

224210



John K. Fiorilla  
856.914.2054  
jfiorilla@capehart.com

December 16, 2008

**UPS OVERNIGHT DELIVERY**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20423-0001



Re: STB Finance Docket No. 35207  
Morristown & Erie Railway, Inc. d/b/a Stourbridge Railway  
Operations Exemption- Stourbridge Railroad Company

Dear Acting Secretary Quinlan:

Enclosed are an original and ten copies of a Verified Notice of Exemption under 49 CFR § 1150.41 and a check made payable to the Surface Transportation Board covering the \$1,800.00 filing fee. Also, enclosed is a disc containing the Notice and Summary.

Please time stamp and date stamp the extra copy of the Notice of Exemption and return it to me in the self-addressed stamped envelope enclosed.

If you or the Staff have any questions, please do not hesitate to call me. Thank you for your time and attention.

Sincerely,

CAPEHART & SCATCHARD, P.A.

John K. Fiorilla

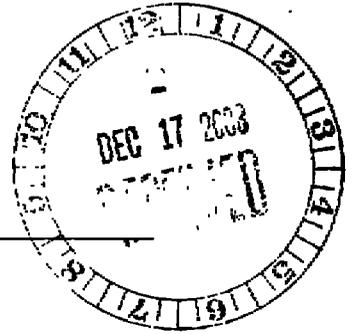
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Enclosures

- cc: Gordon R. Fuller, COO (w/enc.)
- Richard R. Wilson, Esq. (w/enc.)
- Nathan R. Fenno, President NYSW (w/enc.)

1116294

BEFORE THE  
SURFACE TRANSPORTATION BOARD



STB Finance Docket No 35207

In the Matter  
of  
MORRISTOWN & ERIE RAILWAY INC, d/b/a STOURBRIDGE RAILWAY  
-OPERATION EXEMPTION-  
STOURBRIDGE RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1150.41 et seq.

**FILED**

DEC 18 2008

**SURFACE  
TRANSPORTATION BOARD**

**ENTERED**  
Office of Proceedings  
**DEC 18 2008**  
Part of  
Public Record

John K. Fiorilla  
Capehart & Scatchard, P.A.  
8000 Midlantic Drive Suite 300S  
Mount Laurel, N.J. 08054  
(856) 914-2054

Attorney for  
MORRISTOWN & ERIE RAILWAY, INC.

Dated: December 16, 2008

**FEE RECEIVED**  
DEC 18 2008  
**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No 35207

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In the Matter  
of  
MORRISTOWN & ERIE RAILWAY INC, d/b/a STOURBRIDGE RAILWAY  
-OPERATION EXEMPTION-  
STOURBRIDGE RAILROAD COMPANY

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VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1150.41 et seq.

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Morristown & Erie Railway, Inc. a New Jersey Corporation (ME) a class III carrier files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart D-- Exempt Transactions to permit ME doing business as Stourbridge Railway (STRY) to operate a rail line located in Wayne and Pike Counties Pennsylvania. The track

is owned by the Stourbridge Railroad Company (SBRR), a Class III carrier and totals approximately 24.80 miles in length between milepost 0.0 at Lackawaxen, Pike County PA to milepost 24.8 at Honesdale, Wayne County PA. SBRR has entered into a Railroad Operating Agreement with STRY to be the exclusive passenger and common carrier freight operator on the line.

In Support of this Notice of Exemption, STRY submits the following information as required by 49 C.F.R. § 1150.43

(a) Name and address of Class III applicant

Morristown & Erie Railway, Inc.  
49 Abbett Avenue  
PO Box 2206  
Morristown, N.J. 07962

(b) Applicant's Representative:

John K. Fiorilla  
Equity Shareholder  
Capehart & Scatchard P.A.  
8000 Midlantic Drive Suite 300S  
Mount Laurel, N.J. 08054  
856-914-2054  
[jfiorilla@capehart.com](mailto:jfiorilla@capehart.com)

(c) Statement of Agreement

ME has reached agreement with SBRR to operate the line of railroad from milepost 0.0 Lackawaxen, Pike County, Pa. to milepost 24.8 Honesdale, Wayne County, Pa.

The agreement provides that ME d/b/a SBRY will have exclusive passenger and common carrier freight rights over the tracks owned by SBRY. A copy of the agreement reached between the parties is attached hereto as Exhibit A. SBRY will interchange freight with the Central New York Railroad Company (CNYR) at Milepost 0.0 at Lackawaxen, PA.

(d) Operator of the Property

The ME d/b/a SBRY would become operator of the property as soon as this application is approved by the Board.

(e) Brief Summary of Transaction

(1) The railroad which is transferring its operating rights to the applicant is:

Stourbridge Railroad Company, A PA Corporation  
100 Fourth Street  
Honesdale, PA 18431

(2) The rights would be transferred in January of 2009 upon approval by the Board.

(3) The operating rights will be transferred between milepost 0.0 Lackawaxen, PA and milepost 24.8 Honesdale, PA

(4) Operating rights being obtained are over 24.8 route miles.

(f) The map of the line to be operated with stations is attached as Exhibit B

(g) Certificate of Carrier Classification

Pursuant to 49 CFR 1150.43(g), ME certifies that its projected revenues will not exceed that would qualify it as a Class III carrier, and that this transaction will not result in the creation of a Class I or Class II carrier. ME's projected annual operating revenues will not exceed \$5,000,000.00.

Labor Protective Conditions

Pursuant to 49 U.S.C. § 10902, labor protective conditions do not apply and will not be imposed.

### Caption Summary

A caption Summary in the prescribed form is attached as to this Notice.

### Environmental and Historic Preservation Matters

ME will continue to operate the rail line as a result of this transaction. Further board approval is required for ME to discontinue any service and there no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence this Notice of Exemption does not require an historic report under 49 CFR 1105.8 (b)(1).

ME's operation of the rail line will not result in significant changes in carrier operations. There will not be a diversion of (1) more than 1,000 carloads a year to motor carriage, or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in (1) an increase in rail traffic of at least 100 per cent or an increase of at least eight trains a day on any segment of the line; (2) an increase in rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. ME's operation of the rail lines will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. §1105.6 ( c )(2).

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

Respectfully Submitted,



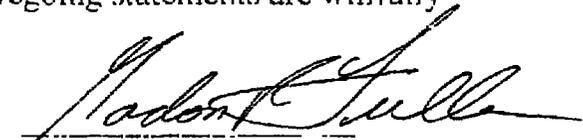
Dated: December 16, 2008

John K. Fiorilla, Esq.  
Capehart & Scatchard, PA  
8000 Midlantic Drive Suite 300S  
Mount Laurel, N.J. 08054  
(856) 914-2054  
jfiorilla@capehart.com  
**Attorney for Petitioner**  
**Morristown & Erie Railway, Inc.**

VERIFICATION

I, Gordon R. Fuller, Chief Operating Officer of the petitioner hereby certifies that I have read the foregoing Notice of Exemption and am knowledgeable of facts stated therein, and that the same are true as stated to the best of my knowledge. I am aware that if any of the foregoing statements are willfully false, that I am subject to punishment.

December 11, 2008

  
Gordon R. Fuller

# EXHIBIT A

## RAILROAD OPERATING AGREEMENT

For valuable consideration, including their mutual agreements contained herein, the Morristown & Erie Railway, Inc., a NJ corporation having offices at 49 Abbett Avenue, PO Box 2206, Morristown, NJ 07962, trading during the term of this agreement as "Stourbridge Railway", and the Stourbridge Railroad Company, a PA corporation having offices at 100 Fourth Street, Honesdale, PA 18431, hereby enter into this agreement on this Eighth day of December 2008.

### Definitions

- A. "The line" is the Stourbridge Railroad Line, including approximately 26 miles of existing track and any adjoining properties, rights-of-way, crossings, engine houses, bridges, buildings, or other areas, as indicated in "Schedule A", that are currently owned by Owner.
- B. "Owner" is Stourbridge Railroad Company.
- C. "Operator" is Morristown and Erie Railway, Inc.

### Operator's Responsibilities

1. Operator will use its best efforts to maintain, operate, market and promote the line in a manner that maximizes total revenue. Operator shall have the exclusive right to provide passenger and common carrier freight services across the lines.
2. Operator shall maximize, administer and collect revenues from all existing and future leases, licenses, ticket sales, rail freight services, or other activities associated with the provision of rail freight services on the line. Operator will provide and pay for all of the necessary equipment (including without limitation, locomotives), staff, offices and other items or expenses required to operate the line in a safe, orderly and efficient fashion.
3. Operator will be solely responsible for all the reasonable expenses associated with the maintenance and operation of the line, with the sole exception of extraordinary repairs and capital improvements requested by Owner and those extraordinary repairs which are required to be incurred by the Operator to continue operations. In addition Owner agrees to fund all matching contributions necessary for rail improvement projects for which the Owner and Operator have applied and which are granted by the State, Municipal, County and/or Federal government.
4. Operator shall comply with all regulatory and reporting requirements to any and all governmental agencies (including, without limitation, taxing authorities) with jurisdiction over the line. The Operator has inspected the line and accepts the same "as is, where is" and owner makes no representation of warranty regarding the physical condition of the line or the quality of its legal title. The Operator shall use its best efforts to maintain the line to FRA Class I standards and Owner shall have the right to inspect the line upon reasonable advance notice to the Operator.



5. Operator shall maintain general railroad operator's liability insurance which shall cover general liability including property damage to third parties and personal injury, environmental damages. The insurance shall be in an amount of not less than \$10,000,000.00 per occurrence and Operator shall cause the Owner to be named as an additional insured under the aforesaid insurance coverages and shall furnish the Owner with appropriate certificates of such insurance which shall state that the insurance company shall furnish to the Owner at least thirty (30) days notice of any lapse or change in such insurance.

6. Operator shall provide a list of third party contractors who will work on the property to the Owner whose approval of said list shall be assumed unless approval of a specific contractor is denied by Owner for a specific and reasonable cause which will be stated to the Operator. Said denial shall be made by the Owner within seven days of the submission of the list containing the contractors name to the Owner. Operator will supplement the list from time to time as new contractors are hired and Owner shall have seven days from the submission of said supplemental lists to specifically give cause to why a newly named contractor shall not be approved.

7. Operator shall keep the right of way free from snow, ice, debris or any other dangerous or potentially injurious conditions.

8. Operator shall provide a qualified forklift operator for unloading of steel products for the period from March 1, 2009 to September 30, 2011. Owner will provide a forklift during that period for this purpose with the Operator reimbursing the Owner for the fair rental value of the forklift used during the period March 1, 2009 to September 30, 2011 in January 2013.

**Compensation, Taxes, Owner's Obligations**

9. Operator shall indemnify, defend and hold harmless the Owner, its officers, agents, employees, successors and assigns from and against all claims, actions and all costs or expenses, including reasonable attorney's fees based upon or arising out of (a) Operator's breach of its obligations under this Agreement. or (b) damages, injuries or death to persons or property (including the line) caused by or related to the acts or omissions of the Operator or its officers, agents, employees, guests, invitees, contractors, suppliers of materials or providers of services in connection with the use or occupancy of the line by the Operator.

10. As compensation, the Operator shall be entitled to keep 50% (and remit 50% to the Owner) of the gross revenues associated with the line identified in Paragraph 2 which accrue after the date of this agreement. Operator shall collect all such revenues and then remit monthly statements with the Owner's 50% share (by check). Owner shall also be entitled to review the Operator's records and conduct regular and reasonable audits to verify that Owner is receiving its appropriate share of the gross revenues. Operator shall not receive any share of revenue paid directly to Owner by



entities owned or controlled by Paul Brancato, Giacomo Brancato or their immediate family members for services other than the actual movement of freight cars or passengers. Without limitation storage, leasing, licensing paid directly to owner by affiliated entities will not be shared with the Operator.

11. Any revenue collected by Operator which accrued (became due prior to this agreement) shall be remitted to Owner in full (100%).

12. Owner will be responsible for all real estate taxes. Owner will reimburse Operator for 51% of any Pennsylvania Utility taxes that it pays associated with the Line.

13. Payments for extraordinary repairs or capital improvements performed by the Operator shall be made in reasonable progress payments *after* completion of the entire project or, in the case of projects of more than \$200,000K, in progress payments *after* completion of reasonable portions of not less than 20% of the entire project.

**Assignment, Term, Authority, Venue, Modification, Severable Terms**

14. This agreement cannot be assigned by Operator. This agreement cannot be assigned by the Owner. This agreement shall expire on June 1, 2018. In the event of the change of control of ownership of Operator, Owner may upon ninety (90) days written notice terminate this agreement.

15. The Operator shall have no authority to bind the Owner to any other contract. This agreement does not constitute the formation of a partnership or other entity of any kind.

16. This contract has been negotiated and signed in the State of New York, City of New York. Any litigation pertaining to this agreement, between the parties, shall take place in NY the agreement shall be governed by the laws of the State of New York or before the Surface Transportation Board for matters within the jurisdiction of the Board.

17. Operator shall be relieved of its obligation to operate common carrier freight service and excursion passenger service over any portion of the property to the extent that it is prevented or hindered there from by Acts of God, public authority, strikes, riots, labor disputes or any cause beyond the Operator's reasonable control.

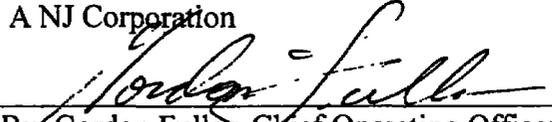
18. This writing represents the sole and entire agreement of the parties. This agreement may not be modified, except by an additional writing signed by both parties.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several overlapping loops and lines.

19. To the extent that any clause or portion of this contract is deemed unenforceable, the rest of the agreement shall not be affected.

Dated: December 8, 2008  
Queens County, NY

MORRISTOWN & ERIE RAILWAY, INC.  
A NJ Corporation

  
By: Gordon Fuller, Chief Operating Officer  
With Full Authority to Bind the Corporation

STOURBRIDGE RAILROAD COMPANY  
A Pennsylvania Corporation

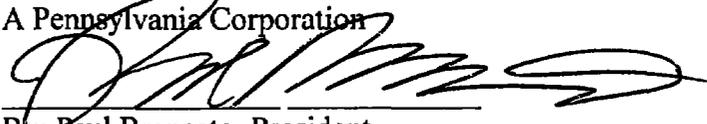
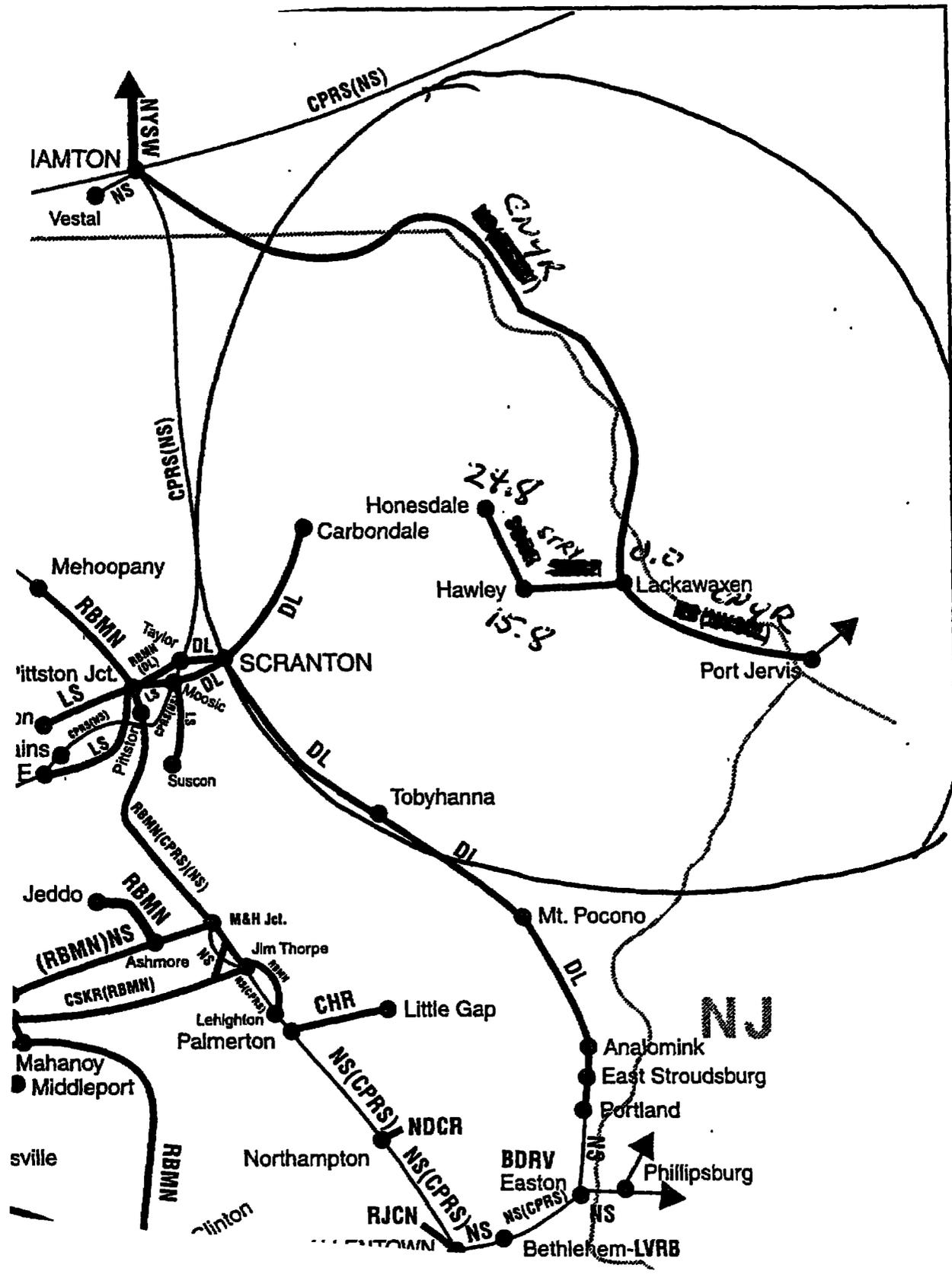
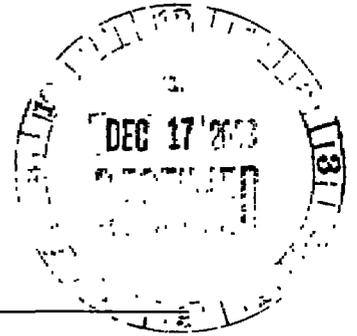
  
By: Paul Brancato, President  
With Full Authority to Bind the Corporation

EXHIBIT B





BEFORE THE  
SURFACE TRANSPORTATION BOARD

**FEE RECEIVED**

STB Finance Docket No 35207

DEC 18 2008

**SURFACE  
TRANSPORTATION BOARD**

In the Matter  
of

MORRISTOWN & ERIE RAILWAY INC, d/b/a STOURBRIDGE  
RAILWAY  
-OPERATION EXEMPTION-  
STOURBRIDGE RAILROAD COMPANY

**ENTERED**  
Office of Proceedings

DEC 18 2008

Part of  
Public Record

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1150.41 et seq.

**FILED**

DEC 18 2008

NOTICE OF OPERATION OF RAIL LINE  
INFORMATION REQUIRED BY 49 C.F.R. 1150.41

**SURFACE  
TRANSPORTATION BOARD**

Morristown & Erie Railway, Inc. d/b/a Stourbridge Railway , a New Jersey Corporation and a Class III carrier has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to operate as a common carrier 24.8 miles of railroad and appurtenant property owned by the Stourbridge Railroad Company, a Class III Carrier between Lackawaxen, Count of Pike and Honesdale, County of Wayne in the Commonwealth of Pennsylvania.

This transaction is not related to any other STB Docket.

Any comments must be filed with the Surface Transportation Board and served on John K. Fiorilla, Capehart & Scatchard, P.A., 8000 Midlantic Drive Suite 300S, Mount Laurel, N.J. 08054. Mr. Fiorilla's telephone is (856)-914-2054.

This notice is filed under 49 C.F.R. 1150.41. 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.