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VIA E-FILING

Surface Transportation Board
ATTN: STB Ex Parte No 684
395 E Street, S W
Washington, DC 20423-0001

RE Comments to STB Ex Parte No 684

Dear Honorable Chairman Nottingham, Vice Chairman Mulvey and Commissioner Buttrey

This law firm represents Salem Rail Logistics, LLC, an operator of a solid waste rail transfer (i.e., transloading) facility in Pleasantville, New Jersey. Please accept this letter to provide our comments to the STB rule proposed for codification at 49 CFR §1155

As a general matter, we wish to compliment the Board on its proposed rule, which we feel, except for the specific comments noted herein, is a reasonable codification of the intent of the Clean Railroads Act ("CRA"). Notwithstanding, we note that the CRA imposes a substantial economic burden on transloaders, many of whom are relatively small entities already experiencing the adverse effects of these difficult economic times. Indeed, the non-siting state permitting requirements imposed by the CRA will likely require transloaders to incur substantial state application fees and corresponding facility improvement costs. Accordingly, we respectfully request that the Board consider reducing the land use exemption ("LUE") permit application fees set forth at §1002.2, and attempt to streamline the information required by the LUE permit application set forth at §1155.22, including the requirement to prepare a full Environmental Impact Statement.

We further submit the following specific comments:

1. Laws that Affect Siting References Supplementary Information Section, p 7, §1155.10, §1155.22(a)(7), §1155.25, §1155.22(e). We suggest that the proposed rule be amended to require that a state agency that submits a petition to require a transloader to apply for a LUE permit indicate, in that petition, all laws that the petitioner believes affect the siting of the

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facility under consideration. See §1155 10 We further suggest that any interested person submitting comments to a pending LUE permit application (see §1155 25 and notices included in §1155 22(e)) be instructed to identify any laws affecting siting of the facility that have not been identified in the applicant's submission, and caution that failure to set forth such laws may result in preclusion of the commentor's ability to later raise such laws

2 Date to Submit Applications for Non-Siting Permits to Appropriate State Agencies *Reference* Supplementary Information Section, p. 9 The proposed rule sets forth April 14, 2009, as the last date on which existing facilities must apply to the appropriate state agencies to obtain non-siting permits Many states, including New Jersey, are currently in the process of promulgating new rules addressing the non-siting permit application processes, however, such rules have not yet been finalized Accordingly, we suggest that the following language is inserted after any references to the April 14, 2009 date for submission of non-siting permit applications "or within 180 days after the appropriate state agency adopts final rules regarding the non-siting permit application processes"

3 Facility Challenge to State Petition *References* Supplementary Information Section, p 9, §1155 12(b)(1) §1155 13 We understand that any challenge to a state agency's petition to require a transloading facility to apply for a LUE permit is limited to the state's classification of that facility under §10908(b) Notwithstanding, we feel that the 20 day time frame set forth in §§1155 12(b)(1) and 1155 13 should be enlarged to at least 30 days, to permit an appropriate length of time to prepare and submit any challenge. Further, facilities should be provided with clear notice that failure to challenge the state agency petition within the allotted time frame will result in forfeiture of the right to challenge the petition at a later time

4 Proximity to Nationally Designated Lands *References* Supplementary Information Section, p 11, §§1155 27(b)(2) and (3) The proposed rule should address the situation where a transloading facility is located on lands that were designated as a National Park, National Wildlife Refuge System, etc., subsequent to the time that the transloading facility began operations. Such existing facilities should be entitled to an exception from this requirement

5 LUE Permit Application Fees/Use of Third Party Consultants *References* Supplementary Information Section, p 12, §1002 2 The Board should consider use of in-house expertise, rather than resort to third party consultants, in effort to minimize the expense associated with the Board's LUE permit application review process Such a practice will also reduce the perception of any conflicts of interest with respect to such third party consultants

6 Effect of Board Issued LUE Permit and the CRA *References* Supplementary Information Section, p. 12; §1155 27(b)(4) Suggest inserting the word "reasonable" between "other" and "state", i.e. "A solid waste transfer facility must comply, however, with all federal laws and with all other reasonable state laws regarding pollution . . . "

7 Economic Effect on Small Entities. *Reference* Supplementary Information Section, p 13. Many transloaders affected by the proposed rule qualify as small businesses. Suggest the Board publish the factual basis supporting its certification that the proposed rule will not have a significant impact on such entities, and accept comments to same prior to adoption of a final rule.

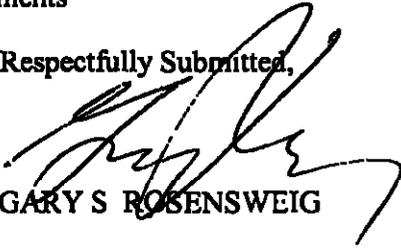
8 Time Frame for Submission of LUE Permit Application following Board Determination with Respect to Governor's Petition *References* §1155 13(b), §1155 20(c). Suggest the 120 day time frame be enlarged to at least 180 days, in view of the substantial amount of required content, to include detailed historical and environmental information.

9 Content of Application/General *Reference* §1155 13(a)(17). An 8 x 10 ½ inch drawing may be too small to capture all of the requested information. Suggest a larger size drawing be permitted.

10. Filing and Service of Application *Reference* §1155 24. Suggest that the Board implement a brief resubmission process (7-10 days) in the event that an initial LUE permit application is rejected.

Thank you for your kind attention to our comments. Please do not hesitate to contact me if you have any questions regarding our comments.

Respectfully Submitted,


GARY S. ROSENSWEIG

RA/sb

cc Michael Foglietta
Robert W. Bucknam, Esq.