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VIA FACSIMILE & OVERNIGHT DELIVERY

March 29, 2006

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

ENTERED
Office of Proceedings

MAR 30 2006

Part of
Public Record



**Re: STB Finance Docket No. 34852, Gordon Reger-Continuance in
Control Exemption – Doremus Ave Recycling and Transfer, LLC**

**STB Finance Docket No. 34853, Doremus Ave Recycling and
Transfer, LLC-Operating Exemption**

Dear Secretary Williams:

This letter is submitted on behalf of Consolidated Rail Corporation ("Conrail") in the above-referenced proceedings.

The subject proceedings relate to a proposed rail-served waste transfer station located in Newark, New Jersey adjacent to a line of railroad known as the Bay Shore Lead, which is owned and operated by Conrail. Conrail is very familiar with the project since, as the proposed serving rail carrier, it would need to address any associated engineering and operational issues and indeed, has had a number of meetings and conversations with Doremus Ave Recycling and Transfer, LLC ("DART") about the project.

Conrail received no notice of the filings and, having now had the opportunity to review them, does not believe that they represent a legitimate use of the applicable class exemption. Conrail's objection is simply that the tracks to be operated by DART are exclusively private switching and yard tracks and, therefore, excepted from the STB's licensing authority under 49 U.S.C. 10906. In short, from the information supplied in the filing and from Conrail's knowledge of the project as described below, DART would be functioning merely as a shipper of waste (and possibly other commodities) and not as a rail common carrier.

From the outset, DART indicated to Conrail that it would switch railcars within the confines of the transfer station property. Under the proposed operational plan, Conrail

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would deliver empty gondolas or flat cars to a designated receiving track designated as track 10 on Exhibit A to the DART Petition. DART, or a contract switcher, would reposition the empty railcars to the waste loading tracks and then further reposition the loaded railcars to Track 9 for pick-up by Conrail. This proposed arrangement limits DART to performing strictly a yard switching operation. Furthermore, DART will not be operating on Conrail tracks. The configuration of the facility and the surrounding Conrail track infrastructure as well as Conrail's existing operational and service obligations presents no other viable operating alternative.

The foregoing begs the question as to the rationale and purpose behind the creation of a shortline railroad to serve the proposed waste transfer facility. It is a permitted facility and, therefore, it is not seeking railroad status to preempt state or local regulation. Furthermore, the proposed operation does not include a line of railroad over which the Petitioner could operate. Since the Board's jurisdiction does not extend to switching or spur tracks, 49 U.S.C. 10906, it would be an abuse of its authority to grant common carrier status to an entity that cannot function as such. See STB Finance Docket No. 34735, Northeast Interchange Railway, LLC (Decision dated November 18, 2005), where, in a proceeding also filed by Gordon Reger, the Board rejected a proposed transaction, inter alia, on identical grounds.

"(2) the Board has no licensing authority over the track because it is exempt spur track or switching track; and (3) the activity in which NIR would be engaging is not subject to Board jurisdiction because it is not transportation by railroad, but merely continuation of the same private waste processing activities by a different entity."

Lastly, we question the basis for the representation in the notice that "as part of this project, DART is constructing approximately 12,000 feet of railroad trackage and switches to serve its facility," Notice of Operation, p. 3-4. Exhibit A indicates a total length of the various yard tracks of approximately 3,500 feet. While the lengths of the various crossovers and lead track are not indicated, they appear to add at most another 1,500 feet bringing the total trackage to less than half of what is represented in the Petition. It should be noted that the proposed track layout and transfer facility totally utilize the entirety of the available property. In short, the diagram reflects a switching yard, not a line of railroad.

Given the foregoing, we believe that the Board cannot grant the relief sought in the subject petition and therefore, should either reject the notice or, in the alternative, stay the notice and establish a procedural schedule so that the record can be more fully developed. Furthermore, the continuance-in-control notice filed by Gordon Reger in STB Finance Docket No. 34852 is rendered moot since it flows from the same project.

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Respectfully submitted,

A handwritten signature in cursive script, reading "Jonathan M. Broder".

Jonathan M. Broder

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c: John Heffner, Esq.