

SERVICE DATE - JANUARY 17, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1163X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--  
IN NORTHAMPTON COUNTY, PA

Decided: January 14, 1997

This decision addresses a petition filed by Harcros Pigments Inc. (Harcros) on January 6, 1997, for a stay of the effectiveness of an exemption granted in a decision served on December 20, 1996. That decision: (1) granted a petition by Consolidated Rail Corporation (Conrail) for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon 3.8 miles of railroad extending from milepost 79.0 to milepost 82.8 in Northampton County, PA; and (2) issued a notice of interim trail use or abandonment, subject to public use, trail use, and standard labor protective conditions. The exemption is scheduled to become effective on January 19, 1997. The stay request will be denied.

DISCUSSION AND CONCLUSIONS

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other interested parties; and (4) whether issuance of a stay is in the public interest. See, e.g., Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

In its petition, Harcros has not provided any reasons why it is likely to prevail on the merits of any future petition to reject or revoke the exemption. Indeed, Harcros has not even stated that it is likely to prevail. Harcros has not supported or even asserted a showing of irreparable harm. The petition contains only vague reference to the effect that the abandonment conditions may impair the performance of the obligations of Conrail and protection of the rights of Harcros under agreements with Conrail. Similarly, Harcros has not provided any information on harm to other interested parties, nor has it demonstrated that the issuance of a stay here would be in the public interest.<sup>1</sup>

CONCLUSION

The burden is upon Harcros to demonstrate conclusively that it has met the conditions for issuance of a stay. Harcros has fallen far short of making such a demonstration. It has failed to show that any relief is necessary or appropriate in the circumstances. Accordingly, its stay petition will be denied.

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<sup>1</sup> Beyond the discussion of contractual rights, the petition consists only of brief references to notice and safety concerns.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Harcros' petition for stay is denied.
2. The decision is effective on January 17, 1997.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary