

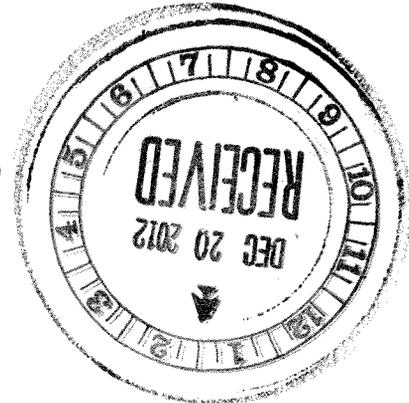
233565

**FILED**

DEC 20 2012

**SURFACE  
TRANSPORTATION BOARD**

Megan E. Harmon  
Direct Dial: 412-577-5209  
Internet Address: mharmon@schnader.com



December 19, 2012

**VIA UPS OVERNIGHT**

Chief, Section of Administration  
Surface Transportation Board  
395 E. Street, S.W.  
Washington, DC 20024

ENTERED  
Office of Proceedings

DEC 20 2012

Part of  
Public Record

**FEE RECEIVED**

DEC 20 2012

**SURFACE  
TRANSPORTATION BOARD**

Re: Finance Docket No. 35707  
MCM Rail Services LLC – Petition for Retroactive Exemption – of the  
Operation of a Line of Railroad in Sparrows Point, Baltimore County, Maryland

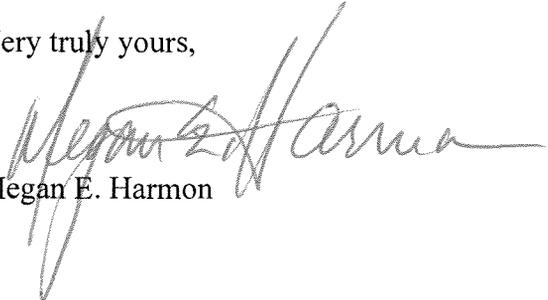
Dear Ladies and Gentlemen:

Enclosed for filing please find an original and ten copies of a Petition for Retroactive Exemption for the above-captioned matter as well as check no. 051168 in the amount of \$1,800 for the filing fee.

An additional copy of the filing is also enclosed. Kindly indicate receipt and filing by time-stamping the extra copy and returning it to the undersigned in the enclosed pre-addressed, postage pre-paid envelope.

Thank you for your attention to this matter.

Very truly yours,

  
Megan E. Harmon

MEH/alp  
Enclosures  
cc: David Mardigian (w/enc.)

233565 **FILED**  
DEC 20 2012

BEFORE THE SURFACE TRANSPORTATION BOARD

**SURFACE  
TRANSPORTATION BOARD**

In the Matter of )  
)  
MCM RAIL SERVICES LLC – )  
PETITION FOR RETROACTIVE )  
EXEMPTION – OF THE )  
OPERATION OF A LINE OF )  
RAILROAD IN SPARROWS )  
POINT, BALTIMORE COUNTY, )  
MARYLAND )  
)  
Petitioner. )

Finance Docket No. 35707  
ENTERED  
Office of Proceedings  
DEC 20 2012  
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Public Record



DEC 20 2012

**PETITION FOR RETROACTIVE EXEMPTION** **SURFACE  
TRANSPORTATION BOARD**

MCM Rail Services LLC (“MCM”) respectfully petitions the Surface Transportation Board (“STB” or “Board”) pursuant to 49 U.S.C. § 10502 and 49 C.F.R. §§ 1121.1 *et seq.* for a retroactive exemption to authorize its operation of a 12 mile line of railroad located at 1430 Sparrows Point Boulevard, Sparrows Point, Baltimore County, Maryland (the “Railroad”). The Railroad was formerly known as the Patapsco & Back Rivers Railroad owned and operated by R. G. Steel Railroad Holdings, LLC and previously owned by Bethlehem Steel Corporation (or an affiliate) and ISG Railways, Inc. Each of the prior owners was an affiliate of the owner of the steel operations located at Sparrows Point.

As explained below, MCM inadvertently failed to seek prior authorization for its operation of the Railroad due to the exigencies of a complicated bankruptcy auction and sale, coupled with MCM’s lack of knowledge going into the transaction that the track in question was considered a common carrier line and the operation of the Railroad is subject to the Board’s jurisdiction. The Board has previously granted after-the-fact retroactive exemptions to legitimize transactions that would have been proper subjects for exemption had such relief been sought

beforehand, where the applicant has demonstrated that its failure to seek authorization on a timely basis was unintentional and did not prejudice the rights of other parties. *See, e.g.*, Finance Docket No. 34481, *Horsehead Corporation - - Petition for Acquisition and Operation Exemption - - Chestnut Ridge Railway Company* (2004 WL 47981 (STB)), Finance Docket No. 32964, *Brotherhood of Maintenance of Way Employees et al. v. Soo Line Railroad et al.* (unprinted decision served December 22, 1998) at 6-7, and cases cited therein at 7n. and 15n. MCM respectfully submits that such relief is appropriate in this case.

### **Background**

R.G. Steel Railroad Holdings, LLC (“R.G. Railroad”) was the immediate prior owner of the Railroad. On May 31, 2012 R.G. Railroad and its affiliates R.G. Steel, LLC (“RG Steel”), WP Steel Venture LLC, Metal Centers LLC, R.G. Steel Wheeling, LLC, RG Steel Warren, LLC and RG Steel Wheeling Group, LLC filed for bankruptcy in the United States Bankruptcy Court for the District of Delaware captioned *In re WP Steel Venture LLC, et al.* jointly administered under Case No. 12-11661.

MCM Management, Inc. (“MCMM”), the parent corporation of MCM, and its affiliates are primarily in the business of demolition and construction and demolition debris recycling and disposal. In June 2012, MCMM and HRE Sparrows Point, LLC (“HRE”) learned that the steel mill and other properties and equipment at Sparrows Point may be auctioned as part of the bankruptcy action. HRE is an affiliate of Hillco Industries (“Hillco”), an organization performing industrial auction services. HRE’s desired to market, sell or demolish, remove and scrap certain property, plant, equipment and improvements at the Sparrows Point property. MCMM and Hillco have teamed on other projects in the Midwest to demolish, recycle and scrap large obsolete properties and prepare them for redevelopment.

In August 2012, R.G. Steel Sparrows Point, LLC (“RGSSP”) and R.G. Railroad, as sellers and Environmental Liability Transfer, Inc., Commercial Development Company, Inc. and Sparrows Point, LLC (“SP”), as buyers entered into an asset purchase agreement whereby the buyers purchased the assets of sellers at Sparrows Point which included real property containing steel mills, other real property, personal property, machinery and equipment, including the rail assets. The Asset Purchase Agreement was approved by the bankruptcy court on August 21, 2012.

Under the terms of the Asset Purchase Agreement (the “Asset Purchase Agreement”) and the Designation of Purchased Assets, each dated as of August 7, 2012, SP (as owner of the personal property and improvements) designated HRE as the acquirer of certain assets and granted HRE a license to exclusively operate the Railroad and its associated equipment for forty-two months. HRE acquired these assets via Bill of Sale and Assignment Agreement, dated September 14, 2012 by and among R.G. Steel Sparrows Point, LLC, R.G. Steel Railroad Holdings and HRE.

As set forth above, HRE holds a license to exclusively operate the Railroad located at Sparrows Point for forty-two months commencing September 14, 2012 (the “License”) under a Memorandum of Agreement, dated September 14, 2012 by and between HRE and Sparrows Point, LLC and a Joint Venture Letter Agreement, dated August 11, 2012 among Sparrows Point, LLC and certain of its affiliates and HRE and certain of its affiliates. Upon the closing of the transaction contemplated by the Asset Purchase Agreement, MCM was requested to operate the Railroad. MCM is in the process of negotiating a Railroad Services Agreement with HRE and its affiliates. To date there is no written agreement to operate the Railroad. As part of the demolition and removal services, HRE and MCM negotiated an arrangement whereby for a

period of forty-two months MCM would provide rail services at the Sparrows Point site, while its parent MCMM would provide demolition services.

The sale of RG Steel's assets at Sparrows Point was completed on an expedited basis in order to obtain a viable candidate to own / operate the Railroad and the steel operations at Sparrows Point. This sale contemplated under the Asset Purchase Agreement consists of 3,600 acres of real property containing steel mills, rail facilities, leases, equipment and other assets.

As part of the services to be provided at Sparrows Point, MCM is, *inter alia*, to procure and maintain all notifications, licenses and permits associated with the Railroad.

MCM does not own or operate any other railroads or provide services to any other party similar to the services to be provided by MCM at Sparrows Point. MCM took possession of the rail assets at closing and employed the same people employed by R.G. Railroad. MCM will continue to operate the Railroad substantially in the same manner as it has been operated in the past, with substantially the same employees. MCM anticipates increased volumes to be shipped via rail in connection with the demolition and removal services of MCMM and the planned remediation and redevelopment of the Sparrows Point property. MCM does not own the equipment, the rail or any real property at Sparrows Point. MCM proposes to operate the Railroad and provide the services previously supplied by the prior owner of the Railroad. The revenues generated by this activity are anticipated to be less than the Twenty Million Dollar threshold for a Class III railroad. MCM proposes to name the Railroad the Baltimore Industrial Railroad.

Since September 14, 2012, which is the date of the closing of the assets of R.G. Railroad and RG Steel, MCM has continued to operate the rail line substantially similar to the operations that were being conducted prior to the sale. The line is entirely on private property and connects to CSX and Norfolk Southern. A copy of the rail operations is attached hereto as Exhibit A.

The Railroad services other occupants of the Sparrows Point property.<sup>1</sup> To assist in these operations, MCM retained the services of a manager to transition operations and oversee the regulatory process. Unfortunately, the new manager did not fulfill his obligations as contemplated by MCM and a new manager has been retained. One of the primary responsibilities of the prior manager was to apply for the exemption sought herein. MCM operated the Railroad believing no further authorizations or approvals were required.

Upon finalizing the arrangement to provide rail services and the termination of the manager as described above, MCM investigated the precise legal status of the services to be provided. During that investigation, MCM learned that the Patapsco & Back Rivers Railroad had in the past been regarded as a common carrier subject to the former Interstate Commerce Commission's jurisdiction, and that inasmuch as it had apparently never obtained abandonment or discontinuance authority, the properties remained subject to the jurisdiction of the STB. MCM was NOT aware that the track may be a common carrier line and subject to the jurisdiction of the Board. At that point, MCM directed its counsel to seek all requisite authorizations from the Board for its proposed operation of the Railroad as a Class III common carrier railroad.

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<sup>1</sup> The third parties serviced by the MGM currently are AMG, Amtrol, Chesapeake Specialties, Clark Diedrich, Lafarge, Fritz Enterprises, Maryland Metals, Kinder Morgan, Phoenix Services, Heidman Steel, Maryland Pig and Nelson Lumber.

### Request for Exemption

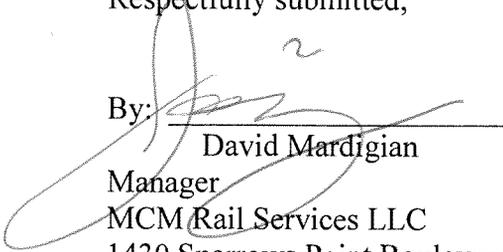
It is clear that if MCM had realized seven days prior to its taking over operations of the former Patapsco & Back Rivers Railroad required the prior approval of the STB, it could have filed a Notice of Exemption covering the operations then and the entire transaction would have been exempt from the start. In other words, the Board has in effect determined, through its adoption of the 49 C.F.R. § 1150.31 Class Exemption for acquisitions by new carriers, that regulation of such acquisitions is not needed.

MCM did not file such a Notice on a timely basis. However, its unintentional delay in bringing this matter before the STB has not prejudiced anyone: MCM has continued during this interim period to operate the Railroad properties in the same manner as R.G. Rail did, providing the same service for shippers, charging the same rates, and using the same employees, as R.G. Rail had before September 14, 2012. In other words, MCM's brief stewardship over the railroad operations has been essentially invisible to the public. Moreover, in the unlikely event that someone would have wished to challenge MCM's acquisition of the railroad operation, they can still do so now, using the same mechanism – a petition to revoke – that would have been available to them if a Notice of Exemption had been filed in September.

MCM regrets its oversight, and apologizes to the Board for its failure to seek and obtain prior authorization to acquire the railroad properties in question. MCM requests that, in light of the circumstances explained above, and after due consideration, the Board act favorably on this petition for retroactive exemption, and thereby authorize *nunc pro tunc* its operation of the railroad retroactively from September 14, 2012.

Petitioner so prays.

Respectfully submitted,

By: 

David Mardigian

Manager

MCM Rail Services LLC

1430 Sparrows Point Boulevard

Sparrows Point, MD 21219-1039

  
Megan E. Harmon

Schnader Harrison Segal & Lewis LLP

120 Fifth Avenue, Suite 2700

Pittsburgh, PA 15222

(412) 577-5200

Of Counsel:

Attorney for Petitioner MCM Rail Services LLC

Dated: December 17, 2012

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**EXHIBIT A**  
**RAIL OPERATIONS**

# RAILROAD OPERATIONS

SPOT

④ - 4 TURNS  
TRAIN CREW  
INTERCHANGE AND  
OUTSIDE CUSTOMERS

④ - 4 TURNS  
TRAIN CREW  
HOT BELLS

④ - 4 TURNS (FINISHING & MISC.)  
④ - 4 TURNS (OUTSIDE FREIGHT)  
④ - 4 TURNS (OPERATIONS WORK)  
④ - 1 TURN (SHIFT SUPER)  
④ - 1 TURN (YARDMASTER)  
④ - 1 TURN (SAFETY COORD.)

④ - 1 TURN (DIVISION WORK)  
④ - 1 TURN (ANAL. OR ANALYST)  
④ - 1 TURN (ACCOUNTANT)  
④ - 1 TURN (STEEL MARKING)

④ - 4 TURNS  
TRAIN CREW  
PRIORITY END

TRANSPORTATION	
④ - 10 CREW	2 MEN/4 TURNS - 8 (O.T.)
④ - 10 CREW	2 MEN/4 TURNS - 8 (O.T.)
④ - 10 CREW	2 MEN/1 TURN - 7 (O.T.)
④ - 10 CREW	2 MEN/4 TURNS - 8 (O.T.)
④ - 1 CREW	2 MEN/4 TURNS - 8 (S.O.T.)
④	YARDMASTER - 1 MAN/2 TURNS - 2 (S.O.T.)
④	SAFETY COORD. - 1 MAN/1 TURN - 1 (S.O.T.)
37	
CURRENT TRANSPORTATION STAFFING - 38	
* ALL VACATIONS COVERED BY OVERTIME	

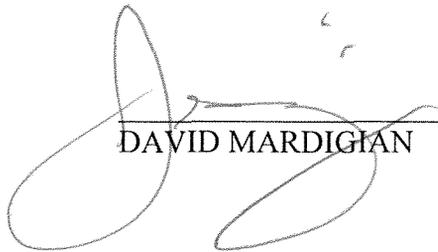
MANAGEMENT	
④	DIVISION MANAGER - 1 MAN/1 TURN = 1
④	OPERATIONS MANAGER - 1 MAN/1 TURN = 1
④	OPERATIONS ANALYST - 1 MAN/1 TURN = 1
④	SHIFT SUPERVISOR - 1 MAN/4 TURNS = 4
④	DIVISION ACCOUNTANT (1/2 TURN STEEL MARKING) - 1 MAN/1/2 TURN = 1/2
7 1/2	

**VERIFICATION**

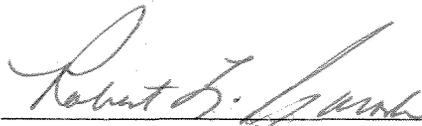
COUNTY OF OAKLAND )  
 )  
STATE OF MICHIGAN )

ss:

David Mardigian, being duly sworn, deposes and says that he/she has read the foregoing document, knows the contents thereof, and that the same are true as stated to the best of his/her knowledge, information, and belief.

  
\_\_\_\_\_  
DAVID MARDIGIAN

Subscribed and sworn to before me  
this 17<sup>th</sup> day of December, 2012

  
\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_

ROBERT L. YAROCH  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF OAKLAND  
MY COMMISSION EXPIRES JUL 10, 2018  
ACTING IN COUNTY OF OAKLAND

My commission expires \_\_\_\_\_