

SERVICE DATE – JUNE 30, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34192

HI TECH TRANS, LLC
–PETITION FOR DECLARATORY ORDER–
HUDSON COUNTY, NJ

Decided: June 27, 2003

On June 17, 2003, new counsel for Hi Tech Trans, LLC (Hi Tech) filed a letter withdrawing a petition filed on June 9, 2003,¹ in which Hi Tech sought clarification of a decision served in this proceeding on November 20, 2002 (November decision).² In lieu of the petition for clarification, Hi Tech has filed another petition for declaratory order, this time seeking a determination that the Board has exclusive jurisdiction over a rail transloading facility owned by Delaware & Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway (CP) and operated by Hi Tech, and that the attempted regulation and closure of that facility by the New Jersey Department of Environmental Protection is preempted under federal law pursuant to 49 U.S.C. 10501(b).³

Hi Tech will be allowed to withdraw its June 9, 2003 petition for clarification because the November decision requires no clarification. The issue before the Board in the November decision was limited to a determination that the Board's jurisdiction, and preemption under section 10501(b), would not reach movements of construction and demolition debris haulers on public roads en route to the CP transload facility. The question of whether Hi Tech is a rail carrier has not come before the Board, and the Board has made no determination on that issue, which in any event would have no bearing on the status of the truck traffic.

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

¹ Hi Tech's request for a refund of the filing fee will be addressed separately by the Secretary of the Board.

² The petition for clarification sought a determination of whether Hi Tech is, or is not, a rail carrier subject to the Board's jurisdiction.

³ The new petition has been docketed as STB Finance Docket No. 34192 (Sub-No. 1).

It is ordered:

1. Hi Tech is granted permission to withdraw its June 9, 2003 petition for clarification.
2. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary