

217016

RUTGERS ENVIRONMENTAL LAW CLINIC

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July 12, 2006

BY ELECTRONIC FILING

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

Re: Request for Comments on New England Transrail, LLC (d/b/a Wilmington & Woburn Terminal Railway) – Petition for an Exemption from 49 U.S.C. § 10901 to Acquire, Construct and Operate as a Rail Carrier on Tracks and Land in Wilmington and Woburn, Massachusetts, STB Finance Docket No. 34797

Dear Secretary Williams:

Please accept these comments on behalf of Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper) and the Hackensack Riverkeeper, Inc. (collectively, "Commentors") pursuant to the Surface Transportation Board's ("STB's") decision in this matter decided on June 12, 2006, and served on June 13, 2006.

The STB invited comments from "all interested parties" on "what activities would normally be associated with transloading and thus would be part of rail transportation" and, in particular, "what activities would normally be associated with [municipal solid waste] and [construction and demolition debris] processing and would occur even absent rail transportation." Commentors' interest in this matter arises out of their involvement in litigation against a railroad for operating five waste management facilities in North Bergen, New Jersey, that have operated without any state or local permits and without complying with state and local environmental laws and have as a result polluted the air, water, wetlands and soil in the area.

As described by the STB, New England Transrail, LLC "proposes to subject all of the C&D and some of the MSW it receives to sorting, grinding, crushing, aggregating, segregating, and /or baling before being loaded into rail cars or containers for rail shipment." The railroad has apparently argued that these activities are "rail transportation" or are somehow "integrally related to rail transportation" and therefore qualify for preemption from most state and local regulation under 49 U.S.C. § 10501(b).

The STB should limit the application of the terms "transportation" and "transloading" to waste handling activities involving sealed containers only. Any handling of loose debris will necessarily involve some amount of non-loading manipulation in the form of separating the waste, extracting recyclables for profit and other material that will not be accepted by the receiving landfill, pushing the waste into piles with heavy machinery, and crushing the waste (purposefully or accidentally) to reduce the volume before loading. If the waste is kept in open

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piles then operators should be engaging in additional non-loading waste management activities such as controlling dust through the application of water and controlling the runoff of leachate. All of these activities occur before loading and are the same activities undertaken by the operators of non-railroad waste management facilities, who have to comply with generally applicable solid waste laws. Indeed, the only unique feature of railroad waste facilities is the actual loading of waste onto railcars. Put another way, unless the railroad and its contractors are loading sealed containers of waste they are necessarily engaging in at least some activities normally associated with non-rail waste management operations.

This distinction between those activities absolutely necessary for loading waste and other waste management activities is fully consistent with STB and court precedent distinguishing between true railroad transportation and loading activities and related but attenuated activities upstream of actual loading. As the Third Circuit noted in a different context, “[t]he mere fact that the [railroad] ultimately uses rail cars to transport the [construction and demolition] debris [the waste company] loads does not morph [the waste company’s] activities into ‘transportation by rail carrier’” because under that reasoning “any nonrail carrier’s operations would come under the exclusive jurisdiction of the STB if, at some point in the chain of distribution it handles products that are eventually shipped by rail” Hi Tech Trans, LLC v. New Jersey 382 F.3d 295, 309 (3rd Cir. 2004). When railroads purport to handle waste upstream of actual loading, those activities are not any more morphed into “transportation” than the activities of non-rail operators. The notion that all generally applicable laws are preempted by ICCTA has been rejected as absurd and unconnected to the intent of Congress, for that “reasoning, taken to its logical conclusion, could mean that railroads cannot be required to put postage on their mail.” Holland v. Delray Connecting R.R., 311 F. Supp.2d 744, 757 (N.D. Ind. 2004).

Our position is also informed by three practical considerations. First, the STB must resolve the matter in a manner that will avoid future disputes about whether particular pre-loading activities involve sufficient handling to trigger STB jurisdiction and the right to preempt state and local oversight. In our view, attempts to draw the line based on some quantitative or quantitative measure other than upon whether waste is handled in closed containers or not will invite many challenges as to whether the handling is one quantum over or under the amount thought necessary to trigger jurisdiction. In contrast, whether or not a railroad is handling sealed containers is a bright-line, enforceable rule. The jurisdictional issue is one that demands clarity.

Commentators note that the STB has made a previous attempt at drawing a related jurisdictional line between ancillary operations that involve “manufacturing activities and facilities not integrally related to the provision of interstate rail service are not subject to our jurisdiction or subject to federal preemption.” Borough of Riverdale Petition for Declaratory Order the New York Susquehanna and Western Railway Corporation, STB Finance Dkt. No. 33466, 4 S.T.B. 380 (STB served September 10, 1999). The STB’s “integrally related” jurisdictional test, while perhaps a reasonable construction of ICCTA and a policy that is close to the intent of Congress, has not proven to be a final or even workable resolution of jurisdictional issues. Perhaps this failure is due to the absence of either rulemaking or extensive development in cases in the first instance to set forth the details so necessary to real-world applications, such as the kinds of activities and facilities at the rail terminus are “integrally related” to interstate rail

service. At any rate, this test has been left to languish as a general pronouncement and has not proven sufficient to resolve the present dispute or many other matters involving terminal facilities. The Board should correct that failure here by establishing clear criteria that mark activities outside of its jurisdiction.

Second, and more importantly, the STB must avoid inadvertently creating legal conditions that provide an incentive for railroads to expand their activities beyond traditional railroad functions to gain a competitive advantage in activities that avoid all oversight under public health and safety laws. Although many early ICCTA preemption cases before the STB involved core railroad facilities such as the construction of switching facilities and tracks, the STB asserted its jurisdiction and its right to pronounce the scope of ICCTA preemption regardless of whether it has licensing or regulatory authority. See Borough of Riverdale, Petition for Declaratory Order, STB Finance Dkt. No. 33466 (STB served Sept. 9, 1999). Since the STB's environmental review obligations are triggered only by its licensing authority, that assertion by the Board inadvertently created the situation where it preempted local laws even when it did not have the statutory authority to fill the regulatory gap.

The STB's decision in this matter should be influenced by its practical effect on whether any environmental review will take place because railroad waste operations have the potential to cause significant environmental harm. For example, the New York Susquehanna & Western Railroad ("NYSW") has attempted to use ICCTA to preempt solid waste laws over five waste operations in North Bergen, New Jersey, and in several other municipalities. NYSW operates a 400 mile line between northern New Jersey and central New York, where its cars are transferred to tracks operated by a national railroad. At some point around 2003, NYSW unilaterally opened several solid waste handling facilities along its existing tracks. NYSW arranged to have construction and demolition debris dumped in open piles that grew to over 50 feet tall. See enclosed Exhibit 1 (various photographs of site operations). After the debris was sorted to remove recyclable metals and material that could not be disposed of in the receiving landfill, heavy machinery crushed and the waste and pushed it into piles for loading on railcars with claw attachments on cranes. Not only were the facilities extensively handling the waste for loading on railcars, but they were grinding tires and wood pallets into chips and separating out recyclable metal, presumably for resale. All of these activities caused significant emissions of dust and contaminated stormwater runoff, which are problematic because construction and demolition debris includes treated and untreated wood scrap, concrete, asphalt, plaster, wallboard, roofing materials, cardboard, metal, insulation, plastic scrap and other materials with hazardous waste elements, and may also include asbestos insulation and wood treated with lead paint from the older structures that are common in the Northeast, or all-weather wood treated with arsenic.

On-site inspections found extensive violations of state laws, including operating outside of an enclosed building, failing to have a system to collect waste water and failing to control dust. State and local fire inspectors observed flammable acetylene bottles and paint, piles of waste tires, hydraulic fluid in puddles on the ground, missing or inoperable fire extinguishers, the improper dispensing of fuel, and the use of equipment close to high-voltage power lines, all of which created an extreme fire danger. See enclosed Exhibit 2 (inspection report). One crane had actually touched the high-voltage wires, which short-circuited the lines and caused a power

Hon. Vernon A. Williams

July 12, 2006

Page 4 of 4

outage, but NYSW did not report this incident to the power company or local authorities. State environmental inspectors took samples from standing pools of water at three of the transfer stations and found elevated levels of mercury, arsenic and lead at each station. See enclosed Exhibit 3 (inspection and lab reports). At another site, officials found 80 containers of phosphorus pentasulfide, a flammable chemical that can ignite or explode on contact with water and release toxic fumes; the company routinely left the gates to the facility open and had not reported the chemical to local emergency services, who might have unwittingly attacked any fire with water. And after one carload of waste caught fire and was extinguished, NYSW refused to allow the firefighters to inspect the waste on the theory that federal law preempted local fire controls. See enclosed Exhibit 4 (newspaper article).

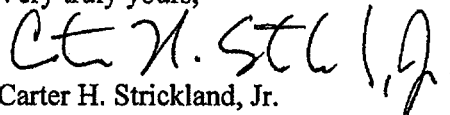
In our view, NYSW's activities were outside of the STB's jurisdiction. The activities of the railroad were well beyond what any reasonable person would consider to be traditional transloading activities, and certainly these activities could not be viewed as necessary to accomplish the transfer of wastes from truck to rail. Lingering doubts about the matter, however, have prevented the effective enforcement of solid waste laws that are otherwise generally applicable to all waste management facilities. The STB should take this opportunity to eliminate the perception of a regulatory gap and to clarify the non-preemption of state solid waste laws.

Containers that are properly sealed at regulated waste management facilities would prevent waste from leaking into the environment during loading and transportation by railroads and would avoid these missteps. Accordingly, if the STB asserts jurisdiction over waste loading operations only where the waste is within properly sealed containers, it will not have created a regulatory gap removing all oversight over waste management.

Third, the STB must consider the precedential impact of its decision in this matter on operations that have even more potential for harm. Lawyers for NYSW and other railroads have already claimed in regulatory rulemakings that "preemption applies equally to hazardous waste, medical waste and recycling facility permits and approvals." 36 New Jersey Register 5098(b), Cmt. 16. We are not suggesting that containerization of such wastes would be adequate to address all risks from such materials, but at a minimum the handling of such wastes in the open should be foreclosed. That will happen only if the STB declares that it does not have jurisdiction (and that state and local authorities do have jurisdiction) over wastes that are handled outside of sealed containers.

Commentors emphasize that this is a crucial opportunity for the STB to clarify its powers vis-à-vis state and local zoning and land use controls. Thank you for the opportunity to submit these comments.

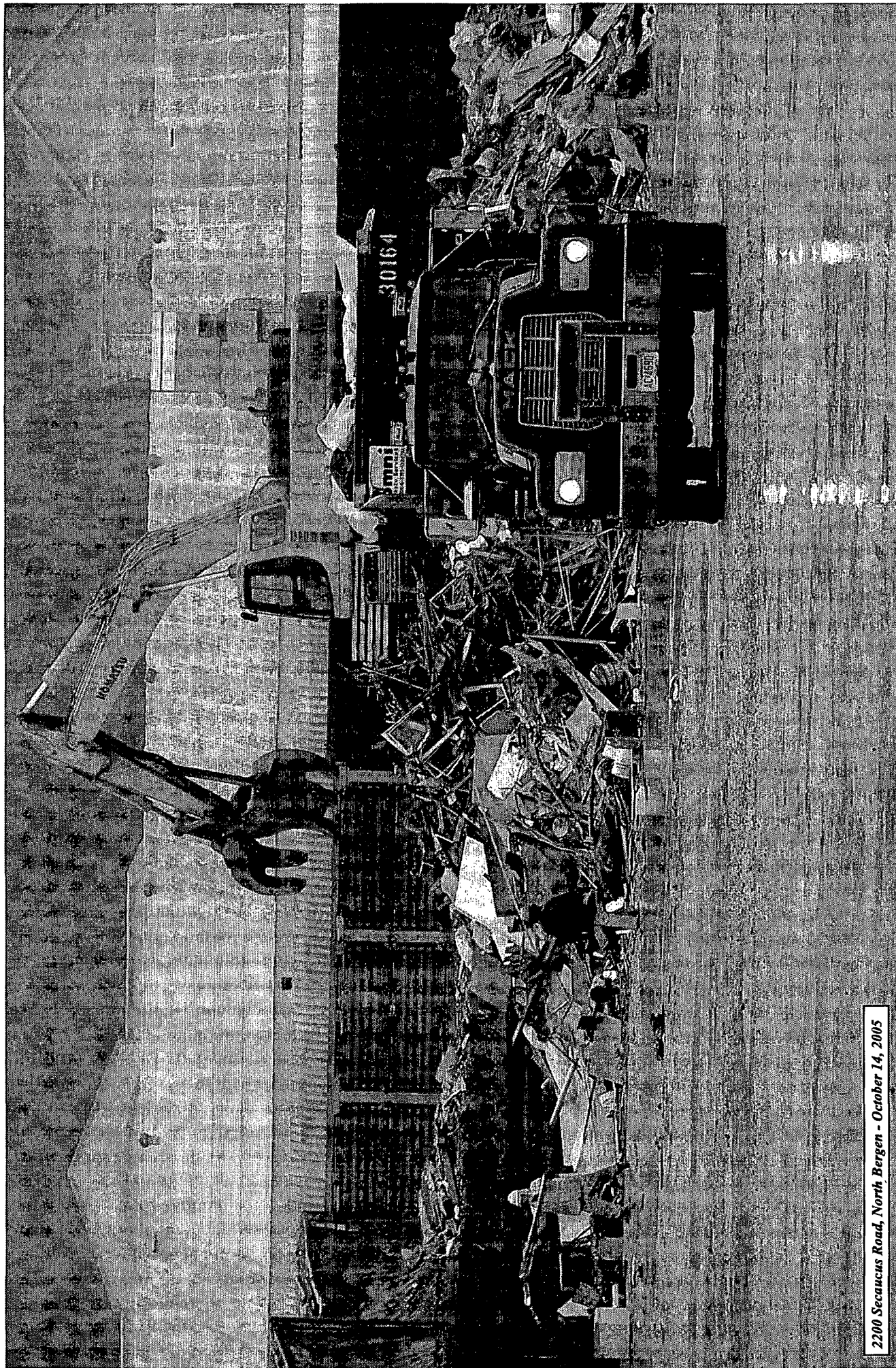
Very truly yours,


Carter H. Strickland, Jr.

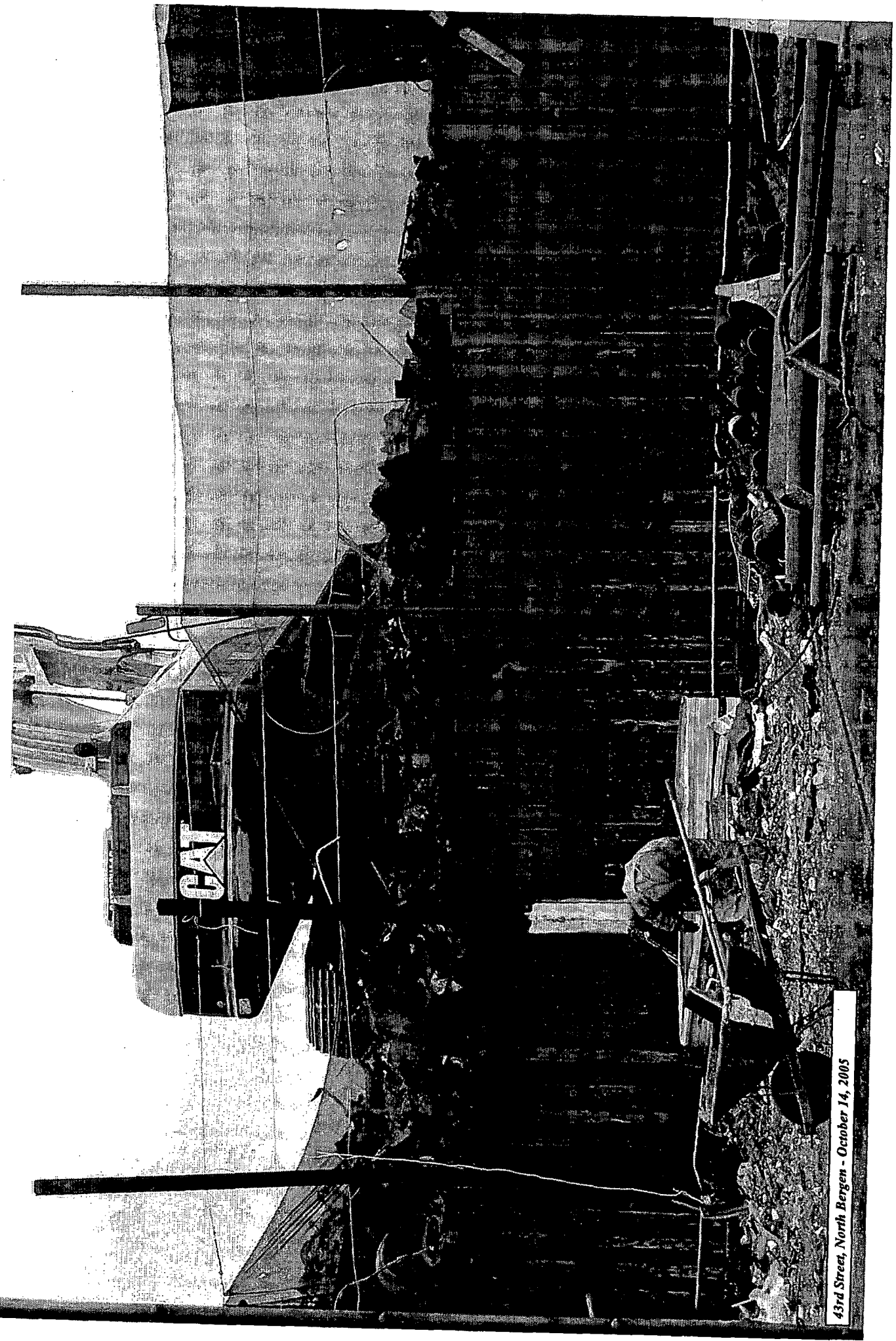
Encl.



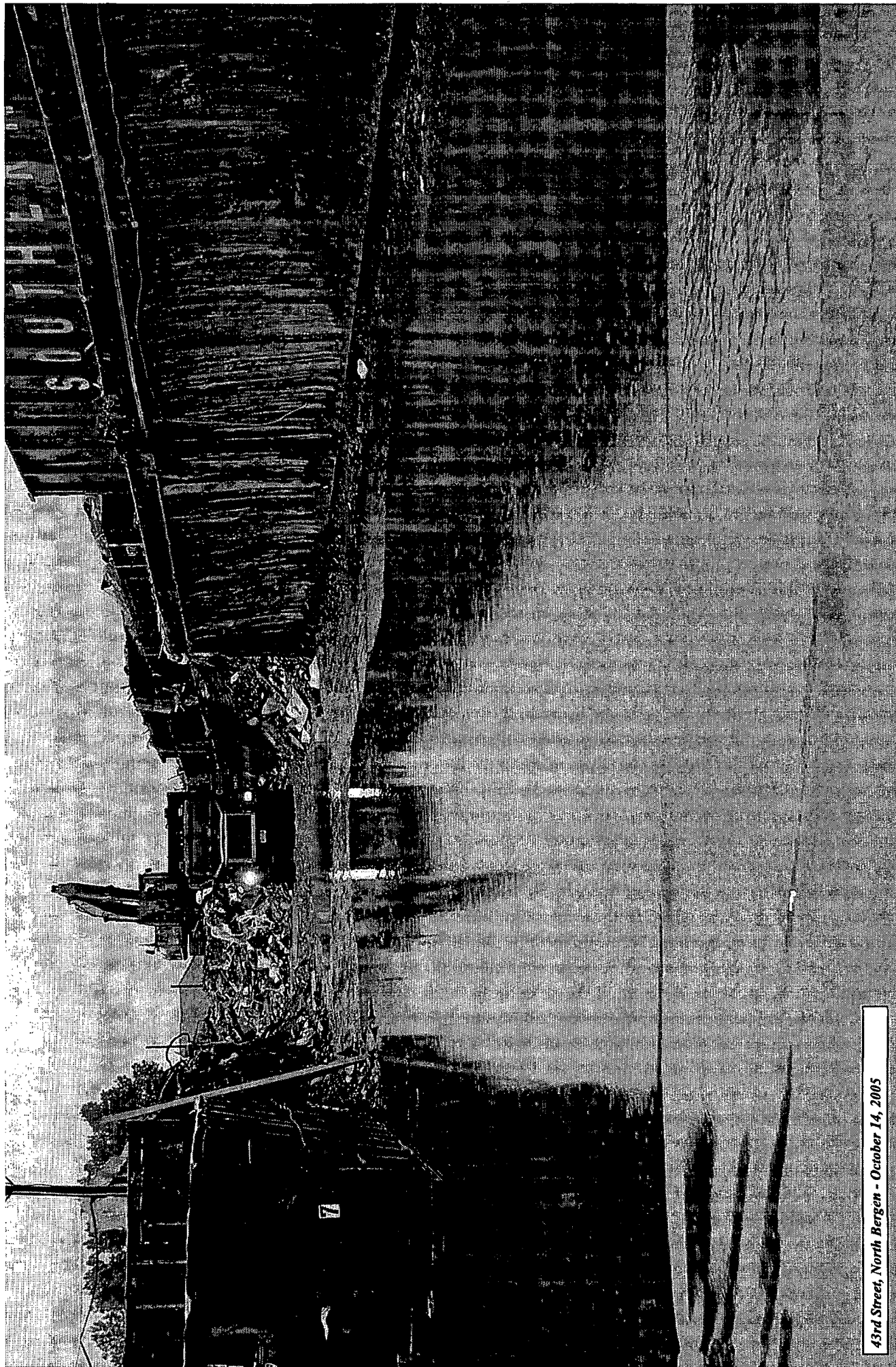
2200 Secaucus Road, North Bergen - October 14, 2005



2200 Secaucus Road, North Bergen - October 14, 2005



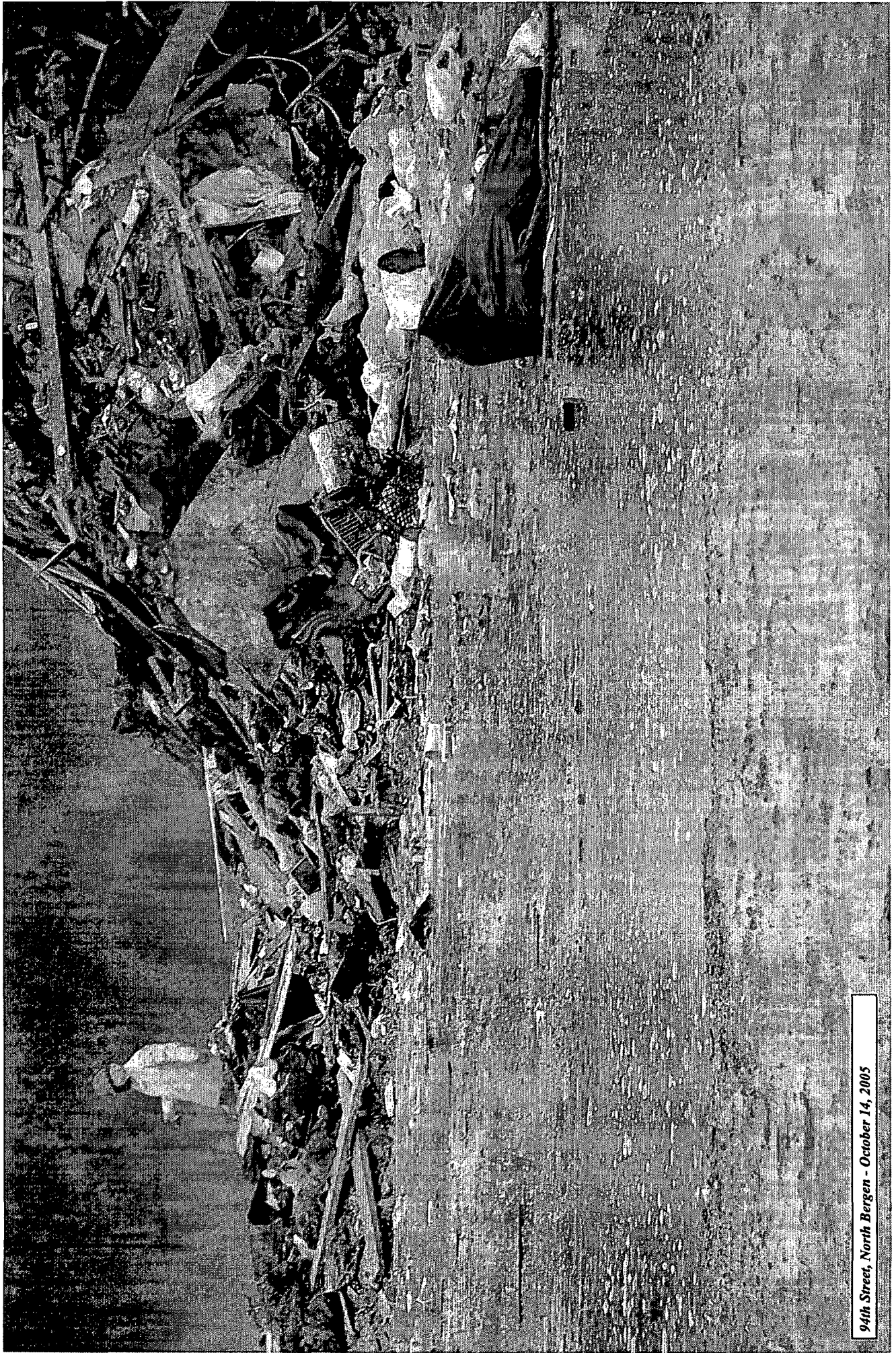
43rd Street, North Bergen - October 14, 2005



43rd Street, North Bergen - October 14, 2005



43rd Street, North Bergen - October 14, 2004



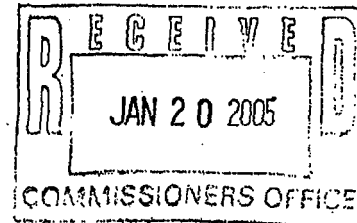
94th Street, North Bergen - October 14, 2005



2200 Secaucus Road, Dec. 10, 2004

**DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF FIRE SAFETY
MEMORANDUM**

TO: Susan Bass Levin, Commissioner
FROM: William Kramer, Jr., Deputy Director
DATE: January 20, 2005
SUBJECT: North Bergen Trash Transfer Stations



As requested, I along with Director Petrillo and Principal Inspector Smyth met with the Director and Fire Chief of the North Hudson Regional Fire Rescue agency as well as the North Bergen Fire Official and the Hudson County Department of Health. Together we visited two sites in North Bergen utilized by the NYS&W Railroad as trash transfer stations. At each location we were met by the site manager who advised us that the facility was on federal property and we had no jurisdiction. In each case we advised the site managers that it was not federal property and we, as well as the local fire official, did have jurisdiction.

Each site allows trash haulers to enter their property, be weighed, dump their loads, and re-weighed on their way out. Once dumped, the trash is separated and then loaded into rail cars and transported to Ohio. At the first site we visited we found mostly construction debris including wood, shingles, metal, sheet rock, paint which had spilled onto the ground, and an acetylene bottle. On this day the trash was piled to a height of approximately 20 feet. However, the fire official as well as the site manager stated that this pile has been as high as 60 plus feet. Additionally, we observed the improper dispensing of fuel, hydraulic fluid in puddles on the ground, and missing or inoperable fire extinguishers. However, the most disturbing aspect was that this operation was directly under high power transmission lines and is apparently on PSE&G property. This poses an extreme risk to these lines if a fire were to occur.

At the second location we found a similar operation. However, the debris pile was approximately 30 feet. Again we observed the improper dispensing of fuel and missing or inoperable fire extinguishers. At this location the manager called the railroad police to have us removed from the property. When the officer arrived he advised us that it was railroad property, not federal property, and allowed us to continue with our inspection.

After discussion with the fire official we have decided that the most effective way to handle this situation is for the division to issue the fire code violations. Additionally, we will be contacting DEP regarding the paint and hydraulic fluid spills and the acetylene cylinder as well as the BPU regarding the operation under the power lines.

Attached are pictures we took at each location.

c: Charles Richman
Lawrence Petrillo
George Miller

WILLIAM BROWN
ACTING ATTORNEY GENERAL OF NEW JERSEY

R.J. Hughes Justice Complex

25 Market Street

P.O. Box 093

Trenton, NJ 08625-0093

Attorney for Defendants/Counterclaimants/Third-Party Plaintiffs

Bradley M. Campbell, in his official capacity as the Commissioner
of the New Jersey Department of Environmental Protection,
the New Jersey Meadowlands Commission, et al.

By: Kevin P. Auerbacher (KA 9707)
Penny Cirrotti-Ludman (PC 1985)
Deputy Attorneys General
(609) 292-6945

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NEW YORK, SUSQUEHANNA AND
WESTERN RAILWAY CORPORATION,

Plaintiff,

v.

BRADLEY M. CAMPBELL, in his official
capacity as Commissioner of the
New Jersey Department of Environmental
Protection, NEW JERSEY
MEADOWLANDS COMMISSION, et al.,

Defendants/Counterclaimants/Third Party
Plaintiffs,

v.

MHF LOGISTICAL SOLUTIONS, INC.;
SLANE RAIL TRANSPORT, LLC;
PRECISE CONSTRUCTION
CONTRACTING, INC.; RAIL-TECH,
LLC; HUDSON-NATIONAL, LLC;
CARDELLA TRUCKING CO., INC.;
ON TRACK LOADING COMPANY, INC.;

CIVIL ACTION No. 05-4010 (KSH)
ELECTRONICALLY FILED

**DECLARATION OF JOSEPH M.
MIKULKA CONCERNING THE
RESULTS OF STORM WATER
SAMPLES COLLECTED AT THREE
NYS&W FACILITIES**

X-PRESS RAIL TRANSFER, LLC d/b/a :
94TH STREET RAIL TRANSFER, LLC; :
SCOTT EXCAVATING, LLC; and :
SUSQUEHANNA BULK SYSTEMS, INC.,:

Third Party Defendants.

I, Joseph M. Mikulka, make this declaration upon personal knowledge:

1. I submit this declaration to bring to this Court's attention certain conclusions I have reached following my review of the analytical results of three storm water samples collected during inspections at three New York Susquehanna and Western Railroad transfer stations (hereinafter "NYS&W facilities") on October 25, 2005, by John Zuzeck, an inspector employed with the New Jersey Department of Environmental Protection (hereinafter the "Department" or "DEP") Northern Bureau of Water Compliance and Enforcement.
2. I have worked for over 34 years at the DEP. In 1971 I began working for the DEP compliance and enforcement program. Since 1971 I have held various engineering, supervisory and management titles with the DEP. Currently, my title is Bureau Chief, Northern Bureau of Water Compliance and Enforcement. I am currently responsible for the management and administration of compliance monitoring and enforcement programs in support of the DEP's drinking water, water supply, wastewater and underground storage tank regulatory programs in a nine county area of northern New Jersey. I graduated from Fairleigh Dickinson University with a BS in Mechanical Engineering and the University of Southern California's Environmental Management Institute in the Graduate School of Public Administration. In my various roles as an employee of the DEP I have reviewed and analyzed the results of numerous water and storm water samples.

3. In November of 2005 I was asked by James K. Hamilton, Administrator of the Water Compliance and Enforcement Program, to review the results of three storm water samples collected on October 25, 2005, during inspections of three NYS&W facilities located in North Bergen, Hudson County, New Jersey, at 16th Street, 43rd Street, and 94th Street. The reports containing the results beared Laboratory Identification Numbers of 0504786, 0504787, and 0504788. True and correct copies of the these reports containing the sample analyses results are appended hereto as Exhibits A, B and C. The samples were collected by John Zuzeck, an inspector with the Northern Bureau of Water Compliance and Enforcement, who, upon receipt of the sample reports from the New Jersey Department of Health and Senior Services, Public Health and Environmental Laboratory, forwarder the results to Mr. Hamilton. On October 25, 2005, Mr. Zuzeck was accompanied by Mike Gage of DEP Solid Waste Compliance and Enforcement.
4. Prior to my review of the sample analyses results I discussed the sampling locations and results with Mr. Zuzeck. Following are my conclusions:
 - a. All of the stormwater samples analyzed contained evidence of pollutants. Specifically, all of the samples contained concentrations of lead (Pb), arsenic (AS), Mercury (Hg) and Copper (Cu).
 - b. In almost all cases, the analyses for the above mentioned four toxic metals showed results in excess of the applicable Surface Water Quality Standards ("SWQS"). All but one sample result was in excess of the Fresh Water Class 2 (FW-2) SWQS and all of the sample results were in excess of the Saline Estuary (SE) SWQS. A

summary of the sample analyses results compared to the SWQS is appended hereto as Exhibit D.

c. Some of these exceedences of the SWQS were by orders of magnitude. Thus, even with the additional dilution that would be expected before the stormwater reached a surface water body, there would likely be a pollutional impact on the receiving waters.

5. Toxic metals are of high concern in the Hackensack River watershed.
6. Based on my discussions with Mr. Zuzeck, it is clear that there is a significant threat that the polluted stormwater sampled on October 25, 2005 from the three NYS&W facilities eventually reached a New Jersey surface water body, whether through direct pumping of stormwater to a surface water body, transport through a storm drain, or overland flow. Additionally, future stormwater from the NYS&W facilities located at 16th Street and 43rd Street will also potentially reach New Jersey surface water bodies because these NYS&W facilities operate their waste loading activities outside of an enclosed building, allowing rain water to come into contact with the waste, and do not adequately control the stormwater runoff. Even at the 94th street facility, where I am told waste loading activities will eventually be conducted inside of an enclosed building, waste water produced from dust suppression activities and not properly disposed of could potentially reach New Jersey surface water bodies.

7. Past and future ground water seepage of the above discussed stormwater and waste water at all three facilities is also likely.
8. Based on these results the DEP would either regulate these facilities by requiring them to apply for and receive storm water permits, or order the facilities to cease the discharge of stormwater containing concentrations of the four above-mentioned metals in excess of the SWQS and remediate any impacts to the environment caused by the release of the contaminated stormwater.

Pursuant to 28 V.S.C. §1746, and under penalty of perjury, I declare that the foregoing is true and correct to the best of my knowledge. Executed on December 6, 2005



Joseph M. Mikulka

EXHIBIT A

FOR LABORATORY USE ONLY

Bact. Lab No. _____

Date Rec'd _____

Time Rec'd _____

New Jersey Department of Health
and Senior Services
Public Health and Environmental Laboratories
PO Box 361, Trenton, NJ 08625-0361

AQUEOUS SAMPLE ANALYSIS REQUEST

FOR LABORATORY USE ONLY

Lab Batch Number 9512E

Lab Sample Number 10504786

Sample Point/Station Identification Number SE Corner - waste loading area

Collection Date (YY/MM/DD) 05/10/25

Collection Time (Military) 1314

Field Sample Number 108825

Sampling Site/Facility/Supply/Location NYSWRR - 16TH AVE

Stream trib. Hackensack R.

Municipality Secaucus

County Hudson

Sample Type

☐ Stream/Surface	☐ Raw	☐ Effluent
☐ Sewage	☒ Raw	☐ Effluent
☒ Industrial		
☐ Ground Water	☐ Raw	☐ Finished
☐ Potable		
☐ Private Well		
☐ Septic		
☐ Ocean/Seine		
☐ Other		

Trip Blank Number _____

Priority Level

☐ Routine ☒ Priority ☐ Emergency

Data Package

☒ MRRF (Tier I) ☐ SRRF (Tier I)

Retain Sample

☐ No ☐ Yes

Chain of Custody

☐ No ☒ Yes

Submitting Agency NJDEP NBWCE

Sample Collector John Zuzack

Street Address 7 Ridgedale Ave

DEP Agency No. 222

DEP Project Code 7W106BXX

City, State, Zip Code Cedar Knolls, NJ

Field Information

Water Temp °C (P00010) ~11.0C

Do-Winkler (P00300) _____

Do-Probe (P00289) _____

pH (Field) (P00400) ~6.034

Sample Depth Ft. (P00003) _____

Residual Chlorine _____

Turbidity _____

Stream Flow-CFS (P00081) _____

Gage Height-Ft. (P00088) _____

Spec. Cond. @ 25 °C (P00086) _____

Salinity (P00480) _____

Tide Stage (PT0211) _____

Disinfecting Agents Added in Field

☐ Yes ☒ No

Preserved in _____ Date (YY/MM/DD) 05/10/25 Time (HH/MM) 1314

☒ Field ☐ Lab

Bacteriology

Fecal coli 100 ml ☐ MPN P31815 ☐ MF P31613

Fecal Strept 100 ml ☐ MPN ☐ MF

Ym coli 100 ml ☐ MPN P31505 ☐ MF P31501

Enterococci 100 ml ☐ MPN ☐ MF

Standard Plate Count

Suggested Bacteriological Dilutions

Fecal Coli

10	1	10	10	10	10	10	10
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Total Coliform

10	1	10	10	10	10	10	10
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Fecal Streptococci

10	1	10	10	10	10	10	10
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Enterococci

10	1	10	10	10	10	10	10
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Nutrients

☐ NO₂-N (NAND2)

☐ NO₂-NO₃ (NAND3)

☐ NH₃-N (NANH2)

☐ TKN (NATN)

☐ O-RTHO-P (NAOP)

☐ TOTAL-P (NATP)

Residuals

☒ Non-Filtrable 101 (RASS)

☒ Filtrable (RATF)

☐ Filtrable (RAFF)

☐ Settleable Matter (RASB)

Remnants

☒ COD/CL (GACODL)

☐ TOC/CL (GATOC)

☐ BOD5 (GABD5)

☐ BOD20 (GABD20)

☐ CBOD20 (GACBD20)

General

☐ Color (GAC)

☐ Odor (GAO)

☐ Turbidity (GAT)

☐ PH (GAPH)

☐ Alkalinity (GAAL)

☐ Acidity (GAAC)

☒ Chloride (GACL)

☐ MBAS (GAMB)

☐ Phenols (SS) (GAPHS)

☐ Phenols (PW) (GAPHEX)

☐ Hardness (GAHD)

☐ Sulfate (GASO4)

☐ Oil & Grease (GAOG)

☐ Petroleum Hydrocarbons (GAPHC)

☐ Cyanide (GACN)

☐ Conductance (GACD)

☐ Dissolved Oxy. (GADO)

☐ Fluoride (GAF)

☐ Fluoride w/Dis. (GAFD)

☐ Silica (GASI)

☐ Sulfide (GAS)

Metals

☐ Ag Silver

☐ Al Aluminum

☐ As Arsenic

☐ B Boron

☐ Ba Barium

☐ Be Beryllium

☐ Ca Calcium

☐ Cd Cadmium

☐ Co Cobalt

☐ Cr-H Chrom-Hex

☐ Cr-T Chrom-Tot

☐ Cu Copper

☐ Fe Iron

☐ Hg Mercury

☐ K Potassium

☐ Mg Magnesium

☐ Mn Manganese

☐ Mo Molybdenum

☐ Na Sodium

☐ Ni Nickel

☐ Pb Lead

☐ Sb Antimony

☐ Se Selenium

☐ Ti Tantalum

☐ V Vanadium

☐ Zn Zinc

Organics

☐ EPA 504.1 (PP504) EDB, DBCP, 123TGP

☐ EPA 505 (PP505) Organochlorine Pest. & PCB's

☐ EPA 507 (PP507) N and P containing Pesticides

☐ EPA 508A (PP508) PCB Confirmation*

☐ EPA 515.9 (PP515) Chlorinated Acid Herbicides

☐ EPA 524.9 (VCE242) Purgeables

☐ EPA 525.2 (BNA525) Liquid-Solid Extractables

☐ EPA 531.1 (PP531) N-Methylcarbamoylorganics & N-Methylcarbamates

☐ EPA 608 (PF608) Organochlorine Pest. & PCB's

☐ EPA 824 (VOE24) Purgeables

☐ EPA 825 (BNA825) Base/Neutral & Acid Extractables

Other

*Detection of PCB's by 505 requires confirmation by 508A

CHEM-44
NOV 03

Distribution: White - Submitting Agency
Canary - ECLB Central File

Pink - Bacteriology Lab
Gold - Sample Collector

3892

**NEW JERSEY STATE DEPARTMENT of HEALTH and SENIOR SERVICES
ENVIRONMENTAL and CHEMICAL LABORATORY SERVICES
METALS LABORATORY**

Laboratory Sample No. 0504786
Receipt Date: 051026.1330
Laboratory Batch No. 05NRE00054

Field No: 108825
Collection Date: 051025.1214
Report Date: NOV. 1 2005

Matrix: WATER - INDUSTRIAL - RAW

Analyte	Result ug/L *	Result Qualifier	Reporting Level	Analysis Date
Aluminum	ANR			
Antimony	ANR			
Arsenic	25.90		1.00	051031
Barium	ANR			
Beryllium	ANR			
Boron	ANR			
Calcium *	ANR			
Cadmium	ANR			
Chromium hex.	ANR			
Chromium	ANR			
Cobalt	ANR			
Copper	41.40		5.00	051028
Iron	ANR			
Lead	64.00		1.00	051031
Magnesium *	ANR			
Manganese	ANR			
Mercury	.163		0.100	051101
Molybdenum	ANR			
Nickel	ANR			
Potassium *	ANR			
Selenium	ANR			
Silver	ANR			
Sodium *	ANR			
Strontium	ANR			
Thallium	ANR			
Tin	ANR			
Vanadium	ANR			
Zinc	ANR			

* Results for Ca, Mg, K and Na are reported as mg/L.
Reporting Level = Concentration of lowest calibration standard
ANR = Analyte Not Requested K = Value below detection limit
J-MI = Approximate value due to matrix interferences.
J-R = Approximate value result below the reporting level
J-QC = Approximate value due to quality control problems.
Comments:

EXHIBIT B

FOR LABORATORY USE ONLY

Fact Lab No. _____

Date Rec'd _____

Time Rec'd _____

New Jersey Department of Health
and Senior Services
Public Health and Environmental Laboratories
PO Box 361, Trenton, NJ 08625-0361

AQUEOUS SAMPLE ANALYSIS REQUEST

FOR LABORATORY USE ONLY

Lab Batch Number 0510125

Lab Sample Number 0504782

Sample Point/Station Identification Number Runoff from loading area

Collection Date (YY/MM/DD) 05/10/25

Collection Time (M:SS) 13:15

Field Sample Number 108826

Sampling Site/Facility/Supply/Location NY SW RR 43rd ST.

Stream Trish Hackensack R.

Municipality North Bergen

County Hudson

Sample Type

☐ Stream/Surface	☐ Raw	☐ Effluent
☒ Sewage	☒ Raw	☐ Effluent
☒ Industrial	☐ Raw	☐ Finished
☐ Ground Water	☐ Raw	☐ Finished
☐ Potable		
☐ Private Well		
☐ Septic		
☐ Ocean/Saline		
☐ Other		

Priority Level ☐ Routine ☒ Priority ☐ Emergency

Data Package ☒ MRRP (Tier I) ☐ BRRP (Tier I)

Retain Sample ☒ No ☐ Yes

Chain of Custody ☐ No ☒ Yes

Submitting Agency NJ DEP NBWCE

Sample Collector John Zuzek

Street Address 7 Ridgedale Ave.

DEP Agency No. 222

DEP Project Code 74106 BXX

City, State, Zip Code Cedar Knolls, NJ

Comments _____

Water Temp °C (P00010) ~12°C

Do-Wrinkler (P00300) _____

Do-Probe (P00299) _____

pH (Field) (P00400) ~6.55

Sample Depth Ft. (P00008) _____

Residual Chlorine _____

Turbidity _____

Stream Flow-OF& (P00061) _____

Gage Height-Ft. (P00065) _____

Spec. Cond. @25°C (P00095) _____

Salinity (P00480) _____

Tide Stage (P70011) _____

Dechlorinating Agents Added in Field ☐ Yes ☐ No

Preserved in ☒ Field ☐ Lab Date (YY/MM/DD) 05/10/25 Time (HH/MM) 13:18

Bacteriology		Residue		Suggested BOD Dilutions		Organics	
Fecal coli 100 ml ☐ MPN ☐ MF Fecal Strept 100 ml ☐ MPN ☐ MF Tot col 100 ml ☐ MPN ☐ MF Enterococci 100 ml ☐ MPN ☐ MF Standard Plate Count	P31615 P31613 P31803 P31801 10 1 10 10 10 10 10 10	☒ COD/CL (GACODL) ☐ TOC/CL (GATOC) ☐ BOD5 (GABD5) ☐ CBOD5 (GACBDS) ☐ BOD20 (GABD20) ☐ CBOD20 (GACBDS0)	BOD5 CBOD5 BOD20 CBOD20	☐ EPA 504.1 (PP504) EDS, DSCP, 129TCF ☐ EPA 505 (PP505) Organochlorine Pest. & PCB's ☐ EPA 507 (PP507) N and P containing Pesticides ☐ EPA 508A (PP508A) PCB Confirmation ☐ EPA 515.3 (PP515.3) Chlorinated Acid Herbicides ☐ EPA 524.E (V0524.E) Purgeables ☐ EPA 525.3 (BNA525.3) Liquid-Solid Extractables ☐ EPA 521.1 (PP521.1) N-Methylcarbamoylcarbamates & N-Methylcarbamates ☐ EPA 506 (PP506) Organochlorine Pest. & PCB's ☐ EPA 524 (V0524) Purgeables ☐ EPA 525 (BNA525) Base/Neutral & Acid Extracts	☐ EPA 515.3 (PP515.3) Chlorinated Acid Herbicides ☐ EPA 524.E (V0524.E) Purgeables ☐ EPA 525.3 (BNA525.3) Liquid-Solid Extractables ☐ EPA 521.1 (PP521.1) N-Methylcarbamoylcarbamates & N-Methylcarbamates ☐ EPA 506 (PP506) Organochlorine Pest. & PCB's ☐ EPA 524 (V0524) Purgeables ☐ EPA 525 (BNA525) Base/Neutral & Acid Extracts		
Suggested Bacteriological Dilutions Fecal Coli Total Coliform Fecal Streptococci Enterococci		General ☐ Color (GAC) ☐ Odor (GAC) ☐ Turbidity (GAT) ☐ pH (GAPH) ☐ Alkalinity (GAAC) ☐ Acidity (GAAC) ☒ Chloride (GACL) ☐ MBAS (GAMB) ☐ Phenols (BSI) (GAPHE) ☐ Phenols (PW) (GAPHEX) ☐ Hardness (GAND) ☐ Sulfate (GAS04) ☐ Oil & Grease (GAOG) ☐ Petroleum Hydrocarbons (GAPHC) ☐ Cyanide (GACN) ☐ Conductance (GACE) ☐ Dissolved Oxy. (GADO) ☐ Fluoride (GAF) ☐ Fluoride w/Dist. (GAFD) ☐ Silica (GASi) ☐ Sulfide (GAS)		Metals ☐ Ag Silver ☐ Al Aluminum ☐ As Arsenic ☐ B Boron ☐ Ba Barium ☐ Be Beryllium ☐ Ca Calcium ☐ Cd Cadmium ☐ Co Cobalt ☐ Cr-H Chrom-Hex. ☐ Cr-T Chrom-Tot ☐ Cu Copper ☐ Fe Iron ☐ Hg Mercury ☐ K Potassium ☐ Mg Magnesium ☐ Mn Manganese ☐ Mo Molybdenum ☐ Na Sodium ☐ Ni Nickel ☐ Pb Lead ☐ Sb Antimony ☐ Se Selenium ☐ Ti Titanium ☐ V Vanadium ☐ Zn Zinc		☐ EPA 504.1 (PP504) EDS, DSCP, 129TCF ☐ EPA 505 (PP505) Organochlorine Pest. & PCB's ☐ EPA 507 (PP507) N and P containing Pesticides ☐ EPA 508A (PP508A) PCB Confirmation ☐ EPA 515.3 (PP515.3) Chlorinated Acid Herbicides ☐ EPA 524.E (V0524.E) Purgeables ☐ EPA 525.3 (BNA525.3) Liquid-Solid Extractables ☐ EPA 521.1 (PP521.1) N-Methylcarbamoylcarbamates & N-Methylcarbamates ☐ EPA 506 (PP506) Organochlorine Pest. & PCB's ☐ EPA 524 (V0524) Purgeables ☐ EPA 525 (BNA525) Base/Neutral & Acid Extracts	
Nutrients ☐ NO2-N (NANO2) ☐ NO3-N (NANO3) ☐ NH3-N (NANH3) ☐ TKN (NATKN) ☐ ORTHO-P (NAOP) ☐ TOTAL-P (NATP)		Residue ☒ Non-Fiberable (RASS) ☐ Fiberable (RATF) ☐ Settlesable Matter (RASM)		Other ☐ _____ ☐ _____ ☐ _____		Detection of PCB's by 505 requires confirmation by 50	

CHRM-44
NOV 03

Distribution: White - Submitting Agency
Grey - ECLS Central File

Pink - Bacteriology Lab
Gold - Sample Collector

NEW JERSEY STATE DEPARTMENT of HEALTH and SENIOR SERVICES
ENVIRONMENTAL and CHEMICAL LABORATORY SERVICES
METALS LABORATORY

Laboratory Sample No. 0504787
Receipt Date: 051026.1330
Laboratory Batch No. 05NRE00055

Field No: 108826
Collection Date: 051025.1315
Report Date: NOV. 1 2005

Matrix: WATER - INDUSTRIAL - RAW

Analyte	Result ug/L *	Result Qualifier	Reporting Level	Analysis Date
Aluminum	ANR			
Antimony	ANR			
Arsenic	5.06		1.00	051031
Barium	ANR			
Beryllium	ANR			
Boron	ANR			
Calcium *	ANR			
Cadmium	ANR			
Chromium hex.	ANR			
Chromium	ANR			
Cobalt	ANR			
Copper	54.50		5.00	051028
Iron	ANR			
Lead	398.00		1.00	051031
Magnesium *	ANR			
Manganese	ANR			
Mercury	.779		0.100	051101
Molybdenum	ANR			
Nickel	ANR			
Potassium *	ANR			
Selenium	ANR			
Silver	ANR			
Sodium *	ANR			
Strontium	ANR			
Thallium	ANR			
Tin	ANR			
Vanadium	ANR			
Zinc	ANR			

* Results for Ca, Mg, K and Na are reported as mg/L.
Reporting Level = Concentration of lowest calibration standard
ANR = Analyte Not Requested R = Value below detection limit
J-MI = Approximate value due to matrix interferences
J-R = Approximate value result below the reporting level
J-QC = Approximate value due to quality control problems.
Comments:

EXHIBIT C

FOR LABORATORY USE ONLY

Sub: Lab No. _____

Date Rec'd _____

Time Rec'd _____

New Jersey Department of Health
and Senior Services
Public Health and Environmental Laboratories
PO Box 381, Trenton, NJ 08625-0381

AQUEOUS SAMPLE ANALYSIS REQUEST

FOR LABORATORY USE ONLY

Lab Batch Number 05104780

Lab Sample Number 56

Sample Point/Station Identification Number _____

Collection Date (YY/MM/DD) 05/10/25

Collection Time (Military) 1348

Field Sample Number 108827

Sampling Site/Facility/Supply Location NYSWRR 94th St

Stream trib Hackensack R.

Municipality North Bergen

County Hudson Co.

Sample Type

☐ Stream/Surface	☐ Raw	☐ Effluent
☐ Sewage	☒ Raw	☐ Effluent
☒ Industrial		
☐ Ground Water	☐ Raw	☐ Finished
☐ Potable		
☐ Private Well		
☐ Septic		
☐ Ocean/Seine		
☐ Other _____		

Trip Blank Number _____

Priority Label ☒ Routine ☐ Priority ☐ Emergency

Data Package ☒ SMRPF (Tier II) ☐ SMRPF (Tier I)

Retain Sample ☒ No ☐ Yes

Chain of Custody ☐ No ☒ Yes

Submitting Agency NJDEP NBWCE

Sample Collector John Zuzack

Site Address 7 Ridgedale Ave

DSP Agency No. 222

DEP Project Code 7W106BXX

City, State, Zip Code Cedar Knolls, N.J.

Field Information

Water Temp °C (P00010) ~12°C

Stream Flow-CFS (P00051) _____

Do-Winkler (P00000) _____

Gage Height-PL (P00065) _____

Do-Probe (P00299) _____

Spec. Cond. @ 25 °C (P00085) _____

pH (Field) (P00400) ~8.0 SU

Salinity (P00480) _____

Sample Depth PL (P00003) _____

Tide Stage (P70011) _____

Residual Chlorine _____

Dechlorinating Agents Added in Field ☐ Yes ☐ No

Turbidity _____

Preserved In _____

Date (YY/MM/DD) 05/10/25

Time (HH/MM) 13:53

Field ☒ Lab ☐

Bacteriology		Demands		Suggested BOD Dilutions		Organics	
Fecal col: 100 ml	☐ MPN P31818 ☐ MF P31819	☒ CODCL (GACODL)	BOD5			☐ EPA 804.1 (PP804) EOB, DBO, 123TCP	
Fecal Strept: 100 ml	☐ MPN ☐ MF	☐ TOCCL (GATOC)	CBOD5			☐ EPA 805 (PP805) Organochlorine Res. & PCB's	
Total col: 100 ml	☐ MPN P31505 ☐ MF P31501	☐ BOD5 (GABD5)	BOD20			☐ EPA 807 (PP807) N and P containing Pesticides	
Enterococci: 100 ml	☐ MPN ☐ MF	☐ CBOD5 (GACBD5)	CBOD20			☐ EPA 808A (PP808) PCB Confirmation	
Standard Plate Count		☐ BOD20 (GABD20)				☐ EPA 815.2 (PP815) Chlorinated Acid Herbicides	
Suggested Bacteriological Dilutions		General		Metals		Other	
Fecal Coli	10 1 10 10 10 10 10 10	☐ Color (GAC)	☐ Ag Silver	☐ Al Aluminum	☐ EPA 824.1 (VO824) Purgeables	☐ EPA 824.2 (VO824) Purgeables	
Total Coliform	10 1 10 10 10 10 10 10	☐ Odor (GAC)	☐ As Arsenic	☐ Ba Barium	☐ EPA 825.2 (BNA825) Liquid-Gold Extractables	☐ EPA 831.1 (PP831) N-Methylcarbamoylformates & N-Methylcarbamates	
Fecal Streptococci	10 1 10 10 10 10 10 10	☐ pH (GAPH)	☐ Be Beryllium	☐ Ca Calcium	☐ EPA 808 (PP808) Organochlorine Pest. & PCB's	☐ EPA 824 (VO824) Purgeables	
Enterococci	10 1 10 10 10 10 10 10	☐ Alkalinity (GAAK)	☐ Cd Cadmium	☐ Co Cobalt	☐ EPA 825 (BNA825) Base/Neural & Acid Extractables		
Nutrients		Phenols (351) (GAPHE)		☐ Cr-H Chrom-Hex			
☐ NO2-N (NAN02)		☐ Phenols (PW) (GAPHEX)	☐ Cu Chrom-Tot	☐ Cr-T Chrom-Tot			
☐ NO3-N (NAN03)		☐ Hardness (GAHD)	☐ Fe Copper	☐ Fe Iron			
☐ NH3-N (NANH3)		☐ Sulfate (GAS04)	☐ Hg Mercury	☐ Hg Mercury			
☐ TKN (NATKN)		☐ Oil & Grease (GAOG)	☐ K Potassium	☐ K Potassium			
☐ ORTHO-P (NAOP)		☐ Petroleum Hydrocarbons (GAPHC)	☐ Mg Magnesium	☐ Mn Manganese			
☐ TOTAL-P (NATP)		☐ Cyanide (GACN)	☐ Mo Molybdenum	☐ Na Sodium			
Residues		☐ Conductance (GACE)	☐ Ni Nickel	☐ Ni Nickel			
☒ Non-Filtrable (RASS)		☐ Dissolved Oxy. (GADO)	☐ Pb Lead	☐ Pb Lead			
☐ Filtrable (RAFR)		☐ Fluoride (GAF)	☐ Sb Antimony	☐ Sb Antimony			
☐ Settleable Matter (RASB)		☐ Fluoride w/Dist. (GAFD)	☐ Se Selenium	☐ Se Selenium			
		☐ Silica (GASI)	☐ Ti Titanium	☐ Ti Titanium			
		☐ Sulfide (GAS)	☐ V Vanadium	☐ V Vanadium			
			☐ Zn Zinc	☐ Zn Zinc			

CHEM-44
NOV 01

Distribution: White - Submitting Agency
Canary - ECLS Central File

Pink - Bacteriology Lab
Gold - Sample Collector

**NEW JERSEY STATE DEPARTMENT of HEALTH and SENIOR SERVICES
ENVIRONMENTAL and CHEMICAL LABORATORY SERVICES
METALS LABORATORY**

Laboratory Sample No. 0504788
Receipt Date: 051026.1330
Laboratory Batch No. 05NRE00056

Field No: 108827
Collection Date: 051025.1348
Report Date: NOV. 1 2005

Matrix: WATER - INDUSTRIAL - RAW

Analyte	Result ug/L *	Result Qualifier	Reporting Level	Analysis Date
Aluminum	ANR			
Antimony	ANR			
Arsenic	7.84		1.00	051031
Barium	ANR			
Beryllium	ANR			
Boron	ANR			
Calcium *	ANR			
Cadmium	ANR			
Chromium hex.	ANR			
Chromium	ANR			
Cobalt	ANR			
Copper	33.20		5.00	051028
Iron	ANR			
Lead	217.00		1.00	051031
Magnesium *	ANR			
Manganese	ANR			
Mercury	.993		0.100	051101
Molybdenum	ANR			
Nickel	ANR			
Potassium *	ANR			
Selenium	ANR			
Silver	ANR			
Sodium *	ANR			
Strontium	ANR			
Thallium	ANR			
Tin	ANR			
Vanadium	ANR			
Zinc	ANR			

* Results for Ca, Mg, K and Na are reported as mg/L.
Reporting Level = Concentration of lowest calibration standard
ANR = Analyte Not Requested K = Value below detection limit
J-MI = Approximate value due to matrix interferences
J-R = Approximate value result below the reporting level
J-QC = Approximate value due to quality control problems.
Comments:

EXHIBIT D

October 5, 2005 Stormwater Sample Results
NYS&W Facilities, North Bergen, NJ

Metal	FW-2 SWQS	SE SWQS	94th St.	43rd St.	16th St.
Lead	5	210	217	398	64
Arsenic	0.017	0.136	7.84	5.06	25.9
Mercury	0.144	0.146	0.993	0.779	0.163
Copper	7.9		33.2	54.5	41.4

* All results are in PPB.

SECTION

I

The Record LOCAL

WEDNESDAY, MAY 31, 2006

Railcars worry towns

Unregulated waste-transfer site sparks blaze



H. Douglas Hansen, the fire marshal in Ridgefield Park, says he is concerned by the fire hazard of railcars with demolition debris parked near the Callahan Chemical Co. TARIQ ZEHAWI/STAFF PHOTOGRAPHER

By JOHN A. GAVIN
STAFF WRITER

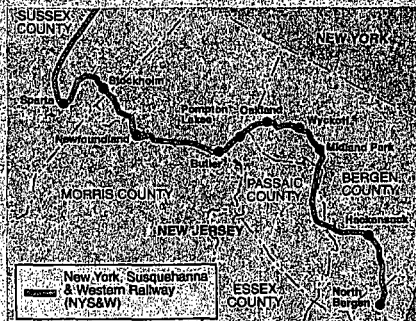
RIDGEFIELD PARK — A recent fire in a railroad car filled with construction debris has sparked new concerns over the safety and hazards of unregulated transfer facilities and the contents being transported by rail.

In March, a 20-foot-high blaze in a gondola car parked on a siding caught the village off guard. Firefighters didn't know the contents and the extent of flammability. After hosing down the flames, they were not allowed to do an inspection because the railroad is exempt from local and state regulations.

The incident has generated anxiety about unregulated solid waste transported by rail, railroad exemptions and the vulnerability of communities the trains pass through.

"If there's a fire in one of those cars, we have no idea what's in it," said H. Douglas Hansen, the village's fire marshal. "It could be asbestos or flammable material. We just

See RAILCARS Page L-10



Fast facts

■ The New York Susquehanna & Western Railway Corp. operates 400 miles of track in New York, New Jersey and Pennsylvania.

■ The carrier transports a wide range of commodities, including feed ingredients, lumber and other building materials, chemicals, plastics, food products, paper products, motor vehicles, metals, demolition and construction waste and contaminated soils.

■ Beginning in 2003, it opened five waste-transfer stations in North Bergen and one in Paterson. Since the state attempted to impose the penalties last year, the railroad has shut three of the North Bergen sites and built two new enclosed facilities.

Railcars: Unregulated waste-transfer sites a worry to towns

From Page L-1

He doesn't think the railroad should be responsible for the safety of our community," Hansen said, contending that DEP regulations are preempted by federal law.

The case is still in limbo with freight cars that pass through towns, perhaps even requiring an inventory of a railcar's contents.

He has written a letter to the Federal Railroad Administration in Washington asking for help.

With the recent boom in hauling solid waste by rail, the federal loophole that exempts waste-transfer sites adjacent to railroad tracks from state and local regulations has assumed national significance.

Last July, the nearby North Bergen waste-transfer station, operated by the New York Susquehanna & Western Railway Co., was fined \$2.5 million by the state Department of Environmental Protection for failing to meet basic

building codes and environmental requirements.

The railroad said, contending that DEP regulations are preempted by federal law.

The case is still in limbo with freight cars that pass through towns, perhaps even requiring an inventory of a railcar's contents.

He has written a letter to the Federal Railroad Administration in Washington asking for help.

With the recent boom in hauling solid waste by rail, the federal loophole that exempts waste-transfer sites adjacent to railroad tracks from state and local regulations has assumed national significance.

es an experience that they are part of a nationwide trend when they are not.

She said that in 2004, the DEP issued new rules for waste-management companies and rail car companies before the House Subcommittee on Railroads.

In Rutherford Park, where inter-state freight trains tumble through day and night, often halting traffic, the railroad is an integral part of the town's life.

But the town is just one among a string of communities serviced by the NY & W railroad, which transports the debris to Binghamton, N.Y., where freight cars are transferred to another railway line and shipped to a garbage dump in Ohio.

"Think of the immediate valley of the town, every town along the way (about every railcar's contents)," said Timothy V. O'Neil, a spokesman for the railroad. "The

is not the same kind of situation as having a dump of some hazardous materials.

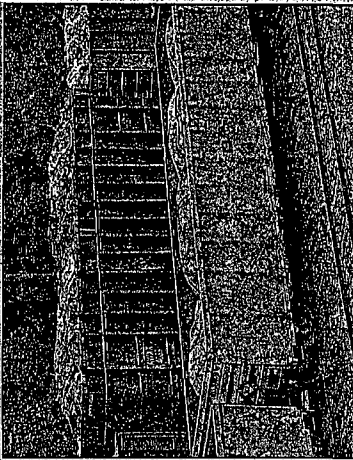
The debris is often drywall, sheetrock and floor ripped from old buildings and factories being converted into housing to meet growing demand, he said.

Rail transport has increased in recent years, partly because garbage dumps in Pennsylvania have filled up and rail has become a cheaper option than truck for the longer distance.

In the village, it's not unusual for dozens of box cars, tankers and gondolas filled with debris to be parked on side tracks just a few yards from a chemical plant, factories and a railroad fueling depot.

That setting — underneath the trestles for Routes 95 and 46 — could be a recipe for disaster, if a major fire breaks out, Hansen said.

In Rutherford Park, where the train also would be derailed, and they also would be derailed, if a railcar were to derail, the freight cars don't know what they're carrying, he said.



(ARDEHAM/STATE PHOTOGRAPHER) Rutherford Park and other towns are concerned with this first of rail cars filled with debris that often are hazardous materials.

They also may have to make sure the debris are safe, said Mayor Steven Tompkins, and E-mail: david@hansen.com