

215198

SIDLEY AUSTIN BROWN & WOOD LLP

BEIJING
BRUSSELS
CHICAGO
DALLAS
GENEVA
HONG KONG
LONDON

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

LOS ANGELES
NEW YORK
SAN FRANCISCO
SHANGHAI
SINGAPORE
TOKYO
WASHINGTON, D.C.

WRITER'S DIRECT NUMBER
(202) 736-8538

WRITER'S E-MAIL ADDRESS
phemmersbaugh@sidley.com

November 23, 2005

By Hand

The Honorable Vernon A. Williams
Secretary
U.S. Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
NOV 23 2005
Part of
Public Record



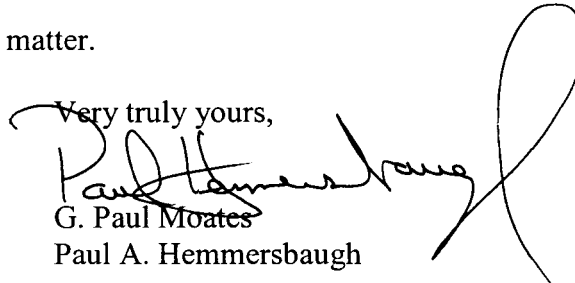
Re: NSWMA et el Petition for Declaratory Order, STB Docket No. 34776

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are the original and ten copies of a (i) Motion Of The New York, Susquehanna, And Western Railway Corporation For Leave To File Response; and (ii) Response Of The New York, Susquehanna, And Western Railway Corporation To Reply Of New Jersey Department Of Environmental Protection And New Jersey Meadowlands Commission.

Please file these two documents in STB Docket No. 34776, file-stamp the additional copies and return them to our messenger for service and for our files. If you have any questions regarding this filing, please contact one of the undersigned.

Thank you for your assistance in this matter.

Very truly yours,

G. Paul Moates
Paul A. Hemmersbaugh

cc: Counsel of record

ENTERED
Office of Proceedings

NOV 23 2005

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34776



**MOTION OF THE NEW YORK, SUSQUEHANNA, AND
WESTERN RAILWAY CORPORATION FOR LEAVE TO FILE RESPONSE**

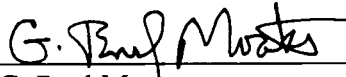
The New York, Susquehanna and Western Railway Corporation ("NYS&W") hereby moves the Board for leave to file the attached response to the Reply of the New Jersey Department of Environmental Protection and New Jersey Meadowlands Commission (collectively, "NJDEP"). Leave to file should be granted to enable NYS&W to correct the record by responding briefly to NJDEP's mischaracterizations of conditions at NYS&W's rail facilities and positions taken by NYS&W in other litigation.

The National Solid Wastes Management Association ("NSWMA") and several other entities filed a Petition for Declaratory Order in the above-captioned case, asking the Board to issue a declaratory order that 49 U.S.C. § 10501(b) does not preempt state and local regulation of certain transloading operations conducted at NYS&W's truck-rail transload facility located at 16th Street, North Bergen Township, Hudson County, New Jersey (the "16th Street Facility") and at "other similarly situated locations." NSWMA Pet. 8. On November 14, 2005, NYS&W filed a Reply to the Petition, arguing, *inter alia*, that the Petition is moot because the 16th Street Facility has been closed and that a declaratory order proceeding is inappropriate because of ongoing proceedings before the United States District Court for the District of New Jersey in *New York, Susquehanna and Western Railway Corp. v. Campbell* (Civil Action No. 05-4010 (KSH)) ("*NYS&W v. Campbell*").

Two days later, on November 16, 2005, the NJDEP filed its Reply. Without providing any factual support whatsoever, NJDEP accused NYS&W of being a "rogue operator" and claimed that certain of NYS&W's transload operations had "outrageous" and "deplorable" conditions. NJDEP Reply at 1, 2 n.2, 3. NJDEP further asserted that NYS&W was arguing in *NYS&W v. Campbell* that it was "answerable to no one for compliance with any environmental or public health and safety statute or regulation." *Id.* at 4 n.4. These immoderate and unsupported accusations mischaracterize the current conditions at NYS&W's facilities and the arguments made by NYS&W before the District Court. The attached reply responds to these mischaracterizations and will provide the Board with a more accurate and complete record on which to decide whether to institute the declaratory order proceeding requested in the NSWMA Petition.

WHEREFORE, NYS&W respectfully requests that the Board grant it leave to file the attached reply.

Respectfully submitted,



G. Paul Moates
Terence M. Hynes
Paul A. Hemmersbaugh
Matthew J. Warren
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (fax)

Attorneys for New York, Susquehanna and
Western Railway Corporation

Dated: November 23, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of November 2005, I served the foregoing Response of The New York, Susquehanna, And Western Railway Corporation To Reply of the New Jersey Department of Environmental Protection and New Jersey Meadowlands Commission by causing a copy thereof to be delivered by overnight courier to:

Stephen M. Richmond, Esq.
Tina Y. Wu, Esq.
Beveridge & Diamond, P.C.
45 William Street, Suite 120
Wellesley, Massachusetts 02481-4004

and by first class mail, postage prepaid, to:

William G. Dressel, Jr., Executive Director
New Jersey State League of Municipalities
407 West State Street
Trenton, NJ 08618

Martin T. Durkin, Esq.
Village of Ridgefield Park, New Jersey
71 Mount Vernon Street
Ridgefield Park, NJ 07660

Augustus M. Mosca, County Administrator
Burlington County, New Jersey
49 Rancocas Road
Mount Holly, NJ 08060

John Skinner, Ph.D., SWANA
Executive Director
Solid Waste Association of North America
P.O. Box 7219
Silver Spring, MD 20907-7219

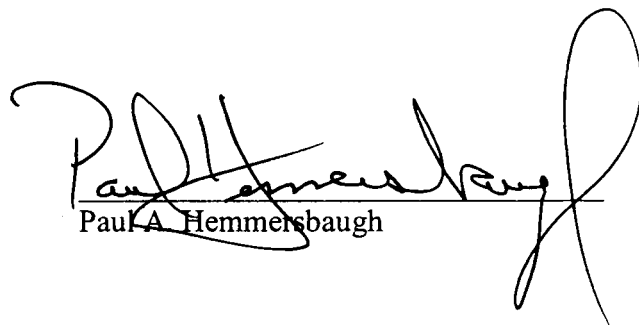
William Turley, Executive Director
Construction Materials Recycling Assn.
P.O. Box 122
Eola, IL 60519

Joanne Y. Watson, Corporation Counsel
City of Newark, New Jersey
920 Broad Street
Newark, NJ 07102

Mayor Patrick J. Byrne
Hainesport Township, New Jersey
Hainesport Township Municipal Complex
One Hainesport Centre
Hainesport, NJ 08036

Tom Cochran, Executive Director
The U.S. Conference of Mayors
1620 Eye Street, N.W.
Washington, D.C. 20006

Ted Michaels, President
Integrated Waste Services Association
1331 H Street, N.W.
Washington, D.C. 20005



Paul A. Hemmersbaugh