petition to Revoke. Because Maryland acted promptly upon acquiring such information, its Petition to Revoke is timely and should not be dismissed.

WHEREFORE, Maryland respectfully requests the Board to deny Mr. Riffin's motion to dismiss Maryland's Petition to Revoke.

Respectfully submitted,

The State of Maryland

By: 

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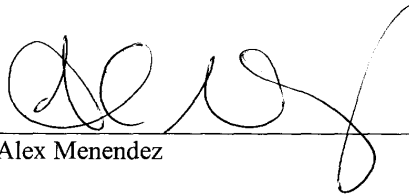
Email. cspitulnik@mwmlaw.com

Dated: October 4, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2004, a copy of the foregoing Reply of the State of Maryland to Answer of James Riffin d/b/a The Northern Central Railroad to Petition to Revoke 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



Alex Menendez