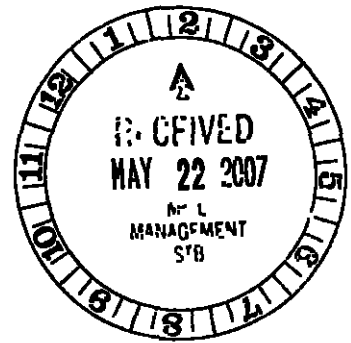


219329

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35020



**NORTHERN AND BERGEN RAILROAD, L.L.C.
—ACQUISITION EXEMPTION—
A LINE OF RAILROAD OWNED BY NEW YORK & GREENWOOD LAKE RAILWAY**

REPLY TO REQUEST FOR STAY OF EXEMPTION

Northern and Bergen Railroad, L.L.C. ("NBRR") hereby files this Reply to the "Request for Stay by the New Jersey Department of Environmental Protection," filed May 16, 2007 ("Request"). This Reply is supported by the attached Verified Statement of James R. Wilson ("Wilson V.S.") (Attachment A), President of the New York & Greenwood Lake Railway ("NYGLR"), which rail properties the NBRR seeks to acquire through this exemption proceeding. The New Jersey Department of Environmental Protection ("NJDEP") seeks a stay of the Notice of Exemption filed by NBRR on April 26, 2007, and due to become effective May 26, 2007.¹ A stay is not warranted by the facts of this transaction.

¹ Late yesterday, the New Jersey Transit Corporation ("NJT") filed in support of NJDEP's stay request on grounds that NJT is the owner of the property upon which the NYGLR interchange track with Norfolk Southern is located and that NJT requires a stay in order to obtain sufficient information to determine if it will grant a similar lease to NBRR. This has never been grounds for staying an exemption.

The Board consistently has held that any party requesting a stay "should explain why the Board should stay the effectiveness of an exemption to acquire and/or operate a rail line that would simply give permissive authority to consummate a transaction described in the notice of exemption, if and when the parties might have the legal capacity to do so." STB Finance Docket No. 34963, *James Riffin, D/B/A the Raritan Valley Connecting R.R.—Acquisition and Operation Exemption—On Raritan Valley Connecting Track* (served Dec. 12, 2006), at 2-3. See also, STB Finance Docket No. 34267, *Morristown & Erie Ry. Inc.—Operation Exemption—Somerset Terminal R.R. Corp* (served Nov. 27, 2002) (denying a stay request notwithstanding the existence of a dispute over whether Somerset possessed the operating rights sought to be acquired). NBRR recognizes that it still must secure all the necessary rights to provide rail service, such as the assignment of NYGLR's contracts and leases, before it can consummate this transaction. Indeed, this transaction would be of no value to NBRR without those agreements. This would be

I. NBRR SEEKS TO ACQUIRE THE FACILITIES OF AN EXISTING COMMON CARRIER RAILROAD.

Unlike the so-called “100 yard” railroads that have prompted concerns of “sham” transactions for the sole purpose of invoking federal preemption over the state regulation of solid waste facilities, NBRR seeks authority to acquire and operate the assets of an *existing* common carrier railroad, NYGLR. NBRR is not attempting to create a new railroad by acquiring non-jurisdictional track, converting it to jurisdictional track, and then constructing a new solid waste facility along the track in order to claim preemption. Rather, NBRR is acquiring *existing* rail assets, including 1.1 miles of track and an existing solid waste transfer station along that track. Thus, contrary to NJDEP’s predicate for seeking a stay, this transaction does not present “*another* potential waste facility along railroad tracks in New Jersey,” but instead presents a *change in ownership* of existing rail facilities. Request at 1 [emphasis added].

Also unlike the transactions that have been of recent concern to the Board, NBRR will haul commodities other than solid waste. According to records obtained from NYGLR, over the past two years, NYGLR has hauled commodities for at least eight different customers, including shipments of scrap paper and scrap metal in addition to Type 13 solid waste (*i.e.* construction and demolition debris) *Wilson V.S.* at 1. NBRR would continue to provide common carrier service to these same customers and to any other shippers who might locate on its rail line.

Furthermore, NBRR will continue to operate the rail facilities under the same agreements and with the same employees as NYGLR. The current employees of NYGLR will be retained by NBRR. In addition, the solid waste facility will continue to be operated by Hudson Logistics,

true of almost any rail acquisition, whether or not it is exempt, and yet the Board has never held that to be a basis for staying the effective date of an exemption. NJT can obtain all the information it needs from NBRR outside of this proceeding, since without a lease from NJT, NBRR will be unable to consummate its acquisition of the NYGLR rail property despite having permissive authority from the Board to do so.

Inc. pursuant to the same contracts by which Hudson operates the facility on behalf of NYGLR. NYGLR will assign the Hudson Logistics' contracts as part of the proposed transaction, resulting in no change to the current operator of the solid waste facility.

NJDEP cannot seriously question the *bona fides* of NBRR's proposed operations without also challenging the *bona fides* of NYGLR's current operations. NYGLR acquired the same rail line from Conrail, through the Offer of Financial Assistance procedures, in Docket No. AB-167 (Sub-No. 1151X), *Consolidated Rail Corp.—Abandonment Exemption—In Bergen and Passaic Counties, NJ* (served Aug. 14, 1996). Wilson V.S. at 1. NYGLR operated that line as a common carrier for over 8 years before constructing the solid waste transfer station in 2005. *Id.* at 2. NBRR seeks to step into the shoes of NYGLR by acquiring and operating those same rail assets.

NJDEP asserts that a stay is needed to determine if NBRR “is in reality a solid waste processing facility masquerading as a railroad,” and causing “a serious threat to public health and safety.” Request at 2-3. But in this case, NBRR clearly is not a solid waste facility that seeks to cloak itself as a railroad. NBRR seeks to acquire a railroad that already operates a solid waste transfer facility. Since NBRR merely will step into the shoes of NYGLR, this transaction cannot result in NBRR having authority to do anything that NYGLR cannot already do, or is not already doing. NYGLR operates an unquestioned legitimate rail operation today and NBRR will continue, and is legally obliged to continue, that same operation.

Notably, NJDEP acknowledges that NYGLR already operates the very same solid waste transfer facility that NBRR would acquire as part of this transaction, *and* it tacitly admits that the facility is a legitimate rail facility by referring to citations against the facility for “several violations of N.J.A.C. 7:26-2D.1.” Request at 5. Those regulations were adopted by NJDEP to apply *only* to legitimate rail carriers, as a means of enforcing its police powers consistent with

federal preemption² Because the solid waste transfer station is a legitimate rail facility as to NYGLR, it also must be legitimate as to NBRR, which will assume operation of the same rail facilities currently operated by NYGLR

The fact that NBRR seeks to acquire an existing common carrier's property should have been sufficient to inform NJDEP of the legitimacy of NBRR's operations, since by law NBRR succeeds to all the same common carrier obligations of NYGLR. Thus, there is no need for a stay pending the further development of facts.³

II. NJDEP IMPROPERLY SEEKS A STAY TO ADDRESS CONCERNS IT HAS WITH NYGLR THAT HAVE NOTHING TO DO WITH NBRR.

The entire premise for NJDEP's stay request is that NBRR will acquire NYGLR's waste transfer station. But that fact, without more, does not warrant a stay. This acquisition will not alter the status quo. It will simply transfer already existing rail facilities.

NJDEP reveals its true concerns only at the end of its Request. NJDEP notes that it cited the NYGLR solid waste facility for several violations of health and safety regulations in August 2006. Request at 5 After reciting those violations, NJDEP expresses concern that "NBR's operation will *continue* a waste facility in a similar manner." *Id* at 6 [emphasis added]. Clearly, by NJDEP's own admission, it is the current circumstances that concern it, not anything that will

² See *New York Susquehanna and Western Ry. Corp. v. Jackson*, 2007 U.S. Dist. LEXIS 11907, *11-12 (D.N.J. Feb. 20, 2007). In this same decision, however, the district court held that even these regulations are preempted. NJDEP has appealed that decision.

³ Shortly after NBRR filed its Notice of Exemption, NJDEP, through the New Jersey Attorney General's Office, submitted a list of 23 questions to NBRR concerning this transaction. Request Ex. A. In the spirit of cooperation with NJDEP, NBRR responded to those questions on May 16, 2007, the very same day NJDEP filed its stay request, and again with additional information on May 18, 2007, even though several of the questions are wholly irrelevant to NBRR's common carrier status. Reply Attachment B. NBRR would have responded even sooner, except that, because it is acquiring an existing railroad's property, many of the answers had to come from NYGLR and involved obtaining waivers of confidentiality restrictions. Thus, NJDEP now should have all the facts that it claims to need, and so does the Board.

change as a consequence of NBRR's acquisition. The Board should not allow NJDEP to tar NBRR with regulatory citations against NYGLR.

Moreover, NJDEP is playing very loose with the facts surrounding the citations against NYGLR. The only citations alleged by NJDEP are from a July 2006 inspection. Although those citations were admittedly serious, they have been largely corrected. *Wilson V.S* at 3. Despite monthly inspections of the facility, most recently on May 9, 2007, NJDEP does not document a single subsequent citation, which according to NYGLR is because there have not been any. *Id* at 3-4. Rather, NJDEP generically asserts that "the facility continues to operate out of compliance with critical public health and safety regulations." Request at 5. The only definitive example provided is the absence of a fire suppression system.⁴ *Id.* But, NYGLR represents that it has contracted to install a sprinkler system. *Wilson V.S.* at 3. Furthermore, even if NYGLR did not do so, NBRR is committed to install a fire suppression system. Thus, it is hard to understand how a stay of the transaction would promote the public health and safety in that context.

There also has been a change in the operator of the solid waste facility since the July 2006 violations. The previous operator, Steel Wheels, entered into bankruptcy proceedings in 2006, and its contracts with NYGLR to operate the facility were assigned by the Bankruptcy Court to Hudson Logistics, Inc. in January 2007. Reply Attachment C. All of the violations cited by NJDEP occurred while Steel Wheels operated the solid waste facility *Wilson V S.* at 2-3 NYGLR and Hudson Logistics have made significant efforts to address the NJDEP citations that occurred under the operation of Steel Wheels. NYGLR notified NJDEP of the change in

¹ Although NJDEP also vaguely alludes to dust control issues, NYGLR represents that the solid waste transfer facility in fact has installed all the required dust control systems, and NJDEP does not claim otherwise *Wilson V S.* at 3

operators in a January 17, 2007 letter, in which NYGLR also summarized the actions that had been, or were being, taken to address the July 2006 violations. Wilson V.S. at 3 and attached exhibit.

It is improper for NJDEP to seek a stay of NBRR's exemption on the basis of citations issued against NYGLR nearly a year ago. The former has nothing to do with the latter. NJDEP is mixing its issues. Whether or not NYGLR has complied with NJDEP regulations in the past is irrelevant to whether NBRR will be a legitimate common carrier railroad.

III. THE BOARD'S DECISION IN ASHLAND DOES NOT SUPPORT A STAY OF NBRR'S EXEMPTION.

Contrary to NJDEP's representations, this transaction does not at all resemble the proceeding in STB Finance Docket No. 34986, *Ashland Railroad, Inc —Lease and Operation Exemption—Rail Line in Monmouth County, NJ* (served April 27, 2007), in which the Board granted NJDEP's stay request. The following distinctions are highly significant:

1. In *Ashland*, the applicant was a non-carrier which sought to acquire non-jurisdictional track from another non-carrier. *Id.* at 1. In contrast, NBRR is a non-carrier that seeks to acquire jurisdictional track from an existing carrier. Thus, there is no risk that NBRR proposes a "sham" transaction that will create the fiction of a rail carrier where none otherwise exists.
2. In *Ashland*, the applicant planned to construct a *new* transload facility on the acquired rail line. *Id.* In contrast, NBRR seeks to acquire an *existing* transload facility as part of a broader acquisition rail assets.
3. In *Ashland*, the applicant had failed to provide NJDEP with information regarding the nature of the proposed operations, including commodities, volumes, and shippers. As of May 16, 2007, NBRR has voluntarily provided that information

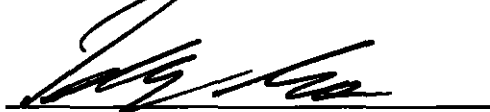
to NJDEP, despite NBRR's position that such information is unnecessary to this transaction. Reply, Attachment B. Much of this information has been provided by NYGLR and further proves the legitimacy of both NYGLR's and NBRR's rail operations

4. In *Ashland*, there was no evidence of interchange or other operating agreements with connecting railroads to demonstrate the legitimacy of the applicant's proposed rail operations. As part of its May 16, 2007 letter to NJDEP, NBRR has provided an Interchange Agreement between NYGLR and Consolidated Rail Corp, an Interline Service Agreement between NYGLR and Norfolk Southern, and a Lease Agreement between NYGLR and New Jersey Transit Corp. for the track used to interchange rail cars, all of which NYGLR intends to assign to NBRR as part of this transaction. *Id* These agreements are all necessary to provide through rail transportation service to shippers, further proving the legitimacy of both NYGLR's and NBRR's rail operations.

NBRR's transaction does not raise any of the same issues as *Ashland*. When the principle reason for a stay is to determine whether the transaction will result in legitimate common carrier rail operations, there is a significant difference between the acquisition of *existing* rail facilities that already are within the Board's jurisdiction, and the acquisition of *new* facilities that are not currently within the Board's jurisdiction but will become so through the exemption process. The former already have been determined to be rail facilities, whereas the latter have not. Thus, in the former situation, such as NBRR's acquisition of NYGLR property, there is no need to stay an exemption to determine the status of existing rail facilities.

WHEREFORE, for the foregoing reasons, the Northern and Bergen Railroad LLC respectfully requests that the Board deny NJDEP's Request for Stay.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey O. Moreno", is written over a horizontal line.

Jeffrey O. Moreno
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036-1600
(202) 331-8800

May 18, 2007

Attorneys for Northern and Bergen Railroad, L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May 2007, copies of the foregoing "Reply to Request for Stay of Exemption" were served via electronic mail upon Ruth E. Carter, Deputy Attorney General of New Jersey, at Ruth.Carter@dol.lps.state.nj.us, D. C. Agrawal, Assistant Executive Director of New Jersey Transit, at dcagrawal@njtransit.com and Kevin P. Auerbacher, Deputy Attorney General of New Jersey, at Kevin.auerbacher@dol.lps.state.nj.us.

A handwritten signature in black ink, appearing to read "Jeffrey O. Moreno", is written over a horizontal line.

Jeffrey O. Moreno

ATTACHMENT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

FINANCE DOCKET NO 35020

**NORTHERN AND BERGEN RAILROAD, LLC
NOTICE OF EXEMPTION**

**AFFIDAVIT
OF
JAMES R. WILSON**

My name is James R. Wilson, and I am the President and CEO of the New York & Greenwood Lake Railway of Glen Ridge New Jersey ("NYGL").

I have been a railroader all my professional life. I started with the Erie Lackawanna Railroad in 1966 and subsequently worked for Conrail, NYS&W, NJ Transit, NY Cross Harbor and AMTRAK until 1997. Throughout the years I worked in various positions and was familiar with all aspects of railroading

In 1996 I saw the opportunity to operate my own railroad and I purchased Conrail's Dundee Branch pursuant to an offer of financial assistance in STB Docket No. AB-167 (Sub-No. 1151X), Conrail—Abandonment Exemption—In Bergen and Passaic Counties, New Jersey, served August 14, 1996.

Initially there wasn't much traffic on the line. There was only one shipper on the line when I purchased the line from Conrail. Over the years I've actively pursued new business and increased the number of customers for the NYGL to service. We've increased our customer base to eight

A few years ago I saw the need to transport construction and demolition debris from New Jersey area by rail rather than by truck, and I determined that NYGL should participate in that business.

I had counsel determine what rules and regulations of the New Jersey Department of Environmental Protection ("NJDEP") needed to be observed in going into the business of transloading and transporting construction and demolition debris.

In 2005 NYGL constructed a 100-foot by 100-foot state-of-the-art fully enclosed corrugated metal construction and demolition debris transfer facility on its property, with sufficient capacity to hold two railcars. NYGL contracted with Steel Wheels Transport, Inc., to receive the truckloads of construction and demolition debris as they arrived and load the material within the enclosed transfer facility into the railcars.

When loaded, NYGL, using its locomotive, would move the cars from the transfer facility to the designated interchange tracks with Norfolk Southern Railway Company in Garfield, Bergen County, New Jersey, for movement beyond.

Inspectors of NJDEP periodically came by to witness our operations, and at no time was NYGL cited for alleged violations of the rules and regulations of the NJDEP.

Unfortunately, on April 4, 2006, we suffered a fire which damaged an excavator and front-end loader and parts of the transfer facility.

NYGL severed its relationship with Steel Wheels Transport, Inc., and on August 24, 2006, contracted with Hudson Logistics Loading, Inc to take over the transloading of the construction and demolition debris within the transfer facility.

NJDEP inspected NYGL's transfer facility on July 19, 2006, when the transloading operations still were being conducted by Steel Wheels Transport, Inc , and

subsequently, on September 20, 2006, NJDEP issued NYGL a Notice of Violation for alleged violations of several of the NJDEP's regulations. Mr. Albert Raimund Belonzi, in his Verified Statement, Exhibit B of the Request for Stay filed by NYDEP on May 16, 2007, stated that the alleged violations were, "(1) the building was nearly at full capacity resulting in waste being offloaded outside of the building and then being pushed into the building; (2) the facility had ineffective stormwater and wastewater management systems, (3) there was no adequate air pollution control system, and (4) there was an inadequate fire suppression system."

NYGL has attended to each of the alleged violations. Hudson Logistics Loading, Inc., has been instructed to unload the trucks bringing the construction and demolition debris only within the transfer facility. The floor drains have been kept clear and properly maintained, and the required dust control system has been installed. Construction and demolition debris is not allowed to remain on the tipping floor overnight. Hudson has been instructed and has contracted to have a sprinkler system installed. In a letter, dated January 17, 2007, a copy of which I am attaching, NYGL apprized NJDEP of the steps it had taken or was in the process of taking to correct the violations found in the July 19, 2006, inspection

Inspectors of NJDEP have stopped by NYGL's transfer facility no less frequently than once a month, as recently as May 9, 2007, and while Mr. Belonzi contends that some of the violations which were the subject of the September 20, 2006, citation remain, no additional citation of violations of the NJDEP's rules and regulations has been issued. NJDEP has inspected NYGL's transfer facility repeatedly since July 19, 2006, and NYGL has not been issued any citation for alleged violations of NJDEP's rules and

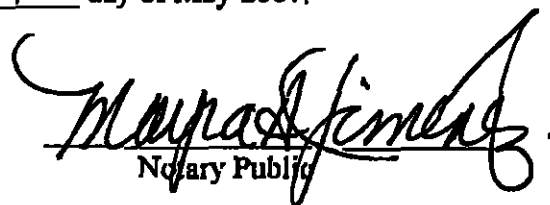
regulation subsequent to the one of September 20, 2006, meaning that NYGL's transfer facility is in substantial compliance with the agency's requirements.

NYGL has agreed to sell the entire Dundee Branch, which includes the transfer facility, to the Northern Bergen Railroad, L L C The Buyer is purchasing an active railroad line, operated in substantial compliance with the regulations of the NJDEP, and I think the Request for Stay is unjustified and should be denied.

Dated at Glen Ridge, New Jersey, this 17th day of May 2007.


James R. Wilson

Subscribed and sworn to before me this 17th day of May 2007.


Notary Public

MAYRA A. JIMENEZ
Notary Public - New Jersey
Middlesex County
My Commission Expires November 15, 20

Sworn To Me Today
17th of May 2007

**NEW YORK & GREENWOOD LAKE RAILWAY
PO BOX 106
GLEN RIDGE, NEW JERSEY 07028
PHONE 973-743-5300 FAX 973-743-4580**

January 16, 2007

John Castner, Director
New Jersey Department of Environmental Protection
County Environmental and Waste Enforcement
401 East State Street, PO Box 422
Trenton, New Jersey 08625

Re: New York and Greenwood Lake Railway (NYGL) Passaic, New Jersey

Dear Mr. Castner,

In response to your letter dated August 24, 2006, we would like to update you as to the most recent changes that have occurred regarding our transload facility in Passaic Steel Wheels Transport, through Team G Loading (an affiliate) who was contracted by the NYGL to provide loading services as the railroad's agent, both companies declared bankruptcy in July of 2006. As a result, there was a period of time when it was uncertain whether Steel Wheels Transport/Team G would continue to provide services at the site.

On August 24, 2006, the Hudson Logistics Loading, Inc (HLL) bought the Steel Wheels and Team G contracts to provide loading services for the Passaic facility as the railroad's agent. This was done with the supervision of the bankruptcy court. HLL assumed the Team G Loading Agreement.

HLL is contracted to be the agent of the NYGL in the provision of loading services of construction and demolition debris into railcars. The facility does not accept municipal solid waste and all material received is non-putrescible. HLL is a responsible company who made a substantial investment in the facility. Regarding your comments, we offer the following information:

1) All offloading of material from vehicles at the facility is required to occur within the building. Additionally, several improvements to the facility have already been completed. Upgrades to the electrical system have been completed. HLL is currently waiting for the engineering plans for the fire suppression system to be completed. Once the plans are finalized the installation of the fire suppression system will begin.

2 The existing drain system has been repaired. The facility was originally designed with floor drains inside the building which lead to a holding tank. The drainage water is being

being removed from the holding tank by a vacuum truck as needed. Steel Wheels began modifying the drainage system, but stopped the process when they entered into bankruptcy.

3) No putrescible waste is delivered to, or transloaded at, the Passaic facility, only construction and demolition debris. HLL is aware of the NJDEP regulation to remove all material from the floor of the facility every 24 hours.

4) HLL will continue to insure that dust is properly controlled.

5) As discussed previously, a fire suppression system is being scheduled for installation in sequence with other improvements. The site is currently posted with emergency numbers.

6) The site has been paved. This was completed December 13th.

7) Through the improvements made to the facility, which allow for a more efficient operation, we will reduce the number of trucks on site at any given time, thus reducing noise. Additionally, a noise barrier has been created by positioning passenger railcars along an on-site track that separates the facility and the residential properties. We will continue to work with HLL to minimize noise from the facility.

8) HLL requires that all vehicles delivering material to the site provide an Origin and Destination Form (NJDEP O and D Form) for the material that is being delivered to the facility. Additionally, HLL is preparing an Operations and Maintenance Manual for the facility which will detail operating procedures for the transload facility, including the acceptance of construction and demolition waste material.

Attached is a letter from the Mayor of Passaic regarding our facility. We have been working cooperatively with the City and hope to make this facility an asset to the community.

Please contact me if you have any additional questions.

Sincerely,



James Wilson

President, New York Greenwood Lake Railway

ATTACHMENT B

May 16, 2007

By E-Mail and First Class Mail

Ruth E. Carter, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093

RE: STB Finance Docket 35020, Northern and Bergen Railroad, LLC--Verified Notice of Exemption

Dear Ms. Carter:

I am submitting this letter on behalf of my client, Northern and Bergen Railroad, LLC ("NBRR"), in response to your May 2, 2007 correspondence containing a list of 23 questions regarding the above-referenced proceeding before the Surface Transportation Board ("STB"). NBRR welcomes this opportunity to clarify the scope of its proposed acquisition of the assets of the New York & Greenwood Lake Railway ("NYGLR") and to discuss NBRR's plans to comply with applicable New Jersey Department of Environmental Protection ("NJDEP") regulations. NBRR apologizes for the delay in this response, but some of the information had to be obtained from NYGLR, and because some of the information is confidential, NBRR had to obtain waivers from NYGLR to share it with you.

NBRR is in negotiations to acquire approximately 1.2 miles of track and various real property and other assets along that track, which are currently owned and operated by the NYGLR as a common carrier railroad (referred to in your letter as the "Site"). NYGLR also will assign to NBRR its rights to certain contracts with Hudson Logistics, Inc. and Hudson Logistics Transloading, Inc. that pertain to the operation of NYGLR's solid waste transfer station along this rail line in Passaic, New Jersey.

As an initial matter, you have requested copies of any operating, transportation or other agreements concerning the Site, as well as insurance policies. In response, we are enclosing the following documents that have been provided to NBRR by NYGLR:

1. Facility Capacity Agreement between NYGLR and Hudson Logistics, Inc., which is the assignee of Steel Wheels Transport, LLC, dated January 7, 2005;
2. Railroad Car Loading Agreement between NYGLR and Hudson Logistics, Inc., which is the assignee of Steel Wheels Transport, LLC, dated January 7, 2005;

Jeff Moreno@ThompsonHine.com Phone 202.263 4107 Fax 202 331.8330

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3. Interchange Agreement between NYGLR and Consolidated Rail Corp., dated November 14, 1997;
4. Interline Service Agreement between NYGLR and Norfolk Southern Railway, dated April 29, 2004;
5. Lease Agreement between NYGLR and New Jersey Transit Corp., dated December 30, 1996;
6. Host Community Benefit Agreement between NYGLR and The City of Passaic, New Jersey, dated July 2006; and
7. Insurance Declarations Pages.

These are all of the responsive documents provided by NYGLR. Please be advised that NYGLR has consented to permit NBRR to disclose these documents only for the purpose of responding to your requests. Please treat these documents with the utmost confidentiality.

NBRR responds to your 23 separately numbered requests for information as follows:

1. Please provide information on the formation of NBR including but not limited to when and where it was formed and the nature of its business and/or services. Please also include the identity of the principals of NBR.

Response: NBRR is a New Jersey limited liability company that was incorporated in April 2007 for the purpose of acquiring the Site and operating as a common carrier railroad. Raymond Toscano is the sole stockholder.

2. Explain NBR's experience and the qualifications of NBR's principals in providing "common carrier rail service."

Response: NBRR is currently a non-carrier that seeks to become a carrier through STB Finance Docket No. 35020. NBR's sole stockholder, Raymond Toscano, does not have experience providing common carrier rail service. NBRR will hire experienced professionals to operate the Site.

3. What type of service will be provided at the Site?

Response: NBRR will provide rail transportation service to three shippers along the rail line: (1) Hudson Logistics, Inc., which currently operates a transfer station on behalf of NYGLR for Type 13 solid waste on property owned by NYGLR; (2) Atlantic Coast Fibers, a paper recycler; and (3) Marcal Paper, a paper producer. In addition, NBRR

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intends to develop a transload business for hauling finished wood products. NBRR will haul cars up to 1.2 miles to an interchange with the Norfolk Southern Railway.

4. Explain the nature of any facility proposed at the Site.

Response: NBRR will acquire the existing facilities of NYGLR.

5. Will any waste materials-solid (Type 10 or 13 waste as defined by NJDEP regulations) or hazardous-be handled in any manner or at any time by NBR at the Site? If not waste, describe precisely what kind of materials will be handled and/or transported by NBR at the Site

Response: See NBRR response to Request Nos. 3 and 4.

6. If waste is offered, will a building be constructed? Who would ship waste materials to the facility? Please describe the operations of the facility should waste be offered as a commodity for shipment. Further, what types of containers would be used for the waste? Would these containers be impervious?

Response: NBRR will handle Type 13 waste through NYGLR's existing facility in Passaic, NJ, consistent with the existing operations. NBRR intends to operate in compliance with NJDEP regulations. NBRR will receive solid waste only from NJDEP licensed companies. Type 13 waste will be transported in covered steel gondolas.

7. Does NBR have a contract with any shipper and/or hauler to haul solid and/or hazardous waste? If there is no contract, has any shipper been provided with a rate quote or tariff rate?

Response: NBRR does not have any contracts, nor has it quoted any rates. NYGLR will assign its contracts and rate agreements to NBRR as part of the contemplated transaction.

8. What type of construction is planned and/or needed?

Response: See NBRR response to Request No. 6.

9. Who is responsible for the costs associated with the Site including any proposed construction? What are these anticipated costs?
-

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Response: NBRR assumes that the focus of this question is upon any solid waste facility, as opposed to NBRR's other rail operations (e.g., track and locomotive maintenance), which are exclusively the responsibility of NBRR. Hudson Logistics, which operates the solid waste facility on behalf of NYGLR and will continue to do so on behalf of NBRR, provides all labor, equipment and tools necessary to transfer Type 13 waste from trucks to railcars.

10. What are the anticipated revenues for the Site and what is the basis for this projection? Please provide any documentation in this regard.

Response: NYGLR receives approximately per car. In addition, NYGLR receives NBRR is still gathering and confirming financial information from NYGLR as part of its due diligence review associated with the proposed transaction, and NBRR will supplement this response as more information becomes available.

11. Who are the shippers or proposed shippers for the Site? How and by whom have these shippers been solicited with respect to the Site?

Response: See NBRR response to Request No. 3.

12. What is the proposed volume of shipments?

Response: NBRR anticipates hauling 5-10 cars of Type 13 waste per day, 5½ days per week for Hudson Logistics; delivering 3-4 cars per week to Marcal; and hauling approximately 2 cars per week from Atlantic Fiber.

13. Who is supplying rail cars that will be used for moving the shipments? What type of rail cars?

Response: NBRR will transport Type 13 solid waste in 100 ton open top gondolas provided by Hudson Logistics. NBRR expects to utilize boxcars owned by Norfolk Southern Railway to transport commodities for other shippers.

14. To where will the shipments go from the Site, including the ultimate destination?

Response: Type 13 solid waste from Hudson Logistics currently moves to two landfills owned by Liberty Waste Group in Lisbon, Ohio and North Apex, Ohio. Marcal receives inbound cars from Alabama. Atlantic Coast Fiber ships outbound to various destinations.

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15. From what source(s) would the shipment(s) originate?

Response: NBRR will originate and/or deliver shipments from/to the three existing shippers on the line: Marcal, Atlantic Coast Fiber, and Hudson Logistics. Hudson Logistics receives Type 13 solid waste from Bergen and Passaic Counties, New Jersey.

16. What type of solicitation/marketing has there been or will there be for the Site?

Response: Any solicitation and marketing to date has been done by NYGLR. NBRR desires to expand its services for paper and building materials. NBRR has not engaged in any solicitation or marketing activities concerning these expanded services.

17. Has there been any communication with NJDEP or any other New Jersey agency concerning the Site? Does NBR intend to communicate with such agencies and/or seek approval for the Site? Who will be responsible for obtaining any environmental permits or any other approvals?

Response: NBRR has not had any communications with NJDEP to date. However, NBRR would like to schedule a meeting with NJDEP, if that will help NJDEP to better understand NBRR's operations. NBRR intends to comply with N.J.A.C. 7:26-2D. NBRR understands that, because the solid waste facility is a rail facility, no permitting is required.

18. Does NBR intend to comply with New Jersey regulations concerning the Site (e.g. regulations implementing the Solid Waste Management Act, N.J.A.C. 7:26-2.1 et seq.) or any other applicable regulation?

Response: NBRR intends to comply with N.J.A.C. 7:26-2D.

19. What types of environmental controls are planned for the Site (e.g. controls concerning air and water pollution and fire hazards)?

Response: The Type 13 solid waste facility has a misting system for dust control, and a waste water containment system. A dry fire suppression system will be installed shortly.

20. Will NBR issue the bills for any shipments?

Response: Yes.

21. Has NBR made any arrangements with trucking companies that will be bringing any shipments into the Site? Which trucking companies? Has NJDEP permitted these trucking companies or will these companies be permitted? Will these trucking companies

May 16, 2007
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issue bills of lading? Has NBR entered into any agreements with such trucking companies or will it?

Response: NBRR will assume all of the existing arrangements of NYGLR and Hudson Logistics. These include the use of only NJDEP permitted trucking companies. NBRR will not have agreements with the trucking companies.

22. Will any shippers or any other person or entity reimburse NBR for any costs associated with the Site?

Response: No.

23. What is the relationship between NYGL's existing solid waste facility in Passaic, New Jersey? Does NBR plan to continue NYGL's waste facility?

Response: NBRR will acquire NYGLR's existing solid waste facility as part of its acquisition of NYGLR's other rail properties.

NBRR desires to work in partnership with NJDEP to ensure compliance with NJDEP's public health and safety regulations. Please do not hesitate to contact me if you have any additional questions.

Sincerely,



Jeffrey O. Moreno

REDACTED

May 18, 2007

By E-Mail and First Class Mail

Ruth E. Carter, Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093

RE: STB Finance Docket 35020, Northern and Bergen Railroad, LLC--Verified Notice of Exemption

Dear Ms. Carter:

I am submitting this letter on behalf of my client, Northern and Bergen Railroad, LLC ("NBRR"), as a follow-up to my May 16, 2007 letter responding to your May 2, 2007 correspondence regarding the above-referenced proceeding before the Surface Transportation Board ("STB"). In the May 16th letter, NBRR informed you that it was still gathering certain information in response to your requests concerning NBRR's proposed acquisition of the assets of the New York & Greenwood Lake Railway ("NYGLR"). This letter completes those responses.

Your original request and NBRR's supplemental responses are as follows:

2. Explain NBR's experience and the qualifications of NBR's principals in providing "common carrier rail service."

Response: In its May 16th response, NBRR stated that it will hire experienced professionals to operate the Site. More precisely, NBRR intends to hire the current employees of NYGLR, in order to ensure a smooth transition and continuity of rail service.

10. What are the anticipated revenues for the Site and what is the basis for this projection? Please provide any documentation in this regard.

Response: Based upon historic information obtained from NYGLR, over the past two years, NYGLR has handled

May 18, 2007

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11. Who are the shippers or proposed shippers for the Site? How and by whom have these shippers been solicited with respect to the Site?

Response: In its May 16th response, NBRR identified Hudson Logistics, Inc.; Atlantic Coast Fibers; and Marcal Paper as shippers and/or receivers of freight on NYGLR. Other NYGLR customers within the past two years include Gerdau Ameristeel, American Steel Processing, Mittal Steel USA, Abrachem Logistics, and Omnishphere Corp.

12. What is the proposed volume of shipments?

Response: NBRR anticipates handling the same volume of traffic handled by NYGLR, as presented in NBRR's response to Request No. 10, above.

NBRR reiterates its desire to work in partnership with NJDEP to ensure compliance with NJDEP's public health and safety regulations. Please do not hesitate to contact me if you have any additional questions.

Sincerely,



Jeffrey O. Moreno

ATTACHMENT C

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

James S. Weiss, Esquire (JSW 0620)
55 Simpson Avenue
Pitman, NJ 08071
Tel.: 856-582-6242
Attorney for Debtor

IN RE:

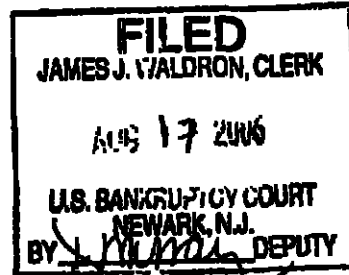
STEEL WHEELS TRANSPORT, LLC,

Debtor.

IN RE:

TEAM G LOADING, LLC,

Debtor.



Case No.: 06-15377-DHS

Chapter: 11

Judge: Donald H. Steckroth

Case No.: 06-15378-DHS

Chapter 11

Judge: Donald H. Steckroth

ORDER DISMISSING CHAPTER 11 CASES *AND*
GRANTING OTHER RELIEF

The relief set forth on the following pages 2 through 5 is hereby **ORDERED**.

August 17, 2006

[Signature]
USBJ

**Debtors: Steel Wheels Transport, LLC
Team G Loading, LLC**

**Case No. 06-15377-DHS
Case No. 06-15378-DHS**

Caption: Order Dismissing Chapter 11 Cases

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This matter, having been brought before the Court upon the Motion of Steel Wheels Transport, LLC and Team G Loading, LLC, the Debtors in the above-captioned Chapter 11 proceedings; and notice and an opportunity to be heard having been given to all creditors and parties-in-interest; and the Court having heard oral argument on the matter on August 10 and 11, 2006; and for good cause shown, it is ORDERED:

1. The Chapter 11 cases of Steel Wheels Transport, LLC and Team G Loading, LLC (hereinafter, "Debtors") be and hereby are dismissed upon the following conditions:

A. The closing (hereinafter, "Closing") on the sale of certain of the Debtors' assets to Chartwell International, Inc. and/or its wholly owned companies, affiliates or subsidiaries, including Hudson Logistics, Inc. and Hudson Logistics Loading, Inc. (hereinafter, "Chartwell") shall take place within five (5) days of the entry of this Order or at a date to be agreed upon by the parties to the sale not later than September 6, 2006;

B. At the closing, the sum of \$1,250,000.00 (hereinafter, "Proceeds") shall be deposited in a trust account(s) of James S. Weiss, Esquire, counsel to the Debtors;

C. The Proceeds shall be disbursed or escrowed as follows:

i. \$28,000.00 shall be paid to New York & Greenwood Lakes Railway (hereinafter, "NYGLR"), along with \$225,000.00 from Chartwell, in full satisfaction of the Proofs of Claim filed against the Debtors;

ii. \$200,000.00 shall be escrowed solely for the payment of the contested claim(s) of Norfolk Southern;

Debtors: Steel Wheels Transport, LLC
Team G Loading, LLC

Case No. 08-15377-DHS
Case No. 08-15378-DHS

Caption: Order Dismissing Chapter 11 Cases

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iii. \$153,000.00 shall be escrowed solely for the payment of the contested claim(s) of Canadian National Railway;

iv. \$360,000.00 shall be escrowed solely for the payment of the claims of the following general unsecured creditors that were (a) listed on the Debtors' Schedules or (b) filed with the Court or the Debtors prior to August 11, 2006: A & L Salvage, All Points Capital, Allstate, American Hose & Hydraulic, American Steel Processing, BFI, Calne & Weiner, Crystal Springs, David Weber Oil Co., FedEx, Foley Rents, Foley, Inc., General Materials Terminals, Grainger, Hoffman, Intuit, JW Goodliffe & Son, Liberty Mutual, Metals USA, NCO Financial, New Jersey Portable Toilets, Oxford Health Plans, Passaic Valley Water Comm., PSE&G, San Diego Credit Assoc., Super Quality Oil Co., Total Fire Protection, and United Merchant Processing;

v. \$50,000.00 shall be escrowed solely for the payment of fees owed to the Office of the United States Trustee and other claims against the Debtors that may arise or be made known to the Debtors after August 11, 2006;

vi. The remaining Proceeds shall be disbursed to the Debtors.

D. Within ten (10) days of the Closing, the Debtors shall send to each creditor *A COPY OF THIS ORDER AND* an offer in full satisfaction of their claim and a Release with a request that the executed Release be returned within fourteen (14) days.

i. If the executed Release is received within fourteen (14) days, the claim will be paid within five (5) days.

ii. If the executed Release is not received within fourteen (14) days, the amount of the creditor's claim listed in the Debtors' schedules shall

Debtors: Steel Wheels Transport, LLC
Team G Loading, LLC

Case No. 06-15377-DHS
Case No. 06-15378-DHS

Caption: Order Dismissing Chapter 11 Cases

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be kept in escrow until receipt of an Order from a court of appropriate jurisdiction, receipt of a Release, the tolling of the applicable statute of limitations, or as further set forth by this Order herein below.

E Six (6) months after the Closing, counsel for the Debtors shall file a report (hereinafter, "Report") on the resolution of and distributions on the claims against the Debtors with the Office of the United States Trustee and the Court at which time, ~~the Court or~~ the Office of the United States Trustee may seek to reopen the Debtors' Chapter 11 cases if ~~either~~ ^{it} deems the Report unsatisfactory.

DHS

F. Six (6) months after the Closing, the Debtors shall notify any creditors whose claims are still unresolved that unless their claims are resolved, thirty (30) days later, any and all remaining escrowed Proceeds shall be disbursed to the Debtors.

2. The following Releases shall be executed at the Closing and filed with the Court as EXHIBIT "A" to this Order:

A. The Debtors, Israel Tyberg, and Moshe Tyberg shall release NYGLR and James R. Wilson from any and all claims and NYGLR and James R. Wilson shall release the Debtors, Israel Tyberg, and Moshe Tyberg from any and all claims except those arising from the disposition of insurance proceeds from a fire on or about April 4 or 5, 2006 at the Debtors' facility in Passaic, New Jersey.

B. The Debtors, Israel Tyberg, and Moshe Tyberg shall release Chartwell from any and all claims and Chartwell shall release the Debtors, Israel Tyberg, and Moshe Tyberg from any and all claims.

**Debtors: Steel Wheels Transport, LLC
 Team G Loading, LLC**

**Case No. 06-15377-DHS
Case No. 06-15378-DHS**

Caption: Order Dismissing Chapter 11 Cases

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3. NYGLR shall allow the Debtors to assign the Facility Capacity Agreement and a Railroad Car Loading Agreement (hereinafter, "Agreements") to Chartwell, which may immediately begin operating under and servicing the Agreements during the period from the entry of this Order until the Closing (hereinafter, "Pre-Closing Period"). Chartwell shall indemnify and hold harmless the Debtors, Israel Tyberg, and Moshe Tyberg from any and all claims stemming from Chartwell's operations under and servicing of the Agreements and arising during the Pre-Closing Period .

4. Chartwell shall pay in full or assume the claims stemming from the Debtors' commercial leases and/or financing arrangements with the following: Commerce Commercial Leasing, Sterling National Bank, Mariner's Bank, and Steelwheels, LLC.

5. The Debtors shall provide to the Office of the United States Trustee an accounting of disbursements made during the pendency of the Chapter 11 cases and pay any and all quarterly fees due to the Office of the United States Trustee within ten (10) days from the entry of this Order.

6. All outstanding fees to the Court are due and owing and must be paid within ten (10) days of the date of this Order.

7. Pursuant to Fed. R. Bankr. P. 2002(f), the Clerk shall notify all parties-in-interest of the entry of this Order.