



Pennsylvania Department of Environmental Protection

Office of Chief Counsel
400 Waterfront Drive
Pittsburgh, PA 15222-4745
December 28, 2007

Southwest Regional Counsel

412-442-4262
Fax: 412-442-4267

Via E-Filing and First-Class Mail

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: J.P. Rail, Inc. – Lease and Operation Exemption – NAT Industries, Inc.
STB Finance Docket Number 35090

Dear Mr. Williams:

Enclosed please find the Commonwealth of Pennsylvania, Department of Environmental Protection's Motion for Leave to File Response to J.P. Rail's Reply, and Response to J.P. Rail's Reply, which are also being e-filed today.

If you have any questions, please contact me at the above number. Thank you for your consideration of this matter.

Sincerely,

John H. Herman
Assistant Counsel

Enclosure

c: John D. Heffner Esq. (w/enc.)
Stephen M. Richmond, Esq. (w/enc.)
Kevin P. Auerbacher, Esq. (w/enc.)
Herman J. Bigi, Esquire (w/enc.)



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35090

J.P. RAIL, INC.
LEASE AND OPERATION EXEMPTION

NAT INDUSTRIES, INC.

MOTION FOR LEAVE TO FILE
RESPONSE TO J.P. RAIL'S REPLY

FILED BY THE
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOW comes the Pennsylvania Department of Environmental Protection ("PaDEP") and moves the Board to grant it leave to file the attached proposed Response to J.P. Rail's December 17, 2007 Reply. In furtherance of this request, PaDEP states the following:

1. On October 17, 2007, J.P. Rail filed its application for a Lease and Operation Exemption on track owned by NAT Industries. Pursuant to Board order, J.P. Rail supplemented its filing on October 31, 2007.

2. On November 20, 2007, the PaDEP filed its Petition, asking the Board to Void Notice of Exemption, and for a Cease and Desist Order, Order Extending Period of Stay, Order Requiring Submission of Environmental Assessment, and an Order Extending Period for Submission of Comments/Petitions.

3. On December 5, 2007, the Board ordered a stay of J.P. Rail's operations at the site, and ordered J.P. Rail to address allegations made in PaDEP's filings, and the filings of the

New Jersey DEP and the PA Waste Industry Association. On December 17, 2007, J.P. Rail filed its response to the Board's order, including a further verified statement and accompanying exhibits.

4. The Board's December 5, 2007 Order did not explicitly grant or deny PaDEP's petition for allowance to file additional materials and argument following further investigation. However, because J.P. Rail's filing of December 17, 2007 contains new and additional misrepresentations of fact (as opposed to mere legal argument), PaDEP believes it is both fair and critical to a sound outcome for the Board to accept evidence from PaDEP that refutes such factual assertions.

5. Specifically, PaDEP's proposed Response addresses just two critical issues:

a. NAT Industries does not own the track spur in question: NAT Industries (from whom J.P. Rail has purportedly leased the track in question) is not the owner of the track. As shown by statements from a principal in NAT Industries, the track has always been owned by the Middle Monongahela Industrial Development Association, or "MIDA." J.P. Rail's application must be denied because it has no lease with the track owner to utilize the track.

b. J.P. Rail is prohibited from using the "Canestrале Coal Yard Property" as a means of truck access for freight movement. In PaDEP's November 20, 2007 filing, it demonstrated that truck traffic would increase on Nitrous Lane beyond the threshold levels for an environmental assessment. J.P. Rail's response indicates that it will use an alternative access route, through property owned by Canestrале Coal Yards, thereby reducing use of Nitrous Lane (J.P. Rail's Reply, page 15, and accompanying Verified Statement, par. 8.) As shown by statements from the owner of the Canestrале Property, however, J.P. Rail is prohibited from using this property as an access route for freight trucks. Nitrous Lane therefore remains the only

access route to and from the track spur, and the thresholds for requiring an environmental assessment will be exceeded.

WHEREFORE, PaDEP respectfully requests the Board to grant PaDEP leave to file the attached proposed Response ("Attachment A").

Respectfully submitted,



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FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Date: Dec. 28, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35090

J.P. RAIL, INC.
LEASE AND OPERATION EXEMPTION

NAT INDUSTRIES, INC.

RESPONSE TO J.P. RAIL'S REPLY

FILED BY THE
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOW comes the Pennsylvania Department of Environmental Protection ("PaDEP") and for its Response to J.P. Rail's December 17, 2007 Reply to PaDEP's Petition, states the following:

1. On October 17, 2007, J.P. Rail filed its application for a Lease and Operation Exemption on track owned by NAT Industries. Pursuant to Board order, J.P. Rail supplemented its filing on October 31, 2007.
2. On November 20, 2007, the PaDEP filed its Petition to Void Notice of Exemption, and for a Cease and Desist Order, Order Extending Period of Stay, Order Requiring Submission of Environmental Assessment, and Order Extending Period for Submission of Comments/Petitions.
3. On December 5, 2007, the Board ordered a stay of J.P. Rail's operations at the site, and ordered J.P. Rail to address allegations made in PaDEP's filings, and the filings of the

New Jersey DEP and the PA Waste Industry Association. On December 17, 2007, J.P. Rail filed its response to the Board's order, including a further verified statement and accompanying exhibits.

4. J.P. Rail has substantially modified its claims regarding the ownership of the rail line in the course of this proceeding. In its initial filings, J.P. Rail alleged that NAT Industries owned the entire "Donora Line," along with the 1 mile spur that J.P. Rail would utilize under this application. See Verified Notice of Exemption, page 3, October 17, 2007. In its December 17, 2007 filing, J.P. Rail conceded that NAT Industries does not own the Donora Line, but only the 1 mile spur. See page 2, footnote 1.

5. In fact, NAT Industries is not the owner of even the 1 mile spur. According to statements made to PaDEP representatives by the principal owner of NAT Industries, it does not and never has owned any rail track. See Verified Statement of Stanley Whitsel, PaDEP, attached hereto as Exhibit 1. Accordingly, J.P. Rail has shown no basis for its authority to use the subject track, and no basis for this Board to grant J.P. Rail's application.

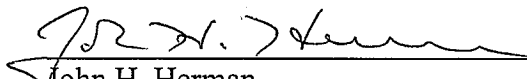
6. In PaDEP's November 20, 2007 verified filing (at pages 6-7), it demonstrated through the Verified Statement of Stanley Whitsel based upon person knowledge, that projected truck traffic would increase on Nitrous Lane beyond the threshold levels for an environmental assessment. J.P. Rail's December 17, 2007 response indicates that it will use the only available alternative access route, through property owned by Canestrале Coal Yards for some of its freight, thereby reducing freight travel along Nitrous Lane (see J.P. Rail's Reply, page 15, and accompanying Verified Statement, par. 8.)

7. The owner of the Canestrале Property, however, has informed PaDEP that J.P. Rail is prohibited from using the Canestrале Property as an access route for freight trucks. See

Verified Statement of Stanley Whitsel, attached hereto as Exhibit 1. Nitrous Lane therefore remains the only access route to and from the track spur, and the thresholds for requiring an environmental assessment will be exceeded.

WHEREFORE, PaDEP requests that the relief sought in PaDEP's filing of November 20, 2007 be granted.

Respectfully submitted,


John H. Herman
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FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Date: DEC. 28, 2007

VERIFIED STATEMENT OF STANLEY WHITSEL

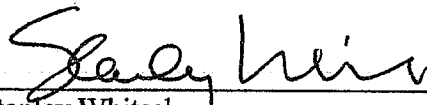
Stanley Whitsel, having been duly sworn according to law, hereby deposes and states that he is authorized to make this Verified Statement, and knows the facts asserted herein are true and accurate as stated, to the best of his knowledge, information and belief.

1. On November 16, 2007, I spoke via telephone with Sarah Eakin, of 16 Aiken Lane, Bentleyville, PA. Ms. Eakin stated that she is the daughter of the original owner of NAT Industries, and now owns the company along with her sister and 94 year old mother. Ms. Eakin confirmed that NAT Industries has entered into a lease with J.P. Rail to bring demolition waste to the property owned by NAT Industries in Donora, Pennsylvania.

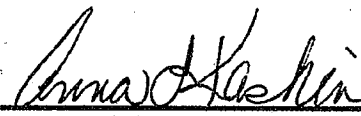
Ms. Eakin further stated that NAT Industries does not own any railroad track or the siding along the track on the property, and that the track and siding on the property is owned by the Middle Monongahela Industrial Development Association, or "MIDA."

Ms. Eakin further stated that NAT Industries has had no customers and has not conducted other business since her father passed away 13 years ago.

2. On November 9, 2007, I spoke via telephone with Matt Canestrone, personally known to me. Mr. Canestrone stated that he is the owner of the Canestrone Coal Yard property located adjacent to the spur track utilized by J.P. Rail. Mr. Canestrone further stated that no person is authorized to use the Canestrone Coal Yard property for truck traffic to or from the rail spur in question, and that he has previously informed a person working with J.P. Rail that it is prohibited from using the Canestrone Coal Yard property for such purposes.


Stanley Whitsel

Subscribed and sworn to before me, a Notary Public, in and for the County of Westmoreland, Commonwealth of Pennsylvania, this 28th day of December, 2007.


Notary Public

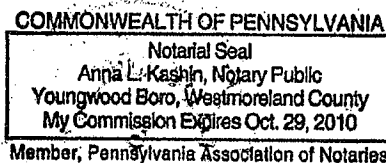


Exhibit 1

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Motion for Leave to File Response to J.P. Rail's Reply and Response to J.P. Rail's Reply, upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

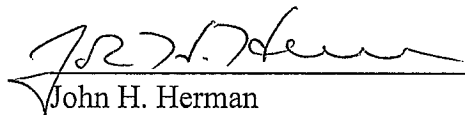
Service by first class mail addressed as follows:

John D. Heffner, Esquire (Counsel for J.P. Rail, Inc.)
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(781) 416-5700

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