



FOLEY & LARDNER LLP

ATTORNEYS AT LAW  
WASHINGTON HARBOUR  
3000 K STREET, N.W.  
SUITE 600  
WASHINGTON, D.C. 20007-5109  
202.672.5300 TEL  
202.672.5399 FAX  
WWW.FOLEY.COM

WRITER'S DIRECT LINE  
202.295.4097  
dralston@foley.com EMAIL

CLIENT/MATTER NUMBER  
104677-0104

November 17, 2015

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Office of Proceedings  
November 17, 2015  
Part of  
Public Record

Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

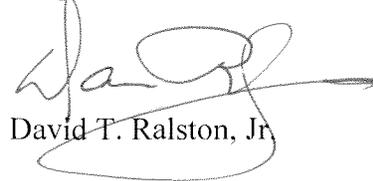
Re: FINANCE DOCKET NO. 35141: U S RAIL  
CORPORATION—CONSTRUCTION AND OPERATION  
EXEMPTION—BROOKHAVEN RAIL TERMINAL

Dear Sir or Madam:

Please accept the attached *corrected* filing, Respondents' Motion for Extension of Time to File Motion to Strike or Otherwise Respond to Town's Filing, in substitution for that filed yesterday. The filing yesterday neglected to include the referenced Exhibit A, which is now attached. Today's filing also corrects the date of the Order on page 3.

Please contact me with any questions.

Respectfully submitted,



David T. Ralston, Jr

Attachments

cc: All Parties of Record

BOSTON  
BRUSSELS  
CHICAGO  
DETROIT

JACKSONVILLE  
LOS ANGELES  
MADISON  
MIAMI

MILWAUKEE  
NEW YORK  
ORLANDO  
SACRAMENTO

SAN DIEGO  
SAN FRANCISCO  
SHANGHAI  
SILICON VALLEY

TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

**CORRECTED VERSION**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35141

U S RAIL CORPORATION—CONSTRUCTION AND OPERATION EXEMPTION—  
BROOKHAVEN RAIL TERMINAL

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**MOTION FOR EXTENSION OF TIME TO FILE MOTION TO STRIKE OR  
OTHERWISE RESPOND TO TOWN'S FILING**

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**David T. Ralston, Jr.  
Zachary L. Coffelt  
Foley & Lardner LLP  
3000 K Street, N.W., Suite 600  
Washington, D.C. 20007**

*Counsel for Brookhaven Rail Terminal  
and Brookhaven Rail, LLC*

Dated: November 16, 2015

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35141

U S RAIL CORPORATION—CONSTRUCTION AND OPERATION EXEMPTION—  
BROOKHAVEN RAIL TERMINAL

---

**MOTION FOR EXTENSION OF TIME TO FILE MOTION TO STRIKE OR  
OTHERWISE RESPOND TO TOWN'S FILING**

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Brookhaven Rail Terminal (“BRT”) and Brookhaven Rail, LLC (“Brookhaven Rail”) (collectively, “Respondents”), respectfully move pursuant to 49 C.F.R. § 1104.7 for additional time to move to strike or otherwise respond to the filing of the Town of Brookhaven (“Town”) dated October 27, 2015.<sup>1</sup> Respondents have prepared a motion to strike the Town October 27<sup>th</sup> filing that demonstrates the Town October 27<sup>th</sup> Filing: (1) is not authorized by the Surface Transportation Board (“Board”)’s July 8, 2015 decision (“Board July 8<sup>th</sup> Decision”),<sup>2</sup> which solely directed Respondents to notify the Board’s Office of Environmental Analysis (“OEA”) that Respondents’ spill prevention, control, and countermeasures plan (“SPCC Plan”) satisfied

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<sup>1</sup> *Objections of Town of Brookhaven, New York*, dated October 27, 2015 (“Town October 27<sup>th</sup> Filing”).

<sup>2</sup> *U S Rail Corporation—Construction And Operation Exemption—Brookhaven Rail Terminal*, STB Finance Docket 35141 (STB served July 8, 2015). Therein the Board stated that Respondents were in compliance with two of the three environmental conditions (EC No. 1 and EC No. 3) imposed by the Board in its 2010 Decision, and noted that while Respondents were in substantial compliance with the remaining environmental condition (EC No. 2), it directed Respondents to notify the Board’s OEA when Respondents’ SPCC Plan satisfied SCSC Article 12. Board July 8<sup>th</sup> Decision at 1, 6. The Board made it clear that upon accomplishing the foregoing, Respondents “will have fully met the third condition.” *Id.* at 1. Furthermore, the Board denied the Town’s motion to reopen, for the second time, on any other grounds other than Respondents’ compliance with the foregoing directive. *Id.*

Article 12 of the Suffolk County Sanitary Code (hereinafter referred to as “SCSC Article 12”); (2) raises an alleged SCSC Article 12 compliance matter altogether collateral to the Board July 8<sup>th</sup> Decision and Respondents’ Notification of Compliance filed in response thereto; and (3) represents an untimely petition for reconsideration of the Board July 8<sup>th</sup> Decision under 49 C.F.R. § 1115.3.

Recent developments have, however, possibly rendered moot the need for Respondents to file the motion to strike that has been prepared. Late last week, the Town and Respondents reached a tentative settlement outline of their dispute pending before the United States District Court for the Eastern District of New York, subject to approval of the settlement outline and final settlement agreement by the Town’s Board. *Town of Brookhaven v. Sill Road Realty LLC, et al*, Civ. No. 2:14-cv-02286-GRB, Order dated November 13, 2015, Exhibit A hereto (“Order”). Among the settlement outline’s provisions is that the parties will cooperate to complete any pending STB proceedings, which presumably will lead to the Town’s withdrawal of the Town October 27<sup>th</sup> Filing. Assuming that occurs (and that the Town Board approves the settlement outline and final agreement), the need for Respondents to move to strike that filing would be moot. It is anticipated that the parties will need up to 30 days to complete the settlement process envisioned by the Minute Order, and execute upon it. Accordingly, Respondents move the Board for an extension of time to move to strike or otherwise respond to the Town October 27<sup>th</sup> Filing to a date certain of December 16, 2015.<sup>3</sup>

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<sup>3</sup> Respondents are operating under the premise that the Board’s 20-day rule of 49 C.F.R. § 1104.13 applies to the instant motion to strike. Under that rule, the motion to strike would be due today, November 16, 2015. Respondents appreciate that 49 C.F.R. § 1104.7(a) requires that an extension of time to file be made 10 days in advance of the due date, but as explained above, the basis for the request to extend the time to file did not arise until November 13, 2015, and this motion is brought the next business day. Accordingly, Respondents request that the Board waive that requirement under the instant circumstances.

**CONCLUSION**

For all the foregoing reasons, Respondents respectfully extend the time for Respondents to move to strike or otherwise respond to the Town October 27<sup>th</sup> Filing until a date certain of December 16, 2015.

Dated: November 16, 2015

Respectfully submitted,

*Brookhaven Rail Terminal and Brookhaven Rail, LLC*

By:   
David T. Ralston, Jr.  
Zachary L. Coffelt  
Foley & Lardner LLP  
3000 K Street, N.W.  
Washington, D.C. 20007

*Counsel for Brookhaven Rail Terminal and Brookhaven Rail, LLC*

**EXHIBIT A**

**From:** <[ecf\\_bounces@nyed.uscourts.gov](mailto:ecf_bounces@nyed.uscourts.gov)>

**Date:** November 13, 2015 at 7:32:24 PM EST

**To:** <[nobody@nyed.uscourts.gov](mailto:nobody@nyed.uscourts.gov)>

**Subject:** Activity in Case 2:14-cv-02286-GRB Town of Brookhaven v. Sills Road Realty LLC et al Status Report Order

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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**U.S. District Court**

**Eastern District of New York**

### **Notice of Electronic Filing**

The following transaction was entered on 11/13/2015 at 7:32 PM EST and filed on 11/13/2015

**Case Name:** Town of Brookhaven v. Sills Road Realty LLC et al

**Case Number:** 2:14-cv-02286-GRB

**Filer:**

**Document Number:** No document attached

### **Docket Text:**

**ORDER UPON COMPLETION OF SETTLEMENT CONFERENCE - Following extended court-supervised negotiations, the parties have drafted an outline for a settlement that would resolve this action, conditionally lift the injunction subject to reinstatement, allowing pursuit of development while making provision for appropriate environmental protections. Subject to the provision of additional information, the defendants have agreed in principle to these terms and Town officials have agreed to recommend the terms to the Town Board. Plaintiff is to provide a status report to the Court on 11/20/15. Ordered by Magistrate Judge Gary R. Brown on 11/13/2015. (Brown, Gary)**

**2:14-cv-02286-GRB Notice has been electronically mailed to:**

Kevin Patrick Mulry [kmulry@farrellfritz.com](mailto:kmulry@farrellfritz.com), [courtnotifications@farrellfritz.com](mailto:courtnotifications@farrellfritz.com)

Robert M. Calica [rcalica@rcblaw.com](mailto:rcalica@rcblaw.com)

Judah Serfaty [jserfaty@rcblaw.com](mailto:jserfaty@rcblaw.com)

Yonaton Aronoff [yaronoff@foley.com](mailto:yaronoff@foley.com), [amccarthy@foley.com](mailto:amccarthy@foley.com)

Alisha L. McCarthy [amccarthy@foley.com](mailto:amccarthy@foley.com)

**2:14-cv-02286-GRB Notice will not be electronically mailed to:**

## CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2015, I caused to be served the foregoing *Motion for Extension of Time to File Motion to Strike or Otherwise Respond to Town's Objection to Town's Filing* by first-class mail, postage prepaid, upon the following Parties of Record in this proceeding:

TO: Judah Serfaty, Esq.  
Rosenberg Calica & Birney LLP  
100 Garden City Plaza, Suite 408  
Garden City, NY 11530

Robert M. Calica, Esq.  
Rosenberg Calica & Birney LLP  
100 Garden City Plaza, Suite 408  
Garden City, NY 11530

NYS Dept. of Transportation  
50 Wolf Road  
Albany, NY 12232  
Attn: Robert A. Rybak, Esq.

Lyngard Knutson, Esq.  
Region 2 E.P.A.  
290 Broadway, 25<sup>th</sup> Floor  
New York, NY 10007

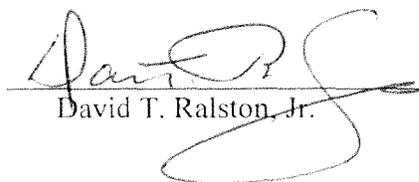
NYS Dept. of Environmental Conservation  
New York Natural Heritage Program  
Albany, NY 12233-4757  
Attn: Tara Seoane

Field Office Supervisor  
U.S. Fish and Wildlife Service  
Long Island Field Office  
340 Smith Road  
Shirley, NY 11967

MTA Long Island Rail Road  
Jamaica Station  
Jamaica, NY 11435-4380  
ATTN: Helena E. Williams

New York & Atlantic Railway  
68-01 Otto Road  
Glendale, NY 11385  
ATTN: Paul Victor

James H. M. Savage  
1750 K. St., N.W.  
Suite 350  
Washington, D.C. 20006



David T. Ralston, Jr.