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September 21, 2009

VIA FEDERAL EXPRESS
Honorable Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20423-0001

FD 35299, 225757

Re: **Borough of Riverdale Petition for Declaratory Order and Stay — Pertaining to New York Susquehanna & Western Rail Transload Facility, Riverdale, New Jersey and Tri-State Brick Transportation, Inc. Finance Docket No.** 225757

Dear Secretary Quinlan:

The undersigned attorneys represent Petitioner, Borough of Riverdale, in reference to the above matter. Enclosed, please find an original and ten copies of the Borough's Petition to the Surface Transportation Board for a declaratory order and stay. Additionally, please find a check in the amount of $1,400.00 covering the filing fee of same.

Pursuant to 49 CFR § 1002.2(e), the Borough of Riverdale further requests a waiver of said filing fee. In this regard, the Borough of Riverdale is a municipal corporation of the State of New Jersey and is not a rail carrier. As such, the Petitioner here is a duly vested local government entity as contemplated within the rule.

Thank you for your time and attention to this matter. Should any questions arise regarding this filing, please do not hesitate to contact me at your convenience.

FILING FEE WAIVED

Respectfully submitted,

JOHNSON, MURPHY, HUBNER, McKEON, WUBBENHORST, BUCCO & APPELT, P.C.

James T. Bryce

cc. John K. Fiorilla, Esq. (NYS&W)
Tri-State Brick Transportation, Inc.

ENTERED
Office of Proceedings
SEP 22 2009
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35299

BOROUGH OF RIVERDALE, NEW JERSEY
PETITION FOR DECLARATORY ORDER AND STAY
PERTAINING TO NEW YORK SUSQUEHANNA & WESTERN RAIL TRANSLOAD FACILITY, RIVERDALE, NEW JERSEY AND TRI-STATE BRICK TRANSPORATION, INC.

PETITION OF BOROUGH OF RIVERDALE FOR DECLARATORY ORDER AND STAY

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James T. Bryce

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RIVERDALE

Dated: September 21, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO.

BOROUGH OF RIVERDALE, NEW JERSEY
PETITION FOR DECLARATORY ORDER AND STAY
PERTAINING TO NEW YORK SUSQUEHANNA & WESTERN RAIL TRANSLOAD FACILITY, RIVERDALE, NEW JERSEY AND TRI-STATE BRICK TRANSPORTATION, INC.

PETITION OF BOROUGH OF RIVERDALE FOR DECLARATORY ORDER AND STAY

The Borough of Riverdale (hereinafter referred to as "Borough") hereby seeks a declaratory order from the Surface Transportation Board (hereinafter referred to as "STB") that the STB does not have jurisdiction over proposed bulk transloading and storage activities at a New York Susquehanna & Western (hereinafter referred to as "NYS&W") facility located within the Borough and therefore, such activities are not preempted from local zoning laws pursuant to the ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 (hereinafter referred to as the "ICCTA"). The Borough further seeks a stay of such activities at the facility pending the STB's review of this matter.

Briefly, this case arises from a proposed change of operations at the facility. This particular facility was the subject of prior STB and state court actions that were ultimately resolved when the Borough and NYS&W entered into a consent order in the state court that restricted the transloading occurring at the facility to food grade syrup. Now, NYS&W and Tri-State Brick Transportation, Inc (hereinafter referred to as "Tri-State") seek to operate the facility for the transloading and storage of brick product. By way of a March 8, 2009 Operating Agreement running between NYS&W and Tri-State, Tri-State is to pay for its use of the facility and is responsible for the off-loading, storage, and transloading of the brick product from rail

cars operated on the NYS&W line. Pursuant to the requirements of the 1998 state court consent order, NYS&W applied to the Borough's Planning Board (herein referred to as "Planning Board") for health, safety and welfare review of the proposed operation, however, the Board remained uncertain as to whether the proposed operation was preempted from local zoning regulations, which would otherwise prohibit a commercial distribution use occurring at the facility without variance relief. The Planning Board based this decision on recent developments distinguishing preempted rail operations from uses and operations that were merely incidental to rail carriage. Accordingly, the Planning Board determined to seek a determination from the STB as to whether the proposed NYS&W and Tri-State operation is preempted.

Prior to the submission of the within petition, NYS&W sought relief in the Superior Court of New Jersey seeking an order allowing the operation at the facility. In connection with this NYS&W presented to the court a July 31, 2009 "Rail Car Transloading Contract" running between NYS&W and Tri-State Brick, Inc., that indicates NYS&W or its contract loader, will be responsible for off-loading and storage of the brick product at the facility. This, of course, is a completely different relationship than that contemplated in the March 8, 2009 operating agreement and as given to the Planning Board. The late change of contractual relationship appears little more than a contrived effort to try and fashion what is in essence a non-preempted third-party's brick distribution operation into an operation that enjoys the preemptive force of 49 U.S.C. § 10502. Accordingly, the Borough requests that the STB issue a declaratory order finding that the proposed operation is not with the jurisdiction of the ICCTA and stay any such operations at the facility pending its determination in this matter.

FACTUAL AND PROCEDURAL HISTORY

1. NYS&W and its predecessors have conducted interstate freight rail operations in and through the Borough of Riverdale, New Jersey for over 100 years.

2. NYS&W is a common rail carrier railroad and its rail operations, like all interstate freight rail operations across the country, are subject to the exclusive jurisdiction of the federal Surface Transportation Board.

3. In or about 1995-1996, NYS&W constructed a facility on its right-of-way in Riverdale to handle transloading of corn syrup from rail cars to trucks—for subsequent delivery to customers in the New York/New Jersey metropolitan area.

4. NYS&W contracted with Bulkmatic, a trucking and logistics firm, to operate the transload facility. Bulkmatic also provided the tank trucks that delivered the corn syrup transferred from the rail cars.

5. The Borough of Riverdale opposed NYS&W's construction and operation of a transload facility, primarily on the ground that the facility was located in an area zoned for residential use.

6. Construction work on the transload facility was completed in early July 1996, and NYS&W began using it for corn syrup transloading operations.

7. The Borough responded by filing a civil action against NYS&W on July 5, 1996, seeking an injunction restraining further operation of the transload facility.

8. The Superior Court of New Jersey held that the Borough's application of local zoning regulations was preempted by the ICCTA. The Court also concluded, however, that local health, safety, and environmental regulations were not preempted by the ICCTA, provided that local authorities do not abuse that regulation so as to deny the facility the right to operate.

9. The Superior Court of New Jersey entered written Judgment on August 21, 1996, finding the proposed use was preempted from local zoning limitations and further directing NYS&W to file a site plan application with the Borough of Riverdale Planning Board for site review its normal course, subject to its standards procedures, in a method not inappropriately obstructive to the operation of the facility. [A copy of the August 21, 2006 Judgment is attached hereto as Exhibit A.]

10. On September 8, 1997, the Borough filed a Petition for Declaratory Order with the STB seeking a determination that the NYS&W's transload facility was not subject to the STB's jurisdiction and that the Borough's land use permitted and zoning regulations were not preempted by the ICCTA.

11. In order to finally bring the court ordered Planning Board proceedings to a close, NYS&W negotiated an agreement with the Planning Board and Borough that ultimately was incorporated in a Consent Order entered by the Court on July 22, 1998. [A copy of the July 22, 1998 Consent Order is attached hereto as Exhibit B.]

12. The 1998 Consent Order provided, among other things, that NYS&W would use the facility for transloading food grade products only and expressly limited transloading by air method. If NYS&W wished to change the use of the facility, it was required to apply to the Borough of Riverdale Planning Board in accordance with the Court's Judgment entered August 21, 1996. The Consent Order also placed a few agreed conditions on NYS&W's corn syrup transloading operations, including noise attenuation mechanisms, fencing, curbing, landscaping improvements, committed NYS&W to pay the Borough's expert fees, and committed NYS&W to obtain certain licenses and building permits with respect to the corn syrup operation.

13. On September 9, 1999, the STB issued a decision outlining its views regarding the ICCTA preemption issues raised by the Borough and seeking comments regarding some issues. Borough of Riverdale—Pet. for Dec. Order—The New York, Susquehanna and Western Ry. Corp. 4 S.T.B. 380 (1999).

14. Although NYS&W and numerous other parties filed comments as requested by the STB, the STB subsequently terminated the proceeding of the ground that the Consent Order entered by the court had resolved the dispute. Borough of Riverdale—Pet. for Dec. Order—The New York, Susquehanna and Western Ry. Corp., STB Finance. Docket. No. 33466, 2001.

15. NYS&W used the facility at Riverdale for the transloading of corn syrup and contracted with Bulkmatic to operate the transload facility to transfer product into tank trucks.

16. On or about March 8, 2009, NYS&W and Tri-State Brick Transportation, Inc. entered into an "Operating Agreement" for Tri-State's use of the facility to transload bundles of custom-ordered bricks that would be transported to the transload facility in rail boxcars from fabrication plants around the country and transloaded to trucks for delivery to customers in the New York/New Jersey area. [A copy of the March 8, 2009 Operating Agreement is attached hereto as Exhibit C.]

17. The Operating Agreement clearly contemplates a lease type relationship and provides that NYS&W and Tri-State "wish to enter in an agreement which provides for, among other matters, [Tri-State's] use of the property use of the NYS&W property at Hamburg Turnpike, Riverdale, NJ for office space, parking, truck weighing and other uses related to transloading and delivery of bulk commodities moved by rail by NYS&W."

18. Indeed, the Operating Agreement provides that "NYS&W hereby grants [Tri-State] use and access, during the term of this Agreement to the portions of the terminal area and

facilities . . . for [Tri-State] to load and unload bulk commodities to and from railcars, temporarily store such bulk commodities and perform administrative and other functions related to transportation of commodity by rail" for consideration of $125,000.00 per year with certain incentives and adjustments. This agreement also provided that Tri-State would indemnify and hold harmless NYS&W from any claims or liability for damage or loss of bulk materials brought to the facility from and after the date of delivery of such materials and for materials brought from the facility by railcar, from and after the date such railcar is released to NYS&W.

19. As required by the 1998 Consent Order, NYS&W on April 8, 2009, filed a site plan application with the Borough of Riverdale Planning Board for the brick transload operation.

20. The Planning Board held hearings on April 23, May 28, and June 25, 2009. [A copy of the transcript of the April 23, May 28, and June 25 Planning Board proceedings are attached hereto as Exhibit D.][1]

21. Nathan R. Fenno, President of NYS&W testified that the proposed operation was intended to be 24/7. (1T37:15-21.)

22. Mr. Fenno testified to the nature of the operation, stating: "the railroad brings boxcars with brick to the site, and Mr. Formica's firm [Tri-State], which is . . . the business of the trucking or the arranging for the – for the transportation (phonetic). Takes care of the unloading of the railroad cars and the – and arranges for the trucking of the – of the material to the – end site (phonetic)." (1T10:14-21.)

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[1] Citations to the transcripts are referenced as follows:
1T – April 23, 2009 transcript
2T – May 28, 2009 transcript
3T – June 25, 2009 transcript
Each citation begins with a transcript designation, which is followed by page number and line numbers separated by a colon.

23. Mr. Fenno then, however, stated: "we [NYS&W] would operate the brick business. I didn't say Mr. Formica was operating" and that Tri-State was not a tenant of the railroad but simply a link in the transportation of the material. (1T20:6-20.)

24. Lou Formica, a representative of Tri-State, was questioned as to the company's website that states Tri-State is one of the largest brick wholesalers in the area and he replied:

> [W]hat we do is what we call back-to-back transactions. The customer will order materials for a particular project, it might be a hospital or school, municipality. They – we, in turn, put an order into the manufacture to manufacture the quantity and type and color and size and all that is required for this particular project. The customer sends up an order, we in turn send the very same order to the manufacturer. They manufacture the brick. When it's ready, we coordinate with the customer, once it's going to be take in, and then in turn delivered to the customer. But the actual ownership of the brick itself is FOB shipping point. So that the terms of the ownership actually takes place as soon as it leaves the manufacturer.
>
> MAYOR BUDESHEIM: And you have nothing to do with that?
>
> MR. FORMICA: We do, we are the party that the customers speak with to coordinate that transaction.

(1T22-23.)

25. Mr. Formica also described the relationship between Tri-State and the NYS&W facility and its proposed operation, stating:

> [W]e actually have a company called Tri-State Transportation. That's the company that is in the relationship with the railroad to move brick. That company exclusively (inaudible) and its sole purpose is to receive rail cars, unload the material from the rail cars and then put them on the trucks for the transport (inaudible) in the eventuality of their final location. That's an entity onto itself. That's called Tri-State Transportation. Tri-State Brick – and we have Tri-State Brick of New Jersey, Tri-State Brick of New York. Tri-State Brick utilizes Tri-State Transportation for their services in moving the brick around. The Tri-State Brick company itself, is nothing more than a marketing and a sales organization. Tri-State Transportation, however, is really the trans-loading operation. They are the companies that are – the company, that is, actually moving material.

(1T28:12 – 1T29:4.)

26. Upon the Board's inquiry, the Board's consulting professional planner stated: "I'm not qualified as an expert in that law [ICC Termination Act], you know, even though I looked at it and tried to present you with the facts as I saw it. And I'm not wholeheartedly convinced that the conditions that the applicant is offering to you that everything is exempt is – is and accurate position." (2T84:8-13.)

27. Given the issue as to whether the proposed operation was a preempted activity, the Vice-Chair of the Planning Board indicated that "I don't think that we could, you know, intelligently vote on it until we get some clarification on exactly what type of operation we have."

28. The Planning Board attorney opined that it would need to apply to the Surface Transportation Board for a definitive ruling as to preemption for this particular operation. (2T124:18-24.)

29. Ultimately, at the June 25, 2009 meeting, the Board unconvinced of its jurisdictional limitations dismissed NYS&W application without prejudice pending a petition to the STB for a determination. [A copy of the August 6, 2009 Resolution memorializing the Board action is attached hereto as Exhibit E.]

30. On or about August 5, 2009, NYS&W filed an Order to Show Cause with the Superior Court of New Jersey seeking to enforce its rights as provided for by the 1996 judgment and 1998 Consent Order.

31. With the filing of the Order to Show Cause NYS&W presented an agreement to the court entitled "Rail Car Transloading Contract" running between NYS&W and Tri-State Brick, Inc., which now provides for NYS&W, or its contract loader, conducting the transloading

and storage of brick material at the facility. [A copy of the Transloading Contract is attached hereto as Exhibit F.]

32. This transloading agreement was dated after the conclusion of the Planning Board hearing and was never presented to the Planning Board, notwithstanding the direct and specific questioning by the Board concerning the relationship between NYS&W and Tri-State. This latter agreement does not clearly abrogate or modify the March 8, 2009 operating agreement.

33. On September 16, 2009, the Superior Court of New Jersey ruled on NYS&W's Order to Show Cause and determined that the Borough's Planning Board should proceed with reviewing NYS&W's site plan for health, safety and welfare concerns after finding that STB, rather than the Planning Board, has jurisdiction to determine whether preemption applies to the proposed operation.

ARGUMENT

POINT ONE

THIS BOARD SHOULD ISSUE A DECLARATORY ORDER DETERMINING THAT ICCTA PREEMPTION DOES NOT APPLY TO THE PROPOSED OPERATIONS OF NYS&W AND TRI-STATE AT THE RIVERDALE FACILITY.

At issue is whether the operation proposed by NYS&W and Tri-State Brick Transportation, Inc. at the Riverdale facility comes within STB jurisdiction and is therefore preempted from local land use controls. For the following reasons, the Borough requests that the STB issue a declaratory order determining such use and operation is not subject to ICCTA preemption.

A. The STB Has Jurisdiction To Issue A Declaratory Order To Remove Uncertainty, Which Is Present In This Matter.

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, this Board has authority to issue a declaratory order to terminate a controversy or remove uncertainty. In this particular matter significant controversy and uncertainty as to whether the "transportation" operation as contemplated by NYS&W and Tri-State falls within the exclusive jurisdtion of the STB under 49 U.S.C. § 10501(b) and is therefore preempted from local land use controls. In this regard, recent STB and judicial determinations make questionable whether the proposed operation of the Riverdale transloading facility is squarely preempted by this Board's jurisdiction especially given the testimony as was adduced before the Borough Planning Board. The testimony and agreements presented to the Planning Board do not support a conclusion of preemption when guided by such STB and judicial decisions, and is further called into doubt by an agreement created and executed by NYS&W and Tri-State after the Planning Board proceeding. If the proposed operation and use of the facility is not fully preempted, then the proposed use would be subject to significantly greater proofs before a local land use agency prior to commencement of operations. Accordingly, there is sufficient controversy and uncertainty to warrant this Board's issuance of a declaratory order.

B. The Proposed Transloading Operation Is Not Subject To ICCTA Preemption.

Pursuant to 49 U.S.C. § 10501, this Board has jurisdiction over "transportation by rail carrier that is (a) only by railroad; or (b) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment." This section also provides that the jurisdiction of the Surface Transportation Board over transportation by rail carriers is exclusive. In turn, 49 U.S.C. § 10102, in relevant parts, defines a "rail carrier" as a person providing common carrier railroad transportation for compensation and "railroad" is defined as (a) a bridge, car float, lighter, ferry, and intermodal equipment used by or in

connection with a railroad; (b) the road used by a rail carrier and owned by it or operated under an agreement; and (c) a switch, spur, track, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation." This section also defines "transportation" as including "(a) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and (b) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property."

Given this broad statutory jurisdiction, it has been consistently held that railroad operations, and those operations integrally related to such, are preempted from state and local laws that may frustrate interstate commerce and the efficiency of railroad operations. Borough of Riverdale – Pet. for Declaratory Order – The New York Susquehanna and Western Railway Corporation, STB Docket No. 33466, September 9, 1999 and February 23, 2001. However, as has been decided by this Board and multiple courts, the preemptive force of the ICCTA has its limits and as this Board admonished in the above petitions, each preemption case is fact sensitive.

Unlike NYS&W's prior transloading at the facility, the instant operation is dependant upon a third party's (Tri-State) commercial use of the property. Historically, NYS&W transloaded corn syrup from rail tank cars into tank trucks and did this by way of a contract loader, Bulkmatic. Just as in The City of Alexandria, Virginia – Pet. for Declaratory Order, STB Finance Docket No. 35157, February 17, 2009, which addressed a similar type of transloading for ethanol, such syrup transloading fell within ICCTA preemption because the rail road was providing the service but paying a third party to conduct the transloading. In the instant matter,

however, Tri-State is performing the service of brick distribution, not NYS&W. As will be further discussed below, it was not until questioned that NYS&W and Tri-State sought to contract for NYS&W to perform the transloading function for Tri-State.

In Florida East Coast Railway Company v. City of West Palm Beach, 266 F.3d 1324 (11th Cir. 2001), the Eleventh Circuit Court of Appeals held that the ICC Termination Act did not preempt the application of zoning and occupational licensing ordinances for a lessee's use or operation of a rail yard, as such use did not constitute rail transportation. There, Florida East Coast Railway leased a significant portion of their rail yard to an aggregate company, and would transport the aggregate from quarries to this yard. Once in the yard, a contract loader would unload the aggregate and the aggregate company would coordinate the distribution of the product and load the trucks for distribution to end consumers. The aggregate company utilized the rail road's office building on the yard for its purposes and was responsible for payment of expenses, and utilities. The City of West Palm Beach issued cease and desist orders and notices of violations for zoning and licensing violations. The rail company sought a declaratory judgment action seeking a determination that the City's ordinances were preempted as applied to the operation.

The appeals court analyzed several factors militating against preemption. First, the court recognized that the preemption found in 49 U.S.C. § 10501(b) does not expressly reach municipal land use controls as they are not "state laws" as specified to be preempted in the Act. The court then analyzed the historical development and purpose of the ICCTA and ultimately concluded that, while the City's regulations are not optimally efficient for the railroad's operations, the regulations do not impede the interstate functioning of the railroad as the yard

was not truly being used for railroad transportation, but merely supporting a lessee's commercial business, even though the rail carrier delivered product to the yard.

Likewise, in the series of Hi Tech Trans, LLC cases, both this Board and the federal Third Circuit Court of Appeals found that a third party's use of railroad property did not qualify as transportation by rail carrier and thus, ICCTA preemption did not apply. In Hi Tech Trans, LLC – Pet. for Declaratory Order, STB Finance Docket No. 34192, August 14, 2003, the Board directly distinguished that simply because an activity on rail property may come within the meaning of "transportation," in order for the preemptive force of 49 U.S.C. § 10501 to apply, the transportation must also be performed by a rail carrier. In High Tech, the petitioner contracted with shippers for the transportation of solid waste. Hi Tech would contract trucks to transport the solid waste from shippers to a rail transloading facility and Hi Tech would load the waste onto rail cars for further transportation. Hi Tech's use of the rail yard for transloading was through a licensing agreement. Hi Tech maintained that there was no distinction between a transloading facility operated by a non-rail carrier and a rail carrier. The Board rejected Hi Tech's argument, reasoning that any third party that merely uses rail carriers would then come within the statutory preemption. Rather, the Board found that Hi Tech's relationship with the rail carrier was merely that of a shipper. The Board emphasized the fact that Hi Tech's operating agreement with the rail carrier disclaimed any railroad responsibility for the transloading. Importantly, in foot note 12, the Board stated:

> Hi Tech is not a licensed rail carrier. There are formal procedures that must be followed to obtain authority as a rail carrier from the Board. See 49 U.S.C. § 10901. Even if such procedures are followed, the Board will not approve rail carrier authority that is a sham or intended solely to avoid local regulations.

[Emphasis added.]

In Hi Tech Trans, LLC v. State of New Jersey, 382 F.3d 295 (3rd Cir. 2004), the Third Circuit Court of Appeals likewise found that Hi Tech's operation on railroad property did not constitute transportation by rail carrier even though rail carriage was involved. This action stemmed from Hi Tech's seeking of declaratory relief from the federal District Court of New Jersey that for a determination that the operation as preempted from state environmental laws pursuant to the ICCTA. There the court said that at most the activity represented transportation to a rail carrier – not transportation by rail carrier. Accordingly, the operation on the railroad property did not fall within the penumbra of preemption. "The mere fact that that the [railroad] ultimately uses rail cars to transport the [solid waste] Hi Tech loads does not morph Hi Tech's activities into 'transportation by rail carrier.' Indeed, if Hi Tech's reasoning is accepted, any nonrail carrier's operations would come under the exclusive jurisdiction of the STB if, at some point in a chain of distribution, it handles products that are eventually shipped by rail carrier. The district court could not accept the argument that Congress intended the exclusive jurisdiction of the STB to sweep that broadly, and neither can we." Id. at 309. Interestingly, there the court also noted that the licensing agreement between the railroad and Hi Tech and said in a foot note that "[w]e do not cite the License Agreement to suggest that a party can contractually determine its status as a railroad carrier for regulatory purposes. Rather, we cite it merely because it further reflects the nature of Hi Tech's activities and its relationship to [the railroad]." Id.

In the case New York Susquehanna and Western Railway Corp. v. Jackson, et al., 500 F.3d 238 (3rd Cir. 2007), the Third Circuit Court of Appeals again revisited ICCTA preemption as related to the effect of state environmental and solid waste laws on operations conducted by an actual railroad. There, the court found that such state laws are not necessarily preempted if they are nondiscriminatory and not unreasonably burdensome. More importantly, however, the court

distinguished the activity in that case from the Hi Tech case noting that, unlike Hi Tech, the rail carrier owned or leased the land and built the transload facilities, shippers paid the rail carrier to load their freight, and the rail carrier did not disclaim liability for the loading process. The court also elaborated on the aforementioned footnote in the Hi Tech decision, saying: "[o]ur point in Hi Tech was that railroads and loaders may not change by contract what in practice is a substantively different relationship." Id. at 250.

In the instant matter, as in the Florida East Coast case, a third party seeks to use a rail carrier's property to carry on a commercial enterprise that is only related to railroad transportation in as much as product is delivered to the facility by rail. Indeed, as proposed to the Borough's Planning Board, the instant operation is simply a reverse of operations found in the Hi Tech cases, where instead of being a "truck to rail" type of use, here Tri-State's use is "rail to truck." The March 8, 2009 Operating Agreement clearly places the onus and liability of transloading, storage, and distribution of product on Tri-State and the only responsibility NYS&W has toward the operation is to collect rents and deliver the product by rail to the facility. Moreover, under the rubric espoused in the Hi Tech decision, the proposed operation by NYS&W and Tri-State fails meet ICCTA jurisdictional requirements because this Board has already determined that Tri-State, and its related activities, do not fall within the jurisdiction of this Board as it is not a rail carrier. See Tri-State Brick and Stone of New York, Inc. and Tri-State Transportation Inc. – Pet. For Declaratory Order, STB Finance Docket No. 34824, August 11, 2006. (Where the STB determined that Tri-State's were not subject to STB jurisdiction and that its activities were not preempted. The Board found that Tri-State was simply using property to transload cargo and was simply a rail customer.) It was only when questioned about the nature of the operation and the Planning Board resolved to seek an STB jurisdicational

determination that NYS&W and Tri-State then produced a "Transloading Agreement" in an effort to avoid local regulation and "change by contract what is in practice a substantially different relationship." New York Susquehanna and Western Railway Corp., 500 F.3d at 250. Without this latter agreement the operations proposed at the facility would clearly fall outside of this Board's jurisdiction and render the operation subject to local regulation. The suspect timing and provisions of this latter agreement bespeaks of an effort to retroactively contract into preemptive posture intended solely to avoid local regulations – an effort that this Board and our courts admonish against.[2] In this matter, the Borough respectfully requests that this Board determine that ICCTA jurisdiction does not extend to proposed operation of NYS&W and Tri-State at the Riverdale facility.

POINT TWO

THIS BOARD SHOULD ISSUE AN ADMINISTRATIVE STAY PROPOSED OPERATIONS OF NYS&W AND TRI-STATE AT THE RIVERDALE FACILITY.

Pursuant to 49 U.S.C. 721(b)(4), this Board may, "when necessary to prevent irreparable harm, issue an appropriate order without regard to" the procedural requirements of 5 U.S.C. §§ 551-559. To obtain an injunction under this provision, the requesting party must show: (1) it is likely to succeed on the merits; (2) it will be irreparably harmed in the absence of the requested relief; (3) issuance of the injunction will not substantially harm other parties; and (4) granting the injunction is in the public interest. See DeBruce Grain, Inc. v. Union Pacific RR, 2 S.T.B. 773,

[2] It is not overly cynical to hypothesize that contractual arrangements between rail carriers and third-parties could easily be fashioned so as to attain a third party's land use contrary to local zoning considerations under the cloak of preemption. Quite simply, with the use of a third party's straw man entity functioning as a "contract loader," which would cross indemnify and subsidize a railroad's transloading liabilities and fees, an operation can, by contract, be preempted even though the railroad suffers a zero net gain or loss from such an arrangement.

775 n.3 (1997) (citing Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

As indicated in Point One supra, this particular petition seeks a declaratory order of this Board as to whether the operation being proposed by NYS&W and Tri-State fall within the Board's jurisdiction and thus preempted from local land use regulations pursuant to the ICCTA. The operation as has not yet commenced and the relative jurisdiction of this Board versus the local land use agency remains unresolved. In this regard, if this Board finds that the proposed operation does not come within the purview of ICCTA preemption, then the operation would be required to obtain necessary site plan and variance approvals that would not be occasioned if jurisdiction otherwise rests with this Board.

As articulated in Point One, supra, the Borough believes that it has a substantial likelihood in succeeding to convince this Board that the proposed operation of the facility does not fall within the ICCTA's scope of preemption given the facts of this case. As established by recent case law of this Board and our courts, the operation as proposed does not square with the integrally related railroad activities that enjoy the freedoms associated with ICCTA preemption. Moreover, it appears that both NYS&W and Tri-State have realized this fact and have attempted to retroactively contract an arrangement to conform to the decisions that circumscribe the preemptive limitations of the ICCTA as related to the use of railroad property.

Given the fact that should the proposed operation of NYS&W and Tri-State not come within ICCTA preemption, the operation itself, if permitted to commence before a determination of this Board, would subject the Borough and its residents to a deprivation of the due process that would be afforded by local land use procedures under New Jersey's Municipal Land Use Law and would further create unnecessary traffic, noise, dust, debris, and exhaust that would suffered

at the expense of residential property owners abutting the facility. For the residents and the Borough to suffer such nuisances without a clear entitlement of NYS&W and Tri-State to create them, an irreparable harm is suffered.

It should be pointed out that in balancing the equities, no substantial harm will be suffered by other parties should a stay be granted. In this regard, the proposed activities have not as of yet commenced at the facility. The parties may have economic and commercial motivations that may be impacted, however, maintaining the status quo during the pendency of the Board's process to determination is not inequitable.

Moreover, granting the requested stay of operations is in the public interest. As the public is represented by the instant Petitioner, it has been decided that the issue is important enough to the public that it required the instant filing. Moreover, it is within the public's interest to ensure that any use of land is conducted in a lawful manner that respects the respective rights and privileges of all interested parties. As the Board's jurisdiction over proposed operation of NYS&W and Tri-State is less than clear, and given the fact that if jurisdiction is found by this Board to be wanting the proposed operation would require zoning and site plan relief to operate, it is in the public's interest to defer such a use until jurisdiction is resolved.

CONCLUSION

Wherefore, the Petitioner respectfully requests this Board to issue a declaratory order finding that the operation as proposed by NYS&W and Tri-State is not subject to this Board's jurisdiction and stay such operation until such a determination is made. The Petitioner further respectfully requests that this matter be treated in an expedited fashion.

Respectfully submitted,
JOHNSON, MURPHY, HUBNER, MCKEON,
WUBBENHORST, BUCCO & APPELT, P.C.
Attorneys for Petitioner, Borough of
Riverdale

JAMES T. BRYCE

VERIFICATION

I, WILLIAM BUDESHEIM, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading. Executed on September 21, 2009.

WILLIAM BUDESHEIM

CERTIFICATION OF SERVICE

I, JAMES T. BRYCE, hereby certify that on this 21st day of September, 2009, a copy of the forgoing Petition of Borough of Riverdale, was served by overnight Federal Express upon:

John K. Fiorilla, Esq.
Capehart & Scatchard, P.A.
8000 Midlantic Drive
Suite 300S
Mt. Laurel, New Jersey 08054
Attorney for New York Susquehanna & Western
Railway Corporation

Tri-State Brick Transporation, Inc.
151 West 25th Street
New York, NY 10001

Main Facility
Brooklyn Army Terminal Rail Yard
65th Street off 2nd Avenue
Brooklyn, NY 11220

JAMES T. BRYCE

A

BARBARULA AND ASSOCIATES
23 Professional Building
1242 Route 23 North
Butler, New Jersey 07405
(201) 492-1190
Attorneys for Plaintiff

FILED

AUG 21 1996

Reginald Stanton, A.J.S.C.

BOROUGH OF RIVERDALE, Plaintiff, vs. NEW YORK SUSQUEHANNA & WESTERN RAILROAD, Defendants,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MORRIS COUNTY Docket No: MRS-L-2297-96 CIVIL ACTION JUDGMENT

THIS MATTER coming before the Court by way of Order to Show Cause with Restraints, Plaintiff, Borough of Riverdale, being represented by Barbarula and Associates, John M. Barbarula, Esq. appearing, and the Defendant, New York Susquehanna & Western Railroad, being represented by Watson, Stevens, Fiorilla & Rutter, John K. Fiorilla, Esq. appearing; and the Court having reviewed the pleadings, video tapes and briefs of all parties; does hereby adjudge as follows:

A. Defendant, New York Susquehanna & Western Railroad, shall file a Site Plan Application with the Borough of Riverdale Planning Board by September 8, 1996;

B. Plaintiff, Borough of Riverdale, shall review said Application in its normal course, subject to its standard procedures and shall do so in a way which does not inappropriately obstruct the operation of the facility.

AJSC

C. In the event that the Application has not received final approval by January 31, 1997, the parties are to notify the Court and the Court will set a hearing date for further proceedings;

D. The Defendant is estopped from further construction, other than emergent repairs such as to correct drainage defects. The Defendant shall notify the Borough when it must make such emergent repairs;

E. The Defendant shall comply with all applicable safety and health and welfare regulations;

F. The Defendant shall not be bound by Local Zoning regulations of Plaintiff as to Land Use & Utilization, as this constitutes economic regulation which is pre-empted by the ICC Termination Act of 1995; and

G. The portion of the Amended Complaint disputing the Defendant's right to cross Post Lane is hereby severed and by this Judgment is transferred to Chancery Division for disposition. All other issues are resolved by this Judgment.

H. The Plaintiff will not preclude or interfere with Defendant's option of the facility as long as it is in compliance with this Judgment.

The Court is sending this Judgment by fax to counsel for both parties.

ENTERED as a Judgment upon the Court records pursuant to Rule 4:42-1 et seq. as a Final Judgment. 8 Ted: August 21, 1996.

REGINALD STANTON
JUDGE OF THE SUPERIOR COURT
ASSIGNMENT JUDGE

Hon. Reginald Stanton

ASSIGNMENT JUDGE

B

THIS PLEADING CLOSES THE CASE

FILED

JUL 22 1998

Reginald Stanton, A.J.S.C.

BARBARULA AND ASSOCIATES
23 Professional Building
1242 Route 23 North
Butler, New Jersey 07405
(973) 492-1190
Attorneys for Plaintiff

BOROUGH OF RIVERDALE, Plaintiff, vs. NEW YORK SUSQUEHANNA and WESTERN RAILROAD CORP., Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MORRIS COUNTY Docket No: MRS-L-2297-96 CIVIL ACTION CONSENT ORDER

THIS MATTER having come to the attention of the Court by John M. Barbarula, Esq., attorney for the plaintiff, BOROUGH OF RIVERDALE, and John K. Fiorilla, Esq., attorney for the defendant, NEW YORK SUSQUEHANNA and WESTERN RAILROAD CORP.; and it appearing that the parties have stipulated and agreed to the following terms and conditions; and the Court having considered same; and for good cause shown;

IT IS, on this 22 day of July, 1998;

ORDERED THAT:

1. The site shall be restricted for use by the Railroad, its successors, assigns, and their derivative users thereof to food grade products only. Railroad agrees not to transport to the premises or load or unload livestock at the facility. If the Railroad wishes to change the use of the premises, the Railroad shall apply to the Borough of Riverdale Planning Board in accordance with the Order of the Hon. Reginald Stanton,

A.J.S.C. entered and filed on August 21, 1996. The Railroad shall comply with all applicable local, state and federal laws in its operation of the facility. The aforesaid stipulations run with the land and are binding upon the current and future owners of the rail line.

2. All transloading must be accomplished by air method rather than diesel or mechanical methods, unless in the event of an emergency. Any spills that result during transloading must be reported to the Borough of Riverdale Board of Health, County of Morris and State of New Jersey as required. Railroad shall report all spills in excess of twenty-five (25) gallons to the Borough of Riverdale Board of Health.

3. Railroad shall place the compressor and heating unit in the box car to duplicate the equipment of the prior red box car and sound attenuating insulation in the box cars in order to hamper the noise. Insulation shall be performed immediately and all future date box cars shall be insulated to ensure compliance with the noise level maintained at present.

4. Railroad consents to an annual inspection of the boxcar by Borough officials. Each new box car plant installed shall be inspected upon installation by the appropriate Borough official prior to operation.

5. Railroad shall construct a twelve (12) foot high treated wood fence on a two (2) foot high berm. The fence shall extend approximately 550 feet along one side of the site as shown on the amended site plan from the northern right of way of Arlington to the southernly line of the Marra property (Block

24, Lot 3). The fence shall be composed of a minimum of three 1 inch by 6 inch horizontal rails.

6. Railroad shall complete installation of the curbing on the property as shown on the site plan.

7. Railroad shall continue to monitor the lighting with GPU to maintain current conditions.

8. Railroad shall plant and maintain approximately 25 white pine trees approximately 5 to 6 feet high along the west side of the site at Railroad's expense as per the Board Engineer's directives. All landscaping shall be reviewed in 24 months following the date of approval for the Board to determine whether the amount and condition of said landscaping is adequate. In the event that a deficiency is found, the landscaping shall be remedied and supplemented as agreed by the parties.

9. Railroad shall pay all outstanding professional fees within ten days of the execution of this Agreement or as soon as the amounts due are determined.

10. Railroad shall make any necessary application to the Department of Environmental Protection for boiler or boilers that Railroad wishes to install in the box car that require licensure.

11. Railroad shall grant a license or easement to the Borough of Riverdale Fire Department to use the Railroad's right of way currently in use in a form acceptable to the Railroad Corporate Law Department.

12. Railroad shall obtain all building permits to

accomplish the above.

13. Railroad shall submit an as built plan for review by the Board Engineer within 30 days after the completion of all work.

14. Borough accepts Railroad's traffic report for the purposes of settlement. Traffic report shall be incorporated as part of the record.

15. This Agreement shall be offered in evidence in any proceeding instituted by either of the parties in any court of competent jurisdiction, and shall, subject to the approval of the court, be incorporated in any judgment rendered in that action.

16. Should any provision of this Agreement be held invalid or unenforceable by an court of competent jurisdiction, all other provision shall, nonetheless, continue in full force and effect, to the extent that the remaining provisions are fair, just, and equitable.

17. No modification or waiver of any of the terms of this Agreement shall be valid unless in writing and executed by the party to be charged. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any subsequent breach or default of any provision contained in this Agreement.

18. The laws of the State of New Jersey and of the United States (where preemption is found) shall govern the execution and enforcement of the within Agreement.

19. This Agreement shall be recorded by the Borough of Riverdale Planning Board in the Morris County Clerk's Office with indexing to the appropriate rights of way.

20. The above captioned action is dismissed with prejudice except for the purpose of enforcing this Stipulation and the Order entered and filed by the Hon. Reginald Stanton, A.J.S.C. on August 21, 1996.

REGINALD STANTON
JUDGE OF THE SUPERIOR COURT
ASSIGNMENT JUDGE

Hon. Reginald Stanton, A.J.S.C.

REGINALD STANTON
JUDGE OF THE SUPERIOR COURT
ASSIGNMENT JUDGE

I HEREBY CONSENT to the form and entry of the within Order.

BY: _____
John M. Barbarula, Esq.
Attorney for Plaintiff

BY: _____
John K. Fiorilla, Esq.
Attorney for Defendant

C

FILE COPY

OPERATING AGREEMENT

THIS AGREEMENT made as of this 8th day of March, 2009, by and between TRI STATE BRICK TRANSPORTATION, INC., with offices at 151 West 25th Street New York, NY 10001 (hereinafter referred to as "CUSTOMER") and THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION, a New Jersey corporation with offices at 1 Railroad Avenue, Cooperstown, New York 13326 (hereinafter referred to as "NYS&W").

WHEREAS, NYS&W is actively engaged in the interstate transportation of freight in interstate commerce and has facilities available at Riverdale, New Jersey for the purpose of loading, receiving, unloading and transferring to or from railcar loads of bulk commodities; and

WHEREAS NYS&W and CUSTOMER wish to enter in an agreement which provides for, among other matters, CUSTOMER's use of NYS&W property at Hamburg Turnpike, Riverdale, NJ for office space, parking, truck weighing and other uses related to transloading and delivery of bulk commodities moved by rail by NYS&W; and

WHEREAS, in relation to and to further the purposes of the rail transportation, including transloading, of bulk commodies, NYS&W is willing to make certain facilities available for use by CUSTOMER for administrative and other functions related to shipment of commodities by rail;

NOW, THEREFORE, in consideration of the aforementioned and the mutual covenants and agreements set forth hereafter, the parties agree as follows:

1. TERMINAL PREMISES AND FACILITIES:

1.1 NYS&W hereby grants CUSTOMER use and access, during the term of this Agreement to the portions of the terminal area and facilities (hereinafter the "Facility") for CUSTOMER to load and unload bulk commodities to and from railcars; temporarily store such bulk commodities and perform administrative and other functions related to transportation of commodity by rail. CUSTOMER acknowledges that portions of the Facility are or may be used by other customers of NYS&W. CUSTOMER shall be allowed use of the office area in the building at the Facility (such use shared only with NYS&W, or with third parties reasonably acceptable to NYS&W and CUSTOMER) and shared use of the truck scale in common with other NYS&W customers. Areas designated for loading and unloading of railcars, and temporary storage of commodities, are indicated on Exhibit A attached hereto.

1.2 Notwithstanding the foregoing, NYS&W hereby reserves unto itself and its licensees the right and easement to construct, use, operate, maintain, repair and renew any rail tracks, pipe, conduit or tunnel, and any electric, communication or signal transmission lines, together with poles and guys therefore, and any other facilities of line character, as may now exist on, under or over the

Facility, it being agreed that this Agreement is subject and subordinate to any and all such rights, easements and uses. CUSTOMER shall occupy and use the Facility in a careful, safe and orderly manner so as not to interfere in any way with the maintenance or operation of the business of NYS&W or of its licensees or with any structures or facilities appurtenant to the business of NYS&W or of its licensees.

1.3 NYS&W shall, subject to the needs of service, provide CUSTOMER with railcar spots for unloading at the Facility. In the event of a growth of business which exceeds that area, NYS&W will use its reasonable commercial efforts to provide additional car unloading spots on its line within New Jersey.

1.4 NYS&W reserves the right, upon no less than sixty (60) days notice to CUSTOMER, to adjust the layout and location of the Facility, within NYS&W's adjacent property so long as such adjustment and relocation do not adversely affect CUSTOMER's operations.

2. LIMITATIONS ON USE:

2.1 The use of the Facility by CUSTOMER shall be limited to activities related to non-hazardous bulk materials which (i) move in rail cars pursuant to tariffs published by or freight rates and routing agreed to by NYS&W, and (ii) any other legal purpose agreed to in writing by NYS&W.

2.2 CUSTOMER may not use the Facility for any commercial trucking business other than as directly related to transloading of bulk materials between railcars and motor carrier.

2.3 CUSTOMER may not store motor trucks or trailers at the Facility, other than as provided in Section 2.2., and may not fuel highway vehicles at the Facility.

3. UTILITIES:

CUSTOMER shall pay for all heat, water, electricity and other utility services required for its use. In the event that such utilities are used in common with others on a common meter, CUSTOMER and NYS&W shall agree upon a fair and equitable proration of such utility costs.

4. TERM / FEE:

4.1 The initial term of this Agreement shall for a period of five (5) years beginning with its effective date. Unless terminated as provided in Section 4.2, this Agreement shall thereafter automatically renew for renewal terms of 12 months each.

4.2 No less than one hundred twenty (120) days prior to the expiration of the initial or any

renewal term of this Agreement, either party may give notice of its intention to terminate this Agreement.

4.3 CUSTOMER shall pay to NYS&W a facility use fee during the initial term of $125,000.00 per year, payable in quarterly installments, in arrears, of $ 31,350.00. CUSTOMER shall be allowed a credit of $500.00 per revenue producing railcar shipped to or from the FACILITY for the account of CUSTOMER against the facility use fee, which will reduce the amount due, but not below zero. In the event that such credits exceed the amount due in any quarter, such excess shall carry over to the following quarter in the same calendar year, but shall not carry over to following calendar years. Starting with January 1, 2011, the facility use fee and the per railcar credit shall increase effective the 1st day of January of each year by an amount equal to the percent change in the Rent, Residential Component of the Consumer Price Index, Urban Consumers (CPI-U) as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212, from the last such increase, using such CPI-U as published for the month of October. [For example, the rent adjustment on effective January 1, 2011 will be based on the percentage change in the CPI-U from October, 2009 to October, 2010.]

5. CARE OF PREMISES - ALTERATIONS:

5.1 CUSTOMER shall exercise good care in its use of the Facility, and at the end of the term of this Agreement shall deliver up the Facility free of any damages caused by CUSTOMER, normal wear and tear excepted. CUSTOMER, its officers, employees and invitees, while in proximity to rail tracks, shall follow, observe and be governed by Railroad's safety rules as applicable. Railroad shall cooperate with CUSTOMER in CUSTOMER's training programs in regard to Railroad's safety rules.

5.2 CUSTOMER shall not make any alterations, additions or improvements on or to the Facility without the prior written consent of NYS&W, and all alterations, additions or improvements which may be made by either NYS&W or CUSTOMER upon the Facility, unless herein otherwise provided, and except the personal property of CUSTOMER, shall be property of NYS&W and shall remain upon and be surrendered with the Facility as part thereof at expiration or other termination of this Agreement without disturbance, molestation or injury.

5.3 NYS&W and CUSTOMER shall each monitor the condition of the Facility and the state of operations for the purpose of determining the need at any time for the addition of new equipment and improvements, repair or replacement of existing equipment and improvements or the alteration of the Facility.

6. LIENS AND CHARGES:

6.1 The creation or imposition of any lien or charge upon the Facility through acts or

omissions of CUSTOMER, its agents, contractors or sub-contractors, shall be deemed a default under the provisions of this Agreement unless remedied as set forth in Section 6.2.

6.2 In the event any such lien or charge shall not be paid or bonded by CUSTOMER within fifteen (15) days after the lien or charge accrues, NYS&W shall have the right to pay such lien or charge and CUSTOMER shall repay the cost to NYS&W, as additional rent hereunder, with interest at ten percent (10%) per annum from the date of payment by NYS&W, promptly upon rendition of bill therefore. Nothing in this paragraph or in any other paragraph of this Agreement shall be construed as authority to CUSTOMER to create any lien on NYS&W's interest in the Facility.

7. RESPONSIBILITY OF CUSTOMER TO ITS EMPLOYEES:

CUSTOMER, in the performance of any and all work by CUSTOMER under the terms of this Agreement or otherwise, upon or adjacent to the Facility, will furnish all labor and supervisory forces of every kind and CUSTOMER shall employ, pay from CUSTOMER's own funds and have the right to discharge all persons engaged in the performance of such work and all such persons shall be and remain the sole employees of CUSTOMER and subject to CUSTOMER's exclusive supervision, direction and control.

8. INDEMNIFICATION:

8.1 CUSTOMER will be responsible for and will indemnify, save harmless and defend NYS&W against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, damage to or loss of property of NYS&W, CUSTOMER, or of agents, servants or employees of either, or of any other person, and against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, injury to or death of persons, including agents, servants, or employees of NYS&W or of CUSTOMER, or any other person (including CUSTOMER if a natural person), which said damage, loss injury or death shall arise in any manner, directly or indirectly, out of or incidental to or in connection with, the use or occupation of the Facility or exercise of this Agreement by CUSTOMER or any motor carrier performing services related to this Agreement, including any appurtenant sidewalks or driveways, except to the extent caused by the negligence of NYS&W or other entities allowed to use the Facility by NYS&W.

In the event that NYS&W allows other entities to use the Facility, it shall require such entities to enter into a similar indemnification agreement which shall require such other licensees to indemnify CUSTOMER for any claims or damages caused by such other licensee. CUSTOMER's indemnification hereunder shall not extend to the use or occupation of the Facility, or exercise of a license, by another licensee of NYS&W.

8.2 CUSTOMER will be responsible for and will indemnify, save harmless and defend NYS&W against and from any and all claims and suits for, and any and all liability, loss or expense

arising from or incidental to or in connection with, damage to or loss of any bulk materials (i) for materials brought to the facility by railcar, from and after the date and time such railcar is placed by NYS&W; and (ii) for materials to the facility for transport out by railcar, from and after the date and time such railcar is released to NYS&W, except to the extent caused by the negligence of NYS&W or other entities allowed to use the Facility by NYS&W.

9. INSURANCE:

CUSTOMER shall provide and maintain in effect during the term and any continued term hereof, a policy of public liability insurance including contractual liability covering liability assumed by the CUSTOMER under the provisions of the foregoing section 9 of this Agreement. Said insurance shall be in limits of not less than $5,000,000.00 combined single limit, and shall be in companies and forms acceptable to NYS&W.

CUSTOMER shall furnish to NYS&W certificates of all required insurance policies upon request of NYS&W. All such policies shall be endorsed to provide not less than thirty (30) days' notice to NYS&W of any cancellation thereof and of any material change in coverage.

The providing of said insurance coverages shall not be deemed a limitation on the liability of CUSTOMER as provided in this Agreement, but shall be additional security therefore.

At the end of the initial term of this Agreement, and after the end of each five years thereafter, NYS&W may increase the limits of insurance required herein.

10. ASSIGNING, UNDERLETTING:

CUSTOMER shall not assign or transfer this Agreement in whole or in part, or sublet the Facility or any part thereof, without the written consent thereto by NYS&W. Any assignment or transfer of this Agreement shall not affect any obligations of CUSTOMER hereunder arising prior to such assignment or transfer. Any such assignment or transfer of this Agreement shall not be effective until delivery to NYS&W of a written assumption of CUSTOMER's obligations under this Agreement signed by the assignee/transferee in form reasonably acceptable to NYS&W.

The rights, duties, and obligations of the respective parties hereto under this Agreement shall carry to and be binding upon the parties' successors and assigns, respectively.

11. ORDINANCES:

CUSTOMER, at its sole cost and expense, shall comply with and obey all laws, ordinances, rules, regulations and requirements of all Federal, State, Municipal, County, Town, Village or other governmental authorities and the various departments thereof now existing or hereafter created, so

far as the same may affect its use of the Facility or the neighboring streets, roadways, sidewalks, alleys, areas or yards, and CUSTOMER's improvements, if any.

12. ENVIRONMENTAL REGULATIONS:

12.1 CUSTOMER covenants that it will not release, dispose, cause to dispose, or aid and abet in the release or disposal of any hazardous or explosive chemical, impurity, waste, or other substance on or near the Facility. In the event that any court, duly constituted public authority, municipality or agency enters an order or judgment against NYS&W, CUSTOMER, its customers, employees or visitors, for any such release or disposal resulting out of such release of disposal by CUSTOMER, CUSTOMER shall indemnify and hold NYS&W harmless for all expenses associated in compliance with said judgment, to include but not be limited to, clean-up and restoration cost of the site to a safe condition. Further, CUSTOMER agrees to pay and discharge all reasonable costs, attorneys' fees or other costs of litigation that NYS&W may incur in enforcing or defending compliance of the foregoing.

12.2 CUSTOMER agrees to fully cooperate with NYS&W, at CUSTOMER's own expense, at all times both during and at the termination of this Agreement, in regard to any applicable environmental regulations. Without limiting the foregoing, CUSTOMER will, in a timely manner, prepare and execute forms required by a cessation of operations, termination of this Agreement, or sale of the premises, (the "Transaction") and prepare and execute any sampling and/or clean-up plan regarding CUSTOMER's use of the premises required by any governmental agency as a condition for any Transaction.

12.3 CUSTOMER shall not be responsible for any such release which (i) predates this Agreement; or (ii) is caused by NYS&W or another licensee of NYS&W.

12.4 NYS&W shall conduct all of its operations in compliance with all legally applicable environmental statutes, ordinances, rules, regulations and requirements of all Federal, State, Municipal, County, Town, Village or other governmental authorities and the various departments thereof now existing or hereafter created.

13. DEFAULT:

Default is defined as the failure to discharge any of the covenants herein. If either party to this Agreement fails to correct default hereunder within thirty (30) days after written notice to do so, or, if such default cannot with best efforts be cured within thirty (30) days then as soon thereafter as possible, the party serving such notice may unilaterally terminate this Agreement forthwith. Waiver of any default shall not be construed as a waiver of either a subsequent or continuing default.

The actions and remedies provided in this Agreement in case of default shall not be deemed

exclusive but shall be in addition to all other actions and remedies at law or in equity in case of any such default; and no action or remedy taken or omitted by NYS&W in case of default shall be deemed a waiver of such default and waiver of a particular default shall not be deemed a waiver of any other default or a waiver of the same default again occurring, nor shall any failure on the part of NYS&W to compel a fulfillment of any one or more of the covenants, terms and conditions herein contained be held to be a waiver of its right to enforce the same at any time thereafter during the term or any contained term of this Agreement.

14. REMOVAL:

Upon the expiration of the term or any continued term hereof and upon any other termination of this Agreement, CUSTOMER, at CUSTOMER's sole cost and expense, shall remove from the Facility any materials, buildings and structures brought to the Facility by CUSTOMER, except additions and alterations made with the consent of NYS&W and which consent included the provision that such would not be removed, and all waste, rubbish and debris brought to the Facility by CUSTOMER; and repair any damage it has caused to the Facility, reasonable wear and tear excepted. All such work of removal and restoration shall be completed on or before the expiration or other termination of this Agreement.

Should CUSTOMER fail, neglect or refuse to so remove such property and make the aforesaid restoration, then and in such event NYS&W shall have the following rights, which are hereby expressly given it, viz: to remove such property and to make the aforesaid restoration, all at the expense of CUSTOMER, which expense CUSTOMER hereby expressly agrees to pay promptly upon demand, or to sell any of such property and retain the proceeds of such sale and to deliver such property to the purchaser or interest therein of CUSTOMER and without any liability whatsoever to CUSTOMER or to any other person or corporation; or, if NYS&W so elects, in lieu of such sale or removal of any of such property, NYS&W may retain and use the same for interest therein of CUSTOMER or of any person or corporation claiming through or under CUSTOMER and without any liability whatsoever to CUSTOMER or to any other person or corporation.

15. SEVERABILITY:

The provisions of this Agreement are severable and it is the intention of the parties hereto that if this Agreement cannot take effect in its entirety because of the final judgment of any court of competent jurisdiction holding invalid any part or parts thereof, the remaining provisions of this Agreement shall be given full force and effect as completely as if the part or parts held invalid had not been included therein.

16. FORCE MAJEURE:

In the event that either CUSTOMER or NYS&W is unable to perform as stated in this Agreement due to or as a result of one or more of the following causes: acts of God, including but not limited to floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions; act of public enemy, war, blockade, insurrection, riot, vandalism or sabotage; fire, accident, wreck, derailment, washout, or explosion; strike, lockout or labor dispute; embargoes or AAR service orders; or governmental laws, orders or regulations, this Agreement shall be suspended only insofar as said performance is affected by the described cause and only for the duration of such cause.

17. EMINENT DOMAIN:

NYS&W and CUSTOMER herein expressly acknowledge that the property will be utilized by CUSTOMER exclusively as an interstate public rail yard facility. In the event eminent domain proceedings are successfully undertaken and completed against any portion of such property which, in the sole and final determination of NYS&W, leave the remainder, together with any contiguous substitute facilities made available by NYS&W, usable by CUSTOMER for purposes of an intermodal rail facility, then this Agreement will not terminate. The effect of such condemnation will be to terminate the Agreement as to the portion of the property condemned, and leave the Agreement in effect as to the remainder of the property and any contiguous substitute facilities made available by NYS&W. In the event the entire property is taken and NYS&W is unable to provide a mutually acceptable alternative site, this Agreement shall terminate on the date title shall be acquired. It is agreed that CUSTOMER's interest, if any, in improvements and personal property, shall be severed from the NYS&W's interest in such proceeding.

18. ABANDONMENT OF PREMISES:

If CUSTOMER shall vacate or abandon the Facility, this Agreement may be forfeited at NYS&W's option and declared null and void. Upon such abandonment and after five (5) days written notice to CUSTOMER, NYS&W, its agent or attorney, shall have the right without further notice to re-enter upon said Facility and remove all property therefrom without being deemed guilty of any manner of trespass or other tort or violation of law, and without prejudice to any remedy provided by law for the breach of said Agreement.

19. THIRD-PARTY MODIFICATION:

In the event that the Surface Transportation Board ("STB") or any other governmental authority shall issue or adopt any law, order, rule or regulation, the effect of which shall be to modify, amend, cancel or terminate any or all of this Agreement, either party shall promptly deliver to the other a full and complete copy thereof. Provided, however, that neither party shall seek such

action by the STB or other government authority. If any provision of this Agreement shall be found to be illegal or unenforceable, the remaining provisions shall not be affected thereby and shall continue in full force and effect.

20. NOTICE:

Any notice required or permitted to be given in writing under the terms, conditions and provisions of this Agreement shall be considered as having been given upon the mailing thereof of certified mail to the office address of the other party or to such other address as such party may from time to time specify in writing. A postal receipt showing the deposit of such notice shall be prima facie evidence of the giving thereof.

21. APPLICABLE LAW:

This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

22. SPECIFIC PROVISIONS FOR TRANSITION:

Attached hereto as Exhibit B are various provisions the parties have agreed to relating to commencement of operations and continuing operations.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized respective representatives on the day and year first above written.

WITNESS:

THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION

_____

By: _____

Title: Nathan R. Fenno, President

WITNESS:

TRI-STATE TRANSPORTATION, INC.

_____

By: _____

Title: CFO, Sec.

EXHIBIT A

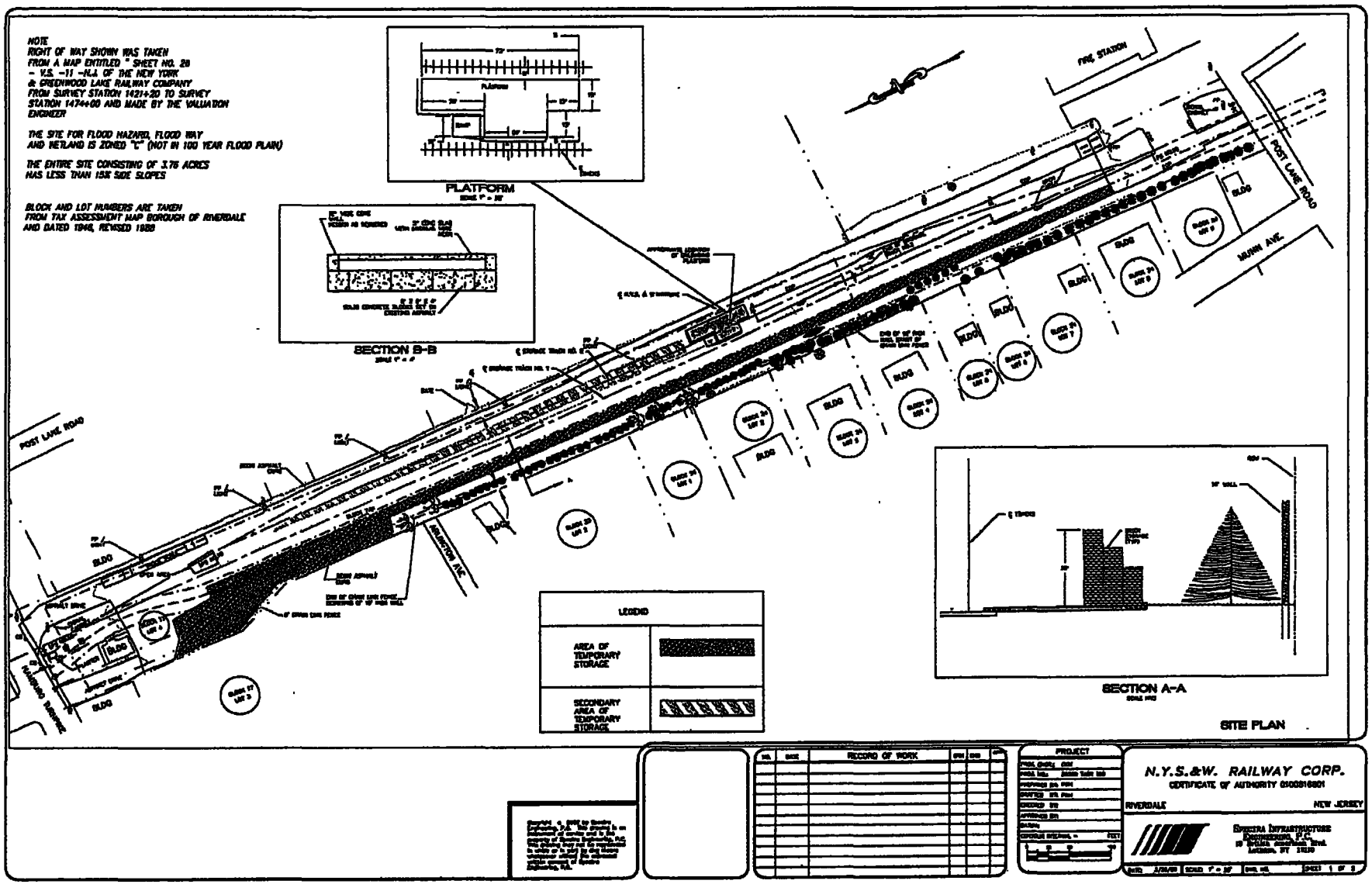

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EXHIBIT B

- Start-up: NYS&W acknowledges that CUSTOMER will initially deliver commodity to the Facility by truck, as it moves from its existing site to the Facility. This delivery of material to the Facility by truck will be complete by May30, 2009, at which time the provisions of Section 1.1 will apply in full.

- Facility Maintenance: At the time of commencement of operations, CUSTOMER will be the only entity using the Facility for loading/unloading activities. Accordingly, CUSTOMER will arrange for, at its own expense, all maintenance, utilities and expense relating to the truck scale and station house, any snowplowing, and grass cutting at the Facility, including adjacent sidewalks and areas to the edge of public streets. CUSTOMER may not remove existing structures or landscaping without prior approval by NYS&W.

- Signs: CUSTOMER shall be authorized to erect a sign or signs at the Facility, subject to reasonable prior review by NYS&W. CUSTOMER shall be responsible for obtaining any required local permits for its signs.

- Shared Use: In the event that NYS&W allows the use of the Facility by another entity for the purpose of loading/unloading commodities, (i) such subsequent user shall not be allowed to unreasonably interfere with CUSTOMER's operations at the Facility, and (ii) the provisions above relating to Facility Maintenance shall be equitably adjusted.

D

Riverdale Planning Board

IN RE: New York Susquehanna & Western Railroad
Hamburg Turnpike/Post Lane
Block 17, Lot 4

Date of Hearing: April 23, 2009

BEFORE: Members of the Planning Board and Public

TRANSCRIPT ORDERED BY:

John Fiorilla, Esq. (Capehart & Scatchard)

Attorney for New York Susquehanna & Western Railroad

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CHAIRMAN LOESNER: Okay.

MR. FIORILLA: Good evening. My name is John Fiorilla. I'm with the firm of Capehart and Scatchard. I represent the New York Susquehanna and Western Railroad Corporation.

We are here under different circumstances, unusual circumstances, because we are here based upon a court judgment, a consent order and a letter that our president, Mr. Fenno, who is with us today, wrote to the board, regarding the use of the railroad's property on Hamburg Turnpike.

As most of you know, a lawsuit in 1996 resulted in a judgment dated August 21, 1996, and that was filed in 1998 with a consent order between the borough and the railroad regarding the Hamburg Turnpike facility.

The railroad in its letter of April 8th, 2009 (phonetic), explains that there is a change in the product that will be trans-loaded (phonetic) at this facility.

Previously the product had been corn syrup and other food grade product, that had to be heated and transferred from tank cars to tank trucks at this facility. That use ended a couple of years ago.

Now the railroad wants to use the same

property to trans-load brick. It's fully explained in our letter of April 8th, 2009, and I would assume that the members of the board have that letter.

In that letter, we talk about exactly what the operations are going to be. We talk about changes to the facility, including movement of the rail cars that are there, the clean up of the facility and some other things that we would be doing in regards to the facility. And a descriptions of the operations.

I point out that the operations in regards to deliveries to and from this facility would be probably less than what the previous one was, it will be less trucks.

The railroad is here because of the consent order it signed, which said they would come before this board to discuss the health and safety and other things related to the -- to this use.

And in regards to what we put in our letter, we have an explanation. We also have passed out to you today a letter from Spectra Engineering (phonetic), which is the outside engineering company that worked for the railroad, which should address some of the concerns that Mr. Darmofalski raised in his letter, his recent letter. His letter, I think, is April 20th, the response was April 21st. And they

talk about those -- those types of things.

We are here tonight to discuss those issues and discuss the issues that are brought up by Burgis and Associates in their memorandum, which we recently received. April 20th date.

The railroad is -- wants to get this resolved, as far as the town is concerned as to what it feels is required, and what we feel is required, and to discuss that with the board. And we're here to answer any questions.

Also with us today is Mr. Formica, who is (inaudible) brick (inaudible) one of the brick (phonetic) people who will be involved in trans-loading for the railroad. And he can talk about the brick and anything in that regard. I'm sure he can answer any questions you have about the product itself. And we would be -- welcome any questions the board may have in regards to our letter.

We also provided to you a site plan, which I'm sure you have, of what the proposed changes would be in that regard.

If you recall in the consent order, it talked about fencing and so on. You'll also recall that there was a -- plan involved in that fencing. That fencing wasn't for the whole facility, because as

you recall, the board wanted it in certain areas and not in certain areas. And that's why this is the whole area (phonetic).

And those are the kind of issues we'll be glad to address today, as to what the board is looking for or any questions the board has in regards to what they see as this facility looking like (phonetic).

MR. BARBARULA: Why don't we, Mr. Fiorilla, why don't we have the people that are with you sworn, so that we don't have to go back and forth.

MR. FIORILLA: That will be fine.

MR. BARBARULA: If they can all come forward to that microphone.

MR. FIORILLA: I don't know if (inaudible) is going to testify. Mr. Formica, would you mind?

MR. BARBARULA: Gentlemen, would you please raise your hand?

N A T H A N F E N N O, SWORN

L O U F O R M I C A, SWORN

MR. BARBARULA: Thank you. Maybe you (inaudible) sit next to him and one by that other microphone, that way we make sure we get everything (phonetic). Mr. Formica, if you want to sit by that microphone, this way when people ask you questions (inaudible).

MR. FORMICA: Sure.

MR. BARBARULA: (Inaudible) take up (inaudible) for the record. All right, Mr. Chairman, I believe that everybody received a copy of the letter and the correspondence, as well as the site plan. I think that (inaudible) has distributed the consent order also.

CHAIRMAN LOESNER: I have the consent order. I have the --

MR. BARBARULA: (Inaudible) partial transcript (inaudible).

CHAIRMAN LOESNER: Partial transcript. I have the -- transportation board decision. I have been doing a lot of reading.

MR. FIORILLA: Do you have the judgment?

MR. BARBARULA: Yes.

(Microphone interference)

MR. BARBARULA: I think maybe that -- Mr. Fiorilla, a good way you can probably start is -- just give the board an overview of this operation?

MR. FIORILLA: Well, the railroad's operation (inaudible).

(Microphone interference)

MR. FIORILLA: It's not Mr. Formica's (inaudible).

MR. BARBARULA: Well (inaudible) he's the (inaudible).

MR. FIORILLA: He's going to be working there.

MR. BARBARULA: (Inaudible) he's the one who is going to be operating it.

MR. FIORILLA: Well, he's going to be working there and operating the facility for the railroad. It's the railroad's operation. I would like to have Mr. Fenno go first, if you don't mind, Mr. Barbarula.

MR. BARBARULA: Not a problem. I thought there was a little lull there, I started to jump in. Go ahead.

MR. FIORILLA: That's fine.

MR. BARBARULA: Go ahead.

UNIDENTIFIED MALE: It's not often you get an opportunity like that with Mr. Fiorilla.

MR. BARBARULA: That's (inaudible) I noticed (inaudible).

MR. FIORILLA: You (inaudible) --

UNIDENTIFIED MALE: (Inaudible) -- all of our past experience.

MR. BARBARULA: (Inaudible) -- federal court and the state court and the federal court again and

back to the state court (inaudible).

MR. FIORILLA: Well, John, you know, there is the -- tape of you and me in state court, and I played that for many people. I want to tell you, we should have copyrighted that -- I tell you (phonetic).

MR. BARBARULA: (Inaudible) -- my image to make money is -- (inaudible).

(Laughter)

MR. BARBARULA: Go ahead Mr. Fiorilla. It's all yours.

DIRECT EXAMINATION BY MR. FIORILLA:

Q Mr. Fenno, would you give us a summary of the letter that you provided to the board on April 8th?

A Sure. Essentially, I tried to set out in this letter as much detail, realistically, as we could about the operations. (Phonetic)

UNIDENTIFIED MALE: Speak up, please.

A Okay. The operations of the train is, I would guess, probably typical for what -- to what the town experienced in the past. The railroad will bring loaded cars to the site, would remove empty cars from the site.

And the times and hours of operating are difficult to predict. They tend to be in the early hours in the morning, late hours of the night. Under

our current operating plan -- but that can change from time to time (phonetic), without -- without, really, (inaudible).

The actual cars, loaded cars would be placed in such a way that there could be access by the -- the -- unloading ramp (inaudible) for this site. Forklift trucks. Brick comes in in boxcars. The forklift trucks would access the railroad car off of the loading ramp. Bring -- the forklift would bring bundles of brick out of the railroad car, place them in the areas indicated on the plan for temporary storage.

When we drew this plan, we attempted to indicate all areas that could potentially be used from time to time for -- for storage of brick, in order that there would be no potential that we put it someplace where we -- we didn't tell that we were (inaudible).

The brick then moves out of the facility on -- on trucks, as indicated on the -- in the -- in my letter. Again, the forklift trucks -- truck (inaudible) forklift lifts the bundles of brick on to -- on to the back of the trucks and they -- they leave the facility. All access by truck -- to the facility -- is via Hamburg Turnpike, obviously, because of the

restrictions on Post Lane.

The -- the loading and un -- the unloading of railroad cars, the loading of trucks, is intended to occur between 7 a.m. and 4 p.m. Mostly weekdays, occasionally on Saturday.

And the -- the expectation is that there would be a maximum of four trucks used with up to -- a truck making up to two -- two loads per day. So -- a total of a maximum of eight movements in and out of the -- of the facility.

Q In regards to the facility itself, what plans in regards to changes does the railroad have?

A Well, the only -- I mean, the changes that are planned, as I indicated, there is a plan to construct a loading ramp, as indicated, at the location as indicated on -- in a -- plan of the loading ramp, is indicated on the plan (phonetic).

Currently, down the center of the facility there are, I believe, 23 stanchions that we use for the -- for the prior use.

There's a -- there's a water and electrical service at each of the stanchions. The stanchions that are in the area where the -- where the loading dock will be built will be -- will be removed. I suspect several of the other stanchions will be

removed. The electrical service and water service to the stanchions will all be -- be turned off. They all feed off of a common source near the station building. (Phonetic)

MR. BARBARULA: People are having a tough time hearing you. You need to --

MR. FENNO: Do I need to be closer to this?

MR. BARBARULA: No, no -- the people in the back can't hear you --

MR. FENNO: Oh -- that's going to be a problem.

MR. BARBARULA: Okay. That doesn't magnify your voice --

MR. FENNO: Okay.

MR. FIORILLA: This isn't a microphone, it's -- just recording --

MR. BARBARULA: (Inaudible) recording (inaudible).

MR. FENNO: Okay.

MR. BARBARULA: (Inaudible) just keep it up because people are leaning over any more they're going to fall out of their chair.

MR. FENNO: Okay.

BY MR. FIORILLA:

A And I think that pretty much covers it. As -- as

we indicated in the letter, there is some clean up required at the facility. We do have several railroad cars at the facility that we will -- we will be moving when we can. There is still some work that needs to be done to those cars before they can moved, some minor work.

And as I stated, there is some -- there is some clean up that needs to be done. I was at the site today, I noticed there is a section of fence that is missing that needs to be replaced near the fire department. Things of that nature.

CHAIRMAN LOESNER: My question. My questions all really relate to the Burgis letter and to Paul's letter, so I think once we go over those two, it may answer a lot of questions I have. And other people. As far as, you know, how the employees are housed. And --

MR. FIORILLA: That we can talk (inaudible)-

CHAIRMAN LOESNER: --

MR. FIORILLA: -- trucks (inaudible) the employees will be at the station. They are not going to be in a separate building, the building that is already there now on the site, which is, you know, has heat and everything else.

CHAIRMAN LOESNER: Okay.

MR. FIORILLA: So they can be inside the station. There is about parking (inaudible) we saw tonight, for about eight cars out right in front of the station. There is probably more parking if you looked around the site. But just right in the front there's eight spots right there.

And that's where all the employees would be. There is no additional, like, trailers or anything else that would be constructed. There is no need for that, there is plenty of room in the station for those (inaudible).

CHAIRMAN LOESNER: The storage -- buildings for the forklift. There is no equipment that needs to be stored.

MR. FIORILLA: Mr. Formica, could you answer those.

MR. FORMICA: No, nothing like that. It's just -- the forklifts are outside. We'll have a container, like a -- like a shipping container that will keep some things that need to be covered from the weather inside that. That will be within the gated facility. But other than that, there is nothing -- storage. (Phonetic)

CHAIRMAN LOESNER: Trash dumpsters.

MR. FORMICA: Yes, the plan is to put a

trash dumpster next to the loading dock, so any debris that comes out of the rail car can be easily dropped right into that container. And other than packaging debris that's within the rail car, there is no other generation of debris.

The bricks are self-contained in their own cubes. And they are offloaded from the train exactly that way and put on the ground, and they are removed exactly that way, as well.

CHAIRMAN LOESNER: It's unclear on the plan how far the 16-foot high fence goes down the property line. Can you show me where it stops?

UNIDENTIFIED MALE: -- fence or a wall -- some places it is called a wall, some places it is called a fence.

MR. FENNO: Well, I think the plans clearly (inaudible) --

UNIDENTIFIED MALE: That's what we're looking at.

MR. FENNO: Okay.

UNIDENTIFIED MALE: Block -- block 24 is where the 16 foot wall -- ends (phonetic).

CHAIRMAN LOESNER: In the decree, it mentions the property by name, not by lot. So I was trying to figure out which lot that was. I think in

the decree it was the Mara (phonetic) property. But I don't -- I don't know which one that is.

MR. FENNO: Where, near -- near Arlington Avenue there is an indication -- end of chain link fence -- beginning of 16-foot high wall, which is the (inaudible).

CHAIRMAN LOESNER: So the 16-foot high fence goes all the way down to Post, down to --

MR. FENNO: No, sir.

CHAIRMAN LOESNER: No.

MR. FENNO: They're at block 24, lot 4.

CHAIRMAN LOESNER: Oh, okay, there it is, I got it.

MR. FENNO: (Inaudible) you'll see -- end of 16 foot high wall.

CHAIRMAN LOESNER: All right, then my next question is -- is the 16-foot high fence going to be extended down to lot 8?

MR. FORMICA: Well, we have not -- we have not proposed that. This whole -- that was done that is shown on the plan is all done (inaudible).

MR. FIORILLA: It was done pursuant to the consent order that you asked us to do.

CHAIRMAN LOESNER: Well, why --

MR. FIORILLA: Why was it done that way? I

think the reason why -- and I was the attorney -- was because there were residents that didn't want the wall extended past their property. But certain other ones did. So what we did -- and I know Mr. Darmofalski may remember, because I know he was here for that --

MR. DARMOFALSKI: --

MR. FIORILLA: The railroad -- we, in the consent order, which had attached to it -- which I don't see attached in the one that I have here, had -- had the site plan or a map -- showed which properties it would be extended to. And that's what the current one shows. It shows how we built it (inaudible).

CHAIRMAN LOESNER: All right.

MR. FIORILLA: -- and we built it based on the consent that we had with the board at that time.

CHAIRMAN LOESNER: Just trying to get it clear in my mind.

MR. FIORILLA: Yes, I mean, that's -- that's what happened. It was -- and I think that what Mr. Fenno just testified to is part of that wall down by the fire station, which, by the way, we also granted (inaudible).

MR. FENNO: No, no --

MR. FIORILLA: Where was it?

MR. FENNO: By the other side. The fence --

down here --

MR. FIORILLA: Chain link fence --

MR. FENNO: Chain link fence.

MR. FIORILLA: Okay.

CHAIRMAN LOESNER: All right.

MAYOR BUDESHEIM: Something you said at the very beginning of your testimony, I was a little confused. You referred to Mr. Formica running the brick business. I believe, Mr. Fenno, you said no, we're running it (phonetic).

MR. FENNO: Let me try to clarify the relationship if we can, because that maybe -- it's very normal to me in my business and my industry, but perhaps a little different than -- that --

MAYOR BUDESHEIM: Maybe you could get closer to the microphone.

MR. FENNO: (Inaudible) frequently (inaudible).

MAYOR BUDESHEIM: It doesn't amplify.

MR. FENNO: The railroad -- which is fairly typical at lots of sites, at our railroad and on other railroads, we move product to -- to destinations. Designations sometimes at a place where it's going to be used, a factory. Other times the destination is at a site where it's -- where it is loaded onto trucks

for -- for delivery to the ultimate consumer. Or ultimate site.

And that is such as what this place is used for, just as a -- just as it was as a corn syrup facility, when this was used for corn syrup.

When it was used for corn syrup, the railroad brought railroad cars in and -- and another company called Gulfmatic (phonetic), which runs tank trucks, would -- would be responsible for the unloading of the corn syrup into the trucks. And the delivery of the -- of the material to the -- to the ultimate user.

Similarly, in this case, the railroad brings boxcars with brick to the site, and Mr. Formica's firm, which is, I guess, realistically you have more than one business, but -- but the business of the trucking or the arranging for the -- for the transportation (phonetic). Takes care of the unloading of the railroad cars and the -- and arranges for the trucking of the -- of the material to the -- to the end site (phonetic).

MAYOR BUDESHEIM: The brick part, this business, isn't railroad business.

MR. FENNO: Well, this is all transportation, if that's what you're asking me.

MAYOR BUDESHEIM: I was just trying to clarify what you said in the beginning when the attorney to Mr. Formica as operating the brick business and you said no, you said no, we're operating the brick business.

MR. FENNO: Oh, I said we would operate the brick business. I didn't say Mr. Formica was operating.

MAYOR BUDESHEIM: I think --

MR. FENNO: I think just to try to clarify here, that is the (inaudible) as I described it, is the typical (inaudible) here or any other place -- the way that (inaudible) trans-loading of materials from railroad cars and (inaudible).

MAYOR BUDESHEIM: So then they're basically a tenant of the railroad?

MR. FENNO: No, sir. (Phonetic)

MAYOR BUDESHEIM: What are they?

MR. FENNO: They're part of the -- a link in the transportation of this -- of this material.

MAYOR BUDESHEIM: Come on, any business is a link in the transportation. Home Depot could be considered a link in the transportation --

MR. FENNO: No, I think -- I think you'd find Home Depot would be a retail -- retail

establishment.

MAYOR BUDESHEIM: This is a whole -- wholesale establishment.

MR. FENNO: This is not a wholesale establishment. This material is ordered for -- for specific destinations, it's shipped to the site to be loaded into railroad cars to go to those destinations.

MR. FORMICA: None of the people here own the brick.

MAYOR BUDESHEIM: That was my question.

MR. FORMICA: No --

MAYOR BUDESHEIM: Who owns the brick?

MR. FORMICA: The people who are going to get the brick own it. They bought it at another site and they are shipping it.

MAYOR BUDESHEIM: So your -- you're contracted to go from point A to point B.

MR. FORMICA: Right.

MAYOR BUDESHEIM: To make -- it simple in my mind.

MR. FORMICA: Right.

MAYOR BUDESHEIM: Once it hits point B, because when you gave me your business card I looked it up on the website and you're listed as one of the largest brick wholesalers in this area. You do own

the brick, don't you?

MR. FORMICA: Actually, we don't own the brick. The legality of it is that when the bricks are -- not the bricks, but the actual transactions that we conduct, there are -- when the customers order material, they are manufactured at the different (inaudible) plants. They are, at that point, sold to the customer, FOB shipping point, where title passes. So the customer, right from the brick manufacturer (inaudible).

And what we do is what we call back-to-back transactions. The customer will order materials for a particular project, it might be a hospital or school, municipality. They -- we, in turn, put an order into the manufacturer to manufacture the quantity and type and color and size and all that is required for this particular project.

The customer sends up an order, we in turn send the very same order to the manufacturer. They manufacture the brick. When it's ready, we coordinate with the customer, once it's going to be take in, and then in turn delivered to the customer.

But the actual ownership of the brick itself is FOB shipping point. So that the terms of the ownership actually takes place as soon as it leaves

the manufacturer.

MAYOR BUDESHEIM: A

with that.

MR. FORMICA: We do

the customers speak with to c

transaction.

UNIDENTIFIED MALE:

like the owner (phonetic).

MAYOR BUDESHEIM: Sounds like a wholesaler. Isn't what a wholesaler buys from a manufacturer itself a retailer?

MR. FORMICA: No, a wholesaler, I believe -- again, it may be semantics, but I think a wholesaler actually take title to the materials. In this case, the title passes immediately to the customers.

MAYOR BUDESHEIM: Then why is so much brick stored here? Why doesn't the customer just come pick it up and bring it to the job site?

MR. FORMICA: That's a fair question. You have to imagine that you might be building a -- around here, we do projects around here, as well.

But envision, if you would, a project, perhaps, in New York City. It might be Presbyterian Hospital. There is not much room on any site for them to take all the brick that is required. The brick has

to be brought to the site as the project continues. But they can't take all that volume of brick to the site. And at different stages of the project, things go quickly, sometimes they may slow down. They might be doing steel. They might have to pause to do some windows or do some site survey.

So it's typical in all projects, even local projects here where they take deliveries as the materials are required, as opposed to putting them on the site and then having inability to move them where they are actually needed.

MAYOR BUDESHEIM: There is no place between Presbyterian Hospital and New York City and here for you to deliver these to. They have to stay here in Riverdale.

MR. FORMICA: Say -- again -- (phonetic)?

MAYOR BUDESHEIM: They have to stay here in Riverdale? There is no place between Presbyterian Hospital and New York City and here for you to store these bricks.

MR. FORMICA: Well, Presbyterian Hospital is not the exclusive location to where the brick is going.

MAYOR BUDESHEIM: You --

MR. FORMICA: I said merely as an example.

I understand the point you're making. Logically, I wish we could deliver them directly to Presbyterian Hospital.

But bricks actually require -- in terms of logistics and costs associated with it, to be transported by rail. There are not that many rail facilities. If there was one next to Presbyterian Hospital, we would prefer to use that, because that would be the most convenient. Because you don't want to handle brick and transport it too far.

MAYOR BUDESHEIM: Where are you now? Are you in Wharton or Rockaway?

MR. FORMICA: We're in a couple of locations. We're now presently in Brooklyn, which we're vacating and leaving Brooklyn. We went out to [redacted] (phonetic), actually, a railroad there had offered a (inaudible) to us.

And as we began to mobilize the -- like we're talking about doing here, the township had spoken up and said that the property that the railroad had offered us to use actually belonged to the township. And they had, essentially, given us the key to the gate to put materials there.

So it was much to our surprise and disappointment that their representations of what they

said in terms of putting materials there, didn't have that capacity to actually hold out.

UNIDENTIFIED MALE: Where are you located in Brooklyn?

MR. FORMICA: It's in Brooklyn (inaudible) Army terminal. Do you know where that is?

UNIDENTIFIED MALE: I do.

MAYOR BUDESHEIM: If you don't own these bricks, how come you have so many locations? What are you doing? (phonetic)

MR. FORMICA: We do -- we do do a sizable amount of materials.

MAYOR BUDESHEIM: So you do own the brick. (phonetic)

MR. FORMICA: You would like me to say that. I would -- I would if it were true. But it's not.

MAYOR BUDESHEIM: (Inaudible)

MR. FORMICA: Say again?

MAYOR BUDESHEIM: You could operate out of a phone booth, all you do is call orders in and ship them somewhere (phonetic).

MR. FORMICA: Our offices -- our offices -- our primary location is located in New York City on 25th Street. Although, I would just like (inaudible) I'll come back to the residences (inaudible) here.

I'm from the local area.

In terms of a phone booth, akin to a phone book is we conduct all this business from an office on the 9th floor. We're not in the middle of construction sites, we're not in the middle of areas where you might think it would be, considering it's brick. It's an office; I go to work dressed this way each day. The people in the office go to work dressed this way. It's not a dirty type of operation; it's an office -- (phonetic).

UNIDENTIFIED MALE: So can your customers buy direct from a manufacturer?

MR. FORMICA: No, they can't.

UNIDENTIFIED MALE: So then you're a wholesaler.

MR. FORMICA: The manufacturer -- the manufacturers are at great distances, far away. And they don't have the ability to be able to deal with the local market here, so they need somebody here to help them in -- in the various local markets. They are -- all they do is really produce the materials.

UNIDENTIFIED MALE: Now you represent yourself as a trucking company. But to listen to you explain your role in how this product gets processed, you're actually taking the order, coordinating with

the manufacturer of the brick. I mean, it seems to me that you are much more than a trucking company. I think wholesaler has been used.

I mean, clearly, you're not just getting compensated for driving the bricks from Riverdale to Columbia Presbyterian on 168th Street. There's got to be more to it. I don't think you're -- to me, I don't believe you're being as forthright as I would expect about your role.

MR. FORMICA: Okay. Well, I give you information about (inaudible). What I alluded to before, we actually have a company called Tri-State Transportation. That's the company that is in the relationship with the railroad to move brick.

That company exclusively (inaudible) and its sole purpose is to receive rail cars, unload the material from the rail cars and then put them on the trucks for the transport (inaudible) in the eventuality of their final location. That's an entity onto itself. That's called Tri-State Transportation.

Tri-State Brick -- and we have Tri-State Brick of New Jersey, Tri-State Brick of New York, Tri-State Brick utilizes Tri-State Transportation for their services in moving the brick around. The Tri-State Brick company itself, is nothing more than a

marketing and a sales organization. Tri-State Transportation, however, is really the trans-loading operation. They are the companies that are -- the company, that is, actually moving material. Does that answer your question?

UNIDENTIFIED MALE: I think it's a little bit clearer that there are other transactions that some group within this company is actually being compensated for for purchasing the brick or selling the brick (inaudible).

MR. FORMICA: Absolutely, sure.

UNIDENTIFIED MALE: And I think that was the point that we were trying to get to and, eventually, we ended up getting there.

MR. FORMICA: It may or may not be important to you, those transactions have nothing -- don't take place at this site.

MAYOR BUDESHEIM: If you don't want to wear the label of wholesaler, then I guess you're a warehouse.

MR. FENNO: No.

MAYOR BUDESHEIM: You're storing materials there. I mean, you've got to be something.

MR. FORMICA: Well, I'm not sure that just because you -- I'm not the first one that I fall into

the category or the second one. I am not sure if I can give a definition. I would say we buy -- I'm not even sure (inaudible).

MAYOR BUDESHEIM: You have got 1,000 feet of storage. Isn't that a definition of a warehouse? Storing material.

MR. FORMICA: It's not --

MR. FENNO: I don't think so. Let me interrupt here, because it's -- you know, this is -- I mean, this is, from the railroad's perspective, okay, understanding that I come from a very different perspective than -- than you folks do. But -- this is a very common thing for us in the railroad business. We have a wide variety of different types of materials.

We -- this is -- from our perspective, we have a facility in North Bergen where we -- where we handle -- handle automobiles. Again, the automobiles come to the site, they are parked there. They may be parked there for some time before they move out by rail, just because of the logistics of planning, the availability of rail cars, the timing of when they come in and when they come out.

We have a facility where we handle lumber. And a very, very similar situation to what we do here,

where lumber comes in by rail and it's put on the ground, and it -- it -- stays there until it moves out by truck.

It's really -- it's really logistics, in the sense of when you're moving large amount of materials, what railroads typically do is to move a fairly large amount of -- materials. When you move from -- from the railroad mode of transportation to the trucking mode of transportation, you need a site that can -- can be flexible. And because of the -- the significant difference in the amount of material that rail moves, as opposed to truck (phonetic).

I mean, we could -- we could bring in, you know, at this site, we could bring in 23 loads of -- of brick into this site -- 23 rail cars of brick into the site. And they would not all -- they would not all be unloaded and moved out in a day.

They may -- again, it's kind of a -- I -- it's -- I kind of -- kind of try to use the example of the highway system where, you know, sometimes things are moving quickly, sometimes things are moving slowly, and you have to have flexibility in the transportation system to be able to absorb those surges and slow downs. And that's, essentially, what this facility does as the result of surges and slow

downs between rail and truck (phonetic).

MR. CLINTON: How many trucks would it take to offload 23 rail cars worth of material?

MR. FENNO: The -- it would be 90 to 100.

MR. FORMICA: Yes, about 3 and a half, four trucks per rail car.

UNIDENTIFIED MALE: They're not all being moved by truck you're telling us. Some will be moved by rail.

MR. FORMICA: No, the inbounds are coming by rail (inaudible).

MR. FENNO: The inbound is by rail, outbound by truck.

UNIDENTIFIED MALE: All -- all outbound by truck.

MR. FENNO: Yes.

MR. FORMICA: Correct.

MR. FENNO: And, as we have indicated in here, we have a maximum of four trucks making two trips a day. A maximum of eight.

UNIDENTIFIED MALE: But you had said (inaudible).

MR. FORMICA: My example of 23 rail cars is based just on the size of the facility from a railroad standpoint. But the intended operations are much

(inaudible).

MR. LANG: Going through your letter, on the certain hours of operations, there are going to be loading and unloading between 6 a.m. and 4 p.m. so while trucks are there loading, the diesel forklifts are going to be unloading. Right? There is no operation after 4, because they are closed at 4. Starting at 6. But the -- the trucks are going to start pulling out at 5:30 a.m.

MR. FENNO: I'm sorry, I'm trying to find (inaudible).

MR. LANG: It's on the last page.

UNIDENTIFIED MALE: The third page.

MR. LANG: Last page.

MR. FENNO: Right, we --

MR. LANG: so -- you're going to be loading and unloading at the same time.

MR. FENNO: That could certainly happen.

MR. LANG: That's what it says. Hours of operation for unloading and -- between 6 and 4, Monday through Friday. Railroad unloading will typically start around 7 a.m., an hour after opening. But the trucks will start up and pull out at 5:30 a.m. to avoid traffic.

MR. FORMICA: I can give you some insight

into that. If I may.

MR. LANG: Yes.

MR. FORMICA: The -- what they like to do is they like to load the truck in the evening by 4 o'clock, when their trucks return back from their second round. So at that point the trucks are loaded. And then in the morning when they arrive, they just pull the trucks out and make their deliveries to the site.

They will return them back from that delivery around 11 o'clock. And then they will load the truck again for their second round, assuming that we have a second round. And at that point, the truck goes out again. It will come back. And then at that point, the truck will get loaded for the morning. And that's a typical scenario.

MR. VENZA: The truck would sit there loaded all night.

MR. FORMICA: Yes, exactly.

MR. VENZA: All night.

MR. FORMICA: Yes.

MR. FENNO: And --

MR. FORMICA: They do it for a couple of reasons. One, we don't want to load in the morning, it would make noise, and not -- the community wouldn't

want that, we just don't do that anyway. And also it helps the drivers, too, because this way the go in the morning and pull right out.

MR. VENZA: And -- tractor-trailer trucks we're talking about?

MR. FORMICA: Yes, there are some straight trucks and there is also some tractor-trailer trucks, as well.

MR. VENZA: We can assume that in colder weather they would be idling all night long.

MR. FORMICA: No, not at all. No, the trucks are off.

MR. VENZA: Really.

MR. FORMICA: Yes.

MR. VENZA: Okay.

UNIDENTIFIED MALE: No unloading or loading after 4 p.m.

MR. FORMICA: No, we don't do it. The (inaudible) it would (inaudible) it often even closes before then. It depends upon -- there might be an occasion where a train comes in and the customer needs the material and we're delinquent in getting it to them. It might be minutes or a short period thereafter. But very, very -- very rare. Not a typical situation.

UNIDENTIFIED MALE: (Inaudible) local (inaudible).

MR. MAGENNIS: Just one (inaudible).

MR. FORMICA: Pardon?

UNIDENTIFIED MALE: The drivers are local people, then?

MR. FORMICA: Yes, they are from Jersey. There's two drivers that we use all the time. They are not our drivers, they are common carriers, they are union people. Because a lot of the jobs that are delivered to are union projects. And those are -- we used the steady people because they are familiar with how to handle the material and how to unload it once they get back and forth.

MR. MAGENNIS: Mr. Fenno, I know you testified that there would be maybe four trucks, two loads per day. The question I have for you is you're not directly involved in the shipping of the material. What leverage do you have to control the number of trips a truck makes on any day or the number of trucks that -- I know you stated that it would be four trucks per rail car.

You guys get backed up and, you know, all of a sudden there's 20 trucks coming in. And I -- and I know it was your testimony that there would be eight,

let's say. What control do you have to prevent anything more than eight from coming to that site or leaving that site?

MR. FENNO: That's an interesting question. I -- I don't know that our agreement covers that specifically one way or the other.

MR. MAGENNIS: And the other question. Is -- what (inaudible) when will the railroad cars be delivering this product to the site?

MR. FENNO: I think I did state that it -- typically, we would be -- we would be here with the locomotive late night/early morning.

MR. MAGENNIS: Well, what does that mean, late night?

MR. FENNO: It means the middle of the night.

MR. MAGENNIS: So you -- so you really -- it's a 24 hour operation, you can come and go as you please.

MR. FENNO: Yes, we are a 24/7 operation, absolutely.

UNIDENTIFIED MALE: Pretty much -- pretty much with the corn syrup.

MR. FENNO: That's right.

UNIDENTIFIED MALE: The location that you

have in North Bergen, is that located very close to a residential neighborhood?

MR. FENNO: In North Bergen, no, it's not.

UNIDENTIFIED MALE: How about the lumberyard that you mentioned -- what town is that in?

MR. FENNO: That's in North Bergen.

UNIDENTIFIED MALE: North Bergen also. Is that located next to a residential neighborhood?

MR. FENNO: No, it's not.

UNIDENTIFIED MALE: It's not.

UNIDENTIFIED MALE: How long do these bricks stay (inaudible) when you (inaudible) load -- in other words, how long do they stay -- on the warehouse (inaudible) (phonetic).

MR. FORMICA: The -- it will vary by the nature of the job itself. Many times it will come in right away and go out that very same day. Otherwise, it could take -- if something occurs on the job site and there is a delay or they might -- find some contamination -- rail cars are different to get, sometimes that's the case, as well.

We may bring material in in anticipation of the difficulty of getting rail cars to replenish that which goes out. So it can range anywhere from immediate to -- to 45 days, maybe 60 days, perhaps.

UNIDENTIFIED MALE: The brick that you dropped off a month ago, those jobs shut down or what happened to those jobs? (Phonetic)

MR. FORMICA: The bricks that we got -- a month ago were -- one of two purposes. We were going to use brick to fill in the platform that is being built. So the perimeter brick are going to be made out of block, the center of the brick will be made out of this brick -- so we can bring the level up. And then concrete will be poured on top of that. (Phonetic)

UNIDENTIFIED MALE: Those bricks -- (phonetic).

MR. FORMICA: I'm not sure. I don't think so. The center of the platform (inaudible) there is a lot (inaudible).

UNIDENTIFIED MALE: I'm looking at the dimensions right here (inaudible). 75 by 15 (phonetic).

MR. FORMICA: I think (inaudible) and I think the brick (inaudible) 30 inches wide.

CHAIRMAN LOESNER: Was there ever any consideration about relocating this into the industrial zone? Since the track runs right through it? On both sides.

MR. FENNO: Can you just tell me where specifically we're talking about?

CHAIRMAN LOESNER: Across the -- across the Hamburg Turnpike, you got the industrial zone there, right, you got (inaudible).

UNIDENTIFIED MALE: --

CHAIRMAN LOESNER: What's on the southern side that I'm thinking about?

UNIDENTIFIED MALE: Excuse me?

CHAIRMAN LOESNER: What's the side I'm thinking about by the phone building over there, what's that zone?

UNIDENTIFIED MALE: That's (inaudible) residential (inaudible) and (inaudible).

CHAIRMAN LOESNER: Okay. And then the southern side, like Mr. Darmofalski is talking about.

UNIDENTIFIED MALE: --

MR. DARMOFALSKI: You have the farming (phonetic), you have the industrial zone on the other side. And after that, Riverdale Road -- County Road. I don't know why you're not at that end, why are you in the middle of a residential and a community business district? (Phonetic)

MR. FENNO: Well, we're here, first of all, because the facility is there. And it exists. And,

you know, other than the loading dock and some very minor work, is ready to go from our standpoint.

The -- as I recall, as you go south from Post Lane, you have residences. As you get to Riverdale Road, the topography, I can recall -- when this facility was built more than 10 years ago and we looked at that site. And that site, because of the topography, does not lend itself for an unloading site.

On the -- on the geographic west, as you know, you've got the armory. The parking lot, which is not ours, of course. But -- that's some level land there. On the geographic east there is a fairly (inaudible) drop off (phonetic) that (inaudible) of which, although we may own, is (inaudible) a piece of property there, it may be half as wide as far as usable area. And it just does not have the ability to have (inaudible) and unloading (phonetic).

MR. DARMOFALSKI: It's 100 feet wide all the way down.

MR. FENNO: Yes. But as I stated, the geographic east side drops off (phonetic) significantly on our property. So while 100 feet wide (inaudible).

MR. DARMOFALSKI: That (inaudible).

MR. FENNO: (Inaudible) 40 of the feet, there's 15 down (phonetic).

MR. DARMOFALSKI: That's (inaudible) across Riverdale Road.

MR. FENNO: No, it's on this side of River -- it's on the north side of Riverdale Road.

MR. DARMOFALSKI: Behind the armory it's all flat.

MR. FENNO: Not on the other side of the tracks.

MR. DARMOFALSKI: But all the storage is on the same side (phonetic).

MR. FENNO: But you need -- but you need to have track to be able to have both and unloading track and a track to go around the unloading track. And there isn't enough land there that -- on grade, to be able to do that. (phonetic)

MR. FENNO: And believe me, I -- I recall when this was -- when this building was built, and we looked long and hard in that area, -- put it -- (phonetic).

MR. DARMOFALSKI: Down there, you were looking to put a garage transfer station behind the armory. (phonetic)

MR. FENNO: We were?

MR. DARMOFALSKI: I met with the guy three or four times (inaudible).

MR. FENNO: You didn't -- you didn't meet with the railroad.

MR. DARMOFALSKI: (Inaudible)

CHAIRMAN LOESNER: (Inaudible) your questions, Paul?

MR. DARMOFALSKI: (Inaudible) I'm just doing some arithmetic, you're pushing out eight loads a day. It appears to me that you're going to be moving --

MR. FENNO: Four loads.

MR. DARMOFALSKI: So a little over two rail cars a day?

MR. FENNO: No, for loads a day.

MR. DARMOFALSKI: Four loads a day.

MR. FENNO: Potential eight trucks.

UNIDENTIFIED MALE: Four trucks times two loads.

MR. DARMOFALSKI: Right.

UNIDENTIFIED MALE: But -- (phonetic).

MR. DARMOFALSKI: Are you going to bring in -- are you going to bring in 12 rail cars and then he's good for a week? Or are you going to bring in two a day? I mean, what's the railroad's typical operations for something like that?

MR. FENNO: That's (inaudible) --

MR. DARMOFALSKI: How many rail cars would be -- I'm sorry (inaudible).

MR. FENNO: -- that's very difficult to predict.

MR. DARMOFALSKI: Okay.

MR. FENNO: We are at the tail end of -- of the rail transportation of this material, it's coming from --

MR. FORMICA: Nebraska or (inaudible).

MR. FENNO: Nebraska, wherever it's coming from.

MR. FORMICA: Washington.

MR. FENNO: And -- and how things get to the destination is dependent upon probably two other railroads before it gets to us. It depends on does the shipper ship out 12 cars at once, 2 cars at once. Do they cars get bunched? Do they get held together? Very difficult for us to predict.

MR. DARMOFALSKI: I'm talking about a typical week. You're going to be needing to move 11 or 12 rail cars in and out just to satisfy the eight trucks a day. And --

MR. FENNO: At -- at maximum, yes.

MR. DARMOFALSKI: Well, I'm saying, you will

be having -- so you can't say that one movement a day or one movement a week, or you're going (inaudible) is the entire length from the Hamburg Turnpike to Post going to occupied with rail cars? And are they are going to move them around a lot? We're trying -- I'm just trying to get a flavor for the amount of activity going on. (Phonetic)

We went through this in 1996 also with -- when we kind of pinned down and did some arithmetic of how many rail cars, and we kind of got a flavor for the board of -- trains are going to be moving in and out. Forgetting (phonetic) the hours of operations (inaudible).

MR. FENNO: Well, I mean, to begin with, you know, if they came two a day and were split by days -- then we would be in there one time a day. If they came four one day and none the next day and four the next day, we would be in there every other day.

I mean, it really depends on the -- the logistics of the railroad cars showing up on our railroad, which we don't have any control over.

I can't imagine a circumstance in which we would be in there more than once a day.

MR. FORMICA: We've never had that.

MR. FENNO: And, frankly, you know, from our

standpoint, from the railroad's standpoint, again, depending on the needs of the customer, you know, we would rather be in there fewer times with more cars, simply because it costs us less money. As you can imagine.

MR. DARMOFALSKI: I'm just going to go back to your --

MR. FENNO: Sure.

MR. DARMOFALSKI: (Inaudible) with the corn syrup.

MR. FENNO: Sure.

MR. DARMOFALSKI: Say you brought them in two or three times a week and it took that amount of (inaudible) time to heat them up (inaudible).

MR. FENNO: A different product, right.

MR. DARMOFALSKI: (inaudible) move the product, and the -- and we kind of did the arithmetic that way, and you have other facilities, maybe (inaudible). I think the board -- some of the board members weren't here 10 years ago. And I guess it's more than 10 years ago. I don't think anybody was (inaudible).

But I'm just trying to give them a flavor for how many (inaudible)--

MR. FENNO: Right, and (inaudible)--

MR. DARMOFALSKI: -- (inaudible) how many times the railroad is (inaudible)--

MR. FENNO: (inaudible) -- and -- and --

MR. DARMOFALSKI: -- going to be moving the cars around.

MR. FENNO: -- as I say, from the railroad's standpoint, you know, we will deliver cars -- we typically deliver cars when they arrive, assuming that, you know, they are within -- and assuming that the facility has track space available, that there aren't already cars there.

You know, we -- we operate pretty much every day through Riverdale, not on this tracks, on our main line, pretty much every night we run through there. And, you know, obviously, we have other customers (inaudible) with (inaudible) that we (inaudible) Morris -- (phonetic) once in awhile, not so much lately.

So, you know, we -- as I say, it's difficult -- I don't know how to predict any more than that, than to say that, you know, I would be shocked if we were there more than once a day.

And the movement of the cars is -- pretty simply is you -- you place the loads and you pull the empties and place (phonetic) the loads. This location

would be -- would be -- the loading platform has been designed so that the cars can be placed on -- on either of two tracks for unloading. (Phonetic)

But I don't really know how to answer your question with more specifics. (Phonetic)

MR. DARMOFALSKI: Maybe I'll ask -- maybe I'll ask the loading facility that you are going to build there. (Phonetic) It's able to service both tracks on the site. (Phonetic)

MR. FENNO: Yes, it is.

MR. DARMOFALSKI: Track one and two.

MR. FENNO: Yes it is.

MR. DARMOFALSKI: So does that mean that you're going to need to move those rail cars every day to that they can be --

MR. FENNO: No, no --

MR. DARMOFALSKI: -- an empty one is going to have to get moved or --

MR. FENNO: No, it does not.

MR. DARMOFALSKI: Okay.

MR. FENNO: You -- I mean, boxcars, as you probably know, they open from the side with a sliding door. Typically, boxcars can be unloaded from either side and you do not need to access both sides. If you get in on one side, you're in the car.

Occasionally, you have a box car that, for one reason or another, the door doesn't work on one side, or something of that nature, that it has to be -- has to be accessed from a specific side. And that's the main reason why we're putting the loading ramp like this, so that we can (inaudible) -- boxcars -- unload from either side of the boxcar. (Phonetic)

MR. DARMOFALSKI: So I just unloaded the boxcar (inaudible)--

MR. FENNO: Okay.

MR. DARMOFALSKI: Do you have to move (inaudible) after (inaudible) and put another full one in the loading area? (Phonetic)

MR. FENNO: No, we do not. That -- that would be done with -- with equipment on site.

MR. FORMICA: The platform is being built so that it can accommodate two boxcars.

MR. DARMOFALSKI: Right.

MR. FORMICA: So that's typically -- occasionally there will be more than that on any one point in time, but typically that's about the most we typically get.

If there was a third car there, we have the ability to push the cars down --

MR. DARMOFALSKI: And you're doing that with

the forklift, is that what you're doing? (Phonetic)

MR. FORMICA: We're going to have a loader, so it can move the train. Or the -- or the forklift could do it, as well.

(Pause in proceeding)

MR. DARMOFALSKI: So you're going to be moving the stuff internally also. (Phonetic)

MR. FORMICA: Yes.

MR. DARMOFALSKI: Not the railroad locomotive doing it. (Phonetic)

MR. FORMICA: In fact, they had asked us if we had (inaudible) if we would or we could, and the idea was that if we had the ability to do that, which we think we do, we have done before, that would mean that they could place more cars on the ground and lengthen the -- not lengthen, but reduce the amount of time you would have to actually come to the site (inaudible).

MR. DARMOFALSKI: That's what I was trying to get at.

MR. FENNO: Okay. And -- and, again, typical in a -- in a site like this, which is very level (phonetic), and not too huge, long string of railroad cars, they can be moved fairly easily with -- a truck can push them, for that matter. If we were

only going to move them a little bit to be able to stage them at the loading dock.

We would not -- we would not expect that we would bring a locomotive back to move -- the cars (inaudible) that would be horribly inefficient from our standpoint.

MR. MAGENNIS: I know we're trying to determine how big your site is going to be, and I know that you have addressed some questions regarding how the cars will be moved.

But actually isn't it you who will determine the volume of brick that is going to be at the site? I mean, if you don't have any customers, you didn't make the order, you don't have to worry about delivering it.

What -- what is the volume of the business that you currently handle? I mean, are we looking at -- I don't know how many square feet -- I mean, linear feet of storage area. Is that all going to be filled, is it partially going to be filled?

MR. FORMICA: It will -- I think the area shown in red will largely be filled.

MR. MAGENNIS: Okay. That's a fair amount of product on the ground there.

MR. FORMICA: There are a lot of jobs that

are running concurrent. The -- the other area that is shown for other space and storage, may or may not be used. We won't know until we're actually within that facility and have a better idea directly ourselves.

MR. MAGENNIS: Okay, now you -- I think you also stated that a lot of this product is custom made or is it -- or you're dealing with vanilla brick (phonetic) that anybody can use?

MR. FORMICA: It's custom ordered.

MR. MAGENNIS: Okay.

MR. FORMICA: Some -- some of the brick actually (inaudible).

MR. MAGENNIS: So it could be a standard project, but it's (inaudible).

MR. FORMICA: But it's usually -- what happens is they make the clay and they make all the brick for that order at one time. Because when they take the clay out of the ground and the fire the clay to make the brick, it has inherent color --

MR. MAGENNIS: Right.

MR. FORMICA: -- and aesthetic qualities.

MR. MAGENNIS: Right, but that brick can be used anywhere, it's not being ordered for a particular job, necessarily.

MR. FORMICA: It actually is. What I'm

saying is that, if they needed more, and they have to manufacture more brick, there is a good chance that the brick may not match the first production run. So they have to be pretty careful when they order materials.

And if there is any brick that is not -- not needed, it's not material that is readily usable by another customer. Because, typically, another customer may take a different color, different size. And it also may come from a different production run.

MR. MAGENNIS: Now when you ship the brick from this site here -- where are your customers located? I mean is there that many projects going on in this area that (inaudible).

MR. FORMICA: Yes, sure. Sure. We have Hackensack Hospital, Chilton -- Lincoln Park School, Kinnelon --

MR. MAGENNIS: I mean, schools are kind of small, I mean, they wouldn't be ordering --

MR. FORMICA: That -- that can be very sizable. You figure a big giant gym -- a gymnasium might use a couple of rail cars of material.

MR. MAGENNIS: But there's that many projects going on that -- that you plan that there would be that much volume and that much of a need for

all of that storage at this site.

MR. FORMICA: We -- we wouldn't want to bring material in otherwise. If there (inaudible) who (inaudible) to do that (phonetic).

MR. MAGENNIS: And your history has been that it would require how many -- how many shipments a week? Would it be one a day? Is that a pretty good average?

MR. FORMICA: Yes, that -- in fact, I want to go back to a question that you asked before regarding what controls does the railroad have over --

MR. MAGENNIS: Right, you're not his tenant, so he -- really doesn't have any landlord rights to tell you want you can and can't do.

MR. BARBARULA: One thing I -- I thought the board had, it was just sent to me, I gave it to Linda, is the -- transportation company, Tri-State Transportation (inaudible) is an operator. And I gave (inaudible) the operation agreement was sent to me, I thought it was also sent to the board.

MR. MAGENNIS: That's the one thing we didn't get.

MR. BARBARULA: (inaudible) I think that's (inaudible).

MR. FIORILLA: We thought (inaudible) I just

sent it to you, John.

MR. BARBARULA: Okay. I didn't know that. So I (inaudible)--

MR. MAGENNIS: I just scanned through it --

MR. BARBARULA: So your questions in the beginning, I didn't realize -- I was standing back wondering -- there is a separate operating company, which is a transporter, different than his Tri-Co (phonetic) --

MR. FORMICA: Tri-State --

MR. MAGENNIS: Yes, the company that -- right, that does the sales.

MR. BARBARULA: (inaudible) wholesaler, (inaudible) manufacturer -- (phonetic) --

MR. MAGENNIS: Right.

MR. BARBARULA: -- whatever -- his office function is different than the company --

MR. MAGENNIS: Right.

MR. BARBARULA: (Inaudible) operator for the railroad. So I -- that was my error, I thought it was also given to the board, but I gave my copy to Linda which will be passed around. But there is two different (inaudible)--

MR. MAGENNIS: Somebody (inaudible)--

MR. BARBARULA: -- (inaudible) two different

entities. And that's -- that process. (Phonetic)

MR. FORMICA: We typically have -- during the colder weather, projects don't go as quickly or they may not go at all. So during the colder weather, some projects continue. The volume is significantly reduced. You might see during colder weather -- maybe five, six trucks leave for the entire week.

During the busy season, we're talking about, possibly, six to eight trucks a day. And that's not always steady. The numbers that we gave you are the numbers that would be on the high side. And that's not a continuous volume that -- occurs.

But I didn't want to represent anything less than that, than have it turn out to be something that was that, even for a short period of time, to anyone's surprise. But that clearly is on the higher side.

UNIDENTIFIED MALE: You're talking of volume of shipping decreasing in colder weather.

MR. FORMICA: Correct.

CHAIRMAN LOESNER: Would your storage volume, as well, decrease in that, in the colder weather?

MR. FORMICA: We try to make it decease in colder weather. Again, it varies, depending upon the projects itself and the availability of the brick when

they are made for the actual project. It -- would decrease, but the whole activity decreases. So we bring less in, the rotation itself is less. We bring less in and less goes out.

And we try to reduce the footprint to always as we possibly can. Because that's money that is tied up until the customer actually receives it and then pays for it.

The question you had before regarding what constraints do they have over the number of trucks. We only have, on a steady basis, two -- two and a half, maybe three drivers that have the familiarity and continuity of delivering our materials.

So in actuality, when we said four trucks, it's actually three trucks on a regular basis, really two trucks on a regular basis.

If we wanted to bring in more trucks than that, we would not be able to keep them active enough for them to be gainfully employed. We would then have to thin out how many loads we were giving to the truck. And they wouldn't be able to make a livelihood doing it.

So the truckers, in order to make some money, need to carry about two loads a day. Some days they don't do two loads, some days they are able to

get three, but that's a rare occasion.

But if we brought in other truckers to bring in more, it would still be the same number of trucks that we have, but it would turn out to be less for the individual drivers. Then they would make less money and not be able to do what they do.

So we almost have a constraint unto ourselves with having about three trucks, on average. And that's even during the busier times. During the less busy times, there's two. Sometimes we have no trucks on a given day. So the most we would expect to see would be between six to eight actual deliveries out of the yard.

MR. VENZA: Mr. Fiorilla, I have a question of you.

MR. FIORILLA: Yes.

MR. VENZA: You said earlier that the wall, the length of the wall is based on the consent order and based on residents' requests?

MR. FIORILLA: The requests were made to the board.

MR. VENZA: Okay. All right.

MR. FIORILLA: The board then --

MR. VENZA: (Inaudible) -- residents -- (phonetic).

MR. FIORILLA: (Inaudible) the board then (inaudible) yes. The board then talked to the railroad about that. That's how we determined, in the consent order, what it would be.

MR. VENZA: Okay.

MR. FIORILLA: So that it was -- the consent order, which means the board wanted this and the railroad agreed to do it.

MR. VENZA: Okay.

MR. FIORILLA: That's how -- that's how it works.

MR. VENZA: I understand.

MR. FIORILLA: Okay.

MR. VENZA: My question, though, is we're -- we're dealing with a different set of circumstances.

MR. FIORILLA: Right.

MR. VENZA: Okay. If these residents that do not have wall request wall -- do we have to take you to court again to get that wall?

MR. FIORILLA: Well, I'm not sure that you took us to court to get that wall in the first place.

MR. VENZA: Well, that's perhaps being argumentative. (Phonetic)

MR. FIORILLA: But no, I mean, that's our -- again, one of the reasons we're here --

MR. VENZA: The reason that I (inaudible)--

MR. FIORILLA: -- (inaudible) -- is to find out what the board would like.

MR. FENNO: -- (inaudible) as I understand the reason we're here is to -- those kinds of issues.

MR. FIORILLA: We would like to discuss those kinds of issues and see if we can come to an agreement. You know what I mean, because if we say well, we'll just build it, that's not going to help either. I mean, it's better to talk to you about it and find out what you want and then we can --

CHAIRMAN LOESNER: Well, sooner or later we're going to get to the public and we're never going to find out what we want.

MR. FIORILLA: Well, okay, well, that's fine. I mean, that's (inaudible)--

CHAIRMAN LOESNER: I take my orders from them.

MR. BARBARULA: Just to let you know (inaudible).

MR. FIORILLA: Well, Mr. Chairman, that's one of the reasons why we're here.

CHAIRMAN LOESNER: I understand that, yes.

MR. BARBARULA: What Mr. Fiorilla is saying -- Paul and I were here, we could tell you what

happened. I recommended to just go ahead and put up the wall, thought it wouldn't be an issue. And the residents -- don't like that recommendation, we don't want the wall, we would rather refine what the product (inaudible).

CHAIRMAN LOESNER: Well, that's why I asked that question an hour ago, because I looked at the drawing and I was, like, why would the wall stop there? I mean, if I was living a little further down, I'd sure want one. But I didn't know that that was the request. So (inaudible)--

MR. BARBARULA: (Inaudible) -- and there was significant landscaping plans to try to buffer (inaudible). Evergreen type of vegetation.

UNIDENTIFIED MALE: And people rejected that.

MR. BARBARULA: Well -- not that they didn't reject it, but the public -- didn't want to take trees down to put trees up, so -- (inaudible) --

UNIDENTIFIED MALE: (Inaudible)

MR. BARBARULA: There was a lot of work that was put into the site improvement here to try to accommodate the wishes of each and every neighbor. Really, the wall ended -- really only about half the length of the wall was put up, because we didn't want

them to put it against the industrial site that was close to the Hamburg Turnpike and the balance of the people closer to Post Lane, they didn't want the wall. The board accommodated. (Phonetic)

CHAIRMAN LOESNER: So we're really not -- the board is really not in a position where we're -- like a site plan, where we are making specific requests and it's more like a (inaudible).

MR. BARBARULA: The railroad is governed by federal law. You are (inaudible) the consent order (inaudible) typically be allowed today, because it is a consent order and they haven't gone in to dissolve it, based on any current statutory law (inaudible).

Your -- your ability here is to enforce (phonetic) fire, health, safety (inaudible) and in accordance with the consent order. I think that -- that's what you have got to look at. I mean -- putting a 25-foot high wall of brick next to a residential area -- (inaudible) --

CHAIRMAN LOESNER: Well, that was going to come in when we (inaudible)--

MR. BARBARULA: (Inaudible) -- great idea (inaudible).

CHAIRMAN LOESNER: -- we're going to get to (inaudible) eventually under the Burgis letter, and

that really addressed brick stacking heights and (inaudible).

MR. BARBARULA: Right. But the -- there was a lot of litigation (inaudible) many (inaudible) of that litigation, many different courts (phonetic). But the end result ended in the consent order, was something that was developed between the board and the (inaudible) the individual residents and the railroad.

CHAIRMAN LOESNER: All right.

MR. BARBARULA: But you have -- you have the safety, health and welfare that still applies and you -- already have the terms of the consent order before you.

CHAIRMAN LOESNER: All right, then let me ask you, how -- how high are these bricks going to be stacked?

MR. FORMICA: We -- first let me say that when we saw the stacking of the bricks initially, and everyone's reaction was atrocious, we agree. There is no issue there. Whoever raised the point of having a that high amount of brick for no apparent reason right in their backyard next to their fence, I couldn't agree more. I wouldn't want that in my backyard. And it's inappropriate and it really was unnecessary.

So when we looked at that situation we

decided that for the area where the fence is low, we would begin the stacking of the brick two cubes high. Coming out from the fence it would go three cubes high. Then we go four cubes high beyond that point.

UNIDENTIFIED MALE: I'm sorry, what --

CHAIRMAN LOESNER: Define cube.

UNIDENTIFIED MALE: What's a cube?

MR. FORMICA: Yes (inaudible)--

UNIDENTIFIED MALE: (inaudible)

UNIDENTIFIED MALE: (Inaudible) collecting animals (phonetic).

MR. FENNO: It's intended to be shown to scale on the -- on the site plan.

CHAIRMAN LOESNER: Okay.

MR. FENNO: So that you can see the -- the 12 foot approximate. When I was out there looking today, I have to tell you your bricks -- they are not quite three-foot cubes, because they are a (inaudible).

MR. FORMICA: A little less than -- about 30 inches.

MR. FENNO: -- (inaudible) a little less.

CHAIRMAN LOESNER: So 30 inches high is per cube.

MR. FORMICA: When the area of the fence is

higher, instead of starting with two, we could easily start it as high -- not only is the fence higher, there is also a greater distance away from the fence. There is an area there that (inaudible) with mulch and where the trees are, the evergreens, and such. And there we could easily start at three and then go for four beyond that point.

MR. VENZA: I think one of the question Mr. Darmofalski asked was the ability of the under (inaudible) to hold that weight.

MR. FORMICA: Yes (inaudible)--

MR. FENNO: We address that in the document we just provided to Mr. Barbarula from our engineer.

CHAIRMAN LOESNER: Okay.

MR. FENNO: And he -- he looked --

MR. BARBARULA: There would (inaudible) response but I have not analyzed it (inaudible) (phonetic) response.

MR. FENNO: We just got the letter on the 20th, and we got the response on 21st, and today is the 23rd. That's pretty close. But I mean, we just got it.

CHAIRMAN LOESNER: What's your intention to stay below the fence line? Is there any -- are you going to go up to the fence line, two foot below,

three foot below?

MR. FORMICA: Well, again, where the fence is --

CHAIRMAN LOESNER: Right.

MR. FORMICA: -- we would start the brick below the fence line, clearly. The next row of brick, I think, goes about up to the fence line. And then the next row further way from the fence, goes slightly above it.

CHAIRMAN LOESNER: And that would be (inaudible).

UNIDENTIFIED MALE: I'm not sure we're all talking about the same thing.

MR. FORMICA: Which -- which are you talking about?

CHAIRMAN LOESNER: I'm talking about (inaudible).

MR. FORMICA: Are you talking about (inaudible)?

CHAIRMAN LOESNER: (Inaudible) on the residents -- on the residents' side, what are they going to see.

MR. FORMICA: Okay. Obviously (inaudible)--

CHAIRMAN LOESNER: Obviously, where the -- where the wall - where the fence is 16 feet high.

MR. FORMICA: They are not going to see (inaudible).

CHAIRMAN LOESNER: Exactly -- self-storage area. Fine. But down where the residents live, obviously, we don't want them to be able to see it. And we don't want them to be standing back there if a brick happens to come off a stack. Or a stack comes down.

UNIDENTIFIED MALE: (Inaudible)

MR. FENNO: Right. So what's been -- what's been done is -- part of the safety concern is what's really shown on this plan where (inaudible) realistically. And what they will see --

CHAIRMAN LOESNER: We just like to bring that out for the people that don't have the plan in front of them.

MR. FENNO: Right. And what the residents will see and -- in the area where there isn't a wall, obviously, they will see the -- the -- to the extent there is other screening provided. There's trees. There is -- (inaudible), they will see that with bricks behind it. And I think there might be one where there is nothing but a chain link fence, in which case they will be seeing brick.

CHAIRMAN LOESNER: What's the general

response, like, if there is a complaint by a resident? Like, say, the bricks are too high or -- is there a way that they can complain or we can make resolution on that? How is that normally handled?

UNIDENTIFIED MALE: --

CHAIRMAN LOESNER: I'm sorry, is there a --

UNIDENTIFIED MALE: If you're operating a site at the Brooklyn army terminal, there's no residential complaints.

MR. FORMICA: Well, let me --

UNIDENTIFIED MALE: This is a completely different site than the Brooklyn army terminal.

MR. FORMICA: Sure.

CHAIRMAN LOESNER: We're not talking about Brooklyn.

MR. FENNO: Let me tell you from the railroad standpoint, there's lots of complaints.

UNIDENTIFIED MALE: I'm sure (inaudible).

MR. FENNO: Okay. And we have -- we have 24/7 dispatch coverage with an 800 number and they log every single complaint and we do our best to respond. We don't always satisfy complaints. But we -- we do our best to respond. And that -- that would really be the answer, I think, to the question.

CHAIRMAN LOESNER: Okay.

UNIDENTIFIED MALE: Just from an operational perspective, I know when you had the product that was a liquid that you had to heat.

MR. FENNO: Right.

UNIDENTIFIED MALE: You know, it was different. It wasn't -- I wouldn't think particularly noisy at the site. Now we're bringing forth an application where we have maybe three hi-los or -- some kind of diesel trucks that are going to be running, moving product up and down the storage areas. Possibly pushing railroad cars around. I mean -- and starting at, maybe, 6:30 or 7 o'clock in the morning.

How much noise is that going to generate? And do you know, you know, what the decibel level will be at whatever distance off your property line?

I mean, my concern is that there is a lot of residents in this area and it's going to be a noisy operation. Prior to this, it was, you know, fluid doesn't make much noise.

CHAIRMAN LOESNER: Outside of the heating car.

UNIDENTIFIED MALE: Yeah, and people --

MR. FENNO: The heating in the car was (inaudible).

UNIDENTIFIED MALE: Well, what I'm saying,

now you've got -- it sounds like there is at least three devices that are going to be moving product. And, certainly, going to be -- what is that, like 1000 or 1500 feet up and down that railroad line. It seems like a lot of activity and -- and, potentially, an awful lot of noise for the neighbors.

UNIDENTIFIED MALE: (Inaudible) backs up.

UNIDENTIFIED MALE: Forget about the cars that could be coming at 1 or 2 in the morning.

MR. FORMICA: The actual trucks themselves will be located close to where the rail station house is up, up in the front of the yard. So there will really be very little trucking, if any, at all down --

UNIDENTIFIED MALE: I'm talking about your front-end loaders, the stuff that is moving the bricks to all this area that you have got marked out on the site plan as storage.

MR. FORMICA: So the trucks being up front, the only activity will be, as you alluded to, is the forklift themselves. The platform was put in an area where the (inaudible) exists, and more towards the middle of the yard, as opposed to toward the side of the yard closest to the residents. The forklift --

UNIDENTIFIED MALE: Right, that -- that storage -- that platform is actually on the side

that's closest to Post Lane, where you don't have very much between the -- your -- property and -- and the neighbors.

MR. FORMICA: Well, you have the 16-foot fence there. The -- in addition to which --

MR. FENNO: I would say, you know, you have to -- again, indicating from the site plan, you have a pretty significant fence, as well as pretty significant vegetative screening there. That will certainly, you know, greatly reduce any kind of noise issue.

MR. FORMICA: And the brick wall --

UNIDENTIFIED MALE: There is nothing there, right?

MR. FORMICA: -- the brick storage itself will actually abate some of that sound, as well.

UNIDENTIFIED MALE: Well, I -- yeah, in the areas where it -- yes, I agree with you, in the areas where you have -- have it in front and it's going up, whatever. But there seems to be an awful lot of area here, especially in the side that is closest to Post Lane, where there is not that much sound barrier to --

UNIDENTIFIED MALE: Well, there is nothing there (inaudible).

UNIDENTIFIED MALE: Yeah, but as you get

down here, you know.

UNIDENTIFIED MALE: Paul?

MR. DARMOFALSKI: Yes.

MAYOR BUDESHEIM: Are you allowed to store all this material on (inaudible) water main right of way? (Phonetic)

MR. DARMOFALSKI: (Inaudible) easement, I don't know the answer to that. If there is any restrictions on -- there is a 108-inch diameter water main underneath where you're going to be stacking the brick. I have not looked into that (inaudible).

MR. FENNO: I think that was addressed at the time with the -- obviously it's paved and it has 18-wheeler trucks running over it (inaudible) when we built this facility. And again, based on (inaudible) engineering analysis, they don't see an issue.

MAYOR BUDESHEIM: John, I don't know, I think there is a distinct legal difference here (inaudible). In that the material stays inside the train car, all right. And then from the train car it went to the truck (inaudible) taken offsite.

I'm looking at our ordinance, we don't define warehouse. But I would think that if the material stays here for any length of time, it is acting as a warehouse. I don't know if there is a

Webster's Dictionary here to define warehouse. But -- it smells and looks, sounds like a warehouse to me.

And if that's the case, would that trigger a use variance? Because this is not a railroad operation, this is a -- wholesale, warehousing -- some other type of -- because once it leaves the -- the railroad cars, and it's stored on site, I think it changes the nature of (inaudible). And since nobody in this room owns any of these brick, maybe we should get the people who own the bricks in here --

MR. BARBARULA: Well -- the definition of in-commerce (phonetic) under the Railroad Act -- I did an enormous amount of work back in '99, '98 -- and it envisions under the Railroad Act, from it's creation to delivery of the railroad and to the ultimate consumer.

And the problem that I would have with that, quite frankly, and I understand your position -- but the rulings under the Rail Act and the Park Ridge case in the state of New Jersey, give you power to take care of health, safety and welfare. But specifically indicates that local zoning cannot interfere with intrastate transportation.

So I can sympathize with that aspect. But -- I don't know if I can find a legal justification to

say that the -- our zoning power would extend there.

MAYOR BUDESHEIM: Well, it would go --

MR. BARBARULA: And I --

MAYOR BUDESHEIM: It would go from the railroad car to a truck, I could see the point.

UNIDENTIFIED MALE: That means then if it's a passenger line they could put housing here, because you could store the people on site?

MR. BARBARULA: No.

UNIDENTIFIED MALE: Why?

MR. BARBARULA: Because the people are not product under the definition of the Railroad Act. There's -- there is a vast distinction between a railroad facility for transportation of product and there is a separate numbers -- a lot more regulations in the transportation of human beings.

UNIDENTIFIED MALE: What about cattle? They could store cattle?

MR. BARBARULA: Unfortunately, let's hope that they never have an end user of live animals, because there are, unfortunately, a number of cases that say they can unload animals, pen them, and then repackage them and distribute them.

UNIDENTIFIED MALE: They agreed not to do that (phonetic).

MR. FORMICA: We did agree not to do that. No.

MR. BARBARULA: Yes, I know that. But that was --

MR. FORMICA: You asked (inaudible).

MR. BARBARULA: -- under the order -- that was brought back in the 90s that we did not want to have (inaudible), corn syrup and it was food grade. Because the other issue was there was just the glimmer of the idea of ethanol back then. And it was an extreme glimmer. However, we did take care of that also in the consent order, and limited that facility to food grade product. (Inaudible).

(Laughter)

MR. BARBARULA: And that was because we didn't want, because of the proximity to the neighbors, we didn't want anything that, even under the most extreme conditions, to become flammable and dangerous to the -- the people. So our order indicates food grade quality only, and no live animals.

And the reason we did say no live animals is because there are (inaudible). And along the railroad there are (inaudible) this is only one little tiny railroad of a national system. And they might be big

around here, but it's part of a long thing, and there are stock yards where they accumulate cows to take them (inaudible).

So our consent order gives us a great deal of protection, in that it had to be food grade product, it has to not -- it cannot be animals. And that they cannot just change the use willy-nilly, that they have to come before us.

And that was -- that -- that consent order give us more powers than any municipality in this state, and we -- Mr. Fiorilla and I had a little banter back and forth, teasing about the video of the hearing. And mainly, that was because it was utilized throughout the country in terms of, you know, what the municipality can and can't do, what the railroad can and can't do. And we -- our consent order is rather unique because we extracted more concessions that are not currently in the law.

So I don't think that there is any condition that we could extend our land use to say that it's a use variance. I guess (inaudible) how I could substantiate that.

UNIDENTIFIED MALE: What (inaudible)--

MR. BARBARULA: I mean, if I could, I certainly would -- would tell you that.

UNIDENTIFIED MALE: What leverage do we use to get any -- extract any consent from them when they supposedly have the upper hand?

MR. BARBARULA: Well, today or back then?

UNIDENTIFIED MALE: No, back then.

UNIDENTIFIED MALE: Why did they (inaudible)--

MR. BARBARULA: Back then we -- back then it was a state in flux, and they were awaiting a number of decisions from the -- from the board. Not our board, it was a national board.

MR. FIORILLA: The STB (phonetic).

MR. BARBARULA: The STB (inaudible).

MR. FIORILLA: I think this is the very first case in the country, the Riverdale case, it was cited later on in all the other cases. And the other cases came out more stringent in favor of the railroad. But the issue was to try to work this out.

One of the issues, I think, too, is the way the later cases came down that talked about the fact that the railroad should go to the municipality and work out the issues (inaudible) the issues that Mr. Venza was speaking about. And that's one of the reasons we're here. To work those out. That was it.

Even the New Jersey Supreme Court, in the

later case of Ridgefield Park -- John, and I know you know that case well, the Supreme Court of New Jersey said the same thing. You know, when it comes to zoning, that's not one of the things that it can be (phonetic).

And this is still a transportation situation. And this is how bricks are transported. I mean, they don't all go immediately to where they can go. They just -- they just can't do that because of the nature of how they are used and how they are shipped. It's not a question of selling brick from this location, it's really just a question of getting it to us and then getting to where it's got to be, when it needs to be there. That's what's called transportation.

MR. REILLY: I'm not exactly sure if I would agree with that -- with that definition. And, perhaps, I'm -- I'm wrong. Transportation, to me, is -- and this is where I was going before -- you're going from point A to point B to point C to point D, whatever the case may be. That's transportation, you're transporting something.

At this point in time right now, there's product that is being transported from point A to point B, and then can be staged anywhere from 0 days

to 60 days. It can be staged. Now, you -- you call that a warehouse, you can call it a distribution point, you can call that something -- no, you're shaking your head like, no, that's --

MR. FIORILLA: It's not really that, though. It's really just part of the transportation pipeline.

MR. REILLY: Yeah, I know, but -- but at -- but at whose cost.

MR. FIORILLA: Right.

MR. REILLY: And the cost is going to be is there is going to be (inaudible) on site. There is going to be product on site. There is going to be a decibel level or a noise level. There's going to be -- the residents are going to have to be looking at this. It's different than transportation. It's a little bit more than simple transportation. I agree, part of a transportation process, but it's not quite as clear-cut as it's -- it's a pure transportation.

MR. FIORILLA: It's --

MR. REILLY: It's beyond that.

MR. FIORILLA: -- I think the definition of transportation in the federal law is very board. It includes rail cars, it includes almost anything, including public delivery tracks, which this, by the way, this facility always was, even for 100 years. It

was called a team track (phonetic) where a team of horses would come with a buckboard. That particular term is in the current federal law.

And they -- they -- they foresee an idea where you would come up and unload and store, and then take things out. There were days, you know, they used to store other things and put them on boats. I mean, it depends on when you were. But all those things were considered part of the transportation.

When these bricks are sold, they are not sold to come here and sit, that's not what it is. Mr. Formica's business is not to buy brick and then find a buyer. His -- his thing is to do the logistics to get it to the right place at the right time, in the condition, in good condition. Very important from his point of view. The bricks aren't broken, they aren't chipped and all that --

MR. REILLY: Oh, I happen to agree, but I also see --

MR. FIORILLA: That's what he does.

MR. REILLY: But I see a lot of area in here for -- for storage. I see a -- a boatload of area for storage, which means to tell me that there is a possibility that this can be maximized. And that is troublesome to me. You know, the -- what I hear an

awful lot, what we hear an awful lot is, well, that's what -- it's probably not going to happen. The fact of the matter is it could.

So I think -- I think the board needs to sit and -- and address what -- what would the possibility to things be (phonetic). And -- and start backing-- backing from there. Rather than saying what it probably won't be. The fact is what can it be. And -- and what will be the negative effects of that.

And then to start looking at, you know, if you want to talk about horse and buggy, you know, 200 years ago, that's fine and dandy. But, you know, we're in 2009 today.

MR. FIORILLA: Right. But I think as I stated earlier, when we prepared this plan, we attempted to show the maximum that would be possible. And the purpose here is to address whatever health, safety, welfare concerns that present that we haven't already thought of ourselves and tried to address.

CHAIRMAN LOESNER: Well, let me take that opportunity to go to our planner, then, and he can address our health and safety issues.

MR. MORONSKI: I don't know whether it's (inaudible) Mr. Fenno or Mr. Formica, my question -- some of the questions that were addressed in the

(inaudible) letter (inaudible), but I was concerned with some of the -- onsite concerns, which obviously affect the residential neighbors. For example, on the site plan it talks about where the lighting is and so forth. Given the testimony tonight that a number (inaudible) some -- some ways (inaudible) 24/7 operation, are -- is there going to be any changes in terms of the lighting?

MR. FENNO: I think I can address that. There's -- the lighting that we show is the existing lighting.

MR. MORONSKI: There will be no increase (inaudible) --

MR. FENNO: We do not --

MR. MORONSKI: -- in capacity?

MR. FENNO: -- we do not propose any changes to the lighting. Mr. Darmofalski, I think, suggested more lighting. We would like to respectfully disagree with that (inaudible).

MR. MORONSKI: What about security concerns (inaudible)? I'm not aware of what your current situation is right now, and I see that (inaudible) similar types of storage application -- it's not railroad property, but (inaudible) outdoor storage, there is concerns about (inaudible) whether

(inaudible) or somebody else when you're dealing with material such as brick, there is (inaudible) concern there is going to be any upgrades in (inaudible)?

MR. FENNO: Well, realistically, the upgrade that we plan, as I indicated, was to make sure that the site is completely enclosed by -- by fence. It's mostly chain link fence (inaudible) area where there would be the large stockade type fence. (Phonetic)

MR. MORONSKI: And the chain link fence (inaudible)?

UNIDENTIFIED MALE: You've got to go across railroad track (phonetic).

MR. FENNO: It does now, sir. There are --

UNIDENTIFIED MALE: (Inaudible)

MR. FENNO: On Hamburg Turnpike and on (inaudible) at Post Lane the fence goes totally across the tracks. (Phonetic)

UNIDENTIFIED MALE: (Inaudible)

MR. FENNO: They -- unlock the gate. Same as the trucks.

UNIDENTIFIED MALE: (inaudible)

MR. FENNO: Excuse me?

UNIDENTIFIED MALE: The site isn't totally enclosed by fence. (Phonetic)

MR. FENNO: There is gap at the fire

department that I think I mentioned earlier, where we will put up a -- close the gap with the chain link fence. That was -- I think there was some changes in the fire department (inaudible) facility (inaudible) fencing changed.

MR. MORONSKI: In terms -- I'm not -- I'm not familiar with the previous use (inaudible) how it operated. Could you compare in terms of that product as opposed to this one, in terms of the area that you use for it and so forth. And are they (inaudible) in your opinion or Mr. Formica's, in terms of the intensity of the use (inaudible) makes solid product such as brick, as opposed to something (inaudible) corn syrup.

MR. FENNO: Well, it's -- I mean, it's a different process, obviously. The facility was designed for corn syrup for us to have spots for 23 rail cars of corn syrup to be -- to be onsite. And hooked up to the steam boilers.

The steam boiler, at the time, was in a railroad car that stayed on the site full time. the steam boiler was necessary to heat the product until it becomes sufficiently (inaudible) would flow (phonetic).

The unloading involved a large truck

tractor-trailer type truck being pulled up next to the railroad car, pipes hooked up, product pumped from the railroad car into the truck. The truck would have to be (inaudible) which (inaudible) truck on site for that purpose. (phonetic)

That would result in trucks potentially being anywhere -- practically on the full length of the -- of the site. The intention here is, as Mr. Formica mentioned earlier, for the trucks to be up at the Hamburg Turnpike end but, obviously, a forklift truck -- forklift vehicle -- couldn't call it a truck, I suppose (phonetic). The forklift would be going throughout the facility. (phonetic)

MR. MORONSKI: But in terms of potential (inaudible) would there any odors -- or complaints about odors (inaudible) corn syrup. (phonetic)

MR. FENNO: Well, you know, the spillage of corn syrup can result in -- in odors, as well as (inaudible) being attracted to the site.

UNIDENTIFIED MALE: Bees.

MR. FENNO: Bees, in particular.

MR. MORONSKI: Right.

MR. FENNO: But others, as well. Obviously, in the case of a massive spill, there would be concern that the corn syrup -- and that was part of the reason

for the asphalt ground, that -- around the site. Obviously, with brick, you don't have that (inaudible) those types of concerns.

MR. MORONSKI: And in terms of the -- you had mentioned about the vehicle circulation on the site, that it would be -- with the corn syrup there were more trucks circulating around the site. (Phonetic)

MR. FENNO: Yes, the -- the site was actually designed -- I think you can still see it -- this -- this plan was based off the (inaudible) plans, obviously.

Basically, the way that the building is designed previously allowed the truck traffic to go from Hamburg Turnpike -- it appears to be two lanes, potentially, all the way through the fence, turn around area at Post Lane, that, believe it or not, a truck could actually make the turn there. And then could go up -- go either way on the other side of the tracks, the easterly side all the way up to the truck (inaudible).

MR. MORONSKI: Refresh my memory, when -- when did the corn syrup cease operation -- cease operating? (phonetic)

MR. FENNO: I have to tell you I didn't -- I

didn't look in our records, it's been several years.

MR. MORONSKI: Okay. Typically, I know (inaudible) I'm sure you can't say it definitively, but would the truck traffic generally head toward Interstate 287? (Phonetic)

MR. FENNO: Yes.

MR. MORONSKI: Okay, so more often than not, coming from 287 and making a right turn in --

MR. FENNO: Yes.

MR. MORONSKI: -- a left turn out.

MR. FENNO: That's correct.

MR. MORONSKI: Okay. Obviously, the concern would be about potential back up of traffic (inaudible) left turn in would obviously have greater potential for backing up traffic (inaudible). And that front entrance even with employee -- employee parking, it has been mentioned that there is a potential for eight parking spaces there (phonetic). That a truck can successfully --

MR. FENNO: Well, there is actually two entrances off the Hamburg Turnpike.

MR. MORONSKI: (Inaudible)

MR. FENNO: The employee entrance would be on the westerly side of the tracks, where the building is.

MR. MORONSKI: Right.

MR. FENNO: And then on the easterly side of the tracks is where the trucks enter and exit.

MR. MORONSKI: Okay.

MR. FENNO: Typically.

MR. MORONSKI: Right. Okay. And from that easterly exit, the trucks can successfully (inaudible) layout of the brick that you're proposing, successfully turn around and, basically, make the trip in and out (inaudible).

MR. FENNO: Right.

MR. MORONSKI: And just one more question about the -- there was a discussion about the brick storage. It had been mentioned about how when the bricks are stacked behind the 16 foot wall, it's intended that they not exceed that wall height.

For the areas where there is no wall, but a fence, we did hear about the stacking and so forth, and I didn't hear a specific, well, it won't be higher than X-number of feet, whether it's 12 feet (inaudible) on the site plan, for example, or it won't be higher than, say, the 16 feet wall height. Do you know at this time -- (phonetic) --

MR. FENNO: What we are proposing is to limit it to the 12 feet.

MR. MORONSKI: 12 feet.

MR. FENNO: As shown. (phonetic)

MR. MORONSKI: Okay. That's all I have right now, Mr. Chairman.

CHAIRMAN LOESNER: Why (inaudible) chance to go to the public here.

MR. MAGENNIS: I juts have one more question about the --

CHAIRMAN LOESNER: Sorry.

MR. MAGENNIS: -- the storage. And I know that we have been spending a lot of time addressing that.

UNIDENTIFIED MALE: (Inaudible)

MR. MAGENNIS: What -- what would -- I mean, is there a way that you can determine how long a product is on the site? You know, I think what we're -- what we don't want to have happen is, you know, we're going through hard economic conditions as we are now, maybe some of these projects get canceled, and now you've got all of this brick that is sitting on the -- on the property here.

I mean, we don't want it to be a storage (inaudible), we can maybe -- maybe understand how if you're moving the product, it comes off the cars and then goes out again within a week or so. But what

happens if, you know, these projects get canceled, now we got I don't know how many thousands of feet of -- linear feet of brick just sitting there. What assurances do we have that it won't become a warehouse or a store yard or a junk yard, or you know.

MR. FORMICA: By the time the brick are actually requested to be taken in for redelivery to the site, the super-structure (phonetic) typically is already up. They have already broken ground, they already have the steel completely up in the building.

MR. MAGENNIS: I understand that. Under normal circumstances --

MR. FORMICA: It would be very unusual -- it's happened, but very unusual for a project to be canceled at the point that we're involved in the project. If a project should be canceled --

MR. MAGENNIS: I guess, you know, perhaps what you're saying is the way things are normally done. But what happens now if you find that you got a great deal on brick that if you buy it today you can buy it for half the cost that it would cost you six weeks down the road. And you buy as much as you could put on this storage facility, hoping that you're going to have a customer that is going to purchase it. Now that's also a possibility.

MR. FORMICA: The brick, again, the projects are designed by architects. The architects specifies the --

MR. MAGENNIS: Yeah, I --

MR. FORMICA: -- the size of brick. And for us to buy brick on the possibility that that particular brick might be used in a project, in the quantities that might be needed, and the size that they need, and corresponding shapes that go along with it, isn't likely.

MR. MAGENNIS: Well, as the mayor said before, you can run up to Home Depot and, you know, they have brick up there, too, that they didn't order cor -- you know, it wasn't custom brick. I mean, there's times that product is available and someone thinks it's a good business decision to buy it.

Now I know you say that the brick that you're selling has been custom ordered by someone, and that may be true most of the time, but not necessarily 100 percent of the time.

MR. FORMICA: We don't have --

MR. MAGENNIS: I think what we have to do is -- is really think about what the long term potential problems could be here if something changes in your business and then it doesn't operate the way that you

have explained it to us today. And then we could have, you know, a storage facility sitting here.

MR. FORMICA: Well, keep in mind, as well, that we don't -- at this facility or wherever we are, we don't conduct any retail operation whatsoever. We don't have customers drive up and say --

MR. MAGENNIS: I (inaudible) think you did.

MR. FORMICA: -- I need this --

MR. MAGENNIS: I didn't say that you did. I wouldn't expect that you're supplying a construction site that they would be coming up there looking to buy a brick or two from you.

MR. FORMICA: What I'm saying is, I have no easy outlet to sell off any bricks that's not already specifically ordered for something.

MR. MAGENNIS: I year ya'.

MR. VENZA: I have one more for Mr. Formica. From what I -- what -- how much do you know about the products that you're -- that you're brokering here. I mean, do you know -- about brick?

MR. FORMICA: I'm a CPA (phonetic) by profession. But I have been in the business for a long time, so I --

MR. VENZA: Okay.

MR. FORMICA: But ask me the question and

I'll see if I know.

MR. VENZA: All right. From -- from what -- from my understanding and from what I have learned through the course of my life, is that these -- these types of products have trace radioactivity. And this is an awful lot of brick.

MR. FORMICA: I have never heard that before. The MSDS sheets that go along with the materials, are all clean. The materials are considered to be clean landfill. So if you had a reason to dispose of the materials, it can go right into the landfill without any cleansing or any kind of extra checking of materials. So I have not heard that ever before.

MR. VENZA: Okay.

MR. FORMICA: If it is trace, it must be so miniscule, it must be like as much trace as might be in a pen or something. But nothing that I have heard of with any regard to that.

MR. VENZA: Would you have any problem keeping MSDS -- sheets on file.

MR. FORMICA: Oh, sure, actually the customers also require to have tests to make sure the brick would be --

MR. VENZA: I mean --

MR. FORMICA: -- compression test --

MR. VENZA: -- with the -- with the municipality, would you --

MR. FORMICA: There's different -- we'll give you as many as you like. There's different manufacturers. And every brick that we take in typically is a different color, different shape, different texture on it. But you'll -- you'll quickly be comfortable with that. But we can certainly provide you with as many as you like.

MR. MAGENNIS: Now, is brick the only product that you sell? I know that at times people that do masonry work they purchase muriatic acid to -- to clean brick. And is there any possibility that you handle product other than brick?

MR. FORMICA: No, we don't. The --

MR. MAGENNIS: So the only thing that we ever see there is brick.

MR. FORMICA: You'll see one other commodity there, but it's a small -- maybe here from here, and that is some steel. We do sell a product, but it's not our main product, by any means. You can see, based upon the geographics of the -- the area.

It's a thin steel that goes up against the wall and -- thin brick (phonetic) is attached to that

in applications where a full brick would be inappropriate for the facility -- the construction design. There are certain areas that the foundation may not be supportive enough or just for economics they choose to go the thin brick route.

UNIDENTIFIED MALE: It's like a (inaudible).

MR. FORMICA: So -- yes, that's the only product. We don't sell any sand. We don't put any cement on the project. There is no loose or bulk materials. There is no hazardous materials whatsoever. It's brick.

MR. VENZA: All right, Paul (phonetic).

MR. DARMOFALSKI: How many cubes fit on a truckload (phonetic)?

MR. FORMICA: The cubes are not -- the cubes are smaller cubes (inaudible). About 24 to 22 cubes.

CHAIRMAN LOESNER: At this time, I would like to go to the public. Anybody from the public (inaudible) recognize you, ask your questions. Come up. What's your name again, sir?

MR. BARBARULA: Dan, you've got to come (inaudible).

MR. SCIARRA: Oh, right here (phonetic).

MR. BARBARULA: Mr. Formica, if you (inaudible) little room there for the --

MR. FORMICA: Sure.

MR. BARBARULA: -- people coming to the microphone. (Phonetic) Thank you.

MR. FORMICA: Okay.

CHAIRMAN LOESNER: Your are again?

MR. SCIARRA: I just got a couple of questions. One is --

UNIDENTIFIED MALE: (inaudible).

MR. SCIARRA: -- Mr. Formica, is there any possibility of you moving this platform further forward in the -- I see you have a big area here in the front for storage. Is there anyway you guys can pus that up into here somewhere, so it's away from our homes?

Because I personally live right, I don't want to hear a hi-lo behind my house. We --- we fought this the last time because of fumes that we were getting from the truck running, that was the original thing we fought this over, the health problems. I don't want a hi-lo running behind my home all day. I know hi-los make a lot of smoke. And -- and they make a lot of noise.

UNIDENTIFIED MALE: Which block do you own?

MR. SCIARRA: And if it's -- if it's going not stay behind my house, I'll be honest with you, it

should be enclosed, then. It should be enclosed into a building to let the two train cars go inside of a building.

They did it in North Bergen when they had all these problem with fumes. And -- hazardous materials, and everything else. They have done that in -- in non-residential areas. Or move this to the front of the property somewhere away from our homes.

Can you move a rail car loaded with brick with the backhoe?

MR. FORMICA: Can we push a rail car?

MR. SCIARRA: Yeah, with a backhoe?

MR. FORMICA: I believe we can, but I --

MR. SCIARRA: Is that what -- I thought you just said that before that you could --

MR. FORMICA: I did. At that -- if not, it (inaudible) will be with the forklift.

MR. SCIARRA: Oh, yeah.

MR. FORMICA: But we're --

MR. SCIARRA: Either one (phonetic).

MR. FORMICA: -- the railroad has to show us how to do is.

MR. SCIARRA: I mean, if you could do that, you know, and -- and move it to the front of the property, I mean, I could live with it. But I mean,

we -- we don't -- we're not going to want all that action behind our homes.

I mean, maybe they can just put the whole train in here, then you guys can pick out the cars you want and move them over to -- and it wouldn't bother us. You know, it would be a lot less aggravating to us.

Because if they're going to be banging these rail cars behind the house at night, and he knows -- you know yourself, if they hump the cars at night, you know, that's a saying from when they push them and they just bang them into each other --

UNIDENTIFIED MALE: (inaudible).

MR. SCIARRA: -- would have had a lot of problems. I called the Surface Transportation Board a couple of times that these guys -- we were promised that they would come in, hook to the cars, pull them out. They were just pushing, pushing them in, you know. It's something that they do because they don't figure residents are around. I understand that. It's not that often that people live behind there.

But if you could -- if you can move this up to the front of the facility and get a little less storage area up there, because there is a lot of red up in the front -- I mean, I think I could live with

it. But other than that, I would have to say it's got to be enclosed if it's going to be behind my house. It's got to be enclosed, you'll be inside of a building.

Because I -- I think that it's going to be very unsafe. It's going to be smelly. I want to use -- I want use of my property. And that was one of the original complaints that we had in front of the judge. We wanted use of our property, right, John? We were denied use of our properties. And a lot of other people on the block, they didn't take the -- the high fence because there wasn't really much of an operation behind their homes.

Now you're changing the whole situation. Now we've got an operation behind everybody's home. A lot of people agreed they wouldn't go back after -- they wouldn't -- they wouldn't come back later on and request a fence. And as long as that operation was there, nobody ever came back and said we want the fence. We -- we sat with it, we lived with the operation, we didn't complain. But now everything is going to change.

I don't want to cause 18 months of bickering here. I would like to see us get through it. But if you guys can move those rail cars around with -- some

kind of a -- small (phonetic) equipment that, you know, rather than these -- these big trains coming and bumping them, and if you could get this thing moved to the front of the property somewhere, I -- I think I could live with it. I don't know about the other residents. But I think it would be better than having this. This is going to make a lot of action behind the homes.

CHAIRMAN LOESNER: The loading area --

MR. SCIARRA: That's all I have to say.

CHAIRMAN LOESNER: -- is -- where the action is going to be. You're --

MR. SCIARRA: Huh?

CHAIRMAN LOESNER: The loading area is definitely where the action is going to be.

MR. SCIARRA: Yes.

CHAIRMAN LOESNER: No question about that.

MR. SCIARRA: And it's right behind my house. And I'm not going to have use of my property, believe me, with that thing going on.

Now, I agree with the fence that -- that contains --

UNIDENTIFIED MALE: Who is building this loading and unloading platform? Who is going to be responsible for maintenance? (phonetic)

MR. SCIARRA: Well, maintenance, we never discussed maintenance. You know why? Because --

UNIDENTIFIED MALE: No, no -- the question wasn't to you.

MR. SCIARRA: -- even the original fence (inaudible) when they --

MR. FENNO: There -- there is a contractor who is going to build it. And (inaudible) Mr. Formica's company and (inaudible).

UNIDENTIFIED MALE: And a question again, on that platform, that's strictly for unloading the boxcars; is that correct?

MR. FENNO: Yes, it is.

UNIDENTIFIED MALE: And the truck loading would be on the entire length of this area?

MR. FORMICA: No, we anticipate taking the material and putting it on the platform, another forklift takes it from the platform and puts it on the ground. And then the trucks are loaded from the ground site.

UNIDENTIFIED MALE: But through the entire length of the site. Correct?

MR. FORMICA: Mostly -- mostly up more toward the front. We're going to use the very back end for that which we know where the projects aren't

ready to go as quickly as that which is up front. We don't want --

UNIDENTIFIED MALE: But the trucks will still be loaded in the back.

MR. FORMICA: -- we don't want to be moving all the way to the back --

UNIDENTIFIED MALE: -- it's not -- you're not going to -- you're not going to transport on a hi-lo the brick from the back of the site to the front of the site to load a truck. (phonetic)

MR. FORMICA: No, we want to minimize that. That's -- that would be -- on occasion --

UNIDENTIFIED MALE: So the answer is yes, the truck will be loaded through the entire length of the site.

MR. FORMICA: I'm sorry, no, the trucks -- we don't intend the trucks to go all the way down to the end of the site. We intend for the trucks to stay up in the front of the site by the building. And have the (inaudible) take the materials and then bring the materials up to the truck.

UNIDENTIFIED MALE: So the hi-lo is going to take the material from Post Lane to the Hamburg Turnpike. (phonetic)

MR. FORMICA: Correct.

CHAIRMAN LOESNER: Any other questions?

MR. SCIARRA: Well, I just want you to consider that -- that -- if they are going to put the platform where they are scheduling it --

CHAIRMAN LOESNER: I wish we had that kind of power.

MR. SCIARRA: -- they should -- they should put it inside of a building. Well, North Bergen did do that. North Bergen made them build facilities because they were operate -- and other thing, they said there is going to be a container there, and he said there is going to be debris going into the container and when debris goes into a container, debris goes into the air. And that's why you have a right to put something over that facility.

MR. VENZA: Thank you.

MR. SCIARRA: And enclose it.

CHAIRMAN LOESNER: Thank you.

MR. SCIARRA: Thank you.

CHAIRMAN LOESNER: Sir.

MR. FENNO: I think we should address the debris maybe first.

CHAIRMAN LOESNER: Okay.

MR. FENNO: (inaudible)

MR. FORMICA: Yes, let me discuss --

CHAIRMAN LOESNER: Hang on one second.

MR. FORMICA: The debris we're talking about is debris that is inside the rail train. When they package the bricks inside the rail trains, they often put (inaudible) bag inside the rail train to stop the brick from moving around and getting chipped. The (inaudible) bags, and sometimes (inaudible), which usually these inflatable bags. (Phonetic)

And there is also some wood, maybe half a sheet of plywood, not as thick as typical plywood, but just some wood to buffer and protect the brick from rubbing against each other.

That -- and also some occasional (inaudible) steel or vinyl strapping that secures the material in the rail cars. That's what we're talking about in terms of debris. There really is no dirt, there is no small miscellaneous parts that could (inaudible) airborne.

UNIDENTIFIED MALE: (Inaudible)

MR. FORMICA: No, it's nothing (inaudible). It's the things that I just mentioned. That's the typical thing (inaudible) that we'll see that will come in along with the brick itself. (Phonetic)

UNIDENTIFIED MALE: (inaudible)

MR. BARBARULA: Mr. Formica (inaudible)

further up --

MR. FORMICA: Sorry.

MR. BARBARULA: -- when you're responding.

MR. FORMICA: Sorry. Would you like me to repeat that?

CHAIRMAN LOESNER: No.

MR. BARBARULA: (inaudible) going down to the low end of fading out (phonetic).

CHAIRMAN LOESNER: Okay.

MR. FORMICA: Okay.

MR. LUCENTE: I'll speak loud enough so that everyone can hear me.

CHAIRMAN LOESNER: And your name is?

MR. LUCENTE: John Lucente, 3 Munn Avenue, Riverdale. One quick question for Mr. Formica. The pile of bricks that are stored right now --

MR. FORMICA: Yes.

MR. LUCENTE: They are about four or five levels.

MR. FORMICA: Uh hum.

MR. LUCENTE: Could you estimate for me right now the weight of that pile.

MR. FORMICA: I think a cube of brick is five -- four pounds of brick is usually about five -- 400 and change --

MR. LUCENTE: Would you say it's a few tons?

MR. FORMICA: Yes, I would say -- I say a cube of brick itself is about 2500 pounds.

MR. LUCENTE: All right, with that, I have a bunch of questions, but I just want to get this one off my chest and you can open it up to everybody else, if you would, sir. (Phonetic)

Sorry (inaudible) don't know most of you people here, and you may not know about the pipes that were installed by the water company (phonetic) remember who the company was?

UNIDENTIFIED MALE: (Inaudible) well, I know it now it is down as the North Jersey District Water (inaudible).

MR. LUCENTE: Okay. Those pipes were between seven and eight feet in diameter. They are presently resting on the railroad property under all the red that you see on this -- diagram here. (Phonetic)

I would appreciate it if Mr. Darmofalski could get together with one of the railroad representatives, get the plans for that and somebody with some knowledge figure out if this loading that is going to be all along that section there, can -- not

impair or collapse any of the pipes.

And I have two pictures here that I will gladly pass around to you people. And I wish you would return them (inaudible). And if you can have that by the next meeting I would appreciate it and we can maybe put an end to that question.

MR. BARBARULA: Mr. Chairman, the right answer to that is to contact the North Jersey District Water Supply and make sure that they are comfortable (inaudible).

CHAIRMAN LOESNER: Was that done at all?

MR. FENNO: Have we gone to them, no. (Phonetic)

CHAIRMAN LOESNER: No. So they are unaware that there is going to 650 trucks worth of brick sitting on top of their pipe?

UNIDENTIFIED MALE: (Inaudible)

CHAIRMAN LOESNER: I would think that would be a safety issue.

UNIDENTIFIED MALE: (Inaudible)

UNIDENTIFIED MALE: The mayor brought it up, I made a note of it (inaudible).

CHAIRMAN LOESNER: Yes, I think that's for sure (phonetic).

UNIDENTIFIED MALE: (Inaudible)

CHAIRMAN LOESNER: Do you have any questions?

UNIDENTIFIED MALE: (Inaudible)

CHAIRMAN LOESNER: Okay.

UNIDENTIFIED MALE: (Inaudible)

MS. SCOTT: Hi, my name is Fran Scott; I live on 29 Arlington Place. You --

MR. BARBARULA: Could you move closer to the microphone.

MS. SCOTT: Sure.

MR. BARBARULA: Thank you.

MS. SCOTT: Well, I was here for this last meeting when the corn syrup was being delivered. My concern is all hours of the night, seven days a week, they were coming in with the railroad cars and just swapping them out, bringing new ones 3 o'clock in the morning, 4 o'clock in the morning. The banging that they did. They cracked our foundation of our house. And I think, if I recall, they also cracked the foundation of the --

UNIDENTIFIED MALE: (inaudible)

MS. SCOTT: -- of his pool (phonetic). One of our neighbors. So that's one of my concerns that I have.

The other concerns are these trucks when

they came in to pick up the corn syrup, they were going faster than the speed limit that is on the Hamburg Turnpike, which Hamburg Turnpike is 25 miles an hour. They are doing 35 on -- on the side of my house.

You know, the guys are just coming in, because you have these different truck drivers coming to pick up the corn syrup, speeding down the road, getting their delivery or whatever. So that was another concern.

The all they put up was -- I don't know, maybe they thought it was for sound, it didn't work. Smell -- it didn't work. When they had the car with the -- the boiler in there, rubbers, odors, or whatever -- that's the kind of smell, odor I got out of that.

They said that they would clean up if there was spills. No. There was not. I even think if I could go home, I have some box of photos that I could bring from the past.

The wall, no maintenance. There's boards that are all bending this way, that way. Pieces are missing. Since they put in that wall, they didn't do any maintenance at all.

So here we are again, now we're starting

with this bricks [sic]. So my main concern -- all right, the storage is one thing.

But another thing is the quality of my life that they are coming back, combing back with this noise, 24/7, I'm not going to be able to sleep. My son went through many years of high school and going to school in the middle of night, ma, I can't sleep, the train. You know.

So here I am again with this. So the other residents, I don't know who is new on the block that is going to be dealing with this. And a lot of you people on the board were not here before. I don't know where yous live [sic], but you're not living on that block. And take that in consideration of what we're going through of our quality of our life. That's all I have to say at this time.

CHAIRMAN LOESNER: Thank you.

MS. SCOTT: Thank you.

MS. ADORNETTO: Joan Adornetto, from 18 Munn Avenue. My concern is the hours of operation. During the times of the corn syrup transportation, they would -- the trains would blow the hors 3:30 in the morning.

There is little children that live right behind where that fence is going to be. They won't

get any sleep if this is going to be the same type of thing -- um -- you know, uh -- noise, lights and the same thing, the banging of the trains back and forth.

So that's my -- my main concern. The hours of operation are not conducive to a good night's sleep for anybody. So -- uh -- I hope you'll take that into consideration.

CHAIRMAN LOESNER: How far down -- how far down are you on Munn?

MS. ADORNETTO: I'm 18.

UNIDENTIFIED MALE: Do you know which lot you're on?

MR. BARBARULA: Do you know what your lot number is?

CHAIRMAN LOESNER: Are you behind the high fence or are you --

UNIDENTIFIED MALE: She's across the street (phonetic).

CHAIRMAN LOESNER: Across the street.

MS. ADORNETTO: Across the street from it.

CHAIRMAN LOESNER: Okay.

MS. ADORNETTO: But then the (inaudible) live right behind it, we -- right in front of me, and they have two children there, and that's one of their concern, too.

CHAIRMAN LOESNER: Okay.

MS. ADORNETTO: Thank you.

CHAIRMAN LOESNER: You're welcome. Anyone else? Sir? Hi, Will.

MR. ALLAN: William Allan, 1A Munn Ave. I don't live right on -- behind the fence, I'm like two yards away. I kind of disagree with my neighbor saying he can live with it. I don't think it's something that we should have to live with.

Um -- I'm up at night a lot, you know, and this -- about saying before the trucks are going to stop at 4 o'clock. Two loads a day. Who's to say, I mean, from past experience a job I had, who is to say you're not going to get on one job and be delayed, they can't offload the brick, whatever.

You get back to the yard late and they are going to unload, they're going to load you up late. It doesn't always go on schedule where you're going to get your two loads out within an eight-hour period.

Um -- the fence looks terrible right now. The other thing I was thinking, you're going to stack these bricks, how far are they going to be from the fence, because I've seen bricks collapse also. And hope they don't collapse towards the fence and maybe one of you guys will be out in the backyard with your

kids, grand kids, great grand kids, and something could happen there.

And, um -- I know -- somebody said you guys don't live there. These guys don't either. They don't want to hang out in that back yard with all that work going on 10 feet away from you. So, that's it.

CHAIRMAN LOESNER: Thanks, Will.

MR. DARMOFALSKI: Am I allowed to interject?

CHAIRMAN LOESNER: You want to make a comment on that.

MR. FENNO: Well, just because it's a safety concern about the brick collapsing. The plan -- we had our engineers draw up to scale to -- so that you could see the (inaudible) and the height and the size of the brick as opposed to how far they are from the fence.

CHAIRMAN LOESNER: Well, how far are the bricks from the fence, generally, according to the plan (phonetic)?

MR. DARMOFALSKI: A fall down (inaudible) is not going to affect (inaudible) based on what they are showing (inaudible). The policing matter, it's very difficult to police once they are in operation. (phonetic)

CHAIRMAN LOESNER: Okay, so what we -- what

we can tell you, Will, is that according to the plans that we have, the bricks are far enough way from the wall.

MR. ALLAN: (Inaudible).

CHAIRMAN LOESNER: Yes, okay. Who had their hand up? Sir.

MR. MOHAN: My name is Ponta Mohan; I live on 7 Munn Ave.

CLERK: I'm sorry, you name again?

MR. MOHAN: Mohan, M-O-H-A-N.

CHAIRMAN LOESNER: 7 Munn, you said?

MR. MOHAN: 7 Munn Ave. And I also disagree with Mr. Sciarra about being able to live with this. The trucking business in your back yard is very hard (phonetic). All the loading equipment they use, they are not subject to any emission tests whatsoever. They smoke, they run lousy (phonetic), for all the companies you see. (phonetic)

And you -- the other one is about storing -- brick material of any kind. If you buy quantity -- you're going to buy six loads, ten loads and store them because you're going to get it so much cheaper. No question they're going to do that. No matter what they say it's -- it's -- that's part of their business.

The -- the fence they mentioned, I mean the pipe. They used to have a four -- four or five foot (inaudible) over the top dirt. All that is gone when they put the blacktop. And the operation, if I remember correctly back in '96 when they did that, they had no permits, they started paving, they started doing their yard work, ready for -- leasing (phonetic). In the middle of their project they were stopped. Am I correct? Or -- something to it.

UNIDENTIFIED MALE: Yes, they started first and then they stopped. (phonetic)

MR. MOHAN: You know, they could have done it by the (inaudible) and they wouldn't be going through all of this all the time. I mean, such a big company they can't afford to go and do the right thing by the armory it's unbelievable -- it's hard to believe they -- they use that issue is because they already have a very easy -- way of taking care of -- and -- (phonetic).

CHAIRMAN LOESNER: It's all about the (inaudible).

MR. MOHAN: Absolutely. And I'm sure a big company like that, they can spend a couple of extra dollars and (inaudible). And don't have to put up with us. Because other places like in North Bergen

and stuff like that, they don't have it anymore. They don't have -- nobody lives there, so they don't have the problem. That's all I have to say. Thank you.

CHAIRMAN LOESNER: Anyone else? Ma'am.

MS. BOYLE: Hi. I'm Meg (inaudible) Boyle. I live on 10 Munn Ave. And I would just like to just give you my feeling on this. I lived on a busy street for 15 years and it took me that long to find a nice, quiet neighborhood where I could raise three children. And to think that this will not a nice, quiet neighborhood just shatters my expectation of where I just moved two years ago. It's horrible to me. It's absolutely horrible to me.

I would like to know, question number one, what kind of action will there be at all on the Post Lane gate where kids are, where they play, walk, go to school, where buses are. What, if anything, will happen at those gates on Munn and Post?

MR. FENNO: I'm not sure I --

MS. BOYLE: If every thing -- every single thing -- every single truck will always go out the Hamburg Turnpike side?

MR. FENNO: They are required to --

MS. BOYLE: Nothing.

MR. FENNO: -- to by local ordinance --

MS. BOYLE: -- there will be nothing on --

CHAIRMAN LOESNER: Yes, Post Lane is --

MS. BOYLE: -- on -- (inaudible) --

CHAIRMAN LOESNER: -- is not rated for truck traffic --

MS. BOYLE: Nothing will be there, that gate will not be open unless the train is there.

CHAIRMAN LOESNER: Right.

MR. FENNO: I can't tell you that --

MS. BOYLE: Technically they could --

CHAIRMAN LOESNER: Well --

MR. FENNO: -- that the gate won't be open. I can't tell you that at truck won't come out the gate (inaudible). But I can tell you a truck will not go on Post Lane.

MS. BOYLE: I'm sorry, Mayor, could you say that again. I didn't hear you.

MAYOR BUDESHEIM: If they are using Post Lane to access -- to the site, they are allowed to use that road (inaudible). But for some reason, (inaudible) traffic (inaudible), what our ordinance says (phonetic).

So yes, if for whatever reason they determine that they can't use Hamburg Turnpike, by law, they could put those trucks (inaudible) and

(inaudible) stop them from making deliveries (inaudible).

MS. BOYLE: Where children are. That's -- that's very unbelievable.

Number two --

MR. FENNO: Can I speak --

MS. BOYLE: -- will the trains --

MR. FENNO: -- (inaudible) --

MS. BOYLE: -- be blocking --

MR. FENNO: Wait. I'm sorry to interrupt you. But I just don't want to lost track of this point. My recollection is that we stipulated in the consent order that the truck traffic will all be Hamburg Turnpike and we certainly prepared to stipulate that here, regardless of the ordinance. To get past that.

CHAIRMAN LOESNER: I thought I saw that in one of those -- one of those decrees.

MR. FENNO: I don't think we ever used Post Lane.

UNIDENTIFIED MALE: No.

MR. VENZA: If you were in operations over the course of the last six months, when the sewers were going in on the Hamburg Turnpike, you would have had to use Post Lane. And you would have.

MR. FENNO: Then there would have been detours or something, right?

MR. VENZA: Yeah, Post Lane.

MR. FENNO: But I mean, you were detouring everybody over to Post Lane.

UNIDENTIFIED MALE: No --

UNIDENTIFIED MALE: We had -- they were digging the road up in front of the entrance to your facility. And there was no way a truck could get in there.

MR. FENNO: But that's not -- you know, in all the time that we operated, we didn't have that problem.

MR. VENZA: I understand. I'm just making a point. There are times that may justify using Post Lane, and this lady wanted to know could we stop it. No -- from our ordinance perspective, we can't.

MS. BOYLE: Well, that will absolutely drive down property value for people who don't want to live in that neighborhood any longer. Where children cannot just ride their bicycles down to the park, which crosses Post Lane.

If there is anyway possible that they would not be permitted in any way to use Post Lane, it would be so much better for the interior part of the

neighborhood.

MR. BARBARULA: (inaudible) they are not using Post Lane under the (inaudible). What the mayor is saying that if there is a situation where they can't use Hamburg Turnpike, they can use Post Lane, just like anybody else would use Post Lane, because under -- under circumstances where the Hamburg Turnpike was closed off for some emergency or something like that, that (inaudible), they are not going to be coming there on a regular basis. But that would also be applied to anybody. (phonetic)

I believe that that was a verbal agreement that was not part of the (inaudible).

MR. FENNO: Yes, we're not --

MR. BARBARULA: It never made it to (inaudible). And it's not in -- and (inaudible) in the decision by the -- (inaudible).

UNIDENTIFIED MALE: I can tell you exactly where it was discussed in the Planning Board, under the traffic (inaudible).

MR. BARBARULA: The traffic plan was accepted by the borough (inaudible). And I think that n the traffic plan, your guys had to come out Hamburg Turnpike (inaudible).

MR. FENNO: All I remember is --

MR. BARBARULA: -- (inaudible) --

MR. FENNO: -- that we always understood we could use (inaudible).

MR. FORMICA: I also think it's --

MR. BARBARULA: -- (inaudible) --

MR. FORMICA: -- for all the time we had it, we never used Post Lane. Anyway, just so you know. We never did.

MR. BARBARULA: One of the agreements is attached (inaudible) --

UNIDENTIFIED MALE: But, you know, you never stored product (inaudible) Post Lane either. The operations were all at the other end.

CHAIRMAN LOESNER: Do you have another question.

MS. BOYLE: I do. Will the trains be, um-- I don't know if this is answered, will the trains be so long that they are making a traffic problem on Post and Hamburg Turnpike where they cross? Will it impede traffic each time the train comes in and out.

MR. BARBARULA: I --

MS. BOYLE: Where they have to stop.

MR. BARBARULA: -- I give you short education on this. I don't know what you were told when you bought the house two years ago. Hopefully

you received a disclosure before you bought the house. The length of the train, no one controls that but the railroad. And the appropriate federal regulations. If, in the event that they are picking up that many trains, they could at some point have both -- crossings come down. That's a possibility.

When the -- when the train shows up, it's also not within our control. So for the last six or seven -- I think (inaudible), (inaudible) --

CHAIRMAN LOESNER: Not that long.

MR. BARBARULA: No. I (inaudible) that is a heck of a long time (inaudible). There's -- it comes whenever it comes. And it could, from time to time, it can happen. But as you heard from the testimony, a lot of times the trains come at night. And that's -- (inaudible).

MS. BOYLE: And they do block traffic.

MR. BARBARULA: (inaudible) -- they can be that long.

MS. BOYLE: Absolutely.

UNIDENTIFIED MALE: -- Hamburg Turnpike -- and cars get set up and they (inaudible).

MR. BARBARULA: The mayor is right, it can -- it depends, we don't control how many cars are tied together. And they can be quite long. The longer

they are, the better it is (phonetic).

MR. FENNO: Can I -- we appreciate everything you said. But it sounds like me talking a little bit. But the practical reality of this train is, first of all, there would be no reason for a train to be blocking both Hamburg Turnpike and Post Lane, I think is part of the concern.

Typically, we would come to the site from the north, where our main (inaudible) is, and the switch (inaudible) facility (inaudible) empty, involves going across Hamburg Turnpike a couple of times. Typically.

Given that there is little if any rail traffic to the south of this facility, the likelihood of having a big long train at this facility --

MR. BARBARULA: -- (inaudible)

MR. FENNO: -- very remote.

MR. BARBARULA: -- but --

MR. FENNO: -- I'm -- I'm -- I'm --

MR. BARBARULA: -- (inaudible)

MR. FENNO: -- you gave the legal side, I'm trying to give --

MR. BARBARULA: -- let her know what can happen because legally you could have it two miles long.

MR. FENNO: I -- I -- I --

MR. BARBARULA: -- it is subject to only the federal regulations.

MR. FENNO: -- I --

MS. BOYLE: And if -- if the --

MR. BARBARULA: I just want to let her know that --

MS. BOYLE: -- Hamburg Turnpike --

MR. BARBARULA: -- that (inaudible) --

MS. BOYLE: -- blocked off and people get accustomed to, oh, no problem, this is such a pain in the neck, great, we found this great little zip around, we'll just all now go down Post, and it absolutely changes the neighborhood.

MR. BARBARULA: The (inaudible) and I said that (inaudible) worst situation that could end up being that long. That's -- just so you know that could happen. It also more likely would be late at night or early in the morning, based on -- based on the (inaudible) from '99 to now, we know that that's when (inaudible).

So I want to let you know. I'm just -- I'm telling you the worst case (inaudible), that we have no control -- it could end up being that way.

MS. BOYLE: Uh hum. Thank you.

MR. BARBARULA: The length of the train is governed by the federal government.

MR. SCOTT: Hello. Um -- my name is Jim Scott. I live on 29 Arlington Place.

Now you're telling me that we can't schedule a date for the trains to -- I mean, not the time, like they, if they come at 3 o'clock in the morning, they come at 3 o'clock in the morning. We can't -- that's that.

MR. BARBARULA: I'm not telling you, I'm only explaining --

MR. SCOTT: Right.

MR. BARBARULA: -- what the -- what the regulations are for trains.

MR. SCOTT: Right.

MR. BARBARULA: Interstate commerce is governed by the federal government --

MR. SCOTT: Uh hum.

MR. BARBARULA: -- and we, as a local municipality, cannot tell them to come at 4 o'clock in the afternoon, 10 o'clock at night --

MR. SCOTT: Right.

MR. BARBARULA: -- they -- they are governed purely by the federal government. And if 3 o'clock is when they come from New York to New Jersey, to

Riverdale --

MR. SCOTT: That's the time.

MR. BARBARULA: That --

MR. SCOTT: I mean, I know I live on a -- by the train tracks. I mean, obviously, you know. I mean, I hear the other ones go by 11:30, boom, their out. This one, that's like an hour long, you know. And then, like, they are starting at 5 o'clock. I'm back in '96 -- crazy (phonetic).

Post Lane, I mean, that's the least (inaudible), honestly, I hate to say it. You're going to (inaudible).

CHAIRMAN LOESNER: Thanks. Coming back for round two?

MS. ADORNETTO: No, I just want to ask a question.

CHAIRMAN LOESNER: Sure, come on up.

MS. ADORNETTO: Is this --

CHAIRMAN LOESNER: You have got to come so we can get --

MS. ADORNETTO: -- (inaudible) --

CHAIRMAN LOESNER: -- you on the microphone.

MS. ADORNETTO: Oh, okay. I just want to ask a question, could this impede the operation of the fire department at night, you know, it's right there

along side.

UNIDENTIFIED MALE: No.

CHAIRMAN LOESNER: No.

UNIDENTIFIED MALE: (inaudible) allow (inaudible) specifically addressed -- (inaudible).

CHAIRMAN LOESNER: Yes.

UNIDENTIFIED MALE: The fire --

MR. BARBARULA: One of the things we negotiated back then was to have an easement for the fire department, and it's part of the -- (inaudible) -- we argued that because they didn't want the fire trucks going over (inaudible). But you capitulated on that one. (phonetic)

MS. ADORNETTO: It --

MR. BARBARULA: It's in the agreement, in the court order that the fire -- the first trucks have a right of ingress and egress. (phonetic)

MS. ADORNETTO: Okay, but if there is this train that is 2 miles long, you know, and the fire department has to get going --

MR. BARBARULA: The fire department will go right over the tracks.

MS. ADORNETTO: Okay.

MR. BARBARULA: That was one of the things that the firemen wanted and we got it negotiated

(inaudible).

MS. ADORNETTO: Okay.

MR. FENNO: That was part of my concern when you started to mention a 2-mile long trains on the track. That --

CHAIRMAN LOESNER: Anything else?

MS. ADORNETTO: --

MR. FENNO: It's not a current reality.

MR. BARBARULA: Obviously she bought after (inaudible).

CHAIRMAN LOESNER: We're closing in on 10:30.

MS. MOHAN: My name is Lillian Mohan; I live on 7 Munn Avenue. Um -- we had that operation with, um -- with the corn, I was home most of the time, I like to leave my doors open, I like to leave my windows open, I couldn't do that because the traffic with the trucks, when they -- idle and run, it was really smelly and I couldn't do any of that stuff.

Now with this here, are we going to have a lot of dust, are they going to be wetting it down, is our street going to be a mess. What's going to happen? Am I going to have to be, like, enclosed and not be able to open my window, put my clothes on the line, like I have been doing?

CHAIRMAN LOESNER: Who wants to answer that?

UNIDENTIFIED MALE: That would be the engineer or -- (phonetic).

MS. MOHAN: Well, it is going to be a lot of dust --

CHAIRMAN LOESNER: Dust issues, Mr. Formica?

MR. FORMICA: No, we don't have any bulk materials that make a lot of dust (inaudible) like bulk cement or any kind of (inaudible). It's just cubes of brick and the cubes of brick, as you know, are -- brick, it doesn't generate dust or dirt or --

CHAIRMAN LOESNER: Are they wrapped in anything, are they wrapped in plastic --

MS. MOHAN: It's going to be nothing?

MR. FORMICA: Some of the materials is (inaudible).

UNIDENTIFIED MALE: (inaudible).

CHAIRMAN LOESNER: Hang on in the back.

UNIDENTIFIED MALE: --

CHAIRMAN LOESNER: Hang on -- whoa, whoa, before we get out of control here --

MS. MOHAN: -- no the trucks --

MR. BARBARULA: You can't -- talk to board, Mr. Formica, your voice is going that way -- and we

can't have a private conversation going on there.

CHAIRMAN LOESNER: Right.

MR. BARBARULA: If you can answer her question towards the board, Mr. Formica (inaudible).

MR. FORMICA: I think the question was does it generate any dust.

CHAIRMAN LOESNER: Yes.

MR. FORMICA: And I had said that we don't sell or deal with any kind of bulk materials, it's only brick. And the brick onto itself does not generate any kind of special dirt or dust or anything like that.

MS. MOHAN: So we're not going to have any thing. It's --

MR. FORMICA: There should be --

MS. MOHAN: -- no particles in the air, nothing on the ground --

MR. FORMICA: -- correct, we're not putting anything extra in the air.

MS. MOHAN: So I don't have to worry if I let my grand kids go outside, they are going to be --

MR. FORMICA: Yes, sure.

MS. MOHAN: -- (inaudible) --

MR. FORMICA: -- (inaudible).

MS. MOHAN: Okay.

CHAIRMAN LOESNER: Thank you. Anyone else? A motion to close the public portion.

MR. HEIMALL: -- (inaudible).

CHAIRMAN LOESNER: Second.

MR. LANG: Second (phonetic).

CHAIRMAN LOESNER: All in favor.

(All answer in the affirmative)

CHAIRMAN LOESNER: All right, we're closing in on 10:30. So what's our --

MR. BARBARULA: Well, I see that there is an issue that the mayor brought up, but also a resident brought up, and that's the right of way. The railroad definitely knows the right of way exists. And we all were there when it was built (phonetic).

I think that is whether (phonetic) or not the pipe can sustain the tonnage, I think, Mr. Formica would like to know that, because (inaudible) wouldn't like to have (inaudible) jobs to transport it. But the second company makes a big difference between what the consumer, ultimate consumer pays and what he has to pay for it at the -- at the factory. (Phonetic)

So I'm sure he won't want to see a lost opportunity there. So I think between now and the next meeting that that safety issue should be able to be worked out between the --

CHAIRMAN LOESNER: I think the --

MR. BARBARULA: -- applicant --

CHAIRMAN LOESNER: I think that number is that pipe, because that's going to be -- that's going to be potentially the biggest problem.

UNIDENTIFIED MALE: You're looking at 10,000 pounds on a 35 (inaudible) area that (inaudible).

CHAIRMAN LOESNER: What was the second issue again, John?

MR. BARBARULA: Well, that -- that's the first issue. And I think after that is -- Linda is going to make copies of the operating agreement so that clears up the (inaudible).

CHAIRMAN LOESNER: Yes, and can you -- can you put together for us exactly -- not exactly, but as close to exact as you can get, what powers we have over the application, so we're clear on what we can do. We can make it clear to the residents what we can do and what we can't do.

MR. BARBARULA: I can make copies of the Ridgefield Park case (inaudible). Other than the consent order, which is your guide --

CHAIRMAN LOESNER: Right.

MR. BARBARULA: -- Ridgefield Park says -- and it would have been --

CHAIRMAN LOESNER: Well, save it for the next time.

MR. BARBARULA: Okay. So that was the (inaudible), in that case I can make copies and have -- as a matter of fact, you know what? Why don't I do this? Linda, if you could, make copies for everybody and (inaudible) and give it back to me. And -- at the next meeting you can have copies out there with the (inaudible).

CHAIRMAN LOESNER: Is this -- this isn't really an application, right, so it's a hearing, so we just have to reschedule the next hearing.

MR. BARBARULA: Yes, this is a -- under the consent order, the railroad could come in any time, as long as they give us 10 days notice. They have to --- when they are changing the use, they have to come back in and show us --

CHAIRMAN LOESNER: Yes, I saw that, but I want to get another -- another date so we can tell people when the next date is going to be --

MR. BARBARULA: Well, I --

CHAIRMAN LOESNER: -- if we can get one --

MR. BARBARULA: -- I would say that I don't -- I would have to defer to Paul (inaudible).

MR. DARMOFALSKI: (inaudible).

CHAIRMAN LOESNER: Well, we noticed --

MR. BARBARULA: -- something that (inaudible)--

CHAIRMAN LOESNER: -- Mayor, didn't we do the notice thing on this?

MAYOR BUDESHEIM: I sent a notice to everyone on Munn and Post (phonetic). (inaudible).

MR. BARBARULA: It's our notice, it's not -- (inaudible) our notice (inaudible).

CHAIRMAN LOESNER: So can we set -- can we set a date tonight or do we have to wait.

MR. BARBARULA: I don't think that (inaudible) be more than a month, right? To get (inaudible).

UNIDENTIFIED MALE: -- (inaudible) --

CHAIRMAN LOESNER: So --

UNIDENTIFIED MALE: -- (inaudible) here at the next meeting? A representative.

CHAIRMAN LOESNER: That will be up to them.

MR. BARBARULA: Not unless --

UNIDENTIFIED MALE: -- the other questioning (inaudible) --

MR. BARBARULA: (Inaudible).

CHAIRMAN LOESNER: Hang on, hang on. Folks.

MR. BARBARULA: Hold on a second.

CHAIRMAN LOESNER: Folks, hang on, please.

MR. BARBARULA: I think with the -- we gave everybody notice here, we should let them know now that it is going to be carried.

CHAIRMAN LOESNER: Well, yeah, I just want to get a date to carry, that's all.

MAYOR BUDESHEIM: That easement -- that easement has to be filed with the county, right?

MR. BARBARULA: It should be filed.

MAYOR BUDESHEIM: It is filed with the county.

UNIDENTIFIED MALE: (inaudible) get a copy of it to see what (inaudible) are attached to that easement. (Phonetic) What if the easement says you're not allowed to put any (inaudible)?

CHAIRMAN LOESNER: We'll see what happens when they get it.

MAYOR BUDESHEIM: (inaudible).

CHAIRMAN LOESNER: All right, so we're going to --

MR. BARBARULA: I -- I will see if I can get it, I'm sure we can get a -- I believe we had it in the -- I think we had a copy, I don't know. Do we have a copy? I don't know.

MAYOR BUDESHEIM: I think we should review

it and see what restrictions are attached to it.

MR. BARBARULA: Yes, I -- Mr. Mayor, I don't know and that's a good -- good question. But I have a feeling that that was (inaudible) back then. But you know what? The conditions are what's in writing. And the writing will tell us.

MAYOR BUDESHEIM: Well --

MR. BARBARULA: So I can -- I can --

MAYOR BUDESHEIM: -- condition this time, before it was just -- (inaudible) --

MR. BARBARULA: No, I'm agreeing with you.

MAYOR BUDESHEIM: Now you have (inaudible).

MR. BARBARULA: The only thing that really matters is not what we remember as what actually is in writing for that easement. It may say you can't put anything on top and then that's going to be an issue.

CHAIRMAN LOESNER: Well, we're going to see. We're going to -- we're going to review the easement, we're going to notify the water commission. We're going to put together what we can do and what we can't do by the consent order.

MR. BARBARULA: All right.

CHAIRMAN LOESNER: May -- is May 28th agreeable?

MR. BARBARULA: I -- gave them the case so

that everybody can read it (inaudible) --

CHAIRMAN LOESNER: Or do you want to go out from there?

MR. FIORILLA: Excuse me?

CHAIRMAN LOESNER: Is May 28th agreeable or do you want to go out from there?

MR. FIORILLA: I just want to make sure we have -- if there are any other issues --

MR. BARBARULA: I would prefer that I contact the chief engineer, who I have his contact (inaudible) North Jersey District Water (inaudible).

MR. FIORILLA: Okay.

MR. BARBARULA: -- (inaudible) from your engineering department and try to solve it -- the engineering issues (inaudible).

MR. FIORILLA: That would be --

MR. BARBARULA: (inaudible)

MR. FIORILLA: We may have -- we may have people from our outside engineering firm involved in that, is that okay with you? (phonetic)

MR. BARBARULA: Mr. Fenno, I think (inaudible), I think the last time (inaudible) somewhere along the line (inaudible).

MR. FENNO: Oh, I'm sure we do.

MR. BARBARULA: So --

MR. FENNO: I mean, we -- we, you know, we certainly have copies. So it's not a problem.

MR. BARBARULA: If you have it (inaudible).

MR. FENNO: We'll find it --

MR. BARBARULA: -- you may say (inaudible).

MR. FENNO: We'll do our best to produce a copy --

MR. BARBARULA: -- (inaudible) New Jersey 100 and some dollars -- (phonetic) -- (inaudible).

CLERK: If you can copy me on that, as well, I would appreciate it.

MR. BARBARULA: If you can find that, you can save us the cost of going (inaudible).

MR. FENNO: We'll do our best, I'm sure.

UNIDENTIFIED MALE: I think also -- the convenience of our residents, any of these documents that we're getting are posted on our website. Go to the home page and (inaudible) what's happening now, have the railroad (inaudible) and be able to look at all these documents as soon as we get them. (phonetic)

MR. BARBARULA: (inaudible) give them back, because that way (inaudible).

UNIDENTIFIED MALE: And depending on the answers that we get -- if you could possibly consider

limiting storage area.

CHAIRMAN LOESNER: We'll see what -- we'll see what comes back on --

UNIDENTIFIED MALE: Yeah, depending on -- on what the -- (inaudible), that might be (inaudible).

UNIDENTIFIED MALE: I would also like to find out about that North Bergen site that Mr. Sciarra was mentioning (inaudible). Were they able to -- force the issue with the building (inaudible).

MR. FENNO: We'll be happy to provide information to Mr. Barbarula --

CHAIRMAN LOESNER: Great.

MR. FENNO: -- about that. That will be very easy for us. And just again, to try to make this be as (inaudible) as possible, trying to make sure I have a list (inaudible) try to respond. (phonetic)

MR. BARBARULA: If you can get us the easement. I know North Bergen contacted me back in (inaudible).

MR. FENNO: We'll have -- (inaudible) explaining --

MR. BARBARULA: Yes.

MR. FENNO: -- (inaudible).

MR. BARBARULA: I kind of remember that. That -- the easement, that and the (inaudible) contact

Paul because the integrity of the -- water easement is something that is of great concern to the railroad --

MR. FENNO: Absolutely.

MR. BARBARULA: -- to the borough --

MR. FENNO: No dispute.

MR. BARBARULA: -- and (inaudible) Mr. Formica who (inaudible) and see water in the pile of brick under the ground. (phonetic)

MR. FORMICA: No question --

CHAIRMAN LOESNER: Would not be good.

MR. BARBARULA: It wouldn't make a good (inaudible).

CHAIRMAN LOESNER: Is that all?

MR. BARBARULA: That's it. Let everybody know --

CHAIRMAN LOESNER: Wait, hang on.

MR. BARBARULA: -- the mps and the chairman will let you -- (inaudible).

CHAIRMAN LOESNER: I would like to make a motion first that we carry the hearing to May 28th.

MR. HEIMALL: So moved.

UNIDENTIFIED MALE: Second.

CHAIRMAN LOESNER: All in favor.

(All answer in the affirmative)

CHAIRMAN LOESNER: Okay. What this means,

folks, is that the hearing will continue on May 28th, after the -- application that we got, right?

(Pause in dialog)

CHAIRMAN LOESNER: Motion to adjourn.

(Hearing concluded)

CERTIFICATION

I, Jean Mirza, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CD is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

July 15, 2009

Jean Mirza, AOC #541

G & L Transcription of NJ

Riverdale Planning Board

IN RE: New York Susquehanna & Western Railroad
Hamburg Turnpike/Post Lane
Block 17, Lot 4

Date of Hearing: May 28, 2009

BEFORE: Members of the Planning Board and Public

TRANSCRIPT ORDERED BY:

John Fiorilla, Esq. (Capehart & Scatchard)

Attorney for New York Susquehanna & Western Railroad

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VICE CHAIRMAN MAGENNIS: Okay. The next items for us is a continuation of the hearing for the New York Susquehanna and Western Railway Corporation, that's NYS&W Railway Corporation, Paterson, Hamburg Turnpike and Post Lane, block 17, lot 4.

COUNCILMAN FALKOSKI: Good evening.

VICE CHAIRMAN MAGENNIS: Good evening.

COUNCILMAN FALKOSKI: Mr. Barbarula. I was not present at the last meeting, but I read all the minutes and read all the correspondence.

MR. BARBARULA: Can you please stand and raise your right hand?

J O S E P H F A L K O S K I, SWORN

MR. BARBARULA: Councilman, you have indicated on the record that you have reviewed the minutes and the documents submitted in this application?

COUNCILMAN FALKOSKI: Yes, I have.

MR. BARBARULA: And you're so certifying as of today, correct?

COUNCILMAN FALKOSKI: Correct.

MR. BARBARULA: Mr. Fiorilla, would you like to ask the councilman any questions about his review of the records?

MR. FIORILLA: No, I have no questions.

MR. BARBARULA: Okay. On that basis, councilman, you wish to sit and be part of the (inaudible).

COUNCILMAN FALKOSKI: (Inaudible).

MR. ROBERTS: I also read the minutes.

MR. PELLEGRINI: (Inaudible) yeah.

MR. BARBARULA: Bob, -- all right. Will all of you please stand.

V I N C E N T P E L L E G R I N I, SWORN

B O B B Y R O B E R T S, SWORN

MR. BARBARULA: Members, each of you, do you solemnly swear that you have read the minutes in this matter and all of the documents that were submitted?

MR. ROBERTS: Yes.

MR. PELLEGRINI: Yes.

MR. BARBARULA: And you so make that certification as of tonight.

MR. ROBERTS: Yes.

MR. PELLEGRINI: Yes.

MR. BARBARULA: Mr. Fiorilla, would you like to ask them any questions?

MR. FIORILLA: I have no questions.

MR. BARBARULA: Gentlemen, on that basis, (inaudible) certification that you have indicated that you brought yourself up to speed on the record, and

you will all be part of the deliberations on the hearing on this matter. (Phonetic)

VICE CHAIRMAN MAGENNIS: Okay, Mr. Fiorilla.

MR. FIORILLA: Mr. Magennis, my name is John Fiorilla; I'm from the firm of Capehart and Scatchard. I continue to make appearing on behalf of the New York Susquehanna and Western Railways.

Since our last meeting, we approached the North Jersey Water Supply District -- I'm sorry, Water Supply Commission, District Water Supply Commission -- let me get that in the right order -- regarding the -- regarding the water pipe, which is in the railroad's facility. And we received this afternoon at about 4 o'clock a letter, which we have made copies and -- has that been distributed Mr. Darmofalski?

MR. DARMOFALSKI: Yes, it was.

MR. FIORILLA: Okay.

VICE CHAIRMAN MAGENNIS: We have it in front of us.

MR. FIORILLA: Yes. And that -- that letter speaks about under what circumstances the brick could be stored at the property.

MR. BARBARULA: At this time, I think that (inaudible) to the board, it should be moved as part of the application.

VICE CHAIRMAN MAGENNIS: Okay. We'll make it part of the application.

CLERK: Is that going to be an exhibit, John, or just part of the application?

MR. BARBARULA: I think what we do is -- I don't think we marked -- did we mark any exhibits at the last one? (Phonetic)

MR. FIORILLA: I don't recall.

CLERK: I don't think so.

VICE CHAIRMAN MAGENNIS: I don't think so.

MR. BARBARULA: (Inaudible) the first one.

MR. FIORILLA: Also referred to in the letter is part of the site plan, and we have some copies of that, Mr. Barbarula, which should also be distributed and marked.

MR. BARBARULA: The letter will be A1, (inaudible). And you have the (inaudible).

MR. FIORILLA: I'm not sure. I don't recall how many I made.

UNIDENTIFIED MALE: (Inaudible).

CLERK: Is that going to be marked?

MR. BARBARULA: Marked A2.

CLERK: A2.

MR. BARBARULA: Section 8A of the (inaudible).

CLERK: Okay.

UNIDENTIFIED MALE: Can I ask Mr. Fiorilla a (inaudible) question?

VICE CHAIRMAN MAGENNIS: Not yet. You'll have your opportunity to ask the questions at the end of their testimony.

(Pause in dialog)

VICE CHAIRMAN MAGENNIS: Just so that the members of the audience know what you gave to us, maybe you could just tell them what we're looking at it.

MR. FIORILLA: It's a change in the site plan to change the -- the amount of bricks --

VICE CHAIRMAN MAGENNIS: Right.

MR. FIORILLA: -- how high the bricks would be stored. And that comes as a result of a letter that I gave you.

VICE CHAIRMAN MAGENNIS: Right. Just so that the people in the audience know that at one point they wanted to stack the brick 12 feet high, now that's limited to 9 feet. And that's based on letters that went back and forth with respect to the safety of the piping, the water piping underneath the easement.

MR. FIORILLA: That's correct. The letter that we have here from the District Water Supply

Commission comes from the -- professional engineer, I think that's an important thing, Michael (inaudible).

VICE CHAIRMAN MAGENNIS: And, Paul, you have seen the letter, you have no issues with what's stated in the letter?

MR. DARMOFALSKI: All the previous correspondence (inaudible) waiting for official documents from the North Jersey District Water Supply addressing their either approval or changes to the (inaudible).

VICE CHAIRMAN MAGENNIS: Okay, well, actually, will those calculations be provided to you, Paul, at some point? I know the letter states that it's safe, but, you know, I mean, it's not as -- factual -- I shouldn't say factual. But I mean, if you had the opportunity to look at the calculations that were --

MR. DARMOFALSKI: I (inaudible) calculations. After the last meeting, which was in April, I contacted the North Jersey District Water Supply engineer (inaudible) and told him what the situation was in the Borough of Riverdale (inaudible) this facility. And I said you've got to coordinate with the construction engineer exactly what load can be placed upon your pipe.

The pipe is buried approximately five feet down, and it was verbally told to me that it got passed onto the railroad that the maximum load was 3,000 pounds per linear foot.

From that point forward, their engineer -- when I say their engineer, the railroad engineers have been in direct correspondence with the North Jersey District Water Supply engineer to work out all the details of that.

The letter that was approved on May 28th by the North Jersey District Water Supply references a letter from Spectra Engineering -- from the middle of May, which is (inaudible) the date of May 13th, and that's where the proposal was to limit the height of the bricks (inaudible).

VICE CHAIRMAN MAGENNIS: Right, okay.

MR. DARMOFALSKI: I don't know that I need those calculations, because I'm really not going to analyze the structural capability of their -- of the North Jersey District Water Supply (inaudible).

VICE CHAIRMAN MAGENNIS: Okay.

MR. DARMOFALSKI: (inaudible). I feel comfortable (inaudible) the engineer (inaudible).

VICE CHAIRMAN MAGENNIS: Okay.

UNIDENTIFIED MALE: When was the pipe put

in?

MR. DARMOFALSKI: The pipe was put in the early 80s. The documents that granted the right (inaudible) was in 1983, I believe. (Inaudible).

UNIDENTIFIED MALE: (inaudible).

MR. DARMOFALSKI: Excuse me?

UNIDENTIFIED MALE: (inaudible) because the drawing that was handed to us shows the --

MR. DARMOFALSKI: Bear with me one moment, I just had that out. I have a letter from Spectra Engineers, who are the engineers -- David Meyers (phonetic) is the (inaudible) engineer for Spectra, where he talks about the design plans that indicated that the 102 inch pipe that (inaudible) where they modified their calculations -- 9 foot height of brick on top as opposed to the 12. And -- it does not say the five-foot (inaudible).

UNIDENTIFIED MALE: Because I didn't see it anywhere in this (inaudible).

UNIDENTIFIED MALE: Does it have (inaudible) on them? (Phonetic)

MR. DARMOFALSKI: Excuse me?

UNIDENTIFIED MALE: What is the pipe made out of?

MR. DARMOFALSKI: The pipe is concrete.

UNIDENTIFIED MALE: Concrete.

MAYOR BUDESHEIM: Paul, at the last meeting, one of the points I brought up was the weight load on top of that pipe.

But the other question I did ask was the -- the legal description of that easement and whether the North Jersey Water Commission, not from an engineering point of view but from a legal point of view, would -- give permission to place these, effectively, structures on top of the easement.

And as the zoning officer I'm not allowed to approve any structure on top of somebody's easement unless I get a written release (phonetic). Have we received a written release from the North Jersey Water Commission saying that they are allowed to (inaudible) for these -- effectively, structures on top of this easement?

MR. DARMOFALSKI: The letter that was sent in today, May 28th, addresses the conditions of approval for the height and also the operating of the facility on top of their -- I don't think that the engineer from North Jersey can speak legally for the North Jersey District Water Supply.

So I think to answer your question, Mr. Mayor, engineering wise, I think it's (inaudible), but

legally, I don't know whether that's been answered.

MAYOR BUDESHEIM: Because that is, effectively, somebody else's property. You know, the use of it (inaudible).

MR. DARMOFALSKI: I'll leave that to the (inaudible) to determine. We've got copies of the original easement from the 80s when the railroad sold the rights to the -- 25 foot easement for the water line itself. It is really silent about what can happen on top of there.

It really is (inaudible), specifically about the installation of the pipe, the cost of putting that pipe in, who is going to be responsible for railroad operations and things (inaudible). It really doesn't talk about what can happen on top of the easement itself (inaudible). That's not my (inaudible).

VICE CHAIRMAN MAGENNIS: Actually, in the letter here, Mayor, it says the commission has not objection for the use of the easement for brick storage. I don't know if --

MAYOR BUDESHEIM: That's being written from an engineer's perspective. I just wanted to know what the legal perspective (inaudible). I'm surprised we didn't get something from their executive director (inaudible).

UNIDENTIFIED MALE: (Inaudible).

MAYOR BUDESHEIM: No, the --

MR. DARMOFALSKI: Michael (inaudible) is -- (inaudible) Destefano (phonetic) is the (inaudible).

MAYOR BUDESHEIM: All right. I would have thought we would have received something from them or their legal counsel. (Phonetic) And I did ask for that at the last meeting.

VICE CHAIRMAN MAGENNIS: I'm sorry, Restiano (phonetic) is the first name you're referring to -- I see he was copied on this letter. So I assume that he had the opportunity to --

MAYOR BUDESHEIM: He probably got it today. This letter was sent out today. So the executive director may not have even seen this yet.

MR. FIORILLA: Mr. Vice Chairman, this is not a structure that we're putting on there, it's brick. It's not a structure. I don't think it's required to have a legal --

VICE CHAIRMAN MAGENNIS: John, what's your interpretation?

MR. FIORILLA: It's a question of -- it's not a structure.

VICE CHAIRMAN MAGENNIS: It sounds like we're --

MR. BARBARULA: Well, first of all, the easement -- the copy of the easements have --

MR. FIORILLA: (Inaudible).

MR. BARBARULA: The one (inaudible). The easement is here, and I had (inaudible) back during the time of the litigation also now, what you have is the storage of a product on top of the ground, was not specifically prohibited in the easement. The storage of brick is not a structure in that it is movable and it can be removed at any time. (Phonetic)

In reference to what the Mayor has indicated and in reference to a legal -- something from the appropriate legal authority rather than the engineer, I think that what this letter is (inaudible) having only received it and reviewed it tonight, what this letter is doing is saying that we want these nine issues addressed.

And I believe that at that -- at that point, there would be something coming from the commission indicating that they have no problem or that they have a problem.

So I do believe that the issue of a utilization of the surface where the easement runs, would be a condition subsequent to any approvals of this Board in getting something that the railroad is

complying with the request of the water company.

Because this is really a contractual issue between the North Jersey Water District and New York Susquehanna Railroad, and what they are saying here is that there are certain issues that they want resolved. And that they want some other details from the New York Susquehanna, including the alignment (phonetic) of the pipe along the easement to be clearly marked and maintained. So that's something that the railroad would (inaudible) status (phonetic).

They would have to have a surveyor go out there and mark that for them. So that at any time (inaudible) it should be -- water company needs to get in, the railroad would have to immediately move the stacks. If they had to do repair work, they are going to have to move those materials in such a way that would give free access.

But if you look at the special easement agreement, the water company has to be able to have access, and they don't control what basically is done on the surface, as long as it is not a permanent structure. (Phonetic)

So all (inaudible) stack 9 foot high now that they are limiting it here, a 9 foot high stack of brick is (inaudible) type of structure that you can

get, it is something that is consistent of a component (phonetic). And those components -- those components are movable and, therefore, they are not in the nature of a permanent structure, which I would then believe would violate the easement. (Phonetic)

So one of the things that I think that the board should do here appropriately is that the -- subsequent to (inaudible), and anything that the board does here, is require something from the commission signed by the appropriate authority, the executive director, counsel, etcetera, indicating that they are satisfied with the follow up that the railroad has done. And I think that that goes to the questions about what we as a board can do.

I was asked at the last time to make a statement as to what I think the board can and can't do. In order to do that, I had to go through the various materials. And in this case, we have the August 21 -- 24th (phonetic), 1996 judgment. And the July 22nd, 1998 consent order in the action of the Borough versus the railroad.

We also have the transcript of that proceeding. And one of the things that Judge Stanton said at that time that guides us -- is sort of a double edge sword that cuts against the railroad, it

cuts against us. He wants to make sure two (inaudible) that happen.

One is that the railroad doesn't say I'm not doing it or I don't have to do anything. And the other one is that the local governing body try to use their regulatory mechanism -- on reference to safety and environmental and health concerns -- to try to get rid (phonetic) of this facility. (Phonetic)

Basically, under the case and the consent order -- was that we have the rights and obligation to look at safety and look at -- appropriateness of well-being and its effect on the public. But we are not and do not have zoning regulatory power because that is economic regulation, which specifically in these rulings -- are limited and reserved to the federal government.

So our application here is to look at (inaudible) health and safety concerns, and under that, I think it would be appropriate to make a -- any determination here subject to a satisfactory result between the two parties to this easement, (inaudible) will not endanger the water pipe. Because (inaudible) breach of that water pipe is obviously a safety concern to the residents of -- of this municipality. So I think that that certainly can be (inaudible).

COUNCILMAN FALKOSKI: John, may I ask a question?

MR. BARBARULA: Sure.

COUNCILMAN FALKOSKI: I have read some of these documents that you just referred to, and I get a different -- a little bit of a different interpretation there.

MR. BARBARULA: Okay.

COUNCILMAN FALKOSKI: That the jurisdiction of the federal government is basically if we're going to do something that is going to interfere with the provision of rail service. If there is some kind of another operation there, then we still have some jurisdiction from the zoning and planning standpoint. Am I correct?

MR. BARBARULA: No.

COUNCILMAN FALKOSKI: Well, that's the way I get that interpretation.

MR. BARBARULA: (Inaudible)

COUNCILMAN FALKOSKI: In other words, you're saying that -- you're saying that they can come in, somebody can set up a separate business on that lot, which is a warehouse type of operation, with an agreement with the railroad, and they can just operate that -- that warehouse operation independently of the

railroad. The railroad may deliver product and drop it there, but they will be operating independently of the railroad and you're telling me that's legal?

MR. BARBARULA: Yes (phonetic) --

COUNCILMAN FALKOSKI: And we don't have any jurisdiction.

MR. BARBARULA: No, we do not have zoning jurisdiction in that regard.

COUNCILMAN FALKOSKI: (Inaudible)

MR. BARBARULA: And that's one of the reasons that we enacted and moved for (inaudible) the consent order was very important, that we eliminate livestock, because they could have, prior to this consent order. And anywhere else they still have a site along this railroad, they could deliver to a third party, such as the purveyor of chickens.

They could deliver crates and crates of chickens to an outside or a stockyard with a roof, a warehousing facility, and the railroad could deliver the chickens to that facility and then that facility could distribute.

That's called economic regulation. The zoning aspects of the town do not apply to that, as long as it's part of the chain of commerce and the economic access.

They could be a stockyard. There could be -- there could be chemicals. The consent order in this case that we got at a time when there was a flux in the law, because there is some stricter regulations on local municipalities since then, however, we have -- we have a consent order. No chemicals can be brought to this site. No livestock can be brought to this site.

But product, when they came in to change from the corn syrup, they had to come back before us to show what they are doing (phonetic). And we have control over safety and health.

Zoning -- if they put a warehouse here to accept (inaudible), they can build it on their -- on there, as long as it is built within their purview of their jurisdiction on their property, they can build a warehouse to deliver tons of clothes and then ship from there. And that's part of the surface transportation act, that's part of the subsequent case law.

COUNCILMAN FALKOSKI: Even if the person that is picking up those clothes is in the business of selling clothes, he -- he can have an agreement with the railroad that he can keep his warehouse there and stock his product there.

MR. BARBARULA: Yes. Because we had that same exact relationship with the people who were accepting the corn syrup. The corn syrup was, in effect, warehoused behind that -- in this section, and maintained through the heating system and tanks that were just stored there. That -- that was exactly that.

And then when the purveyors of the corn syrup had a client, Coca-Cola or whoever, or Borland (phonetic), they would heat up the product, crank up the -- crank up the boiler and trans-load from the stored product, the trucks, and took it out. That was exactly what happened.

That was an independent company that had the -- that had the call for corn syrup. And they had -- they were not owned by the railroad. They were a separate company. And they didn't make a physical building a warehouse, but they made the tankers that were stored there, warehouses (phonetic).

So, I mean, it doesn't sound -- it doesn't feel right, it doesn't sound right --

COUNCILMAN FALKOSKI: I -- I read it, as I say, I get a little different interpretation out of it. And I'm not an attorney but somehow I don't feel I agree with you right now.

MR. BARBARULA: Well, all I can tell you is that I went both to state and federal court and that's -- that's the plain language of the judgment and the order, and -- I can tell you that we do not have -- and I have a transcript of (inaudible), we do not have zoning control over the railroad property.

COUNCILMAN FALKOSKI: Well, I thought there was some openings there whereby as long as we were not interfering with any of the rail's commerce of any kind that --

MR. BARBARULA: Well, that -- that would be interference with rail commence.

COUNCILMAN FALKOSKI: Well, I don't see how that could be, because if -- in my interpretation, I -- I won't argue (inaudible) --

MR. BARBARULA: Well, I can --

COUNCILMAN FALKOSKI: -- (Inaudible) --

MR. BARBARULA: -- tell you that there are a number of cases that have subsequently come down because the -- the Riverdale case really -- was widely quoted and widely used throughout the country. And more of the interpretation of our case subsequent communities did not exert as much leeway as we have gotten.

COUNCILMAN FALKOSKI: So in other words, if

they want to put a Starbucks there, as long as the railroad was delivering the coffee to that Starbucks--

MR. BARBARULA: No. No, that would be retail.

COUNCILMAN FALKOSKI: Oh (phonetic) --

MR. BARBARULA: If they were to put a warehouse to accept the (inaudible) coffee beans that Starbucks sells, that they can do. (Phonetic)

COUNCILMAN FALKOSKI: Why is retail excluded?

MR. BARBARULA: Because retail is -- and I don't believe it is covered by the surface transportation act, retail is not part of the overall commerce. I don't think that a rail -- that that would be covered. That I would argue, essentially, is not part of the same entity as a --

COUNCILMAN FALKOSKI: But didn't they testify at the last meeting that they're not wholesalers? I thought that that was brought out that they aren't wholesalers. So -- what are you, then?

MR. FIORILLA: We're trans-loaders.

MR. BARBARULA: Well, I --

MR. FIORILLA: That's what we are. We are trans-loaders.

MR. FENNO: We're transportation.

COUNCILMAN FALKOSKI: Who owns the brick?

MR. FIORILLA: We don't own it, we're the railroad. Other people, third parties.

COUNCILMAN FALKOSKI: Who pays for it?

MR. FIORILLA: Third parties. A lot of the -- (phonetic) --

COUNCILMAN FALKOSKI: Who pays who (phonetic)?

MR. FIORILLA: I don't know who they pay it to, they don't pay it to us.

COUNCILMAN FALKOSKI: In other words, the -- you're telling me that the railroad just comes in and drops some bricks on the site, they don't know who is going to buy it --

MR. FIORILLA: Right.

COUNCILMAN FALKOSKI: -- where is it going -- (inaudible) --

MR. FIORILLA: Because we're getting paid for transporting those bricks. That's all we get paid for.

MAYOR BUDESHEIM: So we're not really trying -- we're not trying to regulate the railroad's property, we're trying to regulate somebody's property who we don't even know whose it is.

MR. BARBARULA: No, that's --

MR. FIORILLA: No --

MR. BARBARULA: -- I have to respectfully disagree with, Mayor, because the property is the railroad's. And the tenant is the person and entity that is accepting the delivery of the product from the railroad. And that tenant is covered under the surface transportation act and under federal law, part of the stream of commerce.

If that tenant - if they were to have a retail outlet where people came and said, I want to buy that brick, then I think I have a legitimate argument to say that this (inaudible) business there is not something that is in the furtherance of the transportation situation, you have now made an end user and you have now developed a (inaudible). That may have a serious fight with counsel (inaudible), having an outlet saying, okay, come and buy the brick here, I think might be a little different situation.

But it (inaudible) the storage situation is exactly the same. It's not corn syrup, it's brick. But the exact same process is happening.

MAYOR BUDESHEIM: Well, if we're going to -- our jurisdiction is limited to -- limited to safety and health -- then I respectfully disagree to your determination that those bricks are not a structure.

And normally I would agree with you.

But you have 102-inch aqueduct, water aqueduct sitting directly underneath these bricks. Now I saw them trying to load those pallets and move them around. And I'm telling you, you can knock a house down faster than it would take for them to move one of those stacks. And this is in a residential neighborhood. (Phonetic)

And -- there have been engineers who have been known to miscalculate things. And -- what happens if there is a break in that pipe. And they have 24 hours to respond to get there. And then it's going to take many hours to move those bricks. And who knows what's going on underneath there.

So I think we do have a lot of -- a lot to say about this, because we are dealing with the health and safety of the people whose backyards (inaudible) business is being run out of.

UNIDENTIFIED MALE: Mr. Chairman -- (inaudible).

VICE CHAIRMAN MAGENNIS: No, actually --

UNIDENTIFIED MALE: -- questions (inaudible).

VICE CHAIRMAN MAGENNIS: No. You will have an opportunity but it's just not at this time.

UNIDENTIFIED MALE: Relevant to this conversation. (Phonetic)

VICE CHAIRMAN MAGENNIS: You will -- you will have the opportunity, it's just not at this time.

MR. BARBARULA: All I can tell you is the board is at -- they can interpret the orders that I have -- what we have gotten in this case. I only give you advice, I don't make decisions.

COUNCILMAN FALKOSKI: Can I ask a question -- I'm not sure I understand it. The railroad brings these bricks in and they deposit them on the site.

MR. BARBARULA: Right.

COUNCILMAN FALKOSKI: Someone comes in and picks those bricks up and transports them somewhere else.

MR. BARBARULA: That's correct. That's what the testimony --

COUNCILMAN FALKOSKI: Who pays for the transportation on the railroad?

MR. BARBARULA: I have no idea, but that's not a health, safety or welfare issue.

COUNCILMAN FALKOSKI: Well, it would be something to determine what kind of operation (inaudible). The other thing I would like to know --

MR. BARBARULA: I don't -- that --

councilman, you would have to ask the operator, I have no idea.

COUNCILMAN FALKOSKI: Okay. The other question that would go along with that is that, like I said, from what I understand the railroad brings the brick in to process it on the site and some kind of a trucking company comes in and transports it off. Is that correct? Anyone?

MR. FENNO: Mr. Barbarula, if I could jump in. There was a lot of testimony last month on this topic, if we need to repeat that, we can do that.

COUNCILMAN FALKOSKI: No, I read the -- I read the minutes --

MR. BARBARULA: I -- just, if you can answer the question, fine. I -- I don't know all the answers --

MR. FENNO: (inaudible)

MR. BARBARULA: -- what the testimony was.

MR. FENNO: What's the question, I'm sorry?

COUNCILMAN FALKOSKI: The question was, that -- so I'm sure that I'm understanding what's happening here, is that the railroad delivers the brick to the site.

MR. FENNO: That's correct.

COUNCILMAN FALKOSKI: And someone picks it

up and transports it to whoever is buying this. An unknown person who no one knows who pays the rail transportation or who buys the brick or anything, is that correct?

MR. FENNO: No. Of course, that's not correct. And that's why I --

COUNCILMAN FALKOSKI: Well, what happens with the brick --

MR. FENNO: (inaudible)--

COUNCILMAN FALKOSKI: -- once it's delivered to the site?

MR. FENNO: Well, it's a different question from who pays for the retail freight. Maybe we should just walk through the process and, Lou, maybe you can help me with this.

But, you know, we have a customer, which is Tri-State Brick, that is, essentially, a logistics role that -- people who order brick, whether through them or with their help, order brick from the manufacturer. Usually special ordered for their projects. They are typically large projects.

The brick is shipped by rail from the manufacturer to this site. It's offloaded by a Tri-State Brick entity (inaudible). And it is loaded onto trucks and taken to the job site.

And the rail freight, rail freight can be paid in many different ways, I would guess there would be different answers who pays the rail freight. Because in some cases it will be Tri-State Brick who provides -- makes those arrangements. In other cases, the actual purchaser of the brick who makes the arrangements with the factory, will pay the rail freight. And it's -- it's specific to the different transactions.

COUNCILMAN FALKOSKI: All right. So then I have another question that may follow that up. In looking at the agreement that the people have with the railroad, exhibit B, states the agreement is with the railroad and what is referred to as the customer.

MR. FENNO: Yes.

COUNCILMAN FALKOSKI: Does -- the railroad acknowledges the customer who initially delivered commodity to the facility by truck. Now, I thought it was picking it up. What is it delivering to the site?

MR. FENNO: The customer is moving from another site to this site.

COUNCILMAN FALKOSKI: Delivery -- delivered commodity.

MR. FENNO: Commodity would be brick. Brick is the commodity.

COUNCILMAN FALKOSKI: So t
company that you're agreeing -- that
this agreement with is delivering br
MR. FENNO: Initially.
VICE CHAIRMAN MAGENNIS: W
expiration date -- today, I think, o
that is supposed to end?
MR. FENNO: (inaudible) The reason for that is because --
VICE CHAIRMAN MAGENNIS: So that should end on Saturday.
MR. FENNO: Well, it hasn't started. I mean, realistically. But the reason for that is because they are moving from a different location to this location. They have some material at that location that they need to move and we (inaudible).
UNIDENTIFIED MALE: What (inaudible) location?
MR. FENNO: We have a couple of sites, as I recall. (Phonetic)
UNIDENTIFIED MALE: (inaudible)
COUNCILMAN FALKOSKI: So in other words, you're warehousing the brick. What does that have to do with the railroad?
MR. FORMICA: The brick is brought in for

specific orders by customers. And delivered to those -- to customer job sites.

COUNCILMAN FALKOSKI: No, what I'm saying, when you're delivering something to the railroad site, to start up, NYS&W acknowledges that customer will initially deliver commodity to the facility by truck as it moves from its existing site to the facility. So in other words, wherever you're operating now (inaudible) commercial product, it's not on railroad property. Is it?

MR. FORMICA: Yes, it is.

COUNCILMAN FALKOSKI: So in other words, you're moving it from one railroad property to another railroad property.

MR. FORMICA: What's happening is that the product that we have now that we're talking about moving, is for projects that are ongoing at the present time. Not all of the commodities (inaudible) delivered to those projects.

COUNCILMAN FALKOSKI: But it's moving from one railroad site to another (inaudible).

MR. FORMICA: After we vacate that one location, which is in Brooklyn, to this location, then any jobs that we have commodity on the ground for, we're moving over so that they can be sent to the

(inaudible) from this location to the project. (Phonetic)

MAYOR BUDESHEIM: I thought you were moving stuff from Wharton.

MR. FORMICA: (inaudible).

MAYOR BUDESHEIM: From Wharton. Aren't you shutting down a place there in Morris County?

MR. FORMICA: Wharton was the location that we were contemplating going before. We had moved some product to Wharton, as well, but that's in Kenvil (phonetic).

MAYOR BUDESHEIM: So you already have stuff there.

MR. FORMICA: We started to move from Brooklyn to Kenvil and stopped. We actually have product in both locations.

MAYOR BUDESHEIM: Well, why don't you just stay there?

MR. FORMICA: This is a more suitable location.

CLERK: -- Mr. Formica -- (inaudible) microphone. Thank you.

MR. FORMICA: I'm Lou Formica, by the way.

MAYOR BUDESHEIM: Why did you go there first?

MR. FORMICA: That railroad had approached us and made us an attractive -- we have not met with this railroad. Their -- they came to the business first. And it seemed to be a suitable location.

The railroad had held out to us that there was plenty of land and use and they could transport a lot of commodities through their -- through their facility. And they were unable to do that. So they held out that they do greater than what they were able to do.

UNIDENTIFIED MALE: (inaudible). It's (inaudible) right of way, isn't it? (Phonetic)

MR. FORMICA: I'm not sure.

VICE CHAIRMAN MAGENNIS: I know we're going over a lot of -- not issues, but understanding that you try to better -- get a grasp on at the last meeting, and I think it's helpful again now, some of the same questions are coming up.

Just one question if you wouldn't mind answering.

MR. FORMICA: Sure.

VICE CHAIRMAN MAGENNIS: Do you -- every commodity that comes to this site, assuming it's approved, there is a customer already in place for it.

MR. FORMICA: That's correct.

VICE CHAIRMAN MAGENNIS: So there is nothing that shows up here that doesn't have a customer.

MR. FORMICA: That's right.

VICE CHAIRMAN MAGENNIS: Okay. The next question that I have is, I think if I recall your testimony from the last meeting correctly, these bricks or the commodity seem to move relatively quickly. What I'm having a difficult time understanding now is if it moves that quickly, why do we have to be shipping it from Brooklyn to Riverdale to send it out again?

MR. FORMICA: There's --

VICE CHAIRMAN MAGENNIS: It just seems to be a conflict -- of statement.

UNIDENTIFIED MALE: (inaudible) Columbia Presbyterian Hospital, that's what they told us -- (inaudible) coming across the river and going back across the river. That's what you told us last time. (Phonetic)

MR. FORMICA: There's -- I'm sorry, I didn't get the reference to the Columbia Presbyterian.

VICE CHAIRMAN MAGENNIS: Well, you --

UNIDENTIFIED MALE: That's where you told us all the bricks were going to. (Phonetic)

VICE CHAIRMAN MAGENNIS: Well, as an example

you said --

MR. FORMICA: No, that was -- not the exclusive destination --

UNIDENTIFIED MALE: No, I know (phonetic).

MR. FORMICA: -- for it.

UNIDENTIFIED MALE: (inaudible) Brooklyn to go back to Columbia Presbyterian. (Phonetic)

MR. FORMICA: That wouldn't be our preference. Our preference would be to deliver directly from where it is presently on the ground. We don't want to move brick twice, because every time you move brick --

UNIDENTIFIED MALE: (inaudible) --

MR. FORMICA: -- chips, it --

UNIDENTIFIED MALE: -- testified at the last meeting -- (inaudible) --

MR. FORMICA: -- and you damage it, and that's true.

UNIDENTIFIED MALE: -- that some of these bricks are going to Columbia Presbyterian. (Phonetic)

MR. FORMICA: The question regarding the time period in which brick moves, it varies by project. A lot of projects are maybe -- in fact we were talking this evening about a project that may be 25 rail cars full of material. We'll bring brick in

when it's ready from the manufa
when we tell them to have it rea
that they produce it at that time
When they do, we begin t
the manufacturer after it's ready.
the ground and the job will take th
landed on the ground at different ti
may have 40 jobs running at the same time. So we'll have brick on the ground that we can service these 40 projects, as the projects are moving along.

And they move along at different rates. Some projects move along very quickly. Some projects move along and then they come to a stop because they have to put some more steel up or pour some more floors, or do different kind of construction aspects. And then we'll store brick on the ground that we had to bring in because it was ready to bring in. So the timing as to when it moves out varies.

UNIDENTIFIED MALE: How long have you been in business? (Phonetic)

MR. FORMICA: 1990.

UNIDENTIFIED MALE: And where have you been storing the brick up until now? (Phonetic)

MR. FORMICA: We first started in Elizabeth. The city had offered us this nice

(inaudible) land on the waterfront in Brooklyn. And we have been there for at least -- I believe about 12 years.

UNIDENTIFIED MALE: So why Riverdale? I -- I don't understand.

MR. FORMICA: I'm not sure if I can satisfactorily answer your question. I understand --

UNIDENTIFIED MALE: (inaudible) shutting down Elizabeth?

MR. FORMICA: Elizabeth closed down -- that -- when we had the opportunity to go to Brooklyn, which was an ideal location, that's where we went.

That property is actually controlled by the EDC, the Economic Development Commission or Apple Development, which is part of the city, and they actually want to use that location, and they are exploring -- there's always studies going on, it's like an ongoing thing, for a tunnel to go between New York and New Jersey.

So they want to preserve this property vacant so at any point in time they can do what they wish with it, regardless if there is a revenue stream for them or not, it doesn't matter.

UNIDENTIFIED MALE: The point in getting at, your bricks are somewhere now, right?

MR. FORMICA: They are located in Brooklyn. For the most part, correct.

UNIDENTIFIED MALE: And they can't stay there.

MR. FORMICA: No, the -- we have agreed with the city to vacate. And that's been a battle. We -- we would like to have been there. We --

UNIDENTIFIED MALE: How many bricks are there? (Phonetic)

MR. FORMICA: The site itself was about four acres. We occupied about -- about two acres worth of property.

UNIDENTIFIED MALE: (inaudible) --

MR. FORMICA: Yes.

UNIDENTIFIED MALE: -- but how many bricks are there?

MR. FORMICA: The quantity of brick, I can't -- know? (Phonetic)

UNIDENTIFIED MALE: (inaudible)

MR. FORMICA: A couple of million brick, I'm not exactly sure.

UNIDENTIFIED MALE: Well, (inaudible).

MR. FORMICA: I would have to go back and check to tell you more exact.

UNIDENTIFIED MALE: (inaudible) cubes of

brick (inaudible).

MR. FORMICA: Well, it fulfills a footprint of about two acres.

UNIDENTIFIED MALE: Well, what's the length of the storage area? (Phonetic) Paul, do you know?

MR. DARMOFALSKI: I can tell you in a moment.

UNIDENTIFIED MALE: (inaudible).

MR. FORMICA: And having four acres, afforded us the opportunity to bring more brick in earlier than we actually needed it.

UNIDENTIFIED MALE: How high are they stored on (inaudible)?

MR. FORMICA: Here, we're talking about going to 9 feet with 12 feet before.

UNIDENTIFIED MALE: (inaudible).

MR. FORMICA: I understand. It goes up to 15, 16, 18 feet in Brooklyn.

UNIDENTIFIED MALE: (inaudible) cubes on top (inaudible).

MR. DARMOFALSKI: The storage is indicated on the plan in red, temporary storage, is 1300 feet (phonetic) long.

UNIDENTIFIED MALE: How wide? Well, they're only going to go about, what, three pallets, about

nine feet wide (phonetic).

UNIDENTIFIED MALE: (inaudible)

UNIDENTIFIED MALE: How many square feet is that? About 13,000 square feet. That about a third of an acre. And you have got all this stuff on two acres now, and you're going to put it all on a third of an acre. I see -- a jamming up problem here. (Phonetic)

MR. DARMOFALSKI: A little over (inaudible).

UNIDENTIFIED MALE: Yeah. So you have, what, two million bricks you said up there? (Phonetic)

MR. FORMICA: About that.

UNIDENTIFIED MALE: How many fit in a cube? (Phonetic)

MR. FORMICA: Five hundred -- it varies, the brick comes in different sizes, but about 520, 525.

UNIDENTIFIED MALE: (inaudible) to the math real quick --

MR. FORMICA: What's going to have to happen, though, is that we're going to have to change the nature of our business. We can no longer -- now, period of time when we bring brick to when it has to get out, has to be shorter. Because we -- we don't have that window of keeping it there.

To take it from the manufacturer when it's ready, now we have to make sure that when we get it, it in has to go out quickly, because we can't afford to keep any extra things on the ground where we would have no space for it.

We may also have to bring in different product by truck, which is the more --

UNIDENTIFIED MALE: (inaudible) --

MR. FORMICA: -- expensive proposition (phonetic).

UNIDENTIFIED MALE: (inaudible) 4,000 cubes (phonetic).

MR. VENZA: At our last meeting, I brought up an issue of radioactivity.

MR. FORMICA: You did.

MR. VENZA: And you said you had no information on that, you knew nothing about it. If I -- if -- the board would allow me to read a paragraph from a site of a US environmental protection agency. The site is called "Becoming Aware of Radiation Sources."

Building products. Common building products such as brick, cement block, granite countertops and glazed tiles may contain radioactive materials due to their presence in (inaudible)

material from which they are made. Nearly all rock, minerals and soil may contain small amounts of natural (inaudible) radioactive materials. Typically found radio (inaudible) include radium, (inaudible) and uranium.

For example, soils of the US contain on average about one picocurie, a unit measure of radiation, of radium, per gram weight. Though they sometimes can contain more. When these soils or rock are incorporated into building materials, these natural occurring radioactive materials are included, as well.

Now, a picocurie is a very small amount of radiation. But we're talking about a lot of brick. So how -- are there any -- um -- um -- precautions that are taken that -- that would be taken? Do we -- do we know how much radiation this amount of brick would be giving off? We're in -- we're in a neighborhood now. (Phonetic)

MR. FORMICA: I understand. The -- after you raised that comment, I thought about it after our meeting last. And to answer your question directly, I don't know.

But what I thought about was, and the way I perhaps thought I may have been better able to answer

your question (inaudible) hospitals are built out of brick. Schools are built out of brick.

MR. VENZA: (inaudible) --

MR. FORMICA: There are massive structures--

MR. VENZA: -- most of them have some type of remediation system to keep an airflow or -- or anything like that. Now I understand that we're talking about -- in a hospital, a wall. But we're talking about blocks of brick, okay. Which -- um -- in -- in my thought process, would mean that there is more radiation in a condensed area.

Now, of course, it being out in the open is a good thing. But -- it's still going to be there.

MR. FORMICA: I can't give you a better answer than what I just gave. I'm not sure. I have never heard it before in any situation, even with the brick manufacturers where they have much more brick than we have, that radiation ever was an issue for any their workers.

And these places are -- OSHA supervised, they have a lot of regulatory agencies that are watching over their -- their manufacturing operations for pollutants that they may be emitting when they have the refractories that actually burn the clay. That seems to be a bigger issue, or an issue -- I

can't say bigger, because I don't know any issue relating to the radiation question itself.

VICE CHAIRMAN MAGENNIS: Mr. Formica, are there any permits -- environmental type permits or something that's special that would -- that you would be required to get either from the federal government or the local government to handle the material?

MR. FORMICA: No, nothing at all. The manufacturers have their own issues when they actually produce it, because they go through a refractory process. But when it's a finished good it's inert and there is nothing that we have for (inaudible).

VICE CHAIRMAN MAGENNIS: So you don't have any regulations --

MR. FORMICA: Correct.

VICE CHAIRMAN MAGENNIS: -- other than, like, OSHA, but nothing environmental.

MR. FORMICA: Correct.

VICE CHAIRMAN MAGENNIS: Okay.

MR. VENZA: You -- I'm glad that you looked into it. Um -- did you happen to look at the MSDS sheets related to -- do they -- do they touch on the subject?

MR. FORMICA: They do not.

MR. VENZA: They don't.

VICE CHAIRMAN MAGENNIS: Yes --

MS. HOLMQUIST: (Inaudible) question.

VICE CHAIRMAN MAGENNIS: -- yes, Donna.

MS. HOLMQUIST: I wasn't here at the last meeting (inaudible).

MR. FORMICA: Sure.

MS. HOLMQUIST: Isn't it (inaudible)?

MR. FORMICA: The -- they do when they manufacture the brick. And, again, I'm not a brick manufacturing expert. I'm actually a CPA. Bob, my partner, is with us tonight, who is the president of the business who knows more about the manufacturing, but I think I can speak to your question.

They do reclaim some of previously manufactured brick by regrinding it and putting it back in. But for the most part, it's just clay that they mine and they put some additives into it to give it some different color, different texture.

The biggest component of it is when they go through the heating process. It's a kiln and it's very hot and it's a long tunnel that they send the brick through.

There, as a result of the heating at tremendous temperatures, they actually turn it into a ceramic. And there, there is some emissions of

whatever it is that they have to put scrubbers on when -- before it goes out to the atmosphere. But beyond that, that's the extent of anything that they have to worry about in terms of environmental.

MS. HOLMQUIST: And (inaudible) deals with receiving or stock piling (inaudible) building materials. (Phonetic)

MR. FORMICA: There are some people that deal with the used brick. We don't --

MS. HOLMQUIST: (Inaudible).

MR. FORMICA: -- not us, we don't do that.

MS. HOLMQUIST: (Inaudible) and it won't be here (phonetic).

MR. FORMICA: No.

MS. HOLMQUIST: (Inaudible) brick (phonetic).

MR. FORMICA: Correct.

VICE CHAIRMAN MAGENNIS: Everything that you will be dealing with is product coming in, you will not be sending product out from this location.

MR. FORMICA: I'm sorry, say it again?

VICE CHAIRMAN MAGENNIS: Your intended use of the location here is only for product that is coming onto the site, you will not be taking product to the site to ship it out to someplace else.

MR. FORMICA: Yes, we don't -- exactly, we don't take products by --

VICE CHAIRMAN MAGENNIS: So it's all new.

MR. FORMICA: -- there is not -- they are not demoing a building or we're taking that brick and reclaiming it and restacking it and reselling it.

In fact, certain jobs, they actually like the look of a used brick, and manufacturers will actually product a brand new brick, they'll tumble it and they'll make it look like it's a used brick. And if we ever sell any brick that they wanted a used brick, it will be that brick.

The old, the used brick that you might get out of some buildings that they may have knocked down in Newark and such, the clay is often very soft, porous, it's not -- it doesn't have the compression strength that are needed for the new construction standards. So all the brick that we sell are all fresh brick that come right from the manufacturers.

VICE CHAIRMAN MAGENNIS: Just one question for Mr. Fenno. I know we discussed a little bit about how the railroad brings materials to the site and you allow people to, you know, use the site to ship it to some other places. And you talked a little bit this evening about, you know, how you get paid.

Is there any limitation on if somebody wants to buy brick, send it to Riverdale, and someone other than this gentleman here decides to ship it out. Are you limiting -- are you -- are they the sole shipper of brick that is going to be coming into Riverdale? Or could some other company come in here, deal directly with you, and decide that they want to have someone else ship their product?

MR. FORMICA: I would be upset if he says yes.

MR. FENNO: You should see the look on his face.

VICE CHAIRMAN MAGENNIS: Well, I just, you know, I read the material that was submitted --

MR. FENNO: I think, realistically, you know, we have in our agreement we have committed pretty much all of the usable space at this site for this purpose with Mr. Fomica's company. Certainly, things could change in the future. Whether --

VICE CHAIRMAN MAGENNIS: Well, it seemed like there was language in there that would allow it to change in the future, and I just -- you know, after hearing a little bit about --

MR. FENNO: I mean, typically, we -- typically, we -- we try to maintain as much control

and discretion and, certainly, if we were going to bring in another -- certainly under our agreement, if we're going to have a customer that is going to bring in a different commodity, we would have to come back to this board.

VICE CHAIRMAN MAGENNIS: I'm not even interested in another commodity, I'm specifically interested in -- if it's going to be used for shipping brick, you know, is it possible that somebody else could come in there and ship their own brick out, without using this gentleman here, who is testifying to things that he is going to do --

MR. FENNO: I -- I --

VICE CHAIRMAN MAGENNIS: -- or not do.

MR. FENNO: -- I'm really having a difficult time considering how that could happen with our agreement. I -- I -- (inaudible).

VICE CHAIRMAN MAGENNIS: It might clear it up for us, too, if --

MR. FENNO: It's hard for me to predict an absolute, (inaudible).

MR. PELLEGRINI: So there can be only one tenant on the site (inaudible).

MR. FENNO: Yes, I mean, we don't really refer to him as a tenant for --

MR. PELLEGRINI: He really is a tenant (phonetic).

MR. FENNO: -- for a reason. But, realistically, this -- this facility -- we made a commitment for a period of time that pretty much uses up the capacity of this facility. And I -- I just don't see how anybody else could (inaudible).

MR. PELLEGRINI: And, John, if they did decide to have another operation, is there anything we can do about that anyway?

MR. BARBARULA: Yes, they have to come back under the agreement each time. The only thing that would happen, if they were to manufacturer, even the Surface Transportation Board, which was the entity that determined, that said that -- if -- let me see if I can find it here.

If these were not trans-loading and they were manufacturing and processing facilities, then local zoning would be able to control. Because they would not be part of the transportation process.

So if they wanted to come in here and build a manufacturing plant on that site, it would come back for local zoning because there would be -- and that's why I analogized like a -- a Starbucks retail is not part of the transportation processes.

They use the -- I have it here. They use the word "intermodal" and "trans-loading" and -- basically, our limitations are that that -- that's when we can come in for zoning. If they decided that they were going to put a manufacturing plant here, then it's no longer railroad operations and it would be subject to local control.

MR. PELLEGRINI: Now what about a couple of trailers (inaudible) cinderblock (inaudible).

MR. BARBARULA: Another -- another use, another -- another type of product, receiving lumber, receiving apples, food product grade, things -- pursuant to our consent order, they would have to come back and tell us how they're going to handle it. But we can look at the health and safety. But it still has to be in -- what they call an "intermodal, trans-loading facility."

So if they wanted to come and have --

MR. PELLEGRINI: Lumber.

MR. BARBARULA: -- a huge lumber -- share the site somehow with them, they would come in and they would say here is what we're going to do. In that case, we would have to deal with, okay, you're storing lumber, what about fire, what about other safety for that regard.

But if the manufacturer, if they -- if they were to deliver the sand, the clay and try to put up a facility that would fire the brick, then it's -- then they are no longer in the transportation "intermodal" aspect, or "trans-loading", quotes, and they would have to meet the zoning, and that would not be permitted in this zone as a residential zone.

VICE CHAIRMAN MAGENNIS: I have another -- a question for you. I know that, you know, we talked about the health, safety and I also believe environmental was included in that, as well.

MR. BARBARULA: Health, safety and environmental -- unless it becomes -- unless we apply it -- non-uniformly or in such a way as to preclude utilization of the facility.

VICE CHAIRMAN MAGENNIS: Right. The question that I have -- it's similar to the one that I had for Mr. Formica. Are you required to file for certain permits to operate your equipment? You know -- I know if there was a building there and you had over a million BTU's, there's lots of restrictions that you have, you know, (inaudible) loaders couldn't go off site and, you know, just lots of -- lots of things that you would have to comply with.

Do you currently have to apply for any

permits to operate the equipment that you're intending to use at the site? If --

MR. FENNO: No (phonetic).

VICE CHAIRMAN MAGENNIS: -- this -- okay. So everything that you use there is no -- state, federal permitting required.

MR. FENNO: I mean, there is no state permitting. There is -- anything from a federal standpoint, we are regulated, we don't require a permit from (inaudible) for instance, from the federal railroad administration, which is -- which is a federal agency that primarily regulates safety on railroads. (Phonetic)

VICE CHAIRMAN MAGENNIS: Right, but I'm talking about more of the --

MR. FENNO: They -- for instance, they inspect our locomotives frequently. To make sure that they are in compliance with federal requirements. But there is no specific permit like -- (phonetic) --

VICE CHAIRMAN MAGENNIS: Well --

MR. FENNO: -- in the sense that you're talking about. (Phonetic)

VICE CHAIRMAN MAGENNIS: Since you brought up the locomotives, I mean, one of the requirements for -- if it was the commercial building, you would

have to have a certificate that someone is in there adjusting the combustion equipment to make sure that, you know, that it is in compliance with whatever standards are for, you know, hydrocarbons, carbon monoxide. Do you have the same requirements for your locomotive?

I mean, if we have got something that is coming up and down the tracks here -- are -- are you required to make sure that the carbon monoxide that it puts out, the carbon dioxide, etcetera, is within certain limits to make sure that they are not a health related issue for people, either working on it or living around it?

MR. FENNO: It's a -- it's a -- it's difficult for me to relate because it's such an entirely different -- different from the regulatory scheme, so to speak. The railroad locomotives are regulated primarily by the federal railroad administration. To some extent by the US EPA, as well.

And there's compliance -- requirements of daily inspection, there's requirements for more detailed inspections every 92 (phonetic) days. There's more detailed inspection after -- on every -- what is it, every year or something, yearly inspection

requirement. So there's -- there's significant regulation.

We do not have, like, a -- we do not have an air emission like a smokestack factor (phonetic). (Inaudible) --

VICE CHAIRMAN MAGENNIS: Well --

MR. FENNO: But there are regulations relating to a variety of things, including air emissions on -- on locomotives. And the federal (inaudible). There are federal regulations (inaudible). The Environmental Protection Agency is primarily the one for locomotive.

UNIDENTIFIED MALE: The federal EPA.

MR. FENNO: (inaudible).

VICE CHAIRMAN MAGENNIS: So there are requirements then for --

MR. FENNO: There are.

VICE CHAIRMAN MAGENNIS: -- and for --

MR. FENNO: -- there are. And they enforce them themselves, they have their own inspectors. The federal road administration comes all the time, actually. They are here all the time to look at this railroad. They are federal inspectors.

MR. VENZA: Going along with that issue, um -- I know you told us -- locomotives will not be used

to move the cars around on the site. But there would be another means of moving them, correct?

MR. FENNO: Well, I can't say locomotives won't be used to move cars on the site, because the locomotives will bring the cars there, they will bring them back --

MR. VENZA: -- understand (inaudible) understand --

MR. FENNO: There may be a circumstance in which a locomotive might be asked to move a car around. But more likely, the -- as far as moving the cars a little bit so that they can get the next cars to the loading platform, would mostly likely done by Mr. Formica (inaudible), equipment, and I think he talked about that last time.

MR. VENZA: And who regulates your equipment?

MR. FORMICA: There is no regulation. We -- essentially, what we were talking about is -- if the railroad brings in, say, two rail cars, and one of the rail cars is not acceptable from the platform to unload, it's easy to -- with a forklift to pull those two trains forward enough -- enough of a distance, to put that second car in place so you can access it.

MR. VENZA: So you're just essentially using

a hi-lo and --

MR. FORMICA: Exactly.

MR. VENZA: -- move things around.

UNIDENTIFIED MALE: How many hi-los (inaudible)?

MR. FORMICA: There's three -- two are pretty active, and two others, I would say there is four. And I think at any point in time there would be two that might be active. Maybe three.

UNIDENTIFIED MALE: And how many truckloads a day? (Phonetic)

MR. FORMICA: There will be two, sometimes three regular routine truck operations that we have. Each one will do two loads a day each. So it will be about six. It could be upwards to, if they get lucky, eight loads a day going out.

UNIDENTIFIED MALE: (Inaudible) tractor-trailers.

MR. FORMICA: Yes. In fact, some days none.

UNIDENTIFIED MALE: And how many people are going to be working in the office (phonetic)?

MR. FORMICA: In the office itself?

UNIDENTIFIED MALE: (Inaudible).

MR. FORMICA: Basically, we just have one yard manager. And we have three -- maybe three people

to assist. Unloading the trains, just keeping things tidy.

UNIDENTIFIED MALE: Do you own these trucks to transport? (Phonetic)

MR. FORMICA: We do not. They are common carriers.

MAYOR BUDESHEIM: (Inaudible). You don't order the bricks, you don't own the bricks, you don't deliver the bricks.

MR. FORMICA: I can only tell the truth. If it something that you didn't like --

MAYOR BUDESHEIM: I (inaudible) what you're doing -- (inaudible) --

MR. FORMICA: -- I'll clarify it.

MAYOR BUDESHEIM: (inaudible).

MR. REILLY: John, if you could help me understand a couple of things here. I know that we have gone over it both last time and this time around.

If I understand it correctly, municipalities, town, cities, whatever, have little -- little of none jurisdiction over the railroad operations. They can basically operate 24/7 and the railroad can come through at any time. Is that correct?

MR. BARBARULA: Right.

MR. REILLY: They can --

MR. BARBARULA: The trains going back and forth on the rail is completely federal.

MR. REILLY: Right.

MR. BARBARULA: The utilization of any property adjacent to the railroad, as long as it is trans modal or trans-loading, being part of commerce, it is federal preemption, no zoning applies.

MR. REILLY: Okay.

MR. BARBARULA: So that, although if this was done in -- anywhere else in the municipality, we would consider it a storage facility or warehousing type facility and apply our zoning to it. Because it is on railroad property, and it's part of the transportation processes, that is preempted by federal law.

Where we have control is health, safety and environmental -- but that is limited by, it must be uniformly applied throughout the municipality. You cannot say that this applies to this site and nowhere else. And that it cannot be applied in such a restrictive fashion so as to preclude the utilization of the site.

MR. REILLY: Okay.

MR. BARBARULA: What you have here is you

have some interesting elements, in that there is a significant water transportation facility that brings us a number of serious health issues, in terms of -- and safety, primarily safety, that you want to make sure that the utilization in their transportation processes do not interfere in such a way as to create a safety hazard.

And that's why I said to you that you certainly can require an appropriate legal approval of the North Jersey Water Commission because they are the beneficiary of the perpetual easement.

And you see in that letter that we got tonight, and I only got it tonight also, that one of the things they say is that they feel that it is inappropriate (phonetic) that they would have to -- the railroad would have to move that stack -- or stacks plural.

MR. REILLY: At what point in time, once a product is off loaded from a rail car, once -- once it's physically off loaded, and that -- let's make the assumption that can be off loaded at 3 o'clock in the morning.

MR. BARBARULA: It can be.

MR. REILLY: No problem. Not for me it wouldn't be --

MR. FENNO: Well, maybe we should just stop right there, because we did make representations about when the materials -- (inaudible) --

UNIDENTIFIED MALE: (inaudible) --

MR. FENNO: -- would be off loaded from the railroad cars. And that is (inaudible) --

MR. REILLY: Appease me; let's just -- just go over it again so I can under -- so I can (inaudible).

MR. FENNO: It (inaudible) daytime operation (phonetic).

MR. FORMICA: Correct, yes.

MR. REILLY: So you have -- so conceivably -- let me see, the intent of the operation is that you might have a rail car come in at 3 o'clock in the morning, but your operations -- because this is where I get a little bit confused, because we're not dealing with one operation.

So when I hear Mr. Barbarula speaks about, you know, the federal law and the intermodal and the trans modal and whatever heck else you're talking about, it gets a little bit, you know, convoluted to me. So I need to try to understand this.

You know, if there are two businesses, of which -- which we are unable to regulate either, and

it -- it becomes a little bit frustrating. So when we begin to go over and over and over the same things --

MR. FORMICA: We understand.

MR. REILLY: Okay. Now, so by way of some type of agreement, and I don't know exactly what your agreement is. But the agreement is you won't offload or your tenant -- and I know that you don't like to use that word, but in my mind I kind of use that, because that's, in my mind, what it is -- your tenant will not, by some type of agreement, offload at 3 o'clock in the morning.

MR. FENNO: That's correct.

MR. BARBARULA: In the application that was submitted (inaudible) signed by Mr. Fenno (inaudible) operation (inaudible).

MR. REILLY: Okay.

MR. BARBARULA: Just for the record, again, hours of operation for the rail car unloading and truck loading would be between 6 a.m. and 4 p.m.

MR. REILLY: Okay, that's good.

MR. BARBARULA: Monday through Friday, so the rare Saturday activity (inaudible) few hours to accommodate (inaudible) of such deliveries. Rail car unloading will typically start about 7 a.m. --

MR. REILLY: Okay.

MR. BARBARULA: -- an hour after opening.

MR. REILLY: Okay.

MR. BARBARULA: No work it conducted on Sundays or holidays.

MAYOR BUDESHEIM: They're meaningless. Because those are zoning issues and we have no control. So if they decide, screw it, we're going to start doing it at 3 o'clock in the morning, there is absolutely nothing we can do with that.

UNIDENTIFIED MALE: (inaudible) --

MAYOR BUDESHEIM: I don't (inaudible) --

MR. FORMICA: That might be true, but we have been doing this awhile, and we don't do that. And (inaudible) --

MAYOR BUDESHEIM: (inaudible) the business, whatever business you're in, you could sell it tomorrow.

MR. FORMICA: But when you --

MAYOR BUDESHEIM: No, no. We have been burned so many times by promises. That's meaningless. So I -- (inaudible) don't be --

MR. REILLY: It's --

MAYOR BUDESHEIM: -- don't be mollified by what was just read to you. (Phonetic)

MR. REILLY: Well, that was my question.

MR. FENNO: Can I respond to that?

MR. REILLY: Absolutely.

MR. FENNO: Because I think, you know, maybe the railroad would get sold and I won't be here either. But, you know, and -- Mr. Barbarula can certainly give his opinion to what I'm about to say, but it would seem to me --

MR. BARBARULA: (inaudible) --

MR. FENNO: It would seem to me that, you know, the railroad has come here seeking revisions under a consent order, and has made representations to the board in order to receive the board's agreement with those revisions (phonetic).

And, frankly, if the railroad -- and when I say the railroad, the railroad and its customers, were to blatantly violate those representations, I personally would expect to receive an order to show cause from -- from Mr. Barbarula. (Phonetic)

MR. BARBARULA: I think that's the testimony of Mr. Formica is his operation, as a customer of the railroad, is that Monday through Friday with the occasional Saturday. That's clear. And if he were to misrepresent that, then we would have the right (inaudible) and go forward on that.

What the Mayor is saying is also true.

Because if the economic situation changes, unfortunately, because the railroad is governed by federal law, and it could be -- it could change to be at night.

Now, one of the things that people have -- everybody here has to understand, is that whenever the train arrives in Riverdale, cars will be disconnected from the remainder of the train. The disconnecting processes of taking off car one and two, load it with brick, make noise. If they come at 3 o'clock in the morning, 4, 2, 5 or 1 o'clock, there is, as the mayor has indicated, nothing that can be done.

Now, Mr. Formica says that he doesn't send his workers out at 3 o'clock in the morning to then take it from that rail car and put it on trucks. That's --

MR. REILLY: But again that -- not that becomes now --

MR. BARBARULA: -- comes in (inaudible) --

MR. REILLY: -- but now, if you hold on for a second. Now that becomes a separate business operation. When the train comes, that's a train operation. When they -- correct me -- when you -- if a rail car has to be disconnected, that's not his operation. That's a rail operation.

MR. BARBARULA: That's correct.

MR. REILLY: Is that correct?

MR. BARBARULA: But in the -- in the overall (inaudible) of interstate commerce, the entire processes from the manufacturer to the ultimate consumer delivery is the transportation process.

MR. REILLY: Yes.

MR. BARBARULA: Yes, in a common -- in the common layman's sense, the delivery of these rail cars to this site is under the express control of the railroad.

MR. REILLY: John, the reason why I -- the reason why I question that is if because the disconnecting to the rail cars was not a rail operation, and if it was his operation, and he's not going to have somebody there between the hours of -- other than normal operating hours, I don't have an overly large concern about the fact that something there may not happen.

The -- the fact -- well, the fact is if it's a rail operation at 3 o'clock in the morning, he could be home in bed, which is fine, because they are going to be disconnecting and making the noise. We don't have any control over that, and I can appreciate that. Don't like it. But I can certainly appreciate that.

What I am questioning is what control do we have. I have a real huge concern when I look at all this red on -- on this plan. I see a huge concern about how much warehouse space that -- that we have become.

I have a real concern that we're negotiating with the railroad and we have another business entity here. And you're telling me, which I can appreciate is true, but we have -- but we're being forced, you know, to deal with something that we have no control over.

I think that we should have some control over how much warehouse space we want the tenant to have. We -- I don't know. That's certainly --

MR. BARBARULA: If you -- if you, in a non-discriminatory way, can show that health, safety or environmental concerns relate to the amount of storage on the facility, then that is the only way that you can legitimately exercise control.

If you cannot show that this storage -- because the fact that it's storage is not within our control, because that would be a zoning issue. What we try to do back -- more than 10 years ago, was to say that off loading the corn syrup, keeping the corn syrup in tanks, then heating it up and transferring

it to trucks was a manufacturing process and, therefore, subject to zoning, and that was determined to be trans-loading, that's not subject to our regulation.

So it's not that you have no control. It has to be your control on this is -- does this much storage adversely affect the health of the community. Does this much storage adversely affect the safety of the community? Does this much storage affect the environment and has environmental concerns for the community.

MR. REILLY: How about the quality of life of the community.

MR. BARBARULA: The quality of life, unfortunately, is not an issue. If -- and this is throughout the country and people wake up one day on a rail line that hasn't been used in 80 years, and all of a sudden they see these lovely little machines that come by and pick the rail, put down new stone and throw down new ties, and throw down new steel, and then a freight train comes by and the pull off their (inaudible). Because they never thought that the old rail lines would be created (phonetic).

We, as a country, are going to -- a lot of old rail lines are going to be reactivated if the

current policy of this administration is ever implemented, because that's part of what this administration is looking to do. Increase public transportation and get us out of our cars.

MR. REILLY: No, I can appreciate that.

MR. BARBARULA: That quality of life is people bought houses by a rail line.

MR. REILLY: And they knew that the rail line was there when they purchased their home, absolutely.

MR. BARBARULA: It was used or not used --

MR. REILLY: My -- my larger question, John, I understand, and I know that we --

MR. BARBARULA: Nothing of what I'm saying is very popular. But I -- I am just giving you --

MR. REILLY: No, I understand that.

MR. BARBARULA: -- my legal opinion --

MR. REILLY: I understand that.

MR. BARBARULA: -- and you decide what to do with it.

MR. REILLY: No, I certainly understand that. But when I see a railroad or a rail line now being used as -- as a storage facility, that -- that just kind of gets under mu skin and it -- and it's beyond my belief that the law was intended to be that.

So I -- I have a real hard time believing that -- that the law intended that to happen.

MR. BARBARULA: I can tell you that that is exactly my position. And in the page five of the court decision, in which we exacted our consent order, the judge ruled that this facility is not authorized by local zoning regulations as legally immaterial (phonetic) (inaudible).

MR. REILLY: I'm assuming that that judge didn't live by a rail station then.

MAYOR BUDESHEIM: So you know, John, I think there was a difference between the two situations. If I'm not mistaken, the corn syrup stayed in the train cars (phonetic).

MR. BARBARULA: Right.

MAYOR BUDESHEIM: They didn't dump it on the side of the -- on the pavement and then another truck came and sucked it all up. And that's the difference here. Because it stayed within the train cars.

Now, as we have been trying to point out, it's no longer becoming a railroad operation, now they have a tenant/customer/trans-loader, whatever description you want to use, wholesaler, storage, maintenance, whatever. And I think that's the difference. I think that's what the board is having a

problem reconciling.

You know, we found out yo
for some reason, I didn't know ther
in that ruling that retail can't be
not allowed there. I know that the
at the site in Butler, they have al
trailers. The trains (inaudible) office trailers up
there. You know.

Is there no restrictions? How does the judge then restrict livestock? If we have no control, how --

MR. BARBARULA: He didn't. We did by consent order in order to -- and we exacted that in order to cease the litigation with the railroad and the railroad conceded to agreeing to that.

MAYOR BUDESHEIM: But what's to stop them from going back and saying, hey, we want to sell chickens there now and, because we have no control, again, that's almost meaningless.

MR. BARBARULA: Well, they have to go --

MAYOR BUDESHEIM: (inaudible) -- they didn't want to do at the time (inaudible).

MR. BARBARULA: Well, let's put it this way. All I can tell you, Mr. Mayor, is that in order for them to do that, they have to go back to the board and

show that there is sufficient information, that the consent order should be abrogated.

I think that they would have a tough time in that regard, because if they felt that it was an easy walk in the park to go in and change the consent order, they would have done it, rather than come back here. Because subsequent municipalities did not exert and did not extract from them as favorable a decision as we have gotten.

So I do believe that in that regard, that's one of the reasons that our consent order (inaudible) gives this municipality a great deal of benefit that other municipalities, unfortunately, do not have. And one of them is that they can't bring livestock here, unless they go back to the board.

And I think that especially with all of the current nastiness, the swine flu, and everything else, and the fact that there is residential in the proximity of other houses, I don't -- I don't know whether they would get a state -- a state court favorable to changing the (inaudible) order. And I think that they would have a very difficult time in that regard.

VICE CHAIRMAN MAGENNIS: John, I know that we don't have very much control over how the railroad

conducts their business. But I think what we -- what we have here are really two issues. One is the railroad's typical operation of bringing the car in and, you know, someone is going to unload it, which is the daytime operation.

Is there anything that would, you know, restrict the railroad themselves by putting stricter language in -- in the contract that they have with their customer, saying that you will only operate between the hours of 7 to 4? So it's not an issue of us having to regulate their internal operations, but they're regulating it themselves?

And I know there is some concern here that -- that the customer at the site might choose to operate at hours that are different than what's stated. And right now, there is nothing in the contract that really restricts it or --

UNIDENTIFIED MALE: (inaudible)

VICE CHAIRMAN MAGENNIS: Well, there would have to obviously be some kind of language or something in there, as well, too. But at least it would be --

UNIDENTIFIED MALE: Isn't (inaudible)?

VICE CHAIRMAN MAGENNIS: Well, you can't separate it. From what I'm hearing our attorneys,

from our legal experts, is that we have no control over it. And if we can't control it directly, perhaps the next best approach would be to have them control it themselves, and the contract that is set up with their customer. So it's very clearly stated, you know, it's not what we thought they said, but it's in writing --

MR. BARBARULA: Those two parties can always contract for anything, that's not an issue (phonetic). The issue is could we impose that as a -- as a condition between their contractual relationship. And that answer is no.

VICE CHAIRMAN MAGENNIS: But they can do it themselves.

MR. BARBARULA: They could always do it themselves. We do not have any -- any powers to tell them what their contract is between the railroad and their transporter.

MR. FIORILLA: Mr. Barbarula, the railroad is willing to put that into the order that comes from this board. In other words, make it part of a new consent order.

MR. BARBARULA: I --

MR. FIORILLA: On this particular --

MR. BARBARULA: -- I said that you guys

could do it and you (inaudible) consent to it, we can't force you.

MR. FIORILLA: Well, I know, but we could -- we could agree to it as part of --

MR. BARBARULA: Absolutely.

MR. FIORILLA: -- couldn't we?

UNIDENTIFIED MALE: Sure.

MR. FIORILLA: Therefore, it would be directly with us. We could -- we would --

UNIDENTIFIED MALE: That would be, presumably, legally enforceable by the town --

MR. BARBARULA: Well --

UNIDENTIFIED MALE: -- well --

MR. FIORILLA: Which is what you want.

MR. BARBARULA: Exactly. And you can voluntarily agree to it, that's not an issue.

MR. FIORILLA: Well, we're saying that we would continue doing that, you know, we would have language that talks about brick business and the hours, and so on.

MR. BARBARULA: That's your answer. If they are willing to do it, they can give it to us voluntarily. We can't mandate their contract, but they can voluntarily offer it. And you hear that that's what they are going to do.

MAYOR BUDESHEIM: Well, Mr. Magennis, I think one of the issues, though, is once we do that it's (inaudible).

VICE CHAIRMAN MAGENNIS: We would have to, clearly, depend on our legal counsel to, you know --

MR. BARBARULA: We could -- we could do it. And it would be --

VICE CHAIRMAN MAGENNIS: Right. To make sure that --

MR. BARBARULA: -- violation of that would require the will of the municipality to go in and enforce it.

MR. FIORILLA: It's just as enforceable as this consent order.

MR. BARBARULA: Well, no, I understand, I'm not saying it isn't.

MR. FIORILLA: Well you agree with me. (Phonetic)

MR. BARBARULA: Yeah, I do.

MR. FIORILLA: Okay, I just want to make sure that --

MR. BARBARULA: But I'm just saying that I want to make it clear for the record it's not something that we can force you to do.

MR. FIORILLA: No, but --

MR. BARBARULA: You're making a voluntary offer.

MR. FIORILLA: I think it's also important to understand that we haven't ignored this consent order.

MR. BARBARULA: I understand that.

MR. FIORILLA: We have come here voluntarily because we're under this consent order. We didn't ignore it.

MR. BARBARULA: Oh, I --

MR. FIORILLA: We didn't have you dragged into court to enforce it. We came here, right?

MR. BARBARULA: I --

MR. FIORILLA: I mean, that's all we can say. That we came here in good faith --

MR. BARBARULA: So, yes --

MR. FIORILLA: -- under the order.

MR. BARBARULA: -- we could, we can modify that, with their consent we can always modify (inaudible) and the agreement actually says --

MR. FIORILLA: Yes, it (inaudible).

MR. BARBARULA: (inaudible).

MR. FIORILLA: And we said that we would -- that the railroad --

MR. BARBARULA: The difference is that the

chairman is saying is there any way we can put more (inaudible) in it and said we can't do it legally, they can always do it. And what they are saying is that they are more than willing to do that.

VICE CHAIRMAN MAGENNIS: Well, that would --

UNIDENTIFIED MALE: (Inaudible).

VICE CHAIRMAN MAGENNIS: I knew that we couldn't do it, but there is nothing to stop them from doing it.

MR. BARBARULA: They're saying that they would do that. And what they say now is taking it a step further --

VICE CHAIRMAN MAGENNIS: They'll put it in the consent agreement --

MR. BARBARULA: -- and rather than just in the resolution, he's willing to modify the consent order to reflect that.

VICE CHAIRMAN MAGENNIS: Okay. I know that we really haven't followed, probably, the, you know, your -- your path for getting through this process. I know -- is there anything that you formally wanted to -- I know we're open ended here --

MR. FIORILLA: I think I presented everything I -- (inaudible) --

MR. FENNO: (inaudible) make clear, so you

know, like you, we received this letter from the water district late today. I think it specifically addresses, I think it's section 10 of the agreement that talks about -- of an easement agreement, it talks about what -- what the railroad had agreed to do, as far as protecting the water line in the future.

And I just want to make clear that the conditions, which are really kind of forward speaking things that will happen in the future, that all of these conditions that are set forth in this letter are acceptable to us and we fully intend to comply. There is no concern -- question about that.

VICE CHAIRMAN MAGENNIS: As --

UNIDENTIFIED MALE: Mr. Chairman -- (inaudible).

VICE CHAIRMAN MAGENNIS: I just have one more question, and I know it came up a couple of times with regard to -- to safety in the event that there was a problem with the -- with the water pipe. How long does it take you to move the product that you have, you know, over the water pipe? I know you said there would be, one cube, about 500 or so brick, I think, in one.

MR. FORMICA: Yes --

VICE CHAIRMAN MAGENNIS: I mean, if it's 9

foot high -- I mean, we don't know your operation. How long would it take you to go in there and move (inaudible)?

MR. FORMICA: The forklift will lift up two cubes at a time. And I think the 9 feet proposition here is about 3 cubes.

VICE CHAIRMAN MAGENNIS: Three cubes.

MR. FORMICA: So it will take less than a minute to move a stack of three.

VICE CHAIRMAN MAGENNIS: Right.

MAYOR BUDESHEIM: How far away are you moving it? How can you say less than a minute? You have -- you have to move it 500 feet away.

MR. FORMICA: For -- if I'm moving it a mile away, it will take -- whatever time it takes to move--

VICE CHAIRMAN MAGENNIS: Right. To travel--

MR. FORMICA: -- to physically get access to the cube, lift it up and then begin to pull it away, depending on how far, of course, you move it, it's rather quick.

VICE CHAIRMAN MAGENNIS: You're prepared to move it, though, relatively quickly.

MR. FORMICA: Correct. Of course. Yeah, we don't have anything -- anything (inaudible).

VICE CHAIRMAN MAGENNIS: Okay, I'm sorry?

COUNCILMAN FALKOSKI: I just wanted a qualification, I'm reading the (inaudible) reports, and on page four -- it listed as exempt from the STB jurisdiction is motor vehicle transportation that is a transport (inaudible) deliveries. It appears that the proposed activity is a transfer and, therefore, may not be under STB jurisdiction. (Phonetic) Could I get a clearer explanation of that (phonetic)?

MS. HOLMQUIST: Yes. When I looked at the regulation for this (inaudible) nature, and one of the things that (inaudible) instances where the STB has jurisdiction and instances where it doesn't. And I was not at the last hearing on (inaudible) but it didn't seem from the minutes that a lot of testimony was given on those regulations to you. And how this application either falls under that type of jurisdiction or not. (Phonetic)

And I guess one of the questions that (inaudible) is having to do with the (inaudible) and whether they are classified as motor carriers or (inaudible). Do we know that?

MR. FORMICA: I don't -- since it's common carrier (phonetic), and it's not within my operation, I'm not sure how they are classified.

MR. FENNO: It would be considered motor

carrier (inaudible), I'm sure. (Inaudible) typically doesn't operate trucks.

VICE CHAIRMAN MAGENNIS: I see where you're going with that.

MR. FENNO: So, certainly, they would be considered motor carriers, they are common carriers.

MR. FORMICA: I think a forwarder would be a consolidator of materials. Who takes many different products in, will then warehouse and then redistribute them from a location. Not so in our case. It's a (inaudible) dedicated for this operation onto itself. (Phonetic)

MS. HOLMQUIST: (inaudible) that I had in reviewing this matter is that it seems to be the applicant's position that (inaudible) completely under the jurisdiction, etcetera, etcetera, and counsel -- board's counsel position is similar, in that he is relying on the law for the '99 (phonetic).

Now, other aspects of (inaudible) that's what comes to my mind, because that is under federal regulation and there has been a lot of case law over the last 10 to 15 years, and it has evolved to the point where the (inaudible) carrier has to demonstrate to the board that there is a significant gap (phonetic) and that's why they need that location.

(Phonetic)

I mean, a lot of cases board retains their own experts, radio frequency experts to verify the fact that the carrier is giving correct testimony and that there is no alternative location that could fill that gap. I think the board doesn't have an expert on the STB issue. (Phonetic)

I'm not qualified as an expert in that law, you know, even though I looked at it and tried to present you with the facts as I saw it. And I'm not wholeheartedly convinced that the conditions that the applicant is offering to you that everything is exempt is -- is an accurate position. (Phonetic)

And I -- I understand what the gentleman is saying about what (inaudible) motor carrier versus a freight forwarder, but we don't have that information to substantiate what I believe to be a truthful conclusion. But we don't have that (inaudible) in front of us so we can question and ascertain whether that conclusion is correct. (Phonetic) So I think we're missing a lot of information here.

The other thing, you know, that also jumped out at me is that we have such an incomplete site plan in front of us. I don't recall seeing anything in the consent order saying -- and they don't have to show

you as much detail as -- as any other site plan application.

And, you know, some of it is quite glaring. Um -- I don't know whether they are asking for waivers from those requirements. I didn't see anything in the minutes. I haven't heard anything tonight. Um -- that would seem to be a procedural issue that (inaudible).

Um -- the third issue that troubles me is that, evidently, from my review of the consent order, a traffic study was -- was performed the last time around. I haven't seen one for this and, yet, it seems to me that the trucking activity is going to be even more intense. (Phonetic)

Um -- you know, so those are some issues of -- um -- evidence, if you will, and details that I think are lacking. (Phonetic)

VICE CHAIRMAN MAGENNIS: There was testimony to the traffic, it was about eight to ten trucks during the busy season. A day.

Okay. I have a motion to open it up for the public so that they can ask questions for the testimony that's been presented.

Yes, Mr. Lucente, if you step up front and state your name and -- come up to the microphone so

everybody can hear you.

MR. LUCENTE: Where would you like me to go (phonetic)?

VICE CHAIRMAN MAGENNIS: It doesn't matter.

CLERK: Up here is fine.

VICE CHAIRMAN MAGENNIS: Yes, right there, there is more room for you.

MR. LUCENTE: John Lucente and family, 3 Munn Avenue, Riverdale, New Jersey. We have been residents in town for 36 years. And I tried to interrupt before because I thought it was relevant at the time. And I -- I apologize for the last meeting, I meant to bring up something concerning the pipes and I forgot to.

I did not hear anything in the report on the -- on the safety of the pipes, concerning the Ramapo fault that runs through our property. And I would think that would be quite a consideration for the people that own those pipes, because in the 36 years we have lived here, there were two times that our house rumbled and Mr. Darmofalski could check those dates, I don't have them.

Um -- who knows what happens with the Ramapo fault or any other fault. And that's my main concern about those pipes. I brag to people that we live up

high and we could never have a flood. But, yes, we could. Thank you.

VICE CHAIRMAN MAGENNIS: Do you have a question?

UNIDENTIFIED MALE: Do you have a question, John?

VICE CHAIRMAN MAGENNIS: That was more of a statement. But do you have a question for the testimony that was --

MR. LUCENTE: No (inaudible).

VICE CHAIRMAN MAGENNIS: Okay. Is there anybody else from the public that has a question?

Just come forward, state your name and -- up to the microphone that Mr. Lucente was at.

MR. SCIARRA: (Inaudible) couple of statements.

VICE CHAIRMAN MAGENNIS: Well, statements are later. If you have a question --

MR. SCIARRA: All right, I do have one question. They have stated that --

VICE CHAIRMAN MAGENNIS: Could you state your name and --

MR. SCIARRA: Dan Sciarra, 1 Munn Avenue, Riverdale. I just wanted to say that I had eight -- eight tractor-trailer loads, I figured 24 skids per

tractor-trailer load, and if I'm right, that's 192 moves loading the eight trucks. Who should I address this to, I guess Mr. Formica. (Phonetic)

I would assume if the trains come in and bring the same amount in, that's 192 moves coming off the train, so that's over 400 moves with the unloads a day. (Phonetic)

MR. FORMICA: We don't get trains every day.

MR. TURZILLI: (Inaudible).

MR. SCIARRA: You're going to load -- if we load the eight trains --

VICE CHAIRMAN MAGENNIS: Excuse me, could you just state your name so that -- since you're answering the question, so that we have it on record your name --

MR. TURZILLI: Robert Turzilli, T-U-R-Z-I-L-L-I.

VICE CHAIRMAN MAGENNIS: And --

MR. TURZILLI: President of (inaudible).

VICE CHAIRMAN MAGENNIS: Okay.

MR. SCIARRA: All right, so we're going to load, let's say, eight tractor-trailer loads, figure 24 skids a truck, right. 192 moves.

MR. TURZILLI: And that's on the high side.

MR. SCIARRA: On the high side. They got to

come in at some point -- you know, during the week. Maybe not the same week but at some point. So I'm figuring 400 moves a day.

MR. TURZILLI: That's not going to happen. You won't get that many carloads in the course of a week.

MR. SCIARRA: How many carloads do you assume a week?

MR. TURZILLI: Three.

MR. SCIARRA: Three carloads a week.

MR. TURZILLI: Uh hum.

MR. SCIARRA: Three carloads a week average what, four tractor-trailer loads on a carload.

MR. TURZILLI: (inaudible).

MR. SCIARRA: So that would be four, eight -- well, that's only 12 loads a week going out then. That's more accurate of what the operation is?

MR. TURZILLI: That's why I said eight (phonetic), most of the time we send out four, five, six.

MR. SCIARRA: And you're assuming that these trucks are going to get back at -- you said they go out for a second load. Now, I can see if they are going out for a second load if they are coming out of Brooklyn going into the city. But here they are going

out of Riverdale and going into the city. Now you have got a lot more (inaudible) time.

MR. TURZILLI: Who said they were (inaudible).

MR. SCIARRA: I'm assuming --

MR. TURZILLI: No, that's incorrect.

MR. SCIARRA: -- where is most of the work?

MR. TURZILLI: -- that's incorrect. They could go to the city, they can go to New Jersey, they can go around the corner if there is a job being built here. But they can go anywhere --

MR. SCIARRA: What percentage of your work would you say is New York?

MR. TURZILLI: Maybe 60 percent.

MR. SCIARRA: But most of the time they would go in the city, though. But they wouldn't get back as soon as -- as they are right now.

MR. TURZILLI: Uh hum.

MR. SCIARRA: They might get back a lot later.

MR. TURZILLI: Depends on traffic.

MR. SCIARRA: Might not even make a second trip. Or, okay, I just wanted to -- just wanted to get those two questions. Thank you.

VICE CHAIRMAN MAGENNIS: Is there anybody

else from the public that would like to come forward to ask a question. Yes.

MS. MAJERSAK: (inaudible) Majersak.

VICE CHAIRMAN MAGENNIS: I'm sorry, we couldn't hear --

MS. MAJERSAK: Emanuela Majersak.

CLERK: -- how do you spell the last name?

MS. MAJERSAK: M-A-J --

CLERK: M-A-J --

MS. MAJERSAK: -- E-R-S-A-K. I have a very simple question. Um, I was wondering why Riverdale is such an attractive location for you. Considering that it's not even half the storage that you have in Brooklyn now.

MR. FORMICA: The rail locations are becoming more and more difficult to find. It's as simple as that.

MS. MAJERSAK: Right.

MR. FORMICA: And --

MS. MAJERSAK: But you --

MR. FORMICA: -- there was a location that was closer or better -- (inaudible) --

MS. MAJERSAK: I find it hard that, you know, there is no other better location, this is in a residential neighborhood, it can't be good for you for

your operation.

MR. FORMICA: (inaudible) that we're here. It's a suitable location that works for us. And of all of our exploration and attempts to find alternatives, this is what we came up with. And this will work.

MS. MAJERSAK: This is the only location that you can go to since you have to vacate the Brooklyn lot.

MR. FORMICA: If you can find a location for us--

MS. MAJERSAK: No, I would be happy to, but, uh, I work --

MR. FORMICA: (inaudible) --

MS. MAJERSAK: -- by what time do you have to be out of Brooklyn.

MR. FORMICA: We actually committed to be out of Brooklyn by May 31st.

MS. MAJERSAK: All right, thank you.

VICE CHAIRMAN MAGENNIS: Anybody else from the public. Okay, one more.

MR. ALLAN: William Allan, 1A Munn Ave. My question was --

CLERK: Spell the last name, please.

MR. ALLAN: A-L-L-A-N. I did buy the house

in Riverdale by the tracks. I didn't know I bought a house by the tracks with a water line a couple of feet underneath the ground there.

So, uh, the question was -- isn't -- isn't that a safety issue being right there between the weight of the bricks, the weight of the forklifts driving over these pipes.

First I heard it was five feet deep, then I heard it was eight feet deep, it might be three feet deep. Nobody knows. But between the ground freezing and thawing out, freezing up and the weight of these hi-los going over these pipes, there is a chance it could break.

Don't you -- and I don't see how you can move a -- load of bricks in a minute with all mud and everything if -- if the pipe breaks and there is water and mud and -- the forklift will tip a little, maybe the bricks will go. You got a mess. And our houses will be shot. We'll get all that water in there.

Isn't there a better spot to put this place where maybe the water line moves away from the tracks a little more or where there is not a waterline where you would store these bricks, down the tracks a little bit, another town maybe.

VICE CHAIRMAN MAGENNIS: Paul, do you want

to address the issue with the safety, with the concrete pipe (inaudible) --

MR. ALLAN: I mean, if that's not safety, I don't know what is.

MR. DARMOFALSKI: The concrete pipe is under the jurisdiction of the water commission not under Riverdale (inaudible). They answered that question and they said that they feel it is safe (inaudible) nine feet high for brick storage. (Phonetic)

MR. ALLAN: Well, we went from 12 to 9, so that was a safety issue right there that's --

MR. DARMOFALSKI: It's been evaluated by both sets of engineers and that's the conclusion (inaudible).

MR. ALLAN: And then when we heard five feet and eight feet, maybe we can dig a test -- and see how deep it really is.

MR. DARMOFALSKI: (inaudible)

MR. ALLAN: It might be three feet.

MR. DARMOFALSKI: Probably would be a good idea.

VICE CHAIRMAN MAGENNIS: I mean, the water company is responsible for the pipe. I mean, they are not going to take unnecessary risk. And if they sent a letter to us saying that they are comfortable with

what's being proposed, and I think we have to accept it. It's their professional engineer that's, you know, corresponding with us.

I think we also heard testimony that they would go someplace else if they felt another suitable place was available. I think that was the second question that you had asked. I don't know if you guys want to address them directly or just --

UNIDENTIFIED MALE: (inaudible).

VICE CHAIRMAN MAGENNIS: Can I have a motion to close the --

UNIDENTIFIED MALE: (inaudible).

VICE CHAIRMAN MAGENNIS: No, we're not at the statement stage yet. Can I have a motion?

MR. HEIMALL: -- motion to close.

MR. VENZA: Second.

VICE CHAIRMAN MAGENNIS: All in favor.

(All answer in the affirmative)

VICE CHAIRMAN MAGENNIS: Gentlemen, would you like to make a summary or you stated all that needs to be stated?

MR. FIORILLA: Well, Mr. Vice Chairman, I think we have presented what our plans are, why we feel it's safe. We have gone to the water commission and they have made their analysis of the project. We

feel that -- that, clearly, this is the type of thing that -- trans-loading facility that this type of property would be used for. And that's why we're here.

We have also agreed to put into any -- into a consent order, the times that the trucks would come and go to pick up the brick. And we will put that in a consent order with the township, with the borough, I'm sorry -- with the borough, so that there isn't any question that's what we intend to do. We have a right to do that, and it is enforceable if we do it in that form. And we're willing to do that, because that's how we intend to run this facility.

We don't have anything further to present. Mr. Fenno -- and I think we have tried to answer all the questions as best we can. And came back the second time and got more information regarding the water commission.

And the engineer spent a good month getting that together, we're lucky we got it out of them finally, but it was -- they were looking at this for the whole month. We started that process right after we left here the last time. And the engineers were -- there was a lot of things back and forth between --

VICE CHAIRMAN MAGENNIS: Personally --

MR. FIORILLA: -- and we also --

VICE CHAIRMAN MAGENNIS: -- satisfied that (inaudible) spent that much time looking at --

MR. FIORILLA: -- to keep Mr. Darmofalski involved in what they were saying. So if he had any questions, he could present them directly to those engineers. That was our concern. I can't always answer the engineering questions, the engineers can.

VICE CHAIRMAN MAGENNIS: Okay. I'll take a motion that we open it up to the public to make statements.

MR. VENZA: Before we do that, can I (inaudible) questions.

VICE CHAIRMAN MAGENNIS: Sure.

MR. VENZA: Considering the consent order -- some of the items on it are very specific to the corn syrup business. Will we be able to modify the consent order to be specific with the (inaudible).

MR. FIORILLA: Brick, yes.

MR. VENZA: Will that -- will that be done?

MR. FIORILLA: That's what we -- yes.

MR. VENZA: Okay. Second question. There is some -- (inaudible), the wall, fence, whatever you want to call it, that was constructed, the wooden thing. Will it be reevaluated at this point and

repaired, replaced if necessary --

MR. FENNO: We intend to make repairs to that (inaudible) stockade fence (inaudible) refer to it.

MR. VENZA: Right.

MR. FENNO: And I think I discussed earlier at the last hearing there was another fence issue (inaudible) one to two spots in the chain link fence that's on the property, there's gaps, there is an opening (inaudible) fire department, things of that nature.

MR. VENZA: Now, that's -- that's great stuff. We also have new residents since the last time this consent order was entered. Perhaps some of them want that wall extended. Are you going to do that, as well?

MR. FENNO: I think we'll certainly (inaudible) consider that. Yes. I mean, we -- we don't know -- I mean, I think it would be technical difficulties if it was like too small, do you know what I mean? But I think the engineers can work that out.

UNIDENTIFIED MALE: It would be important to know exactly where, of course. That's another issue. I don't think we want to do any extension until

everybody agrees --

MR. VENZA: (inaudible) hammer it out in court. Going into it, having these people here, these are things that you're willing to do. (Inaudible)

MR. FENNO: We would be willing to do that.

MR. VENZA: Okay.

MR. FENNO: That's how we did it the last time, actually. Mr. Barbarula can speak to that.

UNIDENTIFIED MALE: The mayor last time wanted it to be uniform --

UNIDENTIFIED MALE: All the way.

UNIDENTIFIED MALE: -- and -- and he would talk -- he was requested by a number of residents saying, I don't want to look at a fence. That was how that ended up being fence, no fence type of situation. So that statement is correct (phonetic) that's what happened.

MR. VENZA: I have one (inaudible).

VICE CHAIRMAN MAGENNIS: Sure.

MR. VENZA: Is there any way that we can have some assurance that there is no radiation or (inaudible) brick?

MR. FENNO: Well, you know, in my -- I'm not a brick person, but I do know a little bit about other issues of materials. And, you know, these days, all

materials come with material data safety sheets, MDS (phonetic), whatever they call them. That are federally required that address all the safety issues as to any materials that -- that is being handled (phonetic).

MR. VENZA: Does the brick manufacturer issue --

MR. FORMICA: They do.

MR. VENZA: -- (inaudible).

MR. FORMICA: Correct. The MSDS sheets and material safety data sheets are issued by the manufacturers. And that's their -- that's their OSHA requirement. That's what gives us reasonable assurance that the product itself is within safety requirements.

MR. FENNO: And those -- those -- and I know from looking at more of those MSDS sheets than I care to remember. That -- that they address, typically address issues, you know, relating to if you have a small quantity or a large quantity. Sometimes materials in a small quantity are very safe. The White-Out that we use in offices. If you have a large quantity of that, it can be considered dangerous. (Phonetic)

And -- and I assume that these MSDS sheets

(inaudible) I assume they address that issue, as well. And if (inaudible) by those (inaudible).

MR. VENZA: That's what I was thinking. If the manufacturer who makes the brick ships it as he makes it, there may not be an accumulation (inaudible) that there would be (inaudible).

MR. FENNO: I think what you heard --

MR. VENZA: -- under the quantity.

MR. FORMICA: But the product itself is a dirt. It has no -- it may have trace amounts as you -- I think everything has a trace amount of radiation, to whatever extent, large or small. But this product has nothing that is in any notable amount, whatsoever.

And although there may be some trace amounts, the quantities that exist within it -- just -- you have, again, you have a school or a hospital that is built out of masonry, with children within side these walls.

The material safety data sheets don't represent anything of any concern or any issue regarding this. Throughout the country, there is no issue like this that I'm aware of. And I would be aware of it. The industry associations have no issues with this.

So I don't see it to be a concern. I can't

give you anything other than reasonable assurance. I can show you the MSDS sheets, as well.

MR. VENZA: At one time they built schools and hospitals (inaudible).

UNIDENTIFIED MALE: Right.

MR. FORMICA: Well, we cant speculate what they may find out in the future (phonetic).

MR. VENZA: Just because its allowed now doesn't mean it's safe either. (Phonetic)

MR. FORMICA: That could be the truth for the cotton shirts we're wearing. We don't know that. That's speculation.

MR. HEIMALL: Who is required to share this MSDS information? I mean, I can get it (inaudible), stack it, and not show to anybody, but there would be a problem. (Phonetic)

MR. FORMICA: It's --

MR. HEIMALL: (inaudible) public access, is it required that the board of health to be notified what you're going to store there?

MR. FORMICA: We occasionally get a request for an MSDS sheet, the project that is being built might be a school. Or some kind of public project. And then they will ask for the MSDS sheets to be provided from the manufacturers, and we do. But other

than that, in most construction, we (phonetic) don't even request them.

MR. HEIMALL: Okay, so Riverdale would have to request your sheets as you store (inaudible).

UNIDENTIFIED MALE: (Inaudible).

UNIDENTIFIED MALE: I believe OSHA requires that you have MSDS sheets on -- on site of every product that you handle. And anybody can come in at any time and ask for it and you have to show it to them (phonetic).

UNIDENTIFIED MALE: So there should be a loose-leaf binder with all that information (inaudible) every manufacturer that you handle. (Phonetic)

VICE CHAIRMAN MAGENNIS: Right. And that will be something that our local people can go in and inspect, because that's part of the --

MR. BARBARULA: That is legitimate control--

VICE CHAIRMAN MAGENNIS: Safety.

MR. BARBARULA: -- requirements.

VICE CHAIRMAN MAGENNIS: It actually wouldn't even -- even need to put it in, because you have that right anyway.

MR. BARBARULA: I --

UNIDENTIFIED MALE: (inaudible)

MR. BARBARULA: -- I still would say that filing of a copy would be required (phonetic), that's a legitimate non-discriminatory control. We have done that with industrial users in our industrial zones, required that when they came in, I think if my memory serves me right, a fellow who does (inaudible), I think he filed (inaudible).

MR. VENZA: John, what are our chances of us getting EPA to do radiation levels at this site (inaudible)? Yeah, I know. Out of left field.

MR. BARBARULA: Uh -- not a (inaudible) chance. No (inaudible). I mean, you could say that you would like -- I mean, you could honestly say that you would like that examined, you know, I don't know whether that type of radiation would show up on a Geiger (inaudible).

MR. VENZA: They would have some means of measuring. They have to have some --

MR. BARBARULA: There must be something that measures that type of thing. And -- I don't think that would be a sufficient environmental regulation that would prevent them from operating the facility. You can't say that they can't operate because you could certainly say that you want a -- a test once all the material has -- once the max -- I guess the

maximum amount of material would probably be (inaudible), the summer would probably the most --

MR. FORMICA: Yeah, probably would. Maybe the end of the summer.

MR. BARBARULA: Right, more than the winter.

MR. VENZA: By the time it's on our site it's too late. (Phonetic)

VICE CHAIRMAN MAGENNIS: And then it's going to change anyway, depending on where the brick is manufactured, the materials --

MR. BARBARULA: And it's not -- whether or not it's cumulative, whether or not (inaudible) creates it, right? (Phonetic)

MR. VENZA: Right.

MR. BARBARULA: That's -- the only way you're going to get a testing (inaudible).

UNIDENTIFIED MALE: (inaudible)

UNIDENTIFIED MALE: Or -- or on their site (inaudible).

MR. BARBARULA: Either -- are the Brooklyn and Wharton site as -- as big or bigger than what you're going to have here?

MR. FORMICA: The Brooklyn site is.

MR. VENZA: Well, even if -- even if (inaudible), I can be extrapolated out (phonetic).

MR. BARBARULA: I don't see anything wrong with asking that -- measured (phonetic). I mean, I -- you know, I don't have any idea whatsoever whether or not that's (inaudible) an issue.

UNIDENTIFIED MALE: (inaudible).

MR. BARBARULA: -- (inaudible).

MR. FORMICA: I have no idea. Again, I have heard nothing of --

UNIDENTIFIED MALE: I was asking (inaudible).

MR. FORMICA: Okay.

UNIDENTIFIED MALE: (inaudible).

UNIDENTIFIED MALE: (inaudible).

MR. VENZA: That might actually work.

MR. REILLY: John, under the law, you know, again -- jurisdiction, anything that comes in on a rail, that -- that becomes -- under the -- under the federal law, is that correct? As long as it comes in on a train.

MR. BARBARULA: No, there is the surface transportation as --

MR. REILLY: Onto that site. Onto this site.

MR. BARBARULA: Trains, planes, cars --

MR. REILLY: No, on -- on this particular

site.

MR. BARBARULA: -- federal transportation act I (inaudible) --

MR. REILLY: We're not going to have a 747 land in Riverdale. What I'm saying is, in -- on this site in Riverdale --

MAYOR BUDESHEIM: Never say never.

MR. REILLY: -- what we're talking about right now, anything that comes in on a rail car period. Is that correct?

MR. BARBARULA: Uh hum.

MR. REILLY: Why are -- am I understanding that they are looking to bring in freight from Brooklyn to store here? Is that correct?

MR. FORMICA: We are -- as we transfer the operations --

MR. BARBARULA: Consolidate operations.

MR. REILLY: Yeah, but why should that become our problem? Because if it -- came in on his rail car, then I could understand that.

But why should we allow this to become even more of a storage facility where he's going to be driving it in on a truck. It's not coming in on his train. It's coming in on -- on a truck, because he has to get out of Brooklyn. That shouldn't be -- that

shouldn't be our problem.

MR. FORMICA: Should I put it on a train and transfer it over?

MR. REILLY: Yeah, that's fine.

(Pause in dialog)

MR. BARBARULA: I don't have an answer for that one. I don't even know how that would apply.

MR. REILLY: Well, what I'm saying is I think we're opening up --

MR. BARBARULA: (inaudible) --

MR. REILLY: -- I think we're opening up a door --

MR. BARBARULA: (inaudible) --

MR. REILLY: -- to saying that this can be anything we want it to be, if -- if -- if it becomes a storage facility.

MR. FENNO: No --

MR. BARBARULA: (inaudible) --

VICE CHAIRMAN MAGENNIS: (inaudible) limitation on it, that they had -- in fact, I wanted to ask you that, the date is approaching on Saturday, I think. Is that date going to be honored or is it going beyond that?

MR. FORMICA: I just didn't get the date, if you're talking about --

VICE CHAIRMAN MAGENNIS: Saturday. You said -- in the letter that was sent back it said that there was some material that was going to be shipped to the site but there was a date when that shipping would end. And it's the 30th -- Saturday I think --

MR. FORMICA: We actually were allowing, I think it was 60 days or so, to transfer the materials.

VICE CHAIRMAN MAGENNIS: Has any of it been transferred here?

MR. FORMICA: We started to bring some materials here, so we could begin to build the platform but then we stopped. So we haven't even begun that process yet. So whenever we begin this, it will be that same window of time.

VICE CHAIRMAN MAGENNIS: Right, so the date that is stated in the letter is not accurate, it's not going to be -- it's not going to end on Saturday.

MR. FORMICA: It didn't even begin yet, so it couldn't end.

MR. TURZILLI: I think there is a confusion of time (inaudible) that's when we have to be out of Brooklyn.

VICE CHAIRMAN MAGENNIS: No, I think it was a letter that --

MR. TURZILLI: (inaudible) --

VICE CHAIRMAN MAGENNIS: -- that -- yes, it's a customer letter.

MR. TURZILLI: -- that was --

COUNCILMAN FALKOSKI: It was in the operating agreement.

VICE CHAIRMAN MAGENNIS: Right.

COUNCILMAN FALKOSKI: (inaudible) states that it will be completed by May the 30th.

MR. FORMICA: Yes, and that was -- assuming we had started at a particular point in time. So it gave us a window of time to transfer. And we -- and it was longer than we actually probably needed.

VICE CHAIRMAN MAGENNIS: Actually, I don't think that letter gave you a window, it gave you a specific date that it had to end by.

MR. FORMICA: It did. Yes, but beginning with that starting date is when we thought -- we thought we could start operations by day one. We were incorrect. So that's what we thought. So we figured by that date we stated. But the intent was to have a window of time to do the transfer. So it won't be an ongoing thing, it will just be that initial process.

And although we could conceivably put it into a train and just transfer it that way, it (inaudible) more effective to do it that way, it's

such a short distance.

MR. REILLY: No, you have to understand, I'm not jumping for joy over this. So -- and-- and what I don't want to do is allow a window of opportunity to say if -- if we're forced by federal law to allow this to happen, there is not very much you can do about it. But all of a sudden if it becomes -- if this can become, you know, an operation, a trucking operation, you know, I -- I do have a problem with that. I think we should have something to say about that.

This is not Jersey City of Port Newark. You know. This is Riverdale where we have residents and -- in the back yard. And I can appreciate the fact that the train -- that the train is there, you know, rail -- commerce has to move, I can understand that and I can appreciate that.

You know, my backyard is a quarry and I have to listen to blasting and dust, you know, a lot. And the quarry was there when I bought my house, so this is no surprise. All right. 287 wasn't there when I bought my house but, nonetheless, life is what it is. All right.

But as I said, I don't -- I'm very uncomfortable -- and John, I'm looking for you for some -- some direction with this. I'm really

uncomfortable with allowing a truck to come in and to store materials here. And, yeah, I would be more comfortable if it went on a train.

VICE CHAIRMAN MAGENNIS: I think they have addressed it in a letter. It's inbound -- inbound material (inaudible) date in a letter. If it goes beyond that, whatever, 30, 60 days, but there is a date when it ends. Everything else is outbound. I think that's what the testimony has been --

MR. BARBARULA: Right.

VICE CHAIRMAN MAGENNIS: And I believe that's what we have to judge the testimony on.

MR. BARBARULA: Right.

VICE CHAIRMAN MAGENNIS: I think we should get a date, though, now, for when it ends, so there is no confusion about, you know, when the inbound traffic is finished.

UNIDENTIFIED MALE: (inaudible)

MR. FORMICA: I would be comfortable with whatever day we could start the operation, within a 60 day window. And I think, again, we'll be done with 30 days, but that gives us enough flexibility. It could be rain, it could be some other event. We just don't race to do it.

I was forced before, and I still am, to

vacate the city property as quickly as possible. So there is a lot of intention to try to do it as quickly as we can.

MR. REILLY: As long as we can be assured that this will not be an ongoing thing.

UNIDENTIFIED MALE: (inaudible).

MR. REILLY: As long we can be assured of that, I'm -- (inaudible).

VICE CHAIRMAN MAGENNIS: Does anybody else have any questions?

UNIDENTIFIED MALE: (inaudible).

UNIDENTIFIED MALE: Sure.

UNIDENTIFIED MALE: (inaudible).

UNIDENTIFIED MALE: That building hasn't been used (inaudible). It hasn't been used for quite awhile. (Phonetic)

VICE CHAIRMAN MAGENNIS: Okay. Someone like to make a motion to -- have the public statement. Yes, open it up for the public statement.

MR. HEIMALL: I'll open it up (inaudible).

VICE CHAIRMAN MAGENNIS: Okay. Now the public will have the opportunity to come forward and make statements about the testimony that they have heard. The period for questions is over. Now you can make your statement. Who would like to come forward

to the microphone over here?

MR. SCIARRA: Hello. Dan Sciarra, 1 Munn Avenue. I heard a lot of different terminology tonight, trans-loading -- trans-loading is what we had before. It was a trans-loading facility -- meaning they transferred it from one car to the next. They take it from one car, it never came off the car, went right into the -- right into the -- to the truck, it never hit the ground. This is off loading.

I heard all attorneys say many times here tonight, trans-loading you have no jurisdiction over. He never said offloading. This is a totally different operation. We're going to be taking off 400 moves a day behind my house. Behind my house. With a loading dock. That somebody is going to hit a hi-lo doing 40 miles an hour to get up.

Let me say somethin. I'm going to read a prepared statement I have here, I hope I don't take too much of your time.

I attended the court proceedings in Morristown as a witness in front of Judge Stanton. Our complaints were addressed to him and we were -- we were told by him as he rendered his decision, I -- I -- I informed him there were trucks idling in my yard. Smells were emitting from the site. Also addressed

was the fact that this was not a sufficient buffer zone between us and the railroad.

The Judge's decision states that the Planning Board and the railroad should come together to satisfy the residents' concerns. I was there when he said that.

Since they are now attempting to change the existing terminal from one that stored freight and rail cars to one that now will unload rail cars -- and warehouse on the site, the operation has changed. And our concerns have changed accordingly.

I'm going to list some of the concerns that I -- I spoke with some of the residents about and my own concerns here.

Diesel fumes. Very hazardous. Cancer causing. Will be running -- they will be running these hi-los behind my home full throttle, up and down the ramps. Toxic fumes will again enter our yards and destroy our lives. These fumes can be deadly.

The present fence has not been maintained and has many openings in it. Also the boards have since shrunk and you can see through it. They will not prevent the hazardous fumes from entering our properties.

Now, I have a picture of the fence that I

would like to present to the board. This was taken last week. Dust from the rail cars and cement particles. Also hazardous to my health. To my yard. I live -- I live one foot from that fence, that's my swimming pool.

The bricks, the broken bricks will enter the air as they go into the dumpster, this proposes another health hazard to me and my family. That fence will not protect me.

We had them trans-loading by air method, they would not be able to run the truck -- that was one of the last -- you remember that, Mr. Barbarula, that they couldn't run the trucks in the rear yards because of the fumes.

And one of the agreements was that -- that they would be offloaded by air. This is going to circumvent that whole thing with the hi-los. Four hundred moves a day in my back yard. I got to breathe that in? That fence is not going to stop that. That has to be a solid fence, then. And it still might come over it.

Any time outdoor equipment of this nature is running near residential property lines, it would be good planning to have it enclosed. So that the residents can continue to have full use of their

properties. And a safe environment. A mere fence between us does not suffice.

I have some suggestions and I have listed it. Okay. The board members here have offered some additional suggestions like locating it to a different area. The railroad has refused.

The loading dock should not be located or built behind or next to anyone's residential property. The railroad has enough property there to utilize the industrial section of that property.

The railroad has plenty of room or -- near the front of the location. If it were to be located behind or next to any residential property, it should be fully enclosed, inside of a sound proof building, as the railroad has done in other areas.

I have pictures of -- that facility in North Bergen where there isn't even -- I want to present that to the board for you to look at. There is not a residential house within a half a mile of that facility. And that's what they built to keep the fumes and things in.

Here is a picture that I want to present to the board of the surrounding area, total industrial. And this is owned by -- uh -- the present railroad, not another one, I believe they have two or three

other buildings in the Newark area that are similar to that. It wouldn't have to be that high, but it should definitely be enclosed if you're going to put it behind the homes.

And, uh -- here is a picture next to the plumbing supply up by the front here they have -- they have an extra 50 feet up in the front of the property that they're not utilizing.

As you can see, I took a picture here. This is the front of the property where there -- they're not going to have the loading -- they're going to have the loading dock behind my house? Our house? It's ridiculous. They got 50 extra feet there where that building is -- to put the -- put the loading dock.

There's only going to be three trains a week he said? They can put three trains a week there and the guy can unload them. I got no problem with that. But they're going to put it behind my house, they better put a buildin' up. They better put somethin' up.

You have a right to protect us. You have authority to -- to dictate to these people what has to be done to protect the residents. That's the right thing to do.

You wouldn't want that behind your house.

You wouldn't be able to live like that. You wouldn't be able to live with fumes in your yards. I got kids and I got a family. And I'm going to fight this thing.

We purchased our houses by the rail line. We knew that. But it was never an offloading facility there. Ever. This is going to be a blight on the community, it's going to cause property values to go down. And I'd advise everybody in that area should fight their property values now.

If you cannot refuse their requests -- that they must operate here, I say let them. But put the -- put the controls in place that they have to abide by. Don't refuse them, let them do it, but tell them how to do it. That's your right. Thank you.

VICE CHAIRMAN MAGENNIS: Okay, thank you. Anybody else from the public like to make a statement?

MR. LOTTERMAN: James Lotterman, 13 Munn. I think you all, um -- can remember a letter that we had gotten from the railroad's -- it was kind of sarcastic, stating that they found a new tenant to clean up along our fence line. Well, how do they propose to do that when they have brick blocking the view of what to pick up and what is to be mowed and cleaned up.

Uh, as it stands, I have weeds behind my house about two and a half, three, even higher than that, almost four feet high.

I was surprised to see that they had moved the brick like I asked two meetings ago. Um -- but my concern -- my concern still does ride on the easement for asphalt pavement that is back there. Uh -- all of these bricks, according to this photo here, and according to where the bricks are directly behind my house, less than eight feet from -- from the fence.

Um -- what they had done was they built a small tangent about four feet wide, all right, to -- to -- to make that driveway or whatever you want to call it, roadway back there, a little bit wider. Uh -- there is no stone, no crushed gravel or anything that's under that, it is just asphalt.

It is on a pitch. I put a four foot level on it, touching the ground here, going to the end, I lift that level up an inch and a half and it reads level. That's supposed to be pitched toward the tracks. I have been getting water in my yard for -- since they put that roadway back there. Okay.

Uh -- another thing is that in the summer months, this material that -- that they say that is only supposed to be, I believe, what's it -- 3,000

pounds per linear foot, he said. Um, okay -- is -- marble the same weight as brick, because that's what's being stored back there at this time right now. I'm not sure if it's the same weight. I don't believe it is.

Um, that weight included with the forklift, if there is an accidental fall or a collapse of these bricks, everything is going into that pipe. Everything. Including my home and everybody else's on the block. Um -- I think that's about it. Thanks.

VICE CHAIRMAN MAGENNIS: Thank you. Anybody else from the public who would like to come up and make a statement? Seeing no one coming forward, do I have a motion to close the public?

UNIDENTIFIED MALE: I'll make that motion.

VICE CHAIRMAN MAGENNIS: All in favor?

(All answer in the affirmative)

COUNCILMAN FALKOSKI: Mr. Chairman, if I could -- just, uh -- the question that I asked Ms. Holmquist before, and the explanation that I got for it, I would like to, uh -- ask our attorney.

We would have the right now to go ahead and ask for some of that information, because everything up in here is nice and everything I have read from the past meeting and everything, it's so nebulous. There

is nothing that really pins down what's going to be happening here. And what its interpretation is and what its definition is.

I think before we make any kind of decision, whatever it is, that we should have some of this information, particularly the information that Ms. Holmquist wrote in her report regarding the fact as to whether this is exempt or not. What is your opinion, Mr. Barbarula?

MR. BARBARULA: Well, I certainly can say that everybody has their right to their opinions. I think that the judgment and the consent order, the hearing of August 7th, 1996, and the Surface Transportation Board decision -- clearly indicates that it is part of transportation processes, is exempt.

It also clearly indicates that if it's not part of the transportation processes, that if it is -- manufacturing and processing, that -- it would be -- it says exactly, "manufacturing or production purposes, then, like any other non-railroad property, it would be subject to applicable state and local regulations."

As far as I know what trans-loading operations and transportation services are, and the

Park Ridge cases and the other cases that have been decided in this state, I -- you know, I would love to be able to say honestly that it is not preempted. But that's not my opinion, I have to disagree with Donna. I don't -- I don't believe that it is an exempted activity.

That is only my opinion. You are not bound by my opinion. That is my opinion. It is up to you to make your own decision based upon the documents that you have.

COUNCILMAN FALKOSKI: Would we not be able to get an interpretation from the Surface Transportation Board?

MR. BARBARULA: You want to authorize the expenditure of funds to do that? I certainly -- I'm sure it certainly can be done. The -- way that the order and the consent order is written, I don't think would prevent them from operating in the meantime.

But if the -- the board wishes to extend that -- that money and that endeavor, and authorize an interpretation of whether or not that is the case, it certainly can be done.

I, you know, I only give you my opinion that what I feel that the answer would be, and I already did it. I'm -- I can't restate it again. You

certainly can ask someone else to make a decision.

I would fully expect that that would not prevent them from operating the facility, and they would have to go in on an order to show cause saying that they are violating the consent order. And that would also have to be authorized by the board.

COUNCILMAN FALKOSKI: You're -- you're telling me that in order to get an opinion from the Surface Transportation Board, as to whether their rule specifies its exempt or not exempt it would cost us money?

MR. BARBARULA: It would cost a lot of money, yes.

VICE CHAIRMAN MAGENNIS: John, would it be the board or would it be an attorney that specializes in that type of law that would make the interpretation?

MR. BARBARULA: You can have 28 (phonetic) lawyers make an opinion, if you want a definitive ruling, (inaudible) to get it to the Surface Transportation Board, a petition would have to be done and that is, certainly, going to be something that would have to be -- something that you would have to expend money on.

And, you know, those petitions don't happen

for free. Unless the -- unless you were to get someone who is going to volunteer their legal services and present that. I mean, the board can hire anybody to make the petition to the Surface Transportation Board.

I don't know -- I don't know how long it takes today, I know it took an exorbitant amount of time back -- back in '99, I think it took seven or eight months before they even got a response out of them.

MS. HOLMQUIST: (inaudible), may I just (inaudible)--

VICE CHAIRMAN MAGENNIS: Sure.

MS. HOLMQUIST: -- for a minute. Um -- I understand the dialog going on. But one thing I was trying to point out before is (inaudible) regulations distinguished between motor carrier and freight forwarder. (Phonetic)

Um -- and it would seem to me to be the burden of proof is on the applicant to demonstrate how the -- the trucking operation is classified or regulated. Whether it's motor carrier or freight forwarder. (Phonetic)

And you heard opinion tonight but it wasn't substantiated by anything. Um -- and I don't know if

this gentleman is (inaudible) trucking company or just the brick company (inaudible). I wasn't sure of the relationship there. That would be my suggestion. That the burden is on them to demonstrate to you whether the trucking company is classified as motor carrier or freight forwarder.

MR. FIORILLA: The trucking company isn't being regulated here. That's not the issue. The trucking company --

MS. HOLMQUIST: (inaudible).

MR. FIORILLA: -- the trucking company have -- their trucks have to -- are still regulated by the state as to how their trucks operate. There's no question about that. The STB has said that.

MS. HOLMQUIST: The regulations are pretty clear and they make a distinction between (inaudible) and -- (inaudible).

MR. FIORILLA: Yes. But it also says that you can have a common carrier -- all we're doing, somebody over here buys the brick. And it's from here. It's got to come here, get unloaded and go to him. That's all we're doing.

The trucks that come in have -- have -- can't -- no matter whose trucks they are, they are going to have to be in -- they have to go by all the

state regulations regarding trucks.

MS. HOLMQUIST: The classification makes a difference and (inaudible) --

MR. FIORILLA: Yes, but the classification doesn't make a difference in our yard. I mean, I -- trucks have to unload the product. Otherwise, there would be no way to do that.

MS. HOLMQUIST: The piece of information that could be provided (inaudible) you have not (inaudible) --

MR. FIORILLA: I don't think you -- I don't even understand what information you want.

MS. HOLMQUIST: I think I was clear (phonetic).

MR. FIORILLA: No I don't think you are at all clear. Say something to me --

VICE CHAIRMAN MAGENNIS: Let's just calm down a little bit.

MR. FIORILLA: (inaudible) -- Mr. Barbarula -- (inaudible) --

MR. BARBARULA: (inaudible).

VICE CHAIRMAN MAGENNIS: Hold it, hold it.

UNIDENTIFIED MALE: Wait a second.

MR. BARBARULA: Just calm down. You can make any argument you want, it doesn't have to be at a

very high decibel, which I'm doing right now.

MR. FIORILLA: Okay.

MR. BARBARULA: And it also doesn't have to be in a combative nature. This is a -- a proceeding that decorum should be observed. And you're losing that level. You want to make a presentation. You want to make an argument. That's fine. But it shouldn't be at a level that is abusive. And I really don't think it's appropriate.

MR. FIORILLA: It wasn't abusive.

MR. BARBARULA: I just think it's quite out of hand and quite loud. And your point, you can make your point without having to get up and -- and -- and do it at such a loud and --

MR. FIORILLA: (inaudible)

MR. BARBARULA: -- and ominous way.

MR. FENNO: Perhaps the quiet spoken one can (inaudible) the question. There is neither a trucking company nor a freight forwarder before this board tonight (inaudible) involved in this application. We do not understand the question.

MS. HOLMQUIST: Okay. Can I respond to that?

VICE CHAIRMAN MAGENNIS: Sure.

MR. HEIMALL: I mean, documents that were

submitted cite trucking companies (inaudible) carriers, why are you saying that's not part of the application. (Inaudible)

MR. FENNO: Independent carriers will -- will operate trucks that come to this facility to take brick away.

MS. HOLMQUIST: (inaudible) part of the application (inaudible).

MR. FENNO: But I don't, again, we -- we have made --

VICE CHAIRMAN MAGENNIS: John, maybe you --

MR. FENNO: -- if somebody can tell us -- explain the question. I don't understand.

MR. FORMICA: We don't understand how that has to do with preemption of the issue to the movement of the brick.

MR. BARBARULA: Quite frankly, I can't, because I don't understand the distinction that our planner is making either.

VICE CHAIRMAN MAGENNIS: Well --

MS. HOLMQUIST: Our code -- the code that regulates the STB makes the distinction between motor carrier and freight forwarder. And we haven't heard any testimony or evidence on which way the trucking company is classified. And I think that goes to the

heart of the issue of whether (inaudible) is preempted or not (inaudible).

VICE CHAIRMAN MAGENNIS: Donna, what is your understanding the difference between the two is, just so that -- I can maybe -- understand it from you.

MS. HOLMQUIST: It seems to me that if a classification is motor carrier, then STB has no jurisdiction. And local authority would prevail. If it's a freight forwarder, it seems the opposite is true. (Phonetic)

UNIDENTIFIED MALE: What is the difference? Between a motor carrier and a freight forwarder.

MS. HOLMQUIST: I don't have that information in front of me. It should (inaudible) two terms are distinct in US Code. (Phonetic)

UNIDENTIFIED MALE: I don't -- I don't understand what the term is, how can I -- (inaudible).

UNIDENTIFIED MALE: (inaudible).

VICE CHAIRMAN MAGENNIS: Please. The public session is over.

UNIDENTIFIED MALE: You know, that's what I mean. To make a distinction on two different words (inaudible) --

MS. HOLMQUIST: (inaudible) --

UNIDENTIFIED MALE: -- nobody can explain it

(inaudible) --

MS. HOLMQUIST: -- the applicant's whole position here is that local authority has nothing to do with this and they are allowed to do what they want, you can put a few conditions on them but, basically, this operation is allowed. And I'm not convinced of that.

UNIDENTIFIED MALE: Because of the trucking.

MS. HOLMQUIST: Yes.

VICE CHAIRMAN MAGENNIS: And no one here can give us a very specific definition of motor carrier or freight forwarder.

MS. HOLMQUIST: Right. I didn't see a decision of that in the minutes of the last meeting, and I, you know, I got response tonight but, you know, nothing to substantiate the response that was given to me. (Inaudible)

MR. FENNO: Let me -- let me --

MS. HOLMQUIST: (inaudible) --

MR. FENNO: -- let me --

MS. HOLMQUIST: -- he was entirely sure of it. (Phonetic)

MR. FENNO: -- let try to at least clarify what the railroad understands or believes and whether that resolves the issue or not. I doubt it, actually,

to tell the truth:

But, you know, this operation -- preemption from local regulations is dependent upon this being part of railroad transportation, as it is very broadly defined under the interstate commerce act.

Whether this is a trucking company is involved or freight forwarder is involved, is, from our perspective, irrelevant, because we're not relying on it being a freight forwarder, we're relying on this being part of the railroad transportation that's broadly defined and as (inaudible) law and regulation makes quite clear.

So that's why I -- we're really having a failure to communicate on this issue. And -- and we don't mean disrespect in any way, but we don't really know what to present because we don't understand --

VICE CHAIRMAN MAGENNIS: Well, I think we understand what you just stated. But I think the issue is one is, apparently, exempt and the other not.

MR. FENNO: What I'm saying is the trucking/freight forwarding is over here. Railroad is here.

VICE CHAIRMAN MAGENNIS: Right.

MR. REILLY: No, no, please, don't -- do me a favor, don't insult this board by trying to divorce

yourself, because all night long it's all been this. Now all of a --

MR. FENNO: No -- (inaudible) --

MR. REILLY: -- no, no, now don't all of a sudden say I'm the railroad and what they are doing is what they are doing. Because it was presented as a package. Let's (inaudible) remain as a package.

MR. FENNO: I don't mean to say that there aren't trucks involved, obviously, there are trucks involved. There's trucks involved at every intermodal facility in the country, because that's essentially what happens. Intermodal means more than one mode of transportation.

So it's (inaudible) what I was trying to say and, perhaps, it's more of a legal thing than a perspective that (inaudible), is that from the legal standpoint, the issue of STB jurisdiction over trucking or not trucking, freight forwarding/not freight forwarding, is not in our -- in our (inaudible) relevant here tonight, because it's not an issue. The issue is is it part of railroad transportation. And that is the (inaudible) issue (inaudible).

COUNCILMAN FALKOSKI: Why would the rules identify it as -- question the motor vehicle

transportation in terminal area (phonetic). Do you not consider this a terminal area?

MR. FENNO: I'm not sure what you're referring to (inaudible).

COUNCILMAN FALKOSKI: Well, it would be a railroad terminal area, I would assume.

MR. FENNO: (inaudible)

COUNCILMAN FALKOSKI: So if the rules specify there is an exemption -- depending on whether (inaudible) activity is a transfer or a collection or delivery, then there has to be some kind of an interpretation and a definition for that, so that there is some kind of a definitive answer that can be (inaudible) to have no definitive answers on anything that has been asked here. (Phonetic)

And that's very bothersome for these -- us sitting up on this board when we have to make decisions. We make our decisions based upon facts. And we really have not received any facts. In my opinion.

MR. FENNO: I think we gave a lot of facts as to exactly how --

COUNCILMAN FALKOSKI: But they were nebulous.

MR. FENNO: They weren't nebulous, they are

pretty definite as to exactly what we're going to do.

COUNCILMAN FALKOSKI: All right, I asked questions that no one could answer the question.

MR. FENNO: Yes, we answered every single question that was put here tonight.

VICE CHAIRMAN MAGENNIS: Joe, ask something that you think --

MR. FENNO: -- (inaudible) we answered --

VICE CHAIRMAN MAGENNIS: -- is unanswered, why don't --

MR. FENNO: -- factual questions.

VICE CHAIRMAN MAGENNIS: -- you ask it again.

COUNCILMAN FALKOSKI: I have all the questions. I have asked --

MR. FENNO: -- the question -- (inaudible).

COUNCILMAN FALKOSKI: -- who pays for the brick, who pays for the rail transportation, I never got an answer.

MAYOR BUDESHEIM: Let me ask this question then. Do you get paid for doing anything? Do you get -- do you receive money?

MR. FORMICA: Of course (phonetic).

MAYOR BUDESHEIM: What do they pay you to do? I'm not -- I'm not clear what your role is,

because all I keep hearing is --

UNIDENTIFIED MALE: (inaudible).

MAYOR BUDESHEIM: -- I keep hearing this is a railroad operation. You don't own the brick. You don't own the truck. What do people pay you to do?

MR. FORMICA: The projects that are built are designed by architects. A mason is then appointed and collected to build that project. He has to buy the specified materials. We represent the manufacturers that manufacture brick.

That mason will come to us and say I need to buy this quantity of brick for this particular project. He will do his own determination of how many bricks, what brick he needs, and he will place the order with us and we in turn place the order, back to back, the same exact thing, with the manufacturer to produce that material.

And then our role essentially becomes transporting the materials once they're manufactured, to that customer to have available for his project. For that -- for that we get paid.

MAYOR BUDESHEIM: So you're a wholesaler.

MR. FORMICA: Again, I can't say yes to that question, as much as you try to niche me into a particular spot. It is what I just described.

MR. REILLY: Is it a broker role, would you consider it a broker role?

MR. FORMICA: I think a broker role -- the customer will actually pay us -- the title takes place when the goods get shipped from the manufacturer. But we don't actually --

MR. REILLY: Title gets -- title gets transferred to who, to you?

MR. FORMICA: No, to the -- to the buyer.

MR. REILLY: To the buyer.

MR. FORMICA: The goods are produced and they are shipped. While they are being produced, we're really responsible to make sure that the transaction is completed.

If the buyer doesn't complete the transaction, the manufacturer will come to us and say you owe us for the material. And protocol we'll say, okay, I guess we do. Because we have an ongoing relationship with the different manufacturers.

MAYOR BUDESHEIM: So you're only responsible for bringing the brick to the manufacturer, from the manufacturer to this terminal. Once it gets to the terminal, you never take title of it. So then once it's brought to the terminal then the people who ordered it own it at that point.

MR. FORMICA: When it leaves the manufacturer -- the customers actually own it. At that point. But as a practical matter, we help in the logistics to get the material to the job site for the customers. They don't have the ability or the knowledge -- you need to have a certain volume in order to transfer materials through rail cars.

MAYOR BUDESHEIM: So you are providing a warehouse type facility for the -- because the people can't accept the delivery. The manufacturer wants to get rid of them, the customer can't accept them, so you warehouse them for them.

MR. FORMICA: Well, you can't drive a train to a job site. So you need a facility --

MAYOR BUDESHEIM: You warehouse them for them because they don't get immediately trans-loaded from the railroad car to the truck, they are warehoused until they are ready to take delivery of them.

MR. FORMICA: At this -- (inaudible).

MAYOR BUDESHEIM: All right, so then it is a warehouse. We finally got that answered.

MR. FORMICA: Well, I don't --

MAYOR BUDESHEIM: I have no more questions.

MR. FIORILLA: I'm sorry, but that was --

that was outrageous and we object. Because that isn't that he said at all. He obviously said that the -- that he has to get the thing to the job site, he doesn't warehouse them, he trans-loads them and he brings them to the job site.

MAYOR BUDESHEIM: And with two months in between.

MR. FIORILLA: Not necessarily.

MAYOR BUDESHEIM: But -- possibly. I mean, those bricks have been sitting there for two months now. Right?

UNIDENTIFIED MALE: (inaudible).

MR. FORMICA: Those bricks we were going to use to build to platform.

UNIDENTIFIED MALE: (inaudible).

MR. REILLY: The bricks that are in -- the bricks that are in Brooklyn have been there for a period of time, I assume.

MR. FORMICA: (inaudible).

MR. REILLY: Yes. And so -- so I mean, you can --

UNIDENTIFIED MALE: They are housed.

MR. REILLY: They are housed, they are -- they are parked, they are piled, they are warehoused. They are -- they are something. Whatever word you

want to assign to it.

VICE CHAIRMAN MAGENNIS: I think we have been over --

MR. FORMICA: But I do want to make the distinction that we're not buying brick for inventory, to stock it, to find out when a company decides they want to buy some and they come over and they say, I like that, I think I'll buy that.

UNIDENTIFIED MALE: We understand that.

MAYOR BUDESHEIM: But you're warehousing (inaudible).

MR. FORMICA: We're holding it on their behalf. So we can fulfill their projects.

MAYOR BUDESHEIM: It's called a warehouse (phonetic).

UNIDENTIFIED MALE: Stockpile them.

VICE CHAIRMAN MAGENNIS: All right --

MAYOR BUDESHEIM: I have no more questions.

MR. REILLY: We're not going to -- I mean -- (phonetic) --

VICE CHAIRMAN MAGENNIS: I think we're done, but really the question that remains to be answered, and I'm not sure how we go about getting it answered, is the issue of whether it's a freight forwarder or a motor carrier. If it's an exempt operation, then we

have very limited control over what's being proposed. If it's a non-exempt operation, then the board would have a lot more control.

But I don't think that we could, you know, intelligently vote on it until we get some clarification on exactly what type of operation we have. And I know that there's lots of people in the room here that have opinions as to what they believe their operation is. All would probably -- some substantive rationale behind it.

But I don't think that we are the people that, you know, can make a judgment yet, because we don't have the information that you have.

So I think the recommendation that, perhaps, we get someone else in here with an opinion that's much more, you know, informed, based on -- on the knowledge of the law that they have. I think once that determination is made, then I think the decision is, you know, going to be a lot easier for us.

And, John, I'm not sure how we would go about getting --

MR. BARBARULA: Well, very simply, you have in front of you two orders and the surface transportation decision. Which, by the way, didn't take seven months, it took two years. It was filed

September 8th, 1997 and it was decided September 9th, 1999. okay.

The board could authorize the hiring of an attorney who specializes in railroad activity. You may have to go out of state to find someone who is not working for the New York Susquehanna Railroad.

As a matter of fact, if it is anything like it was in 1997, we had to go to -- Oklahoma or some place like that, to finally find somebody that didn't have some sort of relationship, because all the of the rail lines have inter -- whatever the heck they call different compacts (phonetic), and almost everybody that was even near the east coast had conflicts.

So you certainly can authorize the expenditure of the municipality's funds to obtain the counsel that is -- specializes in the Surface Transportation Board, to make that determination for you and give you advice on that. That is absolutely within your jurisdiction.

VICE CHAIRMAN MAGENNIS: John, the work that you did on the consent decree, I know you spent a lot of time. And you are our legal counsel, and we have a great deal of faith in the advice that you have given us.

Based on your experience and knowledge, you

believe this is the exempt operation, that it's a motor carrier.

MR. BARBARULA: I don't have to believe that. All I can tell you is that from the transcript, that it was the court who believed that the fact that -- at that time there were trucks that came to the corn syrup depot --

VICE CHAIRMAN MAGENNIS: Right.

MR. BARBARULA: -- which, in effect, was a warehousing of corn syrup, they were trucks -- and I don't know, because I don't have a definition, and I'm not an expert in what is --

VICE CHAIRMAN MAGENNIS: Right.

MR. BARBARULA: -- a freight forwarder or common carrier.

VICE CHAIRMAN MAGENNIS: But it would appear that it's the same operation.

MR. BARBARULA: But there was a truck that came to the site and offloaded from the storage tanks that were kept on the railroad site, put into those trucks, and away it went to Coca Cola or Pepsi. I mean, I think -- you have the transcript.

VICE CHAIRMAN MAGENNIS: Right.

MR. BARBARULA: It was the judge who determined that, since it's part of the overall

transportation processes, he determined that it was still transportation. Regardless of the fact that my argument was, Judge, it isn't transportation, they come here, they leave the corn syrup, they leave it there for extended period of time -- that's what my argument was. They made it a warehouse.

And then they -- and I also made the argument that it was a processing plant. And he determined that that was the -- that it wasn't processing, that it didn't change the nature of the corn syrup, that they only reason that you had to do the boiler and heat it up was because when corn syrup sits, it solidifies. And that it had to be heated in order to be able to become --

UNIDENTIFIED MALE: (Inaudible).

VICE CHAIRMAN MAGENNIS: Viscous, yes.

MR. BARBARULA: Viscous. And -- in order to pump it.

VICE CHAIRMAN MAGENNIS: Right.

MR. BARBARULA: So that's it. But look, you don't -- that's all I can tell you. I do not limit my practice to the Surface Transportation Board. I do not regularly practice before that. You are certainly within your right to authorize the expenditure of funds to find someone who does to give you an opinion.

All I can tell you is, read the transcript. There is no -- there is no requirement that you vote tonight. I would recommend you read the transcript and look at Donna's letter and orders and then come back and make your own decision. Or authorize the expenditure now of the funds in order to obtain someone to give you an opinion who is versed in that area of the law.

I don't know if anybody that -- that probably would not have a conflict with New York Susquehanna Railway in this immediate New York, New Jersey, Pennsylvania area. So I think we would have to really get on line and try to find somebody out of the area. And then you get bids and see if you can hire them.

That's all I can tell you. Honestly -- I honestly don't know the definitions that Donna has brought up, the difference of what they -- they would be. All I can tell you is that you should look carefully at the transcript and then make your own decision as the tryers and the determiners of what the facts are --

UNIDENTIFIED MALE: (inaudible)

MR. BARBARULA: -- to see if -- what?

UNIDENTIFIED MALE: Look in the dictionary.

Is it in there?

MS. HOLMQUIST: No, (inaudible) you don't want to go by that. And (inaudible) Title (inaudible). And the other distinction -- (inaudible) --

MR. FIORILLA: Wait, Title 49 is 20 books. Which -- 49 what? 49 is 20 volumes.

MS. HOLMQUIST: I know.

MR. FIORILLA: Okay, well tell me what -- what --

MS. HOLMQUIST: (inaudible).

MR. FIORILLA: -- there's --

MS. HOLMQUIST: -- Title 49, subtitle 4 (phonetic), interstate transportation.

MR. FIORILLA: That's still -- all right, tell me -- give me a cite.

MS. HOLMQUIST: That's the citation.

MR. FIORILLA: No, no, that's not --

MS. HOLMQUIST: (inaudible) -- US Code.

MR. FIORILLA: -- US Code is --

UNIDENTIFIED MALE: Actually --

VICE CHAIRMAN MAGENNIS: What she has -- we expect you to be knowledgeable about these areas, and you can come back --

MS. HOLMQUIST: Exactly.

VICE CHAIRMAN MAGENNIS: -- you can come back --

MS. HOLMQUIST: You're attorney for the railroad.

VICE CHAIRMAN MAGENNIS: Right, I understand. You can come back and -- and address the sections that are applicable.

MS. HOLMQUIST: And the other (inaudible) I would point out is (inaudible) as an example. (Inaudible) change periodically (inaudible) if you look at the administrative code today for (inaudible) it's very different than what it was in 1999 or 1996 (phonetic) when this (inaudible) consent order (inaudible). (Inaudible) laws in effect (inaudible).

So I don't know that the law is the same now as (inaudible) consent order was entered into (phonetic). But (inaudible). (Inaudible) classification, I don't think that (inaudible).

(Pause in dialog)

MS. HOLMQUIST: (Inaudible).

(Pause in dialog)

VICE CHAIRMAN MAGENNIS: Mr. Fenno, would you be prepared to come back with the answers to the questions that were just raised?

MR. FENNO: I'm still a little confused, to

tell you the truth. I mean, I think we could certainly provide some sort of a written statement as to -- we certainly can provide some kind of a statement to (inaudible) trucking company versus freight forwarder, define what each is. I assume, I have never -- to tell you the truth, that's an area of the law that I really haven't looked at much because, frankly, it doesn't apply to us, typically.

And, John, I don't think you do much trucking -- freight forwarding work, but I'm sure we can (inaudible) find the regulations. And we can probably also try to provide a fairly short statement as to why we think that issue really doesn't have anything to do with this proceeding.

I think the most important part of that really goes back to something that Mr. Barbarula had said several times, which is that we're here regarding this consent order. We're not here with a zoning specific petition and (inaudible) type plan (inaudible) that you have seen. (Phonetic)

And, you know, we can certainly try to address some of the concerns about has the law changed. I can tell you the law has changed. The law has changed greatly in favor of the railroads from what it was when Judge Stanton made his decision.

MR. FIORILLA: He was the first decision.

MR. FENNO: The laws, even in cases in the state of New Jersey, have become significantly more favorable to railroads than what we have agreed to in the consent order. And, you know, we can, I think, provide our view of, you know, in a page or two, of kind of what the status is today. As opposed to what it was in '96 if that would be of some help to you.

But I'm not really sure I understand why it is of help in the sense that, regardless of how the law has changed, we have a consent order that we're both bound by.

VICE CHAIRMAN MAGENNIS: John, does the consent order make a distinction -- or does it specifically address the two different types of carriers, whether it's a freight forwarder or -- it doesn't address it at all.

MR. BARBARULA: No. I -- other than that, I haven't seen it -- when Donna issued her letter. And I just asked to read it again and I read it again.

I, honestly, there is not one word by the court in its decision of August 7th on whether or not freight forwarder or common carrier has anything to do with whether or not it was exempt under the Surface Transportation Board or preempted.

I -- I am really -- not prepared to answer, because I don't know the difference between those two on a legal standpoint. I am having a great deal of difficulty in seeing -- since the section of that quote was not attached to the report, whether or not that would change the fact of the -- either the Surface Transportation Board's decision or the court's decision, where it says that this -- as long as it is in the transportation and the storage and the ultimate transportation processes, I don't -- I just have a hard time seeing that distinction. I'm not saying she's wrong or she's right.

VICE CHAIRMAN MAGENNIS: Well, I think --

MR. BARBARULA: The trans-loading and the transportation surfaces -- is the controlling factor to factor in.

And, specifically, it was also back then that it said that if these -- if this facility doesn't aide the transportation services, in other words, the whole process of transporting goods from the manufacturer to the consumer, but rather, either a manufacturing or production purposes, then we have ultimate control.

Well, I haven't heard any testimony that there is anything being done other than the fact that

it's being stored there.

Honestly, you know, the only thing I can say is this -- you know, you can ask the applicant to give you a memo on whether or not he feels that that section -- whatever section it is, that the code provides (phonetic).

I can tell you that because the case of Riverdale was the first one and was reported, that since 1999 when it was decided to the present, I usually get a call once a year about it, and talk with town attorneys and county attorneys who are rather -- unhappy, because the degree of benefits that we got out of our order has been eroded over the last whatever years is that, 99 -- you know.

MAYOR BUDESHEIM: You know, John, the thing that bothers me is our planner's report was dated April 20th, and I have to presume that this was sent to the applicant?

MR. BARBARULA: I don't know, I assume it was.

MAYOR BUDESHEIM: Donna, was this sent to (inaudible)?

MS. HOLMQUIST: I don't know that our office (inaudible).

MAYOR BUDESHEIM: Did you get a copy of this

Burgis Associates?

MR. FIORILLA: I have a copy.

MAYOR BUDESHEIM: So they have had it for months, and these questions were raised and they weren't addressed.

MR. BARBARULA: I'm not saying -- I'm not saying you can't ask them to address it. That's not -- I was just asked if I know any difference between freight forwarder and a common carrier, and, honestly, I don't.

MS. HOLMQUIST: Motor carrier (phonetic).

MR. BARBARULA: Motor carrier.

UNIDENTIFIED MALE: Well, what are we going to do?

VICE CHAIRMAN MAGENNIS: Well, I think for everybody's level of comfort with respect to making a decision, I think we're all going to have to get a definitive distinction between the two types of carriers. And, clearly, from that point, you know, we can all feel more comfortable about whatever decisions are reached.

But I think at this point, since it has been raised, there really is no definitive definition that we can -- that we can interpret. You know, I think the best thing to do is to have you come back. There

are some areas of the code that were -- that were referenced. You know, if you could go back --

MR. FIORILLA: She hasn't referenced them, but we'll try to find them.

MAYOR BUDESHEIM: Mr. Chairman, I would then like to recommend, since this issue is so critical, because it determines jurisdiction, and -- how this jurisdiction will be applied, and -- since this -- they have had this in their possession for the past month, I would then like to see them address the entire report issued by the planner. And in those areas especially that are questioning the jurisdiction.

And that it be forwarded to us at least a week or so before our next meeting, so that we have a chance to review this. Because I don't want to be handed like this engineer's report the night of the meeting and then we're supposed to make a determination on -- a -- (inaudible).

So let's find out where the jurisdiction is. If we do have it. The law has changed in the past 10 years, and -- whether or planner's concerns are valid or not.

MS. HOLMQUIST: The chapters are 101, 105, 135 (phonetic). (Inaudible)

MR. FIORILLA: It's not (inaudible). We will find it --

MR. FENNO: We'll find it --

UNIDENTIFIED MALE: Donna (inaudible) --

MS. HOLMQUIST: To (inaudible) from an attorney, I find that shocking (phonetic).

MR. FIORILLA: Well, tell me --

MS. HOLMQUIST: Especially --

UNIDENTIFIED MALE: John --

MS. HOLMQUIST: -- an attorney for a railroad (inaudible) --

UNIDENTIFIED MALE: Seriously. I want to go home tonight. And we're wasting our time on this issue.

VICE CHAIRMAN MAGENNIS: If we're going to continue, we're going to need to make a motion to continue the meeting past 10:30 or -- I guess we will anyway, because it's -- I think that --

UNIDENTIFIED MALE: (inaudible).

VICE CHAIRMAN MAGENNIS: -- I just want to be clear on what the applicant has committed to do. You're going to review the Burgis Associates report. And give us a written promise. When would this be scheduled?

CLERK: June 26th.

VICE CHAIRMAN MAGENNIS: June 26th.

CLERK: If it's acceptable.

MAYOR BUDESHEIM: Ms. Holmquist, are there any other issue that you feel are outstanding from your report that haven't been addressed by the --

MS. HOLMQUIST: As I stated before there are a number of (inaudible) details. I don't know (inaudible).

MAYOR BUDESHEIM: Especially if we're trying to determine -- safety and health and the environment. (phonetic)

MR. FENNO: Let's just be clear as to the railroad's position. We are not submitting complete typical site plan. This is not a site plan application. This board has a complete site plan for this facility from whenever it was. What we submitted is a petition for you (inaudible) changes that we are proposing to this property.

So to the extent that there are issues about topographic contours, you know, there is no changes -- there is no change proposed. And we are not prepared to address that kind of procedural issues, which are, frankly, intended to delay this process. And that is clearly -- in violation of the letter and the spirit of this consent order that we entered into here.

(Phonetic)

We will attempt to address this jurisdictional issue. And we can do that without any problem. Provide it to the board, Mr. Barbarula, whoever else you would like us to. It will not be difficult. And whether you accept it or not, obviously, is your decision. (Phonetic)

But there is no going back on the design of the facility or showing changes. Pursuant to the consent order, we (inaudible) change of the use of the property. That's all. (Phonetic)

COUNCILMAN FALKOSKI: So in other words, if this board is supposed to review any aspects regarding the health, safety and welfare of the citizens, you're not going to indicate to us anything about set backs or fences or anything of that nature. Is that what you're saying?

MR. FENNO: That's correct.

COUNCILMAN FALKOSKI: Okay.

MAYOR BUDESHEIM: Unless, of course, it is determined that we do have jurisdiction (inaudible) as (inaudible) planner.

VICE CHAIRMAN MAGENNIS: Well that would (inaudible) the matter there --

MAYOR BUDESHEIM: Right, exactly.

VICE CHAIRMAN MAGENNIS: -- then the whole game changes.

MAYOR BUDESHEIM: Uh hum.

VICE CHAIRMAN MAGENNIS: Okay.

MR. BARBARULA: If that turns out to be that because of the types of trucks -- as a modification of the previous orders, and that by the mode of transportation brings it within the jurisdiction of this board, that that means that zoning would apply. And if zoning applies, then this type of facility would require a use variance.

MAYOR BUDESHEIM: Unless they moved to the industrial section of town.

MR. BARBARULA: Well, even that-- moving it to the industrial section of town would then become a conforming (phonetic).

MAYOR BUDESHEIM: Right.

MR. BARBARULA: Right. But if -- what is outlined in the planner's information is that her report indicates that she believes that, under those sections of the US code, that types of carriers somehow brings this within our jurisdiction, what we -- what we are asking for is to look at that section and to see whether or not it changes the federal jurisdiction. That's where -- that what we

(inaudible). If it does, then this application would have to go to a full use variance application.

MAYOR BUDESHEIM: In defense of our planner, I -- she isn't making a determination one way or the other. I think she questioned it and the applicant has failed to address the question.

MR. BARBARULA: I didn't say that she did. I'm just saying that that's --

MAYOR BUDESHEIM: Yeah, all right.

VICE CHAIRMAN MAGENNIS: I think everybody understands that.

MAYOR BUDESHEIM: Yes.

VICE CHAIRMAN MAGENNIS: And, actually, I think the other qualifier would be that we would be looking for a response by June 18th, if we're going to have it at the 25th as the meeting, I think it was a week beforehand that we were looking for --

MAYOR BUDESHEIM: -- 10 days or - I mean, it appears to be a very clear case (inaudible) is going to be a one page letter they said.

CLERK: Primarily the rule is I need to receive any papers (phonetic) for the meeting 10 days prior to the meeting.

VICE CHAIRMAN MAGENNIS: Ten days, okay. So that would be like the 15th.

CLERK: Right.

VICE CHAIRMAN MAGENNIS: June 15th.

CLERK: And if that isn't possible, because of (inaudible).

MR. BARBARULA: Any submission by any applicant is required 10 days before it --

CLERK: (inaudible)

VICE CHAIRMAN MAGENNIS: Right.

MR. BARBARULA: -- that's what we do, that is our rule (phonetic).

VICE CHAIRMAN MAGENNIS: Right.

MR. VENZA: Mr. Chairman?

VICE CHAIRMAN MAGENNIS: Yes.

MR. VENZA: In addition to this information from the railroad, could we have Mr. Formica bring in an environmentalist - of -- of some -- you know, certified environmentalist to get a reading on the radiation on the stacks that they have (phonetic).

VICE CHAIRMAN MAGENNIS: It's up to him.

MR. FORMICA: Well, I could bring you the MSDS sheets -- (inaudible) evaluation and see what else you require. (phonetic)

MR. VENZA: That's not what I'm asking. I'm asking -- we're talking about an MSDS sheet is about a brick. We're talking about tons of brick. Okay. And

although the basic components of the brick are the same, and they reactivity, the burn rate, everything else, the break rate, -- strength, that's all the same on each individual brick. However, when you add each brick to each other brick, radiation is -- is added, is cumulative. Okay. So I -- I would like to see a number.

MR. FORMICA: I'll ask the manufacturer if they have anything like that that can help us. But to go out and to hire an environmentalist to do such work (inaudible), I'm not sure, because there is plenty of precedent around the country where there is tons of brick accumulated, both at manufacturing facilities, in other brick yards like ours, (inaudible) has never been an issue.

MR. VENZA: That's true. But they don't have residents 50 feet away.

MR. FORMICA: Well, we can't be (inaudible) sure as well.

MR. VENZA: Okay. But for the most part there aren't. (phonetic)

MR. FORMICA: (inaudible). It could be an expensive process, and time consuming, as well. So I will try to get additional (inaudible) to the extent I can (inaudible) manufacturers that may abate some of

that concern. If it (inaudible) hopefully it will be, maybe that will suffice. (phonetic)

VICE CHAIRMAN MAGENNIS: But you will bring the MSDS sheets --

MR. FORMICA: Yes.

VICE CHAIRMAN MAGENNIS: -- at a minimum.

MR. VENZA: Send them (inaudible) same rate -- (phonetic) --

MR. FORMICA: Okay -- sure.

CLERK: Just to be clear, the meeting will be scheduled for June 25th. correct?

VICE CHAIRMAN MAGENNIS: June 25th. Right.

CLERK: Okay.

VICE CHAIRMAN MAGENNIS: I guess --

UNIDENTIFIED MALE: Make a motion that we continue this (inaudible).

UNIDENTIFIED MALE: Second.

MR. DARMOFALSKI: Well, the pipe issues are done structurally, but the mayor has requested a formal approval for (inaudible).

VICE CHAIRMAN MAGENNIS: That actually was, I think --

MR. DARMOFALSKI: -- engineering department, but I think what we were looking for was from the North Jersey District Water Supply (inaudible).

VICE CHAIRMAN MAGENNIS: Yes, the --

MR. DARMOFALSKI: -- engineering review.

VICE CHAIRMAN MAGENNIS: I think they --

MR. DARMOFALSKI: Last month we asked for an engineering review (inaudible).

VICE CHAIRMAN MAGENNIS: The commission provides a written notification and -- and -- that the railroad has completed with terms of (inaudible).

UNIDENTIFIED MALE: (inaudible).

MAYOR BUDESHEIM: What if -- as long as we're going through everything here.

UNIDENTIFIED MALE: Did you extend the meeting?

CLERK: No, actually we need to.

VICE CHAIRMAN MAGENNIS: Can I have a motion to extend the meeting.

UNIDENTIFIED MALE: I make a motion to extend the meeting until 11 o'clock.

UNIDENTIFIED MALE: Second.

VICE CHAIRMAN MAGENNIS: All in favor.

(All answer in the affirmative)

MAYOR BUDESHEIM: Some of the concerns, I think that Mr. Lotterman brought out about there not being any (inaudible) under that asphalt (inaudible). Can we do some test borings to make sure that -- that

asphalt is as it purports to be. I mean, if there is no base to them -- if that was just put on the grass, I don't (inaudible).

MR. DARMOFALSKI: I think with respect to the water (inaudible), I don't know that you have to inspect (inaudible). There has to be an inspection of the fence, there was a lot of complaints about the fence (phonetic). I already made a note about the asphalt, the pitch going the wrong way (inaudible), obviously (inaudible). (phonetic)

I have not done an inspection of that facility in 10 years. So it was built then, (inaudible) one inspection of the heating car and we haven't done anything since then.

So I think inspections are in order. I don't know that you -- I'll be happy to go out there in the next (inaudible) and look (inaudible). It's very important. If the board feels more comfortable with it that way, I'll be happy to do it.

UNIDENTIFIED MALE: (inaudible).

MR. DARMOFALSKI: If you want me to, it won't be a (inaudible).

VICE CHAIRMAN MAGENNIS: Why don't you do that, Paul? It will make everybody feel more comfortable.

CLERK: (inaudible) second -- carry the meeting -- carry the application to June 25th -- all in favor --

UNIDENTIFIED MALE: Roll call.

CLERK: I need a roll call, okay.

(Roll Call)

(All answer in the affirmative)

CLERK: Okay, this application will be carried to June 25th.

CERTIFICATION

I, Jean Mirza, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CD recording is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

July 15, 2009

Jean Mirza, AOC #541
G & L Transcription of NJ

Riverdale Planning Board

IN RE: New York Susquehanna & Western Railroad
Hamburg Turnpike/Post Lane
Block 17, Lot 4

Date of Hearing: June 25, 2009

BEFORE: Members of the Planning Board and Public

TRANSCRIPT ORDERED BY:

John Fiorilla, Esq. (Capehart & Scatchard)

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CHAIRMAN LOESNER: Hearing for New York Susquehanna and Western Railway Corporation. Paterson Hamburg Turnpike and Post Lane, block 17, lot 4. A continuation of the last two months hearing.

John, can you tell me where we stand on this now?

CLERK: Before you do that, John, I have statements signed by both -- Bradley Clinton and Steven Loesner that they have read all the minutes and the documents.

MR. BARBARULA: Gentlemen, will you please stand, raise your right hands.

B R A D L E Y C L I N T O N, SWORN

S T E V E N L O E S N E R, SWORN

MR. BARBARULA: Mr. Chairman, have you, as indicated in the statement, that is to remain part of the file, have you examined the record of the hearing where you were absent?

CHAIRMAN LOESNER: I have.

MR. BARBARULA: Mr. Clinton, as a member of the board, have you submitted a statement (inaudible) have you examined the record of the last meeting when you were absent?

MR. CLINTON: Yes, I have.

MR. BARBARULA: Would you please be seated.

Mr. Fiorilla, would you like to ask (inaudible) Chairman or member Clinton any questions as to the validity of them having fulfilled the statutory requirement of listening to (inaudible) and reviewing the records?

MR. FIORILLA: I have no questions, Mr. Barbarula.

MR. BARBARULA: Thank you. It will be without an objection. They will be sitting and they will be able to deliberate in this hearing.

Where we are is there are a couple of questions that were asked. The board has requested the applicant to outline their positions. The board received it, I believe, June 16th. That is in response to the board's inquiry. Since it was received by the board, I believe it was distributed to all members. Since (inaudible) to the case, it should be considered as an addendum to the application.

And -- I think the applicant had indicated that they are done with their presentation (inaudible) now if the board has any questions in reference to the documents they submitted, I think that's where we're at.

MR. FIORILLA: Mr. Barbarula?

MR. BARBARULA: Yes.

MR. FIORILLA: We would also like to just point that we submitted this evening a letter we received today from the water commission.

MR. BARBARULA: Yes.

MR. FIORILLA: We would like to make that as part of our application, as well.

MR. BARBARULA: Additionally, there was --

MR. FIORILLA: This was also requested.

MR. BARBARULA: Right. Additionally, there was a request, based upon a prior letter of the North Jersey District Water Supply Commission, the letter had indicated certain aspects of what they could do and could not do, and the limitation of the size of the stack, if you remember.

There was a question by the board, how do we know that that's the actual position of the board and this verifies the original letter. And that should then be added to the initial communication and made part of the record also.

I think that takes care of all of the other issues. I think at this point, it would then be up to the board to -- proceed on whether or not they are satisfied. If there are questions in reference to the applicant's submissions.

VICE CHAIR MAGENNIS: I believe there was

other questions, and it had to do with the depth of the existing pipe underneath the existing easement. I think Paul -- I think there was some question as to whether or not it was actually five feet below the --

MR. DARMOFALSKI: All paperwork indicated it's eight foot. (Phonetic)

VICE CHAIR MAGENNIS: It's eight foot. Okay. And all of the calculations were done on -- on a five foot. That the engineering --

MR. DARMOFALSKI: (Inaudible)

VICE CHAIR MAGENNIS: Okay.

CHAIRMAN LOESNER: And how do we feel about the -- submission on the determination of the site plan? Motor carrier as opposed to freight mover, what was it --

UNIDENTIFIED MALE: Forwarder.

CHAIRMAN LOESNER: Freight forwarder.

MS. HOLMQUIST: Well, the applicant's position from the paperwork that they have submitted is that they fall within the preemption. That there is no local authority or (inaudible). (Phonetic)

And I'm not convinced of that. I (inaudible) at the last meeting, that (inaudible) whether this (inaudible). There are procedures that the board can (inaudible).

CHAIRMAN LOESNER: Well, I happen to agree with you. For a couple of reasons. One of them was the testimony from the applicant, which pretty much said that once the freight arrives and was offloaded off the cars, it wasn't going to one operator, it was going to several different job sites.

It's a lot different to me than the corn syrup where it was offloaded directly from the rail cars to its transport and left the site. There was testimony, I believe, that the bricks could stay there for months. While the jobs progressed.

So it's --

MS. HOLMQUIST: I just wanted to also (inaudible) that had been submitted, um -- I did note that they are proposing to make this (inaudible) available to other customers. It said something to that effect in the agreement, um -- (inaudible) I don't know what other customers (inaudible) materials would be or what the truck traffic would be in conjunction with that. (Phonetic)

I guess I would also add that, you know, there are occasions that -- that I looked at where the STB has found that a trucking operation is not (inaudible). And, um -- the US Court of Appeals also (inaudible).

CHAIRMAN LOESNER: Uh hum.

MS. HOLMQUIST: So it's not unheard of. And each (inaudible) really rests on the facts (inaudible) for that particular use. It's a very specialized area. I (inaudible) and I believe that's why they're hiding (phonetic) (inaudible).

CHAIRMAN LOESNER: Right. Well, that's been the board's position, I think, all along throughout these hearings, is that -- we understand the rights of the railroad to deliver their product by rail car. Once it's sitting in the yard, we believe that we have jurisdiction over what goes on at the site. And is that your -- do you agree with us on that?

MS. HOLMQUIST: Yeah. And also to further that point, um, during my site visit, which I accompanied Mr. Darmofalski, um, the railroad representative, it was apparent to me that this will have a negative impact on the residents (inaudible) property that back up to the railroad (inaudible). (Phonetic)

Um, there are features that are not shown on the site plan. He listed many of them (inaudible). There are standard site plan detail (inaudible). And the applicant's position is they are not going to show that (phonetic).

Um, therefore, I don't really think the board can make an educated decision on the application (inaudible). And I currently don't feel that providing those details on the plan in any way is an undue burden for this applicant. (Phonetic)

CHAIRMAN LOESNER: I agree. And I feel that we would be doing the residents a vast injustice if we didn't -- didn't make sure we got that. We have no idea what's going on in there.

Again, I understand the argument put forth by the railroad. But, again, once it's offloaded and sitting on that platform, I think it belongs to us.

The thing that frustrates me on it is -- in my opinion, it's unnecessary. These lines extend right down into the industrial zone. We talked about this months -- a few months ago.

I can't understand why -- well, I guess it's all about money. Why a proper offloading and transfer facility couldn't be constructed a quarter mile down the road, down the line, in the industrial zone, with direct access to a truck route and to 23. I -- I don't understand why we can't get a modern facility.

Obviously, the railroad intends on using this -- this spur for either offloading corn syrup or bricks, or whatever it is in the future. And I think

every time that they change their mind on what use is going to go in there, we're going to be sitting here going through the same thing over and over again. And inconveniencing the people from Munn and the rest of the town.

So I agree, I don't -- I don't know, and I have been thinking about it since I read the minutes. I don't know what kind of determination even to make tonight. I don't feel I have -- I don't feel I have enough -- information --

MAYOR BUDESHEIM: (inaudible).

CHAIRMAN LOESNER: Go ahead, mayor, yeah, help me out here before I keep stammering around here.

MAYOR BUDESHEIM: I share your sentiments 100 percent. And I appreciate all the research you have done. So I would like to, if possible, make the recommendation that we appeal to the board, the -- Transportation --

MS. HOLMQUIST: (inaudible).

MAYOR BUDESHEIM: -- Surface Transportation Board, to get a ruling. Once we do that, we are insulated from any lawsuits challenging our position. And get a determination.

I would also like to recommend that the applicant, if time is of the essence to them, that

they amend their application and put it in the industrial zone where such an activity belongs, and they can prepare a full site plan that I -- our planner would determine whether that is a permitted use. But it would be far more appropriate down there, as you said, rather than the redevelopment/residential zones that they are looking to put it in. (phonetic)

CHAIRMAN LOESNER: Well, I agree, Mayor, and that's one of the -- that's why I brought it up. Because I can understand the railroad's position. And I know we have nothing to stand on that spur, they can bring their product in by rail. But why they wouldn't want to construct a modern, safe, efficient, clean -- transfer facility in the industrial zone just staggers me.

Like again, like I say, I think, you know, once the brick operation moves out and something else comes in, we're going to be right back here with the same thing.

UNIDENTIFIED MALE: You made that in the form of a motion, Mr. Mayor?

MAYOR BUDESHEIM: Yes. I would also like to include the planner's letter where she outlined her position in much detail, as a part of that resolution.

CHAIRMAN LOESNER: Absolutely.

COUNCILMAN FALKOSKI: I'll second that.

CHAIRMAN LOESNER: Anybody want to add anything? Any thoughts? John, anything?

MR. BARBARULA: No. I gave my opinion the last time. I have nothing to add. The board has made a motion. I have nothing to add.

CHAIRMAN LOESNER: Okay.

CLERK: Okay. Mayor Budesheim.

MAYOR BUDESHEIM: Yes.

CLERK: Councilman Joseph Falkoski.

COUNCILMAN FALKOSKI: Yes.

CLERK: Glenn Venza?

MR. VENZA: Yes.

CLERK: Al Heimall?

MR. HEIMALL: No.

CLERK: Vincent Pellegrini?

MR. PELLEGRINI: Abstain.

CLERK: Bradley Clinton.

MR. CLINTON: Yes.

CLERK: George Lang.

MR. LANG: Yes.

CLERK: Michael Reilly.

MR. REILLY: Yes.

CLERK: Vice Chairman Brendan Magennis?

VICE CHAIR MAGENNIS: No.

CLERK: Chairman Steven Loesner.

CHAIRMAN LOESNER: Yes.

CLERK: Motion carried.

MAYOR BUDESHEIM: We will file that motion with the -- the -- within the next few days to protect our rights.

MR. BARBARULA: I would suggest that the board make a motion to (inaudible) to do that, if you're going to do that.

MAYOR BUDESHEIM: I would -- I think this is a -- this goes beyond the Planning Board.

MR. BARBARULA: I think the board should pick someone that has experience in this area. Especially in light of my opinion to the board, I believe that it would be more appropriate to have someone else --

CHAIRMAN LOESNER: I agree.

MR. BARBARULA: -- the application.

MAYOR BUDESHEIM: And it's not a -- not trying to diminish you --

MR. BARBARULA: You don't have to -- you don't have to make one comment about it. Its my recommendation, I just said that to the board.

MAYOR BUDESHEIM: Right.

MR. BARBARULA: I suggest that the board

pick somebody to -- present this position, that they can (inaudible) that, basically, it could end up that I could go before the board to be called as a witness, so I'd rather have an independent person do that. (Phonetic)

MAYOR BUDESHEIM: Right. I will check with our borough attorney, since this is a, I believe, a municipal action more than a Planning Board -- I'll check and see if he has the -- the ability to go before the board and represent us. Otherwise, I'll to have to hire someone else.

MR. BARBARULA: It isn't municipal. The board -- this board is acing, this board entered into the -- you would have to authorize the hiring of an independent, and you should do so tonight.

The -- that can be done very simply, Mr. Chairman and Mr. Mayor, by authorizing a committee -- two or three people to accept resumés or to confer -- but also conferring with the town attorney would be very appropriate, because if, in fact, their firm is to do it, there is no prohibition against that firm doing it.

So I would suggest you make a motion to authorize the hiring of an attorney to file, if at all possible, a petition with the Surface Transportation

Board.

MAYOR BUDESHEIM: All right, then I would our attorney's suggestion, and first check and see if our borough attorney could -- or his firm could handle it. If not, we have used (inaudible) in the past, so rather than going through an interview process, I would like to get this going as soon as possible.

CHAIRMAN LOESNER: Is that your motion?

MAYOR BUDESHEIM: Yes.

CHAIRMAN LOESNER: That's fine with me. We're familiar with Mr. Clemack (phonetic).

CLERK: We need --

VICE CHAIR MAGENNIS: Are we saying that Mr. Clemack is going to make the application to the --

MAYOR BUDESHEIM: If our attorney cannot.

VICE CHAIR MAGENNIS: So he is going to determine whether he can or he can't.

MAYOR BUDESHEIM: Right. And if he can't, Mr. Clemack has helped us in the past (inaudible) conflicts with our attorney or with Mr. Barbarula.

UNIDENTIFIED MALE: And if it's beyond Mr. Clemack's scope?

CHAIRMAN LOESNER: Then we'll form the committee and we'll find -- we'll find one.

MR. BARBARULA: That's what I would like you

to state, whatever motions you need now --

UNIDENTIFIED MALE: Whatever motions (inaudible).

MR. BARBARULA: -- (inaudible) --

CHAIRMAN LOESNER: We're getting there.

MR. BARBARULA: -- since this is the last formal meeting you have -- (phonetic) --

CHAIRMAN LOESNER: We're getting there.

MR. BARBARULA: Let's take one -- one motion at a time. The mayor has made a motion to obtain independent counsel. That's my recommendation. Please do a vote on that first.

CHAIRMAN LOESNER: Very well.

CLERK: Mayor Budesheim.

MAYOR BUDESHEIM: Yes.

MR. BARBARULA: Please -- there wasn't a -- let's do it right.

CLERK: Who was the second?

MR. BARBARULA: Who was the second?

CLERK: George Lang.

CHAIRMAN LOESNER: George Lang.

MR. BARBARULA: I didn't hear it, thank you.

CLERK: Okay. George -- (inaudible).

MR. BARBARULA: Go ahead, sorry.

CLERK: Mayor Budesheim.

MAYOR BUDESHEIM: Yes.

CLERK: George Lang.

MR. LANG: Yes.

CLERK: Councilman Joseph Falkoski.

COUNCILMAN FALKOSKI: Yes.

CLERK: Glenn Venza?

MR. VENZA: Yes.

CLERK: Al Heimall?

MR. HEIMALL: No.

CLERK: Vincent Pellegrini?

MR. PELLEGRINI: Yes.

CLERK: Bradley Clinton?

MR. CLINTON: Yes.

CLERK: Michael Reilly?

MR. REILLY: Yes.

CLERK: Vice Chairman Brendan Magennis?

VICE CHAIR MAGENNIS: Yes.

CLERK: Chairman Steven Loesner?

CHAIRMAN LOESNER: Yes. Second motion.

MR. BARBARULA: Would be to appoint a committee to look at potential attorneys, first being the town attorney, the second would be the (inaudible) attorney. I have -- we have had Mr. Clemack cover for me for this board before. He's very familiar with the town, so that would be number two. And then after

consulting with them, go to a third. So that would be the order.

And also with that motion picking at least two people for a committee for -- to take care of the communications with the town attorney and Mr. Clemack and any other attorney that you may need to interview.

VICE CHAIR MAGENNIS: All right, just one question on that. Who is the approving authority? I know Mr. Clemack can recommend himself. Who is approving that he is qualified to do this work?

MR. BARBARULA: That --

VICE CHAIR MAGENNIS: I think that needs to be stated.

MR. BARBARULA: -- that's going to be --

VICE CHAIR MAGENNIS: The committee? Or --

MR. BARBARULA: -- back to the committee, you're going to have to authorize the committee if you want something done quickly.

VICE CHAIR MAGENNIS: So the committee is going to -- the committee should be named --

MR. BARBARULA: (inaudible) you authorize to hire an attorney.

VICE CHAIR MAGENNIS: Right.

MR. BARBARULA: The committee will have to authorize by talking to these people --

VICE CHAIR MAGENNIS: I think the first one was that they would hire an attorney, I don't think that it stated that the committee had --

MR. BARBARULA: That's what this motion is all about.

VICE CHAIR MAGENNIS: Okay.

MR. BARBARULA: You authorize hiring an independent attorney with the first motion. Second motion is -- is to enable a committee to --

VICE CHAIR MAGENNIS: Approve --

MR. BARBARULA: -- make the selection.

CHAIRMAN LOESNER: I'm going to make that motion with the committee being myself and Vice Chairman Brendan Magennis.

VICE CHAIR MAGENNIS: Actually, I would not want to be on that committee.

CHAIRMAN LOESNER: Okay.

VICE CHAIR MAGENNIS: I think I would be biased.

CHAIRMAN LOESNER: Okay. Who is our next senior member? Heimall -- Mr. Heimall?

CLERK: Yes.

MR. HEIMALL: You really want (inaudible). Okay.

CHAIRMAN LOESNER: It will be myself and

member Heimall.

CLERK: I need a second.

UNIDENTIFIED MALE: I'll second it.

CLERK: Chairman Steven Loesner.

CHAIRMAN LOESNER: Yes.

CLERK: George Lang.

MR. LANG: Yes.

CLERK: Okay. Mayor Budesheim.

MAYOR BUDESHEIM: Yes.

CLERK: Councilman Joseph Falkoski.

COUNCILMAN FALKOSKI: Yes.

CLERK: Glenn Venza?

MR. VENZA: Yes.

CLERK: Al Heimall?

MR. HEIMALL: Yes.

CLERK: Vincent Pellegrini?

MR. PELLEGRINI: Yes.

CLERK: Bradley Clinton.

MR. CLINTON: Yes.

CLERK: Michael Reilly.

MR. REILLY: Yes.

CLERK: Vice Chairman Brendan Magennis?

VICE CHAIR MAGENNIS: Yes.

CLERK: So that's -- the committee will be Steven Loesner and Al Heimall. Okay.

MR. BARBARULA: Motion to close (phonetic).

CLERK: No. We have to make a motion to cancel the July 2nd meeting, since we have no agenda.

MR. BARBARULA: Okay.

(Matter requested concluded)

CERTIFICATION

I, Jean Mirza, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CD is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

July 15, 2009

Jean Mirza, AOC #541
G & L Transcription of NJ

E

RESOLUTION
BOROUGH OF RIVERDALE
PLANNING BOARD

APPLICATION
NYS&W Railway Corporation
BLOCK 17 LOT 4
Paterson Hamburg Turnpike
at Post Lane
Site Plan Review as per Consent Order

WHEREAS, the application was considered by the Planning Board , after said application was received along with exhibits, photographs and expert reports, as per the attached minutes, which are incorporated herein as if set forth verbatim. The Board having taken testimony of the applicant, experts and the public, and

WHEREAS, the Board having determined that the application has not met the requirements of the existing Consent Order, therefore the Board determined that there was a true jurisdictional issue and that based upon the conflicting opinions of the Board's Attorney and Planner that no approval of the application would be appropriate,

WHEREAS, The Board has by motion adopted the jurisdictional statements of the Board's Planner Donna Holmquist as enumerated upon the record and incorporated herein. The Board finds that the proposed use requested by the applicant may be subject to the full jurisdiction of the Planning Board and the Board is appealing to the S.T.B. for a determination of jurisdiction. Accordingly the Board finds that the submission is not sufficient as indicated in the Planner's report and will await a jurisdictional determination by the Surface Transportation Board before proceeding,

NOW THEREFORE BE IT RESOLVED that the above application be and is hereby dismissed without prejudice, based upon inadequate proofs and documentation and based upon the report of the Board's Planner which is incorporated herein and that jurisdictional issues exist.

The undersigned, Secretary of the Planning Board, hereby certifies that the above is a true copy of the resolution adopted by the Board on this 6th day of August, 2009.

_____
Linda Roetman
Secretary to the Planning Board

F

RAIL CAR TRANSLOADING CONTRACT

THIS AGREEMENT made as of this 31st day of July, 2009, by and between TRI STATE BRICK, INC., with offices at 151 West 25th Street New York, NY 10001 (hereinafter referred to as "TRI-STATE") and THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION, a New Jersey corporation with offices at 1 Railroad Avenue, Cooperstown, New York 13326 (hereinafter referred to as "NYS&W").

WHEREAS, NYS&W is an interstate carrier by rail and has an existing rail-to-truck transloading facility (the "Facility") at certain real property owned by NYS&W and accessed via Hamburg Turnpike, Riverdale, New Jersey, as more particularly described on Exhibit A annexed hereto; and

WHEREAS, TRI-STATE wishes to make arrangements with NYS&W for (a) NYS&W to transport railcar shipments of brick (the "Commodity") to the Facility; (b) NYS&W to transload the Commodity between truck and rail at the Facility; (c) NYS&W to provide temporary storage in transit of the Commodity at the Facility, and (d) NYS&W to perform administrative functions related to the transportation of the Commodity.

NOW, THEREFORE, in consideration of a mutual exchange of promises and other valuable consideration, the receipt of which is acknowledged by the parties, the parties hereto covenant and agree as follows:

1. CONSTRUCTION OF FACILITY; PERFORMANCE OBLIGATIONS; PROPERTY:

1.1 The Facility currently exists, but was designed to transload liquid commodities. NYS&W and TRI-STATE have cooperated to design modifications to the Facility that are needed to handle the Commodity efficiently and effectively, as shown on Exhibit A. Those modifications will be constructed by contractors selected by NYS&W.

1.2 NYS&W will perform the transportation services, including without limitation transloading services, as requested by and for the benefit of TRI-STATE, as set forth herein. NYS&W will designate space within the Facility sufficient for and facilities and equipment (the "Equipment") needed for handling the Commodity, as well as NYS&W's performance of all its obligations under this Agreement. NYS&W is responsible for all improvements to the Facility, including without limitation all Equipment at the Facility.

1.3 During the Term of this Agreement, NYS&W acknowledges that it shall not perform transloading services at the Facility for the benefit of any person other than TRI-STATE unless such services can be performed in a manner which does not impede in any way NYS&W's handling of commodity tendered by TRI-STATE. In consideration of NYS&W's commitment of the capacity of the Facility for traffic arranged by Tri-State, Tri-State agrees to arrange for no fewer than Two Hundred Fifty (250) loaded railcars of Commodity to be shipped to the Facility during each year of this Agreement. In the event that fewer than Two Hundred Fifty (250) loaded railcars of Commodity are

shipped to the Facility in any year of this Agreement, then Tri-State shall pay to NYS&W a sum determined by multiplying the difference between the actual number of railcars shipped and Two Hundred Fifty (250) by Five Hundred Dollars ($500.00).

1.4 NYS&W hereby grants to TRI-STATE the right to access the Facility solely for purposes directly related to the transportation of the Commodity, including such actions as inspecting the Commodity for damage, review of NYS&W's unloading and loading procedures, and inspection of shipping documents.

2. FREIGHT RATES:

Rail freight rates are to be determined by the NYS&W rate circular or private contract then in effect.

3. RAILROAD TRANSLOADING:

3.1 NYS&W hereby agrees that it, or an entity it engages ("Loader"), shall perform bulk loading /unloading of the Commodity, as well as any and all other services required during, and as part of, transporting the Commodity, including without limitation receiving, unloading the Commodity at the Facility, operating equipment, maneuvering railcars over and across the Facility, temporarily storing Commodity, loading Commodity onto trucks for delivery off site, completing all appropriate paperwork, and complying with all applicable laws and regulations governing rail transportation (hereafter and collectively, the "Services").

3.2 . Unloading of railcars by NYS&W or Loader shall follow operating procedures mutually acceptable to NYS&W and TRI-STATE.

4. TRANSPORATION AND LOADING:

4.1 In order to assure that unloading of railcars and loading of trucks is performed in a manner acceptable to TRI-STATE, TRI-STATE may station one or more representatives in the location within the Facility to observe such operations.

4.2 TRI-STATE will make all arrangements for trucks to transport the Commodity from the Facility. Neither TRI-STATE nor its trucking contractor may, without prior written permission of NYS&W, store motor trucks or trailers at the Facility, fuel road vehicles at the Facility, or store bulk materials at the Facility.

4.4 TRI-STATE and NYS&W shall ensure that their respective employees, agents and contractors comply with the NYS&W's rules governing safety and other operating issues at the Facility.

[4.5 TRI-STATE and NYS&W agree to meet no less than quarterly to review the operation of the Facility and the costs of the Services to make equitable adjustments in the Actual Costs (as

defined below) to reflect operating efficiencies or inefficiencies, changes in law or application of law, legally enforceable orders of governmental authorities, changes in rates of pay, material costs and unanticipated expenses. If either party should suffer a material inequity in the performance or service level of its obligations under this Agreement as a result of adverse and unforeseen conditions, then the parties hereto shall renegotiate in good faith for the purpose of resolving such inequity, provided that until such renegotiation is concluded, the Actual Costs being charged at the time either party requests a renegotiation shall remain in effect. Any changes to the terms of this Agreement agreed to by NYS&W and TRI-STATE shall be memorialized in writing as an Amendment hereto and signed by the authorized representatives of NYS&W and TRI-STATE.]

5. TERM / FEE:

5.1 The initial term of this Agreement shall for a period of five (5) years beginning with its effective date. Unless terminated as provided in Section 5.2, this Agreement shall thereafter automatically renew for renewal terms of 12 months each.

5.2 No less than one hundred twenty (120) days prior to the expiration of the initial or any renewal term of this Agreement, either party may give notice of its intention to terminate this Agreement.

5.3 TRI-STATE shall pay to NYS&W an amount equal to NYS&W's actual reasonable costs in providing Services to TRI-STATE determined in accordance with 23 CFR Part 140, Subpart I (collectively, the "Actual Costs"). Such payments shall be made on a weekly basis by wire transfer to an account designated by NYS&W within seven (7) days of receipt of a detailed line item invoice from NYS&W for such Actual Costs. TRI-STATE shall have the right, at its own cost, on reasonable notice and at a mutually agreeable time, to inspect and audit NYS&W's books relating to the Actual Costs, and any corrections or adjustments in TRI-STATE's favor will be credited to TRI-STATE as against future payments of Actual Costs.

6. OPERATIONS:

6.1 NYS&W or Loader will provide all labor, equipment and tools necessary to accomplish the function of transfer of Commodity from trucks to railcars in a manner consistent with this Agreement.

6.2 NYS&W or Loader will provide personnel sufficient to accomplish the functions of transfer of Commodity between trucks and railcars and all associated administrative functions in a manner consistent with this Agreement.

6.3 NYS&W will maintain records and receipts for railcars it unloads identifying the following:

i. car number;
ii. shipper;

iii. commodity.

6.4 TRI-STATE, its officers, employees and invitees, while in proximity to rail tracks, shall follow, observe and be governed by railroad safety rules as applicable.

[6.5 NYS&W shall monitor and inspect all unloading/loading equipment at reasonable intervals and shall, immediately upon discovery of any damage or malfunction thereof, notify TRI-STATE of needed repairs and any effect on operations. NYS&W shall arrange and pay for all repairs made to the unloading/loading equipment.]

7. INDEPENDENT CONTRACTOR STATUS:

It is the intent of the parties that NYS&W (including Loader) is and shall remain an independent contractor with respect to TRI-STATE. Neither NYS&W nor any employee,other worker, or entity engaged by NYS&W shall be deemed an employee or agent of TRI-STATE under any circumstances or for any purpose, including, but not limited to, federal, state or local payroll taxes, income tax withholding, workers compensation premiums, unemployment tax or TRI-STATEprovided benefits of employment. This independent contractor relationship of the parties is paramount to this Agreement, and nothing herein contained shall be construed as inconsistent therewith.

9. INDEMNIFICATION:

9.1 TRI-STATE will be responsible for and will indemnify, save harmless and defend NYS&W and each of its officers, shareholders, directors, employees and agents against and from any and all claims and suits for, and any and all liability, loss or expense (including reasonable attorneys fees) arising from or incidental to or in connection with, damage to or loss of property of NYS&W, TRI-STATE, or of agents, servants or employees of either, or of any other person, and against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, injury to or death of persons, including agents, servants, or employees of NYS&W or of Loader, or any other person (including Loader, if a natural person), which said damage, loss injury or death shall arise in any manner, directly or indirectly, out of or incidental to or in connection with, TRI-STATE employees being on NYS&W property, except to the extent caused by the negligent or intentional acts or omissions of NYS&W or other entities allowed to use the Facility by NYS&W pursuant to this Agreement.

9.2 NYS&W will be responsible for and will indemnify, save harmless and defend TRI-STATE and each of its officers, members, managers, employees and agents against and from any and all claims and suits for, and any and all liability, loss or expense (including reasonable attorneys fees) arising from or incidental to or in connection with, damage to or loss of property of TRI-STATE, NYS&W, or of agents, servants or employees of either, or of any other person, and against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, (a) injury to or death of persons, or damage to property, including agents, servants, or employees of TRI-STATE or of Loader, or any other person (including Loader, if a natural person), which said damage, loss injury or death shall arise in any

manner, directly or indirectly, out of or incidental to or in connection with, the transloading operation being performed by NYS&W or Loader at the Property, except to the extent caused by the negligent or intentional acts or omissions of TRI-STATE, (b) any environmental or other conditions on the Property, and (c) the operations of any other person or company on the Property during the Term.

10. INSURANCE:

10.1 TRI-STATE shall provide and maintain in effect during the Term a policy of public liability insurance including contractual liability covering liability assumed by TRI-STATE under the provisions of the foregoing Section 9 of this Agreement. Said insurance shall be in limits of not less than $5,000,000.00 combined single limit, and shall be in companies and forms acceptable to NYS&W.

10.2 TRI-STATE shall furnish to NYS&W certificates of all required insurance policies upon request of NYS&W. All such policies shall be endorsed to provide not less than thirty (30) days' notice to NYS&W of any cancellation thereof and of any material change in coverage.

10.3 The providing of said insurance coverages shall not be deemed a limitation on the liability of TRI-STATE as provided in this Agreement, but shall be additional security therefor.

10.4 NYS&W may, from time to time, require increased limits of insurance to reflect changes in the Consumer Price Index since the last such increase.

10.5 NYS&W, Loader and any other person using the Property with the permission of NYS&W shall provide and maintain in effect during the Term a policy of public liability insurance including contractual liability covering liability assumed by NYS&W and Loader under the provisions of the foregoing Section 9 of this Agreement. Said insurance shall be in limits of not less than $5,000,000.00 combined single limit, and shall be in companies and forms acceptable to TRI-STATE, and shall name TRI-STATE and its officers, members, managers, employees and agents as additional insureds.

10.6 NYS&W shall furnish to TRI-STATE certificates of all required insurance policies upon request of TRI-STATE. All such policies shall be endorsed to provide not less than thirty (30) days' notice to TRI-STATE of any cancellation thereof and of any material change in coverage.

10.7 The providing of said insurance coverages shall not be deemed a limitation on the liability of NYS&W as provided in this Agreement, but shall be additional security therefor.

10.8 TRI-STATE may, from time to time, require increased limits of insurance to reflect changes in the Consumer Price Index since the last such increase.

11. ENVIRONMENTAL REGULATIONS:

11.1 TRI-STATE covenants that it will not release or dispose of any hazardous or explosive (a) chemical, (b) impurity, (c) waste, or (d) other substance on or near the Facility, provided that it is acknowledged that TRI-STATE is the business of causing Commodity to be delivered to the Facility to be shipped by truck from the Facility. In the event that any court, duly constituted public authority, municipality or agency enters a final and incontestible order or judgment against NYS&W for any such release or disposal by TRI-STATE so long as NYS&W neither authorized nor sanctioned the same, then TRI-STATE shall indemnify and hold NYS&W harmless for all expenses associated with compliance with said judgment to include, but not be limited to, any required clean-up and/or restoration cost of the site to a safe condition together with NYS&W's reasonable costs, attorneys' fees or other costs of litigation.

11.2 Notwithstanding Section 11.1 above, TRI-STATE shall not be responsible for or indemnify NYS&W for any such release or environmental condition, and NYS&W shall indemnify and hold TRI-STATE and its officers, members, managers, employees and agents harmless from and against all costs, liabilities and expenses (including reasonable attorneys fees) for any such release or environmental condition, which (i) predates this Agreement, (ii) is caused by or is the result of any act or omission or NYS&W, its agents, contractors or invitees, (iii) is caused by or is the result of any act or omission of any third person over whom TRI-STATE has no authority or control, including, but not limited to, any person who supplies or furnishes railroad cars that are the effective cause of the release or disposal of said substances, or (iv) is caused by any other person having use of or operating at the Property.

11.3 NYS&W shall conduct all of its operations in compliance with all applicable environmental statutes, ordinances, rules, regulations and requirements of all federal, state and local governmental authorities, and the various departments thereof, now existing or hereafter created.

12. REPRESENTATIONS AND WARRANTIES:

12.1 NYS&W is a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency.

12.2 NYS&W has the full corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement constitutes the valid and binding agreement of NYS&W, enforceable in accordance with its terms.

12.3 TRI-STATE has the full limited liability company power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement constitutes the valid and binding agreement of TRI-STATE, enforceable in accordance with its terms.

13. ASSIGNING:

Neither party shall assign or transfer this Agreement in whole or in part, without the written consent thereto by the other party, such consent not to be unreasonably withheld, conditioned or

delayed, provided, however, that NYS&W shall have the right to assign this Agreement pursuant to any merger of NYS&W or sale of stock or all or substantially all of the assets of NYS&W to a railroad licensed by the Surface Transportation Board. Any assignment or transfer of this Agreement shall not affect any obligations of either party hereunder arising prior to such assignment or transfer. Any assignment or transfer of this Agreement shall not be effective until delivery of a written assumption of the assignor's obligations under this Agreement signed by the assignee/transferee in form reasonably acceptable to the non-assigning party. For the purposes of this Agreement, a sale or change in control of either party shall be considered an assignment of this Agreement.

14. DEFAULT:

Default is defined as the failure to discharge any of the covenants herein. If either party to this Agreement fails to correct any default hereunder within thirty (30) days after written notice to do so (unless a longer period is otherwise specified herein), or, if such default cannot with commercially reasonable best efforts be cured within thirty (30) days then as soon thereafter as possible, the party serving such notice may unilaterally terminate this Agreement forthwith. Waiver of any default shall not be construed as a waiver of either a subsequent or continuing default.

The actions and remedies provided in this Agreement in case of default shall not be deemed exclusive but shall be in addition to all other actions and remedies at law or in equity in case of any such default; and no action or remedy taken or omitted by NYS&W or by TRI-STATE in case of default shall be deemed a waiver of such default and waiver of a particular default shall not be deemed a waiver of any other default or a waiver of the same default again occurring, nor shall any failure on the part of NYS&W or by TRI-STATE to compel a fulfillment of any one or more of the covenants, terms and conditions herein contained be held to be a waiver of its right to enforce the same at any time thereafter during the term, or any continued term, of this Agreement.

15. SEVERABILITY:

The provisions of this Agreement are severable and it is the intention of the parties hereto that if this Agreement cannot take effect in its entirety because of the final judgment of any court of competent jurisdiction holding invalid any part or parts thereof, the remaining provisions of this Agreement shall be given full force and effect as completely as if the part or parts held invalid had not been included therein.

16. FORCE MAJEURE:

In the event that either TRI-STATE or NYS&W is unable to perform as stated in this Agreement due to or as a result of one or more of the following causes: acts of God, including but not limited to floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions; act of public enemy, war, blockade, insurrection, riot, vandalism or sabotage; fire, accident, wreck, derailment, washout, or explosion; strike, lockout or labor dispute; embargoes or AAR service orders; or governmental laws, orders (including court orders) or regulations, this Agreement shall be suspended only insofar as said performance is affected by the described cause

and only for the duration of such cause.

17. THIRD-PARTY MODIFICATION:

In the event that the Surface Transportation Board ("STB") or any other governmental authority having jurisdiction shall issue or adopt (or issue or publish notice of its intention of any such issuance of adoption) any law, order, rule or regulation, the effect of which shall be to modify, amend, cancel or terminate any or all of this Agreement, either party shall promptly deliver to the other a full and complete copy thereof; provided, however, that neither party shall seek such action by the STB or other government authority.

18. NOTICES:

Any notice required or permitted to be given under the terms, conditions and provisions of this Agreement shall be in writing and considered as having been given upon the mailing thereof by certified mail, return receipt requested, to the office address of the other party set forth above, or to such other address as such party may from time to time specify in writing. Each such notice shall be effective on the date actually received, as indicated on the receipt therefor.

Notice shall be given as follows:

If to NYS&W: President
The New York, Susquehanna & Western Railway Corporation
1 Railroad Avenue
Cooperstown, New York 13326

If to TRI-STATE: President
TRI STATE BRICK , INC.
151 West 25th Street
New York, NY 1000

19. APPLICABLE LAW:

This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey, without regard to its conflict of law principles.

20. ENTIRE AGREEMENT; AMENDMENTS:

This Agreement contains the entire agreement of the parties relating to NYS&W transloading of bulk materials between railcars and trucks at the Property. Any purported amendment hereto shall not be effective unless it shall be set forth in writing and executed by both parties.

[The balance of this page intentionally left blank]

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized respective representatives on the day and year first above written.

THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION

By: _____

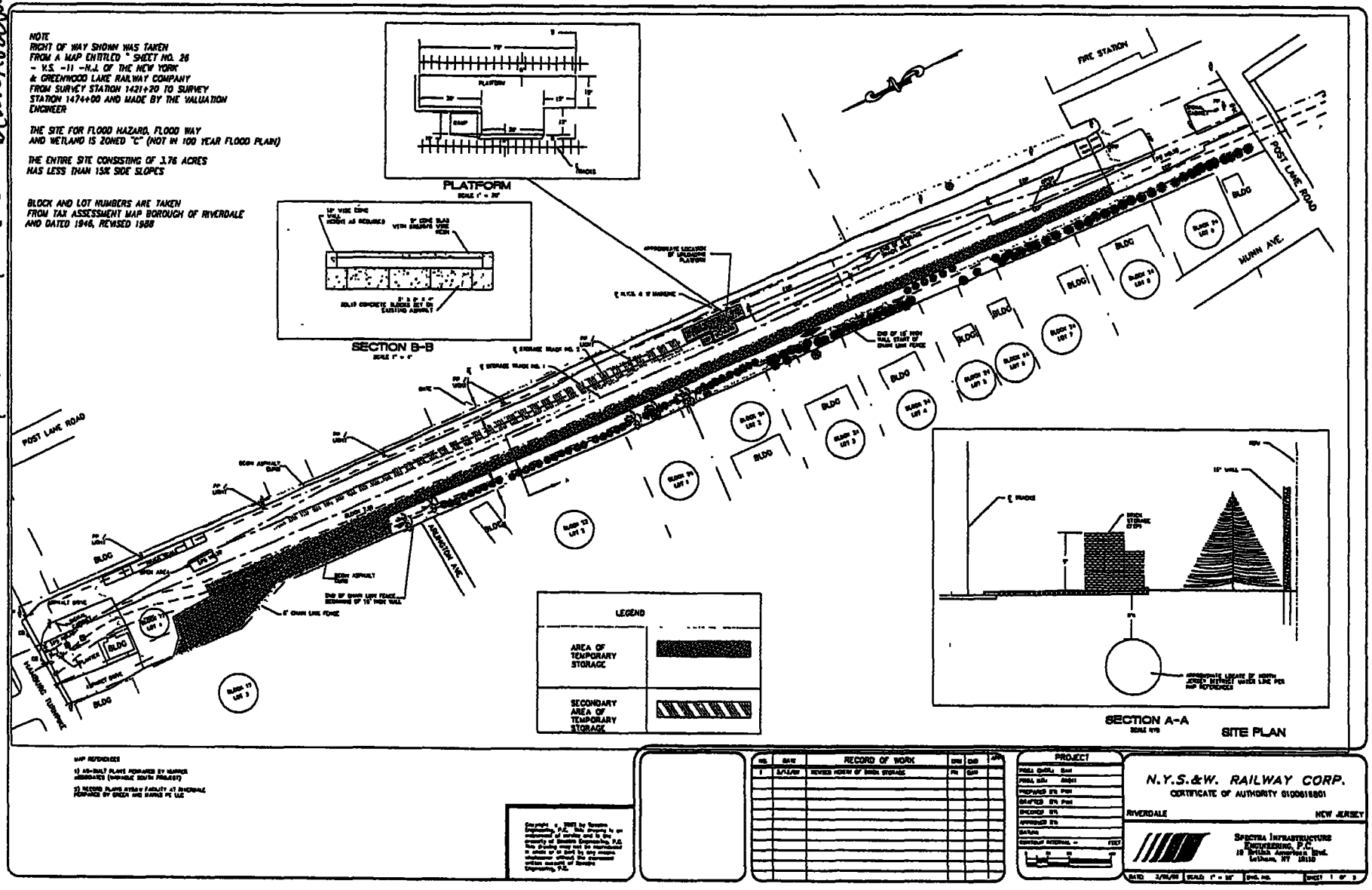
Name: NATHAN R. FENNO

Title: PRESIDENT

TRI-STATE BRICK, INC.

By: _____

Name: Louis Formica

Title: CFO

Ex. A - N Rail Car Transloading Contract