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FD 36063

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Office of Proceedings
August 31, 2016
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August 30, 2016

The Honorable Ann K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Via Federal Express.

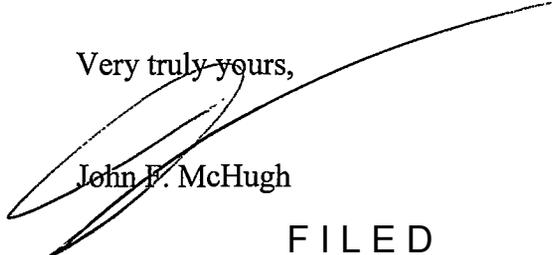
Re: Jersey Marine Rail, LLC
Petition for a Declaratory Order

Dear Secretary Quinlan:

Enclosed please find the original and ten copies of Jersey Marine Rail's petition for a Declaratory Order that its acquisition and rehabilitation of rail yard and industrial tracks for operation as a class III rail carrier is an exempt transaction. Petitioner had filed an Exemption on August 12, 2016 but was advised to withdraw and proceed with a petition. The Exemption was thus withdrawn on August 25. This petition is filed as the advice we received that this transaction requires a full petition, conflicts with the Board's decision as to a similar petition, SWANSON RAIL TRANSFER, LP—DECLARATORY ORDER—SWANSON, RAIL YARD TERMINAL, FD 35424. Also please find my check for the \$1,400 for the filing fee. Also enclosed please find a CD containing the same.

Thank you for your attention to this matter.

Very truly yours,


John F. McHugh

FEE RECEIVED
August 31, 2016
SURFACE
TRANSPORTATION BOARD

FILED
August 31, 2016
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36063

**JERSEY MARINE RAIL, LLC
PETITION FOR A DECLARATIOY ORDER THAT REHABILITATION
AND OPERATION OF EXISTING TRACKS WITHIN A FORMER RAIL
YARD AND SERVING AN ADJACENT INDUSTRIAL CITE AS A CLASS
III RAIL CARRIER IS AN EXEMPT TRANSACTION
AND
SEEKING EXPEDITED CONSIDERATION**

Jersey Marine Rail, LLC (hereinafter “JMR” or “**Petitioner**”), a non carrier which seeks to become a class III common carrier by rail, seeks an order that it is exempt from the provisions of 49 U.S.C. 10901 to rehabilitate and operate approximately 5,000 feet (almost 1 mile) of tracks within a site, which consists of a three track holding yard and a rail served industrial brown field site in the City of Linden, New Jersey (“the Trackage”). Two tracks of the three track holding yard are within the portion of the leasehold which was purchased from Conrail or its predecessor, Central Railroad of New Jersey. The third track is immediately adjacent but just to the east. This holding yard was a portion of what is now Conrail’s Sound Shore Line, which still reaches the trackage in issue. All these tracks were served by a common carrier in the past. The track within the right of

way is subject to a right of Conrail to operate over that portion of the trackage should Conrail ever seek to serve shippers south of the Rahway River.

The Conrail Sound Shore Line north of the site remains active, serving a customer just to the north of JMR's leasehold.

The tracks and land they are on is leased to JMR for a term, with extensions, totaling 50 years. Thus, JMR seeks to operate on track which consists of: 3 tracks two of which are within the boundaries of the former Sound Shore Line, plus three former industrial spurs, all of which, pursuant to 49 U.S.C. 10906, would be exempt from Board regulation but for the fact that this carrier will consist entirely of such trackage to be operated by JMR. The purpose of this Petition is to enable JMR to provide common carrier railroad services to the public.

As all re-construction contemplated, is limited to rehabilitating and upgrading existing track, petitioner, relying on the Board's decision in Swanson Rail Transfer LP--Declaratory Order- Swanson No. FD 35424(June 14, 2011) on August 12, 2016 originally proceeded by Notice of Exemption. The Petitioner has been informed by the Board's staff, that a Notice proceeding is inappropriate in this matter as it contemplates rehabilitation of existing spur tracks and yard tracks. While the Board's staff's position is inconsistent with the holding of Swanson Rail Transfer, LP Declaratory Order, Supra on nearly identical facts, which allowed that proceeding to move forward through a notice of exemption, Petitioner here

withdrew its Notice in this proceeding on August 25 at staff's request. As several potential shippers have expressed interest in utilizing JMR's services if its services can be made operable soon, the Petitioner needs to proceed as quickly as possible as Petitioner and its potential customers were expected to have operating authority one month after filing the Notice, or on September 12. For those reasons, JMR requests expedited handling with a decision served by mid-October of 2016, effective immediately upon service, so that it does not lose its currently interested customers to other locations due to uncertainty as to the length of this process.

Rail operations will consist of an average of 10 cars per day six days per week.

JMR submits: the verified statement of JMR Manager, Ronaald Klempner (hereafter "Klempner" Exhibit A). Mr. Klempner describes the proposed railroad operations and the previous generic environmental review conducted by the Union County Board of Freeholders; and Exhibit B, a map showing the tracks to be rehabilitated and the Conrail Sound Shore Line which connects to the Yard tracks to the Conrail System.

BACKGROUND

Petitioner JMR seeks to rehabilitate existing spur and yard tracks and to initially serve marine/rail trans load facilities to be located on the property adjacent to its leased trackage in Linden, N.J.. Towards that end, JMR has entered into a

lease of the rail infrastructure which formally served a chemical plant site at the junction of the Rahway River and the Arthur Kill, (the “Site”) in Linden, NJ. Once rebuilt to allow use and to comply with New Jersey flood control regulations, JMR will operate approximately 5,000 feet of track. This trackage is connected to the national railway system by Conrail’s Sound Shore Line. The JMR track branches out from the Conrail connection into three yard tracks two of which are within the former Conrail Sound Shore Line right of way, and which are in turn connected to three existing spurs. Operation will commence once sufficient trackage is rehabilitated to allow such service. Rehabilitation work will commence immediately after the anticipated decision of the Board on this Petition.

The rehabilitation and operation of these tracks is consistent with the Union County Master Plan of 2007. The area in question is a brownfield site in which contaminated areas have been capped by its former owner. Removing existing tracks and ballast and then raising the track with fill and ballast will not interfere with these caps, which in any case are not under the tracks in question with one limited short exception. Therefore, this project will have no environmental impact beyond a slight increase in rail traffic.

DESCRIPTION OF THE PROPOSED TRACKS AND PLANNED
OPERATIONS

Petitioner's proposal entails the rehabilitation of a total of six tracks and the switches which connect them to each other and to the Conrail Sound Shore line. The three "yard" tracks are mostly within a the former Conrail Sound Shore Line right of way, which ends, as do the yard tracks, near the abutment of the former bridge across the Rahway River. They were storage tracks. They will become storage and and/or loading tracks. An additional three tracks are spurs which run from the yard lead into and across the property toward the Arthur Kill. One spur is a track which splits into two spurs and the other is a longer spur. Interchange will be on all tracks accessed from off the property

The name of the rail service operator will be Jersey Marine Rail, LLC, 46 Grand Cove Way, Edgewater, NJ. 07020. which has obtained a lease of all the existing tracks in issue and minimal surrounding land to facilitate cargo handling.

JMR will be a common carrier.

The identity and address of common carrier which last provided service on this trackage is: Conrail, 1717 Arch Street, Philadelphia, PA 19103.

The track to be operated will be that existing on the leasehold, See Exhibit A, including:

(a) 3 tracks of 815' each, two of which are within the former Conrail right of way on the Sound Shore Line segment, and one abutting track, all of which are within the leasehold;

(b) a spur ending in 2 tracks which, with their single lead, are 800' each; and

(c) a spur totaling approximately about 900'.

All of these tracks were previously served by a common carrier railroad, but have been out of service for up to 30 years. Rehabilitation will entail removing all rails and ties. The existing ballast will be removed and cleaned . Fill and ballast will then be added to the extent required by New Jersey Flood Control regulations. Once that is in place the cleaned and new ballast will be reinstalled for each track. New ties will be installed, but existing rails, to the extent possible will used. Unusable rail will be replaced. Each track will retain the same location as the tracks existing as of the date of this Petition. This track rehabilitation and repair involves about 5,000 feet.

As this carrier will operate on existing but currently unused tracks, formerly served by Conrail, it will not be extending rail service into any new territory.

The Yard connects with Conrail's Sound Shore Line but the interchange will be on Petitioner's property. The Site is located in an area of brownfields next to major oil refining activity. The contamination left from prior uses has been capped as required by the New Jersey Department of Environmental Protection. Petitioner's use of the trackage will meet all requirements for the use of the site set forth in the No Action letters obtained by a prior owner, Exhibits C, D and E hereto.

The area is served by the Sound Shore Line of Conrail which is characterized by heavy rail traffic, (80 cars a day) originating seven hundred feet north of the end of the proposed reconstructed railway. The activity proposed for JMR will not increase such traffic significantly.

Petitioner anticipates that there will be no significant adverse impacts resulting from merely restoring the former railway use of these tracks. The subject area is a nonattainment area. JMR believes that the utilization of rail instead of truck will promote energy conservation and reduce air and noise pollution. Furthermore, use of rail will improve highway safety and reduce traffic congestion.

Rail use of the site has already been subject to a generic environmental assessment ("EA") conducted under NEPA-like guidelines by the Union County Board of Freeholders which determined that there would be no significant impacts from rail development in the Tremley Point section of Linden, NJ along Conrail's Sound Shore Line--such as that contemplated by Petitioner herein. See: Exhibit. E. The project contemplated here in is consistent with and will not change any of the findings of the EA. The petitioner's plan meets the need cited by the Union County Plan by providing rail access to this part of Tremley Point making development and employment possible.

Finally the proposed operation's revenue will not exceed that of a Class III carrier.

IV

ARGUMENT

The Board's decision in Swanson supra, holds that construction of new tracks on former rail yard lands, does not require any environmental review. Pursuant to 49 U.S.C. §10906 the Board's authority is not required to build industrial or side tracks such as those planned here, except where, as here, they constitute the entire railroad. Pursuant to 49 C.F.R. §1150.36 the Board has also exempted connecting tracks built entirely on railroad lands. Petitioner by rebuilding existing tracks in their original location, has complied with all environmental requirements. The 1995 revision to §10901(c) directs the Board to issue a certificate authorizing construction unless it finds that such construction would be inconsistent with the public convenience and necessity. Board precedent establishes a clear presumption favoring construction proposals. Midwest Generation, LLC – Exemption from 49 U.S.C. 10901 – For Construction in Will County, IL, STB Finance Docket No. 34060, Slip op. at 7-8 (served March 21, 2002). However restoring rail property to rail uses is not the type of construction which requires scrutiny, Swanson,

Even if it were to require construction approval, Petitioner's construction proposal follows the national trend that has been set in cases such as Effingham RR Co.—Pet. For Declaratory Order, 2 S.T.B. 606 (1997) involving the

construction, acquisition, and/or operation of common carrier rail facilities by short line railroads to serve industrial parks and transload facilities (See also, New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Railway—Construction, Acquisition and Operation Exemption – In Wilmington and Woburn, MA, STB Finance Docket No. 34797, slip op. served July 10, 2007; and U S Rail Corporation – Construction and Operation Exemption – Brookhaven Rail Terminal, STB Finance Docket No. 35036, slip op. served June 7, 2010 (hereafter “US Rail”). This trend is necessitated in part by the disappearance of facilities around major cities for shippers to get access to rail lines as well as the shift from handling car load traffic to and from rail shippers to public terminals.¹

However, due to the limitations imposed by 49 U.S.C. 10906 and 49 C.F.R. 1150-36, applicant believes that this construction is not subject to approval under the formal requirements of 49 U.S.C. 10901 and the related regulations. In any case the Board has almost invariably allowed smaller construction proposals such as that here to utilize the individual exemption procedures of 49 U.S.C. 10502 to obtain approval. See, e.g., Swanson, Supra, Ellis County Rural Rail

¹ See, e.g. SMS Rail Service, Inc – Petition for Declaratory Order, STB Finance Docket no. 34483 9served jan. 24, 2006), citing SMS Rail Service, Inc. – lease and Operation Exemption – Pureland Association, Inc.. Finance Docket No. 32494 (ICC served May 26, 1994). Penn-Jersey Rail Lines – Acquisition and Operation Exemption – Lines in Penn Warner Industrial Park, Falls Township, bucks county, PA, STB Finance Docket No. 33835 9served may 5, 2000), and SMA rail Service, Inc. – Acquisition and Operation Exemption – Valero Refining Company—New Jersey, STB Finance Docket No. 33927 (served Sept. 22, 2000), Yolo Shortline Railroad Company – Lease and Operation Exemption – Port of Sacramento, STB Finance Docket No. 34114, (served Feb. 3, 2003).

Transportation District – Construction and Operation Exemption – Ellis County, TX, STB Finance Docket No. 33731, (served Feb 15, 2000) (hereafter “**Ellis County**”); Pemiscot County, MO, STB Finance Docket No. 34117 (served July 2, 2002) (hereafter “**Pemiscot**”); and Southwest Guld Railroad Company – Construction and Operation Exemption – Medina County, TX, STB Finance Docket No. 34284 9served May 19, 2003) (hereafter “**Southwest**”).

Under §10502(a), Congress intended for the Board, in a matter related to a rail carrier providing rail transportation subject to its jurisdiction, to exempt a person, class of persons, transaction or service whenever it finds that the application of a provision of this subtitle—(1) is not neseccary to carry out the transportation policy of §10101a of this title; and (2) either (a) the transaction or service is of limited scope, or (b) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power.

The legislative history behind §10505 [the predecessor section to the current §10502] makes clear Congress’ intent that the Interstate Commerce Commission and [now the Board] use its exemption authority liberally to free certain transactions and services from the administrative and financial costs associated with continued regulation. In discussing the exemption powers of the Board’s predecessor—the ICC – the Stagers Act legislative history starts:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reducing regulation is

clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the commission will pursue partial and complete exemptions from remaining regulation.

H.R. Rep. No. 96-1430, 96th Cong. 2d Sess. 105 (1980); see also, Exemption from Regulation—Boxcar Traffic, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, Brae Corp. v. United States, 740 F. 2d 1023 (D.C. Cir. 1984). This statement applies equally to the Board as the ICC's successor. Therefore, where, as here, the construction involved includes the rehabilitation of sidings, yard tracks and loading spurs and connections which are not part of the line haul of a railroad consisting only of terminal tracks, application of the provisions of §10901 to such a minor transaction, is unnecessary and places an unnecessary financial burden on the applicant. Indeed, with the enactment of the ICC Termination Act of 1995, Board policy clearly favors the approval of short railroad construction projects by exemption and deeming this transaction to be either exempt or exempt from permitting requirements is consistent with that policy. See, e.g., Ellis county, supra.; Pemiscot, supra; and Southwest, supra.

B. APPLICATION OF §10901 IS NOT NECESSARY TO FURTHER NATIONAL TRANSPORTATION POLICY

Requiring Petitioner to comply with the formal requirements of §10901 is not necessary to carry out the transportation policy of 49 U.S.C. 10101a. That

section, originally added to the Act by the Staggers Rail Act amendments and incorporated into the ICC Termination Act, represents Congress' most recent expression of rail transportation policy. Of these, a grant of the petition would satisfy subsections (2) and (7) by minimizing federal regulatory control over and granting expedited consideration of Petitioner's request to construct a self-contained rail yard. It would also satisfy subsection (4) and (5), by providing shipper customers lacking adequate rail access the option of rail transportation, ensuring the development of a sound transportation system with effective competition and coordination between railroads and other transportation modes, and fostering sound economic conditions in the transportation industry. See, e.g. Ellis County, supra, and Southwest, supra; and Alamo North Texas Railroad Corporation-Construction and Operation Exemption-Wise county, STB Finance Docket No. 34002 (served Nov. 8, 2001) (hereafter "Alamo"). Finally, a grant of this exemption would satisfy subsection (14) by promoting energy conservation through increased use of energy efficient rail transportation.

C. THE TRANSACTION IS ONE OF LIMITED SCOPE

The transaction unquestionably satisfies the limited scope test of §10502(a). The proposed trackage totals only out 5,000 feet, in a facility encompassing only 33 acres of land. The Yard would initially serve only a water-rail facility. Petitioner believes the proposed railroad will initially handle 1,040 new carloads of

freight annually after construction. By any measurement the Board chooses to use, this construction proposal is clearly limited in scope within the meaning of 49 U.S.C. 10502(a)(2)(A). A finding to that effect would be consistent with—and is indeed required by—the relevant facts of this case and relevant precedent. See, e.g., Ellis County, supra (4.8 miles of new construction), Pemiscot, supra (5 miles), Alamo, supra (2.25 miles), Southwest, supra (7 miles), and US Rail, supra (2 miles).

D. APPLICATION OF §10901 IS NOT NECESSARY TO PROTECT SHIPPERS FROM ABUSE OF MARKET POWER

Because this transaction satisfies the limited scope test of §10502(a), Petitioner does not need to show that it also meets the alternative test that there is no opportunity to expose shippers to abuse of market power. But even if the limited scope test were not satisfied, the exemption sought herein would still be warranted by virtue of §10502(a)(2)(B) inasmuch as the subject railroad will offer an additional form of modal competition to the shippers of water born freight. See, Alamo, Southwest and US Rail, supra. In fact, this case is similar to Alamo, Southwest, and US Rail because all four cases involve proposals to construct new rail lines to provide direct rail service to shippers that would otherwise be dependent largely on truck service for their transportation needs.

V.

EXPEDITED HANDLING REQUESTED

JMR requests that the Board expeditiously consider and grant its proposal. Petitioner has inquiries from shippers who seek to use this facility. Due to reliance on the Board's decision in Swanson, supra, these shippers expected authority to proceed 30 days after filing a notice. Considerable work is needed to render these tracks useable and such work is limited in the cold months. Thus petitioner seeks a decision which allows work to proceed before the cold weather interferes so that this facility can be available for transloading by late Spring or early Summer of 2017. Such a reason for expedition has been deemed sufficient, City of Chicago, Petition for a Declaratory Order, Cherry Avenue Bridge, FD 35154 (August 4, 2008). Indeed, JMR's financing is contingent of obtaining authority expeditiously.

JMR doubts that this proposal will present the sort of issues that other construction proposals typically involve. The project involves only rehabilitation of tracks within an former railroad right of way and an associated rail served brownfield site. It is close to but does not cross any navigable bodies of water, nor does it affect any wetlands. Union County's generic EA has already determined that the rail infrastructure proposed for this area does not hold any Indian artifacts or cultural resources or unique land forms nor would anything on the site fall under the National Historic Preservation Act warranting attention citing the areas long history of successive waves of industrial activity. JMR is also not aware of

any endangered animal or plant species on the Site that would require the preparation of a Section 7 biological assessment.

JMR will have no significant community impact nor will it affect safety, JMR's operation is extremely remote from any residential area. Indeed numerous tank farms lie between it and any other activity other than refineries and petroleum terminals. The Union County generic EA determined that there is little potential for any significant truck traffic from the site nor will the operation or construction generate any significant increases in air or noise pollution. There are no residences, schools, hospitals, recreation facilities, or retail establishments within a mile and a half of the site.

JMR has reviewed other fairly straight forward construction proposals such as those filed in Ellis County, Alamo, Southwest and US Rail, supra, and found that the time required from the date of filing the petition to the date of the final decision ran between 6 and 24 months. In view the JMR's simplicity, and the decision in Swanson, supra, which deems this Petition to be unnecessary, thus placing it in the 30 day notice of exemption category, JMR requests the Board to rule on this petition by mid-October, 2016.

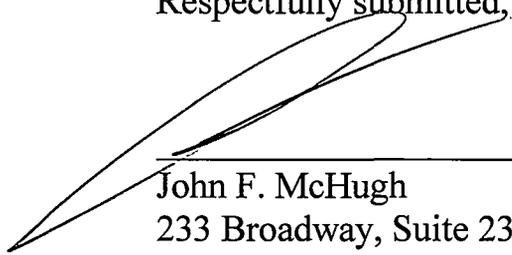
I

CONCLUSION

Accordingly, JMR requests that the Board expeditiously grant it an exemption from the provisions of 49 U.S.C. 10901 to permit it to re-construct and operate a new line of railroad on rehabilitated tracks. JMR also requests that the Board grant its Petition before mid-October, 2016, as if the Petitioner is correct in that this should have been able to move forward with a Notice of Exemption proceeding which would have granted operating authority in 30 days.

Dated: New York, NY
August 26, 2010

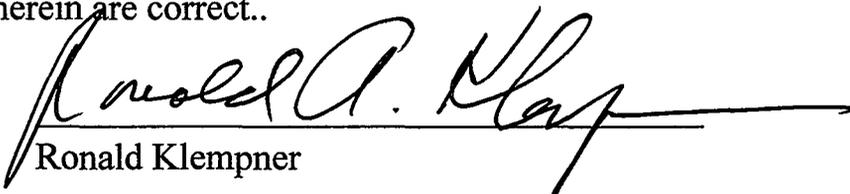
Respectfully submitted,



John F. McHugh
233 Broadway, Suite 2320
New York, NY 10279
212-483-0875

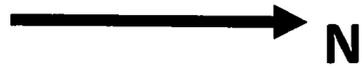
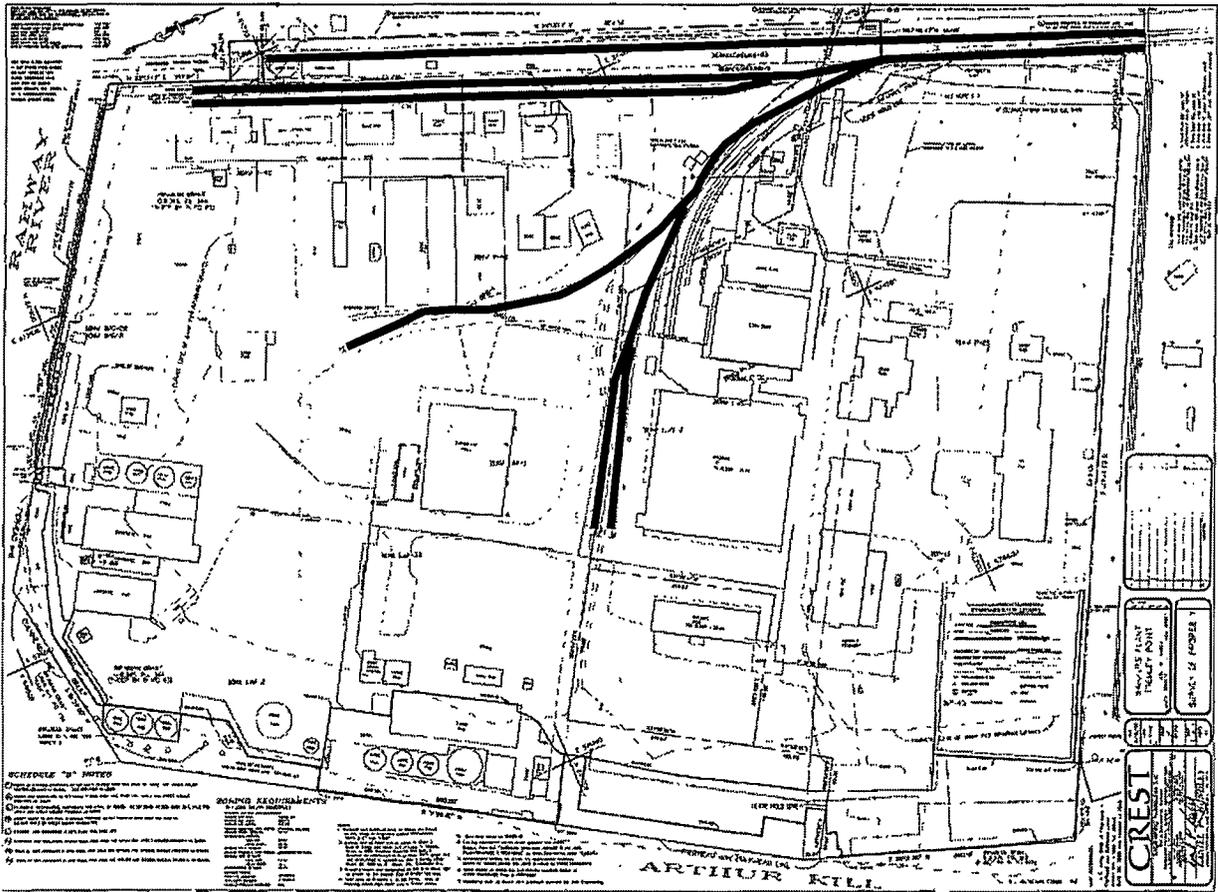
VERIFICATION

Ronald Klempner verifies that I am the Principal of Jersey Marine Rail LLC and as such I am authorized to approve the filing of this petition. I have reviewed this Petition and the facts set forth therein are correct..


Ronald Klempner

JERSEY MARINE RAIL

EXHIBIT A



American Marine Rail Exxhibit A, Map

JERSEY MARINE RAIL

EXHIBIT B

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO.

JERSEY MARINE RAIL, LLC

**JERSEY MARINE RAIL, LLC
PETITION FOR A DECLARATIOY ORDER THAT REHABILITATION
AND OPERATION OF EXISTING TRACKS WITHIN A FORMER RAIL
YARD AND SERVING AN ADJACENT INDUSTRIAL CITE AS A CLASS
III RAIL CARRIER IS AN EXEMPT TRANSACTION
AND
SEEKING EXPEDITED CONSIDERATION**

DECLARATION OF RONALD A. KLEMPNER

I, Ronald A. Klempner, am the principal of Jersey Marine Rail, LLC (the "**Petitioner**"), certify pursuant to 28 U.S.C. 1746 in support of Petitioners petition for a declaratory order that JMR's proposal to create a Class III carrier to restore service on unused trackage on Tremley Point in Linder New Jersey is an exempt transaction. Further JMR is seeking to meet the needs of its potential customers who were under the impression, based on The Board's decision in Swanson Rail Transfer --Declaratory Order--Swanson, FD 3542 (June 14, 2011) that this was an exempt transaction and thus, expected JMR to

commence the rather extensive restoration work needed to make these tracks serviceable as soon as possible. Thus, JMR filed an Exemption on August 12, 2016 believing that it would be authorized by September 13, 2016. Therefore, JMR seeks expedited consideration of this petition so that rehabilitation work can commence before winter conditions arrive.

1. The reason for haste is that JMR has received strong expressions of interests and has been negotiating with a number of customers who desire to utilize the railroad being proposed by JMR. The most urgent is, a road salt distributor who seeks to use a facility on our lessor's property to commence its stockpiling of road salt during the Spring of 2017 to meet the Winter 2017-2018 season. JMR and Lessor's unloading point are a short distance from that shipper's facility. If the trackage is not available by The Spring of 2017, that shipper will be required to seek alternative trans loading facilities which would require much longer hauls in trucks.
2. In order to meet the deadline of Spring, 2017, for commencement of operations, rehabilitation work must start no later than early November, 2017, so as to be substantially underway before Winter months set in, which may impede Rehabilitation Work. Petitioner has agreements with a

contractor which will commence the rehabilitation work as soon as the Board issues its order.

3. The trackage in issue has not been utilized or maintained for at least three decades. It was all served by Conrail's predecessor railroads until the factory closed. Prior to that closing the factory owner had purchased the right of way of the Sound Shore Line which lies just west of the factory's lands, creating a three track holding yard, two tracks of which are within the original Sound Shore right of way and one being adjacent just to the east. At all times the rail common carrier served the factory. Since the factory closed the trackage has been subject to considerable vegetative and scrub growth, and degradation of ties and rails, spikes, knuckles. Etc.. Consequently, the trackage is not usable without extensive Rehabilitation Work
4. Rehabilitation Work will consist of: (a) picking up all existing track, spikes, knuckles and ties, and inspecting the same to determine whether any can be reused or need to be replaced; (b) removing existing subgrade and ballast and cleaning the same for re-use to the extent feasible; (c) laying down, as needed, replacement of subgrade, blanket, sub-ballast, ballast and sleepers, which will also conform to the elevations required by New Jersey's new (since Hurricane Sandy) flood plain mapping. (d) installation of those ties,

spikes, knuckles and rails which can be recovered or new ones, as needed. It is expected that almost none of the old ties, spikes or knuckles will be re-usable, but it is hoped that much of the rail itself will be re-usable.

5. When completed, the Rehabilitation Work will result in tracks which are in the same location as the existing tracks, which are all within either the former Conrail property, or are the existing spur tracks which run across the Site running from the Line towards the Arthur Kill.
6. When completed the tracks will connect with Conrail's Sound Shore Line, which remains as an active line delivering 80 cars a day to a customer immediately adjacent to Petitioner's Site to the north.
7. Conrail will interchange with Petitioner on the portion of the trackage which was the southern-most segment of Conrail's Sound Shore Line which now terminates at the footings of a bridge (no longer in existence) over the Rahway River. In its sale to the petitioners Lessor's predecessor, Conrail retained an easement should it seek to restore service across and beyond the Rahway River.

8. Petitioner's lease of the trackage is limited to that portion of the land which comprises the Yard, and the land on which the three spur tracks are located plus the space immediately adjacent to them for use of cargo handling.
9. Union County adopted a planning document titled *Union County Freight Access Between Elizabeth and Tremley Point* in June, 2007. (The "Plan"). The Plan included an environmental review of its proposed improvements, a review which followed NEPA guidelines. That plan, determined that, among other elements of the plan, restoration of rail facilities on Tremley Point had no adverse environmental impact, due, in part, to heavy prior industrial usage.
10. Indeed, the County Plan specifically called for rehabilitation and development of rail facilities serving Tremley Point, specifically referring to the petitioner's property and others on the Sound Shore Line. The Plan determined that developments such as that in issue here would foster economic development and employment while ameliorating the impacts of truck freight in the area.
11. After conducting its environmental review following NEPA guidelines, Union County Board of Freeholders, as lead agency, determined that, in large part due to the fact that this area had a long history of heavy industrial

use, none of the projects on Tremley Point, recommended in the County Plan, including rehabilitation of the rail system here in issue, would have a significant negative impact on: noise and vibration; air quality; ecology wetlands, water resources, cultural resources (including prehistoric archeology, historic archeology, historic architecture) or, indeed any of the areas of concern covered by NEPA (See pages 53-64 of the County Plan, Exhibit F). In addition to the long history of industrial use, this area, including the JMR leasehold is a mile and a half from any residential type of use and between that use and the property, heavy industrial uses continue.

12. The trackage here in issue is on or adjacent to land which was the location of a major chemical plant. Most of the plant structures have been removed. The site is completely surrounded on the land side by tank farms, industrial plants, petroleum, gas and chemical pipelines. Highway access is via a private road, 1.44 miles in length. That road has heavy truck traffic due to other users. Petitioner's railroad will not add significantly to that traffic. Further, the State has obtained the land, the permits and the authorization to connect that road to the New Jersey Turnpike.

13. As the Site was formerly used as a chemical production plant it contains some contaminated areas, which have been 'capped'. A prior owner of the site obtained approval of the use of the property from the New Jersey Department of Environmental Protection in the form of three no action letters. These letters, Exhibits 1, 2, and 3 hereto set conditions for any use of the lands in issue. Petitioners proposal meets all the conditions set forth in these letters.
14. Indeed, JMR reviewed it's plans with the NJDEP which has verbally informed JMR that as long as it does not disturb soils below the current grade in the 'capped' contaminated areas, the Rehabilitation Work will be in conformance with the No Action Letters and that they would have no objections to such work.
15. The tracks in issue are not over any of the caps with one exception which is a few feet at end of one spur. In that area the cap is well below grade.
16. The revenue to be derived from this operation will not exceed the limits for a Class III rail carrier.

Wherefore, as all JMR seeks to do is to rehabilitate and operate existing trackage within a small yard formerly owned by Conrail and last operated by

one of Conrail's predecessors and three spurs funning from that yard into the former factory site, and to operate that as a Class III rail carrier, the petitioner urges the Board to follow its precedent in Swanson Rail Transfer LP—Declaratory Order, Sanson No. FD 3542 (June 14, 2011) that this is an exempt transaction which does not require further review and to authorize JMR to operate as a Class III carrier effective immediately.

I declare on this 29th day of August 2016 that the above factual statements are true,



Ronald Klempner

RECEIVED

DEC 02 2002

ENV. SERVICES

James E. McGreevey
Governor



State of New Jersey
Department of Environmental Protection

Bradley M. Campbell
Commissioner

Bureau of Case Management
Floor 5 West, P. O. Box 28, 401 East State Street
Trenton, NJ 08625-0028

Phone: 609-633-1455/Fax: 609-633-1439/Email: BRUCE.VENNER@DEP.STATE.NJ.US

NOV 26 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

No. 7001 2510 0005 3949 3162

Mr. Joel Jerome
CYTEC
5 Garret Mountain Plaza
West Paterson, NJ 07424

Dear Mr. Jerome:

Re: Former Warners Plant Site, Linden City, Union County
Restricted Use --No Further Action letter and Covenant not to Sue.
Area of Concern—Groundwater
Block 587; Lot 8
KCSL # NJD002173144

The New Jersey Department of Environmental Protection (NJDEP) received a letter from Blasland, Bouck & Lee (BBL) on behalf of CYTEC dated 26 October 2002 requesting no further action and covenant not to sue (NFA & CNS) for the referenced area of concern—groundwater. NJDEP and CYTEC signed an Administrative Consent Order (ACO) which became effective on September 5, 1990 and amended on August 5, 1993.

Pursuant to N.J.S.A. 58:10B-13.1 and N.J.A.C. 7:26C, NJDEP makes a determination that no further action is necessary for the remediation of the referenced area of concern--groundwater for the former Warners Plant site only. This action is based upon information in NJDEP case file and CYTEC Remedial Investigation report, Corrective Measure Study report and Groundwater Monitoring reports as well as subsequent correspondence. In issuing this NFA & CNS, NJDEP has relied upon the certified representations and information provided to NJDEP so long as CYTEC did not withhold any information from NJDEP.

By issuance of this NFA & CNS, NJDEP acknowledges the completion of any necessary remedial activities pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E) for the referenced area of concern and no other areas. Sediment containment area at the Rahway River (part of the site) and other areas that are included in the Site-Wide Deed Notice dated 28 May 2002 are being monitored/maintained and are not part of this NFA & CNS.

New Jersey is an Equal Opportunity Employer
Regulated Business

Jersey Marine Rail Exhibit C

NJDEP reserves its rights to require any person responsible for the contamination at the site to address Natural Resource Injuries.

NO FURTHER ACTION CONDITIONS

As a condition of this NFA & CNS, CYTEC as well as each subsequent owner, lessee and operator (collectively Successors) shall comply with each of the following:

1. Pursuant to N.J.S.A. 58:10B-12, CYTEC and the Successors shall inform NJDEP in writing whenever its name or address changes, within 14 calendar days after the change.
2. **Deed Notice:** Pursuant to N.J.S.A. 58:10B-13A, CYTEC and the Successors shall ensure that the Deed Notice filed on 28 May 2002 at Union County is complied with including maintenance of institutional and engineering controls and reporting to NJDEP. Pursuant to N.J.S.A. 58:10B-13h, an owner of a property on which a Deed Notice has been recorded shall notify any person who intends to excavate on the site of the nature and location of contamination existing on the site and of any conditions or measures necessary to prevent exposure to contaminants.
3. **Monitoring of Compliance for Deed Notices:** Pursuant to N.J.S.A. 58:10B-13.1, CYTEC and the Successors shall conduct monitoring for compliance and effectiveness of the institutional and engineering controls specified in the Deed Notice in Item 2 above and submit written certification to NJDEP every two (2) years that the institutional and engineering controls are being properly maintained and continue to be protective of public health and safety and the environment. Any such certification shall include the information relied upon to determine that no changes have occurred.

COVENANT NOT TO SUE

NJDEP issues this Covenant Not to Sue pursuant to N.J.S.A. 58:10B-13.1. That statute requires a covenant not to sue with each no further action letter. However, in accordance with N.J.S.A. 58:10B-13.1, nothing in this Covenant shall benefit any person who is liable, pursuant to the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11, for cleanup and removal costs and NJDEP makes no representation by the issuance of this Covenant, either express or implied, as to the Spill Act liability of any person.

NJDEP covenants, except as provided in the preceding paragraph, that it will not bring any civil action against the following:

- (a) the person who entered into ACO;
- (b) subsequent owners of the subject property;
- (c) subsequent lessees of the subject property; and
- (d) subsequent operators at the subject property

for the purposes of requiring remediation to address contamination which existed prior to the completion date of the Remedial Investigation for the referenced areas of concern identified above, including payment of compensation for damages to, or loss of, natural resources and the payment of cleanup and removal costs for such additional remediation of cleanup and removal costs for such additional remediation.

The person who undertook the remedial action, and each subsequent owner, lessee and operator, during that person's ownership, tenancy or operation, shall maintain those controls and conduct periodic

compliance monitoring in the manner NJDEP requires.

Any person who may benefit from this Covenant is barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, for any costs or damages relating to the remediation covered by this Covenant. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.

Any person who may benefit from this Covenant is barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, for any costs or damages relating to the remediation covered by this Covenant if NJDEP requires additional remediation in order to remove the institutional control. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.

Pursuant to N.J.S.A. 58:10B-13.1d, this* Covenant does not relieve any person from the obligation to comply in the future with laws and regulations. NJDEP reserves its right to take all appropriate enforcement for any failure to do so.

NJDEP may revoke this Covenant at any time after providing notice upon its determination that either:

- (a) any person with the legal obligation to comply with any condition in this NFA & CNS has failed to do so; or
- (b) any person with the legal obligation to maintain or monitor any engineering or institutional control has failed to do so.

This NFA & CNS, which NJDEP has executed in duplicate, shall take effect immediately once the person who entered into the ACO has signed and dated the NFA & CNS on the lines supplied below and NJDEP has received one copy of this document with original signatures of NJDEP and the person who entered into ACO.

Direct Billing:

Please be advised that pursuant to the Procedures for Department Oversight of the Remediation of Contaminated Sites (N.J.A.C. 7:26C et seq.), CYTEC is required to reimburse NJDEP for review of any submissions pursuant to the ACO. NJDEP will be issuing a bill shortly.

CYTEC Industries, Inc.

Name: T. P. Wozniak

Title: Treasurer

Signature: *T. P. Wozniak*

Date: 12/02/2002

New Jersey Department of Environmental Protection

Name: Bruce Venner

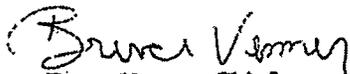
Title: Chief

Signature: Bruce Venner

Date: 11/25/02

If you have any questions, please contact Haiyesh Shah at (609) 633-0718.

Sincerely,


Bruce Venner, Chief
Bureau of Case Management

C: Ms. Elizabeth Butler, USEPA-NY
Mr. Ernest Hahn, NJDEP-Natural & Historic Resource

JERSEY MARINE RAIL

EXHIBIT C

JERSEY MARINE RAIL

EXHIBIT D



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE
Governor

Bureau of Case Management
Floor 5 West, PO Box 028, 401 East State Street, Trenton, NJ 08625-0028
Phone: (609) 633-1455/Fax: (609) 633-1439/Email: STEVE.MAYBURY@DEP.STATE.NJ.US

LISA P. JACKSON
Commissioner

26August2008

Mr. Anton C. Marek, P. E.
Director, Remediation
CYTEC Industries Incorporated
5 Garret Mountain Plaza, West Paterson, NJ 07424

**Re: Conditional No Further Action Letter and Covenant Not to Sue with
Requirements for Biennial Certifications
Restricted Use--Area of Concern (Rahway River Sediment)
Warners Plant Site-CYTEC Industries Inc. and American Cyanamid Company
(hereinafter "CYTEC")
4900 Tremley Point Rd, Linden, NJ
Program Interest Number: 008812
Block-9.0, Lot 21, Block 10, Lots 8, 9, 10 and 12 to 21, Block 11.01, Lots 8, 10 to 14
and 28**

Pursuant to N.J.S.A. 58:10B-13.1 and N.J.A.C. 7:26C, the New Jersey Department of Environmental Protection (NJDEP) issues this Conditional No Further Action Letter and Covenant Not to Sue (NFA & CNS) for the remediation of the area of concern (AOC) specifically referenced above, so long as CYTEC did not withhold any information from NJDEP. This action is based upon information in NJDEP's case file and the 20Aug08 final certified report from ARCADIS. In issuing this Conditional NFA & CNS, NJDEP has relied upon the certified representations and information provided to NJDEP. To remain in compliance with the terms of this Conditional NFA and to maintain the benefits of the CNS, CYTEC as well as each subsequent owner, lessee and operator must comply with the conditions noted below.

By issuance of this Conditional NFA & CNS, NJDEP acknowledges the completion of a Remedial Investigation and Remedial Action pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E) for the referenced AOC and no other areas.

NJDEP reserves its rights to require any person responsible for the contamination at the site to address Natural Resource Injuries.

NJDEP reserves, and this Conditional No Further Action Determination is without prejudice to, all rights against CYTEC with respect to liability for costs, injunctive relief, and damages (including primary and compensatory restoration damages) for injury to, destruction of, or loss of natural resources and for the costs of any natural resource

assessments. NJDEP further reserves, and this Conditional No Further Action Determination is without prejudice to, all rights against CYTEC with respect to liability for costs, injunctive relief, and damages related to methyl tertiary butyl ether (MTBE) contamination, and this letter in no way limits any potential liability for any and all costs, injunctive relief, and damages available to NJDEP being sought in the United States District Court for the District of New Jersey, in the case captioned NJDEP et al. v. Amerada Hess Corp. et al., C.A. No. 3:07-5284, and now currently pending in the United States District Court for the Southern District of New York, captioned as In Re; Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, MDL No. 1358.

CONDITIONS

Pursuant to N.J.S.A. 58:10B-12c, CYTEC and any other person who was liable for the cleanup and removal costs, and remains liable pursuant to the Spill Act, shall inform NJDEP in writing within 14 calendar days whenever its name or address changes. Any notices submitted pursuant to this paragraph shall reference the above case numbers and shall be sent to: Bureau of Case Assignment and Initial Notice -Case Assignment Section, P.O. Box 434, Trenton, N.J. 08625-0434.

CYTEC as well as each subsequent owner, lessee and operator (collectively Successors) shall comply with each of the following:

Monitoring of Compliance for Institutional and Engineering Controls and Biennial Certifications

Pursuant to N.J.S.A. 58:10B-13.1 and N.J.A.C. 7:26E-8, CYTEC and the Successors shall conduct monitoring for compliance and effectiveness of the institutional and engineering control(s) specified in 28May02 Deed Notice and submit written biennial certifications to NJDEP that the institutional and engineering control(s) are being properly maintained and continue to be protective of public health and safety and the environment. The biennial certifications are due every two (2) years on the date the institutional control was established. Any such certification shall include the information relied upon to determine that no changes have occurred.

Deed Notice (Institutional and Engineering Control)

Pursuant to N.J.S.A. 58:10B-13a, CYTEC and the Successors shall ensure that the Deed Notice filed on 28May02 with Union County is complied with including maintenance of applicable engineering controls.

Well Sealing

Pursuant to N.J.S.A. 58:4A, CYTEC shall properly seal all monitoring wells installed as part of a remediation that will no longer be used for groundwater monitoring. A certified and licensed well driller shall seal the wells in accordance with the requirements of N.J.A.C. 7:9D-3.1 (et seq.). The well abandonment forms shall be completed and

submitted to the Bureau of Water Systems and Well Permitting. Please call (609) 984-6831 for forms and information.

COVENANT NOT TO SUE

NJDEP issues this Covenant Not to Sue (Covenant) pursuant to N.J.S.A. 58:10B-13.1. That statute requires a Covenant not to sue with each conditional no further action letter. However, in accordance with N.J.S.A. 58:10B-13.1, nothing in this Covenant shall benefit any person who is liable, pursuant to the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11, for cleanup and removal costs and NJDEP makes no representation by the issuance of this Covenant, either express or implied, as to the Spill Act liability of any person.

NJDEP covenants, except as provided in the preceding paragraph, that it will not bring any civil action against:

- (a) the person who undertook the remediation;
- (b) subsequent owners of the subject property;
- (c) subsequent lessees of the subject property; and
- (d) subsequent operators at the subject property;

for the purposes of requiring remediation to address contamination which existed prior to the date of the 20Aug08 final certified report of Revised Request for No Further Action Letter & Covenant Not to Sue for Sediment Investigation and remediation for the real property at the area of concern (Capped Sediment at the Rahway River) identified above, payment of compensation for damages to, or loss of, natural resources, for the restoration of natural resources in connection with the discharge on the property, or payment of cleanup and removal costs for such additional remediation.

The person, who undertook the remedial action, and each subsequent owner, lessee and operator, during that person's ownership, tenancy or operation, shall maintain all applicable engineering and institutional controls and conduct periodic compliance monitoring in the manner NJDEP requires.

Any person who benefits from this Covenant may be barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, for any costs or damages relating to the remediation covered by this Covenant. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.

Any person who benefits from this Covenant may be barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, for any costs or damages relating to the remediation covered by this Covenant if the Department requires additional remediation in order to remove the institutional control. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.

Pursuant to N.J.S.A. 58:10B-13.1d, this Covenant does not relieve any person from the obligation to comply in the future with laws and regulations. NJDEP reserves its right to take all appropriate enforcement for any failure to do so.

NJDEP may revoke this Covenant at any time after providing notice upon its determination that:

- (a) any person with the legal obligation to comply with any condition in this Conditional No Further Action Letter has failed to do so;
- (b) any person with the legal obligation to maintain or monitor any engineering or institutional control has failed to do so; or
- (c) any person with the legal obligation to submit, on a biennial basis, a certification that the engineering and institutional controls are being properly maintained and continue to be protective of the public health and safety and of the environment has failed to do so.

This Covenant, which NJDEP has executed in duplicate, shall take effect immediately once the person who undertook the remediation has signed and dated the Covenant in the lines supplied below and NJDEP has received one copy of this document bearing original signatures of NJDEP and the person who undertook the remediation.

CYTEC Industries, on its own behalf and on behalf of
By: Thomas E. Mesz ^{American Cyanamid Company}

Signature: Thomas E. Mesz

Title: SITE COUNSEL

Dated: Sept 12, 2008

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

By: Mr. Stephen E. Maybury, Bureau Chief

Signature: [Signature]

Dated: AUG 26 2008

NOTICES

Building Interiors Not Addressed

Please be advised that the remediation that is covered by this Conditional No Further Action Letter does not address the remediation of hazardous substances that may exist in building interiors or equipment; including, but not limited to, radon, asbestos and lead. As a result, any risks to human health presented by any building interior or equipment remains. A complete building interior evaluation should be completed before any change in use or re-occupancy is considered.

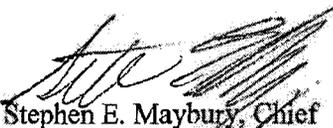
Remediation Funding Source

Pursuant to N.J.A.C. 7:26C-7.2(c) any person required to establish a remediation funding source shall establish and maintain a remediation funding source in an amount equal to or greater than the estimated cost of monitoring and maintaining all necessary engineering and institutional controls pursuant to the Technical Requirements for Site Remediation, at N.J.A.C. 7:26E-8. CYTEC and Successors shall maintain this remediation funding source until such time that NJDEP approves in writing the removal of the control. An evaluation of the cost of monitoring and maintaining all necessary engineering and institutional controls shall be submitted with the Monitoring of Compliance Report due every two years.

Direct Billing

Please be advised that in accordance with the "NJDEP Oversight of the Remediation of Contaminated Sites" (N.J.A.C. 7:26C), CYTEC is required to reimburse NJDEP for oversight of the remediation. NJDEP will be issuing a bill within the next four months.

Sincerely,


Stephen E. Maybury, Chief
Bureau of Case Management

C: Municipal Clerk, Linden
Linden Board of Health
Union County Bureau of Environmental Health Enforcement (CEHA)
Mr. Robert Soboleski, NJDEP-BOMM
Mr. Rob Hoch, NJDEP-BOMM
Mr. Haiyesh Shah, NJDEP-BCM

JERSEY MARINE RAIL

EXHIBIT E

SENT BY :

01/12/2004 13:18 FAX 1212 888 0036

973 593 2289;
LPGK

SEP-15-02 5:47AM;

PAGE 2
0002

FROM PITNEY HARDIN KIPP & SZUCH

(TUE) 8. 20 '02 17:23/ST. 17 22/NO. 4860118921 P 4

RECEIVED

AUG 12 2002

ENV. SERVICES



State of New Jersey
Department of Environmental Protection

James E. McGreevey
Governor

Bradley M. Campbell
Commissioner

Bureau of Case Management
Floor 5 West, P. O. Box 28, 401 East State Street
Trenton, NJ 08625-0028

Phone: 609-633-1455/Fax: 609-633-1439/Email: BRUCE.VENNER@DEP.STATE.NJ.US

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

No. 7001 2510 0005 3949 7474

AUG 08 2002

Mr. Joel Jerome
CYTEC
5 Garret Mountain Plaza
West Paterson, NJ 07424

Dear Mr. Jerome:

Re: Former Warners Plant Site, Linden City, Union County
Restricted Use - No Further Action letter and Covenant not to Sue
Area of Concern - Soil
Block 587, Lot 8
KCSL # NJD062175144

The New Jersey Department of Environmental Protection (NJDEP) received a letter from CYTEC dated 23 July 2002 requesting no further action and covenant not to sue (NFA & CNS) for the referenced area of concern. NJDEP and CYTEC signed an Administrative Consent Order (ACO) which became effective on September 5, 1990 and amended on August 5, 1993.

Pursuant to N.J.S.A. 58:10B-13.1 and N.J.A.C. 7:26C, NJDEP makes a determination that no further action is necessary for the remediation of the referenced area of concern for former Warners Plant site only. This action is based upon information in NJDEP case file and CYTEC Remedial Investigation report, Corrective Measure Study report and October 2001 Remedial Investigation/Remedial Action report as well as subsequent correspondence. In issuing this NFA & CNS, NJDEP has relied upon the certified representations and information provided to NJDEP so long as CYTEC did not withhold any information from NJDEP.

By issuance of this NFA & CNS, NJDEP acknowledges the completion of any necessary remedial activities pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E) for the referenced area of concern and no other areas. Groundwater under the referenced area of concern and sediment containment area at the Rahway River (part of the site) are being monitored routinely and are not part of this NFA & CNS.

NJDEP reserves its rights to require any person responsible for the contamination of the site to address

New Jersey is an Equal Opportunity Employer
Mandatory Vacancies

FROM PITNEY HARDIN KIPP ASZUCH

(TUE) 8. 20 '02 17:24/ST. 17 22/NO. 4660118921 P 5

*Natural Resource Injuries:***NO FURTHER ACTION CONDITIONS**

As a condition of this NFA & CNS, CYTEC as well as each subsequent owner, lessee and operator (collectively Successors) shall comply with each of the following:

1. Pursuant to N.J.S.A. 58:10B-12, CYTEC and the Successors shall inform NJDEP in writing whenever its name or address changes, within 14 calendar days after the change.
2. **Deed Notice:** Pursuant to N.J.S.A. 58:10B-13A, CYTEC and the Successors shall ensure that the Deed Notice filed on May 28, 2002 with Joanne Rajoppi at Union County is complied with including maintenance of institutional and engineering controls and reporting to NJDEP. Pursuant to N.J.S.A. 58:10B-13h, an owner of a property on which a Deed Notice has been recorded shall notify any person who intends to excavate on the site of the nature and location of contamination existing on the site and of any conditions or measures necessary to prevent exposure to contaminants.
3. **Monitoring of Compliance for Deed Notices:** Pursuant to N.J.S.A. 58:10B-13.1, CYTEC and the Successors shall conduct monitoring for compliance and effectiveness of the institutional and engineering controls specified in the Deed Notice in Item 2 above and submit written certification to NJDEP every two (2) years that the institutional and engineering controls are being properly maintained and continue to be protective of public health and safety and the environment. Any such certification shall include the information relied upon to determine that no changes have occurred.

COVENANT NOT TO SUE

NJDEP issues this Covenant Not to Sue pursuant to N.J.S.A. 58:10B-13.1. That statute requires a covenant not to sue with each no further action letter. However, in accordance with N.J.S.A. 58:10B-13.1, nothing in this Covenant shall benefit any person who is liable, pursuant to the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11, for cleanup and removal costs and NJDEP makes no representation by the issuance of this Covenant, either express or implied, as to the Spill Act liability of any person.

NJDEP covenants, except as provided in the preceding paragraph, that it will not bring any civil action against the following:

- (a) the person who entered into ACO;
- (b) subsequent owners of the subject property;
- (c) subsequent lessees of the subject property; and
- (d) subsequent operators at the subject property

for the purposes of requiring remediation to address contamination which existed prior to the completion date of the Remedial Investigation for the referenced areas of concern identified above, including payment of compensation for damages to, or loss of, natural resources and the payment of cleanup and removal costs for such additional remediation of cleanup and removal costs for such additional remediation.

The person who undertook the remedial action, and each subsequent owner, lessee and operator, during that person's ownership, tenancy or operation, shall maintain those controls and conduct periodic compliance monitoring in the manner NJDEP requires.

SENT BY: ;

878 593 2289;

SEP-15 5:48AM;

PAGE 4/5

01/12/2004 13:17 FAX 1212 888 0038

LPGK

004

FROM PITNEY HARDIN KIPP ASZUCH

(TUE) 8.20'02 17:24/ST. 17:22/NO. 4860118921 P 6

Any person who may benefit from this Covenant is barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, for any costs or damages relating to the remediation covered by this Covenant. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.

Any person who may benefit from this Covenant is barred from making a claim against the Spill Compensation Fund, N.J.S.A. 58:10-23.11i, and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-105, for any costs or damages relating to the remediation covered by this Covenant if NJDEP requires additional remediation in order to remove the institutional control. All other claims against these funds will be controlled by the corresponding statutes and their implementing regulations.

Pursuant to N.J.S.A. 58:10B-13.1d, this Covenant does not relieve any person from the obligation to comply in the future with laws and regulations. NJDEP reserves its right to take all appropriate enforcement for any failure to do so.

NJDEP may revoke this Covenant at any time after providing notice upon its determination that either:

- (a) any person with the legal obligation to comply with any condition in this NFA & CNS has failed to do so; or
- (b) any person with the legal obligation to maintain or monitor any engineering or institutional control has failed to do so.

This NFA & CNS, which NJDEP has executed in duplicate, shall take effect immediately once the person who entered into the ACO has signed and dated the NFA & CNS on the lines supplied below and NJDEP has received one copy of this document with original signatures of NJDEP and the person who entered into ACO.

Direct Billing:

Please be advised that pursuant to the Procedures for Department Oversight of the Remediation of Contaminated Sites (N.J.A.C. 7:26C et seq.), CYTEC is required to reimburse NJDEP for review of any submissions pursuant to the ACO. NJDEP will be issuing a bill shortly.

CYTEC Industries, Inc.

Name: T. P. WODZNIAK

Title: TREASURER

Signature: [Handwritten Signature]

Date: 08/15/02

SENT BY: ;

973 593 2269;

SEP-15-

5:48AM;

PAGE 5/5
10005

01/12/2004 13:17 FAX 1212 888 0036

LPGK

FROM PITNEY HARDIN KIPP & SZUCH

(TUE) 8.20' 02 17:24/ST. 17:22/NO. 4860118921 P 7

New Jersey Department of Environmental Protection

Name: Bruce Venner

Title: Chief

Signature: *Bruce Venner*

Date: 8/2/02

If you have any questions, please contact Haiyesh Shah at (609) 633-0718.

Sincerely,

Bruce Venner

Bruce Venner, Chief
Bureau of Case Management

- C: Ms. Elizabeth Butler, USEPA-NY
- Mr. Ernest Hahn, NJDEP-Natural & Historic Resource

JERSEY MARINE RAIL

EXHIBIT F



Union County

We're Connected to You!

A Service of
the Board of
Chosen Freeholders

UNION COUNTY FREIGHT ACCESS BETWEEN PORT ELIZABETH AND TREMLEY POINT JUNE 2007

Prepared by
Edwards and Kelcey, Inc.
In association with:
A. Strauss-Wieder, Inc.
Moffatt & Nichol, Inc.
Cambridge Systematics, Inc.

For the
COUNTY OF UNION
BOARD OF CHOSEN FREEHOLDERS

Bette Jane Kowalski, Chairwoman
Angel G. Estrada, Vice Chairman
Chester Holmes
Adrian O. Mapp
Alexander Mirabella
Rick Proctor
Deborah P. Scanlon
Daniel P. Sullivan
Nancy Ward

George W. Devanney, County Manager
M. Elizabeth Genievich, CMC, MPA, Deputy County Manager

Alfred J. Faella, Director, Department of Economic Development
Steven H. Merman, Esq., Director, Division of Planning & Community Development
Liza Betz, AICP, PP, Principal Transportation Planner/Coordinator

For additional information on this project:
DEPARTMENT OF ECONOMIC DEVELOPMENT
DIVISION OF PLANNING & COMMUNITY DEVELOPMENT
BUREAU OF TRANSPORTATION PLANNING
Elizabethtown Plaza
Elizabeth, NJ 07207
Telephone: (908) 527-4086
FAX: (908) 527-4715

Union County online: www.ucnj.org

The preparation of this study has been financed in part through funds from the U.S. Department of Transportation, Federal Highway Administration, under the Federal Highway Act of 1956, as amended. This document is disseminated under the sponsorship of the Department of Transportation in the interest of information exchange. The contents do not necessarily reflect the official views or policies of the Federal Transit Administration, the Federal Highway Administration, of the State of New Jersey. This study does not constitute a standard, specification or regulation.

indicate that the proposed alignment would need to be re-routed due to underground utilities. Should any utility require relocation, the agency or agencies responsible for the utility would be notified in advance of the work, as well as be given ample opportunity to inspect the relocation on site.

D. Environmental Screening / Constraints

In addition to major utilities that would present a possible impediment to the construction of a new north/south roadway (roadway concept described in detail in Section VI of this report), a range of environmental issues could alter or eliminate the ability to construct the new roadway. Environmental constraints can include: existence of historic structures, hazardous materials and contamination of properties, environmental justice, and a range of others. While not every environmental constraint will automatically preclude construction of the new roadway or activation of rail and barge facilities, appropriately addressing the issues would each represent some level of cost increase. It is likely that any form of transportation infrastructure project in the Tremley Point area will need to address one or more of these environmental issues and constraints. The following discussion highlights the known and potential environmental issues that are most likely to arise.

1. Environmental Categories and Potential Issues

a. Noise and Vibration

Construction of the new roadway or expanded rail and barge operations would likely introduce additional noise and vibration to the project area. The absence of existing sensitive receptors in the Tremley Point area will reduce the adverse impacts associated with this portion of the project. However, in the northern portions of the study area, noise and vibration impacts to the Elizabethport neighborhood are possible due to truck traffic on the drayage route, as well as construction activities associated with the facility.

b. Air Quality

Similar to noise impacts, construction of the transportation infrastructure projects detailed in Section VI of this report may be accompanied by temporary air quality impacts normally associated with this type of construction (fugitive dust, etc.). Once built, the drayage route is likely to divert some volume of truck traffic from other access routes including the NJ Turnpike Tremley Point Connector Roadway and the South Wood Avenue corridor to the new roadway. While this could affect air quality in the immediate area (at the microscale level), regional air quality is less likely to

be negatively impacted. To the contrary, reduction in vehicle-miles of travel resulting from increased freight rail use and a shorter distance truck route could contribute to an overall improvement in regional air quality.

c. Ecology and Permits

The proposed restoration of freight railways and development of a rail yard facility in Tremley Point, and a truck drayage route paralleling the NJ Turnpike through this area extending north through the Bayway and Elizabethport sections of Elizabeth would be constructed in formerly developed marshlands adjacent to the Arthur Kill. As such, these facilities would potentially encroach upon a number of streams, wetlands, or water bodies.

The project area's adjacency and proximity to the Arthur Kill and associated tributaries (e.g., Elizabeth River, Piles Creek, Morses Creek, Rahway River) is likely to trigger the need for a Waterfront Development Permit in accordance with the Waterfront Development Act (NJSA 12:5-3). The Waterfront Development permit application would include the information required pursuant to the Coastal Permit Program Rules (N.J.A.C. 7:7-4.2) and Waterfront Development permit application checklists. It is anticipated that a detailed Statement of Compliance with the Rules on Coastal Zone Management will serve as the appropriate environmental documentation.

The proposed alignments may traverse wetlands or water resources. In addition, portions of the project may encroach upon the floodplains of the Arthur Kill and its tributaries.

Freshwater Wetland permits would be required for encroachment into these areas or their transition areas. The state protects wetlands and transition areas under the New Jersey Freshwater Wetlands Protection Act (N.J.S.A. 13:9B). The federal Clean Water Act, Section 404 (33 U.S.C. 1344) is enforced by the US Army Corps of Engineers (USACOE) and regulates navigable waters, tributaries of navigable waters and wetlands.

The area of land required for mitigating lost wetlands is generally calculated through a ratio of 2:1 to as high as 4:1, i.e. creating two to four acres of wetland for every one acre destroyed. Mitigation ratios may depend upon the severity of the impact to the wetland, size of the wetland and the resource value classification.

Wetland complexes are designated a resource value classification depending on the value and function the wetland demonstrates, for example, habitat for threatened and endangered species or surface water trout production. Exceptional resource value wetlands require a 150 foot transition area buffer and Intermediate resource value wetlands must receive a 50 foot transition

area buffer. Wetlands that are of ordinary resource value have no required transition area buffer.

Additionally, stream encroachment permits from the New Jersey Department of Environmental Protection (NJDEP) would be required if proposed developments would cross any of the aforementioned water bodies or encroach on their flood zones. Floodplains throughout the project area were identified using the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Program Geographic Information Systems (GIS) Q3 Flood Data. FEMA Flood Insurance Rate Maps (FIRM) were additionally used in identifying floodplains throughout the study corridor.

Multi-permit applications may be prepared during future project phases once a preferred alternative has been selected.

Much of the project area has been developed. The soils in these industrial and urban areas of Linden and Elizabeth are highly disturbed as a result of prior development. While the Elizabethport neighborhood is an extension of the city's dense street grid, the majority of the project area is given to highly industrial uses; however, the proximity to open water and large tracts of vacant land present the possibility of threatened and endangered species habitat in the project location. If a NEPA-level review is advanced, inquiries would be made to the state Natural Heritage Office and U.S. Fish and Wildlife Service.

d. Cultural Resources

This summary represents a preliminary evaluation of the cultural resource issues faced by the proposed undertaking. Additional investigations would be required in a NEPA-level review to make more complete evaluations of potential project impacts.

Prehistoric Archaeology

The sites in the area have largely been previously disturbed. Therefore, there is a low likelihood for the presence of archaeological or historic resources. However, it is recommended that at least a Phase 1A assessment be conducted in the area prior to advancement of any project.

Phase IA level archaeological research should be undertaken to address the prehistoric potential of the portion of the Cities of Elizabeth and Linden on the east side of the NJ Turnpike. It is anticipated that large portions of the study area would be assessed as not possessing any prehistoric archaeological potential, owing to the historic filling and building episodes that would have almost certainly erased any evidence of prehistoric activity.

The alignments of existing and former railroads and historic roads in the study area, such as Tremley Point Road, should be investigated for their potential to contain prehistoric archaeological resources.

Historic Archaeology

In 1872, Elizabethport, New Jersey became the site of a large, state-of-the-art manufacturing facility for the Singer Sewing Machine Company. In that same year, two industries, the Russell Coe Bone Factory and the S. S. Fales Chemical Works, had been established at Tremley Point. Thus began an era of development throughout the entire study area, from north to south, which has seen numerous industries rise and fall in various locations through the years.

Archaeological investigations would need to be undertaken in this area in connection with the proposed project, to determine the level of archaeological potential on affected properties.

Historic Architecture

A review of New Jersey and National Registers of Historic Places indicates that a number of properties and/or districts within the study area have an Opinion of Eligibility for listing by the State Historic Preservation Office, and one district is listed on the State Register. These should be considered as the project moves forward in terms of sensitivity to historic architecture, and analyzed for project-related impacts, including physical impacts to the properties themselves, as well as impacts on views to or from these properties resulting from the project. Table IV-1 lists the sites and locations recognized as being eligible for, or already listed, on the New Jersey and National Registers of Historic Places.

**Table IV-1
Project Area Properties Eligible for or Listed on the
New Jersey and National Registers of Historic Places**

City of Elizabeth	Status
Arthur Kill Waterfront Park	SHPO Opinion of Eligibility
Elizabeth River Bridge, Central RR of NJ	"
107-113 First Street	"
Goethals Bridge	"
Newark and Elizabeth Branch of the Central RR of NJ	"
Perth Amboy and Elizabethport Branch of the Central RR of NJ	"
St. Patrick's Historic District	"
Saint Patrick's Church, 201 Court St.	"
Singer Factory Historic District, Trumbull Street	Listed on the State Register
Staten Island Railroad Historic District	SHPO Opinion of Eligibility
Trumbull Street Sewer (Division Street to Arthur Kill)	"
Staten Island Railway Lift Truss Bridge over Arthur Kill	"
City of Linden	
Central RR of NJ Bridge over the Rahway River	SHPO Opinion of Eligibility
Perth Amboy and Elizabethport Branch of the Central RR of NJ	"

e. Land Use

The project area is located east of the NJ Turnpike, between the Turnpike and the Arthur Kill. The truck drayage route and new freight rail facilities would be built partially on or adjacent to existing and former transportation rights-of-way within industrial and transportation areas of Linden and Elizabeth.

In Elizabeth, the truck drayage route would run immediately east of the NJ Turnpike past the Elizabethport neighborhood. Approximately 100 residential and/or commercial properties between Third Street on the southwest and Trumbull Street on the northeast would need to be acquired as a result of this project. The properties likely to be taken lie in close proximity to the wide swath in the vicinity of (former) Fourth Street that was impacted by the construction of the NJ Turnpike in the 1950s. Essentially, this project represents a widening to the southeast of that transportation corridor. If a NEPA-level review is undertaken, an analysis of land use impacts will be performed based on the number of properties to be taken, their uses, and

their tax valuation. Potential mitigation measures will need to be developed as well.

f. Section 4(f) Properties

Taking of public recreational or historic property by a public transportation project invokes Section 4(f) of the U.S. Department of Transportation Act of 1966. Such a taking would require a Section 4(f) evaluation. Section 4(f) stipulates that the FHWA will not approve any program or project which requires the use of any publicly owned public park, recreation area, or wildlife or waterfowl refuge, or any land from an historic site of national, state, or local significance, unless there is no feasible and prudent alternative to the use, and all possible planning to minimize harm resulting from such use is included. A 4(f) impact could result not only from the direct acquisition of a recreational property, but also from the project precluding access to a property (known as a constructive taking).

Construction of the freight transportation facilities could require the acquisition of publicly-owned lands. In Elizabeth, the truck drayage route alignment encroaches on Tax Block 5, Lots 155A and B, which are vacant grassed lots immediately east of the Chemical Coast Railroad between First and Third Streets, currently owned by the City of Elizabeth and listed as containing gas lines. The proposed truck drayage route would also pass near two baseball fields in the vicinity of Trumbull Street. A determination will need to be made whether construction of the project would result in a direct or constructive use/taking of either of these recreational properties.

g. Hazardous Materials and Landfills

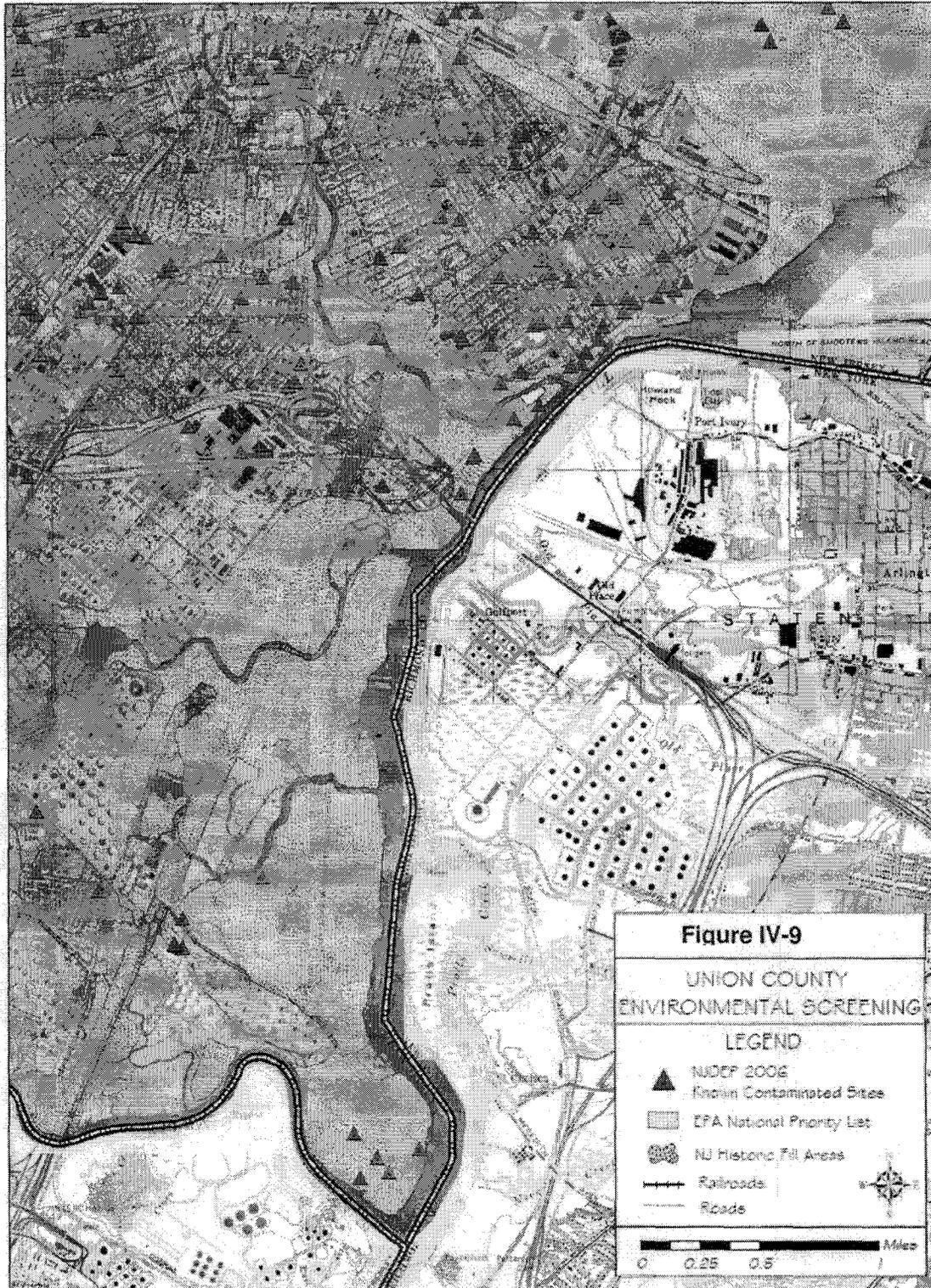
Much of the surrounding area is occupied by industrial manufacturing, goods handling, and warehousing operations, including the ConocoPhillips Bayway Oil Refinery. A significant number of tank trucks and rail tank cars are stored on several sites in the project area, and many trucks pass as well as several freight trains pass through these facilities on a daily basis. Among the various uses previously occupying sites in the general area was a sanitary waste facility. Given the fact that much of the area has been previously filled, in conjunction with the entire area's industrial history, the potential exists that area sites may be impacted by one or more of the following conditions: nearby Comprehensive Environmental Response(s), Compensation and Liability Information condition, illegal dumping of hazardous material, on-site hazardous material generators or storage facilities, and/or open New Jersey State hazardous waste site cases.

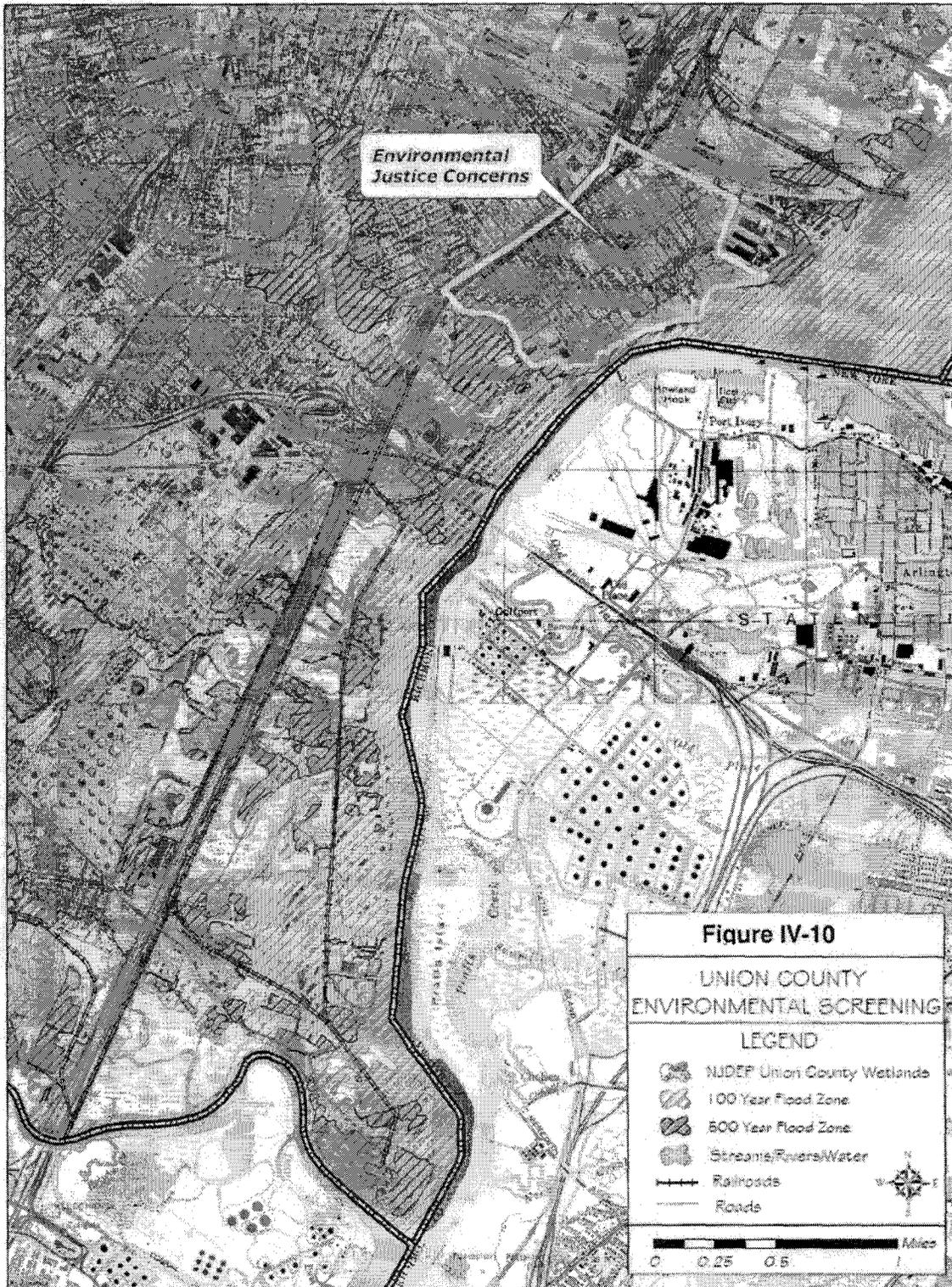
According to the NJDEP 2006 Known Contaminated Sites in New Jersey Geographic Information Systems data, Union County has approximately 940

sites with on-site sources of contamination, closed sites with restrictions, or sites with unknown sources of contamination. One EPA National Priority List site exists within the study area. The Chemical Control Corporation is a 2-acre parcel in Elizabeth adjacent to the Elizabeth River. In the 1970s it operated as a hazardous waste storage, treatment, and disposal facility. The EPA has implemented remedial actions on site which are still being monitored. (See Figure IV-9).

A review of the NJDEP/NJ Geological Survey State historic fill shows that areas within the County have had fill placed to raise the topographic elevation. Historic fill was mapped throughout the state due to the Brownfield and Contaminated Site Remediation Act (BCSRA) which requires the NJDEP to map regions of the state where large areas of historic fill exist. According to NJDEP/NJGS "Some areas mapped as fill may contain chemical-production waste or ore-processing waste that exclude them from the legislative definition of historic fill". (See Figure IV-9).

Some of the lands within the proposed project area are known to be capped brownfield landfill sites. Remediation on some of these sites has been previously completed, and NJDEP has issued a No Further Action determination. This remediation, however, may not be sufficient for the excavation and construction of pilings and/or foundations associated with elements of large-scale freight handling and intermodal facilities. Once the specific sites involved in the project's alignment have been determined, additional investigation and consultation with NJDEP will be necessary to determine the proposed course of remediation measures to be taken.





h. Environmental Justice

Development of a truck drayage route along the NJ Turnpike and Chemical Coast Line would likely require right-of-way acquisition involving displacement of homes in the densely-developed Elizabethport and Liberty Square areas. There are likely to be Environmental Justice issues associated with this project.

For comparison purposes, the Tables IV-2 through Figure IV-5 summarize various Environmental Justice sensitivity factors, including 1999 Median Household Income, Nonwhite Population, and Hispanic Population, for Union County, followed by the same data for Union County Census Tracts 303, 304, and 305, which comprise the Elizabethport neighborhood (See Figure IV-10).

Table IV-2
1999 Median Household Incomes

Location	Union County	Tract 303	Tract 304	Tract 305
1999 Median Household Income (MHI)	\$65,234	\$33,068	\$26,648	\$34,913
Percentage of County MHI	100	50.69	40.85	52.61

Collectively, the median household income for this neighborhood, which would be disproportionately impacted by the project, is less than half of the median household income for the county. This exceeds the threshold for Environmental Justice sensitivity.

Table IV-3
2000 White and Nonwhite Populations

Location	Union County	Tract 303	Tract 304	Tract 305	Tracts 303, 304 & 305
2000 Total Population	522,541	3,414	4,694	4,559	12,667
2000 White Population	342,316	1,936	1,823	2,757	6,516
2000 Nonwhite Population	180,225	1,478	2,871	1,802	6,151
Percentage Nonwhite	34.49	43.29	61.16	39.53	48.56

Collectively, the nonwhite population of the Elizabethport neighborhood is 48.56%, compared to 34.49% for Union County. This significant difference exceeds the threshold for Environmental Justice sensitivity.

**Table IV-4
2000 Hispanic Populations**

Location	Union County	Tract 303	Tract 304	Tract 305	Tracts 303, 304 & 305
2000 Total Population	522,541	3,414	4,694	4,559	12,667
2000 Hispanic Population	102,851	1,942	2,523	3,041	7,506
Percentage Non-Hispanic	19.68	56.88	53.75	66.70	59.26

Collectively, the Hispanic population of the Elizabethport neighborhood is 59.26%, compared to 19.68% for Union County. This significant difference exceeds the threshold for Environmental Justice sensitivity.

There are active Environmental Justice watchdog groups within the study area. The Tremley Point Alliance already filed a petition with the New Jersey Environmental Justice Task Force (EJTF) in September of 2004, which was conditionally approved pending a mutually agreeable action plan.

i. Community Facilities

The project is not anticipated to place significant additional demands on municipally funded facilities or emergency services. If a NEPA-level review is undertaken, an inventory of existing community facilities and an analysis of community facility impacts will be performed based on the anticipated additional demand for services. Potential mitigation measures will need to be developed as well.

j. Consistency with Local Planning

Coordination with City of Elizabeth and City of Linden representatives has existed throughout the course of the Union County Freight Access Study and further investigation of the truck drayage roadway would involve working closely with both cities.

k. Construction Impacts

Due to the nature of the proposed transportation facilities, it is anticipated that there will be temporary impacts to the Elizabethport neighborhood during construction of the proposed truck drayage route. Temporary rerouting of traffic and possible adjustments to scheduled construction activities may be necessary to minimize these impacts.

E. Development of Strategies for Transportation System Improvements:

In addition to recognizing the potential constraints that may be imposed by the existence of major utilities and environmental conditions, it is important to understand that the proposed access improvements could serve a variety of needs, uses and property owners. The access infrastructure concepts are independent of who ultimately redevelops the ISP and DuPont properties. While specific uses may be more heavily dependent on single modes of transportation, maximizing the economic value of the future development/redevelopment suggests the need for a multimodal approach to providing access. Accordingly, the following infrastructure strategies and guiding principles are proposed for Tremley Point and are elaborated upon in the following sections:

Rail opportunities

- Preserve all railroad rights of way currently in existence, whether active or inactive. Identify any out of service or abandoned rights of way, which may be preserved for future reuse to support one or more activities within Tremley Point.
- Identify means to enhance and expand current rail service in Tremley Point. This includes identifying methods to integrate local service with connections to the national rail network via the Chemical Coast Line.
- Provide for rail modal options for current and future development. Carload, container and transload opportunities need to be available to current and future customers.

Roadway opportunities

- Support construction of the Tremley Point Connector Road and crossing of the Rahway River to access the NJ Turnpike. This primary truck access route will avoid increase in traffic on South Wood Avenue.
- Support identification of a right of way for the construction of a roadway to connect the Kapkowski Road and Division Street areas to the Goethals Bridge area in order to avoid traversing the main north-south roadway system serving the Elizabethport neighborhood.

- Integrate the current municipal, county and state roadway and bridge improvements into current and future access improvements to the study area.
- Construct (or at a minimum preserve right of way for the future construction of) a truck only drayage/emergency access roadway connecting Port Elizabeth to the local roadways serving Tremley Point.
- Advance land use redevelopment inclusive of a local roadway network providing connectivity between existing and future uses, as well as full access to the rail yard recommended as a central component of the multimodal transportation network.

Waterborne opportunities

- Identify waterside facilities for preservation, including current and former dockside facilities.
- Identify potential areas for waterside facilities for bulk and break bulk loading and off-loading.
- Explore the possibility of short haul sea and intracoastal barge service as a support activity to current and future industrial usage.