

Strasburger

ATTORNEYS AT LAW

234715

August 26, 2013

FILED
AUG 26 2013
SURFACE
TRANSPORTATION BOARD

JOHN D. HEFFNER

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Direct Fax 202-742-8697
Email: john.heffner@strasburger.com

Ms. Cynthia A. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001



RE: FD 35760 HAINESPORT INDUSTRIAL RAILROAD, LLC

Dear Ms. Brown:

On behalf of Hainesport Industrial, LLC, applicant herein, I am filing an original and ten copies of a verified Notice of Exemption under 49 CFR §1180.2(d)(3) for a corporate family transaction.

In addition, I am enclosing a copy of this filing on a CD in word format as well as a filing fee check payable to the Board for \$1400. Please date stamp and return to our messenger one copy of this filing.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'John D. Heffner'.

John D. Heffner

Enclosures

cc: Darryl Caplan, Esq.

FEE RECEIVED

AUG 26 2013

SURFACE
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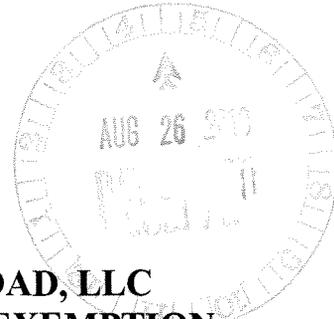
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Office of Proceedings

AUG 26 2013

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35760



**HAINESPORT INDUSTRIAL RAILROAD, LLC
- CORPORATE FAMILY TRANSACTION EXEMPTION -
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (3)**

FILED

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**SURFACE
TRANSPORTATION BOARD**

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

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Dated: August 26, 2013

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35760

**HAINESPORT INDUSTRIAL RAILROAD, LLC
- CORPORATE FAMILY TRANSACTION EXEMPTION -
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (3)**

Come now Hainesport Industrial Railroad, LLC (“Hainesport), a Class III short line railroad subject to the jurisdiction of the Board, and states as follows:

1. Pursuant to the provisions of Section 1180 of the Board's Railroad Consolidation Rules, 49 C.F.R. §1180, Applicant hereby gives notice of a transaction which qualifies for exemption under §1180.2(d) (3) of those rules.
2. As relevant here, Hainesport is a limited liability company and a Class III short line railroad established for the purpose of owning and operating as a common carrier a line of railroad. A copy of a Board exemption authorizing its operation is attached as Exhibit A.
3. Hainesport currently owns and operates a series of tracks serving

several customers located in the Hainesport Industrial Park in Hainesport, NJ where it connects with a line owned and served by Consolidated Rail Corporation (“Conrail”).

4. As the map submitted as Exhibit B shows, Hainesport’s track is in a “wish-bone” like configuration with several sidings pointed in an easterly direction (“the East Lines”) and one or more sidings pointed in a southerly direction (“the South Lines”).

5. Hainesport proposes to establish a new corporate affiliate, Hainesport Secondary Railroad, LLC (“Hainesport Secondary”), to own and operate the East Lines. The East Line currently serves and will continue to serve facilities owned or operated by Gallo, Independent Metal Associates, Inc., and Total Logistics as well as an intermodal track utilized by Heritage Environmental Services and WasteQuip, among others. Traffic currently handled on the East Lines includes wine, wallboard, lumber, rebar, and waste moving in its original shipping containers.¹ The East Line will not handle the movement of non-containerized solid waste.

¹ These containers arrive by truck. Hainesport merely transfers the sealed containers from truck to waiting rail cars for further movement by rail. It receives empty containers coming by rail and transfers them to waiting trucks for movement to the origin customer. Hainesport believes this transportation qualifies for preemption under the Board’s rules governing solid waste transportation. 49 CFR §1155.

6. Hainesport will continue to own the South Line which presently handles and will continue to handle the movement of outbound solid waste classified as construction and demolition debris. Hainesport's operation of this facility has been conducted in accordance with all of the solid waste requirements imposed upon it by the New Jersey Department of Environmental Protection including but not limited to the application for a New Jersey Solid Waste Transfer Permit along with all other supporting permits. Hainesport serves in excess of 100 active customers. The owners of Hainesport are presently considering the sale of this entity.

7. Hainesport has reviewed its proposal with Conrail's law department which advises that it has no objection to this transaction.

8. Under §1180.2(d) (3) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control. Specifically, §1180.2(d) (3) exempts corporate family transactions where the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

9. The subject transaction fits the statutory test. There will be no changes in service levels, operations, or the competitive balance after consummation. What exists today will continue to exist tomorrow. To facilitate smooth operations, Hainesport Secondary will enter into an unregulated haulage agreement with Hainesport to move inbound and outbound traffic between the South Line and the Conrail interchange. Hainesport Secondary will be available to continue the haulage service to any party who acquires Hainesport under mutually acceptable terms.

10. The Board has on a number of occasions exempted transactions such as this one involving the splitting of a rail carrier into two or more entities and the transfer of its lines or operating rights to those affiliated entities. *See, Kansas City Southern, The Kansas City Southern Railway Company, and Meridian Speedway LLC—Exemption for Transactions Within a Corporate Family*, FD 34822, STB served Feb. 16, 2006 (exempting the transfer of rail line by a carrier to newly created corporate affiliate along with continuance in control of affiliated companies and the subsequent grant back of operating rights by the new carrier to the grantor to fulfill the grantee's common carrier obligations). *Housatonic Railroad Company, Inc., Maybrook Railroad Company, and Housatonic*

Transportation Company—Intra-Corporate Family Transaction Exemption, FD 35723, STB served March 22, 2013, presented a somewhat similar transaction involving the transfer of a line between existing commonly controlled affiliates.² Like the Kansas City Southern Railway, Hainesport is “spinning off” a line, the East Line, to its newly established affiliate [Hainesport Secondary] while retaining the South Line. Accordingly, ample Board precedent exists to authorize the proposed transaction.

11. In order to claim the §1180.2(d) (3) exemption, §1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in §§1180.6(a) (1) (i) – (iii), 1180.6(a) (5) – (6), and 1180.6(a) (7) (ii) of those rules. That information is provided as follows:

Summary of Proposed Transaction: **49 CFR §1180.6(a) (1) (i)**

As described above, Hainesport will transfer ownership of and operations over the East Line to a new affiliate, Hainesport Secondary.

Applicant’s name, address, and telephone number:
Hainesport Industrial Railroad, LLC

² See also, *Pioneer Railcorp and Michigan Southern Railroad Company—Corporate Family Transaction Exemption*, FD 33941, STB served October 10, 2000, and *Nicholas B. Temple, Eric Temple, Columbia Basin Railroad Company, Inc, Central Washington Railroad Company and Portland Vancouver Junction Railroad, LLC—Corporate Family Transaction Exemption*, FD 35210, STB served Jan. 16, 2009 (exempting the transfer of leasehold interests from one new or existing affiliate to another affiliate).

c/o Darryl S. Caplan, Esquire
Caplan, Valenti & Murray, PC
The Pavilions at Moorestown
740A Marne Highway South, Suite 101
Moorestown, New Jersey 08057

Legal counsel to whom questions should be addressed:

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Schedule for consummation: **49 CFR §1180.6(a) (1) (ii)**

The parties intend to consummate the proposed transaction at least 30 days from the date of this notice, on or about September 26, 2013.

Purpose to be accomplished by the transaction: **49 CFR §1180.6(a) (1) (iii)**

The purpose of this transaction is to allow Hainesport to separate its two lines of railroad according to the types of traffic each handles with the East Line traffic primarily being general commodities or containerized freight. It will also facilitate the sale of the South Line should Hainesport's owners choose to do so.

State(s) in which the property of each carrier is situated: **49 CFR**

§1180.6(a) (5)

New Jersey

Map: **49 CFR §1180.6(a) (6)**

Attached hereto as Exhibit B.

Copy of Agreement: **49 CFR §1180.6(a) (7) (ii)**

N.A. There is no agreement covering the instant transaction.

Environmental and historical considerations:

This corporate family transaction exemption proceeding is exempt from environmental review under 49 CFR §1105.6(c) (2) (i) because the proposed action will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5). In addition, this proceeding is exempt from historic review under 49 CFR §1105.8(b)(1) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are at least 50 years old.

Accordingly, no historic report is required.

Labor Protection to be Imposed

No labor protection applies on transactions involving only class III railroads.

See, 49 U.S.C. §11326(c).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. D. Heffner", with a long horizontal flourish extending to the right.

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

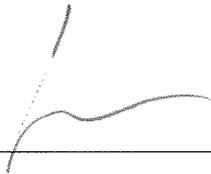
Counsel for Applicants

Dated: August 26, 2013

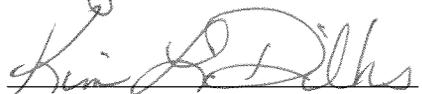
VERIFICATION

STATE OF New Jersey)
County)
CITY OF BURLINGTON)

Darryl Caplan, being duly sworn according to law, hereby deposes and states that (s)he holds the position of Managing Member with applicant/petitioner, is authorized to make this Verification, had read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her)his knowledge, information, and belief.



Subscribed to and sworn to before me, a Notary Public, in and for the County of Burlington in the State of NJ, this 23rd day of August, 2013.


Notary Public

My Commission expires:

KIM A. LEHUQUET DILKS
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. ~~22, 2010~~
28, 2015

EXHIBIT A

35823

SERVICE DATE – MAY 18, 2005

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34695]

Hainesport Industrial Railroad, LLC–Acquisition and Operation Exemption–Hainesport
Industrial Park Railroad Association, Inc.

Hainesport Industrial Railroad, LLC (HIR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 1 mile of rail line owned by Hainesport Industrial Park Railroad Association, Inc. in Burlington County, NJ. The line is located within the Hainesport Industrial Park in the township of Hainesport, and connects with Consolidated Rail Corporation at milepost 12.6 in the South Jersey Conrail Shared Assets Area.

HIR certifies that its projected revenues will not exceed those that would qualify it as a Class III rail carrier, and that its annual revenues will not exceed \$5 million.

The transaction was expected to be consummated on or after April 28, 2005.

If the notice contains false or misleading information, the exemption is void ab initio.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34695, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Linda J. Morgan, 1201 Pennsylvania Avenue, N.W., Washington, DC 20004.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: May 10, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

EXHIBIT B

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.

