



KAPLAN KIRSCH ROCKWELL

March 26, 2009

E-Filing

Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *James Riffin – Acquisition and Operation Exemption – Veneer Mfg. Co. Spur – A
Distance of Approximately 400 Feet – Located in Baltimore County, MD
Finance Docket No. 35221*

Dear Ms. Quinlan:

I am enclosing the following submissions of the Maryland Transit Administration:

1. Motion to Dismiss James Riffin's Notice of Exemption and Request for Declaratory Relief; and
2. Reply to James Riffin's Motion for a Protective Order

in the above-referenced proceeding.

Thank you for your attention to this matter.

Sincerely,

Allison I. Fultz

Enclosure

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**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 35221

**James Riffin – Acquisition and Operation Exemption
Veneer Mfg. Co. Spur – A Distance of Approximately 400 Feet
Baltimore County, MD**

**MOTION OF MARYLAND TRANSIT ADMINISTRATION
MOTION TO DISMISS
JAMES RIFFIN'S NOTICE OF EXEMPTION AND
REQUEST FOR DECLARATORY RELIEF**

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Dated: March 26, 2009

**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 35221

**James Riffin – Acquisition and Operation Exemption
Veneer Mfg. Co. Spur – A Distance of Approximately 400 Feet
Baltimore County, MD**

**MOTION OF MARYLAND TRANSIT ADMINISTRATION
TO DISMISS
JAMES RIFFIN’S NOTICE OF EXEMPTION AND
REQUEST FOR DECLARATORY RELIEF**

The Maryland Transit Administration, a modal administration of the State of Maryland (“MTA”), submits this Motion to Dismiss the Second Amended Verified Notice of Exemption (“Riffin Notice”) and Memorandum (“Riffin Memorandum”) filed by James Riffin (“Mr. Riffin”) in this proceeding on March 6, 2009, because (a) this proceeding is administratively closed; (b) the Second Amended Verified Notice of Exemption is void as false, misleading and formally and factually insufficient; and (c) the Riffin Memorandum requests action by and relief from this Board that are beyond the scope of an exemption proceeding¹.

On February 19, 2009, Mr. Riffin filed a Verified Notice of Exemption and Memorandum in this proceeding, and re-submitted the Notice and Memorandum, with amendments, on February 20, 2009. On March 5, 2009, this Board, on its own initiative, rejected Mr. Riffin’s submissions as insufficient because (a) Mr. Riffin had failed to provide the

¹ Mr. Riffin has also submitted information into the record that he claims is “highly confidential” and for which he seeks a protective order. MTA has addressed Mr. Riffin’s purported “Replacement Motion for a Protective Order,” which Mr. Riffin filed on March 17, 2009, in a separate pleading. See Reply of MTA to Replacement Motion for a Protective Order filed in this proceeding on March 26, 2009.

information required pursuant to 49 C.F.R. §§ 1150.42-1150.44 and (b) Mr. Riffin had failed to establish that he is a Class III rail carrier, as he claims. *James Riffin – Acquisition and Operation Exemption – Veneer Spur – In Baltimore County, MD*, STB Finance Docket No. 35221 (Service Date Mar. 5, 2009) (“*Board Decision*”), *slip op.* at 1-2. The Board provided that its rejection of Mr. Riffin’s submissions was “without prejudice to Riffin refileing a *new* notice of exemption or some other request for authority.” *Id.* at 2 (emphasis added). Notwithstanding the Board’s invitation to re-file a proper notice or the Board’s rules governing the filing of appeals, Mr. Riffin did neither. He simply filed the Riffin Notice and Riffin Memorandum on March 6, 2009, without addressing or correcting the defects that caused the Board to reject his previous submissions.² Mr. Riffin’s most recent submissions perpetuate those failings and contain other errors that further merit the dismissal of the Riffin Notice and Riffin Memorandum: (a) the Riffin Notice fails to establish on its face that Riffin is a rail carrier and that the target property is a line of railroad, as required pursuant to 49 U.S.C. § 10902; and (b) the Riffin Memorandum consists of argument conceding the facial insufficiency of the Riffin Notice by requesting the Board to determine facts which Mr. Riffin has the burden to demonstrate. The Board should accordingly strike the Riffin Notice and Riffin Memorandum, dismiss this proceeding and deny the relief Mr. Riffin seeks because the Riffin Notice is facially insufficient and the relief Mr. Riffin requests in the Riffin Memorandum cannot be addressed in the context of a notice of exemption.

² Furthermore, Mr. Riffin’s time to file an appeal of the *Board Decision* has now passed. Pursuant to 49 C.F.R. § 1011.7(b)(6), the Director of the Office of Proceedings is authorized to determine whether to institute a declaratory order proceeding, and, under 49 C.F.R. § 1011.7(b)(10), whether to issue a notice of exemption. The *Board Decision* constituted the Director’s decision declining to do either of these things and directing Mr. Riffin to file a properly constituted request. Accordingly, Mr. Riffin’s options included complying with the *Board Decision* or filing an appeal of that Decision pursuant to 49 C.F.R. § 1011.2(a)(7), which requires an appeal of an initial decision of the Director of the Office of Proceedings to have been filed within 10 days of the publication of such decision. That date was March 15, 2009.

BACKGROUND

Mr. Riffin claims, without corroboration, that he has acquired a “long-term leasehold interest” in “the track material and underlying real estate associated with a 400-foot +/- privately-owned spur, and in the land adjacent to the spur track” on a parcel of property in Cockeyville, Maryland (the “Veneer Parcel”), from Mark Downs, Inc., which he describes in turn as the lessee from the fee owner, Stenersen Mahogany Company. Riffin Notice at 2. Mr. Riffin describes the location of Mark Downs, Inc., and the Veneer Parcel as 15 Beaver Run Lane, Cockeyville, MD. *Id.* Mr. Riffin asserts that the Veneer Parcel abuts, and has a connection to, the Cockeyville Industrial Track (“CIT”). *Id.* Mr. Riffin further asserts that he intends to provide freight rail transloading services at the Veneer Parcel. *Id.*

MTA is the owner of the fee interest in the real estate underlying the rail corridor in the vicinity of the Veneer Parcel. MTA acquired the 14.22 mile-long CIT, which extends to MP 15.4 in Cockeyville, from Norfolk Southern Corporation (“NSR”) in 1990, and NSR retained a freight easement over the line. No shippers have been served from the portion of the CIT north of York Turnpike (also known as “York Road”), where the Veneer Parcel appears to be located, since 1990. The history of the CIT, as well as a summary of the exempt MTA-NSR transaction, is set forth in detail in this Board’s Decision in Finance Docket No. 34975, *Maryland Transit Administration – Petition for Declaratory Order, slip op.* (Service Date Oct. 9, 2007).

Mr. Riffin attaches two graphic exhibits to the Riffin Notice: (a) a sketch diagram, labeled “Map for NOE”, which bears no milepost markers, street indications or other descriptions of physical features fixing the location of the Veneer Parcel, no metes and bounds description, no verifiable indication of adjacent property owners, no indication of authorship or date, no scale, no dimensions, and no north arrow, which does not distinguish between existing

and proposed facilities and appears to show railroad track where there is no track in place; and (b) a track diagram from 1965 (“1965 Diagram”) that does not depict current conditions.

Response of Maryland Transit Administration, *Maryland Transit Administration – Petition for Declaratory Order*, STB Finance Docket No. 34975 (Filed Apr. 20, 2007) (“MTA Reply”), Exhibit 1, Verified Statement of Mr. Robert L. Williams (“FD 34975 Verified Statement”), at ¶¶ 3, 6(d) (providing 1965 Track Diagram as historical background, relating history of CIT and stating that any recent activity involving the removal of track in the vicinity of the Veneer Parcel was conducted unlawfully by Mr. Riffin).

The “Cockeysville Siding” indicated on the 1965 Diagram no longer exists north of York Turnpike and the overpass over the York Turnpike at MP 14.85 was removed in 1971, prior to MTA’s acquisition of the CIT. FD 34975 Verified Statement at ¶ 7. The 1965 Diagram clearly shows that any track on the Veneer Parcel would merely have connected to the now-demolished “Cockeysville Siding,” and not to the CIT. Because of these physical constraints, at least some of which occur on property over which Mr. Riffin exerts no control, he cannot achieve any connection to the national rail network from the Veneer Spur. Accordingly, the Riffin Notice can only be seen as intentionally misleading.

ARGUMENT

I. THIS PROCEEDING IS ADMINISTRATIVELY CLOSED

The Board should reject the Riffin Notice and Riffin Memorandum because the Board has already rejected the submissions Mr. Riffin seeks to “amend.” The Board instructed Mr. Riffin to provide a “new notice of exemption or some other request for authority.” *Board Decision* at 2. Mr. Riffin has neither appealed the *Board Decision* nor complied with the Board’s instructions to properly refashion his request. Nor can the Riffin Notice be construed as an appeal of the *Board Decision*, since it adduces no new facts, presents no new argument, and

fails to conform to the requirements of 49 C.F.R. § 1115.2(b). Accordingly, the Board should instruct Mr. Riffin to re-file a properly constituted Notice in a new proceeding, with the attendant filing fees and other actions required when a party commences a new proceeding, and strike the Riffin Notice and Riffin Memorandum from this record and confirm that this proceeding has been dismissed.

II. THE RIFFIN NOTICE IS VOID *AB INITIO* BECAUSE IT IS FALSE, MISLEADING AND FORMALLY AND FACTUALLY INSUFFICIENT

A. The Riffin Notice fails to satisfy the threshold statutory criteria.

The Board should dismiss the Riffin Notice because it fails on its face to satisfy the criteria set forth in 49 U.S.C. § 10902 and 49 C.F.R. §§ 1150.41-1150.44, requiring the applicant (a) to be a Class III rail carrier, (b) to be purchasing a line of railroad, (c) to identify the operator of the rail line, and (d) to identify the railroad from whom the line is being purchased. Mr. Riffin has failed to comply with any of these threshold criteria, and has not in any way cured the defects noted in the *Board Decision*.

1. Mr. Riffin Erroneously Asserts that He Is A Rail Carrier.

The Board has already rejected Mr. Riffin's previous attempts to file a notice of exemption in this proceeding because he cannot show that he is a rail carrier. Mr. Riffin is not a rail carrier and has never succeeded in any claim to carrier status before this Board or any court. Accordingly, Mr. Riffin's claim that he is a Class III rail carrier is erroneous and deliberately misleading. In the Riffin Memorandum, Mr. Riffin asserts that he is a rail carrier in Allegany County, Maryland, and cites *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County, MD*, AB-55 (Sub-No. 659X) (Service Date August 18, 2006) (the "*Allegany County OFA*"), in which the Board permitted Mr. Riffin in his individual capacity to be substituted as the purchaser of the line with respect to an Offer of Financial Assistance ("OFA"). Riffin

Memorandum at ¶ 5. As the Board is well aware, a successful offeror merely receives permissive authority from the Board to subsequently take the necessary steps to become a rail carrier. *The Chicago, Lake Shore and South Bend Ry. Co. – Acquisition and Operation Exemption – Norfolk S. Ry. Co.*, STB Finance Docket No. 34960, *slip op.* at 3-4 (Service Date Feb. 14, 2008) (a person may obtain permissive authority from the Board to acquire a line of railroad, but cannot exercise that authority and become a carrier until it actually acquires the line and commences operation). Accordingly, Mr. Riffin did not become a carrier by virtue of having been approved as the offeror in *Allegany County OFA*.

In the intervening three and a half years, Mr. Riffin has failed to satisfy even the most basic predicates to becoming a rail carrier. He has not recorded his interest in the Allegany County property³ and has not taken any action to rehabilitate the line, which is washed out in several locations. He has not begun to offer common carrier service to the public, the basic criterion for determining whether one is a carrier. 49 U.S.C. §10102(5) (rail carrier is a “person providing common carrier railroad transportation for compensation”); 49 U.S.C. § 10102(5) (common carrier must hold itself out to the public as able to provide service upon request); 49 U.S.C. § 10902(a) (acquisition and operation exemption to acquire a short line is only available to “Class III rail carrier providing transportation subject to the jurisdiction of the Board”); *S.D. Warren Co. d/b/a Sappi Fine Paper N. America – Acquisition and Operation Exemption – Maine Central R. Co. and the Springfield Terminal Ry. Co.*, STB Finance Docket No. 34133, *slip op.* at n.4 (Service Date Sept. 30, 2002) (“[a] person is not a rail carrier for

³ On October 4, 2007, Mr. Riffin filed a petition for injunctive relief in the Circuit Court for Allegany County seeking declaratory and injunctive relief on the ground, generally, that the ICCTA preempts all state and local law that might apply to his work on the Allegany Line. The Circuit Court dismissed Riffin’s petition altogether on July 10, 2008, holding, *inter alia*, that Riffin had no personal interest in the Allegany Line. *Riffin v. Bd. of County Comm’rs of Allegany County, Maryland*, Civil Action No. C-07-29061 (Allegany County Cir. Ct. Jul. 10, 2008) (Memorandum and Order dismissing Riffin’s petition for a declaratory order) (“Allegany County Memorandum and Order”). A copy of the Allegany County Memorandum and Order is attached hereto at **Exhibit A**.

purposes of the Interstate Commerce Act, 49 U.S.C. Subtitle IV, and therefore is not subject to the Board's jurisdiction, *unless it holds itself out to provide rail service to others.*") (emphasis added).

Mr. Riffin's efforts to use the Board's jurisdiction as a shield against the application of necessary environmental permitting requirements resulted in the Allegany County Circuit Court finding that he is not a rail carrier. Allegany County Memorandum and Order.

Since Mr. Riffin is not a rail carrier, he has incorrectly filed his putative notice of exemption under 49 U.S.C. § 10902, which applies only to purchases of short line railroads by Class II or Class III rail carriers.

2. Mr. Riffin Fails to Establish that He Is Acquiring A Line of Railroad.

Mr. Riffin fails to demonstrate that he is purchasing a line of railroad, that there is an operator on the Veneer Parcel, and that his transferor is a railroad. First, nowhere does the Riffin Notice reflect that the Veneer Parcel contains anything other than "privately-owned spur track." Riffin Notice at 1-2. Mr. Riffin otherwise fails to make any showing or colorable argument that the Veneer Parcel contains an active line of railroad. Second, Mr. Riffin fails to identify any current operator, as required by 49 C.F.R. § 1150.43(d), or identify any shippers being served from the Veneer Parcel. Finally, Mr. Riffin forthrightly states that Mark Downs, Inc. is a non-carrier. *Id.* at 1. According to its advertising material, Mark Downs, Inc. appears to be an office furniture supplier, located at 11001 York Road in Cockeyville. *Available at:* www.markdowns.com. Accordingly, since Mr. Riffin has failed to satisfy the threshold statutory prerequisites to filing a notice of exemption for the acquisition and operation of a rail line, the Board should once again reject the Riffin Notice and dismiss this proceeding.

B. The Riffin Notice Is Incomplete.

In addition to its threshold failures, the Riffin Notice lacks the details required by the Board. Mr. Riffin has a long history of filing frivolous pleadings before this Board that similarly fail to reflect any valid intent or capacity on Mr. Riffin's part to provide freight rail service.⁴ The Board has previously revoked notices of exemption submitted by Mr. Riffin in at least two proceedings on the basis of the same defects displayed by the Riffin Notice.⁵

Here, Mr. Riffin claims, without substantiation, that he has reached a lease agreement as of February 16, 2009, with Mark Downs, Inc., a business not engaged in the railroad industry and the purported holder of a possessory interest in the Veneer Spur. Riffin Notice at 1-2. However, Mr. Riffin fails to present any proof that his claimed lease is valid because he states that Mark Downs, Inc. is not the fee owner of the Veneer Parcel, and provides no evidence that the claimed fee owner consents to Mr. Riffin's presence on the property. *Id.* at 2. The Riffin Notice accordingly fails to make the showing required under 49 C.F.R. § 1150.43(e)(1).

The Riffin Notice fails to satisfy the requirement set forth at 49 C.F.R. § 1150.43(f) to provide a map that "clearly indicates the area to be served." Not only does Mr. Riffin fail to

⁴ Mr. Riffin has been adjudged a frivolous litigant by two Courts and has been barred from filing any pleadings in those venues without leave. *See In re: James Riffin* (Circuit Court for Baltimore County, Maryland, Feb. 3, 2009) (Memorandum Opinion and Order), a copy of which is attached hereto as **Exhibit B**; *Baltimore County v. James Riffin*, Case 1:07-cv-02361-RDB (D.Md. Oct. 4, 2007) (Memorandum Opinion and Order), a copy of which is attached hereto as **Exhibit C**.

⁵ *See* STB Finance Docket No. 34484, *James Riffin D/B/A The Northern Central R. – Acquisition and Operation Exemption – In York Co., PA, and Baltimore Co., MD, slip op.* (Service Date February April 20, 2004) ("*Riffin I*") (revoking Mr. Riffin's notice of exemption as insufficient to support the granting of the purported exemption); STB Finance Docket No. 34501, *James Riffin D/B/A The Northern Central Railroad – Acquisition and Operation Exemption – In York Co., PA, slip op.* (Service Date February 23, 2005) ("*Riffin II*") (revoking Mr. Riffin's purported notice of exemption as false and misleading). The Notices of Exemption and Board decisions in *Riffin I* and *Riffin II* are attached hereto at **Exhibits D** and **E**, respectively. In both *Riffin I* and *Riffin II*, Mr. Riffin attempted to file notices of exemption in which he alleged that he was doing business as the Northern Central Railroad, a Class III carrier, and in which he failed to describe the nature and timing of the proposed transactions and to identify from whom he would acquire the target properties. In both instances, the Board found Mr. Riffin's notices to contain misleading or false information and revoked them, finding specifically that neither Mr. Riffin nor the Northern Central Railroad was a carrier and that he had failed to demonstrate that his notices were based on verifiable transactions.

identify the area from which he expects to draw customers, but it is virtually impossible, based on the “Map for NOE” and 1965 Diagram, to even ascertain where the Veneer Parcel is generally located. It is not at all possible to determine what property actually constitutes the Veneer Parcel because the “Map for NOE” does not describe the property with the specificity necessary to distinguish it from other parcels, does not indicate whether the area that is the subject of the purported lease can be accessed from outside the parcel leased by Mark Downs, Inc. (or whether it is landlocked within the Mark Downs, Inc. leasehold) and does not indicate access points or other physical characteristics of the property. The 1965 Diagram does not purport to show individual parcels at all. Accordingly, Mr. Riffin generally expects the Board to believe that he has a valid possessory interest in the Veneer Spur on the basis of the unsubstantiated assertions in the Riffin Notice. Such conclusory, self-serving statements are insufficient to satisfy the requirements of 49 C.F.R. § 1150.43. Mr. Riffin’s claim to have “acquired” the Veneer Parcel is therefore no better substantiated than the wholly fictitious transactions he claimed to be contemplating in *Riffin I* and *Riffin II*. Once again, Mr. Riffin attempts to submit facially insufficient pleadings to this Board in the hopes that it will overlook his failure to comply with the Board’s requirements and procedures. The Board should dismiss the Riffin Notice, as it previously revoked the facially insufficient notices in *Riffin I* and *Riffin II*.

D. The Riffin Notice is inaccurate and misleading.

In addition to its fundamental failure to satisfy the necessary statutory predicates, the Riffin Notice merits dismissal on separate grounds because it contains inaccurate and misleading information. The Board has held that the lack of credible information regarding a proposed acquisition can result in dismissal. *See, e.g., Forty Plus Foundation/Manhattan Central Ry. Systems, LLC – Feeder Line Acquisition – The Manhattan Highline*, STB Finance Docket No. 34606 (Service Date Jan. 25, 2005), *slip op.* at 4 (rejecting putative feeder line acquisition

application for lack of credible substantiating information). The operative facts in *Forty Plus Foundation* are strikingly similar to those in this proceeding:

Applicant's operating plan is sketchy at best. Applicant fails to identify any specific traffic it plans to move or any shippers that want to move any traffic. [Applicant] has not submitted any contracts, affidavits, or other verification to support its contention that there are shippers along the [line] that currently desire service. To the Board's knowledge, no shippers have sought freight service along the [line] for approximately 20 years, and [the applicant's] assumptions about operating revenues and the interest of shippers are pure speculation.

Id. The information provided by Mr. Riffin is similarly vague and incomplete, further warranting dismissal.

As discussed above, the "Map for NOE" is a rough sketch that lacks any indication of size, location or extent of the Veneer Parcel or any labels or keys to the features it appears to depict. The "Map for NOE" accordingly deprives the Board of the information necessary to ascertain whether the facilities indicated on it actually exist, and therefore whether the Riffin Notice is valid. As previously discussed, the 1965 Diagram was provided solely for historical background in Finance Docket No. 34975, and does not reflect current conditions. MTA Reply at 6. Mr. Riffin's use of this 1965 document is deliberately misleading; there are several more recent track charts in the record of Finance Docket No. 34975 clearly showing that no track exists where the 1965 Diagram and the "Map for NOE" appear to show track at the Veneer Parcel and Cockeyville Siding. *See* FD 34975 Verified Statement Exhibit D, pages D-29 and D-30 (1988 track configuration); MTA Reply at Exhibit 2, page 2.4 (current light rail track configuration). These Exhibits are attached hereto as **Exhibit F** and **Exhibit G**, respectively. The "Map for NOE" and 1965 Diagram accordingly fail to satisfy the requirements of 49 C.F.R. § 1150.43(f). By relying on out of date, misleading information and overlooking more recent and more accurate data, Mr. Riffin deliberately misleads the Board.

Additionally, Mr. Riffin's unsubstantiated statement that over 200 carloads a year would move through the Veneer Parcel (Riffin Notice at 2) in the face of his failure to identify any potential shippers, is patently misleading. According to the detailed information submitted in Finance Docket No. 34975, no shippers have existed along the portion of the CIT near the Veneer Parcel since earlier than 1990. FD 34975 Verified Statement at ¶ 13. Mr. Riffin merely lists "[c]ommodities that *may* be shipped on" the Veneer Parcel (emphasis added). Riffin Notice at 2. Mr. Riffin provides no market analyses, requests for service from shippers, or other documentation to indicate that any shippers, in fact, exist. Mr. Riffin's assertions are simply not credible in light of the lack of substantiating data, and the Board has readily rejected such illusory claims in other proceedings. The Riffin Notice is therefore inaccurate, incomplete and deliberately misleading, and the Board should dismiss it.

IV. RIFFIN IS NOT ENTITLED TO THE DECLARATORY RELIEF HE SEEKS

Mr. Riffin implicitly admits the jurisdictional shortcomings of the Riffin Notice by requesting in the Riffin Memorandum that the Board declare the very facts he has the burden to show: (a) that he is a rail carrier and (b) that the Veneer Parcel is a line of railroad. As detailed above, Mr. Riffin is not entitled to the relief he requests because (a) he is not a rail carrier and cannot show that he is one, and (b) the Veneer Parcel is not an operating line of railroad. As a matter of statute and regulation, Mr. Riffin is required to show on the face of the Riffin Notice that his application satisfies the necessary criteria. Mr. Riffin cannot put the cart before the horse by asking the Board to make that determination in order to make the facially insufficient Riffin Notice valid. The Riffin Memorandum therefore requests relief that is outside the scope of the notice of exemption proceeding.

The Riffin Memorandum is also rife with factual misrepresentations and irrelevant material. It is not necessary to refute each such misstatement however, since none of his statements, even if true, could confer Board jurisdiction in the matter because Riffin is not a rail carrier and the Veneer Parcel is not an operating line of railroad. For example, because he is not a rail carrier, it does not matter that Mr. Riffin claims that he intends to provide transloading services (Riffin Memorandum at ¶¶ 6, 15) and will be extending his territory as a result (Riffin Memorandum at ¶¶ 1-14, 16). Accordingly, the Board should strike the Riffin Memorandum and deny Mr. Riffin the relief he seeks.

In a final effort to overcome these fundamental failings, Mr. Riffin argues broadly that his proposed activity would advance the policy goals of the ICCTA set forth in 49 U.S.C. § 10101, and that the Board should therefore accept jurisdiction in this matter. Riffin Memorandum at ¶ 18. This argument fails for the simple reason that, as a matter of statutory construction, general statements of policy cannot supersede the specific substantive and procedural requirements necessary to invoke this Board's jurisdiction. Mr. Riffin's resort to those general policy goals is tantamount to an admission that he has not and cannot meet the statutory requirements for his requested exemption.⁶

⁶ Indeed, Mr. Riffin has developed a long record of conduct with respect to another property in Cockeysville to indicate that his activities are likely to have a detrimental effect and therefore to contravene the Board's policies. Mr. Riffin's other Cockeysville property is located adjacent to Beaver Dam Run, a high-quality freshwater stream that flows into the Loch Raven drinking water reservoir. Mr. Riffin has carried out a number of construction activities at the site, which involved removing trees, building a stone-block retaining wall alongside the stream, and dumping soil within the floodplain of the stream and immediately up-slope from its channel – all without obtaining any of the required permits under applicable federal, state and local law. STB Finance Docket No. 34997, *James Riffin – Petition for Declaratory Order* (Service Date May 2, 2008), *slip op.* at 2; *Maryland Department of the Environment v. James Riffin*, Case No. 03-C-04-008920 OC (Circuit Court for Baltimore County Dec. 17, 2007) (“Baltimore County Memorandum and Order”), a copy of which is attached hereto as **Exhibit H**. In order to stem the stream of redundant, vexatious actions Mr. Riffin has been filing in connection with the State of Maryland's enforcement of valid environmental and public health and safety requirements at that property, the Baltimore County Circuit Court imposed the sanctions that are the subject of the Memorandum and Order attached as **Exhibit A**.

CONCLUSION

Mr. Riffin appears once again before this Board to file false, misleading, and insufficient pleadings and to waste the Board's resources.

The Board has the duty to protect the integrity of its processes.⁷ Mr. Riffin's conduct in other proceedings caused the Board to avow that it would "closely scrutinize any future filings by Mr. Riffin in this or any other proceeding before the Board,"⁸ and that the Board "strongly admonish[es] Mr. Riffin that abuse of the Board's processes will not be tolerated." *Norfolk Southern Railway Company – Abandonment Exemption – In Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 293X) (Service Date Nov. 6, 2007), *slip op.* at 2-6.

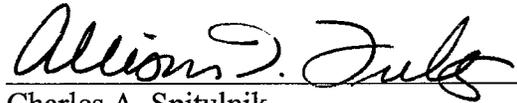
For the reasons set forth above, the Riffin Notice should be dismissed as void *ab initio* and the Riffin Memorandum should be dismissed as requesting relief beyond the scope of this exemption proceeding.

⁷ See, e.g., *The Land Conservancy of Seattle and King County – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33389 (Service Date Sept. 26, 1997); see also *ICC v. American Trucking Ass'ns*, 467 U.S. 354, 364-65 (1984) (agency has inherent authority to protect its statutory processes from abuse).

⁸ MTA notes that Riffin is not admitted to practice law in Maryland. Moreover, MTA has been unable to determine that James Riffin has been accepted as a practitioner before the Board as required pursuant to 49 C.F.R. Part 1103. It is not clear to MTA that Riffin is authorized to submit pleadings in any proceedings before this Board, regardless of the degree of scrutiny the Board may apply.

WHEREFORE, and in view of the foregoing, the MTA respectfully requests that this Board dismiss the notice of exemption and request for declaratory relief in this proceeding.

Respectfully submitted,

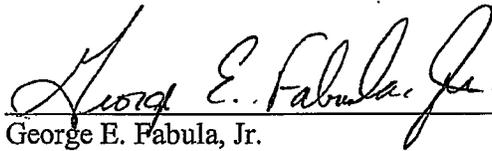


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Date: March 26, 2009

State of Maryland)
City of Baltimore) ss:

I, George E. Fabula, Jr., hereby verify under penalty of perjury that, to the extent not verified in previous submissions, I am aware of and know the facts recited in the foregoing Motion to Dismiss, and that those facts are true and accurately stated to the best of my knowledge.


George E. Fabula, Jr.

Subscribed and sworn to
before me this 26th day of
March, 2009.


Notary Public

My Commission expires: 2-10-2012

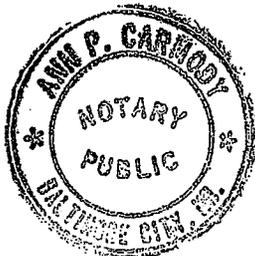


EXHIBIT A

**Allegany County, Maryland, Circuit Court Memorandum and Order
Civil Action No. C-07-29061 (Jul. 10, 2008)**

[attached hereto]

IN THE CIRCUIT COURT FOR ALLEGANY COUNTY, MARYLAND

JAMES RIFFIN

:

Plaintiff

:

v.

: Case No. C-07-29061

BOARD OF COUNTY COMMISSIONERS :
OF ALLEGANY COUNTY, MARYLAND :

Defendant

:

: : : : : : :

MEMORANDUM AND ORDER

Before the Court is the Defendant's Motion to Dismiss Plaintiff's Complaints for Injunctive Relief and for "Declaratory Order and for Injunctive Relief".

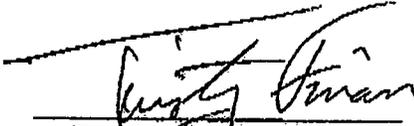
Plaintiff alleges he is a federally licensed Class III rail carrier. He alleges he intends to construct various rail repairs and car maintenance facilities along a line of railroad "he owns" in Allegany County. Plaintiff asserts that because federal law preempts the regulation of his railroad activity by a local jurisdiction, he is entitled to injunctive relief and/or a declaratory order to that effect from this Court.

There is, however, no evidence that Defendant has ever taken any steps to regulate Plaintiff's conduct, or denied any requested permit. This Court fails to find the existence of a justiciable controversy.

2007 JUL 11 AM 12

Accordingly, and for the reasons identified by the Defendant in its Motion to Dismiss (and at oral argument thereon), and the Plaintiff having failed to state a claim for which relief could be granted, the Defendant's Motion to Dismiss Plaintiff's Complaints is GRANTED.

It is so ORDERED this 10th day of July, 2008 by the Circuit Court for Allegany County, Maryland.


W. TIMOTHY FINAN
Judge

TRUE COPY TEST:
Darlene O. Lindsey
Clerk

EXHIBIT B

**Memorandum and Order
Circuit Court for Baltimore County
In re: James Riffin (February 3, 2009)**

[attached hereto]



The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASON TURNBULL, II
CIRCUIT ADMINISTRATIVE JUDGE AND
COUNTY ADMINISTRATIVE JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
410-887-2647

IN RE: JAMES RIFFIN
1941 Greenspring Drive
Timonium, MD 21093

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* * * * *

MEMORANDUM OPINION

As Chief Administrative Judge of the Circuit Court for Baltimore County, it has come to my attention that James Riffin is a party to thirteen (13) open cases before the Court. All of these cases arise out of the same legal controversy; to wit, whether he, as an alleged railroad operation, is exempt from State and local environmental regulations. After reviewing the numerous previously decided cases involving Mr. Riffin and state and local authorities, it is clear that the legal controversy underlying this dispute has already been decided against Mr. Riffin in administrative, State and Federal Courts. However, Mr. Riffin continues to file frivolous and vexatious litigation against Baltimore County and various County officials, including the Assistant County Attorneys working on these cases, for the purpose of avoiding or forestalling

the legal rulings that this and other courts have made against him. It appears that the volume of papers that Mr. Riffin has filed in this Court has increased since he was declared a frivolous litigant by Judge Richard Bennett and barred from filing any further papers in the United States District Court without first obtaining leave of Court. See Civil Action No. RDB-07-2361.

Courts have the power and the obligation to protect themselves from abusive filing of frivolous and repetitive claims. See Maryland Rule 1-341. While an argument for the payment of attorney's fees could already be made in this case, the Court will reserve on this issue and instead hold that Mr. Riffin is hereby declared a frivolous litigant. Accordingly, before Mr. Riffin will be permitted to file any further pleadings or civil actions in this Court, he will be required to seek leave to do so from the Administrative Judge or acting Administrative Judge of this Court. Mr. Riffin will be required to state succinctly how the original complaint or subsequent pleading differs from other actions filed and adjudicated by this Court. No pleading will be accepted for filing by Mr. Riffin, or on Mr. Riffin's behalf, until he obtains prior approval from the Court. In the event that Mr. Riffin does obtain such approval, and it is revealed that he misrepresented the nature of the proceedings, he will be required to show cause why he should not be subject to further sanctions. A separate Order follows.

February 3, 09
DATE


HON. JOHN GRASON TURNBULL, II
Chief Administrative Judge
Circuit Court for Baltimore County



The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASON TURNBULL, II
CIRCUIT ADMINISTRATIVE JUDGE AND
COUNTY ADMINISTRATIVE JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21284
410-887-2647

IN RE: JAMES RIFFIN
1941 Greenspring Drive
Timonium, MD 21093

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE COUNTY
*

* * * * *

ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is this 2nd day
of February, 2009, by the Circuit Court for Baltimore County, hereby ORDERED that:

1. James Riffin is hereby declared a frivolous litigant.
2. The Clerk SHALL NOT ACCEPT FOR FILING any pleadings filed by James Riffin, or filed on his behalf, unless he has first obtained leave of this Court to do so from the Administrative Judge of acting Administrative Judge of this Court.

3. The Clerk SHALL MAIL a copy of the foregoing Memorandum Opinion and a copy of this Order to Mr. Riffin.



HON. JOHN GRASON TURNBULL, II
Chief Administrative Judge
Circuit Court for Baltimore County

Cc: James Riffin
John E. Beverungen, Esquire
The Honorable Peter B. Krauser

EXHIBIT C

**Memorandum and Order
United States District Court for the District of Maryland
Case 1:07-cv-02361-RDB (October 4, 2007)**

[attached hereto]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BALTIMORE COUNTY, MARYLAND :

Plaintiff :

v :

JAMES RIFFIN :

Defendant :

Civil Action No. RDB-07-2361
Related Cases: RDB-04-1342;
RDB-04-2789; RDB-04-2848;
RDB-04-2964; RDB-06-2989;
RDB-07-1229; RDB-07-1623;
and RDB-07-2573

o0o

ORDER

For the reasons stated in the foregoing Memorandum Opinion, IT IS this 4th day of October, 2007, by the United States District Court for the District of Maryland, hereby ORDERED that:

1. This case IS REMANDED to the Hearing Officer for Baltimore County Department of Permits and Development Management, Code Inspection and Enforcement for further proceedings;
2. The Clerk SHALL NOT ACCEPT FOR FILING any pleading filed by James Riffin unless he has first obtained leave of this Court to do so;
3. The Clerk SHALL MAIL a copy of the foregoing Memorandum Opinion and a copy of this Order to Defendant; and
4. The Clerk SHALL TRANSMIT the record to Baltimore County Department of Permits and Development Management, Code Inspection and Enforcement, County Office Building, Room 213, 111 West Chesapeake Avenue, Towson, Maryland 21204; and
5. The Clerk SHALL CLOSE this case.

/s/

RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BALTIMORE COUNTY, MARYLAND :
 :
 Plaintiff :
 :
 v : Civil Action No. RDB-07-2361
 : Related Cases: RDB-04-1342;
 : RDB-04-2789; RDB-04-2848;
 JAMES RIFFIN : RDB-04-2964; RDB-06-2989;
 : RDB-07-1229; RDB-07-1623;
 Defendant : and RDB-07-2573

o0o

MEMORANDUM OPINION

The above-captioned case was removed to this Court on September 4, 2007. For the reasons that follow, the matter must be remanded to the state forum from which it was removed.

The substance of the underlying case Mr. Riffin seeks to remove involves a long running dispute between the parties concerning Baltimore County, Maryland's enforcement authority over Riffin's activities as they relate to his "railroad maintenance-of-way facility" located in Cockeysville, Maryland. *See State v Riffin*, Civil Action No. RDB-06-2989 (D. Md. 2007) (Paper No. 5). Removal of this case is improper and it will be remanded. Under 28 U.S.C. § 1441(a), only actions "brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." *See also Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Here the underlying case is a civil citation proceeding over which this Court does not have original subject matter jurisdiction. Further, Mr. Riffin's attempt to insert a federal issue into the case by claiming the state's authority is preempted by federal statute does not convert the proceeding into a federal case subject to removal pursuant to 28 U.S.C. § 1441(b). *See Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation*

Trust for Southern California, 463 U.S. 1, 10 (1983).

Riffin has made numerous attempts to disrupt valid state proceedings by filing civil rights complaints seeking injunctive relief against Baltimore County and by removing proceedings to this Court, forcing state proceedings to a grinding halt.¹ Riffin's use of federal litigation to stonewall efforts by local authorities to enforce state law is abusive and this Court declines to facilitate those efforts any further. "[F]ederal courts have the power and the obligation to protect themselves from abusive filing of frivolous and repetitive claims." *McMahon v F.M. Bank-Winchester*, 45 F.3d 426, 1994 WL 719695 (4th Cir. Dec. 30, 1994) (unpublished) (per curiam), cf. *Procup v. Strickland*, 792 F.2d 1069, 1070-71 (11th Cir. 1986) (en banc). Before Riffin will be permitted to file another *pro se* civil action in this Court he will be required to seek leave to do so. In so doing, Riffin will be required to state succinctly how the original complaint or removed case differs from other actions filed and dismissed or remanded by this Court. In the event the claim is accepted for filing and it is revealed that Riffin misrepresented the nature of the proceedings, he will be required to show cause why he should not be subject to sanctions.

A separate Order follows.

October 4, 2007
Date

/s/
RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE

¹ Riffin has attempted to remove cases involving his dispute with Baltimore County on numerous occasions. See *State v Riffin*, Civil Action No. RDB-04-1342 (D. Md. 2004); *State v. Riffin*, Civil Action No. RDB-04-2789 (D. Md. 2004); *Maryland Dept. of the Environment v Riffin*, Civil Action No. RDB-04-2848 (D. Md. 2004); *Riffin v Snyder*, Civil Action No. RDB-04-2964 (D. Md. 2004); *State v. Riffin*, Civil Action No. RDB-06-2989 (D. Md. 2006); and *Baltimore County v. Riffin*, Civil Action No. RDB-07-1229 (D. Md. 2007). In addition to his attempts at removal, Riffin has filed numerous civil actions seeking injunctive relief concerning the same matters. See *Riffin v. Wisnom, et al.*, Civil Action No. RDB-07-1623 (D. Md. 2007) and *Riffin v Baltimore County*, Civil Action No. RDB-07-2573 (D. Md. 2007). *Baltimore County v. Riffin*, Civil Action No. RDB-07-1229 (D. Md. 2007) is an open case in which a Motion to Remand and for Attorney Fees is pending.

EXHIBIT D

Notice of Exemption and Board Decision

STB Finance Docket No. 34484, *James Riffin D/B/A The Northern Central R. – Acquisition and Operation Exemption – In York Co., PA, and Baltimore Co., MD, slip op.* (Service Date February April 20, 2004)

[attached hereto]

210255

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



FILED
MAR - 8 2004
SURFACE
TRANSPORTATION BOARD

Finance Docket No.34484

JAMES RIFFIN, dba THE NORTHERN CENTRAL RAILROAD - ACQUISITION AND OPERATION EXEMPTION-ON CONRAIL'S FORMER LINE CODE 1224, BETWEEN THE MARYLAND / PENNSYLVANIA LINE (MP 35.1) AND GRANTLEY (MP 56), A DISTANCE OF APPROXIMATELY 20.9 MILES--ALL LINES LOCATED IN YORK COUNTY, PA; AND BETWEEN MP 14.2 (COCKEYSVILLE) AND MP 16.2 (ASHLAND); AND BETWEEN MP 24.3 (BLUE MOUNT) AND MP 25.2 (BLUE MOUNT QUARRY), A DISTANCE OF APPROXIMATELY 2.9 MILES--ALL LINES LOCATED IN BALTIMORE COUNTY, MARYLAND.

ENTERED
Office of Proceedings

MAR - 8 2004

Part of
Public Record

VERIFIED NOTICE OF EXEMPTION

FEE RECEIVED

MAR - 8 2004

SURFACE
TRANSPORTATION BOARD

James Riffin dba The Northern Central Railroad (Applicant), a Non-Carrier, provides the following as his verified exemption notice to acquire and operate exemptions of approximately 20.9 miles of line within York County, PA, and 2.9 miles of line within Baltimore County, Md, pursuant to 49 U.S.C. §10901. This action comes within the class of transactions which are exempt from regulations under 49 U.S.C. §10901.

1. The following 49 CFR §1150.33 details are provided:

(a) and (b): APPLICANT and representative to whom correspondences should be sent:

James Riffin dba The Northern Central Railroad
1941 Greenspring Drive
Timonium, MD 21093

Phone: (443) 414 - 6210 Fax: (410) 667-3533

(c): No agreement has been reached. One may be reached following a determination by the Board.

(d): James Riffin dba The Northern Central Railroad will be the operator of the property.

(e): The following is a brief summary of the proposed activity:

The Applicant proposes (a) to acquire and operate approximately 20.9 miles of abandoned (circa 2002) line (Conrail's former Line Code 1224) between MP 35.1 (at the Maryland / Pennsylvania line) and MP 56 (Grantley), all line in York County, PA, (b) to acquire and operate approximately 2.0 miles of abandoned (circa 1988) line (Conrail's former Line Code 1224) between MP 14.2 (Cockeysville) and MP 16.2 (Ashland), all line in Baltimore County, Maryland, and (c) to acquire and operate approximately 0.9 miles of abandoned (circa 1976) line (Conrail's former Line Code 1224) between MP 24.3 (Blue Mount) and MP 25.2 (Blue Mount Quarry), all line in Baltimore County, Maryland. Applicant proposes to interchange with the Genesee and Wyoming Railroad. Applicant proposes to commence these activities within 90 days from the date this Verified Notice of Exemption is filed.

(f): A map is attached hereto.

(g): The Petitioner certifies that projected annual revenues of the property will not exceed the Class III carrier threshold.

2. Caption Summary required by 49 CFR §1150.34 is attached.

3. Environmental and Historical Impact:

Petitioner certifies that these activities will not exceed the thresholds established in 49 CFR §§1105.7 (e) (4) or (5), that per 49 CFR §1105.6 (c) (2) no environmental documentation need be

prepared, and that the proposed activities will not affect any historic structures.

Respectfully submitted,



Date: March 8th, 2004

James Riffin dba The Northern Central Railroad,

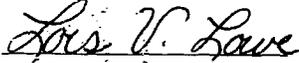
VERIFICATION

I, James Riffin dba the Northern Central Railroad, having been duly sworn, state that I am the majority owner of James Riffin dba the Northern Central Railroad, that I have read the foregoing Notice of Exemption, and that its contents are true and correct to the best of my knowledge and belief.



James Riffin dba the Northern Central Railroad

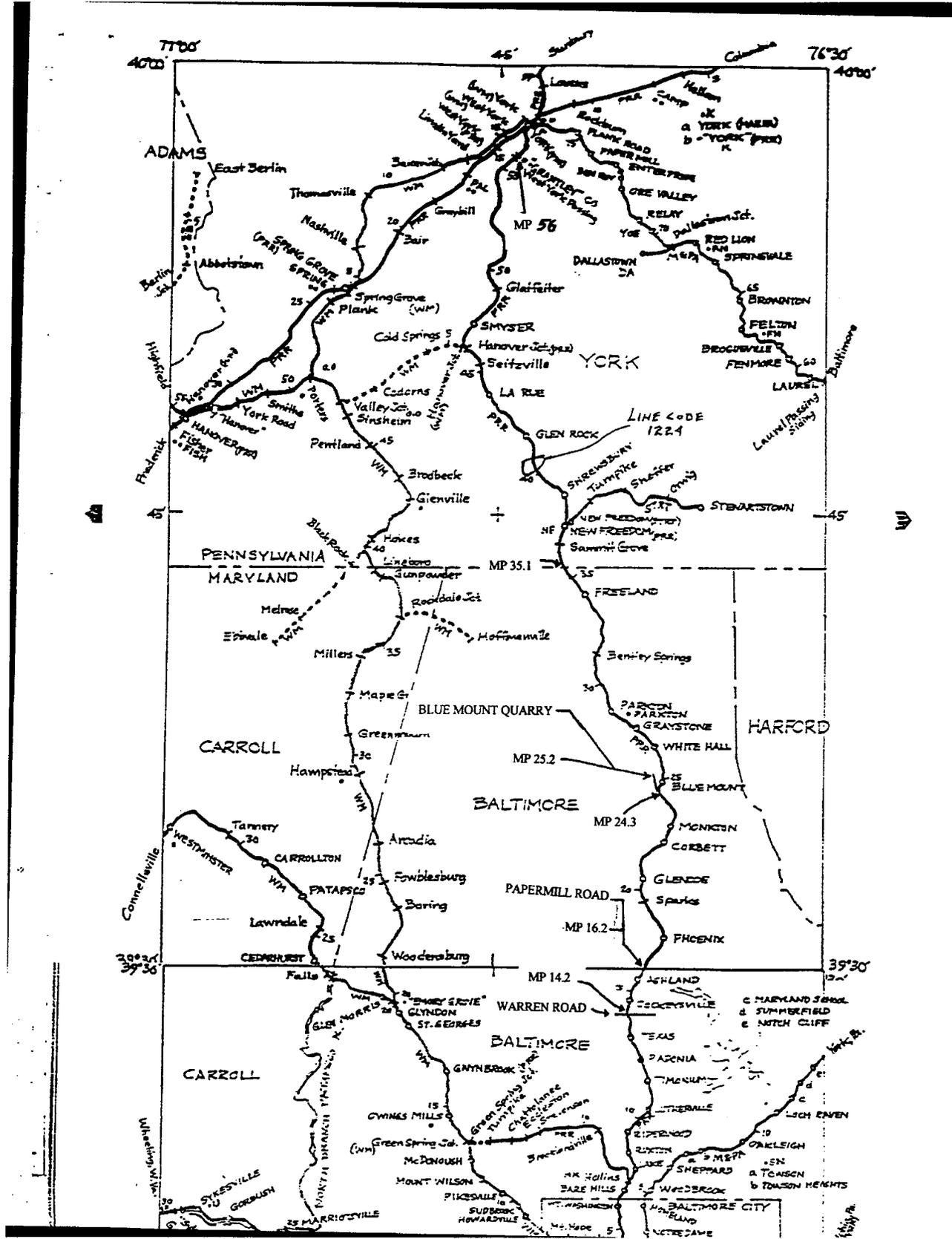
Subscribed and sworn to before me this 8th day of March, 2004.



Notary Public

(SEAL)

LOIS V. LOWE
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 28, 2006



NOTICE OF EXEMPTION

Finance Docket No. 34484

CAPTION SUMMARY



JAMES RIFFIN, dba THE NORTHERN CENTRAL RAILROAD – ACQUISITION AND OPERATION EXEMPTION–ON CONRAIL’S FORMER LINE CODE 1224, BETWEEN THE MARYLAND / PENNSYLVANIA LINE (MP 35.1) AND GRANTLEY (MP 56), A DISTANCE OF APPROXIMATELY 20.9 MILES--ALL LINES LOCATED IN YORK COUNTY, PA; AND BETWEEN MP 14.2 (COCKEYSVILLE) AND MP 16.2 (ASHLAND); AND BETWEEN MP 24.3 (BLUE MOUNT) AND MP 25.2 (BLUE MOUNT QUARRY), A DISTANCE OF APPROXIMATELY 2.9 MILES--ALL LINES LOCATED IN BALTIMORE COUNTY, MARYLAND.

James Riffin, dba the Northern Central Railroad, a Non-Carrier, has filed a Notice of Exemption under 49 U.S.C. §10901 to acquire and operate 20.9 miles of line in York County, PA, and to acquire and operate two lines, for a total of approximately 2.9 miles in Baltimore County Maryland. This action comes within the class of transactions which are exempt from regulations under 49 U.S.C. §10901.

Comments must be filed with the Surface Transportation Board and served on James Riffin dba The Northern Central Railroad, 1941 Greenspring Drive, Timonium, MD 21093, telephone (443) 414-6210.

This Notice conforms to the format in 49 CFR §1150.34. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemptions under 49 U.S.C. §10505 (d) may be filed at any time. Filing petitions to revoke will not automatically stay the transaction.

Dated:

By the Board: Vernon A. Williams
Secretary

34661
EB

SERVICE DATE - LATE RELEASE APRIL 20, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34484

JAMES RIFFIN D/B/A THE NORTHERN CENTRAL RAILROAD
— ACQUISITION AND OPERATION EXEMPTION —
IN YORK COUNTY, PA, AND BALTIMORE COUNTY, MD

Decided: April 20, 2004

By verified notice filed on March 8, 2004, as amended by a letter filed on March 22, 2004, and facsimile received on March 25, 2004, and served and published in the Federal Register on April 7, 2004 (69 FR 18420), James Riffin d/b/a The North Central Railroad (Mr. Riffin or NCR) has invoked the Board's class exemption procedures under 49 CFR 1150.31 for authority to acquire and operate: (a) approximately 20.9 miles of rail line (Conrail's former Line Code 1224) between milepost 35.1 (at the Maryland/Pennsylvania line), and milepost 56 (Grantly), in York County, PA; (b) approximately 2.0 miles of abandoned rail line (Conrail's former Line Code 1224) between milepost 14.2 (Cockeysville) and milepost 16.2 (Ashland), in Baltimore County, MD (Cockeysville/Ashland line); and (c) approximately 0.9 miles of abandoned rail line (Conrail's former line Code 1224) between milepost 24.3 (Blue Mount) and milepost 25.2 (Blue Mount Quarry), in Baltimore County, MD (Blue Mount/Blue Mount Quarry line). NCR states that it will interchange with the Genessee and Wyoming Railroad at or near milepost 56, Grantly, York County, PA. NCR asserts that the Cockeysville/Ashland and Blue Mount/Blue Mount Quarry lines are part of an abandoned right-of-way (ROW) it proposes to acquire and operate and that the land has reverted back to the original owners, from whom it will acquire the ROW. Under the terms of the class exemption procedures, the exemption has become effective.

By petition filed on April 2, 2004, the State of Maryland requests that the Board revoke the exemption. Maryland asserts that the exemption is void ab initio because NCR's notice creates the impression that NCR will purchase or otherwise acquire an interest in the Cockeysville/Ashland and Blue Mount/Blue Mount Quarry lines, both of which Maryland states that it owns and does not intend to convey to NCR. Pointing to specific statements in the notice that it claims are misleading, Maryland also contends that NCR's failure to demonstrate or establish that it could legally obtain title to the lines in Maryland is a material misrepresentation. NCR replied on April 8, 2004 (April 8th reply), claiming that the notice of exemption was not misleading because it can obtain legal title to the Cockeysville/Ashland and Blue Mount/Blue Mount Quarry lines through state condemnation procedures no matter who owns the ROWs.

In addition, Maryland asserts that NCR is using the Board's preemptive jurisdiction to circumvent state law. Maryland claims that NCR has obstructed the efforts of the Maryland Department of the Environment (MDE) to conduct indoor air quality sampling in an office building Mr. Riffin operates. MDE has filed suit in the Circuit Court for Baltimore County (Case No. 03-C-03-013144), which NCR has moved to dismiss on the ground that 49 U.S.C. 10501 preempts all state environmental laws. Also, according to Maryland's petition, at a second site in Baltimore County, NCR is preparing to clear, grade and fill the 100-year floodplain of Beaver Dam Run and has not obtained the required permit under the Maryland Waterway Construction Act, MD. CODE ANN., ENV'T ART. section 5-501 et seq., asserting that all state environmental laws are preempted by the Board's jurisdiction. In a letter filed on April 14, 2004 (April 14th letter), and a supplemental petition filed on April 15, 2004 (April 15th supplement), Maryland states that NCR has begun construction at the second site. MDE issued a Site Complaint, served on Mr. Riffin on April 13, 2004, that requires him to immediately cease and desist all construction and grading activities in the 100-year floodplain and waterway. In its supplemental filing, Maryland also requests that pending resolution of the petition to revoke, the Board issue a cease and desist order preventing NCR from taking any other action "under color of [railroad] authority."

On April 19, 2004, NCR filed a reply to Maryland's request for expedited handling and Maryland's motion for a cease and desist order, as well as a motion to impose sanctions on Maryland and its counsel. NCR does not oppose Maryland's expedited handling request, but does oppose the motion for a cease and desist order that would stop it from holding itself out as a rail carrier subject to the Board's jurisdiction. In its reply, NCR maintains that it has an "absolute right" under Maryland law to acquire the 2.9 miles of ROW in Maryland. Moreover, NCR asserts that the land for which Maryland issued a Site Complaint is not part of the 2.9 miles of ROW and that any construction on that site is not for a rail line. Therefore, NCR takes the position that a cease and desist order directed at activities on property that is not the subject of NCR's notice of exemption should be addressed in a Maryland court of law and not by the Board.

Because use of the class exemption procedures to effect the transaction at issue here would not be appropriate under the circumstances presented, the Board will revoke the exemption.

DISCUSSION AND CONCLUSION

Under the licensing provisions of 49 U.S.C. 10901, a noncarrier, such as NCR, may acquire and operate a rail line only if the Board makes an express finding that the proposal is not inconsistent with the "public convenience and necessity." That means that the Board must examine and weigh the public interest. Under 49 U.S.C. 10502 and 49 CFR 1121, however, a party may request an exemption from the formal application procedures of section 10901, on the

grounds that full regulatory scrutiny is not necessary to carry out the rail transportation policy and that either the exemption is limited in scope or regulation is not needed to protect shippers from an abuse of market power.

There are some situations in which approval would be so routine and uncontroversial that there is an expedited “class exemption” procedure allowing parties to obtain Board authorization subject only to an after-the-fact Board review if objections are received. Thus, under 49 CFR 1150.31, a noncarrier can obtain approval to acquire and operate a line of railroad within 7 days. That authority can later be revoked under 49 U.S.C. 10502(d) or treated as void ab initio if the exemption notice is found to have contained false or misleading information. See Class Exemption — Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 812 (1985), aff’d Illinois Commerce Comm’n v. ICC, 817 F.2d 145 (D.C. Cir. 1987). Moreover, the class exemption process is not appropriate for controversial cases in which a more detailed record is required than is produced through a notice of class exemption. See Riverview Trenton Railroad Company — Acquisition and Operation Exemption — Crown Enterprises, Inc., STB Finance Docket No. 33980 (STB served Feb. 15, 2002).

While NCR claims that it can overcome impediments to its ownership of property at issue in this proceeding, Maryland has raised sufficient concerns here, not only regarding NCR’s ability to obtain title to property, but also regarding NCR’s proposal in general, to make it inappropriate for NCR to use the expedited class exemption procedures in this case. Given that there are substantial factual and legal issues raised and that the Board has a responsibility to protect the integrity of its processes,¹ under the particular circumstances presented here, the Board will revoke the notice of exemption. Should NCR choose to pursue its proposal, it should provide more detailed information, in the form of a petition for an individual exemption under 49 U.S.C. 10502 and 49 CFR 1121, or a full application under 49 U.S.C. 10901 and 49 CFR 1150, as those procedures are designed to elicit a more complete record. Because the Board is revoking the exemption, Maryland’s request for a cease and desist order is moot.

MOTION FOR SANCTIONS

NCR asserts that Maryland and its counsel should be sanctioned for the following reasons: (1) they did not support their petition to revoke under 49 CFR 1121.3(c); (2) they omitted certain facts regarding the ROW, thereby demonstrating a knowing lack of candor and fairness under 49 CFR 1102.2(c); (3) their April 14th letter was addressed to Chairman Nober

¹ See, e.g., The Land Conservancy of Seattle and King County — Acquisition and Operation Exemption — The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33389 (STB served Sept. 26, 1997); see also ICC v. American Trucking Ass’ns, 467 U.S. 354, 364-65 (1984) (agency has inherent authority to protect its statutory processes from abuse).

and thus was a prohibited ex parte communication and/or a private communication with Chairman Nober; and (4) the statements in the letter, according to NCR, are untrue and thus defamatory per se which is a violation of law, and thus a violation under 49 CFR 1103.21.

NCR has not provided sufficient support for its motion for sanctions. Whether Maryland's petition lacks supporting information goes to the strength of the claim but is not a ground for imposing sanctions. The facts that NCR asserts Maryland omitted are on the record in NCR's April 8th reply, and NCR has not demonstrated that Maryland or its counsel knowingly withheld necessary information regarding the ROW. The April 14th letter was not an ex parte or private communication with Chairman Nober because Mr. Riffin was sent a copy. Moreover, the content of the April 14th letter was contained in Maryland's April 15th supplement, which was filed with the Secretary and served on all parties. Nor has NCR demonstrated that, at the time the April 14th letter was sent and April 15th supplement was filed, Maryland or its counsel knowingly made any false or defamatory statements. Therefore, NCR's motion for sanctions will be denied.

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

It is ordered:

1. The exemption in this proceeding is revoked.
2. NCR's motion for sanctions is denied.
3. This decision is effective on its date of service.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary

EXHIBIT E

Notice of Exemption and Board Decision

STB Finance Docket No. 34501, *James Riffin D/B/A The Northern Central Railroad – Acquisition and Operation Exemption – In York Co., PA, slip op.* (Service Date February 23, 2005)

[attached hereto]

ENTERED
Office of Proceedings

APR 28 2004

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

Finance Docket No. 34501



218702

JAMES RIFFIN, dba THE NORTHERN CENTRAL RAILROAD – ACQUISITION AND
OPERATION EXEMPTION—ON USRA LINE 145, BETWEEN THE MARYLAND /
PENNSYLVANIA LINE (MP 35.6) AND HYDE (MP 54.6), A DISTANCE OF
APPROXIMATELY 19 MILES—ALL LINE LOCATED IN YORK COUNTY, PA.

FEE RECEIVED

APR 28 2004

SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION

FILED

APR 28 2004

SURFACE
TRANSPORTATION BOARD

James Riffin dba The Northern Central Railroad (Applicant), a Non-Carrier, provides the following as his verified exemption notice to acquire and operate exemptions of approximately 19 miles of line within York County, PA, pursuant to 49 U.S.C. §10901. This action comes within the class of transactions which are exempt from regulations under 49 U.S.C. §10901.

1. The following 49 CFR §1150.33 details are provided:

(a) and (b): **APPLICANT** and representative to whom correspondences should be sent:

James Riffin dba The Northern Central Railroad
1941 Greenspring Drive
Timonium, MD 21093
Phone: (443) 414 - 6210 Fax: (410) 667-3533

(c): No agreement has been reached. York County, PA, the owner of the right-of-way, has sent a lease proposal to Riffin, which Riffin is reviewing.

(d): James Riffin dba The Northern Central Railroad will be the operator of the property.

(e): The following is a brief summary of the proposed activity:

The Applicant proposes to acquire (via a lease) and operate approximately 19 miles of line, known as USRA Line 145, extending between MP 35.6 (at the Maryland / Pennsylvania line) and MP 54.6 (Hyde, PA), all line in York County, PA. Applicant proposes to interchange with the Genesee and Wyoming Railroad. Applicant proposes to commence these activities within 90 days from the date this Verified Notice of Exemption is filed. The transferors of the line are the Commissioners of York County, PA.(Non-carriers). (The right-of-way was acquired by the Pennsylvania Department of Transportation, a non-carrier. Penn DOT then transferred its interests to the York County Commissioners.)

(f): A map is attached hereto.

(g): The Petitioner certifies that the projected annual revenues of the carrier to be created by this transaction, will not exceed the Class III carrier threshold, nor are they expected to exceed \$5,000,000.00.

2. Caption Summary required by 49 CFR §1150.34 is attached.

3. Environmental and Historical Impact:

Petitioner certifies that these activities will not exceed the thresholds established in 49 CFR §§1105.7 (e) (4) or (5), that per 49 CFR §1105.6 (c) (2) no environmental documentation need be prepared, and that the proposed activities will not affect any historic structures.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "James Riffin dba The Northern Central Railroad".

Date: April 22, 2004

James Riffin dba The Northern Central Railroad,

VERIFICATION

I, James Riffin dba the Northern Central Railroad, having been duly sworn, state that I am the majority owner of James Riffin dba the Northern Central Railroad, that I have read the foregoing Notice of Exemption, and that its contents are true and correct to the best of my knowledge and belief.

James Riffin dba the Northern Central Railroad

James Riffin dba the Northern Central Railroad

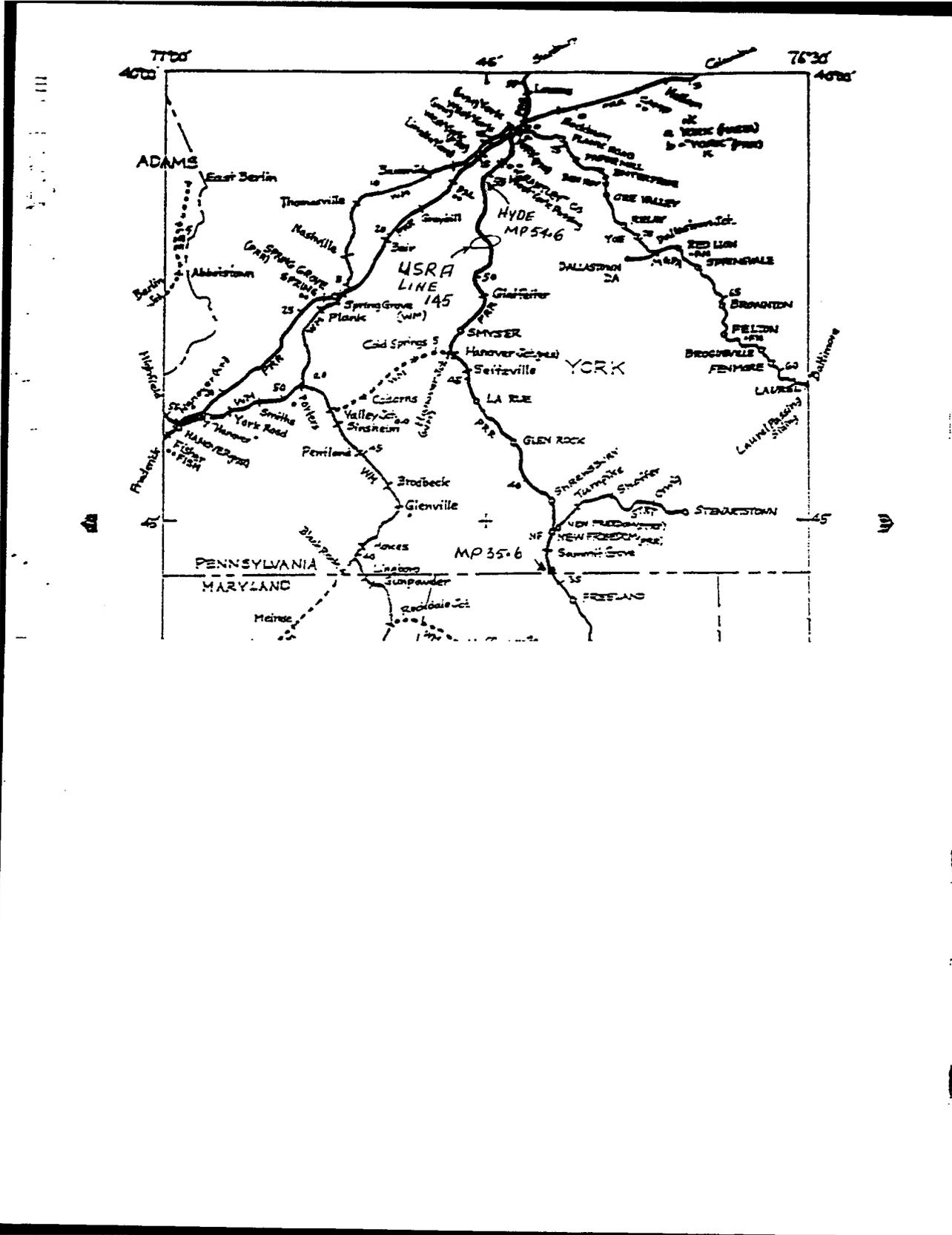
Subscribed and sworn to before me this 22nd day of April, 2004.

Lois V. Lowe

Notary Public

(SEAL)

LOIS V. LOWE
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 28, 2006



NOTICE OF EXEMPTION

Finance Docket No. 34501

CAPTION SUMMARY

JAMES RIFFIN, dba THE NORTHERN CENTRAL RAILROAD – ACQUISITION AND OPERATION EXEMPTION—ON USRA LINE 145, BETWEEN THE MARYLAND / PENNSYLVANIA LINE (MP 35.6) AND HYDE (MP 54.6), A DISTANCE OF APPROXIMATELY 19 MILES--ALL LINE LOCATED IN YORK COUNTY, PA.

James Riffin, dba the Northern Central Railroad, a Non-Carrier, has filed a Notice of Exemption under 49 U.S.C. §10901 to acquire and operate 19 miles of line in York County, PA. This action comes within the class of transactions which are exempt from regulations under 49 U.S.C. §10901.

Comments must be filed with the Surface Transportation Board and served on James Riffin dba The Northern Central Railroad, 1941 Greenspring Drive, Timonium, MD 21093, telephone (443) 414-6210.

This Notice conforms to the format in 49 CFR §1150.34. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemptions under 49 U.S.C. §10505 (d) may be filed at any time. Filing petitions to revoke will not automatically stay the transaction.

Dated:

By the Board: Vernon A. Williams
Secretary

35195
EB

SERVICE DATE – LATE RELEASE FEBRUARY 23, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34501

JAMES RIFFIN D/B/A THE NORTHERN CENTRAL RAILROAD
— ACQUISITION AND OPERATION EXEMPTION —
IN YORK COUNTY, PA

STB Finance Docket No. 34552

JAMES RIFFIN D/B/A THE NORTHERN CENTRAL RAILROAD —
PETITION FOR DECLARATORY ORDER

Decided: February 23, 2005

For the reasons set forth below, we will revoke the exemption in this proceeding and deny the petition for declaratory order.¹

BACKGROUND

By verified notice filed on April 28, 2004, and served and published in the Federal Register on May 20, 2004 (69 FR 29166), James Riffin d/b/a The Northern Central Railroad (Mr. Riffin or NCR) has invoked the Board's class exemption procedures under 49 CFR 1150.31 for authority to acquire, from the Commissioners of York County, PA, and operate approximately 19 miles of rail line, known as the USRA Line 145, between milepost 35.6 (at or near the Maryland - Pennsylvania line) and

¹ These proceedings have not been consolidated and are being dealt with here in one decision solely for administrative convenience.

milepost 54.6 (Hyde), in York County, PA (the line).² Under the terms of the class exemption procedures, the exemption has become effective.

This proceeding represents Mr. Riffin's second attempt to acquire similar authority. In James Riffin d/b/a The Northern Central Railroad — Acquisition and Operation Exemption — in York County, PA and Baltimore County, MD, STB Finance Docket No. 34484 (STB served and published in the Federal Register Apr. 7, 2004) (69 FR 18420), Mr. Riffin sought authorization to acquire two line segments in Baltimore County, MD, in addition to a slightly longer version of the line involved herein. However, in a decision in that proceeding served on April 20, 2004 (April 20, 2004 Decision), the Board revoked the exemption, stating that issues raised by Maryland could not be answered under the expedited "class exemption" process. NCR was advised that, if it wished to pursue the matter, it should provide more detailed information in the form of an exemption petition under 49 U.S.C. 10502 and 49 CFR 1121, or a full application under 49 U.S.C. 10901 and 49 CFR 1150.

Mr. Riffin instead chose to file a notice of exemption for the necessary authority to acquire and operate the line in York County. That notice of exemption is the subject of the petition to revoke in STB Finance Docket No. 34501.

Separately, NCR seeks a declaratory order addressing when a noncarrier becomes a carrier subject to Board jurisdiction and addressing a number of questions regarding federal preemption of state law.

PETITION TO REVOKE

By petition filed on August 20, 2004, Maryland requests that the Board revoke the exemption. First, Maryland asserts that the exemption should be revoked because the type of service Mr. Riffin intends to provide on the line may not be subject to the Board's jurisdiction. Maryland claims that Mr. Riffin intends to run a "dinner train" over the line solely within Pennsylvania and that the jurisdictional issues need to be explored in-depth in a less summary proceeding.

Second, Maryland maintains that the exemption should be revoked because the notice contains false and misleading information. Specifically, Maryland asserts that the statement in the verified notice of exemption that "York County, PA, the owner of the right-of-way has sent a lease proposal to Riffin,

² On May 18, 2004, the State of Maryland (Maryland) filed a motion for leave to file comments, along with those comments. In its comments, Maryland asserted that the publication of the notice of exemption in this proceeding could directly affect the interests of Maryland and its citizens but stated that it did not have sufficient information to conclude that revocation of the exemption was necessary. NCR replied to Maryland's comments on June 2, 2004.

which Riffin is reviewing” is false. Maryland states, based on correspondence from York County,³ that the Commissioners of York County have not forwarded a lease proposal to Mr. Riffin for the line and that Mr. Riffin has not submitted requested documentation that would provide a basis for sending him such a proposal. Moreover, Maryland maintains that the information in the verified notice of exemption is incomplete because it states that the activities will not affect any historic structures, whereas there are at least four historic structures on the line.

Finally, Maryland asserts that Mr. Riffin is using the Board’s preemptive jurisdiction to circumvent state law. Maryland claims that Mr. Riffin has resumed grading and construction activities in an environmentally sensitive area in the State of Maryland, and, as a result, NCR is in violation of at least four Maryland laws. Maryland has instituted a proceeding in state court to enforce its own laws against NCR to protect the health and quality of the public and its waterways.⁴

Although replies to the petition were due on September 9, 2004, NCR did not file its reply until September 14, 2004. The late filing will be accepted in order to have a more complete record and because its acceptance will not prejudice any party.

In its reply, NCR asserts that Maryland does not have standing to file a petition to revoke. NCR also denies that its verified notice contains false or misleading statements as Maryland alleges and it claims that the facts contained therein have been independently verified by Maryland. NCR asserts that its notice of exemption is non-controversial and in the public interest because, should it acquire the line from York County Commissioners, it would reinstitute service on the line. To that end NCR states that it has purchased several cars, as well as two locomotives, and has acquired track maintenance equipment and a large number of railroad ties, which it plans to use to rehabilitate the line.

Then on September 17, 2004, NCR filed a “Notice of Intent to Construct, Operate and Maintain a Railroad Facility,” which is referred to as NCR’s September supplement. It states that NCR intends to construct, operate and maintain a railroad facility on several properties in Cockeysville, MD, portions of which are owned by the Mayor and City Council of Baltimore (jointly, City).

On October 4, 2004, Maryland filed for leave to file a reply to a reply. Because a reply to a reply is impermissible under our rules at 49 CFR 1104.13(c), and because Maryland’s responsive

³ Letters from York County are attached as exhibits to Maryland’s petition to revoke.

⁴ According to Maryland, on September 9, 2004, the Baltimore County Circuit Court entered a preliminary injunction requiring Mr. Riffin to stabilize his construction site and remove the stockpiled materials that presented the greatest flood risk or risk of sediment pollution.

pleading would not add to our understanding of the issues, Maryland's request for permission to file the reply to a reply will be denied.

Also on October 4, 2004, Maryland filed a motion to strike NCR's September supplement. In support of its motion to strike, Maryland states that NCR's September supplement raises issues that are outside the scope of this proceeding and that there is no basis or authority in the Board's regulations for this type of notice of intent. Additionally, Maryland states that the September supplement should be stricken because NCR does not own the property on which it proposes to construct its railroad facility.

On October 20, 2004, the City filed a motion in support of Maryland's motion to strike, stating that it owns the property at the east end of Beaver Run Lane on which Mr. Riffin wishes to construct a railroad facility (the property). The property is in Baltimore County and serves as a watershed buffer for the Loch Raven Reservoir, which is a source of drinking water for several parts of Maryland. On September 10, 2004, the City's Department of Public Works issued a "Stop Work Order" to Mr. Riffin to curtail grading and bulldozing operations being performed on the property without the City's approval. The City has stated that it has no intention of entering into any agreement with Mr. Riffin for the conversion of its watershed buffer zone into a commercial enterprise. The City, however, remains concerned that Mr. Riffin is attempting to use the Board's expedited notice procedure to further his business plans and cause environmental damage.

On November 1, 2004, NCR filed an answer to Maryland's motion to strike. NCR states that the intended construction described in the September supplement is not related to the proceeding currently before the Board. According to NCR, the notice of intent to construct was drafted prior to the revocation of the exemption in STB Finance Docket No. 34484, discussed above, and portions of the notice of intent to construct are obsolete. The reason for inclusion of the September supplement, according to NCR, was to demonstrate that NCR had notified permitting entities that it intends to construct something. NCR states that the September supplement was not intended to be a request for authority from the Board to construct a railroad facility or line in Maryland.

We will grant Maryland's motion to strike NCR's September supplement because it does not appear to be related to the line in STB Finance Docket No. 34501, inasmuch as the planned facility is located in Cockeyville, MD, approximately 40 miles from the Maryland - Pennsylvania border.

PETITION FOR DECLARATORY ORDER

On September 14, 2004, NCR filed a petition for declaratory order acknowledging its effort to construct a facility on property in Maryland and asking the Board to determine when a noncarrier that files a notice of exemption to acquire and operate a line of railroad becomes a carrier subject to the

Board's exclusive jurisdiction. NCR also submitted numerous questions regarding federal preemption of state law based on specific factual scenarios.

On October 4, 2004, Maryland filed a reply to the petition for declaratory order, asserting that the request is premature because all of the questions posed are based on the assumption that NCR is a Class III rail carrier, which is the issue currently pending before the Board in STB Finance Docket No. 34501. Moreover, Maryland argues that the Board does not need to resolve the issues raised in the petition for declaratory order because they do not present any actual, live controversy.

On November 1, 2004, NCR filed a reply to Maryland's reply, which it entitles an "Answer to Opposition of the State of Maryland to Riffin's Petition for Declaratory Order." A reply to a reply is impermissible under our rules at 49 CFR 1104.13(c). Inasmuch as Mr. Riffin's pleading would not add to our understanding of the questions raised in the request for a declaratory order, Mr. Riffin's "Answer" will not be accepted into the record.

DISCUSSION AND CONCLUSIONS

A. The Request For Revocation

Maryland has sought revocation on the grounds that the notice contains false and misleading information, and that the operations NCR intends to conduct are outside the Board's authority. NCR responds, at the outset, that Maryland lacks standing to raise these issues. We disagree. Administrative agencies are not bound by the strict requirements of standing that otherwise govern judicial proceedings, but in any event, Maryland would have standing.⁵ The courts have devised a three-part test to determine whether a party has standing to bring an action: (1) the party must have suffered an injury in fact; (2) the injury must be fairly traceable to the defendant's challenged conduct; and (3) the injury must be one that is likely to be redressed through a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Here, NCR filed a notice of exemption for a line of railroad in Pennsylvania but is evidently attempting to use its resulting authority as authorization to construct facilities on property in Maryland. This activity has caused Maryland actual injury in the form of potentially severe and irreparable damage to its lands and waterway, and is directly traceable to Mr. Riffin's conduct. This injury can be redressed by a revocation of the exemption.

⁵ North Carolina Railroad Company — Petition to Set Trackage Compensation and Other Terms and Conditions — Norfolk Southern Railway, et al., STB Finance Docket No. 33134, slip op. at 2 n.9 (STB served May 29, 1997); Missouri Pacific Railroad Company — Abandonment — In Douglas, Champaign and Vermilion Counties, IL (Westville and Jamaica Branches), Docket No. AB-3 (Sub-No. 103), slip op. at 3 n.4 (ICC served Nov. 3, 1994).

Under the licensing provisions of 49 U.S.C. 10901, a noncarrier, such as NCR, may acquire and operate a rail line only if the Board makes an express finding that the proposal is not inconsistent with the “public convenience and necessity.” That means that the Board must examine and weigh the public interest in the acquisition and operation that is being proposed. Under 49 U.S.C. 10502 and 49 CFR 1121, a party may request an exemption from the formal application procedures of section 10901, on the grounds that full regulatory scrutiny is not necessary to carry out the rail transportation policy and that either the exemption is limited in scope or regulation is not needed to protect shippers from an abuse of market power.

There are some situations in which approval would be so routine and uncontroversial that there is an expedited “class exemption” procedure allowing the parties to obtain Board authorization subject only to an after-the-fact Board review if objections are received. Thus, under 49 CFR 1150.31, a noncarrier can obtain approval to acquire and operate a line of railroad within 7 days. That authority can later be revoked under 49 U.S.C. 10502(d) or treated as void ab initio if the exemption notice is found to have contained false or misleading information. See Class Exemption — Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 812, 817 (1985), aff’d sub nom. Illinois Commerce Comm’n v. ICC, 817 F.2d 145 (D.C. Cir. 1987). However, the class exemption process is not appropriate for controversial cases in which a more detailed record is required than what is produced through a notice invoking a class exemption. See, e.g., The Burlington Northern and Santa Fe Railway Company — Acquisition and Operation Exemption — State of South Dakota, STB Finance Docket No. 34645 (STB served Jan. 14, 2005); Riverview Trenton Railroad Company — Acquisition and Operation Exemption — Crown Enterprises, Inc., STB Finance Docket No. 33980 (STB served Feb. 15, 2002); Jefferson Terminal Railroad Co. — Acquisition and Operation Exemption — Crown Enterprises, Inc., STB Finance Docket No. 33950 (STB served Mar. 19, 2001).

Here, it appears that NCR is attempting to use the cover of Board authority allowing rail operations in Pennsylvania to shield seemingly independent operations and construction in Maryland from legitimate processes of state law. Maryland has shown its legitimate state interest in construction matters within its borders and, once again, has raised sufficient concerns regarding NCR’s proposal to make it inappropriate for NCR to use the expedited class exemption procedures in this case. See April 20, 2004 Decision. The Board has a responsibility to protect the integrity of its processes,⁶ and the Board is concerned that Riffin may be using the licensing process in improper ways. Given the particular circumstances and controversy presented here, the Board will revoke the exemption in STB Finance Docket No. 34501.

⁶ See, e.g., The Land Conservancy of Seattle and King County — Acquisition and Operation Exemption — The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33389 (STB served Sept. 26, 1997); see also ICC v. American Trucking Ass’ns, 467 U.S. 354, 364-65 (1984) (agency has inherent authority to protect its statutory processes from abuse).

As the Board previously instructed these parties in a decision in STB Finance Docket No. 34484, if NCR chooses to pursue its proposal, it must provide more detailed information in the form of a petition for an exemption under 49 U.S.C. 10502 and 49 CFR 1121, or a full application under 49 U.S.C. 10901 and 49 CFR 1150. Those procedures are designed to elicit a more complete record on which we can determine whether the public convenience and necessity would be met by allowing the acquisition and operation to move forward.

B. The Declaratory Order Request

The Board has discretionary authority under 5 U.S.C. 554(e) to issue a declaratory order to terminate a controversy or remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission, have exercised broad authority in handling such requests. In doing so, the agency has considered a number of factors, including the significance to the industry and the ripeness of the controversy. See Delegation of Authority — Declaratory Order Proceedings, 5 I.C.C.2d 675, 676 (1989). Here, given the context in which it was filed – as an adjunct to a second notice to obtain authority to provide operations about which substantial questions have been raised – we see no basis for granting the petition for declaratory order at this time. The declaratory order petition raises numerous questions about precisely how non-railroad activities could be shoehorned into the 49 U.S.C. 10501(b) preemption so as to shield them from the otherwise legitimate reach of state law. But because NCR has no authority to conduct any railroad operations at this time and because serious questions have been raised about the bona fides of its proposals, we will not speculate on how we might rule if it did have such authority. Accordingly, we decline to institute a proceeding on NCR's petition for declaratory order.

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

It is ordered:

1. NCR's late-filed reply is accepted.
2. Maryland's motion to file a reply to a reply is denied.
3. Maryland's motion to strike is granted.
4. NCR's "Answer to Opposition of the State of Maryland to Riffin's petition for Declaratory Order" is not accepted.
5. The exemption in STB Finance Docket No. 34501 is revoked.

STB Finance Docket No. 34501 et al.

6. The petition for declaratory order in STB Finance Docket No. 34552 is denied.

7. This decision is effective on its date of service.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary

EXHIBIT F

**Cockeysville Industrial Track Diagram – 1988
STB Finance Docket No. 34975, Exhibit D to Exhibit 1, pages D-29, D-30**

[attached hereto]

COCKEYSVILLE

(WAS A N.C.R. FRT. STA.)
(REPAIR SHOP FOR LAWN MOWERS)

THIS PORTION OF SIDING OUT OF SERVICE

← EWD - MAIN TRK - WWD →

SIDING OUT OF SERVICE

BUMPER BLOCK

COCKEYSVILLE

ROAD

RELAY CASES



YORK RD.
UNDER-PASS

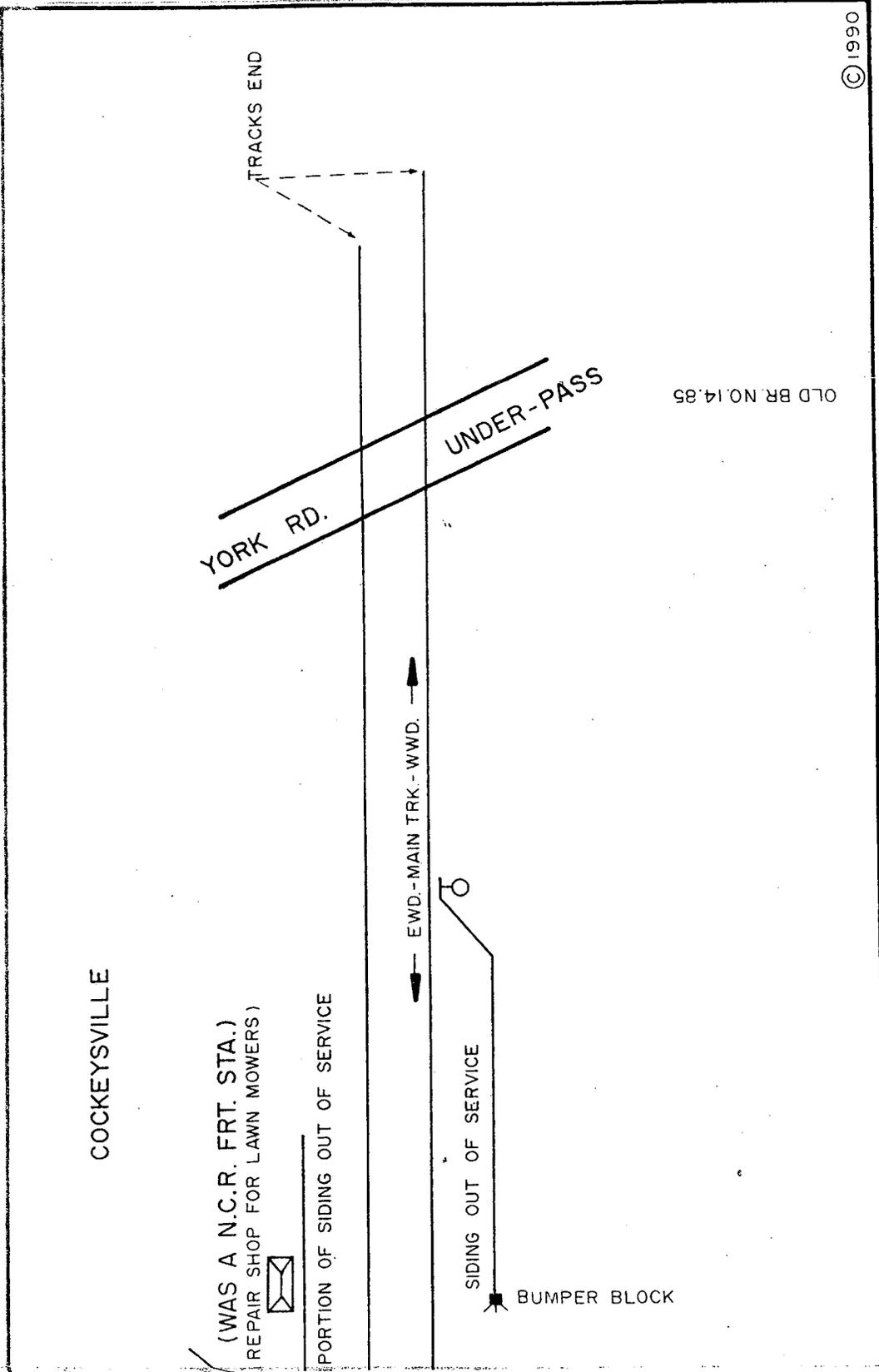
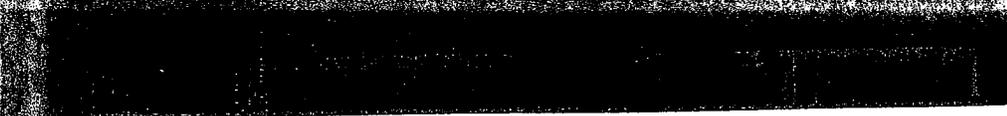


EXHIBIT G

**Cockeysville Industrial Track Diagram – 2005 (MTA)
STB Finance Docket No. 34975, Exhibit 2, page 2.4**

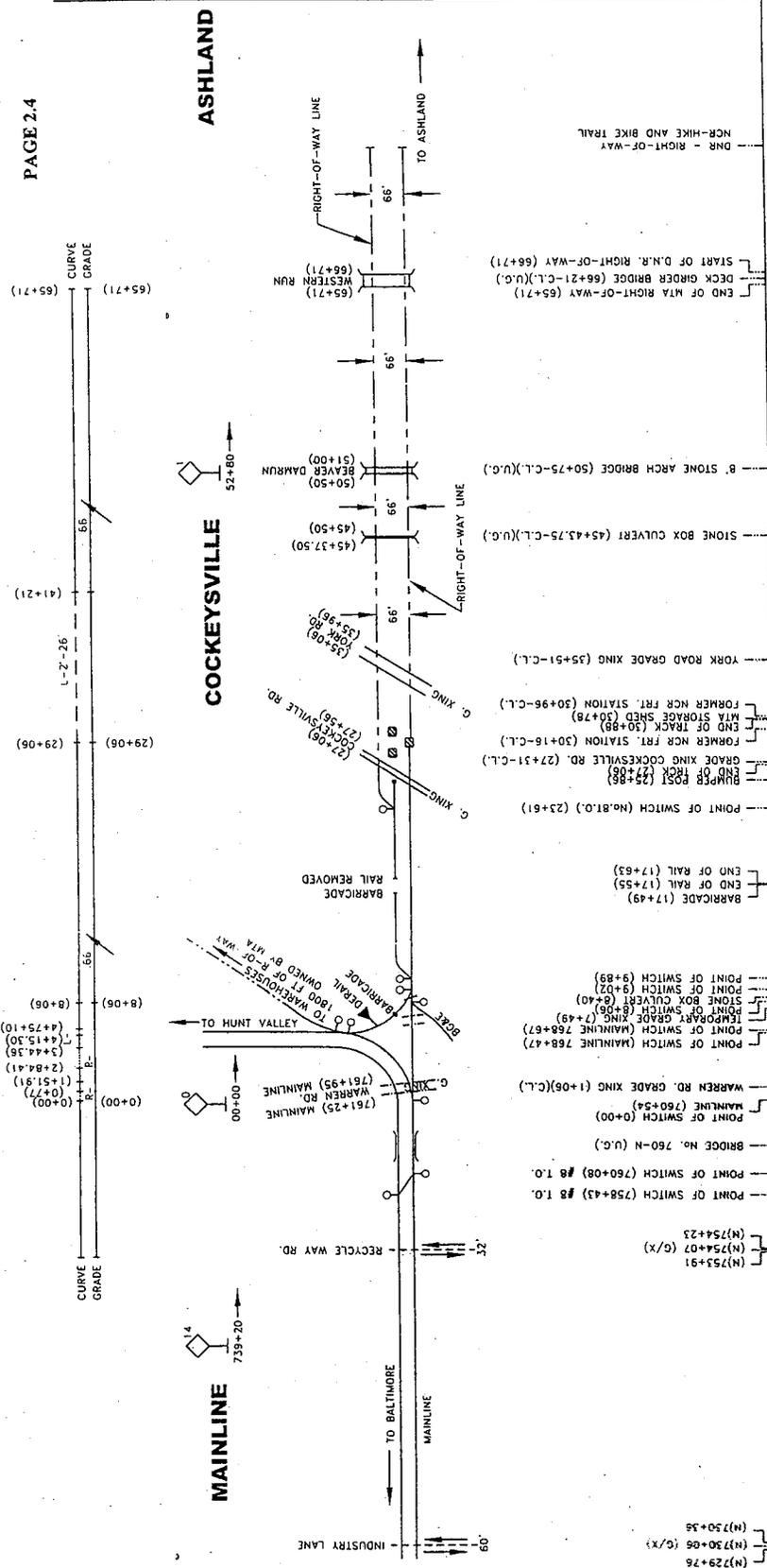
[attached hereto]

MARYLAND TRANSIT
ADMINISTRATION

LIGHT
RAIL
LINE

POLE YARD
SIDING

STATION 0+0 TO STATION 65+71



SYMBOLS

- MILE POST
- T.O. TURN OUT
- U.G. UNDER GRADE
- G. XING GRADE CROSSING
- UNDER GRADE BRIDGES
- HAND OPERATED SWITCHES
- DERAIL
- GRADE CROSSING
- RIGHT-OF-WAY LINE

DESIGNED R.L.W.	DATA 04.05.05
DRAWN L.L.	APPROVED

EXHIBIT H

**Memorandum and Order
Circuit Court for Baltimore County
Case No. 03-C-04-008920 OC (Dec. 17, 2007)**

[attached hereto]

MARYLAND DEPARTMENT OF
THE ENVIRONMENT, *et al.*

v.

JAMES RIFFIN

IN THE

CIRCUIT COURT FOR

BALTIMORE COUNTY

Case No. 03-C-04-008920 OC

ORDER

Before the Court is the Petition for Constructive Civil Contempt filed by the Plaintiffs, State of Maryland, Department of the Environment, and Baltimore County, Maryland. The Court has read and considered said Petition together with ^{the} Exhibits attached thereto and has heard and considered the arguments advanced in open court by all parties thereto.

NOW, THEREFORE, in consideration of the above, the Court finds that Defendant James Riffin ^{intentionally} has not complied with the terms of the permanent injunction issued by this Court on November 19, 2004, and is hereby found to be in CONSTRUCTIVE CIVIL CONTEMPT of Court.

WHEREFORE, it is this 17th day of December 2007, by the Circuit Court for Baltimore County,

ORDERED, that, having found the Defendant James Riffin to be in CONSTRUCTIVE CIVIL CONTEMPT, Defendant James Riffin shall be allowed to purge this Contempt as follows:

(1) By February 15, 2007, Mr. Riffin must permanently remove or cause to be removed all construction and railroad vehicles and equipment from the property located and known as 10919 York Road and 13 Beaver Run Lane, in Cockeysville, Baltimore County, Maryland ("the site"). Mr. Riffin must permanently move all items either to a location offsite and outside the restricted flood plain encompassing his property, or inside his whiskey barrel warehouse or other existing, permanent structure on the site. If the entrance to the existing warehouse needs to be enlarged ^{JLE} ~~to~~ in order to move equipment into the warehouse, the Baltimore County Office of Law and Maryland Department of the Environment (MDE) will assist Mr. Riffin in obtaining the required permits, providing that the necessary permits can be lawfully issued.

(2) By the close of business on December 19, 2007, the Baltimore County Office of Law shall provide a list of potential civil engineering firms to Mr. Riffin.

(3) By January 11, 2008, Mr. Riffin must retain one of these firms and provide the firm's name to the Baltimore County Office of Law. Before retaining one of these engineering firms, Mr. Riffin must ensure that the firm is able to meet with the appropriate State and County officials on or before January 25, 2008, in order to discuss the scope and parameters of a restoration plan for the site, the purpose of which is to restore the site to its condition in 2004, prior to Mr. Riffin's deforestation, excavation, and construction activities.

see and after meeting with the appropriate state and county officials,
(4) By February 15, 2008, the civil engineering firm that Mr. Riffin hires shall submit a formal mitigation/restoration plan for the site, professionally sealed by the aforesaid civil engineering firm, to DEPRM and MDE for review, comment and approval, which approval shall not unreasonably be withheld. see

(5) By February 15, 2008, Mr. Riffin shall post cash security or a letter of credit in the amount of two hundred and fifty thousand dollars (\$250,000.00) with the Baltimore County Office of Budget and Finance in order to secure performance of the restoration plan.

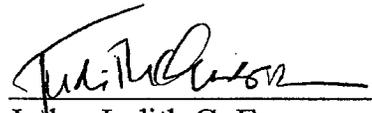
IT IS FURTHER ORDERED, that once DEPRM and MDE approve the plan submitted by Mr. Riffin's engineers, Mr. Riffin must fully and completely abide by and conform to the plan and all directives and deadlines contained in the plan and/or issued by DEPRM and MDE officials in the course of the plan's implementation.

see
IT IS FURTHER ORDERED, that if Defendant James Riffin fails to purge the contempt by following through
to comply with any of the aforementioned directives, he will be fined one thousand dollars (\$1,000.00) per day and/or imprisoned until he does comply.

IT IS FURTHER ORDERED, that if Mr. Riffin fails to comply with any of the aforesaid conditions and directives, upon application of the County or State, Mr. Riffin will be Ordered to appear before this Judge on a date certain to Show Cause why the aforesaid security should not be forfeited, and why the proper State

and County officials, and/or their agents should not be permitted to enter upon the property for the purpose of completing the restoration plan. Further, should the reasonable costs of completing the restoration plan exceed the posted security then the amount of the overage will be assessed as a lien against the personal and real property of Mr. Riffin.

This Order is hereby issued this 17th day of December, 2007.



Judge Judith C. Ensor

Certificate of Service

I hereby certify that I have this 26th day of March, 2009, caused to be served a copy of the foregoing Motion of the Maryland Transit Administration to Dismiss James Riffin's Notice of Exemption and Request for Declaratory Relief upon the following parties of record by first class mail, with postage prepaid:

James Riffin
1941 Greenspring Drive
Timonium, MD 21093

And upon the following by first class mail, with postage prepaid:

James R. Paschall
Senior General Attorney
Norfolk Southern Railway Company – Law Department
Three Commercial Place
Norfolk, VA 23510


Allison I. Fultz