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September 21, 2009

**VIA FEDERAL EXPRESS**

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



FD 35299, 225757

Re: **Borough of Riverdale Petition for Declaratory Order and Stay — 225757  
Pertaining to New York Susquehanna & Western Rail Transload  
Facility, Riverdale, New Jersey and Tri-State Brick Transportation, Inc.  
Finance Docket No.**

Dear Secretary Quinlan:

The undersigned attorneys represent Petitioner, Borough of Riverdale, in reference to the above matter. Enclosed, please find an original and ten copies of the Borough's Petition to the Surface Transportation Board for a declaratory order and stay. Additionally, please find a check in the amount of \$1,400.00 covering the filing fee of same.

Pursuant to 49 CFR § 1002.2(e), the Borough of Riverdale further requests a waiver of said filing fee. In this regard, the Borough of Riverdale is a municipal corporation of the State of New Jersey and is not a rail carrier. As such, the Petitioner here is a duly vested local government entity as contemplated within the rule.

Thank you for your time and attention to this matter. Should any questions arise regarding this filing, please do not hesitate to contact me at your convenience.

Respectfully submitted,

JOHNSON, MURPHY, HUBNER, McKEON,  
WUBBENHORST, BUCCO & APPELT, P.C.

James T. Bryce

**FILING FEE WAIVED**

cc. John K. Fiorilla, Esq. (NYS&W)  
Tri-State Brick Transportation, Inc.

ENTERED  
Office of Proceedings

SEP 22 2009

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET No.

35299

BOROUGH OF RIVERDALE, NEW JERSEY  
PETITION FOR DECLARATORY ORDER AND STAY  
PERTAINING TO NEW YORK SUSQUEHANNA & WESTERN RAIL TRANSLOAD FACILITY, RIVERDALE,  
NEW JERSEY AND TRI-STATE BRICK TRANSPORTATION, INC.

**PETITION OF BOROUGH OF RIVERDALE FOR  
DECLARATORY ORDER AND STAY**

**FILED FEE WAIVED**

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ATTORNEYS FOR THE BOROUGH OF  
RIVERDALE

Dated: September 21, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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**FINANCE DOCKET NO.**

BOROUGH OF RIVERDALE, NEW JERSEY  
PETITION FOR DECLARATORY ORDER AND STAY  
PERTAINING TO NEW YORK SUSQUEHANNA & WESTERN RAIL TRANSLOAD FACILITY, RIVERDALE,  
NEW JERSEY AND TRI-STATE BRICK TRANSPORTATION, INC.

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**PETITION OF BOROUGH OF RIVERDALE FOR  
DECLARATORY ORDER AND STAY**

The Borough of Riverdale (hereinafter referred to as "Borough") hereby seeks a declaratory order from the Surface Transportation Board (hereinafter referred to as "STB") that the STB does not have jurisdiction over proposed bulk transloading and storage activities at a New York Susquehanna & Western (hereinafter referred to as "NYS&W") facility located within the Borough and therefore, such activities are not preempted from local zoning laws pursuant to the ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 (hereinafter referred to as the "ICCTA"). The Borough further seeks a stay of such activities at the facility pending the STB's review of this matter.

Briefly, this case arises from a proposed change of operations at the facility. This particular facility was the subject of prior STB and state court actions that were ultimately resolved when the Borough and NYS&W entered into a consent order in the state court that restricted the transloading occurring at the facility to food grade syrup. Now, NYS&W and Tri-State Brick Transportation, Inc (hereinafter referred to as "Tri-State") seek to operate the facility for the transloading and storage of brick product. By way of a March 8, 2009 Operating Agreement running between NYS&W and Tri-State, Tri-State is to pay for its use of the facility and is responsible for the off-loading, storage, and transloading of the brick product from rail

cars operated on the NYS&W line. Pursuant to the requirements of the 1998 state court consent order, NYS&W applied to the Borough's Planning Board (herein referred to as "Planning Board") for health, safety and welfare review of the proposed operation, however, the Board remained uncertain as to whether the proposed operation was preempted from local zoning regulations, which would otherwise prohibit a commercial distribution use occurring at the facility without variance relief. The Planning Board based this decision on recent developments distinguishing preempted rail operations from uses and operations that were merely incidental to rail carriage. Accordingly, the Planning Board determined to seek a determination from the STB as to whether the proposed NYS&W and Tri-State operation is preempted.

Prior to the submission of the within petition, NYS&W sought relief in the Superior Court of New Jersey seeking an order allowing the operation at the facility. In connection with this NYS&W presented to the court a July 31, 2009 "Rail Car Transloading Contract" running between NYS&W and Tri-State Brick, Inc., that indicates NYS&W or its contract loader, will be responsible for off-loading and storage of the brick product at the facility. This, of course, is a completely different relationship than that contemplated in the March 8, 2009 operating agreement and as given to the Planning Board. The late change of contractual relationship appears little more than a contrived effort to try and fashion what is in essence a non-preempted third-party's brick distribution operation into an operation that enjoys the preemptive force of 49 U.S.C. § 10502. Accordingly, the Borough requests that the STB issue a declaratory order finding that the proposed operation is not within the jurisdiction of the ICCTA and stay any such operations at the facility pending its determination in this matter.

## FACTUAL AND PROCEDURAL HISTORY

1. NYS&W and its predecessors have conducted interstate freight rail operations in and through the Borough of Riverdale, New Jersey for over 100 years.

2. NYS&W is a common rail carrier railroad and its rail operations, like all interstate freight rail operations across the country, are subject to the exclusive jurisdiction of the federal Surface Transportation Board.

3. In or about 1995-1996, NYS&W constructed a facility on its right-of-way in Riverdale to handle transloading of corn syrup from rail cars to trucks—for subsequent delivery to customers in the New York/New Jersey metropolitan area.

4. NYS&W contracted with Bulkmatic, a trucking and logistics firm, to operate the transload facility. Bulkmatic also provided the tank trucks that delivered the corn syrup transferred from the rail cars.

5. The Borough of Riverdale opposed NYS&W's construction and operation of a transload facility, primarily on the ground that the facility was located in an area zoned for residential use.

6. Construction work on the transload facility was completed in early July 1996, and NYS&W began using it for corn syrup transloading operations.

7. The Borough responded by filing a civil action against NYS&W on July 5, 1996, seeking an injunction restraining further operation of the transload facility.

8. The Superior Court of New Jersey held that the Borough's application of local zoning regulations was preempted by the ICCTA. The Court also concluded, however, that local health, safety, and environmental regulations were not preempted by the ICCTA, provided that local authorities do not abuse that regulation so as to deny the facility the right to operate.

9. The Superior Court of New Jersey entered written Judgment on August 21, 1996, finding the proposed use was preempted from local zoning limitations and further directing NYS&W to file a site plan application with the Borough of Riverdale Planning Board for site review its normal course, subject to its standards procedures, in a method not inappropriately obstructive to the operation of the facility. [A copy of the August 21, 2006 Judgment is attached hereto as Exhibit A.]

10. On September 8, 1997, the Borough filed a Petition for Declaratory Order with the STB seeking a determination that the NYS&W's transload facility was not subject to the STB's jurisdiction and that the Borough's land use permitted and zoning regulations were not preempted by the ICCTA.

11. In order to finally bring the court ordered Planning Board proceedings to a close, NYS&W negotiated an agreement with the Planning Board and Borough that ultimately was incorporated in a Consent Order entered by the Court on July 22, 1998. [A copy of the July 22, 1998 Consent Order is attached hereto as Exhibit B.]

12. The 1998 Consent Order provided, among other things, that NYS&W would use the facility for transloading food grade products only and expressly limited transloading by air method. If NYS&W wished to change the use of the facility, it was required to apply to the Borough of Riverdale Planning Board in accordance with the Court's Judgment entered August 21, 1996. The Consent Order also placed a few agreed conditions on NYS&W's corn syrup transloading operations, including noise attenuation mechanisms, fencing, curbing, landscaping improvements, committed NYS&W to pay the Borough's expert fees, and committed NYS&W to obtain certain licenses and building permits with respect to the corn syrup operation.

13. On September 9, 1999, the STB issued a decision outlining its views regarding the ICCTA preemption issues raised by the Borough and seeking comments regarding some issues. Borough of Riverdale—Pet. for Dec. Order—The New York, Susquehanna and Western Ry. Corp. 4 S.T.B. 380 (1999).

14. Although NYS&W and numerous other parties filed comments as requested by the STB, the STB subsequently terminated the proceeding on the ground that the Consent Order entered by the court had resolved the dispute. Borough of Riverdale—Pet. for Dec. Order—The New York, Susquehanna and Western Ry. Corp., STB Finance. Docket. No. 33466, 2001.

15. NYS&W used the facility at Riverdale for the transloading of corn syrup and contracted with Bulkmatic to operate the transload facility to transfer product into tank trucks.

16. On or about March 8, 2009, NYS&W and Tri-State Brick Transportation, Inc. entered into an “Operating Agreement” for Tri-State’s use of the facility to transload bundles of custom-ordered bricks that would be transported to the transload facility in rail boxcars from fabrication plants around the country and transloaded to trucks for delivery to customers in the New York/New Jersey area. [A copy of the March 8, 2009 Operating Agreement is attached hereto as Exhibit C.]

17. The Operating Agreement clearly contemplates a lease type relationship and provides that NYS&W and Tri-State “wish to enter in an agreement which provides for, among other matters, [Tri-State’s] use of the property use of the NYS&W property at Hamburg Turnpike, Riverdale, NJ for office space, parking, truck weighing and other uses related to transloading and delivery of bulk commodities moved by rail by NYS&W.”

18. Indeed, the Operating Agreement provides that “NYS&W hereby grants [Tri-State] use and access, during the term of this Agreement to the portions of the terminal area and

facilities . . . for [Tri-State] to load and unload bulk commodities to and from railcars, temporarily store such bulk commodities and perform administrative and other functions related to transportation of commodity by rail” for consideration of \$125,000.00 per year with certain incentives and adjustments. This agreement also provided that Tri-State would indemnify and hold harmless NYS&W from any claims or liability for damage or loss of bulk materials brought to the facility from and after the date of delivery of such materials and for materials brought from the facility by railcar, from and after the date such railcar is released to NYS&W.

19. As required by the 1998 Consent Order, NYS&W on April 8, 2009, filed a site plan application with the Borough of Riverdale Planning Board for the brick transload operation.

20. The Planning Board held hearings on April 23, May 28, and June 25, 2009. [A copy of the transcript of the April 23, May 28, and June 25 Planning Board proceedings are attached hereto as Exhibit D.]<sup>1</sup>

21. Nathan R. Fenno, President of NYS&W testified that the proposed operation was intended to be 24/7. (1T37:15-21.)

22. Mr. Fenno testified to the nature of the operation, stating: “the railroad brings boxcars with brick to the site, and Mr. Formica’s firm [Tri-State], which is . . . the business of the trucking or the arranging for the – for the transportation (phonetic). Takes care of the unloading of the railroad cars and the – and arranges for the trucking of the – of the material to the – end site (phonetic).” (1T10:14-21.)

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<sup>1</sup> Citations to the transcripts are referenced as follows:

1T – April 23, 2009 transcript

2T – May 28, 2009 transcript

3T – June 25, 2009 transcript

Each citation begins with a transcript designation, which is followed by page number and line numbers separated by a colon.

23. Mr. Fenno then, however, stated: "we [NYS&W] would operate the brick business. I didn't say Mr. Formica was operating" and that Tri-State was not a tenant of the railroad but simply a link in the transportation of the material. (1T20:6-20.)

24. Lou Formica, a representative of Tri-State, was questioned as to the company's website that states Tri-State is one of the largest brick wholesalers in the area and he replied:

[W]hat we do is what we call back-to-back transactions. The customer will order materials for a particular project, it might be a hospital or school, municipality. They – we, in turn, put an order into the manufacture to manufacture the quantity and type and color and size and all that is required for this particular project. The customer sends up an order, we in turn send the very same order to the manufacturer. They manufacture the brick. When it's ready, we coordinate with the customer, once it's going to be take in, and then in turn delivered to the customer. But the actual ownership of the brick itself is FOB shipping point. So that the terms of the ownership actually takes place as soon as it leaves the manufacturer.

MAYOR BUDESHEIM: And you have nothing to do with that?

MR. FORMICA: We do, we are the party that the customers speak with to coordinate that transaction.

(1T22-23.)

25. Mr. Formica also described the relationship between Tri-State and the NYS&W facility and its proposed operation, stating:

[W]e actually have a company called Tri-State Transportation. That's the company that is in the relationship with the railroad to move brick. That company exclusively (inaudible) and its sole purpose is to receive rail cars, unload the material from the rail cars and then put them on the trucks for the transport (inaudible) in the eventuality of their final location. That's an entity onto itself. That's called Tri-State Transportation. Tri-State Brick – and we have Tri-State Brick of New Jersey, Tri-State Brick of New York. Tri-State Brick utilizes Tri-State Transportation for their services in moving the brick around. The Tri-State Brick company itself, is nothing more than a marketing and a sales organization. Tri-State Transportation, however, is really the trans-loading operation. They are the companies that are – the company, that is, actually moving material.

(1T28:12 – 1T29:4.)

26. Upon the Board's inquiry, the Board's consulting professional planner stated: "I'm not qualified as an expert in that law [ICC Termination Act], you know, even though I looked at it and tried to present you with the facts as I saw it. And I'm not wholeheartedly convinced that the conditions that the applicant is offering to you that everything is exempt is – is and accurate position." (2T84:8-13.)

27. Given the issue as to whether the proposed operation was a preempted activity, the Vice-Chair of the Planning Board indicated that "I don't think that we could, you know, intelligently vote on it until we get some clarification on exactly what type of operation we have."

28. The Planning Board attorney opined that it would need to apply to the Surface Transportation Board for a definitive ruling as to preemption for this particular operation. (2T124:18-24.)

29. Ultimately, at the June 25, 2009 meeting, the Board unconvinced of its jurisdictional limitations dismissed NYS&W application without prejudice pending a petition to the STB for a determination. [A copy of the August 6, 2009 Resolution memorializing the Board action is attached hereto as Exhibit E.]

30. On or about August 5, 2009, NYS&W filed an Order to Show Cause with the Superior Court of New Jersey seeking to enforce its rights as provided for by the 1996 judgment and 1998 Consent Order.

31. With the filing of the Order to Show Cause NYS&W presented an agreement to the court entitled "Rail Car Transloading Contract" running between NYS&W and Tri-State Brick, Inc., which now provides for NYS&W, or its contract loader, conducting the transloading

and storage of brick material at the facility. [A copy of the Transloading Contract is attached hereto as Exhibit F.]

32. This transloading agreement was dated after the conclusion of the Planning Board hearing and was never presented to the Planning Board, notwithstanding the direct and specific questioning by the Board concerning the relationship between NYS&W and Tri-State. This latter agreement does not clearly abrogate or modify the March 8, 2009 operating agreement.

33. On September 16, 2009, the Superior Court of New Jersey ruled on NYS&W's Order to Show Cause and determined that the Borough's Planning Board should proceed with reviewing NYS&W's site plan for health, safety and welfare concerns after finding that STB, rather than the Planning Board, has jurisdiction to determine whether preemption applies to the proposed operation.

## ARGUMENT

### POINT ONE

#### **THIS BOARD SHOULD ISSUE A DECLARATORY ORDER DETERMINING THAT ICCTA PREEMPTION DOES NOT APPLY TO THE PROPOSED OPERATIONS OF NYS&W AND TRI-STATE AT THE RIVERDALE FACILITY.**

At issue is whether the operation proposed by NYS&W and Tri-State Brick Transportation, Inc. at the Riverdale facility comes within STB jurisdiction and is therefore preempted from local land use controls. For the following reasons, the Borough requests that the STB issue a declaratory order determining such use and operation is not subject to ICCTA preemption.

- A. The STB Has Jurisdiction To Issue A Declaratory Order To Remove Uncertainty, Which Is Present In This Matter.

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, this Board has authority to issue a declaratory order to terminate a controversy or remove uncertainty. In this particular matter significant controversy and uncertainty as to whether the “transportation” operation as contemplated by NYS&W and Tri-State falls within the exclusive jurisdiction of the STB under 49 U.S.C. § 10501(b) and is therefore preempted from local land use controls. In this regard, recent STB and judicial determinations make questionable whether the proposed operation of the Riverdale transloading facility is squarely preempted by this Board’s jurisdiction especially given the testimony as was adduced before the Borough Planning Board. The testimony and agreements presented to the Planning Board do not support a conclusion of preemption when guided by such STB and judicial decisions, and is further called into doubt by an agreement created and executed by NYS&W and Tri-State after the Planning Board proceeding. If the proposed operation and use of the facility is not fully preempted, then the proposed use would be subject to significantly greater proofs before a local land use agency prior to commencement of operations. Accordingly, there is sufficient controversy and uncertainty to warrant this Board’s issuance of a declaratory order.

B. The Proposed Transloading Operation Is Not Subject To ICCTA Preemption.

Pursuant to 49 U.S.C. § 10501, this Board has jurisdiction over “transportation by rail carrier that is (a) only by railroad; or (b) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.” This section also provides that the jurisdiction of the Surface Transportation Board over transportation by rail carriers is exclusive. In turn, 49 U.S.C. § 10102, in relevant parts, defines a “rail carrier” as a person providing common carrier railroad transportation for compensation and “railroad” is defined as (a) a bridge, car float, lighter, ferry, and intermodal equipment used by or in

connection with a railroad; (b) the road used by a rail carrier and owned by it or operated under an agreement; and (c) a switch, spur, track, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.” This section also defines “transportation” as including “(a) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and (b) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.”

Given this broad statutory jurisdiction, it has been consistently held that railroad operations, and those operations integrally related to such, are preempted from state and local laws that may frustrate interstate commerce and the efficiency of railroad operations. Borough of Riverdale – Pet. for Declaratory Order – The New York Susquehanna and Western Railway Corporation, STB Docket No. 33466, September 9, 1999 and February 23, 2001. However, as has been decided by this Board and multiple courts, the preemptive force of the ICCTA has its limits and as this Board admonished in the above petitions, each preemption case is fact sensitive.

Unlike NYS&W’s prior transloading at the facility, the instant operation is dependant upon a third party’s (Tri-State) commercial use of the property. Historically, NYS&W transloaded corn syrup from rail tank cars into tank trucks and did this by way of a contract loader, Bulkmatic. Just as in The City of Alexandria, Virginia – Pet. for Declaratory Order, STB Finance Docket No. 35157, February 17, 2009, which addressed a similar type of transloading for ethanol, such syrup transloading fell within ICCTA preemption because the rail road was providing the service but paying a third party to conduct the transloading. In the instant matter,

however, Tri-State is performing the service of brick distribution, not NYS&W. As will be further discussed below, it was not until questioned that NYS&W and Tri-State sought to contract for NYS&W to perform the transloading function for Tri-State.

In Florida East Coast Railway Company v. City of West Palm Beach, 266 F.3d 1324 (11<sup>th</sup> Cir. 2001), the Eleventh Circuit Court of Appeals held that the ICC Termination Act did not preempt the application of zoning and occupational licensing ordinances for a lessee's use or operation of a rail yard, as such use did not constitute rail transportation. There, Florida East Coast Railway leased a significant portion of their rail yard to an aggregate company, and would transport the aggregate from quarries to this yard. Once in the yard, a contract loader would unload the aggregate and the aggregate company would coordinate the distribution of the product and load the trucks for distribution to end consumers. The aggregate company utilized the rail road's office building on the yard for its purposes and was responsible for payment of expenses, and utilities. The City of West Palm Beach issued cease and desist orders and notices of violations for zoning and licensing violations. The rail company sought a declaratory judgment action seeking a determination that the City's ordinances were preempted as applied to the operation.

The appeals court analyzed several factors militating against preemption. First, the court recognized that the preemption found in 49 U.S.C. § 10501(b) does not expressly reach municipal land use controls as they are not "state laws" as specified to be preempted in the Act. The court then analyzed the historical development and purpose of the ICCTA and ultimately concluded that, while the City's regulations are not optimally efficient for the railroad's operations, the regulations do not impede the interstate functioning of the railroad as the yard

was not truly being used for railroad transportation, but merely supporting a lessee's commercial business, even though the rail carrier delivered product to the yard.

Likewise, in the series of Hi Tech Trans, LLC cases, both this Board and the federal Third Circuit Court of Appeals found that a third party's use of railroad property did not qualify as transportation by rail carrier and thus, ICCTA preemption did not apply. In Hi Tech Trans, LLC – Pet. for Declaratory Order, STB Finance Docket No. 34192, August 14, 2003, the Board directly distinguished that simply because an activity on rail property may come within the meaning of "transportation," in order for the preemptive force of 49 U.S.C. § 10501 to apply, the transportation must also be performed by a rail carrier. In High Tech, the petitioner contracted with shippers for the transportation of solid waste. Hi Tech would contract trucks to transport the solid waste from shippers to a rail transloading facility and Hi Tech would load the waste onto rail cars for further transportation. Hi Tech's use of the rail yard for transloading was through a licensing agreement. Hi Tech maintained that there was no distinction between a transloading facility operated by a non-rail carrier and a rail carrier. The Board rejected Hi Tech's argument, reasoning that any third party that merely uses rail carriers would then come within the statutory preemption. Rather, the Board found that Hi Tech's relationship with the rail carrier was merely that of a shipper. The Board emphasized the fact that Hi Tech's operating agreement with the rail carrier disclaimed any railroad responsibility for the transloading. Importantly, in foot note 12, the Board stated:

Hi Tech is not a licensed rail carrier. There are formal procedures that must be followed to obtain authority as a rail carrier from the Board. See 49 U.S.C. § 10901. Even if such procedures are followed, the Board will not approve rail carrier authority that is a sham or intended solely to avoid local regulations.

[Emphasis added.]

In Hi Tech Trans, LLC v. State of New Jersey, 382 F.3d 295 (3<sup>rd</sup> Cir. 2004), the Third Circuit Court of Appeals likewise found that Hi Tech's operation on railroad property did not constitute transportation by rail carrier even though rail carriage was involved. This action stemmed from Hi Tech's seeking of declaratory relief from the federal District Court of New Jersey that for a determination that the operation as preempted from state environmental laws pursuant to the ICCTA. There the court said that at most the activity represented transportation to a rail carrier – not transportation by rail carrier. Accordingly, the operation on the railroad property did not fall within the penumbra of preemption. “The mere fact that that the [railroad] ultimately uses rail cars to transport the [solid waste] Hi Tech loads does not morph Hi Tech's activities into ‘transportation by rail carrier.’ Indeed, if Hi Tech's reasoning is accepted, any nonrail carrier's operations would come under the exclusive jurisdiction of the STB if, at some point in a chain of distribution, it handles products that are eventually shipped by rail carrier. The district court could not accept the argument that Congress intended the exclusive jurisdiction of the STB to sweep that broadly, and neither can we.” Id. at 309. Interestingly, there the court also noted that the licensing agreement between the railroad and Hi Tech and said in a foot note that “[w]e do not cite the License Agreement to suggest that a party can contractually determine its status as a railroad carrier for regulatory purposes. Rather, we cite it merely because it further reflects the nature of Hi Tech's activities and its relationship to [the railroad].” Id.

In the case New York Susquehanna and Western Railway Corp. v. Jackson, et al., 500 F.3d 238 (3<sup>rd</sup> Cir. 2007), the Third Circuit Court of Appeals again revisited ICCTA preemption as related to the effect of state environmental and solid waste laws on operations conducted by an actual railroad. There, the court found that such state laws are not necessarily preempted if they are nondiscriminatory and not unreasonably burdensome. More importantly, however, the court

distinguished the activity in that case from the Hi Tech case noting that, unlike Hi Tech, the rail carrier owned or leased the land and built the transload facilities, shippers paid the rail carrier to load their freight, and the rail carrier did not disclaim liability for the loading process. The court also elaborated on the aforementioned footnote in the Hi Tech decision, saying: “[o]ur point in Hi Tech was that railroads and loaders may not change by contract what in practice is a substantively different relationship.” Id. at 250.

In the instant matter, as in the Florida East Coast case, a third party seeks to use a rail carrier’s property to carry on a commercial enterprise that is only related to railroad transportation in as much as product is delivered to the facility by rail. Indeed, as proposed to the Borough’s Planning Board, the instant operation is simply a reverse of operations found in the Hi Tech cases, where instead of being a “truck to rail” type of use, here Tri-State’s use is “rail to truck.” The March 8, 2009 Operating Agreement clearly places the onus and liability of transloading, storage, and distribution of product on Tri-State and the only responsibility NYS&W has toward the operation is to collect rents and deliver the product by rail to the facility. Moreover, under the rubric espoused in the Hi Tech decision, the proposed operation by NYS&W and Tri-State fails meet ICCTA jurisdictional requirements because this Board has already determined that Tri-State, and its related activities, do not fall within the jurisdiction of this Board as it is not a rail carrier. See Tri-State Brick and Stone of New York, Inc. and Tri-State Transportation Inc. – Pet. For Declaratory Order, STB Finance Docket No. 34824, August 11, 2006. (Where the STB determined that Tri-State’s were not subject to STB jurisdiction and that its activities were not preempted. The Board found that Tri-State was simply using property to transload cargo and was simply a rail customer.) It was only when questioned about the nature of the operation and the Planning Board resolved to seek an STB jurisdictional

determination that NYS&W and Tri-State then produced a "Transloading Agreement" in an effort to avoid local regulation and "change by contract what is in practice a substantially different relationship." New York Susquehanna and Western Railway Corp., 500 F.3d at 250. Without this latter agreement the operations proposed at the facility would clearly fall outside of this Board's jurisdiction and render the operation subject to local regulation. The suspect timing and provisions of this latter agreement bespeaks of an effort to retroactively contract into preemptive posture intended solely to avoid local regulations – an effort that this Board and our courts admonish against.<sup>2</sup> In this matter, the Borough respectfully requests that this Board determine that ICCTA jurisdiction does not extend to proposed operation of NYS&W and Tri-State at the Riverdale facility.

#### POINT TWO

#### **THIS BOARD SHOULD ISSUE AN ADMINISTRATIVE STAY PROPOSED OPERATIONS OF NYS&W AND TRI-STATE AT THE RIVERDALE FACILITY.**

Pursuant to 49 U.S.C. 721(b)(4), this Board may, "when necessary to prevent irreparable harm, issue an appropriate order without regard to" the procedural requirements of 5 U.S.C. §§ 551-559. To obtain an injunction under this provision, the requesting party must show: (1) it is likely to succeed on the merits; (2) it will be irreparably harmed in the absence of the requested relief; (3) issuance of the injunction will not substantially harm other parties; and (4) granting the injunction is in the public interest. See DeBruce Grain, Inc. v. Union Pacific RR, 2 S.T.B. 773,

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<sup>2</sup> It is not overly cynical to hypothesize that contractual arrangements between rail carriers and third-parties could easily be fashioned so as to attain a third party's land use contrary to local zoning considerations under the cloak of preemption. Quite simply, with the use of a third party's straw man entity functioning as a "contract loader," which would cross indemnify and subsidize a railroad's transloading liabilities and fees, an operation can, by contract, be preempted even though the railroad suffers a zero net gain or loss from such an arrangement.

775 n.3 (1997) (citing Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977)).

As indicated in Point One supra, this particular petition seeks a declaratory order of this Board as to whether the operation being proposed by NYS&W and Tri-State fall within the Board's jurisdiction and thus preempted from local land use regulations pursuant to the ICCTA. The operation as has not yet commenced and the relative jurisdiction of this Board versus the local land use agency remains unresolved. In this regard, if this Board finds that the proposed operation does not come within the purview of ICCTA preemption, then the operation would be required to obtain necessary site plan and variance approvals that would not be occasioned if jurisdiction otherwise rests with this Board.

As articulated in Point One, supra, the Borough believes that it has a substantial likelihood in succeeding to convince this Board that the proposed operation of the facility does not fall within the ICCTA's scope of preemption given the facts of this case. As established by recent case law of this Board and our courts, the operation as proposed does not square with the integrally related railroad activities that enjoy the freedoms associated with ICCTA preemption. Moreover, it appears that both NYS&W and Tri-State have realized this fact and have attempted to retroactively contract an arrangement to conform to the decisions that circumscribe the preemptive limitations of the ICCTA as related to the use of railroad property.

Given the fact that should the proposed operation of NYS&W and Tri-State not come within ICCTA preemption, the operation itself, if permitted to commence before a determination of this Board, would subject the Borough and its residents to a deprivation of the due process that would be afforded by local land use procedures under New Jersey's Municipal Land Use Law and would further create unnecessary traffic, noise, dust, debris, and exhaust that would suffered

at the expense of residential property owners abutting the facility. For the residents and the Borough to suffer such nuisances without a clear entitlement of NYS&W and Tri-State to create them, an irreparable harm is suffered.

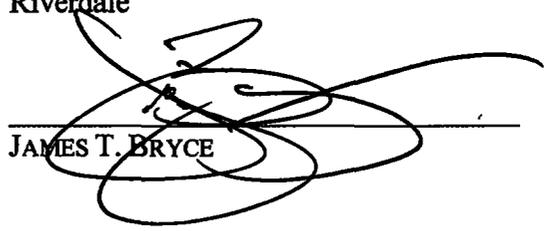
It should be pointed out that in balancing the equities, no substantial harm will be suffered by other parties should a stay be granted. In this regard, the proposed activities have not as of yet commenced at the facility. The parties may have economic and commercial motivations that may be impacted, however, maintaining the status quo during the pendency of the Board's process to determination is not inequitable.

Moreover, granting the requested stay of operations is in the public interest. As the public is represented by the instant Petitioner, it has been decided that the issue is important enough to the public that it required the instant filing. Moreover, it is within the public's interest to ensure that any use of land is conducted in a lawful manner that respects the respective rights and privileges of all interested parties. As the Board's jurisdiction over proposed operation of NYS&W and Tri-State is less than clear, and given the fact that if jurisdiction is found by this Board to be wanting the proposed operation would require zoning and site plan relief to operate, it is in the public's interest to defer such a use until jurisdiction is resolved.

#### CONCLUSION

Wherefore, the Petitioner respectfully requests this Board to issue a declaratory order finding that the operation as proposed by NYS&W and Tri-State is not subject to this Board's jurisdiction and stay such operation until such a determination is made. The Petitioner further respectfully requests that this matter be treated in an expedited fashion.

Respectfully submitted,  
JOHNSON, MURPHY, HUBNER, MCKEON,  
WUBBENHORST, BUCCO & APPELT, P.C.  
Attorneys for Petitioner, Borough of  
Riverdale



\_\_\_\_\_  
JAMES T. BRYCE

VERIFICATION

I, WILLIAM BUDESHEIM, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading. Executed on September 21, 2009.



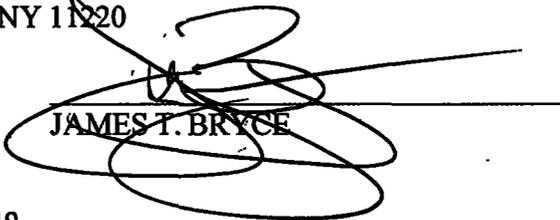
\_\_\_\_\_  
WILLIAM BUDESHEIM

CERTIFICATION OF SERVICE

I, JAMES T. BRYCE, hereby certify that on this 21<sup>st</sup> day of September, 2009, a copy of the forgoing Petition of Borough of Riverdale, was served by overnight Federal Express upon:

John K. Fiorilla, Esq.  
Capehart & Scatchard, P.A.  
8000 Midlantic Drive  
Suite 300S  
Mt. Laurel, New Jersey 08054  
Attorney for New York Susquehanna & Western  
Railway Corporation

Tri-State Brick Transporation, Inc.  
151 West 25th Street  
New York, NY 10001  
Main Facility  
Brooklyn Army Terminal Rail Yard  
65<sup>th</sup> Street off 2<sup>nd</sup> Avenue  
Brooklyn, NY 11220



\_\_\_\_\_  
JAMES T. BRYCE

A

**FILED**

AUG 21 1996

Reginald Stanton, A.J.S.C.

BARBARULA AND ASSOCIATES  
23 Professional Building  
1242 Route 23 North  
Butler, New Jersey 07405  
(201) 492-1190  
Attorneys for Plaintiff

BOROUGH OF RIVERDALE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	MORRIS COUNTY
Plaintiff,	:	
	:	Docket No: MRS-L-2297-96
vs.	:	
	:	<u>CIVIL ACTION</u>
NEW YORK SUSQUEHANNA &	:	
WESTERN RAILROAD,	:	
Defendants,	:	JUDGMENT

THIS MATTER coming before the Court by way of Order to Show Cause with Restraints, Plaintiff, Borough of Riverdale, being represented by Barbarula and Associates, John M. Barbarula, Esq. appearing, and the Defendant, New York Susquehanna & Western Railroad, being represented by Watson, Stevens, Fiorilla & Rutter, John K. Fiorilla, Esq. appearing; and the Court having reviewed the pleadings, video tapes and briefs of all parties; does hereby adjudge as follows:

- A. Defendant, New York Susquehanna & Western Railroad, shall file a Site Plan Application with the Borough of Riverdale Planning Board by September 8, 1996;
- B. Plaintiff, Borough of Riverdale, shall review said Application in its normal course, subject to its standard procedures and shall do so in a way which

*is not unreasonably obstructive to the operation of the facility.*

*W. J. S. C.*

- C. In the event that the Application has not received final approval by January 31, 1997, the parties are to notify the Court and the Court will set a hearing date for further proceedings;
- D. The Defendant is estopped from further construction, other than emergent repairs such as to correct drainage defects. The Defendant shall notify the Borough when it must make such emergent repairs;
- E. The Defendant shall comply with all applicable safety and health and welfare regulations;
- F. The Defendant shall not be bound by Local Zoning regulations of Plaintiff as to Land Use & Utilization, as this constitutes economic regulation which is pre-empted by the ICC Termination Act of 1995; and
- G. The portion of the Amended Complaint disputing the Defendant's right to cross Post Lane is hereby severed and by this Judgment is transferred to Chancery Division for disposition. All other issues are resolved by this Judgment.
- H. The Plaintiff will not preclude or interfere with Defendant's option of the facility as long as it is in compliance with this Judgment.

*Copy of this Judgment by the Court is being filed for the record for both parties.*

ENTERED as a Judgment upon the Court records pursuant to Rule 4:42-1 et seq. as a Final Judgment. *S. St. August 21, 1996.*

REGINALD STANTON  
JUDGE OF THE SUPERIOR COURT  
ASSIGNMENT JUDGE

*[Signature]*  
Hon. Reginald Stanton

ASSIGNMENT JUDGE

**B**

BARBARULA AND ASSOCIATES  
23 Professional Building  
1242 Route 23 North  
Butler, New Jersey 07405  
(973) 492-1190  
Attorneys for Plaintiff

**THIS PLEADING CLOSES THE CASE**  
**FILED**

JUL 22 1998

Reginald Stanton, A.J.S.C.

BOROUGH OF RIVERDALE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	MORRIS COUNTY
	:	
Plaintiff,	:	Docket No: MRS-L-2297-96
	:	
vs.	:	<u>CIVIL ACTION</u>
	:	
NEW YORK SUSQUEHANNA and	:	CONSENT ORDER
WESTERN RAILROAD CORP.,	:	
	:	
Defendant.	:	

THIS MATTER having come to the attention of the Court by John M. Barbarula, Esq., attorney for the plaintiff, BOROUGH OF RIVERDALE, and John K. Fiorilla, Esq., attorney for the defendant, NEW YORK SUSQUEHANNA and WESTERN RAILROAD CORP.; and it appearing that the parties have stipulated and agreed to the following terms and conditions; and the Court having considered same; and for good cause shown;

IT IS, on this 22 day of July, 1998;

ORDERED THAT:

1. The site shall be restricted for use by the Railroad, its successors, assigns, and their derivative users thereof to food grade products only. Railroad agrees not to transport to the premises or load or unload livestock at the facility. If the Railroad wishes to change the use of the premises, the Railroad shall apply to the Borough of Riverdale Planning Board in accordance with the Order of the Hon. Reginald Stanton,

A.J.S.C. entered and filed on August 21, 1996. The Railroad shall comply with all applicable local, state and federal laws in its operation of the facility. The aforesaid stipulations run with the land and are binding upon the current and future owners of the rail line.

2. All transloading must be accomplished by air method rather than diesel or mechanical methods, unless in the event of an emergency. Any spills that result during transloading must be reported to the Borough of Riverdale Board of Health, County of Morris and State of New Jersey as required. Railroad shall report all spills in excess of twenty-five (25) gallons to the Borough of Riverdale Board of Health.

3. Railroad shall place the compressor and heating unit in the box car to duplicate the equipment of the prior red box car and sound attenuating insulation in the box cars in order to hamper the noise. Insulation shall be performed immediately and all future date box cars shall be insulated to ensure compliance with the noise level maintained at present.

4. Railroad consents to an annual inspection of the boxcar by Borough officials. Each new box car plant installed shall be inspected upon installation by the appropriate Borough official prior to operation.

5. Railroad shall construct a twelve (12) foot high treated wood fence on a two (2) foot high berm. The fence shall extend approximately 550 feet along one side of the site as shown on the amended site plan from the northern right of way of Arlington to the southernly line of the Marra property (Block

24, Lot 3). The fence shall be composed of a minimum of three 1 inch by 6 inch horizontal rails.

6. Railroad shall complete installation of the curbing on the property as shown on the site plan.

7. Railroad shall continue to monitor the lighting with GPU to maintain current conditions.

8. Railroad shall plant and maintain approximately 25 white-pine trees approximately 5 to 6 feet high along the west side of the site at Railroad's expense as per the Board Engineer's directives. All landscaping shall be reviewed in 24 months following the date of approval for the Board to determine whether the amount and condition of said landscaping is adequate. In the event that a deficiency is found, the landscaping shall be remedied and supplemented as agreed by the parties.

9. Railroad shall pay all outstanding professional fees within ten days of the execution of this Agreement or as soon as the amounts due are determined.

10. Railroad shall make any necessary application to the Department of Environmental Protection for boiler or boilers that Railroad wishes to install in the box car that require licensure.

11. Railroad shall grant a license or easement to the Borough of Riverdale Fire Department to use the Railroad's right of way currently in use in a form acceptable to the Railroad Corporate Law Department.

12. Railroad shall obtain all building permits to

accomplish the above.

13. Railroad shall submit an as built plan for review by the Board Engineer within 30 days after the completion of all work.

14. Borough accepts Railroad's traffic report for the purposes of settlement. Traffic report shall be incorporated as part of the record.

15. This Agreement shall be offered in evidence in any proceeding instituted by either of the parties in any court of competent jurisdiction, and shall, subject to the approval of the court, be incorporated in any judgment rendered in that action.

16. Should any provision of this Agreement be held invalid or unenforceable by an court of competent jurisdiction, all other provision shall, nonetheless, continue in full force and effect, to the extent that the remaining provisions are fair, just, and equitable.

17. No modification or waiver of any of the terms of this Agreement shall be valid unless in writing and executed by the party to be charged. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any subsequent breach or default of any provision contained in this Agreement.

18. The laws of the State of New Jersey and of the United States (where preemption is found) shall govern the execution and enforcement of the within Agreement.

19. This Agreement shall be recorded by the Borough of Riverdale Planning Board in the Morris County Clerk's Office with indexing to the appropriate rights of way.

20. The above captioned action is dismissed with prejudice except for the purpose of enforcing this Stipulation and the Order entered and filed by the Hon. Reginald Stanton, A.J.S.C. on August 21, 1996.

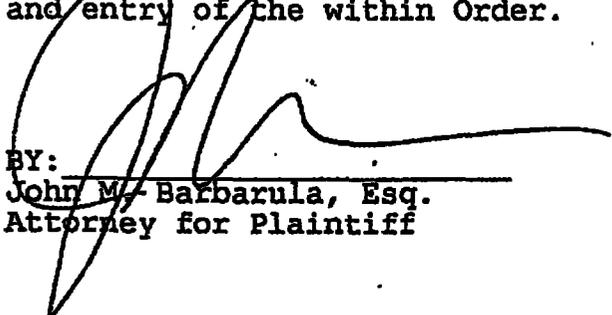
REGINALD STANTON  
JUDGE OF THE SUPERIOR COURT  
ASSIGNMENT JUDGE



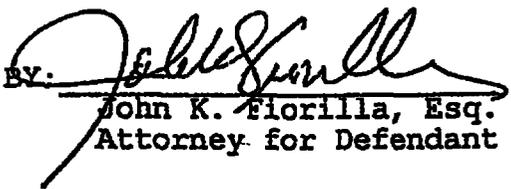
Hon. Reginald Stanton, A.J.S.C.

Hon. ..  
JUDGE OF THE SUPERIOR COURT  
ASSIGNMENT JUDGE

I HEREBY CONSENT to the form and entry of the within Order.



BY: \_\_\_\_\_  
John M. Barbarula, Esq.  
Attorney for Plaintiff



BY: \_\_\_\_\_  
John K. Fiorilla, Esq.  
Attorney for Defendant

C

FILE COPY

## OPERATING AGREEMENT

THIS AGREEMENT made as of this 8th day of March, 2009, by and between TRI STATE BRICK TRANSPORTATION, INC., with offices at 151 West 25th Street New York, NY 10001 (hereinafter referred to as "CUSTOMER") and THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION, a New Jersey corporation with offices at 1 Railroad Avenue, Cooperstown, New York 13326 (hereinafter referred to as "NYS&W").

WHEREAS, NYS&W is actively engaged in the interstate transportation of freight in interstate commerce and has facilities available at Riverdale, New Jersey for the purpose of loading, receiving, unloading and transferring to or from railcar loads of bulk commodities; and

WHEREAS NYS&W and CUSTOMER wish to enter in an agreement which provides for, among other matters, CUSTOMER's use of NYS&W property at Hamburg Turnpike, Riverdale, NJ for office space, parking, truck weighing and other uses related to transloading and delivery of bulk commodities moved by rail by NYS&W; and

WHEREAS, in relation to and to further the purposes of the rail transportation, including transloading, of bulk commodities, NYS&W is willing to make certain facilities available for use by CUSTOMER for administrative and other functions related to shipment of commodities by rail;

NOW, THEREFORE, in consideration of the aforementioned and the mutual covenants and agreements set forth hereafter, the parties agree as follows:

### 1. TERMINAL PREMISES AND FACILITIES:

1.1 NYS&W hereby grants CUSTOMER use and access, during the term of this Agreement to the portions of the terminal area and facilities (hereinafter the "Facility") for CUSTOMER to load and unload bulk commodities to and from railcars; temporarily store such bulk commodities and perform administrative and other functions related to transportation of commodity by rail. CUSTOMER acknowledges that portions of the Facility are or may be used by other customers of NYS&W. CUSTOMER shall be allowed use of the office area in the building at the Facility (such use shared only with NYS&W, or with third parties reasonably acceptable to NYS&W and CUSTOMER) and shared use of the truck scale in common with other NYS&W customers. Areas designated for loading and unloading of railcars, and temporary storage of commodities, are indicated on Exhibit A attached hereto.

1.2 Notwithstanding the foregoing, NYS&W hereby reserves unto itself and its licensees the right and easement to construct, use, operate, maintain, repair and renew any rail tracks, pipe, conduit or tunnel, and any electric, communication or signal transmission lines, together with poles and guys therefore, and any other facilities of line character, as may now exist on, under or over the

Facility, it being agreed that this Agreement is subject and subordinate to any and all such rights, easements and uses. CUSTOMER shall occupy and use the Facility in a careful, safe and orderly manner so as not to interfere in any way with the maintenance or operation of the business of NYS&W or of its licensees or with any structures or facilities appurtenant to the business of NYS&W or of its licensees.

1.3 NYS&W shall, subject to the needs of service, provide CUSTOMER with railcar spots for unloading at the Facility. In the event of a growth of business which exceeds that area, NYS&W will use its reasonable commercial efforts to provide additional car unloading spots on its line within New Jersey.

1.4 NYS&W reserves the right, upon no less than sixty (60) days notice to CUSTOMER, to adjust the layout and location of the Facility, within NYS&W's adjacent property so long as such adjustment and relocation do not adversely affect CUSTOMER's operations.

## 2. LIMITATIONS ON USE:

2.1 The use of the Facility by CUSTOMER shall be limited to activities related to non-hazardous bulk materials which (i) move in rail cars pursuant to tariffs published by or freight rates and routing agreed to by NYS&W, and (ii) any other legal purpose agreed to in writing by NYS&W.

2.2 CUSTOMER may not use the Facility for any commercial trucking business other than as directly related to transloading of bulk materials between railcars and motor carrier.

2.3 CUSTOMER may not store motor trucks or trailers at the Facility, other than as provided in Section 2.2., and may not fuel highway vehicles at the Facility.

## 3. UTILITIES:

CUSTOMER shall pay for all heat, water, electricity and other utility services required for its use. In the event that such utilities are used in common with others on a common meter, CUSTOMER and NYS&W shall agree upon a fair and equitable proration of such utility costs.

## 4. TERM / FEE:

4.1 The initial term of this Agreement shall for a period of five (5) years beginning with its effective date. Unless terminated as provided in Section 4.2, this Agreement shall thereafter automatically renew for renewal terms of 12 months each.

4.2 No less than one hundred twenty (120) days prior to the expiration of the initial or any

renewal term of this Agreement, either party may give notice of its intention to terminate this Agreement.

4.3 CUSTOMER shall pay to NYS&W a facility use fee during the initial term of \$125,000.00 per year, payable in quarterly installments, in arrears, of \$ 31,350.00. CUSTOMER shall be allowed a credit of \$500.00 per revenue producing railcar shipped to or from the FACILITY for the account of CUSTOMER against the facility use fee, which will reduce the amount due, but not below zero. In the event that such credits exceed the amount due in any quarter, such excess shall carry over to the following quarter in the same calendar year, but shall not carry over to following calendar years. Starting with January 1, 2011, the facility use fee and the per railcar credit shall increase effective the 1<sup>st</sup> day of January of each year by an amount equal to the percent change in the Rent, Residential Component of the Consumer Price Index, Urban Consumers (CPI-U) as published monthly by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212, from the last such increase, using such CPI-U as published for the month of October. [For example, the rent adjustment on effective January 1, 2011 will be based on the percentage change in the CPI-U from October, 2009 to October, 2010.]

## 5. CARE OF PREMISES - ALTERATIONS:

5.1 CUSTOMER shall exercise good care in its use of the Facility, and at the end of the term of this Agreement shall deliver up the Facility free of any damages caused by CUSTOMER, normal wear and tear excepted. CUSTOMER, its officers, employees and invitees, while in proximity to rail tracks, shall follow, observe and be governed by Railroad's safety rules as applicable. Railroad shall cooperate with CUSTOMER in CUSTOMER's training programs in regard to Railroad's safety rules.

5.2 CUSTOMER shall not make any alterations, additions or improvements on or to the Facility without the prior written consent of NYS&W, and all alterations, additions or improvements which may be made by either NYS&W or CUSTOMER upon the Facility, unless herein otherwise provided, and except the personal property of CUSTOMER, shall be property of NYS&W and shall remain upon and be surrendered with the Facility as part thereof at expiration or other termination of this Agreement without disturbance, molestation or injury.

5.3 NYS&W and CUSTOMER shall each monitor the condition of the Facility and the state of operations for the purpose of determining the need at any time for the addition of new equipment and improvements, repair or replacement of existing equipment and improvements or the alteration of the Facility.

## 6. LIENS AND CHARGES:

6.1 The creation or imposition of any lien or charge upon the Facility through acts or

omissions of CUSTOMER, its agents, contractors or sub-contractors, shall be deemed a default under the provisions of this Agreement unless remedied as set forth in Section 6.2.

6.2 In the event any such lien or charge shall not be paid or bonded by CUSTOMER within fifteen (15) days after the lien or charge accrues, NYS&W shall have the right to pay such lien or charge and CUSTOMER shall repay the cost to NYS&W, as additional rent hereunder, with interest at ten percent (10%) per annum from the date of payment by NYS&W, promptly upon rendition of bill therefore. Nothing in this paragraph or in any other paragraph of this Agreement shall be construed as authority to CUSTOMER to create any lien on NYS&W's interest in the Facility.

#### 7. RESPONSIBILITY OF CUSTOMER TO ITS EMPLOYEES:

CUSTOMER, in the performance of any and all work by CUSTOMER under the terms of this Agreement or otherwise, upon or adjacent to the Facility, will furnish all labor and supervisory forces of every kind and CUSTOMER shall employ, pay from CUSTOMER's own funds and have the right to discharge all persons engaged in the performance of such work and all such persons shall be and remain the sole employees of CUSTOMER and subject to CUSTOMER's exclusive supervision, direction and control.

#### 8. INDEMNIFICATION:

8.1 CUSTOMER will be responsible for and will indemnify, save harmless and defend NYS&W against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, damage to or loss of property of NYS&W, CUSTOMER, or of agents, servants or employees of either, or of any other person, and against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, injury to or death of persons, including agents, servants, or employees of NYS&W or of CUSTOMER, or any other person (including CUSTOMER if a natural person), which said damage, loss injury or death shall arise in any manner, directly or indirectly, out of or incidental to or in connection with, the use or occupation of the Facility or exercise of this Agreement by CUSTOMER or any motor carrier performing services related to this Agreement, including any appurtenant sidewalks or driveways, except to the extent caused by the negligence of NYS&W or other entities allowed to use the Facility by NYS&W.

In the event that NYS&W allows other entities to use the Facility, it shall require such entities to enter into a similar indemnification agreement which shall require such other licensee to indemnify CUSTOMER for any claims or damages caused by such other licensee. CUSTOMER's indemnification hereunder shall not extend to the use or occupation of the Facility, or exercise of a license, by another licensee of NYS&W.

8.2 CUSTOMER will be responsible for and will indemnify, save harmless and defend NYS&W against and from any and all claims and suits for, and any and all liability, loss or expense

arising from or incidental to or in connection with, damage to or loss of any bulk materials (i) for materials brought to the facility by railcar, from and after the date and time such railcar is placed by NYS&W; and (ii) for materials to the facility for transport out by railcar, from and after the date and time such railcar is released to NYS&W, except to the extent caused by the negligence of NYS&W or other entities allowed to use the Facility by NYS&W.

#### 9. INSURANCE:

CUSTOMER shall provide and maintain in effect during the term and any continued term hereof, a policy of public liability insurance including contractual liability covering liability assumed by the CUSTOMER under the provisions of the foregoing section 9 of this Agreement. Said insurance shall be in limits of not less than \$5,000,000.00 combined single limit, and shall be in companies and forms acceptable to NYS&W.

CUSTOMER shall furnish to NYS&W certificates of all required insurance policies upon request of NYS&W. All such policies shall be endorsed to provide not less than thirty (30) days' notice to NYS&W of any cancellation thereof and of any material change in coverage.

The providing of said insurance coverages shall not be deemed a limitation on the liability of CUSTOMER as provided in this Agreement, but shall be additional security therefore.

At the end of the initial term of this Agreement, and after the end of each five years thereafter, NYS&W may increase the limits of insurance required herein.

#### 10. ASSIGNING, UNDERLETTING:

CUSTOMER shall not assign or transfer this Agreement in whole or in part, or sublet the Facility or any part thereof, without the written consent thereto by NYS&W. Any assignment or transfer of this Agreement shall not affect any obligations of CUSTOMER hereunder arising prior to such assignment or transfer. Any such assignment or transfer of this Agreement shall not be effective until delivery to NYS&W of a written assumption of CUSTOMER's obligations under this Agreement signed by the assignee/transferee in form reasonably acceptable to NYS&W.

The rights, duties, and obligations of the respective parties hereto under this Agreement shall carry to and be binding upon the parties' successors and assigns, respectively.

#### 11. ORDINANCES:

CUSTOMER, at its sole cost and expense, shall comply with and obey all laws, ordinances, rules, regulations and requirements of all Federal, State, Municipal, County, Town, Village or other governmental authorities and the various departments thereof now existing or hereafter created, so

far as the same may affect its use of the Facility or the neighboring streets, roadways, sidewalks, alleys, areas or yards, and CUSTOMER's improvements, if any.

## 12. ENVIRONMENTAL REGULATIONS:

12.1 CUSTOMER covenants that it will not release, dispose, cause to dispose, or aid and abet in the release or disposal of any hazardous or explosive chemical, impurity, waste, or other substance on or near the Facility. In the event that any court, duly constituted public authority, municipality or agency enters an order or judgment against NYS&W, CUSTOMER, its customers, employees or visitors, for any such release or disposal resulting out of such release or disposal by CUSTOMER, CUSTOMER shall indemnify and hold NYS&W harmless for all expenses associated in compliance with said judgment, to include but not be limited to, clean-up and restoration cost of the site to a safe condition. Further, CUSTOMER agrees to pay and discharge all reasonable costs, attorneys' fees or other costs of litigation that NYS&W may incur in enforcing or defending compliance of the foregoing.

12.2 CUSTOMER agrees to fully cooperate with NYS&W, at CUSTOMER's own expense, at all times both during and at the termination of this Agreement, in regard to any applicable environmental regulations. Without limiting the foregoing, CUSTOMER will, in a timely manner, prepare and execute forms required by a cessation of operations, termination of this Agreement, or sale of the premises, (the "Transaction") and prepare and execute any sampling and/or clean-up plan regarding CUSTOMER's use of the premises required by any governmental agency as a condition for any Transaction.

12.3 CUSTOMER shall not be responsible for any such release which (i) predates this Agreement; or (ii) is caused by NYS&W or another licensee of NYS&W.

12.4 NYS&W shall conduct all of its operations in compliance with all legally applicable environmental statutes, ordinances, rules, regulations and requirements of all Federal, State, Municipal, County, Town, Village or other governmental authorities and the various departments thereof now existing or hereafter created.

## 13. DEFAULT:

Default is defined as the failure to discharge any of the covenants herein. If either party to this Agreement fails to correct default hereunder within thirty (30) days after written notice to do so, or, if such default cannot with best efforts be cured within thirty (30) days then as soon thereafter as possible, the party serving such notice may unilaterally terminate this Agreement forthwith. Waiver of any default shall not be construed as a waiver of either a subsequent or continuing default.

The actions and remedies provided in this Agreement in case of default shall not be deemed

exclusive but shall be in addition to all other actions and remedies at law or in equity in case of any such default; and no action or remedy taken or omitted by NYS&W in case of default shall be deemed a waiver of such default and waiver of a particular default shall not be deemed a waiver of any other default or a waiver of the same default again occurring, nor shall any failure on the part of NYS&W to compel a fulfillment of any one or more of the covenants, terms and conditions herein contained be held to be a waiver of its right to enforce the same at any time thereafter during the term or any contained term of this Agreement.

#### 14. REMOVAL:

Upon the expiration of the term or any continued term hereof and upon any other termination of this Agreement, CUSTOMER, at CUSTOMER's sole cost and expense, shall remove from the Facility any materials, buildings and structures brought to the Facility by CUSTOMER, except additions and alterations made with the consent of NYS&W and which consent included the provision that such would not be removed, and all waste, rubbish and debris brought to the Facility by CUSTOMER; and repair any damage it has caused to the Facility, reasonable wear and tear excepted. All such work of removal and restoration shall be completed on or before the expiration or other termination of this Agreement.

Should CUSTOMER fail, neglect or refuse to so remove such property and make the aforesaid restoration, then and in such event NYS&W shall have the following rights, which are hereby expressly given it, viz: to remove such property and to make the aforesaid restoration, all at the expense of CUSTOMER, which expense CUSTOMER hereby expressly agrees to pay promptly upon demand, or to sell any of such property and retain the proceeds of such sale and to deliver such property to the purchaser or interest therein of CUSTOMER and without any liability whatsoever to CUSTOMER or to any other person or corporation; or, if NYS&W so elects, in lieu of such sale or removal of any of such property, NYS&W may retain and use the same for interest therein of CUSTOMER or of any person or corporation claiming through or under CUSTOMER and without any liability whatsoever to CUSTOMER or to any other person or corporation.

#### 15. SEVERABILITY:

The provisions of this Agreement are severable and it is the intention of the parties hereto that if this Agreement cannot take effect in its entirety because of the final judgment of any court of competent jurisdiction holding invalid any part or parts thereof, the remaining provisions of this Agreement shall be given full force and effect as completely as if the part or parts held invalid had not been included therein.

#### 16. FORCE MAJEURE:

In the event that either CUSTOMER or NYS&W is unable to perform as stated in this Agreement due to or as a result of one or more of the following causes: acts of God, including but not limited to floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions; act of public enemy, war, blockade, insurrection, riot, vandalism or sabotage; fire, accident, wreck, derailment, washout, or explosion; strike, lockout or labor dispute; embargoes or AAR service orders; or governmental laws, orders or regulations, this Agreement shall be suspended only insofar as said performance is affected by the described cause and only for the duration of such cause.

17. EMINENT DOMAIN:

NYS&W and CUSTOMER herein expressly acknowledge that the property will be utilized by CUSTOMER exclusively as an interstate public rail yard facility. In the event eminent domain proceedings are successfully undertaken and completed against any portion of such property which, in the sole and final determination of NYS&W, leave the remainder, together with any contiguous substitute facilities made available by NYS&W, usable by CUSTOMER for purposes of an intermodal rail facility, then this Agreement will not terminate. The effect of such condemnation will be to terminate the Agreement as to the portion of the property condemned, and leave the Agreement in effect as to the remainder of the property and any contiguous substitute facilities made available by NYS&W. In the event the entire property is taken and NYS&W is unable to provide a mutually acceptable alternative site, this Agreement shall terminate on the date title shall be acquired. It is agreed that CUSTOMER's interest, if any, in improvements and personal property, shall be severed from the NYS&W's interest in such proceeding.

18. ABANDONMENT OF PREMISES:

If CUSTOMER shall vacate or abandon the Facility, this Agreement may be forfeited at NYS&W's option and declared null and void. Upon such abandonment and after five (5) days written notice to CUSTOMER, NYS&W, its agent or attorney, shall have the right without further notice to re-enter upon said Facility and remove all property therefrom without being deemed guilty of any manner of trespass or other tort or violation of law, and without prejudice to any remedy provided by law for the breach of said Agreement.

19. THIRD-PARTY MODIFICATION:

In the event that the Surface Transportation Board ("STB") or any other governmental authority shall issue or adopt any law, order, rule or regulation, the effect of which shall be to modify, amend, cancel or terminate any or all of this Agreement, either party shall promptly deliver to the other a full and complete copy thereof. Provided, however, that neither party shall seek such

action by the STB or other government authority. If any provision of this Agreement shall be found to be illegal or unenforceable, the remaining provisions shall not be affected thereby and shall continue in full force and effect.

20. NOTICE:

Any notice required or permitted to be given in writing under the terms, conditions and provisions of this Agreement shall be considered as having been given upon the mailing thereof of certified mail to the office address of the other party or to such other address as such party may from time to time specify in writing. A postal receipt showing the deposit of such notice shall be prima facie evidence of the giving thereof.

21. APPLICABLE LAW:

This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

22. SPECIFIC PROVISIONS FOR TRANSITION:

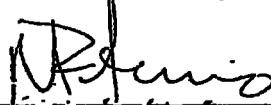
Attached hereto as Exhibit B are various provisions the parties have agreed to relating to commencement of operations and continuing operations.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized respective representatives on the day and year first above written.

WITNESS:

THE NEW YORK, SUSQUEHANNA AND  
WESTERN RAILWAY CORPORATION

By: \_\_\_\_\_



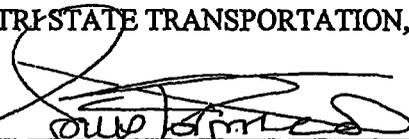
Title: \_\_\_\_\_

Nathan R. Fermo, President

WITNESS:

TRI-STATE TRANSPORTATION, INC.

By: \_\_\_\_\_



Title: \_\_\_\_\_

GFO, Sect.

EXHIBIT A



## EXHIBIT B

- **Start-up:** NYS&W acknowledges that CUSTOMER will initially deliver commodity to the Facility by truck, as it moves from its existing site to the Facility. This delivery of material to the Facility by truck will be complete by May30, 2009, at which time the provisions of Section 1.1 will apply in full.

- **Facility Maintenance:** At the time of commencement of operations, CUSTOMER will be the only entity using the Facility for loading/unloading activities. Accordingly, CUSTOMER will arrange for, at its own expense, all maintenance, utilities and expense relating to the truck scale and station house, any snowplowing, and grass cutting at the Facility, including adjacent sidewalks and areas to the edge of public streets. CUSTOMER may not remove existing structures or landscaping without prior approval by NYS&W.

- **Signs:** CUSTOMER shall be authorized to erect a sign or signs at the Facility, subject to reasonable prior review by NYS&W. CUSTOMER shall be responsible for obtaining any required local permits for its signs.

- **Shared Use:** In the event that NYS&W allows the use of the Facility by another entity for the purpose of loading/unloading commodities, (i) such subsequent user shall not be allowed to unreasonably interfere with CUSTOMER's operations at the Facility, and (ii) the provisions above relating to Facility Maintenance shall be equitably adjusted.

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**Riverdale Planning Board**

**IN RE:** New York Susquehanna & Western Railroad  
Hamburg Turnpike/Post Lane  
Block 17, Lot 4

Date of Hearing: April 23, 2009

**BEFORE:** Members of the Planning Board and Public

**TRANSCRIPT ORDERED BY:**

John Fiorilla, Esq. (Capehart & Scatchard)  
Attorney for New York Susquehanna & Western Railroad

TRANSCRIBER JEAN MIRZA  
G & L TRANSCRIPTION OF NJ  
40 Evans Place  
Pompton Plains, NJ 07444  
(973) 616-1051  
[www.webtranscription.com](http://www.webtranscription.com)

	<u>WITNESS</u>	<u>DIRECT</u>
1	<u>Nathan Fenno</u>	
2	(President NYS&W)	
3	By Mr. Fiorilla	9
4		
5	<u>Lou Formica</u>	
6	(Operations Manager)	
7	By Mr. Fiorilla	
8	Board Questions	15
9	Public Questions	96
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1 CHAIRMAN LOESNER: Okay.

2 MR. FIORILLA: Good evening. My name is  
3 John Fiorilla. I'm with the firm of Capehart and  
4 Scatchard. I represent the New York Susquehanna and  
5 Western Railroad Corporation.

6 We are here under different circumstances,  
7 unusual circumstances, because we are here based upon  
8 a court judgment, a consent order and a letter that  
9 our president, Mr. Fenno, who is with us today, wrote  
10 to the board, regarding the use of the railroad's  
11 property on Hamburg Turnpike.

12 As most of you know, a lawsuit in 1996  
13 resulted in a judgment dated August 21, 1996, and that  
14 was filed in 1998 with a consent order between the  
15 borough and the railroad regarding the Hamburg  
16 Turnpike facility.

17 The railroad in its letter of April 8<sup>th</sup>, 2009  
18 (phonetic), explains that there is a change in the  
19 product that will be trans-loaded (phonetic) at this  
20 facility.

21 Previously the product had been corn syrup  
22 and other food grade product, that had to be heated  
23 and transferred from tank cars to tank trucks at this  
24 facility. That use ended a couple of years ago.

25 Now the railroad wants to use the same

1 property to trans-load brick. It's fully explained in  
2 our letter of April 8<sup>th</sup>, 2009, and I would assume that  
3 the members of the board have that letter.

4 In that letter, we talk about exactly what  
5 the operations are going to be. We talk about changes  
6 to the facility, including movement of the rail cars  
7 that are there, the clean up of the facility and some  
8 other things that we would be doing in regards to the  
9 facility. And a descriptions of the operations.

10 I point out that the operations in regards  
11 to deliveries to and from this facility would be  
12 probably less than what the previous one was, it will  
13 be less trucks.

14 The railroad is here because of the consent  
15 order it signed, which said they would come before  
16 this board to discuss the health and safety and other  
17 things related to the -- to this use.

18 And in regards to what we put in our letter,  
19 we have an explanation. We also have passed out to  
20 you today a letter from Spectra Engineering  
21 (phonetic), which is the outside engineering company  
22 that worked for the railroad, which should address  
23 some of the concerns that Mr. Darmofalski raised in  
24 his letter, his recent letter. His letter, I think,  
25 is April 20<sup>th</sup>, the response was April 21<sup>st</sup>. And they

1 talk about those -- those types of things.

2           We are here tonight to discuss those issues  
3 and discuss the issues that are brought up by Burgis  
4 and Associates in their memorandum, which we recently  
5 received. April 20<sup>th</sup> date.

6           The railroad is -- wants to get this  
7 resolved, as far as the town is concerned as to what  
8 it feels is required, and what we feel is required,  
9 and to discuss that with the board. And we're here to  
10 answer any questions.

11           Also with us today is Mr. Formica, who is  
12 (inaudible) brick (inaudible) one of the brick  
13 (phonetic) people who will be involved in trans-  
14 loading for the railroad. And he can talk about the  
15 brick and anything in that regard. I'm sure he can  
16 answer any questions you have about the product  
17 itself. And we would be -- welcome any questions the  
18 board may have in regards to our letter.

19           We also provided to you a site plan, which  
20 I'm sure you have, of what the proposed changes would  
21 be in that regard.

22           If you recall in the consent order, it  
23 talked about fencing and so on. You'll also recall  
24 that there was a -- plan involved in that fencing.  
25 That fencing wasn't for the whole facility, because as

1 you recall, the board wanted it in certain areas and  
2 not in certain areas. And that's why this is the  
3 whole area (phonetic).

4 And those are the kind of issues we'll be  
5 glad to address today, as to what the board is looking  
6 for or any questions the board has in regards to what  
7 they see as this facility looking like (phonetic).

8 MR. BARBARULA: Why don't we, Mr. Fiorilla,  
9 why don't we have the people that are with you sworn,  
10 so that we don't have to go back and forth.

11 MR. FIORILLA: That will be fine.

12 MR. BARBARULA: If they can all come forward  
13 to that microphone.

14 MR. FIORILLA: I don't know if (inaudible)  
15 is going to testify. Mr. Formica, would you mind?

16 MR. BARBARULA: Gentlemen, would you please  
17 raise your hand?

18 N A T H A N F E N N O, SWORN

19 L O U F O R M I C A, SWORN

20 MR. BARBARULA: Thank you. Maybe you  
21 (inaudible) sit next to him and one by that other  
22 microphone, that way we make sure we get everything  
23 (phonetic). Mr. Formica, if you want to sit by that  
24 microphone, this way when people ask you questions  
25 (inaudible).

1 MR. FORMICA: Sure.

2 MR. BARBARULA: (Inaudible) take up  
3 (inaudible) for the record. All right, Mr. Chairman,  
4 I believe that everybody received a copy of the letter  
5 and the correspondence, as well as the site plan. I  
6 think that (inaudible) has distributed the consent  
7 order also.

8 CHAIRMAN LOESNER: I have the consent  
9 order. I have the --

10 MR. BARBARULA: (Inaudible) partial  
11 transcript (inaudible).

12 CHAIRMAN LOESNER: Partial transcript. I  
13 have the -- transportation board decision. I have  
14 been doing a lot of reading.

15 MR. FIORILLA: Do you have the judgment?

16 MR. BARBARULA: Yes.

17 (Microphone interference)

18 MR. BARBARULA: I think maybe that -- Mr.  
19 Fiorilla, a good way you can probably start is -- just  
20 give the board an overview of this operation?

21 MR. FIORILLA: Well, the railroad's  
22 operation (inaudible).

23 (Microphone interference)

24 MR. FIORILLA: It's not Mr. Formica's  
25 (inaudible).

1 MR. BARBARULA: Well (inaudible) he's the  
2 (inaudible).

3 MR. FIORILLA: He's going to be working  
4 there.

5 MR. BARBARULA: (Inaudible) he's the one who  
6 is going to be operating it.

7 MR. FIORILLA: ~~Well, he's going to be~~  
8 ~~working there and operating the facility for the~~  
9 ~~railroad. It's the railroad's operation.~~ I would  
10 like to have Mr. Fenno go first, if you don't mind,  
11 Mr. Barbarula.

12 MR. BARBARULA: Not a problem. I thought  
13 there was a little lull there, I started to jump in.  
14 Go ahead.

15 MR. FIORILLA: That's fine.

16 MR. BARBARULA: Go ahead.

17 UNIDENTIFIED MALE: It's not often you get  
18 an opportunity like that with Mr. Fiorilla.

19 MR. BARBARULA: That's (inaudible) I noticed  
20 (inaudible).

21 MR. FIORILLA: You (inaudible) --

22 UNIDENTIFIED MALE: (Inaudible) -- all of  
23 our past experience.

24 MR. BARBARULA: (Inaudible) -- federal court  
25 and the state court and the federal court again and

1 back to the state court (inaudible).

2 MR. FIORILLA: Well, John, you know, there  
3 is the -- tape of you and me in state court, and I  
4 played that for many people. I want to tell you, we  
5 should have copyrighted that -- I tell you (phonetic).

6 MR. BARBARULA: (Inaudible) -- my image to  
7 make money is -- (inaudible).

8 (Laughter)

9 MR. BARBARULA: Go ahead Mr. Fiorilla. It's  
10 all yours.

11 DIRECT EXAMINATION BY MR. FIORILLA:

12 Q Mr. Fenno, would you give us a summary of  
13 the letter that you provided to the board on April 8<sup>th</sup>?

14 A Sure. Essentially, I tried to set out in this  
15 letter as much detail, realistically, as we could  
16 about the operations. (Phonetic)

17 UNIDENTIFIED MALE: Speak up, please.

18 A Okay. The operations of the train is, I would  
19 guess, probably typical for what -- to what the town  
20 experienced in the past. The railroad will bring  
21 loaded cars to the site, would remove empty cars from  
22 the site.

23 And the times and hours of operating are  
24 difficult to predict. They tend to be in the early  
25 hours in the morning, late hours of the night. Under

1 our current operating plan -- but that can change from  
2 time to time (phonetic), without -- without, really,  
3 (inaudible).

4           The actual cars, loaded cars would be placed  
5 in such a way that there could be access by the -- the  
6 -- unloading ramp (inaudible) for this site. Forklift  
7 trucks. Brick comes in in boxcars. The forklift  
8 trucks would access the railroad car off of the  
9 loading ramp. Bring -- the forklift would bring  
10 bundles of brick out of the railroad car, place them  
11 in the areas indicated on the plan for temporary  
12 storage.

13           When we drew this plan, we attempted to  
14 indicate all areas that could potentially be used from  
15 time to time for -- for storage of brick, in order  
16 that there would be no potential that we put it  
17 someplace where we -- we didn't tell that we were  
18 (inaudible).

19           The brick then moves out of the facility on  
20 -- on trucks, as indicated on the -- in the -- in my  
21 letter. Again, the forklift trucks -- truck  
22 (inaudible) forklift lifts the bundles of brick on to  
23 -- on to the back of the trucks and they -- they leave  
24 the facility. All access by truck -- to the facility  
25 -- is via Hamburg Turnpike, obviously, because of the

1 restrictions on Post Lane.

2           The -- the loading and un -- the unloading  
3 of railroad cars, the loading of trucks, is intended  
4 to occur between 7 a.m. and 4 p.m. Mostly weekdays,  
5 occasionally on Saturday.

6           And the -- the expectation is that there  
7 would be a maximum of four trucks used with up to -- a  
8 truck making up to two -- two loads per day. So -- a  
9 total of a maximum of eight movements in and out of  
10 the -- of the facility.

11           Q     In regards to the facility itself, what  
12 plans in regards to changes does the railroad have?

13           A     Well, the only -- I mean, the changes that are  
14 planned, as I indicated, there is a plan to construct  
15 a loading ramp, as indicated, at the location as  
16 indicated on -- in a -- plan of the loading ramp, is  
17 indicated on the plan (phonetic).

18           Currently, down the center of the facility  
19 there are, I believe, 23 stanchions that we use for  
20 the -- for the prior use.

21           There's a -- there's a water and electrical  
22 service at each of the stanchions. The stanchions  
23 that are in the area where the -- where the loading  
24 dock will be built will be -- will be removed. I  
25 suspect several of the other stanchions will be

1 removed. The electrical service and water service to  
2 the stanchions will all be -- be turned off. They all  
3 feed off of a common source near the station building.

4 (Phonetic)

5 MR. BARBARULA: People are having a tough  
6 time hearing you. You need to --

7 MR. FENNO: Do I need to be closer to this?

8 MR. BARBARULA: No, no -- the people in the  
9 back can't hear you --

10 MR. FENNO: Oh -- that's going to be a  
11 problem.

12 MR. BARBARULA: Okay. That doesn't magnify  
13 your voice --

14 MR. FENNO: Okay.

15 MR. FIORILLA: This isn't a microphone, it's  
16 -- just recording --

17 MR. BARBARULA: (Inaudible) recording  
18 (inaudible).

19 MR. FENNO: Okay.

20 MR. BARBARULA: (Inaudible) just keep it up  
21 because people are leaning over any more they're going  
22 to fall out of their chair.

23 MR. FENNO: Okay.

24 BY MR. FIORILLA:

25 A And I think that pretty much covers it. As -- as

1 we indicated in the letter, there is some clean up  
2 required at the facility. We do have several railroad  
3 cars at the facility that we will -- we will be moving  
4 when we can. There is still some work that needs to  
5 be done to those cars before they can moved, some  
6 minor work.

7           And as I stated, there is some -- there is  
8 some clean up that needs to be done. I was at the  
9 site today, I noticed there is a section of fence that  
10 is missing that needs to be replaced near the fire  
11 department. Things of that nature.

12           CHAIRMAN LOESNER: My question. My  
13 questions all really relate to the Burgis letter and  
14 to Paul's letter, so I think once we go over those  
15 two, it may answer a lot of questions I have. And  
16 other people. As far as, you know, how the employees  
17 are housed. And --

18           MR. FIORILLA: That we can talk (inaudible)-

19           CHAIRMAN LOESNER: --

20           MR. FIORILLA: -- trucks (inaudible) the  
21 employees will be at the station. They are not going  
22 to be in a separate building, the building that is  
23 already there now on the site, which is, you know, has  
24 heat and everything else.

25           CHAIRMAN LOESNER: Okay.

1           MR. FIORILLA: So they can be inside the  
2 station. There is about parking (inaudible) we saw  
3 tonight, for about eight cars out right in front of  
4 the station. There is probably more parking if you  
5 looked around the site. But just right in the front  
6 there's eight spots right there.

7           And that's where all the employees would be.  
8 There is no additional, like, trailers or anything  
9 else that would be constructed. There is no need for  
10 that, there is plenty of room in the station for those  
11 (inaudible).

12           CHAIRMAN LOESNER: The storage -- buildings  
13 for the forklift. There is no equipment that needs to  
14 be stored.

15           MR. FIORILLA: Mr. Formica, could you answer  
16 those.

17           MR. FORMICA: No, nothing like that. It's  
18 just -- the forklifts are outside. We'll have a  
19 container, like a -- like a shipping container that  
20 will keep some things that need to be covered from the  
21 weather inside that. That will be within the gated  
22 facility. But other than that, there is nothing --  
23 storage. (Phonetic)

24           CHAIRMAN LOESNER: Trash dumpsters.

25           MR. FORMICA: Yes, the plan is to put a

1 trash dumpster next to the loading dock, so any debris  
2 that comes out of the rail car can be easily dropped  
3 right into that container. And other than packaging  
4 debris that's within the rail car, there is no other  
5 generation of debris.

6           The bricks are self-contained in their own  
7 cubes. And they are offloaded from the train exactly  
8 that way and put on the ground, and they are removed  
9 exactly that way, as well.

10           CHAIRMAN LOESNER: It's unclear on the plan  
11 how far the 16-foot high fence goes down the property  
12 line. Can you show me where it stops?

13           UNIDENTIFIED MALE: -- fence or a wall --  
14 some places it is called a wall, some places it is  
15 called a fence.

16           MR. FENNO: Well, I think the plans clearly  
17 (inaudible) --

18           UNIDENTIFIED MALE: That's what we're  
19 looking at.

20           MR. FENNO: Okay.

21           UNIDENTIFIED MALE: Block -- block 24 is  
22 where the 16 foot wall -- ends (phonetic).

23           CHAIRMAN LOESNER: In the decree, it  
24 mentions the property by name, not by lot. So I was  
25 trying to figure out which lot that was. I think in

1 the decree it was the Mara (phonetic) property. But I  
2 don't -- I don't know which one that is.

3 MR. FENNO: Where, near -- near Arlington  
4 Avenue there is an indication -- end of chain link  
5 fence -- beginning of 16-foot high wall, which is the  
6 (inaudible).

7 CHAIRMAN LOESNER: So the 16-foot high fence  
8 goes all the way down to Post, down to --

9 MR. FENNO: No, sir.

10 CHAIRMAN LOESNER: No.

11 MR. FENNO: They're at block 24, lot 4.

12 CHAIRMAN LOESNER: Oh, okay, there it is, I  
13 got it.

14 MR. FENNO: (Inaudible) you'll see -- end of  
15 16 foot high wall.

16 CHAIRMAN LOESNER: All right, then my next  
17 question is -- is the 16-foot high fence going to be  
18 extended down to lot 8?

19 MR. FORMICA: Well, we have not -- we have  
20 not proposed that. This whole -- that was done that  
21 is shown on the plan is all done (inaudible).

22 MR. FIORILLA: It was done pursuant to the  
23 consent order that you asked us to do.

24 CHAIRMAN LOESNER: Well, why --

25 MR. FIORILLA: Why was it done that way? I

1 think the reason why -- and I was the attorney -- was  
2 because there were residents that didn't want the wall  
3 extended past their property. But certain other ones  
4 did. So what we did -- and I know Mr. Darmofalski may  
5 remember, because I know he was here for that --

6 MR. DARMOFALSKI: --

7 MR. FIORILLA: The railroad -- we, in the  
8 consent order, which had attached to it -- which I  
9 don't see attached in the one that I have here, had --  
10 had the site plan or a map -- showed which properties  
11 it would be extended to. And that's what the current  
12 one shows. It shows how we built it (inaudible).

13 CHAIRMAN LOESNER: All right.

14 MR. FIORILLA: -- and we built it based on  
15 the consent that we had with the board at that time.

16 CHAIRMAN LOESNER: Just trying to get it  
17 clear in my mind.

18 MR. FIORILLA: Yes, I mean, that's -- that's  
19 what happened. It was -- and I think that what Mr.  
20 Fenno just testified to is part of that wall down by  
21 the fire station, which, by the way, we also granted  
22 (inaudible).

23 MR. FENNO: No, no --

24 MR. FIORILLA: Where was it?

25 MR. FENNO: By the other side. The fence --

1 down here --

2 MR. FIORILLA: Chain link fence --

3 MR. FENNO: Chain link fence.

4 MR. FIORILLA: Okay.

5 CHAIRMAN LOESNER: All right.

6 MAYOR BUDESHEIM: Something you said at the  
7 very beginning of your testimony, I was a little  
8 confused. You referred to Mr. Formica running the  
9 brick business. I believe, Mr. Fenno, you said no,  
10 we're running it (phonetic).

11 MR. FENNO: Let me try to clarify the  
12 relationship if we can, because that maybe -- it's  
13 very normal to me in my business and my industry, but  
14 perhaps a little different than -- that --

15 MAYOR BUDESHEIM: Maybe you could get closer  
16 to the microphone.

17 MR. FENNO: (Inaudible) frequently  
18 (inaudible).

19 MAYOR BUDESHEIM: It doesn't amplify.

20 MR. FENNO: The railroad -- which is fairly  
21 typical at lots of sites, at our railroad and on other  
22 railroads, we move product to -- to destinations.  
23 Designations sometimes at a place where it's going to  
24 be used, a factory. Other times the destination is at  
25 a site where it's -- where it is loaded onto trucks

1 for -- for delivery to the ultimate consumer. Or  
2 ultimate site.

3           And that is such as what this place is used  
4 for, just as a -- just as it was as a corn syrup  
5 facility, when this was used for corn syrup.

6           When it was used for corn syrup, the  
7 railroad brought railroad cars in and -- and another  
8 company called Gulfmatic (phonetic), which runs tank  
9 trucks, would -- would be responsible for the  
10 unloading of the corn syrup into the trucks. And the  
11 delivery of the -- of the material to the -- to the  
12 ultimate user.

13           Similarly, in this case, the railroad brings  
14 boxcars with brick to the site, and Mr. Formica's  
15 firm, which is, I guess, realistically you have more  
16 than one business, but -- but the business of the  
17 trucking or the arranging for the -- for the  
18 transportation (phonetic). Takes care of the  
19 unloading of the railroad cars and the -- and arranges  
20 for the trucking of the -- of the material to the --  
21 to the end site (phonetic).

22           MAYOR BUDESHEIM: The brick part, this  
23 business, isn't railroad business.

24           MR. FENNO: Well, this is all  
25 transportation, if that's what you're asking me.

1           MAYOR BUDESHEIM: I was just trying to  
2 clarify what you said in the beginning when the  
3 attorney to Mr. Formica as operating the brick  
4 business and you said no, you said no, we're operating  
5 the brick business.

6           MR. FENNO: Oh, I said we would operate the  
7 brick business. I didn't say Mr. Formica was  
8 operating.

9           MAYOR BUDESHEIM: I think --

10          MR. FENNO: I think just to try to clarify  
11 here, that is the (inaudible) as I described it, is  
12 the typical (inaudible) here or any other place -- the  
13 way that (inaudible) trans-loading of materials from  
14 railroad cars and (inaudible).

15          MAYOR BUDESHEIM: So then they're basically  
16 a tenant of the railroad?

17          MR. FENNO: No, sir. (Phonetic)

18          MAYOR BUDESHEIM: What are they?

19          MR. FENNO: ~~They're part of the -- a link in~~  
20 ~~the transportation of this -- of this material.~~

21          MAYOR BUDESHEIM: Come on, any business is a  
22 link in the transportation. Home Depot could be  
23 considered a link in the transportation --

24          MR. FENNO: No, I think -- I think you'd  
25 find Home Depot would be a retail -- retail

1 establishment.

2           MAYOR BUDESHEIM: This is a whole --  
3 wholesale establishment.

4           MR. FENNO: This is not a wholesale  
5 establishment. This material is ordered for -- for  
6 specific destinations, it's shipped to the site to be  
7 loaded into railroad cars to go to those destinations.

8           MR. FORMICA: None of the people here own  
9 the brick.

10          MAYOR BUDESHEIM: That was my question.

11          MR. FORMICA: No --

12          MAYOR BUDESHEIM: Who owns the brick?

13          MR. FORMICA: The people who are going to  
14 get the brick own it. They bought it at another site  
15 and they are shipping it.

16          MAYOR BUDESHEIM: So your -- you're  
17 contracted to go from point A to point B.

18          MR. FORMICA: Right.

19          MAYOR BUDESHEIM: To make -- it simple in my  
20 mind.

21          MR. FORMICA: Right.

22          MAYOR BUDESHEIM: Once it hits point B,  
23 because when you gave me your business card I looked  
24 it up on the website and you're listed as one of the  
25 largest brick wholesalers in this area. You do own

1 the brick, don't you?

2           MR. FORMICA: Actually, we don't own the  
3 brick. The legality of it is that when the bricks are  
4 -- not the bricks, but the actual transactions that we  
5 conduct, there are -- when the customers order  
6 material, they are manufactured at the different  
7 (inaudible) plants. They are, at that point, sold to  
8 the customer, FOB shipping point, where title passes.  
9 So the customer, right from the brick manufacturer  
10 (inaudible).

11           And what we do is what we call back-to-back  
12 transactions. The customer will order materials for a  
13 particular project, it might be a hospital or school,  
14 municipality. They -- we, in turn, put an order into  
15 the manufacturer to manufacture the quantity and type  
16 and color and size and all that is required for this  
17 particular project.

18           The customer sends up an order, we in turn  
19 send the very same order to the manufacturer. They  
20 manufacture the brick. When it's ready, we coordinate  
21 with the customer, once it's going to be take in, and  
22 then in turn delivered to the customer.

23           But the actual ownership of the brick itself  
24 is FOB shipping point. So that the terms of the  
25 ownership actually takes place as soon as it leaves

Board Ques

1 the manufacturer.

2           MAYOR BUDESHEIM: A  
3 with that.

4           MR. FORMICA: We do  
5 the customers speak with to c  
6 transaction.

7           UNIDENTIFIED MALE:  
8 like the owner (phonetic).

9           MAYOR BUDESHEIM: Sounds like a wholesaler.  
10 Isn't what a wholesaler buys from a manufacturer  
11 itself a retailer?

12           MR. FORMICA: No, a wholesaler, I believe --  
13 again, it may be semantics, but I think a wholesaler  
14 actually take title to the materials. In this case,  
15 the title passes immediately to the customers.

16           MAYOR BUDESHEIM: Then why is so much brick  
17 stored here? Why doesn't the customer just come pick  
18 it up and bring it to the job site?

19           MR. FORMICA: That's a fair question. You  
20 have to imagine that you might be building a -- around  
21 here, we do projects around here, as well.

22           But envision, if you would, a project,  
23 perhaps, in New York city. It might be Presbyterian  
24 Hospital. There is not much room on a site for them  
25 to take all the brick that is required. The brick has

1 to be brought to the site as the project continues.  
2 But they can't take all that volume of brick to the  
3 site. And at different stages of the project, things  
4 go quickly, sometimes they may slow down. They might  
5 be doing steel. They might have to pause to do some  
6 windows or do some site survey.

7 So it's typical in all projects, even local  
8 projects here where they take deliveries as the  
9 materials are required, as opposed to putting them on  
10 the site and then having inability to move them where  
11 they are actually needed.

12 MAYOR BUDESHEIM: There is no place between  
13 Presbyterian Hospital and New York City and here for  
14 you to deliver these to. They have to stay here in  
15 Riverdale.

16 MR. FORMICA: Say -- again -- (phonetic)?

17 MAYOR BUDESHEIM: They have to stay here in  
18 Riverdale? There is no place between Presbyterian  
19 Hospital and New York City and here for you to store  
20 these bricks.

21 MR. FORMICA: Well, Presbyterian Hospital is  
22 not the exclusive location to where the brick is  
23 going.

24 MAYOR BUDESHEIM: You --

25 MR. FORMICA: I said merely as an example.

1 I understand the point you're making. Logically, I  
2 wish we could deliver them directly to Presbyterian  
3 Hospital.

4 But bricks actually require -- in terms of  
5 logistics and costs associated with it, to be  
6 transported by rail. There are not that many rail  
7 facilities. If there was one next to Presbyterian  
8 Hospital, we would prefer to use that, because that  
9 would be the most convenient. Because you don't want  
10 to handle brick and transport it too far.

11 MAYOR BUDESHEIM: Where are you now? Are  
12 you in Wharton or Rockaway?

13 MR. FORMICA: We're in a couple of  
14 locations. We're now presently in Brooklyn, which  
15 we're vacating and leaving Brooklyn. We went out to  
16 ~~Rockaway~~ ~~Kenilworth~~ (phonetic), actually, a railroad  
17 there had offered a (inaudible) to us.

18 And as we began to mobilize the -- like  
19 we're talking about doing here, the township had  
20 spoken up and said that the property that the railroad  
21 had offered us to use actually belonged to the  
22 township. And they had, essentially, given us the key  
23 to the gate to put materials there.

24 So it was much to our surprise and  
25 disappointment that their representations of what they

1 said in terms of putting materials there, didn't have  
2 that capacity to actually hold out.

3 UNIDENTIFIED MALE: Where are you located in  
4 Brooklyn?

5 MR. FORMICA: It's in Brooklyn (inaudible)  
6 Army terminal. Do you know where that is?

7 UNIDENTIFIED MALE: I do.

8 MAYOR BUDESHEIM: If you don't own these  
9 bricks, how come you have so many locations? What are  
10 you doing? (phonetic)

11 MR. FORMICA: We do -- we do do a sizable  
12 amount of materials.

13 MAYOR BUDESHEIM: So you do own the brick.  
14 (phonetic)

15 MR. FORMICA: You would like me to say that.  
16 I would -- I would if it were true. But it's not.

17 MAYOR BUDESHEIM: (Inaudible)

18 MR. FORMICA: Say again?

19 MAYOR BUDESHEIM: You could operate out of a  
20 phone booth, all you do is call orders in and ship  
21 them somewhere (phonetic).

22 MR. FORMICA: Our offices -- our offices --  
23 our primary location is located in New York City on  
24 25<sup>th</sup> Street. Although, I would just like (inaudible)  
25 I'll come back to the residences (inaudible) here.

1 I'm from the local area.

2           In terms of a phone booth, akin to a phone  
3 book is we conduct all this business from an office on  
4 the 9<sup>th</sup> floor. We're not in the middle of construction  
5 sites, we're not in the middle of areas where you  
6 might think it would be, considering it's brick. It's  
7 an office; I go to work dressed this way each day.  
8 The people in the office go to work dressed this way.  
9 It's not a dirty type of operation; it's an office --  
10 (phonetic).

11           UNIDENTIFIED MALE: So can your customers  
12 buy direct from a manufacturer?

13           MR. FORMICA: ~~No, they can't.~~

14           UNIDENTIFIED MALE: So then you're a  
15 wholesaler.

16           MR. FORMICA: The manufacturer -- the  
17 manufacturers are at great distances, far away. And  
18 they don't have the ability to be able to deal with  
19 the local market here, so they need somebody here to  
20 help them in -- in the various local markets. They  
21 are -- all they do is really produce the materials.

22           UNIDENTIFIED MALE: Now you represent  
23 yourself as a trucking company. But to listen to you  
24 explain your role in how this product gets processed,  
25 you're actually taking the order, coordinating with

1 the manufacturer of the brick. I mean, it seems to me  
2 that you are much more than a trucking company. I  
3 think wholesaler has been used.

4 I mean, clearly, you're not just getting  
5 compensated for driving the bricks from Riverdale to  
6 Columbia Presbyterian on 168<sup>th</sup> Street. There's got to  
7 be more to it. I don't think you're -- to me, I don't  
8 believe you're being as forthright as I would expect  
9 about your role.

10 MR. FORMICA: Okay. Well, I give you  
11 information about (inaudible). What I alluded to  
12 before, we ~~actually have a company called Tri-State~~  
13 ~~transportation.~~ That's the company that is in the  
14 relationship with the railroad to move brick.

15 That company exclusively (inaudible) and its  
16 sole purpose is to receive rail cars, unload the  
17 material from the rail cars and then put them on the  
18 trucks for the transport (inaudible) in the  
19 eventuality of their final location. That's an entity  
20 onto itself. That's ~~called Tri-State Transportation.~~

21 ~~Tri-State Brick~~ and we have ~~Tri-State~~  
22 ~~Brick of New Jersey, Tri-State Brick of New York,~~  
23 ~~Tri-State Brick, utilizes Tri-State Transportation for~~  
24 ~~their services in moving the brick around. The Tri-~~  
25 ~~State Brick company itself, is nothing more than a~~

1 ~~marketing and a sales organization.~~ Tri-State  
2 Transportation, however, is really the trans-loading  
3 operation. They are the companies that are -- the  
4 company, that is, actually moving material. Does that  
5 answer your question?

6 UNIDENTIFIED MALE: I think it's a little  
7 bit clearer that there are other transactions that  
8 some group within this company is actually being  
9 compensated for for purchasing the brick or selling  
10 the brick (inaudible).

11 MR. FORMICA: Absolutely, sure.

12 UNIDENTIFIED MALE: And I think that was the  
13 point that we were trying to get to and, eventually,  
14 we ended up getting there.

15 MR. FORMICA: It may or may not be important  
16 to you, those transactions have nothing -- don't take  
17 place at this site.

18 MAYOR BUDESHEIM: If you don't want to wear  
19 the label of wholesaler, then I guess you're a  
20 warehouse.

21 MR. FENNO: No.

22 MAYOR BUDESHEIM: You're storing materials  
23 there. I mean, you've got to be something.

24 MR. FORMICA: Well, I'm not sure that just  
25 because you -- I'm not the first one that I fall into

1 the category or the second one. I am not sure if I  
2 can give a definition. I would say we buy -- I'm not  
3 even sure (inaudible).

4           MAYOR BUDESHEIM: You have got 1,000 feet of  
5 storage. Isn't that a definition of a warehouse?  
6 Storing material.

7           MR. FORMICA: It's not --

8           MR. FENNO: I don't think so. Let me  
9 interrupt here, because it's -- you know, this is -- I  
10 mean, this is, from the railroad's perspective, okay,  
11 understanding that I come from a very different  
12 perspective than -- than you folks do. But -- this is  
13 a very common thing for us in the railroad business.  
14 We have a wide variety of different types of  
15 materials.

16           We -- this is -- from our perspective, we  
17 have a facility in North Bergen where we -- where we  
18 handle -- handle automobiles. Again, the automobiles  
19 come to the site, they are parked there. They may be  
20 parked there for some time before they move out by  
21 rail, just because of the logistics of planning, the  
22 availability of rail cars, the timing of when they  
23 come in and when they come out.

24           We have a facility where we handle lumber.  
25 And a very, very similar situation to what we do here,

1 where lumber comes in by rail and it's put on the  
2 ground, and it -- it -- stays there until it moves out  
3 by truck.

4           It's really -- it's really logistics, in the  
5 sense of when you're moving large amount of materials,  
6 what railroads typically do is to move a fairly large  
7 amount of -- materials. When you move from -- from  
8 the railroad mode of transportation to the trucking  
9 mode of transportation, you need a site that can --  
10 can be flexible. And because of the -- the  
11 significant difference in the amount of material that  
12 rail moves, as opposed to truck (phonetic).

13           I mean, we could -- we could bring in, you  
14 know, at this site, we could bring in 23 loads of --  
15 of brick into this site -- 23 rail cars of brick into  
16 the site. And they would not all -- they would not  
17 all be unloaded and moved out in a day.

18           They may -- again, it's kind of a -- I --  
19 it's -- I kind of -- kind of try to use the example of  
20 the highway system where, you know, sometimes things  
21 are moving quickly, sometimes things are moving  
22 slowly, and you have to have flexibility in the  
23 transportation system to be able to absorb those  
24 surges and slow downs. And that's, essentially, what  
25 this facility does as the result of surges and slow

1 downs between rail and truck (phonetic).

2 MR. CLINTON: How many trucks would it take  
3 to offload 23 rail cars worth of material?

4 MR. FENNO: The -- it would be 90 to 100.

5 MR. FORMICA: Yes, about 3 and a half, four  
6 trucks per rail car.

7 UNIDENTIFIED MALE: They're not all being  
8 moved by truck you're telling us. Some will be moved  
9 by rail.

10 MR. FORMICA: No, the inbounds are coming by  
11 rail (inaudible).

12 MR. FENNO: The inbound is by rail, outbound  
13 by truck.

14 UNIDENTIFIED MALE: All -- all outbound by  
15 truck.

16 MR. FENNO: Yes.

17 MR. FORMICA: Correct.

18 MR. FENNO: And, as we have indicated in  
19 here, we have a maximum of four trucks making two  
20 trips a day. A maximum of eight.

21 UNIDENTIFIED MALE: But you had said  
22 (inaudible).

23 MR. FORMICA: My example of 23 rail cars is  
24 based just on the size of the facility from a railroad  
25 standpoint. But the intended operations are much

1 (inaudible).

2 MR. LANG: Going through your letter, on the  
3 certain hours of operations, there are going to be  
4 loading and unloading between 6 a.m. and 4 p.m. so  
5 while trucks are there loading, the diesel forklifts  
6 are going to be unloading. Right? There is no  
7 operation after 4, because they are closed at 4.  
8 Starting at 6. But the -- the trucks are going to  
9 start pulling out at 5:30 a.m.

10 MR. FENNO: I'm sorry, I'm trying to find  
11 (inaudible).

12 MR. LANG: It's on the last page.

13 UNIDENTIFIED MALE: The third page.

14 MR. LANG: Last page.

15 MR. FENNO: Right, we --

16 MR. LANG: so -- you're going to be loading  
17 and unloading at the same time.

18 MR. FENNO: That could certainly happen.

19 MR. LANG: That's what it says. Hours of  
20 operation for unloading and -- between 6 and 4, Monday  
21 through Friday. Railroad unloading will typically  
22 start around 7 a.m., an hour after opening. But the  
23 trucks will start up and pull out at 5:30 a.m. to  
24 avoid traffic.

25 MR. FORMICA: I can give you some insight

1 into that. If I may.

2 MR. LANG: Yes.

3 MR. FORMICA: The -- what they like to do is  
4 they like to load the truck in the evening by 4  
5 o'clock, when their trucks return back from their  
6 second round. So at that point the trucks are loaded.  
7 And then in the morning when they arrive, they just  
8 pull the trucks out and make their deliveries to the  
9 site.

10 They will return them back from that  
11 delivery around 11 o'clock. And then they will load  
12 the truck again for their second round, assuming that  
13 we have a second round. And at that point, the truck  
14 goes out again. It will come back. And then at that  
15 point, the truck will get loaded for the morning. And  
16 that's a typical scenario.

17 MR. VENZA: The truck would sit there loaded  
18 all night.

19 MR. FORMICA: Yes, exactly.

20 MR. VENZA: All night.

21 MR. FORMICA: Yes.

22 MR. FENNO: And --

23 MR. FORMICA: They do it for a couple of  
24 reasons. One, we don't want to load in the morning,  
25 it would make noise, and not -- the community wouldn't

1 want that, we just don't do that anyway. And also it  
2 helps the drivers, too, because this way they go in the  
3 morning and pull right out.

4 MR. VENZA: And -- tractor-trailer trucks  
5 we're talking about?

6 MR. FORMICA: Yes, there are some straight  
7 trucks and there is also some tractor-trailer trucks,  
8 as well.

9 MR. VENZA: We can assume that in colder  
10 weather they would be idling all night long.

11 MR. FORMICA: No, not at all. No, the  
12 trucks are off.

13 MR. VENZA: Really.

14 MR. FORMICA: Yes.

15 MR. VENZA: Okay.

16 UNIDENTIFIED MALE: No unloading or loading  
17 after 4 p.m.

18 MR. FORMICA: No, we don't do it. The  
19 (inaudible) it would (inaudible) it often even closes  
20 before then. It depends upon -- there might be an  
21 occasion where a train comes in and the customer needs  
22 the material and we're delinquent in getting it to  
23 them. It might be minutes or a short period  
24 thereafter. But very, very -- very rare. Not a  
25 typical situation.

1 UNIDENTIFIED MALE: (Inaudible) local  
2 (inaudible).

3 MR. MAGENNIS: Just one (inaudible).

4 MR. FORMICA: Pardon?

5 UNIDENTIFIED MALE: The drivers are local  
6 people, then?

7 MR. FORMICA: Yes, they are from Jersey.  
8 There's two drivers that we use all the time. They  
9 are not our drivers, they are common carriers, they  
10 are union people. Because a lot of the jobs that are  
11 delivered to are union projects. And those are -- we  
12 used the steady people because they are familiar with  
13 how to handle the material and how to unload it once  
14 they get back and forth.

15 MR. MAGENNIS: Mr. Fenno, I know you  
16 testified that there would be maybe four trucks, two  
17 loads per day. The question I have for you is you're  
18 not directly involved in the shipping of the material.  
19 What leverage do you have to control the number of  
20 trips a truck makes on any day or the number of trucks  
21 that -- I know you stated that it would be four trucks  
22 per rail car.

23 You guys get backed up and, you know, all of  
24 a sudden there's 20 trucks coming in. And I -- and I  
25 know it was your testimony that there would be eight,

1 let's say. What control do you have to prevent  
2 anything more than eight from coming to that site or  
3 leaving that site?

4 MR. FENNO: That's an interesting question.  
5 I -- I don't know that our agreement covers that  
6 specifically one way or the other.

7 MR. MAGENNIS: And the other question. Is  
8 -- what (inaudible) when will the railroad cars be  
9 delivering this product to the site?

10 MR. FENNO: I think I did state that it --  
11 typically, we would be -- we would be here with the  
12 locomotive late night/early morning.

13 MR. MAGENNIS: Well, what does that mean,  
14 late night?

15 MR. FENNO: It means the middle of the  
16 night.

17 MR. MAGENNIS: So you -- so you really --  
18 it's a 24 hour operation, you can come and go as you  
19 please.

20 MR. FENNO: Yes, we are a 24/7 operation,  
21 absolutely.

22 UNIDENTIFIED MALE: Pretty much -- pretty  
23 much with the corn syrup.

24 MR. FENNO: That's right.

25 UNIDENTIFIED MALE: The location that you

1 have in North Bergen, is that located very close to a  
2 residential neighborhood?

3 MR. FENNO: In North Bergen, no, it's not.

4 UNIDENTIFIED MALE: How about the lumberyard  
5 that you mentioned -- what town is that in?

6 MR. FENNO: That's in North Bergen.

7 UNIDENTIFIED MALE: North Bergen also. Is  
8 that located next to a residential neighborhood?

9 MR. FENNO: No, it's not.

10 UNIDENTIFIED MALE: It's not.

11 UNIDENTIFIED MALE: How long do these bricks  
12 stay (inaudible) when you (inaudible) load -- in other  
13 words, how long do they stay -- on the warehouse  
14 (inaudible) (phonetic).

15 MR. FORMICA: The -- it will vary by the  
16 nature of the job itself. Many times it will come in  
17 right away and go out that very same day. Otherwise,  
18 it could take -- if something occurs on the job site  
19 and there is a delay or they might -- find some  
20 contamination -- rail cars are different to get,  
21 sometimes that's the case, as well.

22 We may bring material in in anticipation of  
23 the difficulty of getting rail cars to replenish that  
24 which goes out. So it can range anywhere from  
25 immediate to -- to 45 days, maybe 60 days, perhaps.

1 UNIDENTIFIED MALE: The brick that you  
2 dropped off a month ago, those jobs shut down or what  
3 happened to those jobs? (Phonetic)

4 MR. FORMICA: The bricks that we got -- a  
5 month ago were -- one of two purposes. We were going  
6 to use brick to fill in the platform that is being  
7 built. So the perimeter brick are going to be made  
8 out of block, the center of the brick will be made out  
9 of this brick -- so we can bring the level up. And  
10 then concrete will be poured on top of that.

11 (Phonetic)

12 UNIDENTIFIED MALE: Those bricks --  
13 (phonetic).

14 MR. FORMICA: I'm not sure. I don't think  
15 so. The center of the platform (inaudible) there is a  
16 lot (inaudible).

17 UNIDENTIFIED MALE: I'm looking at the  
18 dimensions right here (inaudible). 75 by 15  
19 (phonetic).

20 MR. FORMICA: I think (inaudible) and I  
21 think the brick (inaudible) 30 inches wide.

22 CHAIRMAN LOESNER: Was there ever any  
23 consideration about relocating this into the  
24 industrial zone? Since the track runs right through  
25 it? On both sides.

1 MR. FENNO: Can you just tell me where  
2 specifically we're talking about?

3 CHAIRMAN LOESNER: Across the -- across the  
4 Hamburg Turnpike, you got the industrial zone there,  
5 right, you got (inaudible).

6 UNIDENTIFIED MALE: --

7 CHAIRMAN LOESNER: What's on the southern  
8 side that I'm thinking about?

9 UNIDENTIFIED MALE: Excuse me?

10 CHAIRMAN LOESNER: What's the side I'm  
11 thinking about by the phone building over there,  
12 what's that zone?

13 UNIDENTIFIED MALE: That's (inaudible)  
14 residential (inaudible) and (inaudible).

15 CHAIRMAN LOESNER: Okay. And then the  
16 southern side, like Mr. Darmofalski is talking about.

17 UNIDENTIFIED MALE: --

18 MR. DARMOFALSKI: You have the farming  
19 (phonetic), you have the industrial zone on the other  
20 side. And after that, Riverdale Road -- County Road.  
21 I don't know why you're not at that end, why are you  
22 in the middle of a residential and a community  
23 business district? (Phonetic)

24 MR. FENNO: Well, we're here, first of all,  
25 because the facility is there. And it exists. And,

1 you know, other than the loading dock and some very  
2 minor work, is ready to go from our standpoint.

3           The -- as I recall, as you go south from  
4 Post Lane, you have residences. As you get to  
5 Riverdale Road, the topography, I can recall -- when  
6 this facility was built more than 10 years ago and we  
7 looked at that site. And that site, because of the  
8 topography, does not lend itself for an unloading  
9 site.

10           On the -- on the geographic west, as you  
11 know, you've got the armory. The parking lot, which  
12 is not ours, of course. But -- that's some level land  
13 there. On the geographic east there is a fairly  
14 (inaudible) drop off (phonetic) that (inaudible) of  
15 which, although we may own, is (inaudible) a piece of  
16 property there, it may be half as wide as far as  
17 usable area. And it just does not have the ability to  
18 have (inaudible) and unloading (phonetic).

19           MR. DARMOFALSKI: It's 100 feet wide all the  
20 way down.

21           MR. FENNO: Yes. But as I stated, the  
22 geographic east side drops off (phonetic)  
23 significantly on our property. So while 100 feet wide  
24 (inaudible).

25           MR. DARMOFALSKI: That (inaudible).

1 MR. FENNO: (Inaudible) 40 of the feet,  
2 there's 15 down (phonetic).

3 MR. DARMOFALSKI: That's (inaudible) across  
4 Riverdale Road.

5 MR. FENNO: No, it's on this side of River  
6 -- it's on the north side of Riverdale Road.

7 MR. DARMOFALSKI: Behind the armory it's all  
8 flat.

9 MR. FENNO: Not on the other side of the  
10 tracks.

11 MR. DARMOFALSKI: But all the storage is on  
12 the same side (phonetic).

13 MR. FENNO: But you need -- but you need to  
14 have track to be able to have both and unloading track  
15 and a track to go around the unloading track. And  
16 there isn't enough land there that -- on grade, to be  
17 able to do that. (phonetic)

18 MR. FENNO: And believe me, I -- I recall  
19 when this was -- when this building was built, and we  
20 looked long and hard in that area, -- put it --  
21 (phonetic).

22 MR. DARMOFALSKI: Down there, you were  
23 looking to put a garage transfer station behind the  
24 armory. (phonetic)

25 MR. FENNO: We were?

1 MR. DARMOFALSKI: I met with the guy three  
2 or four times (inaudible).

3 MR. FENNO: You didn't -- you didn't meet  
4 with the railroad.

5 MR. DARMOFALSKI: (Inaudible)

6 CHAIRMAN LOESNER: (Inaudible) your  
7 questions, Paul?

8 MR. DARMOFALSKI: (Inaudible) I'm just doing  
9 some arithmetic, you're pushing out eight loads a day.  
10 It appears to me that you're going to be moving --

11 MR. FENNO: Four loads.

12 MR. DARMOFALSKI: So a little over two rail  
13 cars a day?

14 MR. FENNO: No, for loads a day.

15 MR. DARMOFALSKI: Four loads a day.

16 MR. FENNO: Potential eight trucks.

17 UNIDENTIFIED MALE: Four trucks times two  
18 loads.

19 MR. DARMOFALSKI: Right.

20 UNIDENTIFIED MALE: But -- (phonetic).

21 MR. DARMOFALSKI: Are you going to bring in  
22 -- are you going to bring in 12 rail cars and then  
23 he's good for a week? Or are you going to bring in  
24 two a day? I mean, what's the railroad's typical  
25 operations for something like that?

1 MR. FENNO: That's (inaudible) --

2 MR. DARMOFALSKI: How many rail cars would  
3 be -- I'm sorry (inaudible).

4 MR. FENNO: -- that's very difficult to  
5 predict.

6 MR. DARMOFALSKI: Okay.

7 MR. FENNO: We are at the tail end of -- of  
8 the rail transportation of this material, it's coming  
9 from --

10 MR. FORMICA: Nebraska or (inaudible).

11 MR. FENNO: Nebraska, wherever it's coming  
12 from.

13 MR. FORMICA: Washington.

14 MR. FENNO: And -- and how things get to the  
15 destination is dependent upon probably two other  
16 railroads before it gets to us. It depends on does  
17 the shipper ship out 12 cars at once, 2 cars at once.  
18 Do they cars get bunched? Do they get held together?  
19 Very difficult for us to predict.

20 MR. DARMOFALSKI: I'm talking about a  
21 typical week. You're going to be needing to move 11  
22 or 12 rail cars in and out just to satisfy the eight  
23 trucks a day. And --

24 MR. FENNO: At -- at maximum, yes.

25 MR. DARMOFALSKI: Well, I'm saying, you will

1 be having -- so you can't say that one movement a day  
2 or one movement a week, or you're going (inaudible) is  
3 the entire length from the Hamburg Turnpike to Post  
4 going to occupied with rail cars? And are they are  
5 going to move them around a lot? We're trying -- I'm  
6 just trying to get a flavor for the amount of activity  
7 going on. (Phonetic)

8 We went through this in 1996 also with --  
9 when we kind of pinned down and did some arithmetic of  
10 how many rail cars, and we kind of got a flavor for  
11 the board of -- trains are going to be moving in and  
12 out. Forgetting (phonetic) the hours of operations  
13 (inaudible).

14 MR. FENNO: Well, I mean, to begin with, you  
15 know, if they came two a day and were split by days --  
16 then we would be in there one time a day. If they  
17 came four one day and none the next day and four the  
18 next day, we would be in there every other day.

19 I mean, it really depends on the -- the  
20 logistics of the railroad cars showing up on our  
21 railroad, which we don't have any control over.

22 I can't imagine a circumstance in which we  
23 would be in there more than once a day.

24 MR. FORMICA: We've never had that.

25 MR. FENNO: And, frankly, you know, from our

1 standpoint, from the railroad's standpoint, again,  
2 depending on the needs of the customer, you know, we  
3 would rather be in there fewer times with more cars,  
4 simply because it costs us less money. As you can  
5 imagine.

6 MR. DARMOFALSKI: I'm just going to go back  
7 to your --

8 MR. FENNO: Sure.

9 MR. DARMOFALSKI: (Inaudible) with the corn  
10 syrup.

11 MR. FENNO: Sure.

12 MR. DARMOFALSKI: Say you brought them in  
13 two or three times a week and it took that amount of  
14 (inaudible) time to heat them up (inaudible).

15 MR. FENNO: A different product, right.

16 MR. DARMOFALSKI: (inaudible) move the  
17 product, and the -- and we kind of did the arithmetic  
18 that way, and you have other facilities, maybe  
19 (inaudible). I think the board -- some of the board  
20 members weren't here 10 years ago. And I guess it's  
21 more than 10 years ago. I don't think anybody was  
22 (inaudible).

23 But I'm just trying to give them a flavor  
24 for how many (inaudible)--

25 MR. FENNO: Right, and (inaudible)--

1 MR. DARMOFALSKI: -- (inaudible) how many  
2 times the railroad is (inaudible)--

3 MR. FENNO: (inaudible) -- and -- and --

4 MR. DARMOFALSKI: -- going to be moving the  
5 cars around.

6 MR. FENNO: -- as I say, from the railroad's  
7 standpoint, you know, we will deliver cars -- we  
8 typically deliver cars when they arrive, assuming  
9 that, you know, they are within -- and assuming that  
10 the facility has track space available, that there  
11 aren't already cars there.

12 You know, we -- we operate pretty much every  
13 day through Riverdale, not on this tracks, on our main  
14 line, pretty much every night we run through there.  
15 And, you know, obviously, we have other customers  
16 (inaudible) with (inaudible) that we (inaudible)  
17 Morris -- (phonetic) once in awhile, not so much  
18 lately.

19 So, you know, we -- as I say, it's difficult  
20 -- I don't know how to predict any more than that,  
21 than to say that, you know, I would be shocked if we  
22 were there more than once a day.

23 And the movement of the cars is -- pretty  
24 simply is you -- you place the loads and you pull the  
25 empties and place (phonetic) the loads. This location

1 would be -- would be -- the loading platform has been  
2 designed so that the cars can be placed on -- on  
3 either of two tracks for unloading. (Phonetic)

4 But I don't really know how to answer your  
5 question with more specifics. (Phonetic)

6 MR. DARMOFALSKI: Maybe I'll ask -- maybe  
7 I'll ask the loading facility that you are going to  
8 build there. (Phonetic) It's able to service both  
9 tracks on the site. (Phonetic)

10 MR. FENNO: Yes, it is.

11 MR. DARMOFALSKI: Track one and two.

12 MR. FENNO: Yes it is.

13 MR. DARMOFALSKI: So does that mean that  
14 you're going to need to move those rail cars every day  
15 to that they can be --

16 MR. FENNO: No, no --

17 MR. DARMOFALSKI: -- an empty one is going  
18 to have to get moved or --

19 MR. FENNO: No, it does not.

20 MR. DARMOFALSKI: Okay.

21 MR. FENNO: You -- I mean, boxcars, as you  
22 probably know, they open from the side with a sliding  
23 door. Typically, boxcars can be unloaded from either  
24 side and you do not need to access both sides. If you  
25 get in on one side, you're in the car.

1           Occasionally, you have a box car that, for  
2 one reason or another, the door doesn't work on one  
3 side, or something of that nature, that it has to be  
4 -- has to be accessed from a specific side. And  
5 that's the main reason why we're putting the loading  
6 ramp like this, so that we can (inaudible) -- boxcars  
7 -- unload from either side of the boxcar. (Phonetic)

8           MR. DARMOFALSKI: So I just unloaded the  
9 boxcar (inaudible)--

10          MR. FENNO: Okay.

11          MR. DARMOFALSKI: Do you have to move  
12 (inaudible) after (inaudible) and put another full one  
13 in the loading area? (Phonetic)

14          MR. FENNO: No, we do not. That -- that  
15 would be done with -- with equipment on site.

16          MR. FORMICA: The platform is being built so  
17 that it can accommodate two boxcars.

18          MR. DARMOFALSKI: Right.

19          MR. FORMICA: So that's typically --  
20 occasionally there will be more than that on any one  
21 point in time, but typically that's about the most we  
22 typically get.

23                 If there was a third car there, we have the  
24 ability to push the cars down --

25          MR. DARMOFALSKI: And you're doing that with

1 the forklift, is that what you're doing? (Phonetic)

2 MR. FORMICA: We're going to have a loader,  
3 so it can move the train. Or the -- or the forklift  
4 could do it, as well.

5 (Pause in proceeding)

6 MR. DARMOFALSKI: So you're going to be  
7 moving the stuff internally also. (Phonetic)

8 MR. FORMICA: Yes.

9 MR. DARMOFALSKI: Not the railroad  
10 locomotive doing it. (Phonetic)

11 MR. FORMICA: In fact, they had asked us if  
12 we had (inaudible) if we would or we could, and the  
13 idea was that if we had the ability to do that, which  
14 we think we do, we have done before, that would mean  
15 that they could place more cars on the ground and  
16 lengthen the -- not lengthen, but reduce the amount of  
17 time you would have to actually come to the site  
18 (inaudible).

19 MR. DARMOFALSKI: That's what I was trying  
20 to get at.

21 MR. FENNO: Okay. And -- and, again,  
22 typical in a -- in a site like this, which is very  
23 level (phonetic), and not too huge, long string of  
24 railroad cars, they can be moved fairly easily with --  
25 a truck can push them, for that matter. If we were

1 only going to move them a little bit to be able to  
2 stage them at the loading dock.

3           We would not -- we would not expect that we  
4 would bring a locomotive back to move -- the cars  
5 (inaudible) that would be horribly inefficient from  
6 our standpoint.

7           MR. MAGENNIS: I know we're trying to  
8 determine how big your site is going to be, and I know  
9 that you have addressed some questions regarding how  
10 the cars will be moved.

11           But actually isn't it you who will determine  
12 the volume of brick that is going to be at the site?  
13 I mean, if you don't have any customers, you didn't  
14 make the order, you don't have to worry about  
15 delivering it.

16           What -- what is the volume of the business  
17 that you currently handle? I mean, are we looking at  
18 -- I don't know how many square feet -- I mean, linear  
19 feet of storage area. Is that all going to be filled,  
20 is it partially going to be filled?

21           MR. FORMICA: It will -- I think the area  
22 shown in red will largely be filled.

23           MR. MAGENNIS: Okay. That's a fair amount  
24 of product on the ground there.

25           MR. FORMICA: There are a lot of jobs that

1 are running concurrent. The -- the other area that is  
2 shown for other space and storage, may or may not be  
3 used. We won't know until we're actually within that  
4 facility and have a better idea directly ourselves.

5 MR. MAGENNIS: Okay, now you -- I think you  
6 also stated that a lot of this product is custom made  
7 or is it -- or you're dealing with vanilla brick  
8 (phonetic) that anybody can use?

9 MR. FORMICA: It's custom ordered.

10 MR. MAGENNIS: Okay.

11 ^ MR. FORMICA: Some -- some of the brick  
12 actually (inaudible).

13 MR. MAGENNIS: So it could be a standard  
14 project, but it's (inaudible).

15 MR. FORMICA: But it's usually -- what  
16 happens is they make the clay and they make all the  
17 brick for that order at one time. Because when they  
18 take the clay out of the ground and the fire the clay  
19 to make the brick, it has inherent color --

20 MR. MAGENNIS: Right.

21 MR. FORMICA: -- and aesthetic qualities.

22 MR. MAGENNIS: Right, but that brick can be  
23 used anywhere, it's not being ordered for a particular  
24 job, necessarily.

25 MR. FORMICA: It actually is. What I'm

1 saying is that, if they needed more, and they have to  
2 manufacture more brick, there is a good chance that  
3 the brick may not match the first production run. So  
4 they have to be pretty careful when they order  
5 materials.

6           And if there is any brick that is not -- not  
7 needed, it's not material that is readily usable by  
8 another customer. Because, typically, another  
9 customer may take a different color, different size.  
10 And it also may come from a different production run.

11           MR. MAGENNIS: Now when you ship the brick  
12 from this site here -- where are your customers  
13 located? I mean is there that many projects going on  
14 in this area that (inaudible).

15           MR. FORMICA: Yes, sure. Sure. We have  
16 Hackensack Hospital, Chilton -- Lincoln Park School,  
17 Kinnelon --

18           MR. MAGENNIS: I mean, schools are kind of  
19 small, I mean, they wouldn't be ordering --

20           MR. FORMICA: That -- that can be very  
21 sizable. You figure a big giant gym -- a gymnasium  
22 might use a couple of rail cars of material.

23           MR. MAGENNIS: But there's that many  
24 projects going on that -- that you plan that there  
25 would be that much volume and that much of a need for

1 all of that storage at this site.

2 MR. FORMICA: We -- we wouldn't want to  
3 bring material in otherwise. If there (inaudible) who  
4 (inaudible) to do that (phonetic).

5 MR. MAGENNIS: And your history has been  
6 that it would require how many -- how many shipments a  
7 week? Would it be one a day? Is that a pretty good  
8 average?

9 MR. FORMICA: Yes, that -- in fact, I want  
10 to go back to a question that you asked before  
11 regarding what controls does the railroad have over --

12 MR. MAGENNIS: Right, you're not his tenant,  
13 so he -- really doesn't have any landlord rights to  
14 tell you what you can and can't do.

15 MR. BARBARULA: One thing I -- I thought the  
16 board had, it was just sent to me, I gave it to Linda,  
17 is the -- transportation company, Tri-State  
18 Transportation (inaudible) is an operator. And I gave  
19 (inaudible) the operation agreement was sent to me, I  
20 thought it was also sent to the board.

21 MR. MAGENNIS: That's the one thing we  
22 didn't get.

23 MR. BARBARULA: (inaudible) I think that's  
24 (inaudible).

25 MR. FIORILLA: We thought (inaudible) I just

1 sent it to you, John.

2 MR. BARBARULA: Okay. I didn't know that.

3 So I (inaudible)--

4 MR. MAGENNIS: I just scanned through it --

5 MR. BARBARULA: So your questions in the  
6 beginning, I didn't realize -- I was standing back  
7 wondering -- there is a separate operating company,  
8 which is a transporter, different than his Tri-Co  
9 (phonetic) --

10 MR. FORMICA: Tri-State --

11 MR. MAGENNIS: Yes, the company that --  
12 right, that does the sales.

13 MR. BARBARULA: (inaudible) wholesaler,  
14 (inaudible) manufacturer -- (phonetic) --

15 MR. MAGENNIS: Right.

16 MR. BARBARULA: -- whatever -- his office  
17 function is different than the company --

18 MR. MAGENNIS: Right.

19 MR. BARBARULA: (Inaudible) operator for the  
20 railroad. So I -- that was my error, I thought it was  
21 also given to the board, but I gave my copy to Linda  
22 which will be passed around. But there is two  
23 different (inaudible)--

24 MR. MAGENNIS: Somebody (inaudible)--

25 MR. BARBARULA: -- (inaudible) two different

1 entities. And that's -- that process. (Phonetic)

2 MR. FORMICA: We typically have -- during  
3 the colder weather, projects don't go as quickly or  
4 they may not go at all. So during the colder weather,  
5 some projects continue. The volume is significantly  
6 reduced. You might see during colder weather -- maybe  
7 five, six trucks leave for the entire week.

8 During the busy season, we're talking about,  
9 possibly, six to eight trucks a day. And that's not  
10 always steady. The numbers that we gave you are the  
11 numbers that would be on the high side. And that's  
12 not a continuous volume that -- occurs.

13 But I didn't want to represent anything less  
14 than that, than have it turn out to be something that  
15 was that, even for a short period of time, to anyone's  
16 surprise. But that clearly is on the higher side.

17 UNIDENTIFIED MALE: You're talking of volume  
18 of shipping decreasing in colder weather.

19 MR. FORMICA: Correct.

20 CHAIRMAN LOESNER: Would your storage  
21 volume, as well, decrease in that, in the colder  
22 weather?

23 MR. FORMICA: We try to make it decrease in  
24 colder weather. Again, it varies, depending upon the  
25 projects itself and the availability of the brick when

1 they are made for the actual project. It -- would  
2 decrease, but the whole activity decreases. So we  
3 bring less in, the rotation itself is less. We bring  
4 less in and less goes out.

5           And we try to reduce the footprint to always  
6 as we possibly can. Because that's money that is tied  
7 up until the customer actually receives it and then  
8 pays for it.

9           The question you had before regarding what  
10 constraints do they have over the number of trucks.  
11 We only have, on a steady basis, two -- two and a  
12 half, maybe three drivers that have the familiarity  
13 and continuity of delivering our materials.

14           So in actuality, when we said four trucks,  
15 it's actually three trucks on a regular basis, really  
16 two trucks on a regular basis.

17           If we wanted to bring in more trucks than  
18 that, we would not be able to keep them active enough  
19 for them to be gainfully employed. We would then have  
20 to thin out how many loads we were giving to the  
21 truck. And they wouldn't be able to make a livelihood  
22 doing it.

23           So the truckers, in order to make some  
24 money, need to carry about two loads a day. Some days  
25 they don't do two loads, some days they are able to

1 get three, but that's a rare occasion.

2           But if we brought in other truckers to bring  
3 in more, it would still be the same number of trucks  
4 that we have, but it would turn out to be less for the  
5 individual drivers. Then they would make less money  
6 and not be able to do what they do.

7           . So we almost have a constraint unto  
8 ourselves with having about three trucks, on average.  
9 And that's even during the busier times. During the  
10 less busy times, there's two. Sometimes we have no  
11 trucks on a given day. So the most we would expect to  
12 see would be between six to eight actual deliveries  
13 out of the yard.

14           MR. VENZA: Mr. Fiorilla, I have a question  
15 of you.

16           MR. FIORILLA: Yes.

17           MR. VENZA: You said earlier that the wall,  
18 the length of the wall is based on the consent order  
19 and based on residents' requests?

20           MR. FIORILLA: The requests were made to the  
21 board.

22           MR. VENZA: Okay. All right.

23           MR. FIORILLA: The board then --

24           MR. VENZA: (Inaudible) -- residents --  
25 (phonetic).

1 MR. FIORILLA: (Inaudible) the board then  
2 (inaudible) yes. The board then talked to the  
3 railroad about that. That's how we determined, in the  
4 consent order, what it would be.

5 MR. VENZA: Okay.

6 MR. FIORILLA: So that it was -- the consent  
7 order, which means the board wanted this and the  
8 railroad agreed to do it.

9 MR. VENZA: Okay.

10 MR. FIORILLA: That's how -- that's how it  
11 works.

12 MR. VENZA: I understand.

13 MR. FIORILLA: Okay.

14 MR. VENZA: My question, though, is we're --  
15 we're dealing with a different set of circumstances.

16 MR. FIORILLA: Right.

17 MR. VENZA: Okay. If these residents that  
18 do not have wall request wall -- do we have to take  
19 you to court again to get that wall?

20 MR. FIORILLA: Well, I'm not sure that you  
21 took us to court to get that wall in the first place.

22 MR. VENZA: Well, that's perhaps being  
23 argumentative. (Phonetic)

24 MR. FIORILLA: But no, I mean, that's our --  
25 again, one of the reasons we're here --

1 MR. VENZA: The reason that I (inaudible)--

2 MR. FIORILLA: -- (inaudible) -- is to find  
3 out what the board would like.

4 MR. FENNO: -- (inaudible) as I understand  
5 the reason we're here is to -- those kinds of issues.

6 MR. FIORILLA: We would like to discuss  
7 those kinds of issues and see if we can come to an  
8 agreement. You know what I mean, because if we say  
9 well, we'll just build it, that's not going to help  
10 either. I mean, it's better to talk to you about it  
11 and find out what you want and then we can --

12 CHAIRMAN LOESNER: Well, sooner or later  
13 we're going to get to the public and we're never going  
14 to find out what we want.

15 MR. FIORILLA: Well, okay, well, that's  
16 fine. I mean, that's (inaudible)--

17 CHAIRMAN LOESNER: I take my orders from  
18 them.

19 MR. BARBARULA: Just to let you know  
20 (inaudible).

21 MR. FIORILLA: Well, Mr. Chairman, that's  
22 one of the reasons why we're here.

23 CHAIRMAN LOESNER: I understand that, yes.

24 MR. BARBARULA: What Mr. Fiorilla is saying  
25 -- Paul and I were here, we could tell you what

1 happened. I recommended to just go ahead and put up  
2 the wall, thought it wouldn't be an issue. And the  
3 residents -- don't like that recommendation, we don't  
4 want the wall, we would rather refine what the product  
5 (inaudible).

6 CHAIRMAN LOESNER: Well, that's why I asked  
7 that question an hour ago, because I looked at the  
8 drawing and I was, like, why would the wall stop  
9 there? I mean, if I was living a little further down,  
10 I'd sure want one. But I didn't know that that was  
11 the request. So (inaudible)--

12 MR. BARBARULA: (Inaudible) -- and there was  
13 significant landscaping plans to try to buffer  
14 (inaudible). Evergreen type of vegetation.

15 UNIDENTIFIED MALE: And people rejected  
16 that.

17 MR. BARBARULA: Well -- not that they didn't  
18 reject it, but the public -- didn't want to take trees  
19 down to put trees up, so -- (inaudible) --

20 UNIDENTIFIED MALE: (Inaudible)

21 MR. BARBARULA: There was a lot of work that  
22 was put into the site improvement here to try to  
23 accommodate the wishes of each and every neighbor.  
24 Really, the wall ended -- really only about half the  
25 length of the wall was put up, because we didn't want

1 them to put it against the industrial site that was  
2 close to the Hamburg Turnpike and the balance of the  
3 people closer to Post Lane, they didn't want the wall.  
4 The board accommodated. (Phonetic)

5 CHAIRMAN LOESNER: So we're really not --  
6 the board is really not in a position where we're --  
7 like a site plan, where we are making specific  
8 requests and it's more like a (inaudible).

9 MR. BARBARULA: The railroad is governed by  
10 federal law. You are (inaudible) the consent order  
11 (inaudible) typically be allowed today, because it is  
12 a consent order and they haven't gone in to dissolve  
13 it, based on any current statutory law (inaudible).

14 Your -- your ability here is to enforce  
15 (phonetic) fire, health, safety (inaudible) and in  
16 accordance with the consent order. I think that --  
17 that's what you have got to look at. I mean --  
18 putting a 25-foot high wall of brick next to a  
19 residential area -- (inaudible) --

20 CHAIRMAN LOESNER: Well, that was going to  
21 come in when we (inaudible)--

22 MR. BARBARULA: (Inaudible) -- great idea  
23 (inaudible).

24 CHAIRMAN LOESNER: -- we're going to get to  
25 (inaudible) eventually under the Burgis letter, and

1 that really addressed brick stacking heights and  
2 (inaudible).

3 MR. BARBARULA: Right. But the -- there was  
4 a lot of litigation (inaudible) many (inaudible) of  
5 that litigation, many different courts (phonetic).  
6 But the end result ended in the consent order, was  
7 something that was developed between the board and the  
8 (inaudible) the individual residents and the railroad.

9 CHAIRMAN LOESNER: All right.

10 MR. BARBARULA: But you have -- you have the  
11 safety, health and welfare that still applies and you  
12 -- already have the terms of the consent order before  
13 you.

14 CHAIRMAN LOESNER: All right, then let me  
15 ask you, how -- how high are these bricks going to be  
16 stacked?

17 MR. FORMICA: We -- first let me say that  
18 when we saw the stacking of the bricks initially, and  
19 everyone's reaction was atrocious, we agree. There is  
20 no issue there. Whoever raised the point of having a  
21 that high amount of brick for no apparent reason right  
22 in their backyard next to their fence, I couldn't  
23 agree more. I wouldn't want that in my backyard. And  
24 it's inappropriate and it really was unnecessary.

25 So when we looked at that situation we

1 decided that for the area where the fence is low, we  
2 would begin the stacking of the brick two cubes high.  
3 Coming out from the fence it would go three cubes  
4 high. Then we go four cubes high beyond that point.

5 UNIDENTIFIED MALE: I'm sorry, what --

6 CHAIRMAN LOESNER: Define cube.

7 UNIDENTIFIED MALE: What's a cube?

8 MR. FORMICA: Yes (inaudible)--

9 UNIDENTIFIED MALE: (inaudible)

10 UNIDENTIFIED MALE: (Inaudible) collecting  
11 animals (phonetic).

12 MR. FENNO: It's intended to be shown to  
13 scale on the -- on the site plan.

14 CHAIRMAN LOESNER: Okay.

15 MR. FENNO: So that you can see the -- the  
16 12 foot approximate. When I was out there looking  
17 today, I have to tell you your bricks -- they are not  
18 quite three-foot cubes, because they are a  
19 (inaudible).

20 MR. FORMICA: A little less than -- about 30  
21 inches.

22 MR. FENNO: -- (inaudible) a little less.

23 CHAIRMAN LOESNER: So 30 inches high is per  
24 cube.

25 MR. FORMICA: When the area of the fence is

1 higher, instead of starting with two, we could easily  
2 start it as high -- not only is the fence higher,  
3 there is also a greater distance away from the fence.  
4 There is an area there that (inaudible) with mulch and  
5 where the trees are, the evergreens, and such. And  
6 there we could easily start at three and then go for  
7 four beyond that point.

8 MR. VENZA: I think one of the question Mr.  
9 Darmofalski asked was the ability of the under  
10 (inaudible) to hold that weight.

11 MR. FORMICA: Yes (inaudible)--

12 MR. FENNO: We address that in the document  
13 we just provided to Mr. Barbarula from our engineer.

14 CHAIRMAN LOESNER: Okay.

15 MR. FENNO: And he -- he looked --

16 MR. BARBARULA: There would (inaudible)  
17 response but I have not analyzed it (inaudible)  
18 (phonetic) response.

19 MR. FENNO: We just got the letter on the  
20 20<sup>th</sup>, and we got the response on 21<sup>st</sup>, and today is the  
21 23<sup>rd</sup>. That's pretty close. But I mean, we just got  
22 it.

23 CHAIRMAN LOESNER: What's your intention to  
24 stay below the fence line? Is there any -- are you  
25 going to go up to the fence line, two foot below,

1 three foot below?

2 MR. FORMICA: Well, again, where the fence  
3 is --

4 CHAIRMAN LOESNER: Right.

5 MR. FORMICA: -- we would start the brick  
6 below the fence line, clearly. The next row of brick,  
7 I think, goes about up to the fence line. And then  
8 the next row further way from the fence, goes slightly  
9 above it.

10 CHAIRMAN LOESNER: And that would be  
11 (inaudible).

12 UNIDENTIFIED MALE: I'm not sure we're all  
13 talking about the same thing.

14 MR. FORMICA: Which -- which are you talking  
15 about?

16 CHAIRMAN LOESNER: I'm talking about  
17 (inaudible).

18 MR. FORMICA: Are you talking about  
19 (inaudible)?

20 CHAIRMAN LOESNER: (Inaudible) on the  
21 residents -- on the residents' side, what are they  
22 going to see.

23 MR. FORMICA: Okay. Obviously (inaudible)--

24 CHAIRMAN LOESNER: Obviously, where the --  
25 where the wall - where the fence is 16 feet high.

1 MR. FORMICA: They are not going to see  
2 (inaudible).

3 CHAIRMAN LOESNER: Exactly -- self-storage  
4 area. Fine. But down where the residents live,  
5 obviously, we don't want them to be able to see it.  
6 And we don't want them to be standing back there if a  
7 brick happens to come off a stack. Or a stack comes  
8 down.

9 UNIDENTIFIED MALE: (Inaudible)

10 MR. FENNO: Right. So what's been -- what's  
11 been done is -- part of the safety concern is what's  
12 really shown on this plan where (inaudible)  
13 realistically. And what they will see --

14 CHAIRMAN LOESNER: We just like to bring  
15 that out for the people that don't have the plan in  
16 front of them.

17 MR. FENNO: Right. And what the residents  
18 will see and -- in the area where there isn't a wall,  
19 obviously, they will see the -- the -- to the extent  
20 there is other screening provided. There's trees.  
21 There is -- (inaudible), they will see that with  
22 bricks behind it. And I think there might be one  
23 where there is nothing but a chain link fence, in  
24 which case they will be seeing brick.

25 CHAIRMAN LOESNER: What's the general

1 response, like, if there is a complaint by a resident?  
2 Like, say, the bricks are too high or -- is there a  
3 way that they can complain or we can make resolution  
4 on that? How is that normally handled?

5 UNIDENTIFIED MALE: --

6 CHAIRMAN LOESNER: I'm sorry, is there a --

7 UNIDENTIFIED MALE: If you're operating a  
8 site at the Brooklyn army terminal, there's no  
9 residential complaints.

10 MR. FORMICA: Well, let me --

11 UNIDENTIFIED MALE: This is a completely  
12 different site than the Brooklyn army terminal.

13 MR. FORMICA: Sure.

14 CHAIRMAN LOESNER: We're not talking about  
15 Brooklyn.

16 MR. FENNO: Let me tell you from the  
17 railroad standpoint, there's lots of complaints.

18 UNIDENTIFIED MALE: I'm sure (inaudible).

19 MR. FENNO: Okay. And we have -- we have  
20 24/7 dispatch coverage with an 800 number and they log  
21 every single complaint and we do our best to respond.  
22 We don't always satisfy complaints. But we -- we do  
23 our best to respond. And that -- that would really be  
24 the answer, I think, to the question.

25 CHAIRMAN LOESNER: Okay.

1 UNIDENTIFIED MALE: Just from an operational  
2 perspective, I know when you had the product that was  
3 a liquid that you had to heat.

4 MR. FENNO: Right.

5 UNIDENTIFIED MALE: You know, it was  
6 different. It wasn't -- I wouldn't think particularly  
7 noisy at the site. Now we're bringing forth an  
8 application where we have maybe three hi-los or --  
9 some kind of diesel trucks that are going to be  
10 running, moving product up and down the storage areas.  
11 Possibly pushing railroad cars around. I mean -- and  
12 starting at, maybe, 6:30 or 7 o'clock in the morning.

13 How much noise is that going to generate?  
14 And do you know, you know, what the decibel level will  
15 be at whatever distance off your property line?

16 I mean, my concern is that there is a lot of  
17 residents in this area and it's going to be a noisy  
18 operation. Prior to this, it was, you know, fluid  
19 doesn't make much noise.

20 CHAIRMAN LOESNER: Outside of the heating  
21 car.

22 UNIDENTIFIED MALE: Yeah, and people --

23 MR. FENNO: The heating in the car was  
24 (inaudible).

25 UNIDENTIFIED MALE: Well, what I'm saying,

1 now you've got -- it sounds like there is at least  
2 three devices that are going to be moving product.  
3 And, certainly, going to be -- what is that, like 1000  
4 or 1500 feet up and down that railroad line. It seems  
5 like a lot of activity and -- and, potentially, an  
6 awful lot of noise for the neighbors.

7 UNIDENTIFIED MALE: (Inaudible) backs up.

8 UNIDENTIFIED MALE: Forget about the cars  
9 that could be coming at 1 or 2 in the morning.

10 MR. FORMICA: The actual trucks themselves  
11 will be located close to where the rail station house  
12 is up, up in the front of the yard. So there will  
13 really be very little trucking, if any, at all down --

14 UNIDENTIFIED MALE: I'm talking about your  
15 front-end loaders, the stuff that is moving the bricks  
16 to all this area that you have got marked out on the  
17 site plan as storage.

18 MR. FORMICA: So the trucks being up front,  
19 the only activity will be, as you alluded to, is the  
20 forklift themselves. The platform was put in an area  
21 where the (inaudible) exists, and more towards the  
22 middle of the yard, as opposed to toward the side of  
23 the yard closest to the residents. The forklift --

24 UNIDENTIFIED MALE: Right, that -- that  
25 storage -- that platform is actually on the side

1 that's closest to Post Lane, where you don't have very  
2 much between the -- your -- property and -- and the  
3 neighbors.

4 MR. FORMICA: Well, you have the 16-foot  
5 fence there. The -- in addition to which --

6 MR. FENNO: I would say, you know, you have  
7 to -- again, indicating from the site plan, you have a  
8 pretty significant fence, as well as pretty  
9 significant vegetative screening there. That will  
10 certainly, you know, greatly reduce any kind of noise  
11 issue.

12 MR. FORMICA: And the brick wall --

13 UNIDENTIFIED MALE: There is nothing there,  
14 right?

15 MR. FORMICA: -- the brick storage itself  
16 will actually abate some of that sound, as well.

17 UNIDENTIFIED MALE: Well, I -- yeah, in the  
18 areas where it -- yes, I agree with you, in the areas  
19 where you have -- have it in front and it's going up,  
20 whatever. But there seems to be an awful lot of area  
21 here, especially in the side that is closest to Post  
22 Lane, where there is not that much sound barrier to --

23 UNIDENTIFIED MALE: Well, there is nothing  
24 there (inaudible).

25 UNIDENTIFIED MALE: Yeah, but as you get

1 down here, you know.

2 UNIDENTIFIED MALE: Paul?

3 MR. DARMOFALSKI: Yes.

4 MAYOR BUDESHEIM: Are you allowed to store  
5 all this material on (inaudible) water main right of  
6 way? (Phonetic)

7 MR. DARMOFALSKI: (Inaudible) easement, I  
8 don't know the answer to that. If there is any  
9 restrictions on -- there is a 108-inch diameter water  
10 main underneath where you're going to be stacking the  
11 brick. I have not looked into that (inaudible).

12 MR. FENNO: I think that was addressed at  
13 the time with the -- obviously it's paved and it has  
14 18-wheeler trucks running over it (inaudible) when we  
15 built this facility. And again, based on (inaudible)  
16 engineering analysis, they don't see an issue.

17 MAYOR BUDESHEIM: John, I don't know, I  
18 think there is a distinct legal difference here  
19 (inaudible). In that the material stays inside the  
20 train car, all right. And then from the train car it  
21 went to the truck (inaudible) taken offsite.

22 I'm looking at our ordinance, we don't  
23 define warehouse. But I would think that if the  
24 material stays here for any length of time, it is  
25 acting as a warehouse. I don't know if there is a

1 Webster's Dictionary here to define warehouse. But --  
2 it smells and looks, sounds like a warehouse to me.

3           And if that's the case, would that trigger a  
4 use variance? Because this is not a railroad  
5 operation, this is a -- wholesale, warehousing -- some  
6 other type of -- because once it leaves the -- the  
7 railroad cars, and it's stored on site, I think it  
8 changes the nature of (inaudible). And since nobody  
9 in this room owns any of these brick, maybe we should  
10 get the people who own the bricks in here --

11           MR. BARBARULA: Well -- the definition of  
12 in-commerce (phonetic) under the Railroad Act -- I did  
13 an enormous amount of work back in '99, '98 -- and it  
14 envisions under the Railroad Act, from it's creation  
15 to delivery of the railroad and to the ultimate  
16 consumer.

17           And the problem that I would have with that,  
18 quite frankly, and I understand your position -- but  
19 the rulings under the Rail Act and the Park Ridge case  
20 in the state of New Jersey, give you power to take  
21 care of health, safety and welfare. But specifically  
22 indicates that local zoning cannot interfere with  
23 intrastate transportation.

24           So I can sympathize with that aspect. But  
25 -- I don't know if I can find a legal justification to

1 say that the -- our zoning power would extend there.

2 MAYOR BUDESHEIM: Well, it would go --

3 MR. BARBARULA: And I --

4 MAYOR BUDESHEIM: It would go from the  
5 railroad car to a truck, I could see the point.

6 UNIDENTIFIED MALE: That means then if it's  
7 a passenger line they could put housing here, because  
8 you could store the people on site?

9 MR. BARBARULA: No.

10 UNIDENTIFIED MALE: Why?

11 MR. BARBARULA: Because the people are not  
12 product under the definition of the Railroad Act.  
13 There's -- there is a vast distinction between a  
14 railroad facility for transportation of product and  
15 there is a separate numbers -- a lot more regulations  
16 in the transportation of human beings.

17 UNIDENTIFIED MALE: What about cattle? They  
18 could store cattle?

19 MR. BARBARULA: Unfortunately, let's hope  
20 that they never have an end user of live animals,  
21 because there are, unfortunately, a number of cases  
22 that say they can unload animals, pen them, and then  
23 repackage them and distribute them.

24 UNIDENTIFIED MALE: They agreed not to do  
25 that (phonetic).

1 MR. FORMICA: We did agree not to do that.

2 No.

3 MR. BARBARULA: Yes, I know that. But that  
4 was --

5 MR. FORMICA: You asked (inaudible).

6 MR. BARBARULA: -- under the order -- that  
7 was brought back in the 90s that we did not want to  
8 have (inaudible), corn syrup and it was food grade.  
9 Because the other issue was there was just the glimmer  
10 of the idea of ethanol back then. And it was an  
11 extreme glimmer. However, we did take care of that  
12 also in the consent order, and limited that facility  
13 to food grade product. (Inaudible).

14 (Laughter)

15 MR. BARBARULA: And that was because we  
16 didn't want, because of the proximity to the  
17 neighbors, we didn't want anything that, even under  
18 the most extreme conditions, to become flammable and  
19 dangerous to the -- the people. So our order  
20 indicates food grade quality only, and no live  
21 animals.

22 And the reason we did say no live animals is  
23 because there are (inaudible). And along the railroad  
24 there are (inaudible) this is only one little tiny  
25 railroad of a national system. And they might be big

1 around here, but it's part of a long thing, and there  
2 are stock yards where they accumulate cows to take  
3 them (inaudible).

4           So our consent order gives us a great deal  
5 of protection, in that it had to be food grade  
6 product, it has to not -- it cannot be animals. And  
7 that they cannot just change the use willy-nilly, that  
8 they have to come before us.

9           And that was -- that -- that consent order  
10 give us more powers than any municipality in this  
11 state, and we -- Mr. Fiorilla and I had a little  
12 banter back and forth, teasing about the video of the  
13 hearing. And mainly, that was because it was utilized  
14 throughout the country in terms of, you know, what the  
15 municipality can and can't do, what the railroad can  
16 and can't do. And we -- our consent order is rather  
17 unique because we extracted more concessions that are  
18 not currently in the law.

19           So I don't think that there is any condition  
20 that we could extend our land use to say that it's a  
21 use variance. I guess (inaudible) how I could  
22 substantiate that.

23           UNIDENTIFIED MALE: What (inaudible)--

24           MR. BARBARULA: I mean, if I could, I  
25 certainly would -- would tell you that.

1 UNIDENTIFIED MALE: What leverage do we use  
2 to get any -- extract any consent from them when they  
3 supposedly have the upper hand?

4 MR. BARBARULA: Well, today or back then?

5 UNIDENTIFIED MALE: No, back then.

6 UNIDENTIFIED MALE: Why did they  
7 (inaudible)--

8 MR. BARBARULA: Back then we -- back then it  
9 was a state in flux, and they were awaiting a number  
10 of decisions from the -- from the board. Not our  
11 board, it was a national board.

12 MR. FIORILLA: The STB (phonetic).

13 MR. BARBARULA: The STB (inaudible).

14 MR. FIORILLA: I think this is the very  
15 first case in the country, the Riverdale case, it was  
16 cited later on in all the other cases. And the other  
17 cases came out more stringent in favor of the  
18 railroad. But the issue was to try to work this out.

19 One of the issues, I think, too, is the way  
20 the later cases came down that talked about the fact  
21 that the railroad should go to the municipality and  
22 work out the issues (inaudible) the issues that Mr.  
23 Venza was speaking about. And that's one of the  
24 reasons we're here. To work those out. That was it.

25 Even the New Jersey Supreme Court, in the

1 later case of Ridgefield Park -- John, and I know you  
2 know that case well, the Supreme Court of New Jersey  
3 said the same thing. You know, when it comes to  
4 zoning, that's not one of the things that it can be  
5 (phonetic).

6           And this is still a transportation  
7 situation. And this is how bricks are transported. I  
8 mean, they don't all go immediately to where they can  
9 go. They just -- they just can't do that because of  
10 the nature of how they are used and how they are  
11 shipped. It's not a question of selling brick from  
12 this location, it's really just a question of getting  
13 it to us and then getting to where it's got to be,  
14 when it needs to be there. That's what's called  
15 transportation.

16           MR. REILLY: I'm not exactly sure if I would  
17 agree with that -- with that definition. And,  
18 perhaps, I'm -- I'm wrong. Transportation, to me, is  
19 -- and this is where I was going before -- you're  
20 going from point A to point B to point C to point D,  
21 whatever the case may be. That's transportation,  
22 you're transporting something:

23           At this point in time, right now, there's  
24 product that is being transported from point A to  
25 point B, and then can be staged anywhere from 0 days

1 to 60 days. It can be staged. Now, you -- you call  
2 that a warehouse, you can call it a distribution  
3 point, you can call that something -- no, you're  
4 shaking your head like, no, that's --

5 MR. FIORILLA: It's not really that, though.  
6 It's really just part of the transportation pipeline.

7 MR. REILLY: Yeah, I know, but -- but at --  
8 but at whose cost.

9 MR. FIORILLA: Right.

10 MR. REILLY: And the cost is going to be is  
11 there is going to be (inaudible) on site. There is  
12 going to be product on site. There is going to be a  
13 decibel level or a noise level. There's going to be  
14 -- the residents are going to have to be looking at  
15 this. It's different than transportation. It's a  
16 little bit more than simple transportation. I agree,  
17 part of a transportation process, but it's not quite  
18 as clear-cut as it's -- it's a pure transportation.

19 MR. FIORILLA: It's --

20 MR. REILLY: It's beyond that.

21 MR. FIORILLA: -- I think the definition of  
22 transportation in the federal law is very board. It  
23 includes rail cars, it includes almost anything,  
24 including public delivery tracks, which this, by the  
25 way, this facility always was, even for 100 years. It

1 was called a team track (phonetic) where a team of  
2 horses would come with a buckboard. That particular  
3 term is in the current federal law.

4           And they -- they -- they foresee an idea  
5 where you would come up and unload and store, and then  
6 take things out. There were days, you know, they used  
7 to store other things and put them on boats. I mean,  
8 it depends on when you were. But all those things  
9 were considered part of the transportation.

10           When these bricks are sold, they are not  
11 sold to come here and sit, that's not what it is. Mr.  
12 Formica's business is not to buy brick and then find a  
13 buyer. His -- his thing is to do the logistics to get  
14 it to the right place at the right time, in the  
15 condition, in good condition. Very important from his  
16 point of view. The bricks aren't broken, they aren't  
17 chipped and all that --

18           MR. REILLY: Oh, I happen to agree, but I  
19 also see --

20           MR. FIORILLA: That's what he does.

21           MR. REILLY: But I see a lot of area in here  
22 for -- for storage. I see a -- a boatload of area for  
23 storage, which means to tell me that there is a  
24 possibility that this can be maximized. And that is  
25 troublesome to me. You know, the -- what I hear an

1 awful lot, what we hear an awful lot is, well, that's  
2 what -- it's probably not going to happen. The fact  
3 of the matter is it could.

4           So I think -- I think the board needs to sit  
5 and -- and address what -- what would the possibility  
6 to things be (phonetic). And -- and start backing--  
7 backing from there. Rather than saying what it  
8 probably won't be. The fact is what can it be. And  
9 -- and what will be the negative effects of that.

10           And then to start looking at, you know, if  
11 you want to talk about horse and buggy, you know, 200  
12 years ago, that's fine and dandy. But, you know,  
13 we're in 2009 today.

14           MR. FIORILLA: Right. But I think as I  
15 stated earlier, when we prepared this plan, we  
16 attempted to show the maximum that would be possible.  
17 And the purpose here is to address whatever health,  
18 safety, welfare concerns that present that we haven't  
19 already thought of ourselves and tried to address.

20           CHAIRMAN LOESNER: Well, let me take that  
21 opportunity to go to our planner, then, and he can  
22 address our health and safety issues.

23           MR. MORONSKI: I don't know whether it's  
24 (inaudible) Mr. Fenno or Mr. Formica, my question --  
25 some of the questions that were addressed in the

1 (inaudible) letter (inaudible), but I was concerned  
2 with some of the -- onsite concerns, which obviously  
3 affect the residential neighbors. For example, on the  
4 site plan it talks about where the lighting is and so  
5 forth. Given the testimony tonight that a number  
6 (inaudible) some -- some ways (inaudible) 24/7  
7 operation, are -- is there going to be any changes in  
8 terms of the lighting?

9 MR. FENNO: I think I can address that.  
10 There's -- the lighting that we show is the existing  
11 lighting.

12 MR. MORONSKI: There will be no increase  
13 (inaudible) --

14 MR. FENNO: We do not --

15 MR. MORONSKI: -- in capacity?

16 MR. FENNO: -- we do not propose any changes  
17 to the lighting. Mr. Darmofalski, I think, suggested  
18 more lighting. We would like to respectfully disagree  
19 with that (inaudible).

20 MR. MORONSKI: What about security concerns  
21 (inaudible)? I'm not aware of what your current  
22 situation is right now, and I see that (inaudible)  
23 similar types of storage application -- it's not  
24 railroad property, but (inaudible) outdoor storage,  
25 there is concerns about (inaudible) whether

1 (inaudible) or somebody else when you're dealing with  
2 material such as brick, there is (inaudible) concern  
3 there is going to be any upgrades in (inaudible)?

4 MR. FENNO: Well, realistically, the upgrade  
5 that we plan, as I indicated, was to make sure that  
6 the site is completely enclosed by -- by fence. It's  
7 mostly chain link fence (inaudible) area where there  
8 would be the large stockade type fence. (Phonetic)

9 MR. MORONSKI: And the chain link fence  
10 (inaudible)?

11 UNIDENTIFIED MALE: You've got to go across  
12 railroad track (phonetic).

13 MR. FENNO: It does now, sir. There are --

14 UNIDENTIFIED MALE: (Inaudible)

15 MR. FENNO: On Hamburg Turnpike and on  
16 (inaudible) at Post Lane the fence goes totally across  
17 the tracks. (Phonetic)

18 UNIDENTIFIED MALE: (Inaudible)

19 MR. FENNO: They -- unlock the gate. Same  
20 as the trucks.

21 UNIDENTIFIED MALE: (inaudible)

22 MR. FENNO: Excuse me?

23 UNIDENTIFIED MALE: The site isn't totally  
24 enclosed by fence. (Phonetic)

25 MR. FENNO: There is gap at the fire

1 department that I think I mentioned earlier, where we  
2 will put up a -- close the gap with the chain link  
3 fence. That was -- I think there was some changes in  
4 the fire department (inaudible) facility (inaudible)  
5 fencing changed.

6 MR. MORONSKI: In terms -- I'm not -- I'm  
7 not familiar with the previous use (inaudible) how it  
8 operated. Could you compare in terms of that product  
9 as opposed to this one, in terms of the area that you  
10 use for it and so forth. And are they (inaudible) in  
11 your opinion or Mr. Formica's, in terms of the  
12 intensity of the use (inaudible) makes solid product  
13 such as brick, as opposed to something (inaudible)  
14 corn syrup.

15 MR. FENNO: Well, it's -- I mean, it's a  
16 different process, obviously. The facility was  
17 designed for corn syrup for us to have spots for 23  
18 rail cars of corn syrup to be -- to be onsite. And  
19 hooked up to the steam boilers.

20 The steam boiler, at the time, was in a  
21 railroad car that stayed on the site full time. the  
22 steam boiler was necessary to heat the product until  
23 it becomes sufficiently (inaudible) would flow  
24 (phonetic).

25 The unloading involved a large truck

1 tractor-trailer type truck being pulled up next to the  
2 railroad car, pipes hooked up, product pumped from the  
3 railroad car into the truck. The truck would have to  
4 be (inaudible) which (inaudible) truck on site for  
5 that purpose. (phonetic)

6           That would result in trucks potentially  
7 being anywhere -- practically on the full length of  
8 the -- of the site. The intention here is, as Mr.  
9 Formica mentioned earlier, for the trucks to be up at  
10 the Hamburg Turnpike end but, obviously, a forklift  
11 truck -- forklift vehicle -- couldn't call it a truck,  
12 I suppose (phonetic). The forklift would be going  
13 throughout the facility. (phonetic)

14           MR. MORONSKI: But in terms of potential  
15 (inaudible) would there any odors -- or complaints  
16 about odors (inaudible) corn syrup. (phonetic)

17           MR. FENNO: Well, you know, the spillage of  
18 corn syrup can result in -- in odors, as well as  
19 (inaudible) being attracted to the site.

20           UNIDENTIFIED MALE: Bees.

21           MR. FENNO: Bees, in particular.

22           MR. MORONSKI: Right.

23           MR. FENNO: But others, as well. Obviously,  
24 in the case of a massive spill, there would be concern  
25 that the corn syrup -- and that was part of the reason

1 for the asphalt ground, that -- around the site.  
2 Obviously, with brick, you don't have that (inaudible)  
3 those types of concerns.

4 MR. MORONSKI: And in terms of the -- you  
5 had mentioned about the vehicle circulation on the  
6 site, that it would be -- with the corn syrup there  
7 were more trucks circulating around the site.

8 (Phonetic)

9 MR. FENNO: Yes, the -- the site was  
10 actually designed -- I think you can still see it --  
11 this -- this plan was based off the (inaudible) plans,  
12 obviously.

13 Basically, the way that the building is  
14 designed previously allowed the truck traffic to go  
15 from Hamburg Turnpike -- it appears to be two lanes,  
16 potentially, all the way through the fence, turn  
17 around area at Post Lane, that, believe it or not, a  
18 truck could actually make the turn there. And then  
19 could go up -- go either way on the other side of the  
20 tracks, the easterly side all the way up to the truck  
21 (inaudible).

22 MR. MORONSKI: Refresh my memory, when --  
23 when did the corn syrup cease operation -- cease  
24 operating? (phonetic)

25 MR. FENNO: I have to tell you I didn't -- I

1 didn't look in our records, it's been several years.

2 MR. MORONSKI: Okay. Typically, I know  
3 (inaudible) I'm sure you can't say it definitively,  
4 but would the truck traffic generally head toward  
5 Interstate 287? (Phonetic)

6 MR. FENNO: Yes.

7 MR. MORONSKI: Okay, so more often than not,  
8 coming from 287 and making a right turn in --

9 MR. FENNO: Yes.

10 MR. MORONSKI: -- a left turn out.

11 MR. FENNO: That's correct.

12 MR. MORONSKI: Okay. Obviously, the concern  
13 would be about potential back up of traffic  
14 (inaudible) left turn in would obviously have greater  
15 potential for backing up traffic (inaudible). And  
16 that front entrance even with employee -- employee  
17 parking, it has been mentioned that there is a  
18 potential for eight parking spaces there (phonetic).  
19 That a truck can successfully --

20 MR. FENNO: Well, there is actually two  
21 entrances off the Hamburg Turnpike.

22 MR. MORONSKI: (Inaudible)

23 MR. FENNO: The employee entrance would be  
24 on the westerly side of the tracks, where the building  
25 is.

1 MR. MORONSKI: Right.

2 MR. FENNO: And then on the easterly side of  
3 the tracks is where the trucks enter and exit.

4 MR. MORONSKI: Okay.

5 MR. FENNO: Typically.

6 MR. MORONSKI: Right. Okay. And from that  
7 easterly exit, the trucks can successfully (inaudible)  
8 layout of the brick that you're proposing,  
9 successfully turn around and, basically, make the trip  
10 in and out (inaudible).

11 MR. FENNO: Right.

12 MR. MORONSKI: And just one more question  
13 about the -- there was a discussion about the brick  
14 storage. It had been mentioned about how when the  
15 bricks are stacked behind the 16 foot wall, it's  
16 intended that they not exceed that wall height.

17 For the areas where there is no wall, but a  
18 fence, we did hear about the stacking and so forth,  
19 and I didn't hear a specific, well, it won't be higher  
20 than X-number of feet, whether it's 12 feet  
21 (inaudible) on the site plan, for example, or it won't  
22 be higher than, say, the 16 feet wall height. Do you  
23 know at this time -- (phonetic) --

24 MR. FENNO: What we are proposing is to  
25 limit it to the 12 feet.

1 MR. MORONSKI: 12 feet.

2 MR. FENNO: As shown. (phonetic)

3 MR. MORONSKI: Okay. That's all I have  
4 right now, Mr. Chairman.

5 CHAIRMAN LOESNER: Why (inaudible) chance to  
6 go to the public here.

7 MR. MAGENNIS: I juts have one more question  
8 about the --

9 CHAIRMAN LOESNER: Sorry.

10 MR. MAGENNIS: -- the storage. And I know  
11 that we have been spending a lot of time addressing  
12 that.

13 UNIDENTIFIED MALE: (Inaudible)

14 MR. MAGENNIS: What -- what would -- I mean,  
15 is there a way that you can determine how long a  
16 product is on the site? You know, I think what we're  
17 -- what we don't want to have happen is, you know,  
18 we're going through hard economic conditions as we are  
19 now, maybe some of these projects get canceled, and  
20 now you've got all of this brick that is sitting on  
21 the -- on the property here.

22 I mean, we don't want it to be a storage  
23 (inaudible), we can maybe -- maybe understand how if  
24 you're moving the product, it comes off the cars and  
25 then goes out again within a week or so. But what

1 happens if, you know, these projects get canceled, now  
2 we got I don't know how many thousands of feet of --  
3 linear feet of brick just sitting there. What  
4 assurances do we have that it won't become a warehouse  
5 or a store yard or a junk yard, or you know.

6 MR. FORMICA: By the time the brick are  
7 actually requested to be taken in for redelivery to  
8 the site, the super-structure (phonetic) typically is  
9 already up. They have already broken ground, they  
10 already have the steel completely up in the building.

11 MR. MAGENNIS: I understand that. Under  
12 normal circumstances --

13 MR. FORMICA: It would be very unusual --  
14 it's happened, but very unusual for a project to be  
15 canceled at the point that we're involved in the  
16 project. If a project should be canceled --

17 MR. MAGENNIS: I guess, you know, perhaps  
18 what you're saying is the way things are normally  
19 done. But what happens now if you find that you got a  
20 great deal on brick that if you buy it today you can  
21 buy it for half the cost that it would cost you six  
22 weeks down the road. And you buy as much as you could  
23 put on this storage facility, hoping that you're going  
24 to have a customer that is going to purchase it. Now  
25 that's also a possibility.

1           MR. FORMICA: The brick, again, the projects  
2 are designed by architects. The architects specifies  
3 the --

4           MR. MAGENNIS: Yeah, I --

5           MR. FORMICA: -- the size of brick. And for  
6 us to buy brick on the possibility that that  
7 particular brick might be used in a project, in the  
8 quantities that might be needed, and the size that  
9 they need, and corresponding shapes that go along with  
10 it, isn't likely.

11           MR. MAGENNIS: Well, as the mayor said  
12 before, you can run up to Home Depot and, you know,  
13 they have brick up there, too, that they didn't order  
14 cor -- you know, it wasn't custom brick. I mean,  
15 there's times that product is available and someone  
16 thinks it's a good business decision to buy it.

17           Now I know you say that the brick that  
18 you're selling has been custom ordered by someone, and  
19 that may be true most of the time, but not necessarily  
20 100 percent of the time.

21           MR. FORMICA: We don't have --

22           MR. MAGENNIS: I think what we have to do is  
23 -- is really think about what the long term potential  
24 problems could be here if something changes in your  
25 business and then it doesn't operate the way that you

1 have explained it to us today. And then we could  
2 have, you know, a storage facility sitting here.

3 MR. FORMICA: Well, keep in mind, as well,  
4 that we don't -- at this facility or wherever we are,  
5 we don't conduct any retail operation whatsoever. We  
6 don't have customers drive up and say --

7 MR. MAGENNIS: I (inaudible) think you did.

8 MR. FORMICA: -- I need this --

9 MR. MAGENNIS: I didn't say that you did. I  
10 wouldn't expect that you're supplying a construction  
11 site that they would be coming up there looking to buy  
12 a brick or two from you.

13 MR. FORMICA: What I'm saying is, I have no  
14 easy outlet to sell off any bricks that's not already  
15 specifically ordered for something.

16 MR. MAGENNIS: I year ya'.

17 MR. VENZA: I have one more for Mr. Formica.  
18 From what I -- what -- how much do you know about the  
19 products that you're -- that you're brokering here. I  
20 mean, do you know -- about brick?

21 MR. FORMICA: I'm a CPA (phonetic) by  
22 profession. But I have been in the business for a  
23 long time, so I --

24 MR. VENZA: Okay.

25 MR. FORMICA: But ask me the question and

1 I'll see if I know.

2 MR. VENZA: All right. From -- from what --  
3 from my understanding and from what I have learned  
4 through the course of my life, is that these -- these  
5 types of products have trace radioactivity. And this  
6 is an awful lot of brick.

7 MR. FORMICA: I have never heard that  
8 before. The MSDS sheets that go along with the  
9 materials, are all clean. The materials are  
10 considered to be clean landfill. So if you had a  
11 reason to dispose of the materials, it can go right  
12 into the landfill without any cleansing or any kind of  
13 extra checking of materials. So I have not heard that  
14 ever before.

15 MR. VENZA: Okay.

16 MR. FORMICA: If it is trace, it must be so  
17 miniscule, it must be like as much trace as might be  
18 in a pen or something. But nothing that I have heard  
19 of with any regard to that.

20 MR. VENZA: Would you have any problem  
21 keeping MSDS -- sheets on file.

22 MR. FORMICA: Oh, sure, actually the  
23 customers also require to have tests to make sure the  
24 brick would be --

25 MR. VENZA: I mean --

1 MR. FORMICA: -- compression test --

2 MR. VENZA: -- with the -- with the  
3 municipality, would you --

4 MR. FORMICA: There's different -- we'll  
5 give you as many as you like. There's different  
6 manufacturers. And every brick that we take in  
7 typically is a different color, different shape,  
8 different texture on it. But you'll -- you'll quickly  
9 be comfortable with that. But we can certainly  
10 provide you with as many as you like.

11 MR. MAGENNIS: Now, is brick the only  
12 product that you sell? I know that at times people  
13 that do masonry work they purchase muriatic acid to --  
14 to clean brick. And is there any possibility that you  
15 handle product other than brick?

16 MR. FORMICA: No, we don't. The --

17 MR. MAGENNIS: So the only thing that we  
18 ever see there is brick.

19 MR. FORMICA: You'll see one other commodity  
20 there, but it's a small -- maybe here from here, and  
21 that is some steel. We do sell a product, but it's  
22 not our main product, by any means. You can see,  
23 based upon the geographics of the -- the area.

24 It's a thin steel that goes up against the  
25 wall and -- thin brick (phonetic) is attached to that

1 in applications where a full brick would be  
2 inappropriate for the facility -- the construction  
3 design. There are certain areas that the foundation  
4 may not be supportive enough or just for economics  
5 they choose to go the thin brick route.

6 UNIDENTIFIED MALE: It's like a (inaudible).

7 MR. FORMICA: So -- yes, that's the only  
8 product. We don't sell any sand. We don't put any  
9 cement on the project. There is no loose or bulk  
10 materials. There is no hazardous materials  
11 whatsoever. It's brick.

12 MR. VENZA: All right, Paul (phonetic).

13 MR. DARMOFALSKI: How many cubes fit on a  
14 truckload (phonetic)?

15 MR. FORMICA: The cubes are not -- the cubes  
16 are smaller cubes (inaudible). About 24 to 22 cubes.

17 CHAIRMAN LOESNER: At this time, I would  
18 like to go to the public. Anybody from the public  
19 (inaudible) recognize you, ask your questions. Come  
20 up. What's your name again, sir?

21 MR. BARBARULA: Dan, you've got to come  
22 (inaudible).

23 MR. SCIARRA: Oh, right here (phonetic).

24 MR. BARBARULA: Mr. Formica, if you  
25 (inaudible) little room there for the --

1 MR. FORMICA: Sure.

2 MR. BARBARULA: -- people coming to the  
3 microphone. (Phonetic) Thank you.

4 MR. FORMICA: Okay.

5 CHAIRMAN LOESNER: Your are again?

6 MR. SCIARRA: I just got a couple of  
7 questions. One is --

8 UNIDENTIFIED MALE: (inaudible).

9 MR. SCIARRA: -- Mr. Formica, is there any  
10 possibility of you moving this platform further  
11 forward in the -- I see you have a big area here in  
12 the front for storage. Is there anyway you guys can  
13 pus that up into here somewhere, so it's away from our  
14 homes?

15 Because I personally live right, I don't  
16 want to hear a hi-lo behind my house. We --- we  
17 fought this the last time because of fumes that we  
18 were getting from the truck running, that was the  
19 original thing we fought this over, the health  
20 problems. I don't want a hi-lo running behind my home  
21 all day. I know hi-los make a lot of smoke. And --  
22 and they make a lot of noise.

23 UNIDENTIFIED MALE: Which block do you own?

24 MR. SCIARRA: And if it's -- if it's going  
25 not stay behind my house, I'll be honest with you, it

1 should be enclosed, then. It should be enclosed into  
2 a building to let the two train cars go inside of a  
3 building.

4           They did it in North Bergen when they had  
5 all these problem with fumes. And -- hazardous  
6 materials, and everything else. They have done that  
7 in -- in non-residential areas. Or move this to the  
8 front of the property somewhere away from our homes.

9           Can you move a rail car loaded with brick  
10 with the backhoe?

11           MR. FORMICA: Can we push a rail car?

12           MR. SCIARRA: Yeah, with a backhoe?

13           MR. FORMICA: I believe we can, but I --

14           MR. SCIARRA: Is that what -- I thought you  
15 just said that before that you could --

16           MR. FORMICA: I did. At that -- if not, it  
17 (inaudible) will be with the forklift.

18           MR. SCIARRA: Oh, yeah.

19           MR. FORMICA: But we're --

20           MR. SCIARRA: Either one (phonetic).

21           MR. FORMICA: -- the railroad has to show us  
22 how to do is.

23           MR. SCIARRA: I mean, if you could do that,  
24 you know, and -- and move it to the front of the  
25 property, I mean, I could live with it. But I mean,

1 we -- we don't -- we're not going to want all that  
2 action behind our homes.

3 I mean, maybe they can just put the whole  
4 train in here, then you guys can pick out the cars you  
5 want and move them over to -- and it wouldn't bother  
6 us. You know, it would be a lot less aggravating to  
7 us.

8 Because if they're going to be banging these  
9 rail cars behind the house at night, and he knows --  
10 you know yourself, if they hump the cars at night, you  
11 know, that's a saying from when they push them and  
12 they just bang them into each other --

13 UNIDENTIFIED MALE: (inaudible).

14 MR. SCIARRA: -- would have had a lot of  
15 problems. I called the Surface Transportation Board a  
16 couple of times that these guys -- we were promised  
17 that they would come in, hook to the cars, pull them  
18 out. They were just pushing, pushing them in, you  
19 know. It's something that they do because they don't  
20 figure residents are around. I understand that. It's  
21 not that often that people live behind there.

22 But if you could -- if you can move this up  
23 to the front of the facility and get a little less  
24 storage area up there, because there is a lot of red  
25 up in the front -- I mean, I think I could live with

1 it. But other than that, I would have to say it's got  
2 to be enclosed if it's going to be behind my house.  
3 It's got to be enclosed, you'll be inside of a  
4 building.

5           Because I -- I think that it's going to be  
6 very unsafe. It's going to be smelly. I want to use  
7 -- I want use of my property. And that was one of the  
8 original complaints that we had in front of the judge.  
9 We wanted use of our property, right, John? We were  
10 denied use of our properties. And a lot of other  
11 people on the block, they didn't take the -- the high  
12 fence because there wasn't really much of an operation  
13 behind their homes.

14           Now you're changing the whole situation.  
15 Now we've got an operation behind everybody's home. A  
16 lot of people agreed they wouldn't go back after --  
17 they wouldn't -- they wouldn't come back later on and  
18 request a fence. And as long as that operation was  
19 there, nobody ever came back and said we want the  
20 fence. We -- we sat with it, we lived with the  
21 operation, we didn't complain. But now everything is  
22 going to change.

23           I don't want to cause 18 months of bickering  
24 here. I would like to see us get through it. But if  
25 you guys can move those rail cars around with -- some

1 kind of a -- small (phonetic) equipment that, you  
2 know, rather than these -- these big trains coming and  
3 bumping them, and if you could get this thing moved to  
4 the front of the property somewhere, I -- I think I  
5 could live with it. I don't know about the other  
6 residents. But I think it would be better than having  
7 this. This is going to make a lot of action behind  
8 the homes.

9 CHAIRMAN LOESNER: The loading area --

10 MR. SCIARRA: That's all I have to say.

11 CHAIRMAN LOESNER: -- is -- where the action  
12 is going to be. You're --

13 MR. SCIARRA: Huh?

14 CHAIRMAN LOESNER: The loading area is  
15 definitely where the action is going to be.

16 MR. SCIARRA: Yes.

17 CHAIRMAN LOESNER: No question about that.

18 MR. SCIARRA: And it's right behind my  
19 house. And I'm not going to have use of my property,  
20 believe me, with that thing going on.

21 Now, I agree with the fence that -- that  
22 contains --

23 UNIDENTIFIED MALE: Who is building this  
24 loading and unloading platform? Who is going to be  
25 responsible for maintenance? (phonetic)

1 MR. SCIARRA: Well, maintenance, we never  
2 discussed maintenance. You know why? Because --

3 UNIDENTIFIED MALE: No, no -- the question  
4 wasn't to you.

5 MR. SCIARRA: -- even the original fence  
6 (inaudible) when they --

7 MR. FENNO: There -- there is a contractor  
8 who is going to build it. And (inaudible) Mr.  
9 Formica's company and (inaudible).

10 UNIDENTIFIED MALE: And a question again, on  
11 that platform, that's strictly for unloading the  
12 boxcars; is that correct?

13 MR. FENNO: Yes, it is.

14 UNIDENTIFIED MALE: And the truck loading  
15 would be on the entire length of this area?

16 MR. FORMICA: No, we anticipate taking the  
17 material and putting it on the platform, another  
18 forklift takes it from the platform and puts it on the  
19 ground. And then the trucks are loaded from the  
20 ground site.

21 UNIDENTIFIED MALE: But through the entire  
22 length of the site. Correct?

23 MR. FORMICA: Mostly -- mostly up more  
24 toward the front. We're going to use the very back  
25 end for that which we know where the projects aren't

1 ready to go as quickly as that which is up front. We  
2 don't want --

3 UNIDENTIFIED MALE: But the trucks will  
4 still be loaded in the back.

5 MR. FORMICA: -- we don't want to be moving  
6 all the way to the back --

7 UNIDENTIFIED MALE: -- it's not -- you're  
8 not going to -- you're not going to transport on a hi-  
9 lo the brick from the back of the site to the front of  
10 the site to load a truck. (phonetic)

11 MR. FORMICA: No, we want to minimize that.  
12 That's -- that would be -- on occasion --

13 UNIDENTIFIED MALE: So the answer is yes,  
14 the truck will be loaded through the entire length of  
15 the site.

16 MR. FORMICA: I'm sorry, no, the trucks --  
17 we don't intend the trucks to go all the way down to  
18 the end of the site. We intend for the trucks to stay  
19 up in the front of the site by the building. And have  
20 the (inaudible) take the materials and then bring the  
21 materials up to the truck.

22 UNIDENTIFIED MALE: So the hi-lo is going to  
23 take the material from Post Lane to the Hamburg  
24 Turnpike. (phonetic)

25 MR. FORMICA: Correct.

1 CHAIRMAN LOESNER: Any other questions?

2 MR. SCIARRA: Well, I just want you to  
3 consider that -- that -- if they are going to put the  
4 platform where they are scheduling it --

5 CHAIRMAN LOESNER: I wish we had that kind  
6 of power.

7 MR. SCIARRA: -- they should -- they should  
8 put it inside of a building. Well, North Bergen did  
9 do that. North Bergen made them build facilities  
10 because they were operate -- and other thing, they  
11 said there is going to be a container there, and he  
12 said there is going to be debris going into the  
13 container and when debris goes into a container,  
14 debris goes into the air. And that's why you have a  
15 right to put something over that facility.

16 MR. VENZA: Thank you.

17 MR. SCIARRA: And enclose it.

18 CHAIRMAN LOESNER: Thank you.

19 MR. SCIARRA: Thank you.

20 CHAIRMAN LOESNER: Sir.

21 MR. FENNO: I think we should address the  
22 debris maybe first.

23 CHAIRMAN LOESNER: Okay.

24 MR. FENNO: (inaudible)

25 MR. FORMICA: Yes, let me discuss --

1 CHAIRMAN LOESNER: Hang on one second.

2 MR. FORMICA: The debris we're talking about  
3 is debris that is inside the rail train. When they  
4 package the bricks inside the rail trains, they often  
5 put (inaudible) bag inside the rail train to stop the  
6 brick from moving around and getting chipped. The  
7 (inaudible) bags, and sometimes (inaudible), which  
8 usually these inflatable bags. (Phonetic)

9 And there is also some wood, maybe half a  
10 sheet of plywood, not as thick as typical plywood, but  
11 just some wood to buffer and protect the brick from  
12 rubbing against each other.

13 That -- and also some occasional (inaudible)  
14 steel or vinyl strapping that secures the material in  
15 the rail cars. That's what we're talking about in  
16 terms of debris. There really is no dirt, there is no  
17 small miscellaneous parts that could (inaudible)  
18 airborne.

19 UNIDENTIFIED MALE: (Inaudible)

20 MR. FORMICA: No, it's nothing (inaudible).  
21 It's the things that I just mentioned. That's the  
22 typical thing (inaudible) that we'll see that will  
23 come in along with the brick itself. (Phonetic)

24 UNIDENTIFIED MALE: (inaudible)

25 MR. BARBARULA: Mr. Formica (inaudible)

1 further up --

2 MR. FORMICA: Sorry.

3 MR. BARBARULA: -- when you're responding.

4 MR. FORMICA: Sorry. Would you like me to  
5 repeat that?

6 CHAIRMAN LOESNER: No.

7 MR. BARBARULA: (inaudible) going down to  
8 the low end of fading out (phonetic).

9 CHAIRMAN LOESNER: Okay.

10 MR. FORMICA: Okay.

11 MR. LUCENTE: I'll speak loud enough so  
12 that everyone can hear me.

13 CHAIRMAN LOESNER: And your name is?

14 MR. LUCENTE: John Lucente, 3 Munn Avenue,  
15 Riverdale. One quick question for Mr. Formica. The  
16 pile of bricks that are stored right now --

17 MR. FORMICA: Yes.

18 MR. LUCENTE: They are about four or five  
19 levels.

20 MR. FORMICA: Uh hum.

21 MR. LUCENTE: Could you estimate for me  
22 right now the weight of that pile.

23 MR. FORMICA: I think a cube of brick is  
24 five -- four pounds of brick is usually about five --  
25 400 and change --

1 MR. LUCENTE: Would you say it's a few  
2 tons?

3 MR. FORMICA: Yes, I would say -- I say a  
4 cube of brick itself is about 2500 pounds.

5 MR. LUCENTE: All right, with that, I have  
6 a bunch of questions, but I just want to get this one  
7 off my chest and you can open it up to everybody else,  
8 if you would, sir. (Phonetic)

9 Sorry (inaudible) don't know most of you  
10 people here, and you may not know about the pipes that  
11 were installed by the water company (phonetic)  
12 remember who the company was?

13 UNIDENTIFIED MALE: (Inaudible) well, I know  
14 it now it is down as the North Jersey District Water  
15 (inaudible).

16 MR. LUCENTE: Okay. Those pipes were  
17 between seven and eight feet in diameter. They are  
18 presently resting on the railroad property under all  
19 the red that you see on this -- diagram here.  
20 (Phonetic)

21 I would appreciate it if Mr. Darmofalski  
22 could get together with one of the railroad  
23 representatives, get the plans for that and somebody  
24 with some knowledge figure out if this loading that is  
25 going to be all along that section there, can -- not

1 impair or collapse any of the pipes.

2           And I have two pictures here that I will  
3 gladly pass around to you people. And I wish you  
4 would return them (inaudible). And if you can have  
5 that by the next meeting I would appreciate it and we  
6 can maybe put an end to that question.

7           MR. BARBARULA: Mr. Chairman, the right  
8 answer to that is to contact the North Jersey District  
9 Water Supply and make sure that they are comfortable  
10 (inaudible).

11           CHAIRMAN LOESNER: Was that done at all?

12           MR. FENNO: Have we gone to them, no.

13 (Phonetic)

14           CHAIRMAN LOESNER: No. So they are unaware  
15 that there is going to 650 trucks worth of brick  
16 sitting on top of their pipe?

17           UNIDENTIFIED MALE: (Inaudible)

18           CHAIRMAN LOESNER: I would think that would  
19 be a safety issue.

20           UNIDENTIFIED MALE: (Inaudible)

21           UNIDENTIFIED MALE: The mayor brought it up,  
22 I made a note of it (inaudible).

23           CHAIRMAN LOESNER: Yes, I think that's for  
24 sure (phonetic).

25           UNIDENTIFIED MALE: (Inaudible)

1 CHAIRMAN LOESNER: Do you have any  
2 questions?

3 UNIDENTIFIED MALE: (Inaudible)

4 CHAIRMAN LOESNER: Okay.

5 UNIDENTIFIED MALE: (Inaudible)

6 MS. SCOTT: Hi, my name is Fran Scott; I  
7 live on 29 Arlington Place. You --

8 MR. BARBARULA: Could you move closer to the  
9 microphone.

10 MS. SCOTT: Sure.

11 MR. BARBARULA: Thank you.

12 MS. SCOTT: Well, I was here for this last  
13 meeting when the corn syrup was being delivered. My  
14 concern is all hours of the night, seven days a week,  
15 they were coming in with the railroad cars and just  
16 swapping them out, bringing new ones 3 o'clock in the  
17 morning, 4 o'clock in the morning. The banging that  
18 they did. They cracked our foundation of our house.  
19 And I think, if I recall, they also cracked the  
20 foundation of the --

21 UNIDENTIFIED MALE: (inaudible)

22 MS. SCOTT: -- of his pool (phonetic). One  
23 of our neighbors. So that's one of my concerns that I  
24 have.

25 The other concerns are these trucks when

1 they came in to pick up the corn syrup, they were  
2 going faster than the speed limit that is on the  
3 Hamburg Turnpike, which Hamburg Turnpike is 25 miles  
4 an hour. They are doing 35 on -- on the side of my  
5 house.

6           You know, the guys are just coming in,  
7 because you have these different truck drivers coming  
8 to pick up the corn syrup, speeding down the road,  
9 getting their delivery or whatever. So that was  
10 another concern.

11           The all they put up was -- I don't know,  
12 maybe they thought it was for sound, it didn't work.  
13 Smell -- it didn't work. When they had the car with  
14 the -- the boiler in there, rubbers, odors, or  
15 whatever -- that's the kind of smell, odor I got out  
16 of that.

17           They said that they would clean up if there  
18 was spills. No. There was not. I even think if I  
19 could go home, I have some box of photos that I could  
20 bring from the past.

21           The wall, no maintenance. There's boards  
22 that are all bending this way, that way. Pieces are  
23 missing. Since they put in that wall, they didn't do  
24 any maintenance at all.

25           So here we are again, now we're starting

1 with this bricks [sic]. So my main concern -- all  
2 right, the storage is one thing.

3 But another thing is the quality of my life  
4 that they are coming back, coming back with this  
5 noise, 24/7, I'm not going to be able to sleep. My  
6 son went through many years of high school and going  
7 to school in the middle of night, ma, I can't sleep,  
8 the train. You know.

9 So here I am again with this. So the other  
10 residents, I don't know who is new on the block that  
11 is going to be dealing with this. And a lot of you  
12 people on the board were not here before. I don't  
13 know where you live [sic], but you're not living on  
14 that block. And take that in consideration of what  
15 we're going through of our quality of our life.  
16 That's all I have to say at this time.

17 CHAIRMAN LOESNER: Thank you.

18 MS. SCOTT: Thank you.

19 MS. ADORNETTO: Joan Adornetto, from 18  
20 Munn Avenue. My concern is the hours of operation.  
21 During the times of the corn syrup transportation,  
22 they would -- the trains would blow the horns 3:30 in  
23 the morning.

24 There is little children that live right  
25 behind where that fence is going to be. They won't

1 get any sleep if this is going to be the same type of  
2 thing -- um -- you know, uh -- noise, lights and the  
3 same thing, the banging of the trains back and forth.

4           So that's my -- my main concern. . The hours  
5 of operation are not conducive to a good night's sleep  
6 for anybody. So -- uh -- I hope you'll take that into  
7 consideration.

8           CHAIRMAN LOESNER: How far down -- how far  
9 down are you on Munn?

10           MS. ADORNETTO: I'm 18.

11           UNIDENTIFIED MALE: Do you know which lot  
12 you're on?

13           MR. BARBARULA: Do you know what your lot  
14 number is?

15           CHAIRMAN LOESNER: Are you behind the high  
16 fence or are you --

17           UNIDENTIFIED MALE: She's across the street  
18 (phonetic).

19           CHAIRMAN LOESNER: Across the street.

20           MS. ADORNETTO: Across the street from it.

21           CHAIRMAN LOESNER: Okay.

22           MS. ADORNETTO: But then the (inaudible)  
23 live right behind it, we -- right in front of me, and  
24 they have two children there, and that's one of their  
25 concern, too.

1 CHAIRMAN LOESNER: Okay.

2 MS. ADORNETTO: Thank you.

3 CHAIRMAN LOESNER: You're welcome. Anyone  
4 else? Sir? Hi, Will.

5 MR. ALLAN: William Allan, 1A Munn Ave. I  
6 don't live right on -- behind the fence, I'm like two  
7 yards away. I kind of disagree with my neighbor  
8 saying he can live with it. I don't think it's  
9 something that we should have to live with.

10 Um -- I'm up at night a lot, you know, and  
11 this -- about saying before the trucks are going to  
12 stop at 4 o'clock. Two loads a day. Who's to say, I  
13 mean, from past experience a job I had, who is to say  
14 you're not going to get on one job and be delayed,  
15 they can't offload the brick, whatever.

16 You get back to the yard late and they are  
17 going to unload, they're going to load you up late.  
18 It doesn't always go on schedule where you're going to  
19 get your two loads out within an eight-hour period.

20 Um -- the fence looks terrible right now.  
21 The other thing I was thinking, you're going to stack  
22 these bricks, how far are they going to be from the  
23 fence, because I've seen bricks collapse also. And  
24 hope they don't collapse towards the fence and maybe  
25 one of you guys will be out in the backyard with your

1 kids, grand kids, great grand kids, and something  
2 could happen there.

3           And, um -- I know -- somebody said you guys  
4 don't live there. These guys don't either. They  
5 don't want to hang out in that back yard with all that  
6 work going on 10 feet away from you. So, that's it.

7           CHAIRMAN LOESNER: Thanks, Will.

8           MR. DARMOFALSKI: Am I allowed to interject?

9           CHAIRMAN LOESNER: You want to make a  
10 comment on that.

11           MR. FENNO: Well, just because it's a safety  
12 concern about the brick collapsing. The plan -- we  
13 had our engineers draw up to scale to -- so that you  
14 could see the (inaudible) and the height and the size  
15 of the brick as opposed to how far they are from the  
16 fence.

17           CHAIRMAN LOESNER: Well, how far are the  
18 bricks from the fence, generally, according to the  
19 plan (phonetic)?

20           MR. DARMOFALSKI: A fall down (inaudible) is  
21 not going to affect (inaudible) based on what they are  
22 showing (inaudible). The policing matter, it's very  
23 difficult to police once they are in operation.  
24 (phonetic)

25           CHAIRMAN LOESNER: Okay, so what we -- what

1 we can tell you, Will, is that according to the plans  
2 that we have, the bricks are far enough way from the  
3 wall.

4 MR. ALLAN: (Inaudible).

5 CHAIRMAN LOESNER: Yes, okay. Who had their  
6 hand up? Sir.

7 MR. MOHAN: My name is Ponta Mohan; I live  
8 on 7 Munn Ave.

9 CLERK: I'm sorry, you name again?

10 MR. MOHAN: Mohan, M-O-H-A-N.

11 CHAIRMAN LOESNER: 7 Munn, you said?

12 MR. MOHAN: 7 Munn Ave. And I also disagree  
13 with Mr. Sciarra about being able to live with this.  
14 The trucking business in your back yard is very hard  
15 (phonetic). All the loading equipment they use, they  
16 are not subject to any emission tests whatsoever.  
17 They smoke, they run lousy (phonetic), for all the  
18 companies you see. (phonetic)

19 And you -- the other one is about storing --  
20 brick material of any kind. If you buy quantity --  
21 you're going to buy six loads, ten loads and store  
22 them because you're going to get it so much cheaper.  
23 No question they're going to do that. No matter what  
24 they say it's -- it's -- that's part of their  
25 business.

1           The -- the fence they mentioned, I mean the  
2 pipe. They used to have a four -- four or five foot  
3 (inaudible) over the top dirt. All that is gone when  
4 they put the blacktop. And the operation, if I  
5 remember correctly back in '96 when they did that,  
6 they had no permits, they started paving, they started  
7 doing their yard work, ready for -- leasing  
8 (phonetic). In the middle of their project they were  
9 stopped. Am I correct? Or -- something to it.

10           UNIDENTIFIED MALE: Yes, they started first  
11 and then they stopped. (phonetic)

12           MR. MOHAN: You know, they could have done  
13 it by the (inaudible) and they wouldn't be going  
14 through all of this all the time. I mean, such a big  
15 company they can't afford to go and do the right thing  
16 by the armory it's unbelievable -- it's hard to  
17 believe they -- they use that issue is because they  
18 already have a very easy -- way of taking care of --  
19 and -- (phonetic).

20           CHAIRMAN LOESNER: It's all about the  
21 (inaudible).

22           MR. MOHAN: Absolutely. And I'm sure a big  
23 company like that, they can spend a couple of extra  
24 dollars and (inaudible). And don't have to put up  
25 with us. Because other places like in North Bergen

1 and stuff like that, they don't have it anymore. They  
2 don't have -- nobody lives there, so they don't have  
3 the problem. That's all I have to say. Thank you.

4 CHAIRMAN LOESNER: Anyone else? Ma'am.

5 MS. BOYLE: Hi. I'm Meg (inaudible) Boyle.  
6 I live on 10 Munn Ave. And I would just like to just  
7 give you my feeling on this. I lived on a busy street  
8 for 15 years and it took me that long to find a nice,  
9 quiet neighborhood where I could raise three children.  
10 And to think that this will not a nice, quiet  
11 neighborhood just shatters my expectation of where I  
12 just moved two years ago. It's horrible to me. It's  
13 absolutely horrible to me.

14 I would like to know, question number one,  
15 what kind of action will there be at all on the Post  
16 Lane gate where kids are, where they play, walk, go to  
17 school, where buses are. What, if anything, will  
18 happen at those gates on Munn and Post?

19 MR. FENNO: I'm not sure I --

20 MS. BOYLE: If every thing -- every single  
21 thing -- every single truck will always go out the  
22 Hamburg Turnpike side?

23 MR. FENNO: They are required to --

24 MS. BOYLE: Nothing.

25 MR. FENNO: -- to by local ordinance --

1 MS. BOYLE: -- there will be nothing on --

2 CHAIRMAN LOESNER: Yes, Post Lane is --

3 MS. BOYLE: -- on -- (inaudible) --

4 CHAIRMAN LOESNER: -- is not rated for truck  
5 traffic --

6 MS. BOYLE: Nothing will be there, that gate  
7 will not be open unless the train is there.

8 CHAIRMAN LOESNER: Right.

9 MR. FENNO: I can't tell you that --

10 MS. BOYLE: Technically they could --

11 CHAIRMAN LOESNER: Well --

12 MR. FENNO: -- that the gate won't be open.  
13 I can't tell you that at truck won't come out the gate  
14 (inaudible). But I can tell you a truck will not go  
15 on Post Lane.

16 MS. BOYLE: I'm sorry, Mayor, could you say  
17 that again. I didn't hear you.

18 MAYOR BUDESHEIM: If they are using Post  
19 Lane to access -- to the site, they are allowed to use  
20 that road (inaudible). But for some reason,  
21 (inaudible) traffic (inaudible), what our ordinance  
22 says (phonetic).

23 So yes, if for whatever reason they  
24 determine that they can't use Hamburg Turnpike, by  
25 law, they could put those trucks (inaudible) and

1 (inaudible) stop them from making deliveries

2 (inaudible).

3 MS. BOYLE: Where children are. That's --  
4 that's very unbelievable.

5 Number two --

6 MR. FENNO: Can I speak --

7 MS. BOYLE: -- will the trains --

8 MR. FENNO: -- (inaudible) --

9 MS. BOYLE: -- be blocking --

10 MR. FENNO: Wait. I'm sorry to interrupt  
11 you. But I just don't want to lost track of this  
12 point. My recollection is that we stipulated in the  
13 consent order that the truck traffic will all be  
14 Hamburg Turnpike and we certainly prepared to  
15 stipulate that here, regardless of the ordinance. To  
16 get past that.

17 CHAIRMAN LOESNER: I thought I saw that in  
18 one of those -- one of those decrees.

19 MR. FENNO: I don't think we ever used Post  
20 Lane.

21 UNIDENTIFIED MALE: No.

22 MR. VENZA: If you were in operations over  
23 the course of the last six months, when the sewers  
24 were going in on the Hamburg Turnpike, you would have  
25 had to use Post Lane. And you would have.

1 MR. FENNO: Then there would have been  
2 detours or something, right?

3 MR. VENZA: Yeah, Post Lane.

4 MR. FENNO: But I mean, you were detouring  
5 everybody over to Post Lane.

6 UNIDENTIFIED MALE: No --

7 UNIDENTIFIED MALE: We had -- they were  
8 digging the road up in front of the entrance to your  
9 facility. And there was no way a truck could get in  
10 there.

11 MR. FENNO: But that's not -- you know, in  
12 all the time that we operated, we didn't have that  
13 problem.

14 MR. VENZA: I understand. I'm just making a  
15 point. There are times that may justify using Post  
16 Lane, and this lady wanted to know could we stop it.  
17 No -- from our ordinance perspective, we can't.

18 MS. BOYLE: Well, that will absolutely drive  
19 down property value for people who don't want to live  
20 in that neighborhood any longer. Where children  
21 cannot just ride their bicycles down to the park,  
22 which crosses Post Lane.

23 If there is anyway possible that they would  
24 not be permitted in any way to use Post Lane, it would  
25 be so much better for the interior part of the

1 neighborhood.

2 MR. BARBARULA: (inaudible) they are not  
3 using Post Lane under the (inaudible). What the mayor  
4 is saying that if there is a situation where they  
5 can't use Hamburg Turnpike, they can use Post Lane,  
6 just like anybody else would use Post Lane, because  
7 under -- under circumstances where the Hamburg  
8 Turnpike was closed off for some emergency or  
9 something like that, that (inaudible), they are not  
10 going to be coming there on a regular basis. But that  
11 would also be applied to anybody. (phonetic)

12 I believe that that was a verbal agreement  
13 that was not part of the (inaudible).

14 MR. FENNO: Yes, we're not --

15 MR. BARBARULA: It never made it to  
16 (inaudible). And it's not in -- and (inaudible) in  
17 the decision by the -- (inaudible).

18 UNIDENTIFIED MALE: I can tell you exactly  
19 where it was discussed in the Planning Board, under  
20 the traffic (inaudible).

21 MR. BARBARULA: The traffic plan was  
22 accepted by the borough (inaudible). And I think that  
23 in the traffic plan, your guys had to come out Hamburg  
24 Turnpike (inaudible).

25 MR. FENNO: All I remember is --

1 MR. BARBARULA: -- (inaudible) --

2 MR. FENNO: -- that we always understood we  
3 could use (inaudible).

4 MR. FORMICA: I also think it's --

5 MR. BARBARULA: -- (inaudible) --

6 MR. FORMICA: -- for all the time we had it,  
7 we never used Post Lane. Anyway, just so you know.  
8 We never did.

9 MR. BARBARULA: One of the agreements is  
10 attached (inaudible) --

11 UNIDENTIFIED MALE: But, you know, you never  
12 stored product (inaudible) Post Lane either. The  
13 operations were all at the other end.

14 CHAIRMAN LOESNER: Do you have another  
15 question.

16 MS. BOYLE: I do. Will the trains be, um--  
17 I don't know if this is answered, will the trains be  
18 so long that they are making a traffic problem on Post  
19 and Hamburg Turnpike where they cross? Will it impede  
20 traffic each time the train comes in and out.

21 MR. BARBARULA: I --

22 MS. BOYLE: Where they have to stop.

23 MR. BARBARULA: -- I give you short  
24 education on this. I don't know what you were told  
25 when you bought the house two years ago. Hopefully

1 you received a disclosure before you bought the house.  
2 The length of the train, no one controls that but the  
3 railroad. And the appropriate federal regulations.  
4 If, in the event that they are picking up that many  
5 trains, they could at some point have both --  
6 crossings come down. That's a possibility.

7           When the -- when the train shows up, it's  
8 also not within our control. So for the last six or  
9 seven -- I think (inaudible), (inaudible) --

10           CHAIRMAN LOESNER: Not that long.

11           MR. BARBARULA: No. I (inaudible) that is a  
12 heck of a long time (inaudible). There's -- it comes  
13 whenever it comes. And it could, from time to time,  
14 it can happen. But as you heard from the testimony, a  
15 lot of times the trains come at night. And that's --  
16 (inaudible).

17           MS. BOYLE: And they do block traffic.

18           MR. BARBARULA: (inaudible) -- they can be  
19 that long.

20           MS. BOYLE: Absolutely.

21           UNIDENTIFIED MALE: -- Hamburg Turnpike --  
22 and cars get set up and they (inaudible).

23           MR. BARBARULA: The mayor is right, it can  
24 -- it depends, we don't control how many cars are tied  
25 together. And they can be quite long. The longer

1 they are, the better it is (phonetic).

2 MR. FENNO: Can I -- we appreciate  
3 everything you said. But it sounds like me talking a  
4 little bit. But the practical reality of this train  
5 is, first of all, there would be no reason for a train  
6 to be blocking both Hamburg Turnpike and Post Lane, I  
7 think is part of the concern.

8 Typically, we would come to the site from  
9 the north, where our main (inaudible) is, and the  
10 switch (inaudible) facility (inaudible) empty,  
11 involves going across Hamburg Turnpike a couple of  
12 times. Typically.

13 Given that there is little if any rail  
14 traffic to the south of this facility, the likelihood  
15 of having a big long train at this facility --

16 MR. BARBARULA: -- (inaudible)

17 MR. FENNO: -- very remote.

18 MR. BARBARULA: -- but --

19 MR. FENNO: -- I'm -- I'm -- I'm --

20 MR. BARBARULA: -- (inaudible)

21 MR. FENNO: -- you gave the legal side, I'm  
22 trying to give --

23 MR. BARBARULA: -- let her know what can  
24 happen because legally you could have it two miles  
25 long.

1 MR. FENNO: I -- I -- I --

2 MR. BARBARULA: -- it is subject to only the  
3 federal regulations.

4 MR. FENNO: -- I --

5 MS. BOYLE: And if -- if the --

6 MR. BARBARULA: I just want to let her know  
7 that --

8 MS. BOYLE: -- Hamburg Turnpike --

9 MR. BARBARULA: -- that (inaudible) --

10 MS. BOYLE: -- blocked off and people get  
11 accustomed to, oh, no problem, this is such a pain in  
12 the neck, great, we found this great little zip  
13 around, we'll just all now go down Post, and it  
14 absolutely changes the neighborhood.

15 MR. BARBARULA: The (inaudible) and I said  
16 that (inaudible) worst situation that could end up  
17 being that long. That's -- just so you know that  
18 could happen. It also more likely would be late at  
19 night or early in the morning, based on -- based on  
20 the (inaudible) from '99 to now, we know that that's  
21 when (inaudible).

22 So I want to let you know. I'm just -- I'm  
23 telling you the worst case (inaudible), that we have  
24 no control -- it could end up being that way.

25 MS. BOYLE: Uh hum. Thank you.

1 MR. BARBARULA: The length of the train is  
2 governed by the federal government.

3 MR. SCOTT: Hello. Um -- my name is Jim  
4 Scott. I live on 29 Arlington Place.

5 Now you're telling me that we can't schedule  
6 a date for the trains to -- I mean, not the time, like  
7 they, if they come at 3 o'clock in the morning, they  
8 come at 3 o'clock in the morning. We can't -- that's  
9 that.

10 MR. BARBARULA: I'm not telling you, I'm  
11 only explaining --

12 MR. SCOTT: Right.

13 MR. BARBARULA: -- what the -- what the  
14 regulations are for trains.

15 MR. SCOTT: Right.

16 MR. BARBARULA: Interstate commerce is  
17 governed by the federal government --

18 MR. SCOTT: Uh hum.

19 MR. BARBARULA: -- and we, as a local  
20 municipality, cannot tell them to come at 4 o'clock in  
21 the afternoon, 10 o'clock at night --

22 MR. SCOTT: Right.

23 MR. BARBARULA: -- they -- they are governed  
24 purely by the federal government. And if 3 o'clock is  
25 when they come from New York to New Jersey, to

1 Riverdale --

2 MR. SCOTT: That's the time.

3 MR. BARBARULA: That --

4 MR. SCOTT: I mean, I know I live on a -- by  
5 the train tracks. I mean, obviously, you know. I  
6 mean, I hear the other ones go by 11:30, boom, their  
7 out. This one, that's like an hour long, you know.  
8 And then, like, they are starting at 5 o'clock. I'm  
9 back in '96 -- crazy (phonetic).

10 Post Lane, I mean, that's the least  
11 (inaudible), honestly, I hate to say it. You're going  
12 to (inaudible).

13 CHAIRMAN LOESNER: Thanks. Coming back for  
14 round two?

15 MS. ADORNETTO: No, I just want to ask a  
16 question.

17 CHAIRMAN LOESNER: Sure, come on up.

18 MS. ADORNETTO: Is this --

19 CHAIRMAN LOESNER: You have got to come so  
20 we can get --

21 MS. ADORNETTO: -- (inaudible) --

22 CHAIRMAN LOESNER: -- you on the microphone.

23 MS. ADORNETTO: Oh, okay. I just want to  
24 ask a question, could this impede the operation of the  
25 fire department at night, you know, it's right there

1 along side.

2 UNIDENTIFIED MALE: No.

3 CHAIRMAN LOESNER: No.

4 UNIDENTIFIED MALE: (inaudible) allow  
5 (inaudible) specifically addressed -- (inaudible).

6 CHAIRMAN LOESNER: Yes.

7 UNIDENTIFIED MALE: The fire --

8 MR. BARBARULA: One of the things we  
9 negotiated back then was to have an easement for the  
10 fire department, and it's part of the -- (inaudible)  
11 -- we argued that because they didn't want the fire  
12 trucks going over (inaudible). But you capitulated on  
13 that one. (phonetic)

14 MS. ADORNETTO: It --

15 MR. BARBARULA: It's in the agreement, in  
16 the court order that the fire -- the first trucks have  
17 a right of ingress and egress. (phonetic)

18 MS. ADORNETTO: Okay, but if there is this  
19 train that is 2 miles long, you know, and the fire  
20 department has to get going --

21 MR. BARBARULA: The fire department will go  
22 right over the tracks.

23 MS. ADORNETTO: Okay.

24 MR. BARBARULA: That was one of the things  
25 that the firemen wanted and we got it negotiated

1 (inaudible).

2 MS. ADORNETTO: Okay.

3 MR. FENNO: That was part of my concern when  
4 you started to mention a 2-mile long trains on the  
5 track. That --

6 CHAIRMAN LOESNER: Anything else?

7 MS. ADORNETTO: --

8 MR. FENNO: It's not a current reality.

9 MR. BARBARULA: Obviously she bought after  
10 (inaudible).

11 CHAIRMAN LOESNER: We're closing in on  
12 10:30.

13 MS. MOHAN: My name is Lillian Mohan; I live  
14 on 7 Munn Avenue. Um -- we had that operation with,  
15 um -- with the corn, I was home most of the time, I  
16 like to leave my doors open, I like to leave my  
17 windows open, I couldn't do that because the traffic  
18 with the trucks, when they -- idle and run, it was  
19 really smelly and I couldn't do any of that stuff.

20 Now with this here, are we going to have a  
21 lot of dust, are they going to be wetting it down, is  
22 our street going to be a mess. What's going to  
23 happen? Am I going to have to be, like, enclosed and  
24 not be able to open my window, put my clothes on the  
25 line, like I have been doing?

1 CHAIRMAN LOESNER: Who wants to answer  
2 that?

3 UNIDENTIFIED MALE: That would be the  
4 engineer or -- (phonetic).

5 MS. MOHAN: Well, it is going to be a lot of  
6 dust --

7 CHAIRMAN LOESNER: Dust issues, Mr. Formica?

8 MR. FORMICA: No, we don't have any bulk  
9 materials that make a lot of dust (inaudible) like  
10 bulk cement or any kind of (inaudible). It's just  
11 cubes of brick and the cubes of brick, as you know,  
12 are -- brick, it doesn't generate dust or dirt or --

13 CHAIRMAN LOESNER: Are they wrapped in  
14 anything, are they wrapped in plastic --

15 MS. MOHAN: It's going to be nothing?

16 MR. FORMICA: Some of the materials is  
17 (inaudible).

18 UNIDENTIFIED MALE: (inaudible).

19 CHAIRMAN LOESNER: Hang on in the back.

20 UNIDENTIFIED MALE: --

21 CHAIRMAN LOESNER: Hang on -- whoa, whoa,  
22 before we get out of control here --

23 MS. MOHAN: -- no the trucks --

24 MR. BARBARULA: You can't -- talk to board,  
25 Mr. Formica, your voice is going that way -- and we

1 can't have a private conversation going on there.

2 CHAIRMAN LOESNER: Right.

3 MR. BARBARULA: If you can answer her  
4 question towards the board, Mr. Formica (inaudible).

5 MR. FORMICA: I think the question was does  
6 it generate any dust.

7 CHAIRMAN LOESNER: Yes.

8 MR. FORMICA: And I had said that we don't  
9 sell or deal with any kind of bulk materials, it's  
10 only brick. And the brick onto itself does not  
11 generate any kind of special dirt or dust or anything  
12 like that.

13 MS. MOHAN: So we're not going to have any  
14 thing. It's --

15 MR. FORMICA: There should be --

16 MS. MOHAN: -- no particles in the air,  
17 nothing on the ground --

18 MR. FORMICA: -- correct, we're not putting  
19 anything extra in the air.

20 MS. MOHAN: So I don't have to worry if I  
21 let my grand kids go outside, they are going to be --

22 MR. FORMICA: Yes, sure.

23 MS. MOHAN: -- (inaudible) --

24 MR. FORMICA: -- (inaudible).

25 MS. MOHAN: Okay.

1 CHAIRMAN LOESNER: Thank you. Anyone else?

2 A motion to close the public portion.

3 MR. HEIMALL: -- (inaudible).

4 CHAIRMAN LOESNER: Second.

5 MR. LANG: Second (phonetic).

6 CHAIRMAN LOESNER: All in favor.

7 (All answer in the affirmative)

8 CHAIRMAN LOESNER: All right, we're closing  
9 in on 10:30. So what's our --

10 MR. BARBARULA: Well, I see that there is an  
11 issue that the mayor brought up, but also a resident  
12 brought up, and that's the right of way. The railroad  
13 definitely knows the right of way exists. And we all  
14 were there when it was built (phonetic).

15 I think that is whether (phonetic) or not  
16 the pipe can sustain the tonnage, I think, Mr. Formica  
17 would like to know that, because (inaudible) wouldn't  
18 like to have (inaudible) jobs to transport it. But  
19 the second company makes a big difference between what  
20 the consumer, ultimate consumer pays and what he has  
21 to pay for it at the -- at the factory. (Phonetic)

22 So I'm sure he won't want to see a lost  
23 opportunity there. So I think between now and the  
24 next meeting that that safety issue should be able to  
25 be worked out between the --

1 CHAIRMAN LOESNER: I think the --

2 MR. BARBARULA: -- applicant --

3 CHAIRMAN LOESNER: I think that number is  
4 that pipe, because that's going to be -- that's going  
5 to be potentially the biggest problem.

6 UNIDENTIFIED MALE: You're looking at 10,000  
7 pounds on a 35 (inaudible) area that (inaudible).

8 CHAIRMAN LOESNER: What was the second issue  
9 again, John?

10 MR. BARBARULA: Well, that -- that's the  
11 first issue. And I think after that is -- Linda is  
12 going to make copies of the operating agreement so  
13 that clears up the (inaudible).

14 CHAIRMAN LOESNER: Yes, and can you -- can  
15 you put together for us exactly -- not exactly, but as  
16 close to exact as you can get, what powers we have  
17 over the application, so we're clear on what we can  
18 do. We can make it clear to the residents what we can  
19 do and what we can't do.

20 MR. BARBARULA: I can make copies of the  
21 Ridgefield Park case (inaudible). Other than the  
22 consent order, which is your guide --

23 CHAIRMAN LOESNER: Right.

24 MR. BARBARULA: -- Ridgefield Park says --  
25 and it would have been --

1 CHAIRMAN LOESNER: Well, save it for the  
2 next time.

3 MR. BARBARULA: Okay. So that was the  
4 (inaudible), in that case I can make copies and have  
5 -- as a matter of fact, you know what? Why don't I do  
6 this? Linda, if you could, make copies for everybody  
7 and (inaudible) and give it back to me. And -- at the  
8 next meeting you can have copies out there with the  
9 (inaudible).

10 CHAIRMAN LOESNER: Is this -- this isn't  
11 really an application, right, so it's a hearing, so we  
12 just have to reschedule the next hearing.

13 MR. BARBARULA: Yes, this is a -- under the  
14 consent order, the railroad could come in any time, as  
15 long as they give us 10 days notice. They have to ---  
16 when they are changing the use, they have to come back  
17 in and show us --

18 CHAIRMAN LOESNER: Yes, I saw that, but I  
19 want to get another -- another date so we can tell  
20 people when the next date is going to be --

21 MR. BARBARULA: Well, I --

22 CHAIRMAN LOESNER: -- if we can get one --

23 MR. BARBARULA: -- I would say that I don't  
24 -- I would have to defer to Paul (inaudible).

25 MR. DARMOFALSKI: (inaudible).

1 CHAIRMAN LOESNER: Well, we noticed --

2 MR. BARBARULA: -- something that

3 (inaudible)--

4 CHAIRMAN LOESNER: -- Mayor, didn't we do  
5 the notice thing on this?

6 MAYOR BUDESHEIM: I sent a notice to  
7 everyone on Munn and Post (phonetic). (inaudible).

8 MR. BARBARULA: It's our notice, it's not --  
9 (inaudible) our notice (inaudible).

10 CHAIRMAN LOESNER: So can we set -- can we  
11 set a date tonight or do we have to wait.

12 MR. BARBARULA: I don't think that  
13 (inaudible) be more than a month, right? To get  
14 (inaudible).

15 UNIDENTIFIED MALE: -- (inaudible) --

16 CHAIRMAN LOESNER: So --

17 UNIDENTIFIED MALE: -- (inaudible) here at  
18 the next meeting? A representative.

19 CHAIRMAN LOESNER: That will be up to them.

20 MR. BARBARULA: Not unless --

21 UNIDENTIFIED MALE: -- the other questioning  
22 (inaudible) --

23 MR. BARBARULA: (Inaudible).

24 CHAIRMAN LOESNER: Hang on, hang on. Folks.

25 MR. BARBARULA: Hold on a second.

1 CHAIRMAN LOESNER: Folks, hang on, please.

2 MR. BARBARULA: I think with the -- we gave  
3 everybody notice here, we should let them know now  
4 that it is going to be carried.

5 CHAIRMAN LOESNER: Well, yeah, I just want  
6 to get a date to carry, that's all.

7 MAYOR BUDESHEIM: That easement -- that  
8 easement has to be filed with the county, right?

9 MR. BARBARULA: It should be filed.

10 MAYOR BUDESHEIM: It is filed with the  
11 county.

12 UNIDENTIFIED MALE: (inaudible) get a copy  
13 of it to see what (inaudible) are attached to that  
14 easement. (Phonetic) What if the easement says  
15 you're not allowed to put any (inaudible)?

16 CHAIRMAN LOESNER: We'll see what happens  
17 when they get it.

18 MAYOR BUDESHEIM: (inaudible).

19 CHAIRMAN LOESNER: All right, so we're going  
20 to --

21 MR. BARBARULA: I -- I will see if I can get  
22 it, I'm sure we can get a -- I believe we had it in  
23 the -- I think we had a copy, I don't know. Do we  
24 have a copy? I don't know.

25 MAYOR BUDESHEIM: I think we should review

1 it and see what restrictions are attached to it.

2 MR. BARBARULA: Yes, I -- Mr. Mayor, I don't  
3 know and that's a good -- good question. But I have a  
4 feeling that that was (inaudible) back then. But you  
5 know what? The conditions are what's in writing. And  
6 the writing will tell us.

7 MAYOR BUDESHEIM: Well --

8 MR. BARBARULA: So I can -- I can --

9 MAYOR BUDESHEIM: -- condition this time,  
10 before it was just -- (inaudible) --

11 MR. BARBARULA: No, I'm agreeing with you.

12 MAYOR BUDESHEIM: Now you have (inaudible).

13 MR. BARBARULA: The only thing that really  
14 matters is not what we remember as what actually is in  
15 writing for that easement. It may say you can't put  
16 anything on top and then that's going to be an issue.

17 CHAIRMAN LOESNER: Well, we're going to see.  
18 We're going to -- we're going to review the easement,  
19 we're going to notify the water commission. We're  
20 going to put together what we can do and what we can't  
21 do by the consent order.

22 MR. BARBARULA: All right.

23 CHAIRMAN LOESNER: May -- is May 28<sup>th</sup>  
24 agreeable?

25 MR. BARBARULA: I -- gave them the case so

1 that everybody can read it (inaudible) --

2 CHAIRMAN LOESNER: Or do you want to go out  
3 from there?

4 MR. FIORILLA: Excuse me?

5 CHAIRMAN LOESNER: Is May 28<sup>th</sup> agreeable or  
6 do you want to go out from there?

7 MR. FIORILLA: I just want to make sure we  
8 have -- if there are any other issues --

9 MR. BARBARULA: I would prefer that I  
10 contact the chief engineer, who I have his contact  
11 (inaudible) North Jersey District Water (inaudible).

12 MR. FIORILLA: Okay.

13 MR. BARBARULA: -- (inaudible) from your  
14 engineering department and try to solve it -- the  
15 engineering issues (inaudible).

16 MR. FIORILLA: That would be --

17 MR. BARBARULA: (inaudible)

18 MR. FIORILLA: We may have -- we may have  
19 people from our outside engineering firm involved in  
20 that, is that okay with you? (phonetic)

21 MR. BARBARULA: Mr. Fenno, I think  
22 (inaudible), I think the last time (inaudible)  
23 somewhere along the line (inaudible).

24 MR. FENNO: Oh, I'm sure we do.

25 MR. BARBARULA: So --

1 MR. FENNO: I mean, we -- we, you know, we  
2 certainly have copies. So it's not a problem.

3 MR. BARBARULA: If you have it (inaudible).

4 MR. FENNO: We'll find it --

5 MR. BARBARULA: -- you may say (inaudible).

6 MR. FENNO: We'll do our best to produce a  
7 copy --

8 MR. BARBARULA: -- (inaudible) New Jersey  
9 100 and some dollars -- (phonetic) -- (inaudible).

10 CLERK: If you can copy me on that, as well,  
11 I would appreciate it.

12 MR. BARBARULA: If you can find that, you  
13 can save us the cost of going (inaudible).

14 MR. FENNO: We'll do our best, I'm sure.

15 UNIDENTIFIED MALE: I think also -- the  
16 convenience of our residents, any of these documents  
17 that we're getting are posted on our website. Go to  
18 the home page and (inaudible) what's happening now,  
19 have the railroad (inaudible) and be able to look at  
20 all these documents as soon as we get them.  
21 (phonetic)

22 MR. BARBARULA: (inaudible) give them back,  
23 because that way (inaudible).

24 UNIDENTIFIED MALE: And depending on the  
25 answers that we get -- if you could possibly consider

1 limiting storage area.

2 CHAIRMAN LOESNER: We'll see what -- we'll  
3 see what comes back on --

4 UNIDENTIFIED MALE: Yeah, depending on -- on  
5 what the -- (inaudible), that might be (inaudible).

6 UNIDENTIFIED MALE: I would also like to  
7 find out about that North Bergen site that Mr. Sciarra  
8 was mentioning (inaudible). Were they able to --  
9 force the issue with the building (inaudible).

10 MR. FENNO: We'll be happy to provide  
11 information to Mr. Barbarula --

12 CHAIRMAN LOESNER: Great.

13 MR. FENNO: -- about that. That will be  
14 very easy for us. And just again, to try to make this  
15 be as (inaudible) as possible, trying to make sure I  
16 have a list (inaudible) try to respond. (phonetic)

17 MR. BARBARULA: If you can get us the  
18 easement. I know North Bergen contacted me back in  
19 (inaudible).

20 MR. FENNO: We'll have -- (inaudible)  
21 explaining --

22 MR. BARBARULA: Yes.

23 MR. FENNO: -- (inaudible).

24 MR. BARBARULA: I kind of remember that.  
25 That -- the easement, that and the (inaudible) contact

1 Paul because the integrity of the -- water easement is  
2 something that is of great concern to the railroad --

3 MR. FENNO: Absolutely.

4 MR. BARBARULA: -- to the borough --

5 MR. FENNO: No dispute.

6 MR. BARBARULA: -- and (inaudible) Mr.  
7 Formica who (inaudible) and see water in the pile of  
8 brick under the ground. (phonetic)

9 MR. FORMICA: No question --

10 CHAIRMAN LOESNER: Would not be good.

11 MR. BARBARULA: It wouldn't make a good  
12 (inaudible).

13 CHAIRMAN LOESNER: Is that all?

14 MR. BARBARULA: That's it. Let everybody  
15 know --

16 CHAIRMAN LOESNER: Wait, hang on.

17 MR. BARBARULA: -- the mps and the chairman  
18 will let you -- (inaudible).

19 CHAIRMAN LOESNER: I would like to make a  
20 motion first that we carry the hearing to May 28<sup>th</sup>.

21 MR. HEIMALL: So moved.

22 UNIDENTIFIED MALE: Second.

23 CHAIRMAN LOESNER: All in favor.

24 (All answer in the affirmative)

25 CHAIRMAN LOESNER: Okay. What this means,

1 folks, is that the hearing will continue on May 28<sup>th</sup>,  
2 after the -- application that we got, right?

3 (Pause in dialog)

4 CHAIRMAN LOESNER: Motion to adjourn.

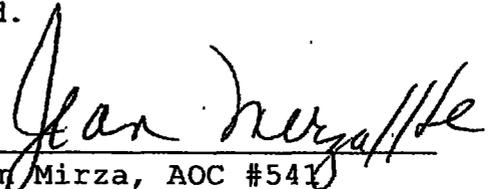
5 (Hearing concluded)

6 CERTIFICATION

7 I, Jean Mirza, the assigned transcriber, do  
8 hereby certify the foregoing transcript of proceedings  
9 on CD is prepared in full compliance with the current  
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11 true and accurate non-compressed transcript of the  
12 proceedings as recorded.

13

14 July 15, 2009

  
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G & L Transcription of NJ

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**Riverdale Planning Board**

**IN RE:** New York Susquehanna & Western Railroad  
Hamburg Turnpike/Post Lane  
Block 17, Lot 4

Date of Hearing: May 28, 2009

**BEFORE:** Members of the Planning Board and Public

**TRANSCRIPT ORDERED BY:**

John Fiorilla, Esq. (Capehart & Scatchard)  
Attorney for New York Susquehanna & Western Railroad

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EXHIBITS

EVID.

8

A1 Letter from water commission

6

9

A2 Site plan

6

10

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1           VICE CHAIRMAN MAGENNIS: Okay. The next  
2 items for us is a continuation of the hearing for the  
3 New York Susquehanna and Western Railway Corporation,  
4 that's NYS&W Railway Corporation, Paterson, Hamburg  
5 Turnpike and Post Lane, block 17, lot 4.

6           COUNCILMAN FALKOSKI: Good evening.

7           VICE CHAIRMAN MAGENNIS: Good evening.

8           COUNCILMAN FALKOSKI: Mr. Barbarula. I was  
9 not present at the last meeting, but I read all the  
10 minutes and read all the correspondence.

11           MR. BARBARULA: Can you please stand and  
12 raise your right hand?

13 J O S E P H F A L K O S K I, SWORN

14           MR. BARBARULA: Councilman, you have  
15 indicated on the record that you have reviewed the  
16 minutes and the documents submitted in this  
17 application?

18           COUNCILMAN FALKOSKI: Yes, I have.

19           MR. BARBARULA: And you're so certifying as  
20 of today, correct?

21           COUNCILMAN FALKOSKI: Correct.

22           MR. BARBARULA: Mr. Fiorilla, would you like  
23 to ask the councilman any questions about his review  
24 of the records?

25           MR. FIORILLA: No, I have no questions.

1 MR. BARBARULA: Okay. On that basis,  
2 councilman, you wish to sit and be part of the  
3 (inaudible).

4 COUNCILMAN FALKOSKI: (Inaudible).

5 MR. ROBERTS: I also read the minutes.

6 MR. PELLEGRINI: (Inaudible) yeah.

7 MR. BARBARULA: Bob, -- all right. Will all  
8 of you please stand.

9 V I N C E N T P E L L E G R I N I, SWORN

10 B O B B Y R O B E R T S, SWORN

11 MR. BARBARULA: Members, each of you, do you  
12 solemnly swear that you have read the minutes in this  
13 matter and all of the documents that were submitted?

14 MR. ROBERTS: Yes.

15 MR. PELLEGRINI: Yes.

16 MR. BARBARULA: And you so make that  
17 certification as of tonight.

18 MR. ROBERTS: Yes.

19 MR. PELLEGRINI: Yes.

20 MR. BARBARULA: Mr. Fiorilla, would you like  
21 to ask them any questions?

22 MR. FIORILLA: I have no questions.

23 MR. BARBARULA: Gentlemen, on that basis,  
24 (inaudible) certification that you have indicated that  
25 you brought yourself up to speed on the record, and

1 you will all be part of the deliberations on the  
2 hearing on this matter. (Phonetic)

3 VICE CHAIRMAN MAGENNIS: Okay, Mr. Fiorilla.

4 MR. FIORILLA: Mr. Magennis, my name is John  
5 Fiorilla; I'm from the firm of Capehart and Scatchard.  
6 I continue to make appearing on behalf of the New York  
7 Susquehanna and Western Railways.

8 Since our last meeting, we approached the  
9 North Jersey Water Supply District -- I'm sorry, Water  
10 Supply Commission, District Water Supply Commission --  
11 let me get that in the right order -- regarding the --  
12 regarding the water pipe, which is in the railroad's  
13 facility. And we received this afternoon at about 4  
14 o'clock a letter, which we have made copies and -- has  
15 that been distributed Mr. Darmofalski?

16 MR. DARMOFALSKI: Yes, it was.

17 MR. FIORILLA: Okay.

18 VICE CHAIRMAN MAGENNIS: We have it in front  
19 of us.

20 MR. FIORILLA: Yes. And that -- that letter  
21 speaks about under what circumstances the brick could  
22 be stored at the property.

23 MR. BARBARULA: At this time, I think that  
24 (inaudible) to the board, it should be moved as part  
25 of the application.

1 VICE CHAIRMAN MAGENNIS: Okay. We'll make  
2 it part of the application.

3 CLERK: Is that going to be an exhibit,  
4 John, or just part of the application?

5 MR. BARBARULA: I think what we do is -- I  
6 don't think we marked -- did we mark any exhibits at  
7 the last one? (Phonetic)

8 MR. FIORILLA: I don't recall.

9 CLERK: I don't think so.

10 VICE CHAIRMAN MAGENNIS: I don't think so.

11 MR. BARBARULA: (Inaudible) the first one.

12 MR. FIORILLA: Also referred to in the  
13 letter is part of the site plan, and we have some  
14 copies of that, Mr. Barbarula, which should also be  
15 distributed and marked.

16 MR. BARBARULA: The letter will be  
17 A1, (inaudible). And you have the (inaudible).

18 MR. FIORILLA: I'm not sure. I don't recall  
19 how many I made.

20 UNIDENTIFIED MALE: (Inaudible).

21 CLERK: Is that going to be marked?

22 MR. BARBARULA: Marked A2.

23 CLERK: A2.

24 MR. BARBARULA: Section 8A of the  
25 (inaudible).

1 CLERK: Okay.

2 UNIDENTIFIED MALE: Can I ask Mr. Fiorilla a  
3 (inaudible) question?

4 VICE CHAIRMAN MAGENNIS: Not yet. You'll  
5 have your opportunity to ask the questions at the end  
6 of their testimony.

7 (Pause in dialog)

8 VICE CHAIRMAN MAGENNIS: Just so that the  
9 members of the audience know what you gave to us,  
10 maybe you could just tell them what we're looking at  
11 it.

12 MR. FIORILLA: It's a change in the site  
13 plan to change the -- the amount of bricks --

14 VICE CHAIRMAN MAGENNIS: Right.

15 MR. FIORILLA: -- how high the bricks would  
16 be stored. And that comes as a result of a letter  
17 that I gave you.

18 VICE CHAIRMAN MAGENNIS: Right. Just so  
19 that the people in the audience know that at one point  
20 they wanted to stack the brick 12 feet high, now  
21 that's limited to 9 feet. And that's based on letters  
22 that went back and forth with respect to the safety of  
23 the piping, the water piping underneath the easement.

24 MR. FIORILLA: That's correct. The letter  
25 that we have here from the District Water Supply

1 Commission comes from the -- professional engineer, I  
2 think that's an important thing, Michael (inaudible).

3 VICE CHAIRMAN MAGENNIS: And, Paul, you have  
4 seen the letter, you have no issues with what's stated  
5 in the letter?

6 MR. DARMOFALSKI: All the previous  
7 correspondence (inaudible) waiting for official  
8 documents from the North Jersey District Water Supply  
9 addressing their either approval or changes to the  
10 (inaudible).

11 VICE CHAIRMAN MAGENNIS: Okay, well,  
12 actually, will those calculations be provided to you,  
13 Paul, at some point? I know the letter states that  
14 it's safe, but, you know, I mean, it's not as --  
15 factual -- I shouldn't say factual. But I mean, if  
16 you had the opportunity to look at the calculations  
17 that were --

18 MR. DARMOFALSKI: I (inaudible)  
19 calculations. After the last meeting, which was in  
20 April, I contacted the North Jersey District Water  
21 Supply engineer (inaudible) and told him what the  
22 situation was in the Borough of Riverdale (inaudible)  
23 this facility. And I said you've got to coordinate  
24 with the construction engineer exactly what load can  
25 be placed upon your pipe.

1           The pipe is buried approximately five feet  
2 down, and it was verbally told to me that it got  
3 passed onto the railroad that the maximum load was  
4 3,000 pounds per linear foot.

5           From that point forward, their engineer --  
6 when I say their engineer, the railroad engineers have  
7 been in direct correspondence with the North Jersey  
8 District Water Supply engineer to work out all the  
9 details of that.

10           The letter that was approved on May 28<sup>th</sup> by  
11 the North Jersey District Water Supply references a  
12 letter from Spectra Engineering -- from the middle of  
13 May, which is (inaudible) the date of May 13<sup>th</sup>, and  
14 that's where the proposal was to limit the height of  
15 the bricks (inaudible).

16           VICE CHAIRMAN MAGENNIS: Right, okay.

17           MR. DARMOFALSKI: I don't know that I need  
18 those calculations, because I'm really not going to  
19 analyze the structural capability of their -- of the  
20 North Jersey District Water Supply (inaudible).

21           VICE CHAIRMAN MAGENNIS: Okay.

22           MR. DARMOFALSKI: (inaudible). I feel  
23 comfortable (inaudible) the engineer (inaudible).

24           VICE CHAIRMAN MAGENNIS: Okay.

25           UNIDENTIFIED MALE: When was the pipe put

1 in?

2 MR. DARMOFALSKI: The pipe was put in the  
3 early 80s. The documents that granted the right  
4 (inaudible) was in 1983, I believe. (Inaudible).

5 UNIDENTIFIED MALE: (inaudible).

6 MR. DARMOFALSKI: Excuse me?

7 UNIDENTIFIED MALE: (inaudible) because the  
8 drawing that was handed to us shows the --

9 MR. DARMOFALSKI: Bear with me one moment, I  
10 just had that out. I have a letter from Spectra  
11 Engineers, who are the engineers -- David Meyers  
12 (phonetic) is the (inaudible) engineer for Spectra,  
13 where he talks about the design plans that indicated  
14 that the 102 inch pipe that (inaudible) where they  
15 modified their calculations -- 9 foot height of brick  
16 on top as opposed to the 12. And -- it does not say  
17 the five-foot (inaudible).

18 UNIDENTIFIED MALE: Because I didn't see it  
19 anywhere in this (inaudible).

20 UNIDENTIFIED MALE: Does it have (inaudible)  
21 on them? (Phonetic)

22 MR. DARMOFALSKI: Excuse me?

23 UNIDENTIFIED MALE: What is the pipe made  
24 out of?

25 MR. DARMOFALSKI: The pipe is concrete.

1 UNIDENTIFIED MALE: Concrete.

2 MAYOR BUDESHEIM: Paul, at the last meeting,  
3 one of the points I brought up was the weight load on  
4 top of that pipe.

5 But the other question I did ask was the --  
6 the legal description of that easement and whether the  
7 North Jersey Water Commission, not from an engineering  
8 point of view but from a legal point of view, would --  
9 give permission to place these, effectively,  
10 structures on top of the easement.

11 And as the zoning officer I'm not allowed to  
12 approve any structure on top of somebody's easement  
13 unless I get a written release (phonetic). Have we  
14 received a written release from the North Jersey Water  
15 Commission saying that they are allowed to (inaudible)  
16 for these -- effectively, structures on top of this  
17 easement?

18 MR. DARMOFALSKI: The letter that was sent  
19 in today, May 28<sup>th</sup>, addresses the conditions of  
20 approval for the height and also the operating of the  
21 facility on top of their -- I don't think that the  
22 engineer from North Jersey can speak legally for the  
23 North Jersey District Water Supply.

24 So I think to answer your question, Mr.  
25 Mayor, engineering wise, I think it's (inaudible), but

1 legally, I don't know whether that's been answered.

2           MAYOR BUDESHEIM: Because that is,  
3 effectively, somebody else's property. You know, the  
4 use of it (inaudible).

5           MR. DARMOFALSKI: I'll leave that to the  
6 (inaudible) to determine. We've got copies of the  
7 original easement from the 80s when the railroad sold  
8 the rights to the -- 25 foot easement for the water  
9 line itself. It is really silent about what can  
10 happen on top of there.

11           It really is (inaudible), specifically about  
12 the installation of the pipe, the cost of putting that  
13 pipe in, who is going to be responsible for railroad  
14 operations and things (inaudible). It really doesn't  
15 talk about what can happen on top of the easement  
16 itself (inaudible). That's not my (inaudible).

17           VICE CHAIRMAN MAGENNIS: Actually, in the  
18 letter here, Mayor, it says the commission has not  
19 objection for the use of the easement for brick  
20 storage. I don't know if --

21           MAYOR BUDESHEIM: That's being written from  
22 an engineer's perspective. I just wanted to know what  
23 the legal perspective (inaudible). I'm surprised we  
24 didn't get something from their executive director  
25 (inaudible).

1 UNIDENTIFIED MALE: (Inaudible).

2 MAYOR BUDESHEIM: No, the --

3 MR. DARMOFALSKI: Michael (inaudible) is --  
4 (inaudible) Destefano (phonetic) is the (inaudible).

5 MAYOR BUDESHEIM: All right. I would have  
6 thought we would have received something from them or  
7 their legal counsel. (Phonetic) And I did ask for  
8 that at the last meeting.

9 VICE CHAIRMAN MAGENNIS: I'm sorry, Restiano  
10 (phonetic) is the first name you're referring to -- I  
11 see he was copied on this letter. So I assume that he  
12 had the opportunity to --

13 MAYOR BUDESHEIM: He probably got it today.  
14 This letter was sent out today. So the executive  
15 director may not have even seen this yet.

16 MR. FIORILLA: Mr. Vice Chairman, this is  
17 not a structure that we're putting on there, it's  
18 brick. It's not a structure. I don't think it's  
19 required to have a legal --

20 VICE CHAIRMAN MAGENNIS: John, what's your  
21 interpretation?

22 MR. FIORILLA: It's a question of -- it's  
23 not a structure.

24 VICE CHAIRMAN MAGENNIS: It sounds like  
25 we're --

1 MR. BARBARULA: Well, first of all, the  
2 easement -- the copy of the easements have --

3 MR. FIORILLA: (Inaudible).

4 MR. BARBARULA: The one (inaudible). The  
5 easement is here, and I had (inaudible) back during  
6 the time of the litigation also now, what you have is  
7 the storage of a product on top of the ground, was not  
8 specifically prohibited in the easement. The storage  
9 of brick is not a structure in that it is movable and  
10 it can be removed at any time. (Phonetic)

11 In reference to what the Mayor has indicated  
12 and in reference to a legal -- something from the  
13 appropriate legal authority rather than the engineer,  
14 I think that what this letter is (inaudible) having  
15 only received it and reviewed it tonight, what this  
16 letter is doing is saying that we want these nine  
17 issues addressed.

18 And I believe that at that -- at that point,  
19 there would be something coming from the commission  
20 indicating that they have no problem or that they have  
21 a problem.

22 So I do believe that the issue of a  
23 utilization of the surface where the easement runs,  
24 would be a condition subsequent to any approvals of  
25 this Board in getting something that the railroad is

1 complying with the request of the water company.

2           Because this is really a contractual issue  
3 between the North Jersey Water District and New York  
4 Susquehanna Railroad, and what they are saying here is  
5 that there are certain issues that they want resolved.  
6 And that they want some other details from the New  
7 York Susquehanna, including the alignment (phonetic)  
8 of the pipe along the easement to be clearly marked  
9 and maintained. So that's something that the railroad  
10 would (inaudible) status (phonetic).

11           They would have to have a surveyor go out  
12 there and mark that for them. So that at any time  
13 (inaudible) it should be -- water company needs to get  
14 in, the railroad would have to immediately move the  
15 stacks. If they had to do repair work, they are going  
16 to have to move those materials in such a way that  
17 would give free access.

18           But if you look at the special easement  
19 agreement, the water company has to be able to have  
20 access, and they don't control what basically is done  
21 on the surface, as long as it is not a permanent  
22 structure. (Phonetic)

23           So all (inaudible) stack 9 foot high now  
24 that they are limiting it here, a 9 foot high stack of  
25 brick is (inaudible) type of structure that you can

1 get, it is something that is consistent of a  
2 component (phonetic). And those components -- those  
3 components are movable and, therefore, they are not in  
4 the nature of a permanent structure, which I would  
5 then believe would violate the easement. (Phonetic)

6           So one of the things that I think that the  
7 board should do here appropriately is that the --  
8 subsequent to (inaudible), and anything that the board  
9 does here, is require something from the commission  
10 signed by the appropriate authority, the executive  
11 director, counsel, etcetera, indicating that they are  
12 satisfied with the follow up that the railroad has  
13 done. And I think that that goes to the questions  
14 about what we as a board can do.

15           I was asked at the last time to make a  
16 statement as to what I think the board can and can't  
17 do. In order to do that, I had to go through the  
18 various materials. And in this case, we have the  
19 August 21 -- 24<sup>th</sup> (phonetic), 1996 judgment. And the  
20 July 22<sup>nd</sup>, 1998 consent order in the action of the  
21 Borough versus the railroad.

22           We also have the transcript of that  
23 proceeding. And one of the things that Judge Stanton  
24 said at that time that guides us -- is sort of a  
25 double edge sword that cuts against the railroad, it

1 cuts against us. He wants to make sure two  
2 (inaudible) that happen.

3           One is that the railroad doesn't say I'm not  
4 doing it or I don't have to do anything. And the  
5 other one is that the local governing body try to use  
6 their regulatory mechanism -- on reference to safety  
7 and environmental and health concerns -- to try to get  
8 rid (phonetic) of this facility. (Phonetic)

9           Basically, under the case and the consent  
10 order -- was that we have the rights and obligation to  
11 look at safety and look at -- appropriateness of well-  
12 being and its effect on the public. But we are not  
13 and do not have zoning regulatory power because that  
14 is economic regulation, which specifically in these  
15 rulings -- are limited and reserved to the federal  
16 government.

17           So our application here is to look at  
18 (inaudible) health and safety concerns, and under  
19 that, I think it would be appropriate to make a -- any  
20 determination here subject to a satisfactory result  
21 between the two parties to this easement, (inaudible)  
22 will not endanger the water pipe. Because (inaudible)  
23 breach of that water pipe is obviously a safety  
24 concern to the residents of -- of this municipality.  
25 So I think that that certainly can be (inaudible).

1 COUNCILMAN FALKOSKI: John, may I ask a  
2 question?

3 MR. BARBARULA: Sure.

4 COUNCILMAN FALKOSKI: I have read some of  
5 these documents that you just referred to, and I get a  
6 different -- a little bit of a different  
7 interpretation there.

8 MR. BARBARULA: Okay.

9 COUNCILMAN FALKOSKI: That the jurisdiction  
10 of the federal government is basically if we're going  
11 to do something that is going to interfere with the  
12 provision of rail service. If there is some kind of  
13 another operation there, then we still have some  
14 jurisdiction from the zoning and planning standpoint.  
15 Am I correct?

16 MR. BARBARULA: No.

17 COUNCILMAN FALKOSKI: Well, that's the way I  
18 get that interpretation.

19 MR. BARBARULA: (Inaudible)

20 COUNCILMAN FALKOSKI: In other words, you're  
21 saying that -- you're saying that they can come in,  
22 somebody can set up a separate business on that lot,  
23 which is a warehouse type of operation, with an  
24 agreement with the railroad, and they can just operate  
25 that -- that warehouse operation independently of the

1 railroad. The railroad may deliver product and drop  
2 it there, but they will be operating independently of  
3 the railroad and you're telling me that's legal?

4 MR. BARBARULA: Yes (phonetic) --

5 COUNCILMAN FALKOSKI: And we don't have any  
6 jurisdiction.

7 MR. BARBARULA: No, we do not have zoning  
8 jurisdiction in that regard.

9 COUNCILMAN FALKOSKI: (Inaudible)

10 MR. BARBARULA: And that's one of the  
11 reasons that we enacted and moved for (inaudible) the  
12 consent order was very important, that we eliminate  
13 livestock, because they could have, prior to this  
14 consent order. And anywhere else they still have a  
15 site along this railroad, they could deliver to a  
16 third party, such as the purveyor of chickens.

17 They could deliver crates and crates of  
18 chickens to an outside or a stockyard with a roof, a  
19 warehousing facility, and the railroad could deliver  
20 the chickens to that facility and then that facility  
21 could distribute.

22 That's called economic regulation. The  
23 zoning aspects of the town do not apply to that, as  
24 long as it's part of the chain of commerce and the  
25 economic access.

1           They could be a stockyard. There could be  
2 -- there could be chemicals. The consent order in  
3 this case that we got at a time when there was a flux  
4 in the law, because there is some stricter regulations  
5 on local municipalities since then, however, we have -  
6 - we have a consent order. No chemicals can be  
7 brought to this site. No livestock can be brought to  
8 this site.

9           But product, when they came in to change  
10 from the corn syrup, they had to come back before us  
11 to show what they are doing (phonetic). And we have  
12 control over safety and health.

13           Zoning -- if they put a warehouse here to  
14 accept (inaudible), they can build it on their -- on  
15 there, as long as it is built within their purview of  
16 their jurisdiction on their property, they can build a  
17 warehouse to deliver tons of clothes and then ship  
18 from there. And that's part of the surface  
19 transportation act, that's part of the subsequent case  
20 law.

21           COUNCILMAN FALKOSKI: Even if the person  
22 that is picking up those clothes is in the business of  
23 selling clothes, he -- he can have an agreement with  
24 the railroad that he can keep his warehouse there and  
25 stock his product there.

1           MR. BARBARULA: Yes. Because we had that  
2 same exact relationship with the people who were  
3 accepting the corn syrup. The corn syrup was, in  
4 effect, warehoused behind that -- in this section, and  
5 maintained through the heating system and tanks that  
6 were just stored there. That -- that was exactly  
7 that.

8           And then when the purveyors of the corn  
9 syrup had a client, Coca-Cola or whoever, or Borland  
10 (phonetic), they would heat up the product, crank up  
11 the -- crank up the boiler and trans-load from the  
12 stored product, the trucks, and took it out. That was  
13 exactly what happened.

14           That was an independent company that had the  
15 -- that had the call for corn syrup. And they had --  
16 they were not owned by the railroad. They were a  
17 separate company. And they didn't make a physical  
18 building a warehouse, but they made the tankers that  
19 were stored there, warehouses (phonetic).

20           So, I mean, it doesn't sound -- it doesn't  
21 feel right, it doesn't sound right --

22           COUNCILMAN FALKOSKI: I -- I read it, as I  
23 say, I get a little different interpretation out of  
24 it. And I'm not an attorney but somehow I don't feel  
25 I agree with you right now.

1 MR. BARBARULA: Well, all I can tell you is  
2 that I went both to state and federal court and that's  
3 -- that's the plain language of the judgment and the  
4 order, and -- I can tell you that we do not have --  
5 and I have a transcript of (inaudible), we do not have  
6 zoning control over the railroad property.

7 COUNCILMAN FALKOSKI: Well, I thought there  
8 was some openings there whereby as long as we were not  
9 interfering with any of the rail's commerce of any  
10 kind that --

11 MR. BARBARULA: Well, that -- that would be  
12 interference with rail commerce.

13 COUNCILMAN FALKOSKI: Well, I don't see how  
14 that could be, because if -- in my interpretation, I  
15 -- I won't argue (inaudible) --

16 MR. BARBARULA: Well, I can --

17 COUNCILMAN FALKOSKI: -- (Inaudible) --

18 MR. BARBARULA: -- tell you that there are a  
19 number of cases that have subsequently come down  
20 because the -- the Riverdale case really -- was widely  
21 quoted and widely used throughout the country. And  
22 more of the interpretation of our case subsequent  
23 communities did not exert as much leeway as we have  
24 gotten.

25 COUNCILMAN FALKOSKI: So in other words, if

1 they want to put a Starbucks there, as long as the  
2 railroad was delivering the coffee to that Starbucks--

3 MR. BARBARULA: No. No, that would be  
4 retail.

5 COUNCILMAN FALKOSKI: Oh (phonetic) --

6 MR. BARBARULA: If they were to put a  
7 warehouse to accept the (inaudible) coffee beans that  
8 Starbucks sells, that they can do. (Phonetic)

9 COUNCILMAN FALKOSKI: Why is retail  
10 excluded?

11 MR. BARBARULA: Because retail is -- and I  
12 don't believe it is covered by the surface  
13 transportation act, retail is not part of the overall  
14 commerce. I don't think that a rail -- that that  
15 would be covered. That I would argue, essentially, is  
16 not part of the same entity as a --

17 COUNCILMAN FALKOSKI: But didn't they  
18 testify at the last meeting that they're not  
19 wholesalers? I thought that that was brought out that  
20 they aren't wholesalers. So -- what are you, then?

21 MR. FIORILLA: We're trans-loaders.

22 MR. BARBARULA: Well, I --

23 MR. FIORILLA: That's what we are. We are  
24 trans-loaders.

25 MR. FENNO: We're transportation.

1 COUNCILMAN FALKOSKI: Who owns the brick?

2 MR. FIORILLA: We don't own it, we're the  
3 railroad. Other people, third parties.

4 COUNCILMAN FALKOSKI: Who pays for it?

5 MR. FIORILLA: Third parties. A lot of the  
6 -- (phonetic) --

7 COUNCILMAN FALKOSKI: Who pays who  
8 (phonetic)?

9 MR. FIORILLA: I don't know who they pay it  
10 to, they don't pay it to us.

11 COUNCILMAN FALKOSKI: In other words, the --  
12 you're telling me that the railroad just comes in and  
13 drops some bricks on the site, they don't know who is  
14 going to buy it --

15 MR. FIORILLA: Right.

16 COUNCILMAN FALKOSKI: -- where is it going  
17 -- (inaudible) --

18 MR. FIORILLA: Because we're getting paid  
19 for transporting those bricks. That's all we get paid  
20 for.

21 MAYOR BUDESHEIM: So we're not really trying  
22 -- we're not trying to regulate the railroad's  
23 property, we're trying to regulate somebody's property  
24 who we don't even know whose it is.

25 MR. BARBARULA: No, that's --

1 MR. FIORILLA: No --

2 MR. BARBARULA: -- I have to respectfully  
3 disagree with, Mayor, because the property is the  
4 railroad's. And the tenant is the person and entity  
5 that is accepting the delivery of the product from the  
6 railroad. And that tenant is covered under the  
7 surface transportation act and under federal law, part  
8 of the stream of commerce.

9 If that tenant - if they were to have a  
10 retail outlet where people came and said, I want to  
11 buy that brick, then I think I have a legitimate  
12 argument to say that this (inaudible) business there  
13 is not something that is in the furtherance of the  
14 transportation situation, you have now made an end  
15 user and you have now developed a (inaudible). That  
16 may have a serious fight with counsel (inaudible),  
17 having an outlet saying, okay, come and buy the brick  
18 here, I think might be a little different situation.

19 But it (inaudible) the storage situation is  
20 exactly the same. It's not corn syrup, it's brick.  
21 But the exact same process is happening.

22 MAYOR BUDESHEIM: Well, if we're going to --  
23 our jurisdiction is limited to -- limited to safety  
24 and health -- then I respectfully disagree to your  
25 determination that those bricks are not a structure.

1 And normally I would agree with you.

2           But you have 102-inch aqueduct, water  
3 aqueduct sitting directly underneath these bricks.  
4 Now I saw them trying to load those pallets and move  
5 them around. And I'm telling you, you can knock a  
6 house down faster than it would take for them to move  
7 one of those stacks. And this is in a residential  
8 neighborhood. (Phonetic)

9           And -- there have been engineers who have  
10 been known to miscalculate things. And -- what  
11 happens if there is a break in that pipe. And they  
12 have 24 hours to respond to get there. And then it's  
13 going to take many hours to move those bricks. And  
14 who knows what's going on underneath there.

15           So I think we do have a lot of -- a lot to  
16 say about this, because we are dealing with the health  
17 and safety of the people whose backyards (inaudible)  
18 business is being run out of.

19           UNIDENTIFIED MALE: Mr. Chairman --  
20 (inaudible).

21           VICE CHAIRMAN MAGENNIS: No, actually --

22           UNIDENTIFIED MALE: -- questions  
23 (inaudible).

24           VICE CHAIRMAN MAGENNIS: No. You will have  
25 an opportunity but it's just not at this time.

1 UNIDENTIFIED MALE: Relevant to this  
2 conversation. (Phonetic)

3 VICE CHAIRMAN MAGENNIS: You will -- you  
4 will have the opportunity, it's just not at this time.

5 MR. BARBARULA: All I can tell you is the  
6 board is at -- they can interpret the orders that I  
7 have -- what we have gotten in this case. I only give  
8 you advice, I don't make decisions.

9 COUNCILMAN FALKOSKI: Can I ask a question  
10 -- I'm not sure I understand it. The railroad brings  
11 these bricks in and they deposit them on the site.

12 MR. BARBARULA: Right.

13 COUNCILMAN FALKOSKI: Someone comes in and  
14 picks those bricks up and transports them somewhere  
15 else.

16 MR. BARBARULA: That's correct. That's what  
17 the testimony --

18 COUNCILMAN FALKOSKI: Who pays for the  
19 transportation on the railroad?

20 MR. BARBARULA: I have no idea, but that's  
21 not a health, safety or welfare issue.

22 COUNCILMAN FALKOSKI: Well, it would be  
23 something to determine what kind of operation  
24 (inaudible). The other thing I would like to know --

25 MR. BARBARULA: I don't -- that --

1 councilman, you would have to ask the operator, I have  
2 no idea.

3 COUNCILMAN FALKOSKI: Okay. The other  
4 question that would go along with that is that, like I  
5 said, from what I understand the railroad brings the  
6 brick in to process it on the site and some kind of a  
7 trucking company comes in and transports it off. Is  
8 that correct? Anyone?

9 MR. FENNO: Mr. Barbarula, if I could jump  
10 in. There was a lot of testimony last month on this  
11 topic, if we need to repeat that, we can do that.

12 COUNCILMAN FALKOSKI: No, I read the -- I  
13 read the minutes --

14 MR. BARBARULA: I -- just, if you can answer  
15 the question, fine. I -- I don't know all the answers  
16 --

17 MR. FENNO: (inaudible)

18 MR. BARBARULA: -- what the testimony was.

19 MR. FENNO: What's the question, I'm sorry?

20 COUNCILMAN FALKOSKI: The question was, that  
21 -- so I'm sure that I'm understanding what's happening  
22 here, is that the railroad delivers the brick to the  
23 site.

24 MR. FENNO: That's correct.

25 COUNCILMAN FALKOSKI: And someone picks it

1 up and transports it to whoever is buying this. An  
2 unknown person who no one knows who pays the rail  
3 transportation or who buys the brick or anything, is  
4 that correct?

5 MR. FENNO: No. Of course, that's not  
6 correct. And that's why I --

7 COUNCILMAN FALKOSKI: Well, what happens  
8 with the brick --

9 MR. FENNO: (inaudible)--

10 COUNCILMAN FALKOSKI: -- once it's delivered  
11 to the site?

12 MR. FENNO: Well, it's a different question  
13 from who pays for the retail freight. Maybe we should  
14 just walk through the process and, Lou, maybe you can  
15 help me with this.

16 But, you know, we have a customer, which is  
17 Tri-State Brick, that is, essentially, a logistics  
18 role that -- people who order brick, whether through  
19 them or with their help, order brick from the  
20 manufacturer. Usually special ordered for their  
21 projects. They are typically large projects.

22 The brick is shipped by rail from the  
23 manufacturer to this site. It's offloaded by a Tri-  
24 State Brick entity (inaudible). And it is loaded onto  
25 trucks and taken to the job site.

1           And the rail freight, rail freight can be  
2 paid in many different ways, I would guess there would  
3 be different answers who pays the rail freight.  
4 Because in some cases it will be Tri-State Brick who  
5 provides -- makes those arrangements. In other cases,  
6 the actual purchaser of the brick who makes the  
7 arrangements with the factory, will pay the rail  
8 freight. And it's -- it's specific to the different  
9 transactions.

10           COUNCILMAN FALKOSKI: All right. So then I  
11 have another question that may follow that up. In  
12 looking at the agreement that the people have with the  
13 railroad, exhibit B, states the agreement is with the  
14 railroad and what is referred to as the customer.

15           MR. FENNO: Yes.

16           COUNCILMAN FALKOSKI: Does -- the railroad  
17 acknowledges the customer who initially delivered  
18 commodity to the facility by truck. Now, I thought it  
19 was picking it up. What is it delivering to the site?

20           MR. FENNO: The customer is moving from  
21 another site to this site.

22           COUNCILMAN FALKOSKI: Delivery -- delivered  
23 commodity.

24           MR. FENNO: Commodity would be brick. Brick  
25 is the commodity.

Board Questions

1 COUNCILMAN FALKOSKI: So t  
2 company that you're agreeing -- that  
3 this agreement with is delivering br

4 MR. FENNO: Initially.

5 VICE CHAIRMAN MAGENNIS: Wa  
6 expiration date -- today, I think, o  
7 that is supposed to end?

8 MR. FENNO: (inaudible) The reason for that  
9 is because --

10 VICE CHAIRMAN MAGENNIS: So that should end  
11 on Saturday.

12 MR. FENNO: Well, it hasn't started. I  
13 mean, realistically. But the reason for that is  
14 because they are moving from a different location to  
15 this location. They have some material at that  
16 location that they need to move and we (inaudible).

17 UNIDENTIFIED MALE: What (inaudible)  
18 location?

19 MR. FENNO: We have a couple of sites, as I  
20 recall. (Phonetic)

21 UNIDENTIFIED MALE: (inaudible)

22 COUNCILMAN FALKOSKI: So in other words,  
23 you're warehousing the brick. What does that have to  
24 do with the railroad?

25 MR. FORMICA: The brick is brought in for

1 specific orders by customers. And delivered to those  
2 -- to customer job sites.

3 COUNCILMAN FALKOSKI: No, what I'm saying,  
4 when you're delivering something to the railroad site,  
5 to start up, NYS&W acknowledges that customer will  
6 initially deliver commodity to the facility by truck  
7 as it moves from its existing site to the facility.  
8 So in other words, wherever you're operating now  
9 (inaudible) commercial product, it's not on railroad  
10 property. Is it?

11 MR. FORMICA: Yes, it is.

12 COUNCILMAN FALKOSKI: So in other words,  
13 you're moving it from one railroad property to another  
14 railroad property.

15 MR. FORMICA: What's happening is that the  
16 product that we have now that we're talking about  
17 moving, is for projects that are ongoing at the  
18 present time. Not all of the commodities (inaudible)  
19 delivered to those projects.

20 COUNCILMAN FALKOSKI: But it's moving from  
21 one railroad site to another (inaudible).

22 MR. FORMICA: After we vacate that one  
23 location, which is in Brooklyn, to this location, then  
24 any jobs that we have commodity on the ground for,  
25 we're moving over so that they can be sent to the

1 (inaudible) from this location to the project.

2 (Phonetic)

3 MAYOR BUDESHEIM: I thought you were moving  
4 stuff from Wharton.

5 MR. FORMICA: (inaudible).

6 MAYOR BUDESHEIM: From Wharton. Aren't you  
7 shutting down a place there in Morris County?

8 MR. FORMICA: Wharton was the location that  
9 we were contemplating going before. We had moved some  
10 product to Wharton, as well, but that's in Kenvil  
11 (phonetic).

12 MAYOR BUDESHEIM: So you already have stuff  
13 there.

14 MR. FORMICA: We started to move from  
15 Brooklyn to Kenvil and stopped. We actually have  
16 product in both locations.

17 MAYOR BUDESHEIM: Well, why don't you just  
18 stay there?

19 MR. FORMICA: This is a more suitable  
20 location.

21 CLERK: -- Mr. Formica -- (inaudible)  
22 microphone. Thank you.

23 MR. FORMICA: I'm Lou Formica, by the way.

24 MAYOR BUDESHEIM: Why did you go there  
25 first?

1 MR. FORMICA: That railroad had approached  
2 us and made us an attractive -- we have not met with  
3 this railroad. Their -- they came to the business  
4 first. And it seemed to be a suitable location.

5 The railroad had held out to us that there  
6 was plenty of land and use and they could transport a  
7 lot of commodities through their -- through their  
8 facility. And they were unable to do that. So they  
9 held out that they do greater than what they were able  
10 to do.

11 UNIDENTIFIED MALE: (inaudible). It's  
12 (inaudible) right of way, isn't it? (Phonetic)

13 MR. FORMICA: I'm not sure.

14 VICE CHAIRMAN MAGENNIS: I know we're going  
15 over a lot of -- not issues, but understanding that  
16 you try to better -- get a grasp on at the last  
17 meeting, and I think it's helpful again now, some of  
18 the same questions are coming up.

19 Just one question if you wouldn't mind  
20 answering.

21 MR. FORMICA: Sure.

22 VICE CHAIRMAN MAGENNIS: Do you -- every  
23 commodity that comes to this site, assuming it's  
24 approved, there is a customer already in place for it.

25 MR. FORMICA: That's correct.

1           VICE CHAIRMAN MAGENNIS: So there is nothing  
2 that shows up here that doesn't have a customer.

3           MR. FORMICA: That's right.

4           VICE CHAIRMAN MAGENNIS: Okay. The next  
5 question that I have is, I think if I recall your  
6 testimony from the last meeting correctly, these  
7 bricks or the commodity seem to move relatively  
8 quickly. What I'm having a difficult time  
9 understanding now is if it moves that quickly, why do  
10 we have to be shipping it from Brooklyn to Riverdale  
11 to send it out again?

12           MR. FORMICA: There's --

13           VICE CHAIRMAN MAGENNIS: It just seems to be  
14 a conflict -- of statement.

15           UNIDENTIFIED MALE: (inaudible) Columbia  
16 Presbyterian Hospital, that's what they told us --  
17 (inaudible) coming across the river and going back  
18 across the river. That's what you told us last time.  
19 (Phonetic)

20           MR. FORMICA: There's -- I'm sorry, I didn't  
21 get the reference to the Columbia Presbyterian.

22           VICE CHAIRMAN MAGENNIS: Well, you --

23           UNIDENTIFIED MALE: That's where you told us  
24 all the bricks were going to. (Phonetic)

25           VICE CHAIRMAN MAGENNIS: Well, as an example

1 you said --

2 MR. FORMICA: No, that was -- not the  
3 exclusive destination --

4 UNIDENTIFIED MALE: No, I know (phonetic).

5 MR. FORMICA: -- for it.

6 UNIDENTIFIED MALE: (inaudible) Brooklyn to  
7 go back to Columbia Presbyterian. (Phonetic)

8 MR. FORMICA: That wouldn't be our  
9 preference. Our preference would be to deliver  
10 directly from where it is presently on the ground. We  
11 don't want to move brick twice, because every time you  
12 move brick --

13 UNIDENTIFIED MALE: (inaudible) --

14 MR. FORMICA: -- chips, it --

15 UNIDENTIFIED MALE: -- testified at the last  
16 meeting -- (inaudible) --

17 MR. FORMICA: -- and you damage it, and  
18 that's true.

19 UNIDENTIFIED MALE: -- that some of these  
20 bricks are going to Columbia Presbyterian. (Phonetic)

21 MR. FORMICA: The question regarding the  
22 time period in which brick moves, it varies by  
23 project. A lot of projects are maybe -- in fact we  
24 were talking this evening about a project that may be  
25 25 rail cars full of material. We'll bring brick in

Board Quest:

1 when it's ready from the manufac  
2 when we tell them to have it rea  
3 that they produce it at that time

4           When they do, we begin t  
5 the manufacturer after it's ready.

6 the ground and the job will take th  
7 landed on the ground at different ti  
8 may have 40 jobs running at the same time. So we'll  
9 have brick on the ground that we can service these 40  
10 projects, as the projects are moving along.

11           And they move along at different rates.  
12 Some projects move along very quickly. Some projects  
13 move along and then they come to a stop because they  
14 have to put some more steel up or pour some more  
15 floors, or do different kind of construction aspects.  
16 And then we'll store brick on the ground that we had  
17 to bring in because it was ready to bring in. So the  
18 timing as to when it moves out varies.

19           UNIDENTIFIED MALE: How long have you been  
20 in business? (Phonetic)

21           MR. FORMICA: 1990.

22           UNIDENTIFIED MALE: And where have you been  
23 storing the brick up until now? (Phonetic)

24           MR. FORMICA: We first started in  
25 Elizabeth. The city had offered us this nice

1 (inaudible) land on the waterfront in Brooklyn. And  
2 we have been there for at least -- I believe about 12  
3 years.

4 UNIDENTIFIED MALE: So why Riverdale? I --  
5 I don't understand.

6 MR. FORMICA: I'm not sure if I can  
7 satisfactorily answer your question. I understand --

8 UNIDENTIFIED MALE: (inaudible) shutting  
9 down Elizabeth?

10 MR. FORMICA: Elizabeth closed down -- that  
11 -- when we had the opportunity to go to Brooklyn,  
12 which was an ideal location, that's where we went.

13 That property is actually controlled by the  
14 EDC, the Economic Development Commission or Apple  
15 Development, which is part of the city, and they  
16 actually want to use that location, and they are  
17 exploring -- there's always studies going on, it's  
18 like an ongoing thing, for a tunnel to go between New  
19 York and New Jersey.

20 So they want to preserve this property  
21 vacant so at any point in time they can do what they  
22 wish with it, regardless if there is a revenue stream  
23 for them or not, it doesn't matter.

24 UNIDENTIFIED MALE: The point in getting at,  
25 your bricks are somewhere now, right?

1 MR. FORMICA: They are located in Brooklyn.

2 For the most part, correct.

3 UNIDENTIFIED MALE: And they can't stay  
4 there.

5 MR. FORMICA: No, the -- we have agreed with  
6 the city to vacate. And that's been a battle. We --  
7 we would like to have been there. We --

8 UNIDENTIFIED MALE: How many bricks are  
9 there? (Phonetic)

10 MR. FORMICA: The site itself was about four  
11 acres. We occupied about -- about two acres worth of  
12 property.

13 UNIDENTIFIED MALE: (inaudible) --

14 MR. FORMICA: Yes.

15 UNIDENTIFIED MALE: -- but how many bricks  
16 are there?

17 MR. FORMICA: The quantity of brick, I can't  
18 -- know? (Phonetic)

19 UNIDENTIFIED MALE: (inaudible)

20 MR. FORMICA: A couple of million brick, I'm  
21 not exactly sure.

22 UNIDENTIFIED MALE: Well, (inaudible).

23 MR. FORMICA: I would have to go back and  
24 check to tell you more exact.

25 UNIDENTIFIED MALE: (inaudible) cubes of

1 brick (inaudible).

2 MR. FORMICA: Well, it fulfills a footprint  
3 of about two acres.

4 UNIDENTIFIED MALE: Well, what's the length  
5 of the storage area? (Phonetic) Paul, do you know?

6 MR. DARMOFALSKI: I can tell you in a  
7 moment.

8 UNIDENTIFIED MALE: (inaudible).

9 MR. FORMICA: And having four acres,  
10 afforded us the opportunity to bring more brick in  
11 earlier than we actually needed it.

12 UNIDENTIFIED MALE: How high are they stored  
13 on (inaudible)?

14 MR. FORMICA: Here, we're talking about  
15 going to 9 feet with 12 feet before.

16 UNIDENTIFIED MALE: (inaudible).

17 MR. FORMICA: I understand. It goes up to  
18 15, 16, 18 feet in Brooklyn.

19 UNIDENTIFIED MALE: (inaudible) cubes on top  
20 (inaudible).

21 MR. DARMOFALSKI: The storage is indicated  
22 on the plan in red, temporary storage, is 1300 feet  
23 (phonetic) long.

24 UNIDENTIFIED MALE: How wide? Well, they're  
25 only going to go about, what, three pallets, about

1 nine feet wide (phonetic).

2 UNIDENTIFIED MALE: (inaudible)

3 UNIDENTIFIED MALE: How many square feet is  
4 that? About 13,000 square feet. That about a third  
5 of an acre. And you have got all this stuff on two  
6 acres now, and you're going to put it all on a third  
7 of an acre. I see -- a jamming up problem here.

8 (Phonetic)

9 MR. DARMOFALSKI: A little over (inaudible).

10 UNIDENTIFIED MALE: Yeah. So you have,  
11 what, two million bricks you said up there?

12 (Phonetic)

13 MR. FORMICA: About that.

14 UNIDENTIFIED MALE: How many fit in a cube?

15 (Phonetic)

16 MR. FORMICA: Five hundred -- it varies, the  
17 brick comes in different sizes, but about 520, 525.

18 UNIDENTIFIED MALE: (inaudible) to the math  
19 real quick --

20 MR. FORMICA: What's going to have to  
21 happen, though, is that we're going to have to change  
22 the nature of our business. We can no longer -- now,  
23 period of time when we bring brick to when it has to  
24 get out, has to be shorter. Because we -- we don't  
25 have that window of keeping it there.

1           To take it from the manufacturer when it's  
2 ready, now we have to make sure that when we get it,  
3 it in has to go out quickly, because we can't afford  
4 to keep any extra things on the ground where we would  
5 have no space for it.

6           We may also have to bring in different  
7 product by truck, which is the more --

8           UNIDENTIFIED MALE: (inaudible) --

9           MR. FORMICA: -- expensive proposition  
10 (phonetic).

11           UNIDENTIFIED MALE: (inaudible) 4,000 cubes  
12 (phonetic).

13           MR. VENZA: At our last meeting, I brought  
14 up an issue of radioactivity.

15           MR. FORMICA: You did.

16           MR. VENZA: And you said you had no  
17 information on that, you knew nothing about it. If I  
18 -- if -- the board would allow me to read a paragraph  
19 from a site of a US environmental protection agency.  
20 The site is called "Becoming Aware of Radiation  
21 Sources."

22           Building products. Common building  
23 products such as brick, cement block, granite  
24 countertops and glazed tiles may contain radioactive  
25 materials due to their presence in (inaudible)

1 material from which they are made. Nearly all rock,  
2 minerals and soil may contain small amounts of natural  
3 (inaudible) radioactive materials. Typically found  
4 radio (inaudible) include radium, (inaudible) and  
5 uranium.

6           For example, soils of the US contain on  
7 average about one picocurie, a unit measure of  
8 radiation, of radium, per gram weight. Though they  
9 sometimes can contain more. When these soils or rock  
10 are incorporated into building materials, these  
11 natural occurring radioactive materials are included,  
12 as well.

13           Now, a picocurie is a very small amount of  
14 radiation. But we're talking about a lot of brick.  
15 So how -- are there any -- um -- um -- precautions  
16 that are taken that -- that would be taken? Do we --  
17 do we know how much radiation this amount of brick  
18 would be giving off? We're in -- we're in a  
19 neighborhood now. (Phonetic)

20           MR. FORMICA: I understand. The -- after  
21 you raised that comment, I thought about it after our  
22 meeting last. And to answer your question directly, I  
23 don't know.

24           But what I thought about was, and the way I  
25 perhaps thought I may have been better able to answer

1 your question (inaudible) hospitals are built out of  
2 brick. Schools are built out of brick.

3 MR. VENZA: (inaudible) --

4 MR. FORMICA: There are massive structures--

5 MR. VENZA: -- most of them have some type  
6 of remediation system to keep an airflow or -- or  
7 anything like that. Now I understand that we're  
8 talking about -- in a hospital, a wall. But we're  
9 talking about blocks of brick, okay. Which -- um --  
10 in -- in my thought process, would mean that there is  
11 more radiation in a condensed area.

12 Now, of course, it being out in the open is  
13 a good thing. But -- it's still going to be there.

14 MR. FORMICA: I can't give you a better  
15 answer than what I just gave. I'm not sure. I have  
16 never heard it before in any situation, even with the  
17 brick manufacturers where they have much more brick  
18 than we have, that radiation ever was an issue for any  
19 their workers.

20 And these places are -- OSHA supervised,  
21 they have a lot of regulatory agencies that are  
22 watching over their -- their manufacturing operations  
23 for pollutants that they may be emitting when they  
24 have the refractories that actually burn the clay.  
25 That seems to be a bigger issue, or an issue -- I

1 can't say bigger, because I don't know any issue  
2 relating to the radiation question itself.

3 VICE CHAIRMAN MAGENNIS: Mr. Formica, are  
4 there any permits -- environmental type permits or  
5 something that's special that would -- that you would  
6 be required to get either from the federal government  
7 or the local government to handle the material?

8 MR. FORMICA: No, nothing at all. The  
9 manufacturers have their own issues when they actually  
10 produce it, because they go through a refractory  
11 process. But when it's a finished good it's inert and  
12 there is nothing that we have for (inaudible).

13 VICE CHAIRMAN MAGENNIS: So you don't have  
14 any regulations --

15 MR. FORMICA: Correct.

16 VICE CHAIRMAN MAGENNIS: -- other than,  
17 like, OSHA, but nothing environmental.

18 MR. FORMICA: Correct.

19 VICE CHAIRMAN MAGENNIS: Okay.

20 MR. VENZA: You -- I'm glad that you looked  
21 into it. Um -- did you happen to look at the MSDS  
22 sheets related to -- do they -- do they touch on the  
23 subject?

24 MR. FORMICA: They do not.

25 MR. VENZA: They don't.

1 VICE CHAIRMAN MAGENNIS: Yes --

2 MS. HOLMQUIST: (Inaudible) question.

3 VICE CHAIRMAN MAGENNIS: -- yes, Donna.

4 MS. HOLMQUIST: I wasn't here at the last  
5 meeting (inaudible).

6 MR. FORMICA: Sure.

7 MS. HOLMQUIST: Isn't it (inaudible)?

8 MR. FORMICA: The -- they do when they  
9 manufacture the brick. And, again, I'm not a brick  
10 manufacturing expert. I'm actually a CPA. Bob, my  
11 partner, is with us tonight, who is the president of  
12 the business who knows more about the manufacturing,  
13 but I think I can speak to your question.

14 They do reclaim some of previously  
15 manufactured brick by regrinding it and putting it  
16 back in. But for the most part, it's just clay that  
17 they mine and they put some additives into it to give  
18 it some different color, different texture.

19 The biggest component of it is when they go  
20 through the heating process. It's a kiln and it's  
21 very hot and it's a long tunnel that they send the  
22 brick through.

23 There, as a result of the heating at  
24 tremendous temperatures, they actually turn it into a  
25 ceramic. And there, there is some emissions of

1 whatever it is that they have to put scrubbers on when  
2 -- before it goes out to the atmosphere. But beyond  
3 that, that's the extent of anything that they have to  
4 worry about in terms of environmental.

5 MS. HOLMQUIST: And (inaudible) deals with  
6 receiving or stock piling (inaudible) building  
7 materials. (Phonetic)

8 MR. FORMICA: There are some people that  
9 deal with the used brick. We don't --

10 MS. HOLMQUIST: (Inaudible).

11 MR. FORMICA: -- not us, we don't do that.

12 MS. HOLMQUIST: (Inaudible) and it won't be  
13 here (phonetic).

14 MR. FORMICA: No.

15 MS. HOLMQUIST: (Inaudible) brick  
16 (phonetic).

17 MR. FORMICA: Correct.

18 VICE CHAIRMAN MAGENNIS: Everything that you  
19 will be dealing with is product coming in, you will  
20 not be sending product out from this location.

21 MR. FORMICA: I'm sorry, say it again?

22 VICE CHAIRMAN MAGENNIS: Your intended use  
23 of the location here is only for product that is  
24 coming onto the site, you will not be taking product  
25 to the site to ship it out to someplace else.

1 MR. FORMICA: Yes, we don't -- exactly, we  
2 don't take products by --

3 VICE CHAIRMAN MAGENNIS: So it's all new.

4 MR. FORMICA: -- there is not -- they are  
5 not demoing a building or we're taking that brick and  
6 reclaiming it and restacking it and reselling it.

7 In fact, certain jobs, they actually like  
8 the look of a used brick, and manufacturers will  
9 actually product a brand new brick, they'll tumble it  
10 and they'll make it look like it's a used brick. And  
11 if we ever sell any brick that they wanted a used  
12 brick, it will be that brick.

13 The old, the used brick that you might get  
14 out of some buildings that they may have knocked down  
15 in Newark and such, the clay is often very soft,  
16 porous, it's not -- it doesn't have the compression  
17 strength that are needed for the new construction  
18 standards. So all the brick that we sell are all  
19 fresh brick that come right from the manufacturers.

20 VICE CHAIRMAN MAGENNIS: Just one question  
21 for Mr. Fenno. I know we discussed a little bit about  
22 how the railroad brings materials to the site and you  
23 allow people to, you know, use the site to ship it to  
24 some other places. And you talked a little bit this  
25 evening about, you know, how you get paid.

1           Is there any limitation on if somebody wants  
2 to buy brick, send it to Riverdale, and someone other  
3 than this gentleman here decides to ship it out. Are  
4 you limiting -- are you -- are they the sole shipper  
5 of brick that is going to be coming into Riverdale?  
6 Or could some other company come in here, deal  
7 directly with you, and decide that they want to have  
8 someone else ship their product?

9           MR. FORMICA: I would be upset if he says  
10 yes.

11           MR. FENNO: You should see the look on his  
12 face.

13           VICE CHAIRMAN MAGENNIS: Well, I just, you  
14 know, I read the material that was submitted --

15           MR. FENNO: I think, realistically, you  
16 know, we have in our agreement we have committed  
17 pretty much all of the usable space at this site for  
18 this purpose with Mr. Fomica's company. Certainly,  
19 things could change in the future. Whether --

20           VICE CHAIRMAN MAGENNIS: Well, it seemed  
21 like there was language in there that would allow it  
22 to change in the future, and I just -- you know, after  
23 hearing a little bit about --

24           MR. FENNO: I mean, typically, we --  
25 typically, we -- we try to maintain as much control

1 and discretion and, certainly, if we were going to  
2 bring in another -- certainly under our agreement, if  
3 we're going to have a customer that is going to bring  
4 in a different commodity, we would have to come back  
5 to this board.

6 VICE CHAIRMAN MAGENNIS: I'm not even  
7 interested in another commodity, I'm specifically  
8 interested in -- if it's going to be used for shipping  
9 brick, you know, is it possible that somebody else  
10 could come in there and ship their own brick out,  
11 without using this gentleman here, who is testifying  
12 to things that he is going to do --

13 MR. FENNO: I -- I --

14 VICE CHAIRMAN MAGENNIS: -- or not do.

15 MR. FENNO: -- I'm really having a difficult  
16 time considering how that could happen with our  
17 agreement. I -- I -- (inaudible).

18 VICE CHAIRMAN MAGENNIS: It might clear it  
19 up for us, too, if --

20 MR. FENNO: It's hard for me to predict an  
21 absolute, (inaudible).

22 MR. PELLEGRINI: So there can be only one  
23 tenant on the site (inaudible).

24 MR. FENNO: Yes, I mean, we don't really  
25 refer to him as a tenant for --

1 MR. PELLEGRINI: He really is a tenant  
2 (phonetic).

3 MR. FENNO: -- for a reason. But,  
4 realistically, this -- this facility -- we made a  
5 commitment for a period of time that pretty much uses  
6 up the capacity of this facility. And I -- I just  
7 don't see how anybody else could (inaudible).

8 MR. PELLEGRINI: And, John, if they did  
9 decide to have another operation, is there anything we  
10 can do about that anyway?

11 MR. BARBARULA: Yes, they have to come back  
12 under the agreement each time. The only thing that  
13 would happen, if they were to manufacturer, even the  
14 Surface Transportation Board, which was the entity  
15 that determined, that said that -- if -- let me see if  
16 I can find it here.

17 If these were not trans-loading and they  
18 were manufacturing and processing facilities, then  
19 local zoning would be able to control. Because they  
20 would not be part of the transportation process.

21 So if they wanted to come in here and build  
22 a manufacturing plant on that site, it would come back  
23 for local zoning because there would be -- and that's  
24 why I analogized like a -- a Starbucks retail is not  
25 part of the transportation processes.

1           They use the -- I have it here. They use  
2 the word "intermodal" and "trans-loading" and --  
3 basically, our limitations are that that -- that's  
4 when we can come in for zoning. If they decided that  
5 they were going to put a manufacturing plant here,  
6 then it's no longer railroad operations and it would  
7 be subject to local control.

8           MR. PELLEGRINI: Now what about a couple of  
9 trailers (inaudible) cinderblock (inaudible).

10          MR. BARBARULA: Another -- another use,  
11 another -- another type of product, receiving lumber,  
12 receiving apples, food product grade, things --  
13 pursuant to our consent order, they would have to come  
14 back and tell us how they're going to handle it. But  
15 we can look at the health and safety. But it still  
16 has to be in -- what they call an "intermodal, trans-  
17 loading facility."

18           So if they wanted to come and have --

19          MR. PELLEGRINI: Lumber.

20          MR. BARBARULA: -- a huge lumber -- share  
21 the site somehow with them, they would come in and  
22 they would say here is what we're going to do. In  
23 that case, we would have to deal with, okay, you're  
24 storing lumber, what about fire, what about other  
25 safety for that regard.

1           But if the manufacturer, if they -- if they  
2 were to deliver the sand, the clay and try to put up a  
3 facility that would fire the brick, then it's -- then  
4 they are no longer in the transportation "intermodal"  
5 aspect, or "trans-loading", quotes, and they would  
6 have to meet the zoning, and that would not be  
7 permitted in this zone as a residential zone.

8           VICE CHAIRMAN MAGENNIS: I have another -- a  
9 question for you. I know that, you know, we talked  
10 about the health, safety and I also believe  
11 environmental was included in that, as well.

12           MR. BARBARULA: Health, safety and  
13 environmental -- unless it becomes -- unless we apply  
14 it -- non-uniformly or in such a way as to preclude  
15 utilization of the facility.

16           VICE CHAIRMAN MAGENNIS: Right. The  
17 question that I have -- it's similar to the one that I  
18 had for Mr. Formica. Are you required to file for  
19 certain permits to operate your equipment? You know  
20 -- I know if there was a building there and you had  
21 over a million BTU's, there's lots of restrictions  
22 that you have, you know, (inaudible) loaders couldn't  
23 go off site and, you know, just lots of -- lots of  
24 things that you would have to comply with.

25           Do you currently have to apply for any

1 permits to operate the equipment that you're intending  
2 to use at the site? If --

3 MR. FENNO: No (phonetic).

4 VICE CHAIRMAN MAGENNIS: -- this -- okay.

5 So everything that you use there is no -- state,  
6 federal permitting required.

7 MR. FENNO: I mean, there is no state  
8 permitting. There is -- anything from a federal  
9 standpoint, we are regulated, we don't require a  
10 permit from (inaudible) for instance, from the federal  
11 railroad administration, which is -- which is a  
12 federal agency that primarily regulates safety on  
13 railroads. (Phonetic)

14 VICE CHAIRMAN MAGENNIS: Right, but I'm  
15 talking about more of the --

16 MR. FENNO: They -- for instance, they  
17 inspect our locomotives frequently. To make sure that  
18 they are in compliance with federal requirements. But  
19 there is no specific permit like -- (phonetic) --

20 VICE CHAIRMAN MAGENNIS: Well --

21 MR. FENNO: -- in the sense that you're  
22 talking about. (Phonetic)

23 VICE CHAIRMAN MAGENNIS: Since you brought  
24 up the locomotives, I mean, one of the requirements  
25 for -- if it was the commercial building, you would

1 have to have a certificate that someone is in there  
2 adjusting the combustion equipment to make sure that,  
3 you know, that it is in compliance with whatever  
4 standards are for, you know, hydrocarbons, carbon  
5 monoxide. Do you have the same requirements for your  
6 locomotive?

7 I mean, if we have got something that is  
8 coming up and down the tracks here -- are -- are you  
9 required to make sure that the carbon monoxide that it  
10 puts out, the carbon dioxide, etcetera, is within  
11 certain limits to make sure that they are not a health  
12 related issue for people, either working on it or  
13 living around it?

14 MR. FENNO: It's a -- it's a -- it's  
15 difficult for me to relate because it's such an  
16 entirely different -- different from the regulatory  
17 scheme, so to speak. The railroad locomotives are  
18 regulated primarily by the federal railroad  
19 administration. To some extent by the US EPA, as  
20 well.

21 And there's compliance -- requirements of  
22 daily inspection, there's requirements for more  
23 detailed inspections every 92 (phonetic) days.  
24 There's more detailed inspection after -- on every --  
25 what is it, every year or something, yearly inspection

1 requirement. So there's -- there's significant  
2 regulation.

3 We do not have, like, a -- we do not have an  
4 air emission like a smokestack factor (phonetic).

5 (Inaudible) --

6 VICE CHAIRMAN MAGENNIS: Well --

7 MR. FENNO: But there are regulations  
8 relating to a variety of things, including air  
9 emissions on -- on locomotives. And the federal  
10 (inaudible). There are federal regulations  
11 (inaudible). The Environmental Protection Agency is  
12 primarily the one for locomotive.

13 UNIDENTIFIED MALE: The federal EPA.

14 MR. FENNO: (inaudible).

15 VICE CHAIRMAN MAGENNIS: So there are  
16 requirements then for --

17 MR. FENNO: There are.

18 VICE CHAIRMAN MAGENNIS: -- and for --

19 MR. FENNO: -- there are. And they enforce  
20 them themselves, they have their own inspectors. The  
21 federal road administration comes all the time,  
22 actually. They are here all the time to look at this  
23 railroad. They are federal inspectors.

24 MR. VENZA: Going along with that issue, um  
25 -- I know you told us -- locomotives will not be used

1 to move the cars around on the site. But there would  
2 be another means of moving them, correct?

3 MR. FENNO: Well, I can't say locomotives  
4 won't be used to move cars on the site, because the  
5 locomotives will bring the cars there, they will bring  
6 them back --

7 MR. VENZA: -- understand (inaudible)  
8 understand --

9 MR. FENNO: There may be a circumstance in  
10 which a locomotive might be asked to move a car  
11 around. But more likely, the -- as far as moving the  
12 cars a little bit so that they can get the next cars  
13 to the loading platform, would mostly likely done by  
14 Mr. Formica (inaudible), equipment, and I think he  
15 talked about that last time.

16 MR. VENZA: And who regulates your  
17 equipment?

18 MR. FORMICA: There is no regulation. We --  
19 essentially, what we were talking about is -- if the  
20 railroad brings in, say, two rail cars, and one of the  
21 rail cars is not acceptable from the platform to  
22 unload, it's easy to -- with a forklift to pull those  
23 two trains forward enough -- enough of a distance, to  
24 put that second car in place so you can access it.

25 MR. VENZA: So you're just essentially using

1 a hi-lo and --

2 MR. FORMICA: Exactly.

3 MR. VENZA: -- move things around.

4 UNIDENTIFIED MALE: How many hi-los  
5 (inaudible)?

6 MR. FORMICA: There's three -- two are  
7 pretty active, and two others, I would say there is  
8 four. And I think at any point in time there would be  
9 two that might be active. Maybe three.

10 UNIDENTIFIED MALE: And how many truckloads  
11 a day? (Phonetic)

12 MR. FORMICA: There will be two, sometimes  
13 three regular routine truck operations that we have.  
14 Each one will do two loads a day each. So it will be  
15 about six. It could be upwards to, if they get lucky,  
16 eight loads a day going out.

17 UNIDENTIFIED MALE: (Inaudible) tractor-  
18 trailers.

19 MR. FORMICA: Yes. In fact, some days none.

20 UNIDENTIFIED MALE: And how many people are  
21 going to be working in the office (phonetic)?

22 MR. FORMICA: In the office itself?

23 UNIDENTIFIED MALE: (Inaudible).

24 MR. FORMICA: Basically, we just have one  
25 yard manager. And we have three -- maybe three people

1 to assist. Unloading the trains, just keeping things  
2 tidy.

3 UNIDENTIFIED MALE: Do you own these trucks  
4 to transport? (Phonetic)

5 MR. FORMICA: We do not. They are common  
6 carriers.

7 MAYOR BUDESHEIM: (Inaudible). You don't  
8 order the bricks, you don't own the bricks, you don't  
9 deliver the bricks.

10 MR. FORMICA: I can only tell the truth. If  
11 it something that you didn't like --

12 MAYOR BUDESHEIM: I (inaudible) what you're  
13 doing -- (inaudible) --

14 MR. FORMICA: -- I'll clarify it.

15 MAYOR BUDESHEIM: (inaudible).

16 MR. REILLY: John, if you could help me  
17 understand a couple of things here. I know that we  
18 have gone over it both last time and this time around.

19 If I understand it correctly,  
20 municipalities, town, cities, whatever, have little --  
21 little of none jurisdiction over the railroad  
22 operations. They can basically operate 24/7 and the  
23 railroad can come through at any time. Is that  
24 correct?

25 MR. BARBARULA: Right.

1 MR. REILLY: They can --

2 MR. BARBARULA: The trains going back and  
3 forth on the rail is completely federal.

4 MR. REILLY: Right.

5 MR. BARBARULA: The utilization of any  
6 property adjacent to the railroad, as long as it is  
7 trans modal or trans-loading, being part of commerce,  
8 it is federal preemption, no zoning applies.

9 MR. REILLY: Okay.

10 MR. BARBARULA: So that, although if this  
11 was done in -- anywhere else in the municipality, we  
12 would consider it a storage facility or warehousing  
13 type facility and apply our zoning to it. Because it  
14 is on railroad property, and it's part of the  
15 transportation processes, that is preempted by federal  
16 law.

17 Where we have control is health, safety and  
18 environmental -- but that is limited by, it must be  
19 uniformly applied throughout the municipality. You  
20 cannot say that this applies to this site and nowhere  
21 else. And that it cannot be applied in such a  
22 restrictive fashion so as to preclude the utilization  
23 of the site.

24 MR. REILLY: Okay.

25 MR. BARBARULA: What you have here is you

1 have some interesting elements, in that there is a  
2 significant water transportation facility that brings  
3 us a number of serious health issues, in terms of --  
4 and safety, primarily safety, that you want to make  
5 sure that the utilization in their transportation  
6 processes do not interfere in such a way as to create  
7 a safety hazard.

8           And that's why I said to you that you  
9 certainly can require an appropriate legal approval of  
10 the North Jersey Water Commission because they are the  
11 beneficiary of the perpetual easement.

12           And you see in that letter that we got  
13 tonight, and I only got it tonight also, that one of  
14 the things they say is that they feel that it is  
15 inappropriate (phonetic) that they would have to --  
16 the railroad would have to move that stack -- or  
17 stacks plural.

18           MR. REILLY: At what point in time, once a  
19 product is off loaded from a rail car, once -- once  
20 it's physically off loaded, and that -- let's make the  
21 assumption that can be off loaded at 3 o'clock in the  
22 morning.

23           MR. BARBARULA: It can be.

24           MR. REILLY: No problem. Not for me it  
25 wouldn't be --

1 MR. FENNO: Well, maybe we should just stop  
2 right there, because we did make representations about  
3 when the materials -- (inaudible) --

4 UNIDENTIFIED MALE: (inaudible) --

5 MR. FENNO: -- would be off loaded from the  
6 railroad cars. And that is (inaudible) --

7 MR. REILLY: Appease me; let's just -- just  
8 go over it again so I can under -- so I can  
9 (inaudible).

10 MR. FENNO: It (inaudible) daytime operation  
11 (phonetic).

12 MR. FORMICA: Correct, yes.

13 MR. REILLY: So you have -- so conceivably  
14 -- let me see, the intent of the operation is that you  
15 might have a rail car come in at 3 o'clock in the  
16 morning, but your operations -- because this is where  
17 I get a little bit confused, because we're not dealing  
18 with one operation.

19 So when I hear Mr. Barbarula speaks about,  
20 you know, the federal law and the intermodal and the  
21 trans modal and whatever heck else you're talking  
22 about, it gets a little bit, you know, convoluted to  
23 me. So I need to try to understand this.

24 You know, if there are two businesses, of  
25 which -- which we are unable to regulate either, and

1 it -- it becomes a little bit frustrating. So when we  
2 begin to go over and over and over the same things --

3 MR. FORMICA: We understand.

4 MR. REILLY: Okay. Now, so by way of some  
5 type of agreement, and I don't know exactly what your  
6 agreement is. But the agreement is you won't offload  
7 or your tenant -- and I know that you don't like to  
8 use that word, but in my mind I kind of use that,  
9 because that's, in my mind, what it is -- your tenant  
10 will not, by some type of agreement, offload at 3  
11 o'clock in the morning.

12 MR. FENNO: That's correct.

13 MR. BARBARULA: In the application that was  
14 submitted (inaudible) signed by Mr. Fenno (inaudible)  
15 operation (inaudible).

16 MR. REILLY: Okay.

17 MR. BARBARULA: Just for the record, again,  
18 hours of operation for the rail car unloading and  
19 truck loading would be between 6 a.m. and 4 p.m.

20 MR. REILLY: Okay, that's good.

21 MR. BARBARULA: Monday through Friday, so  
22 the rare Saturday activity (inaudible) few hours to  
23 accommodate (inaudible) of such deliveries. Rail car  
24 unloading will typically start about 7 a.m. --

25 MR. REILLY: Okay.

1 MR. BARBARULA: -- an hour after opening.

2 MR. REILLY: Okay.

3 MR. BARBARULA: No work it conducted on  
4 Sundays or holidays.

5 MAYOR BUDESHEIM: They're meaningless.  
6 Because those are zoning issues and we have no  
7 control. So if they decide, screw it, we're going to  
8 start doing it at 3 o'clock in the morning, there is  
9 absolutely nothing we can do with that.

10 UNIDENTIFIED MALE: (inaudible) --

11 MAYOR BUDESHEIM: I don't (inaudible) --

12 MR. FORMICA: That might be true, but we  
13 have been doing this awhile, and we don't do that.  
14 And (inaudible) --

15 MAYOR BUDESHEIM: (inaudible) the business,  
16 whatever business you're in, you could sell it  
17 tomorrow.

18 MR. FORMICA: But when you --

19 MAYOR BUDESHEIM: No, no. We have been  
20 burned so many times by promises. That's meaningless.  
21 So I -- (inaudible) don't be --

22 MR. REILLY: It's --

23 MAYOR BUDESHEIM: -- don't be mollified by  
24 what was just read to you. (Phonetic)

25 MR. REILLY: Well, that was my question.

1 MR. FENNO: Can I respond to that?

2 MR. REILLY: Absolutely.

3 MR. FENNO: Because I think, you know, maybe  
4 the railroad would get sold and I won't be here  
5 either. But, you know, and -- Mr. Barbarula can  
6 certainly give his opinion to what I'm about to say,  
7 but it would seem to me --

8 MR. BARBARULA: (inaudible) --

9 MR. FENNO: It would seem to me that, you  
10 know, the railroad has come here seeking revisions  
11 under a consent order, and has made representations to  
12 the board in order to receive the board's agreement  
13 with those revisions (phonetic).

14 And, frankly, if the railroad -- and when I  
15 say the railroad, the railroad and its customers, were  
16 to blatantly violate those representations, I  
17 personally would expect to receive an order to show  
18 cause from -- from Mr. Barbarula. (Phonetic)

19 MR. BARBARULA: I think that's the testimony  
20 of Mr. Formica is his operation, as a customer of the  
21 railroad, is that Monday through Friday with the  
22 occasional Saturday. That's clear. And if he were to  
23 misrepresent that, then we would have the right  
24 (inaudible) and go forward on that.

25 What the Mayor is saying is also true.

1 Because if the economic situation changes,  
2 unfortunately, because the railroad is governed by  
3 federal law, and it could be -- it could change to be  
4 at night.

5 Now, one of the things that people have --  
6 everybody here has to understand, is that whenever the  
7 train arrives in Riverdale, cars will be disconnected  
8 from the remainder of the train. The disconnecting  
9 processes of taking off car one and two, load it with  
10 brick, make noise. If they come at 3 o'clock in the  
11 morning, 4, 2, 5 or 1 o'clock, there is, as the mayor  
12 has indicated, nothing that can be done.

13 Now, Mr. Formica says that he doesn't send  
14 his workers out at 3 o'clock in the morning to then  
15 take it from that rail car and put it on trucks.  
16 That's --

17 MR. REILLY: But again that -- not that  
18 becomes now --

19 MR. BARBARULA: -- comes in (inaudible) --

20 MR. REILLY: -- but now, if you hold on for  
21 a second. Now that becomes a separate business  
22 operation. When the train comes, that's a train  
23 operation. When they -- correct me -- when you -- if  
24 a rail car has to be disconnected, that's not his  
25 operation. That's a rail operation.

1 MR. BARBARULA: That's correct.

2 MR. REILLY: Is that correct?

3 MR. BARBARULA: But in the -- in the overall  
4 (inaudible) of interstate commerce, the entire  
5 processes from the manufacturer to the ultimate  
6 consumer delivery is the transportation process.

7 MR. REILLY: Yes.

8 MR. BARBARULA: Yes, in a common -- in the  
9 common layman's sense, the delivery of these rail cars  
10 to this site is under the express control of the  
11 railroad.

12 MR. REILLY: John, the reason why I -- the  
13 reason why I question that is if because the  
14 disconnecting to the rail cars was not a rail  
15 operation, and if it was his operation, and he's not  
16 going to have somebody there between the hours of --  
17 other than normal operating hours, I don't have an  
18 overly large concern about the fact that something  
19 there may not happen.

20 The -- the fact -- well, the fact is if it's  
21 a rail operation at 3 o'clock in the morning, he could  
22 be home in bed, which is fine, because they are going  
23 to be disconnecting and making the noise. We don't  
24 have any control over that, and I can appreciate that.  
25 Don't like it. But I can certainly appreciate that.

1           What I am questioning is what control do we  
2 have. I have a real huge concern when I look at all  
3 this red on -- on this plan. I see a huge concern  
4 about how much warehouse space that -- that we have  
5 become.

6           I have a real concern that we're negotiating  
7 with the railroad and we have another business entity  
8 here. And you're telling me, which I can appreciate  
9 is true, but we have -- but we're being forced, you  
10 know, to deal with something that we have no control  
11 over.

12           I think that we should have some control  
13 over how much warehouse space we want the tenant to  
14 have. We -- I don't know. That's certainly --

15           MR. BARBARULA: If you -- if you, in a non-  
16 discriminatory way, can show that health, safety or  
17 environmental concerns relate to the amount of storage  
18 on the facility, then that is the only way that you  
19 can legitimately exercise control.

20           If you cannot show that this storage --  
21 because the fact that it's storage is not within our  
22 control, because that would be a zoning issue. What  
23 we try to do back -- more than 10 years ago, was to  
24 say that off loading the corn syrup, keeping the corn  
25 syrup in tanks, then heating it up and transferring

1 it to trucks was a manufacturing process and,  
2 therefore, subject to zoning, and that was determined  
3 to be trans-loading, that's not subject to our  
4 regulation.

5           So it's not that you have no control. It  
6 has to be your control on this is -- does this much  
7 storage adversely affect the health of the community.  
8 Does this much storage adversely affect the safety of  
9 the community? Does this much storage affect the  
10 environment and has environmental concerns for the  
11 community.

12           MR. REILLY: How about the quality of life  
13 of the community.

14           MR. BARBARULA: The quality of life,  
15 unfortunately, is not an issue. If -- and this is  
16 throughout the country and people wake up one day on a  
17 rail line that hasn't been used in 80 years, and all  
18 of a sudden they see these lovely little machines that  
19 come by and pick the rail, put down new stone and  
20 throw down new ties, and throw down new steel, and  
21 then a freight train comes by and the pull off their  
22 (inaudible). Because they never thought that the old  
23 rail lines would be created (phonetic).

24           We, as a country, are going to -- a lot of  
25 old rail lines are going to be reactivated if the

1 current policy of this administration is ever  
2 implemented, because that's part of what this  
3 administration is looking to do. Increase public  
4 transportation and get us out of our cars.

5 MR. REILLY: No, I can appreciate that.

6 MR. BARBARULA: That quality of life is  
7 people bought houses by a rail line.

8 MR. REILLY: And they knew that the rail  
9 line was there when they purchased their home,  
10 absolutely.

11 MR. BARBARULA: It was used or not used --

12 MR. REILLY: My -- my larger question, John,  
13 I understand, and I know that we --

14 MR. BARBARULA: Nothing of what I'm saying  
15 is very popular. But I -- I am just giving you --

16 MR. REILLY: No, I understand that.

17 MR. BARBARULA: -- my legal opinion --

18 MR. REILLY: I understand that.

19 MR. BARBARULA: -- and you decide what to do  
20 with it.

21 MR. REILLY: No, I certainly understand  
22 that. But when I see a railroad or a rail line now  
23 being used as -- as a storage facility, that -- that  
24 just kind of gets under my skin and it -- and it's  
25 beyond my belief that the law was intended to be that.

1 So I -- I have a real hard time believing that -- that  
2 the law intended that to happen.

3 MR. BARBARULA: I can tell you that that is  
4 exactly my position. And in the page five of the  
5 court decision, in which we exacted our consent order,  
6 the judge ruled that this facility is not authorized  
7 by local zoning regulations as legally immaterial  
8 (phonetic) (inaudible).

9 MR. REILLY: I'm assuming that that judge  
10 didn't live by a rail station then.

11 MAYOR BUDESHEIM: So you know, John, I think  
12 there was a difference between the two situations. If  
13 I'm not mistaken, the corn syrup stayed in the train  
14 cars (phonetic).

15 MR. BARBARULA: Right.

16 MAYOR BUDESHEIM: They didn't dump it on the  
17 side of the -- on the pavement and then another truck  
18 came and sucked it all up. And that's the difference  
19 here. Because it stayed within the train cars.

20 Now, as we have been trying to point out,  
21 it's no longer becoming a railroad operation, now they  
22 have a tenant/customer/trans-loader, whatever  
23 description you want to use, wholesaler, storage,  
24 maintenance, whatever. And I think that's the  
25 difference. I think that's what the board is having a

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1 problem reconciling.

2           You know, we found out you  
3 for some reason, I didn't know there  
4 in that ruling that retail can't be  
5 not allowed there. I know that the  
6 at the site in Butler, they have all  
7 trailers. The trains (inaudible) office trailers up  
8 there. You know.

9           Is there no restrictions? How does the  
10 judge then restrict livestock? If we have no control,  
11 how --

12           MR. BARBARULA: He didn't. We did by  
13 consent order in order to -- and we exacted that in  
14 order to cease the litigation with the railroad and  
15 the railroad conceded to agreeing to that.

16           MAYOR BUDESHEIM: But what's to stop them  
17 from going back and saying, hey, we want to sell  
18 chickens there now and, because we have no control,  
19 again, that's almost meaningless.

20           MR. BARBARULA: Well, they have to go --

21           MAYOR BUDESHEIM: (inaudible) -- they didn't  
22 want to do at the time (inaudible).

23           MR. BARBARULA: Well, let's put it this way.  
24 All I can tell you, Mr. Mayor, is that in order for  
25 them to do that, they have to go back to the board and

1 show that there is sufficient information, that the  
2 consent order should be abrogated.

3 I think that they would have a tough time in  
4 that regard, because if they felt that it was an easy  
5 walk in the park to go in and change the consent  
6 order, they would have done it, rather than come back  
7 here. Because subsequent municipalities did not exert  
8 and did not extract from them as favorable a decision  
9 as we have gotten.

10 So I do believe that in that regard, that's  
11 one of the reasons that our consent order (inaudible)  
12 gives this municipality a great deal of benefit that  
13 other municipalities, unfortunately, do not have. And  
14 one of them is that they can't bring livestock here,  
15 unless they go back to the board.

16 And I think that especially with all of the  
17 current nastiness, the swine flu, and everything else,  
18 and the fact that there is residential in the  
19 proximity of other houses, I don't -- I don't know  
20 whether they would get a state -- a state court  
21 favorable to changing the (inaudible) order. And I  
22 think that they would have a very difficult time in  
23 that regard.

24 VICE CHAIRMAN MAGENNIS: John, I know that  
25 we don't have very much control over how the railroad

1 conducts their business. But I think what we -- what  
2 we have here are really two issues. One is the  
3 railroad's typical operation of bringing the car in  
4 and, you know, someone is going to unload it, which is  
5 the daytime operation.

6           Is there anything that would, you know,  
7 restrict the railroad themselves by putting stricter  
8 language in -- in the contract that they have with  
9 their customer, saying that you will only operate  
10 between the hours of 7 to 4? So it's not an issue of  
11 us having to regulate their internal operations, but  
12 they're regulating it themselves?

13           And I know there is some concern here that -  
14 - that the customer at the site might choose to  
15 operate at hours that are different than what's  
16 stated. And right now, there is nothing in the  
17 contract that really restricts it or --

18           UNIDENTIFIED MALE: (inaudible)

19           VICE CHAIRMAN MAGENNIS: Well, there would  
20 have to obviously be some kind of language or  
21 something in there, as well, too. But at least it  
22 would be --

23           UNIDENTIFIED MALE: Isn't (inaudible)?

24           VICE CHAIRMAN MAGENNIS: Well, you can't  
25 separate it. From what I'm hearing our attorneys,

1 from our legal experts, is that we have no control  
2 over it. And if we can't control it directly, perhaps  
3 the next best approach would be to have them control  
4 it themselves, and the contract that is set up with  
5 their customer. So it's very clearly stated, you  
6 know, it's not what we thought they said, but it's in  
7 writing --

8 MR. BARBARULA: Those two parties can always  
9 contract for anything, that's not an issue (phonetic).  
10 The issue is could we impose that as a -- as a  
11 condition between their contractual relationship. And  
12 that answer is no.

13 VICE CHAIRMAN MAGENNIS: But they can do it  
14 themselves.

15 MR. BARBARULA: They could always do it  
16 themselves. We do not have any -- any powers to tell  
17 them what their contract is between the railroad and  
18 their transporter.

19 MR. FIORILLA: Mr. Barbarula, the railroad  
20 is willing to put that into the order that comes from  
21 this board. In other words, make it part of a new  
22 consent order.

23 MR. BARBARULA: I --

24 MR. FIORILLA: On this particular --

25 MR. BARBARULA: -- I said that you guys

1 could do it and you (inaudible) consent to it, we  
2 can't force you.

3 MR. FIORILLA: Well, I know, but we could --  
4 we could agree to it as part of --

5 MR. BARBARULA: Absolutely.

6 MR. FIORILLA: -- couldn't we?

7 UNIDENTIFIED MALE: Sure.

8 MR. FIORILLA: Therefore, it would be  
9 directly with us. We could -- we would --

10 UNIDENTIFIED MALE: That would be,  
11 presumably, legally enforceable by the town --

12 MR. BARBARULA: Well --

13 UNIDENTIFIED MALE: -- well --

14 MR. FIORILLA: Which is what you want.

15 MR. BARBARULA: Exactly. And you can  
16 voluntarily agree to it, that's not an issue.

17 MR. FIORILLA: Well, we're saying that we  
18 would continue doing that, you know, we would have  
19 language that talks about brick business and the  
20 hours, and so on.

21 MR. BARBARULA: That's your answer. If they  
22 are willing to do it, they can give it to us  
23 voluntarily. We can't mandate their contract, but  
24 they can voluntarily offer it. And you hear that  
25 that's what they are going to do.

1           MAYOR BUDESHEIM: Well, Mr. Magennis, I  
2 think one of the issues, though, is once we do that  
3 it's (inaudible).

4           VICE CHAIRMAN MAGENNIS: We would have to,  
5 clearly, depend on our legal counsel to, you know --

6           MR. BARBARULA: We could -- we could do it.  
7 And it would be --

8           VICE CHAIRMAN MAGENNIS: Right. To make  
9 sure that --

10          MR. BARBARULA: -- violation of that would  
11 require the will of the municipality to go in and  
12 enforce it.

13          MR. FIORILLA: It's just as enforceable as  
14 this consent order.

15          MR. BARBARULA: Well, no, I understand, I'm  
16 not saying it isn't.

17          MR. FIORILLA: Well you agree with me.

18 (Phonetic)

19          MR. BARBARULA: Yeah, I do.

20          MR. FIORILLA: Okay, I just want to make  
21 sure that --

22          MR. BARBARULA: But I'm just saying that I  
23 want to make it clear for the record it's not  
24 something that we can force you to do.

25          MR. FIORILLA: No, but --

1 MR. BARBARULA: You're making a voluntary  
2 offer.

3 MR. FIORILLA: I think it's also important  
4 to understand that we haven't ignored this consent  
5 order.

6 MR. BARBARULA: I understand that.

7 MR. FIORILLA: We have come here voluntarily  
8 because we're under this consent order. We didn't  
9 ignore it.

10 MR. BARBARULA: Oh, I --

11 MR. FIORILLA: We didn't have you dragged  
12 into court to enforce it. We came here, right?

13 MR. BARBARULA: I --

14 MR. FIORILLA: I mean, that's all we can  
15 say. That we came here in good faith --

16 MR. BARBARULA: So, yes --

17 MR. FIORILLA: -- under the order.

18 MR. BARBARULA: -- we could, we can modify  
19 that, with their consent we can always modify  
20 (inaudible) and the agreement actually says --

21 MR. FIORILLA: Yes, it (inaudible).

22 MR. BARBARULA: (inaudible).

23 MR. FIORILLA: And we said that we would --  
24 that the railroad --

25 MR. BARBARULA: The difference is that the

1 chairman is saying is there any way we can put more  
2 (inaudible) in it and said we can't do it legally,  
3 they can always do it. And what they are saying is  
4 that they are more than willing to do that.

5 VICE CHAIRMAN MAGENNIS: Well, that would --

6 UNIDENTIFIED MALE: (Inaudible).

7 VICE CHAIRMAN MAGENNIS: I knew that we  
8 couldn't do it, but there is nothing to stop them from  
9 doing it.

10 MR. BARBARULA: They're saying that they  
11 would do that. And what they say now is taking it a  
12 step further --

13 VICE CHAIRMAN MAGENNIS: They'll put it in  
14 the consent agreement --

15 MR. BARBARULA: -- and rather than just in  
16 the resolution, he's willing to modify the consent  
17 order to reflect that.

18 VICE CHAIRMAN MAGENNIS: Okay. I know that  
19 we really haven't followed, probably, the, you know,  
20 your -- your path for getting through this process. I  
21 know -- is there anything that you formally wanted to  
22 -- I know we're open ended here --

23 MR. FIORILLA: I think I presented  
24 everything I -- (inaudible) --

25 MR. FENNO: (inaudible) make clear, so you

1 know, like you, we received this letter from the water  
2 district late today. I think it specifically  
3 addresses, I think it's section 10 of the agreement  
4 that talks about -- of an easement agreement, it talks  
5 about what -- what the railroad had agreed to do, as  
6 far as protecting the water line in the future.

7           And I just want to make clear that the  
8 conditions, which are really kind of forward speaking  
9 things that will happen in the future, that all of  
10 these conditions that are set forth in this letter are  
11 acceptable to us and we fully intend to comply. There  
12 is no concern -- question about that.

13           VICE CHAIRMAN MAGENNIS: As --

14           UNIDENTIFIED MALE: Mr. Chairman --  
15 (inaudible).

16           VICE CHAIRMAN MAGENNIS: I just have one  
17 more question, and I know it came up a couple of times  
18 with regard to -- to safety in the event that there  
19 was a problem with the -- with the water pipe. How  
20 long does it take you to move the product that you  
21 have, you know, over the water pipe? I know you said  
22 there would be, one cube, about 500 or so brick, I  
23 think, in one.

24           MR. FORMICA: Yes --

25           VICE CHAIRMAN MAGENNIS: I mean, if it's 9

1 foot high -- I mean, we don't know your operation.  
2 How long would it take you to go in there and move  
3 (inaudible)?

4 MR. FORMICA: The forklift will lift up two  
5 cubes at a time. And I think the 9 feet proposition  
6 here is about 3 cubes.

7 VICE CHAIRMAN MAGENNIS: Three cubes.

8 MR. FORMICA: So it will take less than a  
9 minute to move a stack of three.

10 VICE CHAIRMAN MAGENNIS: Right.

11 MAYOR BUDESHEIM: How far away are you  
12 moving it? How can you say less than a minute? You  
13 have -- you have to move it 500 feet away.

14 MR. FORMICA: For -- if I'm moving it a mile  
15 away, it will take -- whatever time it takes to move--

16 VICE CHAIRMAN MAGENNIS: Right. To travel--

17 MR. FORMICA: -- to physically get access to  
18 the cube, lift it up and then begin to pull it away,  
19 depending on how far, of course, you move it, it's  
20 rather quick.

21 VICE CHAIRMAN MAGENNIS: You're prepared to  
22 move it, though, relatively quickly.

23 MR. FORMICA: Correct. Of course. Yeah, we  
24 don't have anything -- anything (inaudible).

25 VICE CHAIRMAN MAGENNIS: Okay, I'm sorry?

1           COUNCILMAN FALKOSKI: I just wanted a  
2 qualification, I'm reading the (inaudible) reports,  
3 and on page four -- it listed as exempt from the STB  
4 jurisdiction is motor vehicle transportation that is a  
5 transport (inaudible) deliveries. It appears that the  
6 proposed activity is a transfer and, therefore, may  
7 not be under STB jurisdiction. (Phonetic) Could I  
8 get a clearer explanation of that (phonetic)?

9           MS. HOLMQUIST: Yes. When I looked at the  
10 regulation for this (inaudible) nature, and one of the  
11 things that (inaudible) instances where the STB has  
12 jurisdiction and instances where it doesn't. And I  
13 was not at the last hearing on (inaudible) but it  
14 didn't seem from the minutes that a lot of testimony  
15 was given on those regulations to you. And how this  
16 application either falls under that type of  
17 jurisdiction or not. (Phonetic)

18           And I guess one of the questions that  
19 (inaudible) is having to do with the (inaudible) and  
20 whether they are classified as motor carriers or  
21 (inaudible). Do we know that?

22           MR. FORMICA: I don't -- since it's common  
23 carrier (phonetic), and it's not within my operation,  
24 I'm not sure how they are classified.

25           MR. FENNO: It would be considered motor

1 carrier (inaudible), I'm sure. (Inaudible) typically  
2 doesn't operate trucks.

3 VICE CHAIRMAN MAGENNIS: I see where you're  
4 going with that.

5 MR. FENNO: So, certainly, they would be  
6 considered motor carriers, they are common carriers.

7 MR. FORMICA: I think a forwarder would be a  
8 consolidator of materials. Who takes many different  
9 products in, will then warehouse and then redistribute  
10 them from a location. Not so in our case. It's a  
11 (inaudible) dedicated for this operation onto itself.  
12 (Phonetic)

13 MS. HOLMQUIST: (inaudible) that I had in  
14 reviewing this matter is that it seems to be the  
15 applicant's position that (inaudible) completely under  
16 the jurisdiction, etcetera, etcetera, and counsel --  
17 board's counsel position is similar, in that he is  
18 relying on the law for the '99 (phonetic).

19 Now, other aspects of (inaudible) that's  
20 what comes to my mind, because that is under federal  
21 regulation and there has been a lot of case law over  
22 the last 10 to 15 years, and it has evolved to the  
23 point where the (inaudible) carrier has to demonstrate  
24 to the board that there is a significant gap  
25 (phonetic) and that's why they need that location.

1 (Phonetic)

2 I mean, a lot of cases board retains their  
3 own experts, radio frequency experts to verify the  
4 fact that the carrier is giving correct testimony and  
5 that there is no alternative location that could fill  
6 that gap. I think the board doesn't have an expert on  
7 the STB issue. (Phonetic)

8 I'm not qualified as an expert in that law,  
9 you know, even though I looked at it and tried to  
10 present you with the facts as I saw it. And I'm not  
11 wholeheartedly convinced that the conditions that the  
12 applicant is offering to you that everything is exempt  
13 is -- is an accurate position. (Phonetic)

14 And I -- I understand what the gentleman is  
15 saying about what (inaudible) motor carrier versus a  
16 freight forwarder, but we don't have that information  
17 to substantiate what I believe to be a truthful  
18 conclusion. But we don't have that (inaudible) in  
19 front of us so we can question and ascertain whether  
20 that conclusion is correct. (Phonetic) So I think  
21 we're missing a lot of information here.

22 The other thing, you know, that also jumped  
23 out at me is that we have such an incomplete site plan  
24 in front of us. I don't recall seeing anything in the  
25 consent order saying -- and they don't have to show

1 you as much detail as -- as any other site plan  
2 application.

3           And, you know, some of it is quite glaring.  
4 Um -- I don't know whether they are asking for waivers  
5 from those requirements. I didn't see anything in the  
6 minutes. I haven't heard anything tonight. Um --  
7 that would seem to be a procedural issue that  
8 (inaudible).

9           Um -- the third issue that troubles me is  
10 that, evidently, from my review of the consent order,  
11 a traffic study was -- was performed the last time  
12 around. I haven't seen one for this and, yet, it  
13 seems to me that the trucking activity is going to be  
14 even more intense. (Phonetic)

15           Um -- you know, so those are some issues of  
16 -- um -- evidence, if you will, and details that I  
17 think are lacking. (Phonetic)

18           VICE CHAIRMAN MAGENNIS: There was testimony  
19 to the traffic, it was about eight to ten trucks  
20 during the busy season. A day.

21           Okay. I have a motion to open it up for the  
22 public so that they can ask questions for the  
23 testimony that's been presented.

24           Yes, Mr. Lucente, if you step up front and  
25 state your name and -- come up to the microphone so

1 everybody can hear you.

2 MR. LUCENTE: Where would you like me to go  
3 (phonetic)?

4 VICE CHAIRMAN MAGENNIS: It doesn't matter.

5 CLERK: Up here is fine.

6 VICE CHAIRMAN MAGENNIS: Yes, right there,  
7 there is more room for you.

8 MR. LUCENTE: John Lucente and family, 3  
9 Munn Avenue, Riverdale, New Jersey. We have been  
10 residents in town for 36 years. And I tried to  
11 interrupt before because I thought it was relevant at  
12 the time. And I -- I apologize for the last meeting,  
13 I meant to bring up something concerning the pipes and  
14 I forgot to.

15 I did not hear anything in the report on the  
16 -- on the safety of the pipes, concerning the Ramapo  
17 fault that runs through our property. And I would  
18 think that would be quite a consideration for the  
19 people that own those pipes, because in the 36 years  
20 we have lived here, there were two times that our  
21 house rumbled and Mr. Darmofalski could check those  
22 dates, I don't have them.

23 Um -- who knows what happens with the Ramapo  
24 fault or any other fault. And that's my main concern  
25 about those pipes. I brag to people that we live up

1 high and we could never have a flood. But, yes, we  
2 could. Thank you.

3 VICE CHAIRMAN MAGENNIS: Do you have a  
4 question?

5 UNIDENTIFIED MALE: Do you have a question,  
6 John?

7 VICE CHAIRMAN MAGENNIS: That was more of a  
8 statement. But do you have a question for the  
9 testimony that was --

10 MR. LUCENTE: No (inaudible).

11 VICE CHAIRMAN MAGENNIS: Okay. Is there  
12 anybody else from the public that has a question?

13 Just come forward, state your name and -- up  
14 to the microphone that Mr. Lucente was at.

15 MR. SCIARRA: (Inaudible) couple of  
16 statements.

17 VICE CHAIRMAN MAGENNIS: Well, statements  
18 are later. If you have a question --

19 MR. SCIARRA: All right, I do have one  
20 question. They have stated that --

21 VICE CHAIRMAN MAGENNIS: Could you state  
22 your name and --

23 MR. SCIARRA: Dan Sciarra, 1 Munn Avenue,  
24 Riverdale. I just wanted to say that I had eight --  
25 eight tractor-trailer loads, I figured 24 skids per

1 tractor-trailer load, and if I'm right, that's 192  
2 moves loading the eight trucks. Who should I address  
3 this to, I guess Mr. Formica. (Phonetic)

4 I would assume if the trains come in and  
5 bring the same amount in, that's 192 moves coming off  
6 the train, so that's over 400 moves with the unloads a  
7 day. (Phonetic)

8 MR. FORMICA: We don't get trains every day.

9 MR. TURZILLI: (Inaudible).

10 MR. SCIARRA: You're going to load -- if we  
11 load the eight trains --

12 VICE CHAIRMAN MAGENNIS: Excuse me, could  
13 you just state your name so that -- since you're  
14 answering the question, so that we have it on record  
15 your name --

16 MR. TURZILLI: Robert Turzilli, T-U-R-Z-I-L-  
17 L-I.

18 VICE CHAIRMAN MAGENNIS: And --

19 MR. TURZILLI: President of (inaudible).

20 VICE CHAIRMAN MAGENNIS: Okay.

21 MR. SCIARRA: All right, so we're going to  
22 load, let's say, eight tractor-trailer loads, figure  
23 24 skids a truck, right. 192 moves.

24 MR. TURZILLI: And that's on the high side.

25 MR. SCIARRA: On the high side. They got to

1 come in at some point -- you know, during the week.  
2 Maybe not the same week but at some point. So I'm  
3 figuring 400 moves a day.

4 MR. TURZILLI: That's not going to happen.  
5 You won't get that many carloads in the course of a  
6 week.

7 MR. SCIARRA: How many carloads do you  
8 assume a week?

9 MR. TURZILLI: Three.

10 MR. SCIARRA: Three carloads a week.

11 MR. TURZILLI: Uh hum.

12 MR. SCIARRA: Three carloads a week average  
13 what, four tractor-trailer loads on a carload.

14 MR. TURZILLI: (inaudible).

15 MR. SCIARRA: So that would be four, eight  
16 -- well, that's only 12 loads a week going out then.  
17 That's more accurate of what the operation is?

18 MR. TURZILLI: That's why I said eight  
19 (phonetic), most of the time we send out four, five,  
20 six.

21 MR. SCIARRA: And you're assuming that these  
22 trucks are going to get back at -- you said they go  
23 out for a second load. Now, I can see if they are  
24 going out for a second load if they are coming out of  
25 Brooklyn going into the city. But here they are going

1 out of Riverdale and going into the city. Now you  
2 have got a lot more (inaudible) time.

3 MR. TURZILLI: Who said they were  
4 (inaudible).

5 MR. SCIARRA: I'm assuming --

6 MR. TURZILLI: No, that's incorrect.

7 MR. SCIARRA: -- where is most of the work?

8 MR. TURZILLI: -- that's incorrect. They  
9 could go to the city, they can go to New Jersey, they  
10 can go around the corner if there is a job being built  
11 here. But they can go anywhere --

12 MR. SCIARRA: What percentage of your work  
13 would you say is New York?

14 MR. TURZILLI: Maybe 60 percent.

15 MR. SCIARRA: But most of the time they  
16 would go in the city, though. But they wouldn't get  
17 back as soon as -- as they are right now.

18 MR. TURZILLI: Uh hum.

19 MR. SCIARRA: They might get back a lot  
20 later.

21 MR. TURZILLI: Depends on traffic.

22 MR. SCIARRA: Might not even make a second  
23 trip. Or, okay, I just wanted to -- just wanted to  
24 get those two questions. Thank you.

25 VICE CHAIRMAN MAGENNIS: Is there anybody

1 else from the public that would like to come forward  
2 to ask a question. Yes.

3 MS. MAJERSAK: (inaudible) Majersak.

4 VICE CHAIRMAN MAGENNIS: I'm sorry, we  
5 couldn't hear --

6 MS. MAJERSAK: Emanuela Majersak.

7 CLERK: -- how do you spell the last name?

8 MS. MAJERSAK: M-A-J --

9 CLERK: M-A-J --

10 MS. MAJERSAK: -- E-R-S-A-K. I have a very  
11 simple question. Um, I was wondering why Riverdale is  
12 such an attractive location for you. Considering that  
13 it's not even half the storage that you have in  
14 Brooklyn now.

15 MR. FORMICA: The rail locations are  
16 becoming more and more difficult to find. It's as  
17 simple as that.

18 MS. MAJERSAK: Right.

19 MR. FORMICA: And --

20 MS. MAJERSAK: But you --

21 MR. FORMICA: -- there was a location that  
22 was closer or better -- (inaudible) --

23 MS. MAJERSAK: I find it hard that, you  
24 know, there is no other better location, this is in a  
25 residential neighborhood, it can't be good for you for

1 your operation.

2 MR. FORMICA: (inaudible) that we're here.  
3 It's a suitable location that works for us. And of  
4 all of our exploration and attempts to find  
5 alternatives, this is what we came up with. And this  
6 will work.

7 MS. MAJERSAK: This is the only location  
8 that you can go to since you have to vacate the  
9 Brooklyn lot.

10 MR. FORMICA: If you can find a location for  
11 us--

12 MS. MAJERSAK: No, I would be happy to, but,  
13 uh, I work --

14 MR. FORMICA: (inaudible) --

15 MS. MAJERSAK: -- by what time do you have  
16 to be out of Brooklyn.

17 MR. FORMICA: We actually committed to be  
18 out of Brooklyn by May 31<sup>st</sup>.

19 MS. MAJERSAK: All right, thank you.

20 VICE CHAIRMAN MAGENNIS: Anybody else from  
21 the public. Okay, one more.

22 MR. ALLAN: William Allan, 1A Munn Ave. My  
23 question was --

24 CLERK: Spell the last name, please.

25 MR. ALLAN: A-L-L-A-N. I did buy the house

1 in Riverdale by the tracks. I didn't know I bought a  
2 house by the tracks with a water line a couple of feet  
3 underneath the ground there.

4           So, uh, the question was -- isn't -- isn't  
5 that a safety issue being right there between the  
6 weight of the bricks, the weight of the forklifts  
7 driving over these pipes.

8           First I heard it was five feet deep, then I  
9 heard it was eight feet deep, it might be three feet  
10 deep. Nobody knows. But between the ground freezing  
11 and thawing out, freezing up and the weight of these  
12 hi-los going over these pipes, there is a chance it  
13 could break.

14           Don't you -- and I don't see how you can  
15 move a -- load of bricks in a minute with all mud and  
16 everything if -- if the pipe breaks and there is water  
17 and mud and -- the forklift will tip a little, maybe  
18 the bricks will go. You got a mess. And our houses  
19 will be shot. We'll get all that water in there.

20           Isn't there a better spot to put this place  
21 where maybe the water line moves away from the tracks  
22 a little more or where there is not a waterline where  
23 you would store these bricks, down the tracks a little  
24 bit, another town maybe.

25           VICE CHAIRMAN MAGENNIS: Paul, do you want

1 to address the issue with the safety, with the  
2 concrete pipe (inaudible) --

3 MR. ALLAN: I mean, if that's not safety, I  
4 don't know what is.

5 MR. DARMOFALSKI: The concrete pipe is under  
6 the jurisdiction of the water commission not under  
7 Riverdale (inaudible). They answered that question  
8 and they said that they feel it is safe (inaudible)  
9 nine feet high for brick storage. (Phonetic)

10 MR. ALLAN: Well, we went from 12 to 9, so  
11 that was a safety issue right there that's --

12 MR. DARMOFALSKI: It's been evaluated by  
13 both sets of engineers and that's the conclusion  
14 (inaudible).

15 MR. ALLAN: And then when we heard five feet  
16 and eight feet, maybe we can dig a test -- and see how  
17 deep it really is.

18 MR. DARMOFALSKI: (inaudible)

19 MR. ALLAN: It might be three feet.

20 MR. DARMOFALSKI: Probably would be a good  
21 idea.

22 VICE CHAIRMAN MAGENNIS: I mean, the water  
23 company is responsible for the pipe. I mean, they are  
24 not going to take unnecessary risk. And if they sent  
25 a letter to us saying that they are comfortable with

1 what's being proposed, and I think we have to accept  
2 it. It's their professional engineer that's, you  
3 know, corresponding with us.

4 I think we also heard testimony that they  
5 would go someplace else if they felt another suitable  
6 place was available. I think that was the second  
7 question that you had asked. I don't know if you guys  
8 want to address them directly or just --

9 UNIDENTIFIED MALE: (inaudible).

10 VICE CHAIRMAN MAGENNIS: Can I have a motion  
11 to close the --

12 UNIDENTIFIED MALE: (inaudible).

13 VICE CHAIRMAN MAGENNIS: No, we're not at  
14 the statement stage yet. Can I have a motion?

15 MR. HEIMALL: -- motion to close.

16 MR. VENZA: Second.

17 VICE CHAIRMAN MAGENNIS: All in favor.

18 (All answer in the affirmative)

19 VICE CHAIRMAN MAGENNIS: Gentlemen, would  
20 you like to make a summary or you stated all that  
21 needs to be stated?

22 MR. FIORILLA: Well, Mr. Vice Chairman, I  
23 think we have presented what our plans are, why we  
24 feel it's safe. We have gone to the water commission  
25 and they have made their analysis of the project. We

1 feel that -- that, clearly, this is the type of thing  
2 that -- trans-loading facility that this type of  
3 property would be used for. And that's why we're  
4 here.

5           We have also agreed to put into any --, into  
6 a consent order, the times that the trucks would come  
7 and go to pick up the brick. And we will put that in  
8 a consent order with the township, with the borough,  
9 I'm sorry -- with the borough, so that there isn't any  
10 question that's what we intend to do. We have a right  
11 to do that, and it is enforceable if we do it in that  
12 form. And we're willing to do that, because that's  
13 how we intend to run this facility.

14           We don't have anything further to present.  
15 Mr. Fenno -- and I think we have tried to answer all  
16 the questions as best we can. And came back the  
17 second time and got more information regarding the  
18 water commission.

19           And the engineer spent a good month getting  
20 that together, we're lucky we got it out of them  
21 finally, but it was -- they were looking at this for  
22 the whole month. We started that process right after  
23 we left here the last time. And the engineers were --  
24 there was a lot of things back and forth between --

25           VICE CHAIRMAN MAGENNIS: Personally --

1 MR. FIORILLA: -- and we also --

2 VICE CHAIRMAN MAGENNIS: -- satisfied that  
3 (inaudible) spent that much time looking at --

4 MR. FIORILLA: -- to keep Mr. Darmofalski  
5 involved in what they were saying. So if he had any  
6 questions, he could present them directly to those  
7 engineers. That was our concern. I can't always  
8 answer the engineering questions, the engineers can.

9 VICE CHAIRMAN MAGENNIS: Okay. I'll take a  
10 motion that we open it up to the public to make  
11 statements.

12 MR. VENZA: Before we do that, can I  
13 (inaudible) questions.

14 VICE CHAIRMAN MAGENNIS: Sure.

15 MR. VENZA: Considering the consent order --  
16 some of the items on it are very specific to the corn  
17 syrup business. Will we be able to modify the consent  
18 order to be specific with the (inaudible).

19 MR. FIORILLA: Brick, yes.

20 MR. VENZA: Will that -- will that be done?

21 MR. FIORILLA: That's what we -- yes.

22 MR. VENZA: Okay. Second question. There  
23 is some -- (inaudible), the wall, fence, whatever you  
24 want to call it, that was constructed, the wooden  
25 thing. Will it be reevaluated at this point and

1 repaired, replaced if necessary --

2 MR. FENNO: We intend to make repairs to  
3 that (inaudible) stockade fence (inaudible) refer to  
4 it.

5 MR. VENZA: Right.

6 MR. FENNO: And I think I discussed earlier  
7 at the last hearing there was another fence issue  
8 (inaudible) one to two spots in the chain link fence  
9 that's on the property, there's gaps, there is an  
10 opening (inaudible) fire department, things of that  
11 nature.

12 MR. VENZA: Now, that's -- that's great  
13 stuff. We also have new residents since the last time  
14 this consent order was entered. Perhaps some of them  
15 want that wall extended. Are you going to do that, as  
16 well?

17 MR. FENNO: I think we'll certainly  
18 (inaudible) consider that. Yes. I mean, we -- we  
19 don't know -- I mean, I think it would be technical  
20 difficulties if it was like too small, do you know  
21 what I mean? But I think the engineers can work that  
22 out.

23 UNIDENTIFIED MALE: It would be important to  
24 know exactly where, of course. That's another issue.  
25 I don't think we want to do any extension until

1 everybody agrees --

2 MR. VENZA: (inaudible) hammer it out in  
3 court. Going into it, having these people here, these  
4 are things that you're willing to do. (Inaudible)

5 MR. FENNO: We would be willing to do that.

6 MR. VENZA: Okay.

7 MR. FENNO: That's how we did it the last  
8 time, actually. Mr. Barbarula can speak to that.

9 UNIDENTIFIED MALE: The mayor last time  
10 wanted it to be uniform --

11 UNIDENTIFIED MALE: All the way.

12 UNIDENTIFIED MALE: -- and -- and he would  
13 talk -- he was requested by a number of residents  
14 saying, I don't want to look at a fence. That was how  
15 that ended up being fence, no fence type of situation.  
16 So that statement is correct (phonetic) that's what  
17 happened.

18 MR. VENZA: I have one (inaudible).

19 VICE CHAIRMAN MAGENNIS: Sure.

20 MR. VENZA: Is there any way that we can  
21 have some assurance that there is no radiation or  
22 (inaudible) brick?

23 MR. FENNO: Well, you know, in my -- I'm not  
24 a brick person, but I do know a little bit about other  
25 issues of materials. And, you know, these days, all

1 materials come with material data safety sheets, MDS  
2 (phonetic), whatever they call them. That are  
3 federally required that address all the safety issues  
4 as to any materials that -- that is being handled  
5 (phonetic).

6 MR. VENZA: Does the brick manufacturer  
7 issue --

8 MR. FORMICA: They do.

9 MR. VENZA: -- (inaudible).

10 MR. FORMICA: Correct. The MSDS sheets and  
11 material safety data sheets are issued by the  
12 manufacturers. And that's their -- that's their OSHA  
13 requirement. That's what gives us reasonable  
14 assurance that the product itself is within safety  
15 requirements.

16 MR. FENNO: And those -- those -- and I know  
17 from looking at more of those MSDS sheets than I care  
18 to remember. That -- that they address, typically  
19 address issues, you know, relating to if you have a  
20 small quantity or a large quantity. Sometimes  
21 materials in a small quantity are very safe. The  
22 White-Out that we use in offices. If you have a large  
23 quantity of that, it can be considered dangerous.

24 (Phonetic)

25 And -- and I assume that these MSDS sheets

1 (inaudible) I assume they address that issue, as well.  
2 And if (inaudible) by those (inaudible).

3 MR. VENZA: That's what I was thinking. If  
4 the manufacturer who makes the brick ships it as he  
5 makes it, there may not be an accumulation (inaudible)  
6 that there would be (inaudible).

7 MR. FENNO: I think what you heard --

8 MR. VENZA: -- under the quantity.

9 MR. FORMICA: But the product itself is a  
10 dirt. It has no -- it may have trace amounts as you  
11 -- I think everything has a trace amount of radiation,  
12 to whatever extent, large or small. But this product  
13 has nothing that is in any notable amount, whatsoever.

14 And although there may be some trace  
15 amounts, the quantities that exist within it -- just  
16 -- you have, again, you have a school or a hospital  
17 that is built out of masonry, with children within  
18 side these walls.

19 The material safety data sheets don't  
20 represent anything of any concern or any issue  
21 regarding this. Throughout the country, there is no  
22 issue like this that I'm aware of. And I would be  
23 aware of it. The industry associations have no issues  
24 with this.

25 So I don't see it to be a concern. I can't

1 give you anything other than reasonable assurance. I  
2 can show you the MSDS sheets, as well.

3 MR. VENZA: At one time they built schools  
4 and hospitals (inaudible).

5 UNIDENTIFIED MALE: Right.

6 MR. FORMICA: Well, we cant speculate what  
7 they may find out in the future (phonetic).

8 MR. VENZA: Just because its allowed now  
9 doesn't mean it's safe either. (Phonetic)

10 MR. FORMICA: That could be the truth for  
11 the cotton shirts we're wearing. We don't know that.  
12 That's speculation.

13 MR. HEIMALL: Who is required to share this  
14 MSDS information? I mean, I can get it (inaudible),  
15 stack it, and not show to anybody, but there would be  
16 a problem. (Phonetic)

17 MR. FORMICA: It's --

18 MR. HEIMALL: (inaudible) public access, is  
19 it required that the board of health to be notified  
20 what you're going to store there?

21 MR. FORMICA: We occasionally get a request  
22 for an MSDS sheet, the project that is being built  
23 might be a school. Or some kind of public project.  
24 And then they will ask for the MSDS sheets to be  
25 provided from the manufacturers, and we do. But other

1 than that, in most construction, we (phonetic) don't  
2 even request them.

3 MR. HEIMALL: Okay, so Riverdale would have  
4 to request your sheets as you store (inaudible).

5 UNIDENTIFIED MALE: (Inaudible).

6 UNIDENTIFIED MALE: I believe OSHA requires  
7 that you have MSDS sheets on -- on site of every  
8 product that you handle. And anybody can come in at  
9 any time and ask for it and you have to show it to  
10 them (phonetic).

11 UNIDENTIFIED MALE: So there should be a  
12 loose-leaf binder with all that information  
13 (inaudible) every manufacturer that you handle.  
14 (Phonetic)

15 VICE CHAIRMAN MAGENNIS: Right. And that  
16 will be something that our local people can go in and  
17 inspect, because that's part of the --

18 MR. BARBARULA: That is legitimate control--

19 VICE CHAIRMAN MAGENNIS: Safety.

20 MR. BARBARULA: -- requirements.

21 VICE CHAIRMAN MAGENNIS: It actually  
22 wouldn't even -- even need to put it in, because you  
23 have that right anyway.

24 MR. BARBARULA: I --

25 UNIDENTIFIED MALE: (inaudible)

1 MR. BARBARULA: -- I still would say that  
2 filing of a copy would be required (phonetic), that's  
3 a legitimate non-discriminatory control. We have done  
4 that with industrial users in our industrial zones,  
5 required that when they came in, I think if my memory  
6 serves me right, a fellow who does (inaudible), I  
7 think he filed (inaudible).

8 MR. VENZA: John, what are our chances of us  
9 getting EPA to do radiation levels at this site  
10 (inaudible)? Yeah, I know. Out of left field.

11 MR. BARBARULA: Uh -- not a (inaudible)  
12 chance. No (inaudible). I mean, you could say that  
13 you would like -- I mean, you could honestly say that  
14 you would like that examined, you know, I don't know  
15 whether that type of radiation would show up on a  
16 Geiger (inaudible).

17 MR. VENZA: They would have some means of  
18 measuring. They have to have some --

19 MR. BARBARULA: There must be something that  
20 measures that type of thing. And -- I don't think  
21 that would be a sufficient environmental regulation  
22 that would prevent them from operating the facility.  
23 You can't say that they can't operate because you  
24 could certainly say that you want a -- a test once all  
25 the material has -- once the max -- I guess the

1 maximum amount of material would probably be  
2 (inaudible), the summer would probably the most --

3 MR. FORMICA: Yeah, probably would. Maybe  
4 the end of the summer.

5 MR. BARBARULA: Right, more than the winter.

6 MR. VENZA: By the time it's on our site  
7 it's too late. (Phonetic)

8 VICE CHAIRMAN MAGENNIS: And then it's going  
9 to change anyway, depending on where the brick is  
10 manufactured, the materials --

11 MR. BARBARULA: And it's not -- whether or  
12 not it's cumulative, whether or not (inaudible)  
13 creates it, right? (Phonetic)

14 MR. VENZA: Right.

15 MR. BARBARULA: That's -- the only way  
16 you're going to get a testing (inaudible).

17 UNIDENTIFIED MALE: (inaudible)

18 UNIDENTIFIED MALE: Or -- or on their site  
19 (inaudible).

20 MR. BARBARULA: Either -- are the Brooklyn  
21 and Wharton site as -- as big or bigger than what  
22 you're going to have here?

23 MR. FORMICA: The Brooklyn site is.

24 MR. VENZA: Well, even if -- even if  
25 (inaudible), I can be extrapolated out (phonetic).

1 MR. BARBARULA: I don't see anything wrong  
2 with asking that -- measured (phonetic). I mean, I --  
3 you know, I don't have any idea whatsoever whether or  
4 not that's (inaudible) an issue.

5 UNIDENTIFIED MALE: (inaudible).

6 MR. BARBARULA: -- (inaudible).

7 MR. FORMICA: I have no idea. Again, I have  
8 heard nothing of --

9 UNIDENTIFIED MALE: I was asking  
10 (inaudible).

11 MR. FORMICA: Okay.

12 UNIDENTIFIED MALE: (inaudible).

13 UNIDENTIFIED MALE: (inaudible).

14 MR. VENZA: That might actually work.

15 MR. REILLY: John, under the law, you know,  
16 again -- jurisdiction, anything that comes in on a  
17 rail, that -- that becomes -- under the -- under the  
18 federal law, is that correct? As long as it comes in  
19 on a train.

20 MR. BARBARULA: No, there is the surface  
21 transportation as --

22 MR. REILLY: Onto that site. Onto this  
23 site.

24 MR. BARBARULA: Trains, planes, cars --

25 MR. REILLY: No, on -- on this particular

1 site.

2 MR. BARBARULA: -- federal transportation  
3 act I (inaudible) --

4 MR. REILLY: We're not going to have a 747  
5 land in Riverdale. What I'm saying is, in -- on this  
6 site in Riverdale --

7 MAYOR BUDESHEIM: Never say never.

8 MR. REILLY: -- what we're talking about  
9 right now, anything that comes in on a rail car  
10 period. Is that correct?

11 MR. BARBARULA: Uh hum.

12 MR. REILLY: Why are -- am I understanding  
13 that they are looking to bring in freight from  
14 Brooklyn to store here? Is that correct?

15 MR. FORMICA: We are -- as we transfer the  
16 operations --

17 MR. BARBARULA: Consolidate operations.

18 MR. REILLY: Yeah, but why should that  
19 become our problem? Because if it -- came in on his  
20 rail car, then I could understand that.

21 But why should we allow this to become even  
22 more of a storage facility where he's going to be  
23 driving it in on a truck. It's not coming in on his  
24 train. It's coming in on -- on a truck, because he  
25 has to get out of Brooklyn. That shouldn't be -- that

1 shouldn't be our problem.

2 MR. FORMICA: Should I put it on a train and  
3 transfer it over?

4 MR. REILLY: Yeah, that's fine.

5 (Pause in dialog)

6 MR. BARBARULA: I don't have an answer for  
7 that one. I don't even know how that would apply.

8 MR. REILLY: Well, what I'm saying is I  
9 think we're opening up --

10 MR. BARBARULA: (inaudible) --

11 MR. REILLY: -- I think we're opening up a  
12 door --

13 MR. BARBARULA: (inaudible) --

14 MR. REILLY: -- to saying that this can be  
15 anything we want it to be, if -- if -- if it becomes a  
16 storage facility.

17 MR. FENNO: No --

18 MR. BARBARULA: (inaudible) --

19 VICE CHAIRMAN MAGENNIS: (inaudible)

20 limitation on it, that they had -- in fact, I wanted  
21 to ask you that, the date is approaching on Saturday,  
22 I think. Is that date going to be honored or is it  
23 going beyond that?

24 MR. FORMICA: I just didn't get the date, if  
25 you're talking about --

1           VICE CHAIRMAN MAGENNIS: Saturday. You said  
2 -- in the letter that was sent back it said that there  
3 was some material that was going to be shipped to the  
4 site but there was a date when that shipping would  
5 end. And it's the 30<sup>th</sup> -- Saturday I think --

6           MR. FORMICA: We actually were allowing, I  
7 think it was 60 days or so, to transfer the materials.

8           VICE CHAIRMAN MAGENNIS: Has any of it been  
9 transferred here?

10          MR. FORMICA: We started to bring some  
11 materials here, so we could begin to build the  
12 platform but then we stopped. So we haven't even  
13 begun that process yet. So whenever we begin this, it  
14 will be that same window of time.

15          VICE CHAIRMAN MAGENNIS: Right, so the date  
16 that is stated in the letter is not accurate, it's not  
17 going to be -- it's not going to end on Saturday.

18          MR. FORMICA: It didn't even begin yet, so  
19 it couldn't end.

20          MR. TURZILLI: I think there is a confusion  
21 of time (inaudible) that's when we have to be out of  
22 Brooklyn.

23          VICE CHAIRMAN MAGENNIS: No, I think it was  
24 a letter that --

25          MR. TURZILLI: (inaudible) --

1           VICE CHAIRMAN MAGENNIS:  -- that -- yes,  
2 it's a customer letter.

3           MR. TURZILLI:  -- that was --

4           COUNCILMAN FALKOSKI:  It was in the  
5 operating agreement.

6           VICE CHAIRMAN MAGENNIS:  Right.

7           COUNCILMAN FALKOSKI:  (inaudible) states  
8 that it will be completed by May the 30<sup>th</sup>.

9           MR. FORMICA:  Yes, and that was -- assuming  
10 we had started at a particular point in time.  So it  
11 gave us a window of time to transfer.  And we -- and  
12 it was longer than we actually probably needed.

13           VICE CHAIRMAN MAGENNIS:  Actually, I don't  
14 think that letter gave you a window, it gave you a  
15 specific date that it had to end by.

16           MR. FORMICA:  It did.  Yes, but beginning  
17 with that starting date is when we thought -- we  
18 thought we could start operations by day one.  We were  
19 incorrect.  So that's what we thought.  So we figured  
20 by that date we stated.  But the intent was to have a  
21 window of time to do the transfer.  So it won't be an  
22 ongoing thing, it will just be that initial process.

23                   And although we could conceivably put it  
24 into a train and just transfer it that way, it  
25 (inaudible) more effective to do it that way, it's

1 such a short distance.

2 MR. REILLY: No, you have to understand, I'm  
3 not jumping for joy over this. So -- and-- and what I  
4 don't want to do is allow a window of opportunity to  
5 say if -- if we're forced by federal law to allow this  
6 to happen, there is not very much you can do about it.  
7 But all of a sudden if it becomes -- if this can  
8 become, you know, an operation, a trucking operation,  
9 you know, I -- I do have a problem with that. I think  
10 we should have something to say about that.

11 This is not Jersey City of Port Newark. You  
12 know. This is Riverdale where we have residents and --  
13 -- in the back yard. And I can appreciate the fact  
14 that the train -- that the train is there, you know,  
15 rail -- commerce has to move, I can understand that  
16 and I can appreciate that.

17 You know, my backyard is a quarry and I have  
18 to listen to blasting and dust, you know, a lot. And  
19 the quarry was there when I bought my house, so this  
20 is no surprise. All right. 287 wasn't there when I  
21 bought my house but, nonetheless, life is what it is.  
22 All right.

23 But as I said, I don't -- I'm very  
24 uncomfortable -- and John, I'm looking for you for  
25 some -- some direction with this. I'm really

1 uncomfortable with allowing a truck to come in and to  
2 store materials here. And, yeah, I would be more  
3 comfortable if it went on a train.

4 VICE CHAIRMAN MAGENNIS: I think they have  
5 addressed it in a letter. It's inbound -- inbound  
6 material (inaudible) date in a letter. If it goes  
7 beyond that, whatever, 30, 60 days, but there is a  
8 date when it ends. Everything else is outbound. I  
9 think that's what the testimony has been --

10 MR. BARBARULA: Right.

11 VICE CHAIRMAN MAGENNIS: And I believe  
12 that's what we have to judge the testimony on.

13 MR. BARBARULA: Right.

14 VICE CHAIRMAN MAGENNIS: I think we should  
15 get a date, though, now, for when it ends, so there is  
16 no confusion about, you know, when the inbound traffic  
17 is finished.

18 UNIDENTIFIED MALE: (inaudible)

19 MR. FORMICA: I would be comfortable with  
20 whatever day we could start the operation, within a 60  
21 day window. And I think, again, we'll be done with 30  
22 days, but that gives us enough flexibility. It could  
23 be rain, it could be some other event. We just don't  
24 race to do it.

25 I was forced before, and I still am, to

1 vacate the city property as quickly as possible. So  
2 there is a lot of intention to try to do it as quickly  
3 as we can.

4 MR. REILLY: As long as we can be assured  
5 that this will not be an ongoing thing.

6 UNIDENTIFIED MALE: (inaudible).

7 MR. REILLY: As long we can be assured of  
8 that, I'm -- (inaudible).

9 VICE CHAIRMAN MAGENNIS: Does anybody else  
10 have any questions?

11 UNIDENTIFIED MALE: (inaudible).

12 UNIDENTIFIED MALE: Sure.

13 UNIDENTIFIED MALE: (inaudible).

14 UNIDENTIFIED MALE: That building hasn't  
15 been used (inaudible). It hasn't been used for quite  
16 awhile. (Phonetic)

17 VICE CHAIRMAN MAGENNIS: Okay. Someone like  
18 to make a motion to -- have the public statement.  
19 Yes, open it up for the public statement.

20 MR. HEIMALL: I'll open it up (inaudible).

21 VICE CHAIRMAN MAGENNIS: Okay. Now the  
22 public will have the opportunity to come forward and  
23 make statements about the testimony that they have  
24 heard. The period for questions is over. Now you can  
25 make your statement. Who would like to come forward

1 to the microphone over here?

2 MR. SCIARRA: Hello. Dan Sciarra, 1 Munn  
3 Avenue. I heard a lot of different terminology  
4 tonight, trans-loading -- trans-loading is what we had  
5 before. It was a trans-loading facility -- meaning  
6 they transferred it from one car to the next. They  
7 take it from one car, it never came off the car, went  
8 right into the -- right into the -- to the truck, it  
9 never hit the ground. This is off loading.

10 I heard all attorneys say many times here  
11 tonight, trans-loading you have no jurisdiction over.  
12 He never said offloading. This is a totally different  
13 operation. We're going to be taking off 400 moves a  
14 day behind my house. Behind my house. With a loading  
15 dock. That somebody is going to hit a hi-lo doing 40  
16 miles an hour to get up.

17 Let me say somethin. I'm going to read a  
18 prepared statement I have here, I hope I don't take  
19 too much of your time.

20 I attended the court proceedings in  
21 Morristown as a witness in front of Judge Stanton.  
22 Our complaints were addressed to him and we were -- we  
23 were told by him as he rendered his decision, I -- I  
24 -- I informed him there were trucks idling in my yard.  
25 Smells were emitting from the site. Also addressed

1 was the fact that this was not a sufficient buffer  
2 zone between us and the railroad.

3           The Judge's decision states that the  
4 Planning Board and the railroad should come together  
5 to satisfy the residents' concerns. I was there when  
6 he said that.

7           Since they are now attempting to change the  
8 existing terminal from one that stored freight and  
9 rail cars to one that now will unload rail cars -- and  
10 warehouse on the site, the operation has changed. And  
11 our concerns have changed accordingly.

12           I'm going to list some of the concerns that  
13 I -- I spoke with some of the residents about and my  
14 own concerns here.

15           Diesel fumes. Very hazardous. Cancer  
16 causing. Will be running -- they will be running  
17 these hi-los behind my home full throttle, up and down  
18 the ramps. Toxic fumes will again enter our yards and  
19 destroy our lives. These fumes can be deadly.

20           The present fence has not been maintained  
21 and has many openings in it. Also the boards have  
22 since shrunk and you can see through it. They will  
23 not prevent the hazardous fumes from entering our  
24 properties.

25           Now, I have a picture of the fence that I

1 would like to present to the board. This was taken  
2 last week. Dust from the rail cars and cement  
3 particles. Also hazardous to my health. To my yard.  
4 I live -- I live one foot from that fence, that's my  
5 swimming pool.

6           The bricks, the broken bricks will enter the  
7 air as they go into the dumpster, this proposes  
8 another health hazard to me and my family. That fence  
9 will not protect me.

10           We had them trans-loading by air method,  
11 they would not be able to run the truck -- that was  
12 one of the last -- you remember that, Mr. Barbarula,  
13 that they couldn't run the trucks in the rear yards  
14 because of the fumes.

15           And one of the agreements was that -- that  
16 they would be offloaded by air. This is going to  
17 circumvent that whole thing with the hi-los. Four  
18 hundred moves a day in my back yard. I got to breathe  
19 that in? That fence is not going to stop that. That  
20 has to be a solid fence, then. And it still might  
21 come over it.

22           Any time outdoor equipment of this nature is  
23 running near residential property lines, it would be  
24 good planning to have it enclosed. So that the  
25 residents can continue to have full use of their

1 properties. And a safe environment. A mere fence  
2 between us does not suffice.

3 I have some suggestions and I have listed  
4 it. Okay. The board members here have offered some  
5 additional suggestions like locating it to a different  
6 area. The railroad has refused.

7 The loading dock should not be located or  
8 built behind or next to anyone's residential property.  
9 The railroad has enough property there to utilize the  
10 industrial section of that property.

11 The railroad has plenty of room or -- near  
12 the front of the location. If it were to be located  
13 behind or next to any residential property, it should  
14 be fully enclosed, inside of a sound proof building,  
15 as the railroad has done in other areas.

16 I have pictures of -- that facility in North  
17 Bergen where there isn't even -- I want to present  
18 that to the board for you to look at. There is not a  
19 residential house within a half a mile of that  
20 facility. And that's what they built to keep the  
21 fumes and things in.

22 Here is a picture that I want to present to  
23 the board of the surrounding area, total industrial.  
24 And this is owned by -- uh -- the present railroad,  
25 not another one, I believe they have two or three

1 other buildings in the Newark area that are similar to  
2 that. It wouldn't have to be that high, but it should  
3 definitely be enclosed if you're going to put it  
4 behind the homes.

5           And, uh -- here is a picture next to the  
6 plumbing supply up by the front here they have -- they  
7 have an extra 50 feet up in the front of the property  
8 that they're not utilizing.

9           As you can see, I took a picture here. This  
10 is the front of the property where there -- they're  
11 not going to have the loading -- they're going to have  
12 the loading dock behind my house? Our house? It's  
13 ridiculous. They got 50 extra feet there where that  
14 building is -- to put the -- put the loading dock.

15           There's only going to be three trains a week  
16 he said? They can put three trains a week there and  
17 the guy can unload them. I got no problem with that.  
18 But they're going to put it behind my house, they  
19 better put a buildin' up. They better put somethin'  
20 up.

21           You have a right to protect us. You have  
22 authority to -- to dictate to these people what has to  
23 be done to protect the residents. That's the right  
24 thing to do.

25           You wouldn't want that behind your house.

1 You wouldn't be able to live like that. You wouldn't  
2 be able to live with fumes in your yards. I got kids  
3 and I got a family. And I'm going to fight this...  
4 thing.

5           We purchased our houses by the rail line.  
6 We knew that. But it was never an offloading facility  
7 there. Ever. This is going to be a blight on the  
8 community, it's going to cause property values to go  
9 down. And I'd advise everybody in that area should  
10 fight their property values now.

11           If you cannot refuse their requests -- that  
12 they must operate here, I say let them. But put the  
13 -- put the controls in place that they have to abide  
14 by. Don't refuse them, let them do it, but tell them  
15 how to do it. That's your right. Thank you.

16           VICE CHAIRMAN MAGENNIS: Okay, thank you.  
17 Anybody else from the public like to make a statement?

18           MR. LOTTERMAN: James Lotterman, 13 Munn. I  
19 think you all, um -- can remember a letter that we had  
20 gotten from the railroad's -- it was kind of  
21 sarcastic, stating that they found a new tenant to  
22 clean up along our fence line. Well, how do they  
23 propose to do that when they have brick blocking the  
24 view of what to pick up and what is to be mowed and  
25 cleaned up.

1           Uh, as it stands, I have weeds behind my  
2 house about two and a half, three, even higher than  
3 that, almost four feet high.

4           I was surprised to see that they had moved  
5 the brick like I asked two meetings ago. Um -- but my  
6 concern -- my concern still does ride on the easement  
7 for asphalt pavement that is back there. Uh -- all of  
8 these bricks, according to this photo here, and  
9 according to where the bricks are directly behind my  
10 house, less than eight feet from -- from the fence.

11           Um -- what they had done was they built a  
12 small tangent about four feet wide, all right, to --  
13 to -- to make that driveway or whatever you want to  
14 call it, roadway back there, a little bit wider. Uh  
15 -- there is no stone, no crushed gravel or anything  
16 that's under that, it is just asphalt.

17           It is on a pitch. I put a four foot level  
18 on it, touching the ground here, going to the end, I  
19 lift that level up an inch and a half and it reads  
20 level. That's supposed to be pitched toward the  
21 tracks. I have been getting water in my yard for --  
22 since they put that roadway back there. Okay.

23           Uh -- another thing is that in the summer  
24 months, this material that -- that they say that is  
25 only supposed to be, I believe, what's it -- 3,000

1 pounds per linear foot, he said. Um, okay -- is --  
2 marble the same weight as brick, because that's what's  
3 being stored back there at this time right now. I'm  
4 not sure if it's the same weight. I don't believe it  
5 is.

6 Um, that weight included with the forklift,  
7 if there is an accidental fall or a collapse of these  
8 bricks, everything is going into that pipe.  
9 Everything. Including my home and everybody else's on  
10 the block. Um -- I think that's about it. Thanks.

11 VICE CHAIRMAN MAGENNIS: Thank you. Anybody  
12 else from the public who would like to come up and  
13 make a statement? Seeing no one coming forward, do I  
14 have a motion to close the public?

15 UNIDENTIFIED MALE: I'll make that motion.

16 VICE CHAIRMAN MAGENNIS: All in favor?

17 (All answer in the affirmative)

18 COUNCILMAN FALKOSKI: Mr. Chairman, if I  
19 could -- just, uh -- the question that I asked Ms.  
20 Holmquist before, and the explanation that I got for  
21 it, I would like to, uh -- ask our attorney.

22 We would have the right now to go ahead and  
23 ask for some of that information, because everything  
24 up in here is nice and everything I have read from the  
25 past meeting and everything, it's so nebulous. There

1 is nothing that really pins down what's going to be  
2 happening here. And what its interpretation is and  
3 what its definition is.

4 I think before we make any kind of decision,  
5 whatever it is, that we should have some of this  
6 information, particularly the information that Ms.  
7 Holmquist wrote in her report regarding the fact as to  
8 whether this is exempt or not. What is your opinion,  
9 Mr. Barbarula?

10 MR. BARBARULA: Well, I certainly can say  
11 that everybody has their right to their opinions. I  
12 think that the judgment and the consent order, the  
13 hearing of August 7<sup>th</sup>, 1996, and the Surface  
14 Transportation Board decision -- clearly indicates  
15 that it is part of transportation processes, is  
16 exempt.

17 It also clearly indicates that if it's not  
18 part of the transportation processes, that if it is --  
19 manufacturing and processing, that -- it would be --  
20 it says exactly, "manufacturing or production  
21 purposes, then, like any other non-railroad property,  
22 it would be subject to applicable state and local  
23 regulations."

24 As far as I know what trans-loading  
25 operations and transportation services are, and the

1 Park Ridge cases and the other cases that have been  
2 decided in this state, I -- you know, I would love to  
3 be able to say honestly that it is not preempted. But  
4 that's not my opinion, I have to disagree with Donna.  
5 I don't -- I don't believe that it is an exempted  
6 activity.

7           That is only my opinion. You are not bound  
8 by my opinion. That is my opinion. It is up to you  
9 to make your own decision based upon the documents  
10 that you have.

11           COUNCILMAN FALKOSKI: Would we not be able  
12 to get an interpretation from the Surface  
13 Transportation Board?

14           MR. BARBARULA: You want to authorize the  
15 expenditure of funds to do that? I certainly -- I'm  
16 sure it certainly can be done. The -- way that the  
17 order and the consent order is written, I don't think  
18 would prevent them from operating in the meantime.

19           But if the -- the board wishes to extend  
20 that -- that money and that endeavor, and authorize an  
21 interpretation of whether or not that is the case, it  
22 certainly can be done.

23           I, you know, I only give you my opinion that  
24 what I feel that the answer would be, and I already  
25 did it. I'm -- I can't restate it again. You

1 certainly can ask someone else to make a decision.

2 I would fully expect that that would not  
3 prevent them from operating the facility, and they  
4 would have to go in on an order to show cause saying  
5 that they are violating the consent order. And that  
6 would also have to be authorized by the board.

7 COUNCILMAN FALKOSKI: You're -- you're  
8 telling me that in order to get an opinion from the  
9 Surface Transportation Board, as to whether their rule  
10 specifies its exempt or not exempt it would cost us  
11 money?

12 MR. BARBARULA: It would cost a lot of  
13 money, yes.

14 VICE CHAIRMAN MAGENNIS: John, would it be  
15 the board or would it be an attorney that specializes  
16 in that type of law that would make the  
17 interpretation?

18 MR. BARBARULA: You can have 28 (phonetic)  
19 lawyers make an opinion, if you want a definitive  
20 ruling, (inaudible) to get it to the Surface  
21 Transportation Board, a petition would have to be done  
22 and that is, certainly, going to be something that  
23 would have to be -- something that you would have to  
24 expend money on.

25 And, you know, those petitions don't happen

1 for free. Unless the -- unless you were to get  
2 someone who is going to volunteer their legal services  
3 and present that. I mean, the board can hire anybody  
4 to make the petition to the Surface Transportation  
5 Board.

6 I don't know -- I don't know how long it  
7 takes today, I know it took an exorbitant amount of  
8 time back -- back in '99, I think it took seven or  
9 eight months before they even got a response out of  
10 them.

11 MS. HOLMQUIST: (inaudible), may I just  
12 (inaudible)--

13 VICE CHAIRMAN MAGENNIS: Sure.

14 MS. HOLMQUIST: -- for a minute. Um -- I  
15 understand the dialog going on. But one thing I was  
16 trying to point out before is (inaudible) regulations  
17 distinguished between motor carrier and freight  
18 forwarder. (Phonetic)

19 Um -- and it would seem to me to be the  
20 burden of proof is on the applicant to demonstrate how  
21 the -- the trucking operation is classified or  
22 regulated. Whether it's motor carrier or freight  
23 forwarder. (Phonetic)

24 And you heard opinion tonight but it wasn't  
25 substantiated by anything. Um -- and I don't know if

1 this gentleman is (inaudible) trucking company or just  
2 the brick company (inaudible). I wasn't sure of the  
3 relationship there. That would be my suggestion.  
4 That the burden is on them to demonstrate to you  
5 whether the trucking company is classified as motor  
6 carrier or freight forwarder.

7 MR. FIORILLA: The trucking company isn't  
8 being regulated here. That's not the issue. The  
9 trucking company --

10 MS. HOLMQUIST: (inaudible).

11 MR. FIORILLA: -- the trucking company have  
12 -- their trucks have to -- are still regulated by the  
13 state as to how their trucks operate. There's no  
14 question about that. The STB has said that.

15 MS. HOLMQUIST: The regulations are pretty  
16 clear and they make a distinction between (inaudible)  
17 and -- (inaudible).

18 MR. FIORILLA: Yes. But it also says that  
19 you can have a common carrier -- all we're doing,  
20 somebody over here buys the brick. And it's from  
21 here. It's got to come here, get unloaded and go to  
22 him. That's all we're doing.

23 The trucks that come in have -- have --  
24 can't -- no matter whose trucks they are, they are  
25 going to have to be in -- they have to go by all the

1 state regulations regarding trucks.

2 MS. HOLMQUIST: The classification makes a  
3 difference and (inaudible) --

4 MR. FIORILLA: Yes, but the classification  
5 doesn't make a difference in our yard. I mean, I --  
6 trucks have to unload the product. Otherwise, there  
7 would be no way to do that.

8 MS. HOLMQUIST: The piece of information  
9 that could be provided (inaudible) you have not  
10 (inaudible) --

11 MR. FIORILLA: I don't think you -- I don't  
12 even understand what information you want.

13 MS. HOLMQUIST: I think I was clear  
14 (phonetic).

15 MR. FIORILLA: No I don't think you are at  
16 all clear. Say something to me --

17 VICE CHAIRMAN MAGENNIS: Let's just calm  
18 down a little bit.

19 MR. FIORILLA: (inaudible) -- Mr. Barbarula  
20 -- (inaudible) --

21 MR. BARBARULA: (inaudible).

22 VICE CHAIRMAN MAGENNIS: Hold it, hold it.

23 UNIDENTIFIED MALE: Wait a second.

24 MR. BARBARULA: Just calm down. You can  
25 make any argument you want, it doesn't have to be at a

1 very high decibel, which I'm doing right now.

2 MR. FIORILLA: Okay.

3 MR. BARBARULA: And it also doesn't have to  
4 be in a combative nature. This is a -- a proceeding  
5 that decorum should be observed. And you're losing  
6 that level. You want to make a presentation. You  
7 want to make an argument. That's fine. But it  
8 shouldn't be at a level that is abusive. And I really  
9 don't think it's appropriate.

10 MR. FIORILLA: It wasn't abusive.

11 MR. BARBARULA: I just think it's quite out  
12 of hand and quite loud. And your point, you can make  
13 your point without having to get up and -- and -- and  
14 do it at such a loud and --

15 MR. FIORILLA: (inaudible)

16 MR. BARBARULA: -- and ominous way.

17 MR. FENNO: Perhaps the quiet spoken one can  
18 (inaudible) the question. There is neither a trucking  
19 company nor a freight forwarder before this board  
20 tonight (inaudible) involved in this application. We  
21 do not understand the question.

22 MS. HOLMQUIST: Okay. Can I respond to  
23 that?

24 VICE CHAIRMAN MAGENNIS: Sure.

25 MR. HEIMALL: I mean, documents that were

1 submitted cite trucking companies (inaudible)  
2 carriers, why are you saying that's not part of the  
3 application. (Inaudible)

4 MR. FENNO: Independent carriers will --  
5 will operate trucks that come to this facility to take  
6 brick away.

7 MS. HOLMQUIST: (inaudible) part of the  
8 application (inaudible).

9 MR. FENNO: But I don't, again, we -- we  
10 have made --

11 VICE CHAIRMAN MAGENNIS: John, maybe you --

12 MR. FENNO: -- if somebody can tell us --  
13 explain the question. I don't understand.

14 MR. FORMICA: We don't understand how that  
15 has to do with preemption of the issue to the movement  
16 of the brick.

17 MR. BARBARULA: Quite frankly, I can't,  
18 because I don't understand the distinction that our  
19 planner is making either.

20 VICE CHAIRMAN MAGENNIS: Well --

21 MS. HOLMQUIST: Our code -- the code that  
22 regulates the STB makes the distinction between motor  
23 carrier and freight forwarder. And we haven't heard  
24 any testimony or evidence on which way the trucking  
25 company is classified. And I think that goes to the

1 heart of the issue of whether (inaudible) is preempted  
2 or not (inaudible).

3 VICE CHAIRMAN MAGENNIS: Donna, what is your  
4 understanding the difference between the two is, just  
5 so that -- I can maybe -- understand it from you.

6 MS. HOLMQUIST: It seems to me that if a  
7 classification is motor carrier, then STB has no  
8 jurisdiction. And local authority would prevail. If  
9 it's a freight forwarder, it seems the opposite is  
10 true. (Phonetic)

11 UNIDENTIFIED MALE: What is the difference?  
12 Between a motor carrier and a freight forwarder.

13 MS. HOLMQUIST: I don't have that  
14 information in front of me. It should (inaudible) two  
15 terms are distinct in US Code. (Phonetic)

16 UNIDENTIFIED MALE: I don't -- I don't  
17 understand what the term is, how can I -- (inaudible).

18 UNIDENTIFIED MALE: (inaudible).

19 VICE CHAIRMAN MAGENNIS: Please. The public  
20 session is over.

21 UNIDENTIFIED MALE: You know, that's what I  
22 mean. To make a distinction on two different words  
23 (inaudible) --

24 MS. HOLMQUIST: (inaudible) --

25 UNIDENTIFIED MALE: -- nobody can explain it

1 (inaudible) --

2 MS. HOLMQUIST: -- the applicant's whole  
3 position here is that local authority has nothing to  
4 do with this and they are allowed to do what they  
5 want, you can put a few conditions on them but,  
6 basically, this operation is allowed. And I'm not  
7 convinced of that.

8 UNIDENTIFIED MALE: Because of the trucking.

9 MS. HOLMQUIST: Yes.

10 VICE CHAIRMAN MAGENNIS: And no one here can  
11 give us a very specific definition of motor carrier or  
12 freight forwarder.

13 MS. HOLMQUIST: Right. I didn't see a  
14 decision of that in the minutes of the last meeting,  
15 and I, you know, I got response tonight but, you know,  
16 nothing to substantiate the response that was given to  
17 me. (Inaudible)

18 MR. FENNO: Let me -- let me --

19 MS. HOLMQUIST: (inaudible) --

20 MR. FENNO: -- let me --

21 MS. HOLMQUIST: -- he was entirely sure of  
22 it. (Phonetic)

23 MR. FENNO: -- let try to at least clarify  
24 what the railroad understands or believes and whether  
25 that resolves the issue or not. I doubt it, actually,

1 to tell the truth:

2 But, you know, this operation -- preemption  
3 from local regulations is dependent upon this being  
4 part of railroad transportation, as it is very broadly  
5 defined under the interstate commerce act.

6 Whether this is a trucking company is  
7 involved or freight forwarder is involved, is, from  
8 our perspective, irrelevant, because we're not relying  
9 on it being a freight forwarder, we're relying on this  
10 being part of the railroad transportation that's  
11 broadly defined and as (inaudible) law and regulation  
12 makes quite clear.

13 So that's why I -- we're really having a  
14 failure to communicate on this issue. And -- and we  
15 don't mean disrespect in any way, but we don't really  
16 know what to present because we don't understand --

17 VICE CHAIRMAN MAGENNIS: Well, I think we  
18 understand what you just stated. But I think the  
19 issue is one is, apparently, exempt and the other not.

20 MR. FENNO: What I'm saying is the  
21 trucking/freight forwarding is over here. Railroad is  
22 here.

23 VICE CHAIRMAN MAGENNIS: Right.

24 MR. REILLY: No, no, please, don't -- do me  
25 a favor, don't insult this board by trying to divorce

1 yourself, because all night long it's all been this.

2 Now all of a --

3 MR. FENNO: No -- (inaudible) --

4 MR. REILLY: -- no, no, now don't all of a  
5 sudden say I'm the railroad and what they are doing is  
6 what they are doing. Because it was presented as a  
7 package. Let's (inaudible) remain as a package.

8 MR. FENNO: I don't mean to say that there  
9 aren't trucks involved, obviously, there are trucks  
10 involved. There's trucks involved at every intermodal  
11 facility in the country, because that's essentially  
12 what happens. Intermodal means more than one mode of  
13 transportation.

14 So it's (inaudible) what I was trying to say  
15 and, perhaps, it's more of a legal thing than a  
16 perspective that (inaudible), is that from the legal  
17 standpoint, the issue of STB jurisdiction over  
18 trucking or not trucking, freight forwarding/not  
19 freight forwarding, is not in our -- in our  
20 (inaudible) relevant here tonight, because it's not an  
21 issue. The issue is is it part of railroad  
22 transportation. And that is the (inaudible) issue  
23 (inaudible).

24 COUNCILMAN FALKOSKI: Why would the rules  
25 identify it as -- question the motor vehicle

1 transportation in terminal area (phonetic). Do you  
2 not consider this a terminal area?

3 MR. FENNO: I'm not sure what you're  
4 referring to (inaudible).

5 COUNCILMAN FALKOSKI: Well, it would be a  
6 railroad terminal area, I would assume.

7 MR. FENNO: (inaudible)

8 COUNCILMAN FALKOSKI: So if the rules  
9 specify there is an exemption -- depending on whether  
10 (inaudible) activity is a transfer or a collection or  
11 delivery, then there has to be some kind of an  
12 interpretation and a definition for that, so that  
13 there is some kind of a definitive answer that can be  
14 (inaudible) to have no definitive answers on anything  
15 that has been asked here. (Phonetic)

16 And that's very bothersome for these -- us  
17 sitting up on this board when we have to make  
18 decisions. We make our decisions based upon facts.  
19 And we really have not received any facts. In my  
20 opinion.

21 MR. FENNO: I think we gave a lot of facts  
22 as to exactly how --

23 COUNCILMAN FALKOSKI: But they were  
24 nebulous.

25 MR. FENNO: They weren't nebulous, they are

1 pretty definite as to exactly what we're going to do.

2 COUNCILMAN FALKOSKI: All right, I asked  
3 questions that no one could answer the question.

4 MR. FENNO: Yes, we answered every single  
5 question that was put here tonight.

6 VICE CHAIRMAN MAGENNIS: Joe, ask something  
7 that you think --

8 MR. FENNO: -- (inaudible) we answered --

9 VICE CHAIRMAN MAGENNIS: -- is unanswered,  
10 why don't --

11 MR. FENNO: -- factual questions.

12 VICE CHAIRMAN MAGENNIS: -- you ask it  
13 again.

14 COUNCILMAN FALKOSKI: I have all the  
15 questions. I have asked --

16 MR. FENNO: -- the question -- (inaudible).

17 COUNCILMAN FALKOSKI: -- who pays for the  
18 brick, who pays for the rail transportation, I never  
19 got an answer.

20 MAYOR BUDESHEIM: Let me ask this question  
21 then. Do you get paid for doing anything? Do you get  
22 -- do you receive money?

23 MR. FORMICA: Of course (phonetic).

24 MAYOR BUDESHEIM: What do they pay you to  
25 do? I'm not -- I'm not clear what your role is,

1 because all I keep hearing is --

2 UNIDENTIFIED MALE: (inaudible).

3 MAYOR BUDESHEIM: -- I keep hearing this is  
4 a railroad operation. You don't own the brick. You  
5 don't own the truck. What do people pay you to do?

6 MR. FORMICA: The projects that are built  
7 are designed by architects. A mason is then appointed  
8 and collected to build that project. He has to buy  
9 the specified materials. We represent the  
10 manufacturers that manufacture brick.

11 That mason will come to us and say I need to  
12 buy this quantity of brick for this particular  
13 project. He will do his own determination of how many  
14 bricks, what brick he needs, and he will place the  
15 order with us and we in turn place the order, back to  
16 back, the same exact thing, with the manufacturer to  
17 produce that material.

18 And then our role essentially becomes  
19 transporting the materials once they're manufactured,  
20 to that customer to have available for his project.  
21 For that -- for that we get paid.

22 MAYOR BUDESHEIM: So you're a wholesaler.

23 MR. FORMICA: Again, I can't say yes to that  
24 question, as much as you try to niche me into a  
25 particular spot. It is what I just described.

1           MR. REILLY: Is it a broker role, would you  
2 consider it a broker role?

3           MR. FORMICA: I think a broker role -- the  
4 customer will actually pay us -- the title takes place  
5 when the goods get shipped from the manufacturer. But  
6 we don't actually --

7           MR. REILLY: Title gets -- title gets  
8 transferred to who, to you?

9           MR. FORMICA: No, to the -- to the buyer.

10          MR. REILLY: To the buyer.

11          MR. FORMICA: The goods are produced and  
12 they are shipped. While they are being produced,  
13 we're really responsible to make sure that the  
14 transaction is completed.

15                 If the buyer doesn't complete the  
16 transaction, the manufacturer will come to us and say  
17 you owe us for the material. And protocol we'll say,  
18 okay, I guess we do. Because we have an ongoing  
19 relationship with the different manufacturers.

20          MAYOR BUDESHEIM: So you're only responsible  
21 for bringing the brick to the manufacturer, from the  
22 manufacturer to this terminal. Once it gets to the  
23 terminal, you never take title of it. So then once  
24 it's brought to the terminal then the people who  
25 ordered it own it at that point.

1 MR. FORMICA: When it leaves the  
2 manufacturer -- the customers actually own it. At  
3 that point. But as a practical matter, we help in the  
4 logistics to get the material to the job site for the  
5 customers. They don't have the ability or the  
6 knowledge -- you need to have a certain volume in  
7 order to transfer materials through rail cars.

8 MAYOR BUDESHEIM: So you are providing a  
9 warehouse type facility for the -- because the people  
10 can't accept the delivery. The manufacturer wants to  
11 get rid of them, the customer can't accept them, so  
12 you warehouse them for them.

13 MR. FORMICA: Well, you can't drive a train  
14 to a job site. So you need a facility --

15 MAYOR BUDESHEIM: You warehouse them for  
16 them because they don't get immediately trans-loaded  
17 from the railroad car to the truck, they are  
18 warehoused until they are ready to take delivery of  
19 them.

20 MR. FORMICA: At this -- (inaudible).

21 MAYOR BUDESHEIM: All right, so then it is a  
22 warehouse. We finally got that answered.

23 MR. FORMICA: Well, I don't --

24 MAYOR BUDESHEIM: I have no more questions.

25 MR. FIORILLA: I'm sorry, but that was --

1 that was outrageous and we object. Because that isn't  
2 that he said at all. He obviously said that the --  
3 that he has to get the thing to the job site, he  
4 doesn't warehouse them, he trans-loads them and he  
5 brings them to the job site.

6           MAYOR BUDESHEIM: And with two months in  
7 between.

8           MR. FIORILLA: Not necessarily.

9           MAYOR BUDESHEIM: But -- possibly. I mean,  
10 those bricks have been sitting there for two months  
11 now. Right?

12           UNIDENTIFIED MALE: (inaudible).

13           MR. FORMICA: Those bricks we were going to  
14 use to build to platform.

15           UNIDENTIFIED MALE: (inaudible).

16           MR. REILLY: The bricks that are in -- the  
17 bricks that are in Brooklyn have been there for a  
18 period of time, I assume.

19           MR. FORMICA: (inaudible).

20           MR. REILLY: Yes. And so -- so I mean, you  
21 can --

22           UNIDENTIFIED MALE: They are housed.

23           MR. REILLY: They are housed, they are --  
24 they are parked, they are piled, they are warehoused.  
25 They are -- they are something. Whatever word you

1 want to assign to it.

2 VICE CHAIRMAN MAGENNIS: I think we have  
3 been over --

4 MR. FORMICA: But I do want to make the  
5 distinction that we're not buying brick for inventory,  
6 to stock it, to find out when a company decides they  
7 want to buy some and they come over and they say, I  
8 like that, I think I'll buy that.

9 UNIDENTIFIED MALE: We understand that.

10 MAYOR BUDESHEIM: But you're warehousing  
11 (inaudible).

12 MR. FORMICA: We're holding it on their  
13 behalf. So we can fulfill their projects.

14 MAYOR BUDESHEIM: It's called a warehouse  
15 (phonetic).

16 UNIDENTIFIED MALE: Stockpile them.

17 VICE CHAIRMAN MAGENNIS: All right --

18 MAYOR BUDESHEIM: I have no more questions.

19 MR. REILLY: We're not going to -- I mean --  
20 (phonetic) --

21 VICE CHAIRMAN MAGENNIS: I think we're done,  
22 but really the question that remains to be answered,  
23 and I'm not sure how we go about getting it answered,  
24 is the issue of whether it's a freight forwarder or a  
25 motor carrier. If it's an exempt operation, then we

1 have very limited control over what's being proposed.  
2 If it's a non-exempt operation, then the board would  
3 have a lot more control.

4           But I don't think that we could, you know,  
5 intelligently vote on it until we get some  
6 clarification on exactly what type of operation we  
7 have. And I know that there's lots of people in the  
8 room here that have opinions as to what they believe  
9 their operation is. All would probably -- some  
10 substantive rationale behind it.

11           But I don't think that we are the people  
12 that, you know, can make a judgment yet, because we  
13 don't have the information that you have.

14           So I think the recommendation that, perhaps,  
15 we get someone else in here with an opinion that's  
16 much more, you know, informed, based on -- on the  
17 knowledge of the law that they have. I think once  
18 that determination is made, then I think the decision  
19 is, you know, going to be a lot easier for us.

20           And, John, I'm not sure how we would go  
21 about getting --

22           MR. BARBARULA: Well, very simply, you have  
23 in front of you two orders and the surface  
24 transportation decision. Which, by the way, didn't  
25 take seven months, it took two years. It was filed

1 September 8<sup>th</sup>, 1997 and it was decided September 9<sup>th</sup>,  
2 1999. okay.

3           The board could authorize the hiring of an  
4 attorney who specializes in railroad activity. You  
5 may have to go out of state to find someone who is not  
6 working for the New York Susquehanna Railroad.

7           As a matter of fact, if it is anything like  
8 it was in 1997, we had to go to -- Oklahoma or some  
9 place like that, to finally find somebody that didn't  
10 have some sort of relationship, because all the of the  
11 rail lines have inter -- whatever the heck they call  
12 different compacts (phonetic), and almost everybody  
13 that was even near the east coast had conflicts.

14           So you certainly can authorize the  
15 expenditure of the municipality's funds to obtain the  
16 counsel that is -- specializes in the Surface  
17 Transportation Board, to make that determination for  
18 you and give you advice on that. That is absolutely  
19 within your jurisdiction.

20           VICE CHAIRMAN MAGENNIS: John, the work that  
21 you did on the consent decree, I know you spent a lot  
22 of time. And you are our legal counsel, and we have a  
23 great deal of faith in the advice that you have given  
24 us.

25           Based on your experience and knowledge, you

1 believe this is the exempt operation, that it's a  
2 motor carrier.

3 MR. BARBARULA: I don't have to believe  
4 that. All I can tell you is that from the transcript,  
5 that it was the court who believed that the fact that  
6 -- at that time there were trucks that came to the  
7 corn syrup depot --

8 VICE CHAIRMAN MAGENNIS: Right.

9 MR. BARBARULA: -- which, in effect, was a  
10 warehousing of corn syrup, they were trucks -- and I  
11 don't know, because I don't have a definition, and I'm  
12 not an expert in what is --

13 VICE CHAIRMAN MAGENNIS: Right.

14 MR. BARBARULA: -- a freight forwarder or  
15 common carrier.

16 VICE CHAIRMAN MAGENNIS: But it would appear  
17 that it's the same operation.

18 MR. BARBARULA: But there was a truck that  
19 came to the site and offloaded from the storage tanks  
20 that were kept on the railroad site, put into those  
21 trucks, and away it went to Coca Cola or Pepsi. I  
22 mean, I think -- you have the transcript.

23 VICE CHAIRMAN MAGENNIS: Right.

24 MR. BARBARULA: It was the judge who  
25 determined that, since it's part of the overall

1 transportation processes, he determined that it was  
2 still transportation. Regardless of the fact that my  
3 argument was, Judge, it isn't transportation, they  
4 come here, they leave the corn syrup, they leave it  
5 there for extended period of time -- that's what my  
6 argument was. They made it a warehouse.

7           And then they -- and I also made the  
8 argument that it was a processing plant. And he  
9 determined that that was the -- that it wasn't  
10 processing, that it didn't change the nature of the  
11 corn syrup, that they only reason that you had to do  
12 the boiler and heat it up was because when corn syrup  
13 sits, it solidifies. And that it had to be heated in  
14 order to be able to become --

15           UNIDENTIFIED MALE: (Inaudible).

16           VICE CHAIRMAN MAGENNIS: Viscous, yes.

17           MR. BARBARULA: Viscous. And -- in order to  
18 pump it.

19           VICE CHAIRMAN MAGENNIS: Right.

20           MR. BARBARULA: So that's it. But look, you  
21 don't -- that's all I can tell you. I do not limit my  
22 practice to the Surface Transportation Board. I do  
23 not regularly practice before that. You are certainly  
24 within your right to authorize the expenditure of  
25 funds to find someone who does to give you an opinion.

1 All I can tell you is, read the transcript.  
2 There is no -- there is no requirement that you vote  
3 tonight. I would recommend you read the transcript  
4 and look at Donna's letter and orders and then come  
5 back and make your own decision. Or authorize the  
6 expenditure now of the funds in order to obtain  
7 someone to give you an opinion who is versed in that  
8 area of the law.

9 I don't know if anybody that -- that  
10 probably would not have a conflict with New York  
11 Susquehanna Railway in this immediate New York, New  
12 Jersey, Pennsylvania area. So I think we would have  
13 to really get on line and try to find somebody out of  
14 the area. And then you get bids and see if you can  
15 hire them.

16 That's all I can tell you. Honestly -- I  
17 honestly don't know the definitions that Donna has  
18 brought up, the difference of what they -- they would  
19 be. All I can tell you is that you should look  
20 carefully at the transcript and then make your own  
21 decision as the tryers and the determiners of what the  
22 facts are --

23 UNIDENTIFIED MALE: (inaudible)

24 MR. BARBARULA: -- to see if -- what?

25 UNIDENTIFIED MALE: Look in the dictionary.

1 Is it in there?

2 MS. HOLMQUIST: No, (inaudible) you don't  
3 want to go by that. And (inaudible) Title  
4 (inaudible). And the other distinction -- (inaudible)  
5 --

6 MR. FIORILLA: Wait, Title 49 is 20 books.  
7 Which -- 49 what? 49 is 20 volumes.

8 MS. HOLMQUIST: I know.

9 MR. FIORILLA: Okay, well tell me what --  
10 what --

11 MS. HOLMQUIST: (inaudible).

12 MR. FIORILLA: -- there's --

13 MS. HOLMQUIST: -- Title 49, subtitle 4  
14 (phonetic), interstate transportation.

15 MR. FIORILLA: That's still -- all right,  
16 tell me -- give me a cite.

17 MS. HOLMQUIST: That's the citation.

18 MR. FIORILLA: No, no, that's not --

19 MS. HOLMQUIST: (inaudible) -- US Code..

20 MR. FIORILLA: -- US Code is --

21 UNIDENTIFIED MALE: Actually --

22 VICE CHAIRMAN MAGENNIS: What she has -- we  
23 expect you to be knowledgeable about these areas, and  
24 you can come back --

25 MS. HOLMQUIST: Exactly.

1 VICE CHAIRMAN MAGENNIS: -- you can come  
2 back --

3 MS. HOLMQUIST: You're attorney for the  
4 railroad.

5 VICE CHAIRMAN MAGENNIS: Right, I  
6 understand. You can come back and -- and address the  
7 sections that are applicable.

8 MS. HOLMQUIST: And the other (inaudible) I  
9 would point out is (inaudible) as an example.  
10 (Inaudible) change periodically (inaudible) if you  
11 look at the administrative code today for (inaudible)  
12 it's very different than what it was in 1999 or 1996  
13 (phonetic) when this (inaudible) consent order  
14 (inaudible). (Inaudible) laws in effect (inaudible).

15 So I don't know that the law is the same now  
16 as (inaudible) consent order was entered into  
17 (phonetic). But (inaudible). (Inaudible)  
18 classification, I don't think that (inaudible).

19 (Pause in dialog)

20 MS. HOLMQUIST: (Inaudible).

21 (Pause in dialog)

22 VICE CHAIRMAN MAGENNIS: Mr. Fenno, would  
23 you be prepared to come back with the answers to the  
24 questions that were just raised?

25 MR. FENNO: I'm still a little confused, to

1 tell you the truth. I mean, I think we could  
2 certainly provide some sort of a written statement as  
3 to -- we certainly can provide some kind of a  
4 statement to (inaudible) trucking company versus  
5 freight forwarder, define what each is. I assume, I  
6 have never -- to tell you the truth, that's an area of  
7 the law that I really haven't looked at much because,  
8 frankly, it doesn't apply to us, typically.

9           And, John, I don't think you do much  
10 trucking -- freight forwarding work, but I'm sure we  
11 can (inaudible) find the regulations. And we can  
12 probably also try to provide a fairly short statement  
13 as to why we think that issue really doesn't have  
14 anything to do with this proceeding.

15           I think the most important part of that  
16 really goes back to something that Mr. Barbarula had  
17 said several times, which is that we're here regarding  
18 this consent order. We're not here with a zoning  
19 specific petition and (inaudible) type plan  
20 (inaudible) that you have seen. (Phonetic)

21           And, you know, we can certainly try to  
22 address some of the concerns about how the law  
23 changed. I can tell you the law has changed. The law  
24 has changed greatly in favor of the railroads from  
25 what it was when Judge Stanton made his decision.

1 MR. FIORILLA: He was the first decision.

2 MR. FENNO: The laws, even in cases in the  
3 state of New Jersey, have become significantly more  
4 favorable to railroads than what we have agreed to in  
5 the consent order. And, you know, we can, I think,  
6 provide our view of, you know, in a page or two, of  
7 kind of what the status is today. As opposed to what  
8 it was in '96 if that would be of some help to you.

9 But I'm not really sure I understand why it  
10 is of help in the sense that, regardless of how the  
11 law has changed, we have a consent order that we're  
12 both bound by.

13 VICE CHAIRMAN MAGENNIS: John, does the  
14 consent order make a distinction -- or does it  
15 specifically address the two different types of  
16 carriers, whether it's a freight forwarder or -- it  
17 doesn't address it at all.

18 MR. BARBARULA: No. I -- other than that, I  
19 haven't seen it -- when Donna issued her letter. And  
20 I just asked to read it again and I read it again.

21 I, honestly, there is not one word by the  
22 court in its decision of August 7<sup>th</sup> on whether or not  
23 freight forwarder or common carrier has anything to do  
24 with whether or not it was exempt under the Surface  
25 Transportation Board or preempted.

1 I -- I am really -- not prepared to answer,  
2 because I don't know the difference between those two  
3 on a legal standpoint. I am having a great deal of  
4 difficulty in seeing -- since the section of that  
5 quote was not attached to the report, whether or not  
6 that would change the fact of the -- either the  
7 Surface Transportation Board's decision or the court's  
8 decision, where it says that this -- as long as it is  
9 in the transportation and the storage and the ultimate  
10 transportation processes, I don't -- I just have a  
11 hard time seeing that distinction. I'm not saying  
12 she's wrong or she's right.

13 VICE CHAIRMAN MAGENNIS: Well, I think --

14 MR. BARBARULA: The trans-loading and the  
15 transportation surfaces -- is the controlling factor  
16 to factor in.

17 And, specifically, it was also back then  
18 that it said that if these -- if this facility doesn't  
19 aide the transportation services, in other words, the  
20 whole process of transporting goods from the  
21 manufacturer to the consumer, but rather, either a  
22 manufacturing or production purposes, then we have  
23 ultimate control.

24 Well, I haven't heard any testimony that  
25 there is anything being done other than the fact that

1 it's being stored there.

2           Honestly, you know, the only thing I can say  
3 is this -- you know, you can ask the applicant to give  
4 you a memo on whether or not he feels that that  
5 section -- whatever section it is, that the code  
6 provides (phonetic).

7           I can tell you that because the case of  
8 Riverdale was the first one and was reported, that  
9 since 1999 when it was decided to the present, I  
10 usually get a call once a year about it, and talk with  
11 town attorneys and county attorneys who are rather --  
12 unhappy, because the degree of benefits that we got  
13 out of our order has been eroded over the last  
14 whatever years is that, 99 -- you know.

15           MAYOR BUDESHEIM: You know, John, the thing  
16 that bothers me is our planner's report was dated  
17 April 20<sup>th</sup>, and I have to presume that this was sent to  
18 the applicant?

19           MR. BARBARULA: I don't know, I assume it  
20 was.

21           MAYOR BUDESHEIM: Donna, was this sent to  
22 (inaudible)?

23           MS. HOLMQUIST: I don't know that our office  
24 (inaudible).

25           MAYOR BUDESHEIM: Did you get a copy of this

1 Burgis Associates?

2 MR. FIORILLA: I have a copy.

3 MAYOR BUDESHEIM: So they have had it for  
4 months, and these questions were raised and they  
5 weren't addressed.

6 MR. BARBARULA: I'm not saying -- I'm not  
7 saying you can't ask them to address it. That's not -  
8 - I was just asked if I know any difference between  
9 freight forwarder and a common carrier, and, honestly,  
10 I don't.

11 MS. HOLMQUIST: Motor carrier (phonetic).

12 MR. BARBARULA: Motor carrier.

13 UNIDENTIFIED MALE: Well, what are we going  
14 to do?

15 VICE CHAIRMAN MAGENNIS: Well, I think for  
16 everybody's level of comfort with respect to making a  
17 decision, I think we're all going to have to get a  
18 definitive distinction between the two types of  
19 carriers. And, clearly, from that point, you know, we  
20 can all feel more comfortable about whatever decisions  
21 are reached.

22 But I think at this point, since it has been  
23 raised, there really is no definitive definition that  
24 we can -- that we can interpret. You know, I think  
25 the best thing to do is to have you come back. There

1 are some areas of the code that were -- that were  
2 referenced. You know, if you could go back --

3 MR. FIORILLA: She hasn't referenced them,  
4 but we'll try to find them.

5 MAYOR BUDESHEIM: Mr. Chairman, I would then  
6 like to recommend, since this issue is so critical,  
7 because it determines jurisdiction, and -- how this  
8 jurisdiction will be applied, and -- since this --  
9 they have had this in their possession for the past  
10 month, I would then like to see them address the  
11 entire report issued by the planner. And in those  
12 areas especially that are questioning the  
13 jurisdiction.

14 And that it be forwarded to us at least a  
15 week or so before our next meeting, so that we have a  
16 chance to review this. Because I don't want to be  
17 handed like this engineer's report the night of the  
18 meeting and then we're supposed to make a  
19 determination on -- a -- (inaudible).

20 So let's find out where the jurisdiction is.  
21 If we do have it. The law has changed in the past 10  
22 years, and -- whether or planner's concerns are valid  
23 or not.

24 MS. HOLMQUIST: The chapters are 101, 105,  
25 135 (phonetic). (Inaudible)

1 MR. FIORILLA: It's not (inaudible). We  
2 will find it --

3 MR. FENNO: We'll find it --

4 UNIDENTIFIED MALE: Donna (inaudible) --

5 MS. HOLMQUIST: To (inaudible) from an  
6 attorney, I find that shocking (phonetic).

7 MR. FIORILLA: Well, tell me --

8 MS. HOLMQUIST: Especially --

9 UNIDENTIFIED MALE: John --

10 MS. HOLMQUIST: -- an attorney for a  
11 railroad (inaudible) --

12 UNIDENTIFIED MALE: Seriously. I want to go  
13 home tonight. And we're wasting our time on this  
14 issue.

15 VICE CHAIRMAN MAGENNIS: If we're going to  
16 continue, we're going to need to make a motion to  
17 continue the meeting past 10:30 or -- I guess we will  
18 anyway, because it's -- I think that --

19 UNIDENTIFIED MALE: (inaudible).

20 VICE CHAIRMAN MAGENNIS: -- I just want to  
21 be clear on what the applicant has committed to do.  
22 You're going to review the Burgis Associates report.  
23 And give us a written promise. When would this be  
24 scheduled?

25 CLERK: June 26<sup>th</sup>.

1 VICE CHAIRMAN MAGENNIS: June 26<sup>th</sup>.

2 CLERK: If it's acceptable.

3 MAYOR BUDESHEIM: Ms. Holmquist, are there  
4 any other issue that you feel are outstanding from  
5 your report that haven't been addressed by the --

6 MS. HOLMQUIST: As I stated before there are  
7 a number of (inaudible) details. I don't know  
8 (inaudible).

9 MAYOR BUDESHEIM: Especially if we're trying  
10 to determine -- safety and health and the environment.  
11 (phonetic)

12 MR. FENNO: Let's just be clear as to the  
13 railroad's position. We are not submitting complete  
14 typical site plan. This is not a site plan  
15 application. This board has a complete site plan for  
16 this facility from whenever it was. What we submitted  
17 is a petition for you (inaudible) changes that we are  
18 proposing to this property.

19 So to the extent that there are issues about  
20 topographic contours, you know, there is no changes --  
21 there is no change proposed. And we are not prepared  
22 to address that kind of procedural issues, which are,  
23 frankly, intended to delay this process. And that is  
24 clearly -- in violation of the letter and the spirit  
25 of this consent order that we entered into here.

1 (Phonetic)

2 We will attempt to address this  
3 jurisdictional issue. And we can do that without any  
4 problem. Provide it to the board, Mr. Barbarula,  
5 whoever else you would like us to. It will not be  
6 difficult. And whether you accept it or not,  
7 obviously, is your decision. (Phonetic)

8 But there is no going back on the design of  
9 the facility or showing changes. Pursuant to the  
10 consent order, we (inaudible) change of the use of the  
11 property. That's all. (Phonetic)

12 COUNCILMAN FALKOSKI: So in other words, if  
13 this board is supposed to review any aspects regarding  
14 the health, safety and welfare of the citizens, you're  
15 not going to indicate to us anything about set backs  
16 or fences or anything of that nature. Is that what  
17 you're saying?

18 MR. FENNO: That's correct.

19 COUNCILMAN FALKOSKI: Okay.

20 MAYOR BUDESHEIM: Unless, of course, it is  
21 determined that we do have jurisdiction (inaudible) as  
22 (inaudible) planner.

23 VICE CHAIRMAN MAGENNIS: Well that would  
24 (inaudible) the matter there --

25 MAYOR BUDESHEIM: Right, exactly.

1           VICE CHAIRMAN MAGENNIS: -- then the whole  
2 game changes.

3           MAYOR BUDESHEIM: Uh hum.

4           VICE CHAIRMAN MAGENNIS: Okay.

5           MR. BARBARULA: If that turns out to be that  
6 because of the types of trucks -- as a modification of  
7 the previous orders, and that by the mode of  
8 transportation brings it within the jurisdiction of  
9 this board, that that means that zoning would apply.  
10 And if zoning applies, then this type of facility  
11 would require a use variance.

12           MAYOR BUDESHEIM: Unless they moved to the  
13 industrial section of town.

14           MR. BARBARULA: Well, even that-- moving it  
15 to the industrial section of town would then become a  
16 conforming (phonetic).

17           MAYOR BUDESHEIM: Right.

18           MR. BARBARULA: Right. But if -- what is  
19 outlined in the planner's information is that her  
20 report indicates that she believes that, under those  
21 sections of the US code, that types of carriers  
22 somehow brings this within our jurisdiction, what we -  
23 - what we are asking for is to look at that section  
24 and to see whether or not it changes the federal  
25 jurisdiction. That's where -- that what we

1 (inaudible). If it does, then this application would  
2 have to go to a full use variance application.

3 MAYOR BUDESHEIM: In defense of our planner,  
4 I -- she isn't making a determination one way or the  
5 other. I think she questioned it and the applicant  
6 has failed to address the question.

7 MR. BARBARULA: I didn't say that she did.  
8 I'm just saying that that's --

9 MAYOR BUDESHEIM: Yeah, all right.

10 VICE CHAIRMAN MAGENNIS: I think everybody  
11 understands that.

12 MAYOR BUDESHEIM: Yes.

13 VICE CHAIRMAN MAGENNIS: And, actually, I  
14 think the other qualifier would be that we would be  
15 looking for a response by June 18<sup>th</sup>, if we're going to  
16 have it at the 25<sup>th</sup> as the meeting, I think it was a  
17 week beforehand that we were looking for --

18 MAYOR BUDESHEIM: -- 10 days or - I mean, it  
19 appears to be a very clear case (inaudible) is going  
20 to be a one page letter they said.

21 CLERK: Primarily the rule is I need to  
22 receive any papers (phonetic) for the meeting 10 days  
23 prior to the meeting.

24 VICE CHAIRMAN MAGENNIS: Ten days, okay. So  
25 that would be like the 15<sup>th</sup>.

1 CLERK: Right.

2 VICE CHAIRMAN MAGENNIS: June 15<sup>th</sup>.

3 CLERK: And if that isn't possible, because  
4 of (inaudible).

5 MR. BARBARULA: Any submission by any  
6 applicant is required 10 days before it --

7 CLERK: (inaudible)

8 VICE CHAIRMAN MAGENNIS: Right.

9 MR. BARBARULA: -- that's what we do, that  
10 is our rule (phonetic).

11 VICE CHAIRMAN MAGENNIS: Right.

12 MR. VENZA: Mr. Chairman?

13 VICE CHAIRMAN MAGENNIS: Yes.

14 MR. VENZA: In addition to this information  
15 from the railroad, could we have Mr. Formica bring in  
16 an environmentalist - of -- of some -- you know,  
17 certified environmentalist to get a reading on the  
18 radiation on the stacks that they have (phonetic).

19 VICE CHAIRMAN MAGENNIS: It's up to him.

20 MR. FORMICA: Well, I could bring you the  
21 MSDS sheets -- (inaudible) evaluation and see what  
22 else you require. (phonetic)

23 MR. VENZA: That's not what I'm asking. I'm  
24 asking -- we're talking about an MSDS sheet is about a  
25 brick. We're talking about tons of brick. Okay. And

1 although the basic components of the brick are the  
2 same, and they reactivity, the burn rate, everything  
3 else, the break rate, -- strength, that's all the same  
4 on each individual brick. However, when you add each  
5 brick to each other brick, radiation is -- is added,  
6 is cumulative. Okay. So I -- I would like to see a  
7 number.

8           MR. FORMICA: I'll ask the manufacturer if  
9 they have anything like that that can help us. But to  
10 go out and to hire an environmentalist to do such work  
11 (inaudible), I'm not sure, because there is plenty of  
12 precedent around the country where there is tons of  
13 brick accumulated, both at manufacturing facilities,  
14 in other brick yards like ours, (inaudible) has never  
15 been an issue.

16           MR. VENZA: That's true. But they don't  
17 have residents 50 feet away.

18           MR. FORMICA: Well, we can't be (inaudible)  
19 sure as well.

20           MR. VENZA: Okay. But for the most part  
21 there aren't. (phonetic)

22           MR. FORMICA: (inaudible). It could be an  
23 expensive process, and time consuming, as well. So I  
24 will try to get additional (inaudible) to the extent I  
25 can (inaudible) manufacturers that may abate some of

1 that concern. If it (inaudible) hopefully it will be,  
2 maybe that will suffice. (phonetic)

3 VICE CHAIRMAN MAGENNIS: But you will bring  
4 the MSDS sheets --

5 MR. FORMICA: Yes.

6 VICE CHAIRMAN MAGENNIS: -- at a minimum.

7 MR. VENZA: Send them (inaudible) same rate  
8 -- (phonetic) --

9 MR. FORMICA: Okay -- sure.

10 CLERK: Just to be clear, the meeting will  
11 be scheduled for June 25<sup>th</sup>. correct?

12 VICE CHAIRMAN MAGENNIS: June 25<sup>th</sup>. Right.

13 CLERK: Okay.

14 VICE CHAIRMAN MAGENNIS: I guess --

15 UNIDENTIFIED MALE: Make a motion that we  
16 continue this (inaudible).

17 UNIDENTIFIED MALE: Second.

18 MR. DARMOFALSKI: Well, the pipe issues are  
19 done structurally, but the mayor has requested a  
20 formal approval for (inaudible).

21 VICE CHAIRMAN MAGENNIS: That actually was,  
22 I think --

23 MR. DARMOFALSKI: -- engineering department,  
24 but I think what we were looking for was from the  
25 North Jersey District Water Supply (inaudible).

1 VICE CHAIRMAN MAGENNIS: Yes, the --

2 MR. DARMOFALSKI: -- engineering review.

3 VICE CHAIRMAN MAGENNIS: I think they --

4 MR. DARMOFALSKI: Last month we asked for an  
5 engineering review (inaudible).

6 VICE CHAIRMAN MAGENNIS: The commission  
7 provides a written notification and -- and -- that the  
8 railroad has completed with terms of (inaudible).

9 UNIDENTIFIED MALE: (inaudible).

10 MAYOR BUDESHEIM: What if -- as long as  
11 we're going through everything here.

12 UNIDENTIFIED MALE: Did you extend the  
13 meeting?

14 CLERK: No, actually we need to.

15 VICE CHAIRMAN MAGENNIS: Can I have a motion  
16 to extend the meeting.

17 UNIDENTIFIED MALE: I make a motion to  
18 extend the meeting until 11 o'clock.

19 UNIDENTIFIED MALE: Second.

20 VICE CHAIRMAN MAGENNIS: All in favor.

21 (All answer in the affirmative)

22 MAYOR BUDESHEIM: Some of the concerns, I  
23 think that Mr. Lotterman brought out about there not  
24 being any (inaudible) under that asphalt (inaudible).  
25 Can we do some test borings to make sure that -- that

1 asphalt is as it purports to be. I mean, if there is  
2 no base to them -- if that was just put on the grass,  
3 I don't (inaudible).

4 MR. DARMOFALSKI: I think with respect to  
5 the water (inaudible), I don't know that you have to  
6 inspect (inaudible). There has to be an inspection of  
7 the fence, there was a lot of complaints about the  
8 fence (phonetic). I already made a note about the  
9 asphalt, the pitch going the wrong way (inaudible),  
10 obviously (inaudible). (phonetic)

11 I have not done an inspection of that  
12 facility in 10 years. So it was built then,  
13 (inaudible) one inspection of the heating car and we  
14 haven't done anything since then.

15 So I think inspections are in order. I  
16 don't know that you -- I'll be happy to go out there  
17 in the next (inaudible) and look (inaudible). It's  
18 very important. If the board feels more comfortable  
19 with it that way, I'll be happy to do it.

20 UNIDENTIFIED MALE: (inaudible).

21 MR. DARMOFALSKI: If you want me to, it  
22 won't be a (inaudible).

23 VICE CHAIRMAN MAGENNIS: Why don't you do  
24 that, Paul? It will make everybody feel more  
25 comfortable.

1 CLERK: (inaudible) second -- carry the  
2 meeting -- carry the application to June 25<sup>th</sup> -- all in  
3 favor --

4 UNIDENTIFIED MALE: Roll call.

5 CLERK: I need a roll call, okay.

6 (Roll Call)

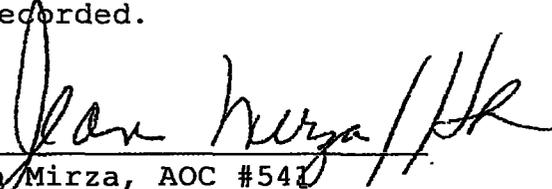
7 (All answer in the affirmative)

8 CLERK: Okay, this application will be  
9 carried to June 25<sup>th</sup>.

10 CERTIFICATION

11 I, Jean Mirza, the assigned transcriber, do  
12 hereby certify the foregoing transcript of proceedings  
13 on CD recording is prepared in full compliance with  
14 the current Transcript Format for Judicial Proceedings  
15 and is a true and accurate non-compressed transcript  
16 of the proceedings as recorded.

17  
18 July 15, 2009

  
\_\_\_\_\_  
Jean Mirza, AOC #541  
G & L Transcription of NJ

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**Riverdale Planning Board**

**IN RE:** New York Susquehanna & Western Railroad  
Hamburg Turnpike/Post Lane  
Block 17, Lot 4

Date of Hearing: June 25, 2009

**BEFORE:** Members of the Planning Board and Public

**TRANSCRIPT ORDERED BY:**

John Fiorilla, Esq. (Capehart & Scatchard)  
Attorney for New York Susquehanna & Western Railroad

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1           CHAIRMAN LOESNER: Hearing for New York  
2 Susquehanna and Western Railway Corporation. Paterson  
3 Hamburg Turnpike and Post Lane, block 17, lot 4. A  
4 continuation of the last two months hearing.

5           John, can you tell me where we stand on this  
6 now?

7           CLERK: Before you do that, John, I have  
8 statements signed by both -- Bradley Clinton and  
9 Steven Loesner that they have read all the minutes and  
10 the documents.

11           MR. BARBARULA: Gentlemen, will you please  
12 stand, raise your right hands.

13 B R A D L E Y   C L I N T O N, SWORN

14 S T E V E N   L O E S N E R, SWORN

15           MR. BARBARULA: Mr. Chairman, have you, as  
16 indicated in the statement, that is to remain part of  
17 the file, have you examined the record of the hearing  
18 where you were absent?

19           CHAIRMAN LOESNER: I have.

20           MR. BARBARULA: Mr. Clinton, as a member of  
21 the board, have you submitted a statement (inaudible)  
22 have you examined the record of the last meeting when  
23 you were absent?

24           MR. CLINTON: Yes, I have.

25           MR. BARBARULA: Would you please be seated.

1 Mr. Fiorilla, would you like to ask (inaudible)  
2 Chairman or member Clinton any questions as to the  
3 validity of them having fulfilled the statutory  
4 requirement of listening to (inaudible) and reviewing  
5 the records?

6 MR. FIORILLA: I have no questions, Mr.  
7 Barbarula.

8 MR. BARBARULA: Thank you. It will be  
9 without an objection. They will be sitting and they  
10 will be able to deliberate in this hearing.

11 Where we are is there are a couple of  
12 questions that were asked. The board has requested  
13 the applicant to outline their positions. The board  
14 received it, I believe, June 16<sup>th</sup>. That is in response  
15 to the board's inquiry. Since it was received by the  
16 board, I believe it was distributed to all members.  
17 Since (inaudible) to the case, it should be considered  
18 as an addendum to the application.

19 And -- I think the applicant had indicated  
20 that they are done with their presentation (inaudible)  
21 now if the board has any questions in reference to the  
22 documents they submitted, I think that's where we're  
23 at.

24 MR. FIORILLA: Mr. Barbarula?

25 MR. BARBARULA: Yes.

1           MR. FIORILLA: We would also like to just  
2 point that we submitted this evening a letter we  
3 received today from the water commission.

4           MR. BARBARULA: Yes.

5           MR. FIORILLA: We would like to make that as  
6 part of our application, as well.

7           MR. BARBARULA: Additionally, there was --

8           MR. FIORILLA: This was also requested.

9           MR. BARBARULA: Right. Additionally, there  
10 was a request, based upon a prior letter of the North  
11 Jersey District Water Supply Commission, the letter  
12 had indicated certain aspects of what they could do  
13 and could not do, and the limitation of the size of  
14 the stack, if you remember.

15           There was a question by the board, how do we  
16 know that that's the actual position of the board and  
17 this verifies the original letter. And that should  
18 then be added to the initial communication and made  
19 part of the record also.

20           I think that takes care of all of the other  
21 issues. I think at this point, it would then be up to  
22 the board to -- proceed on whether or not they are  
23 satisfied. If there are questions in reference to the  
24 applicant's submissions.

25           VICE CHAIR MAGENNIS: I believe there was

1 other questions, and it had to do with the depth of  
2 the existing pipe underneath the existing easement. I  
3 think Paul -- I think there was some question as to  
4 whether or not it was actually five feet below the --

5 MR. DARMOFALSKI: All paperwork indicated  
6 it's eight foot. (Phonetic)

7 VICE CHAIR MAGENNIS: It's eight foot.  
8 Okay. And all of the calculations were done on -- on  
9 a five foot. That the engineering --

10 MR. DARMOFALSKI: (Inaudible)

11 VICE CHAIR MAGENNIS: Okay.

12 CHAIRMAN LOESNER: And how do we feel about  
13 the -- submission on the determination of the site  
14 plan? Motor carrier as opposed to freight mover, what  
15 was it --

16 UNIDENTIFIED MALE: Forwarder.

17 CHAIRMAN LOESNER: Freight forwarder.

18 MS. HOLMQUIST: Well, the applicant's  
19 position from the paperwork that they have submitted  
20 is that they fall within the preemption. That there  
21 is no local authority or (inaudible). (Phonetic)

22 And I'm not convinced of that. I  
23 (inaudible) at the last meeting, that (inaudible)  
24 whether this (inaudible). There are procedures that  
25 the board can (inaudible).

1           CHAIRMAN LOESNER: Well, I happen to agree  
2 with you. For a couple of reasons. One of them was  
3 the testimony from the applicant, which pretty much  
4 said that once the freight arrives and was offloaded  
5 off the cars, it wasn't going to one operator, it was  
6 going to several different job sites.

7           It's a lot different to me than the corn  
8 syrup where it was offloaded directly from the rail  
9 cars to its transport and left the site. There was  
10 testimony, I believe, that the bricks could stay there  
11 for months. While the jobs progressed.

12           So it's --

13           MS. HOLMQUIST: I just wanted to also  
14 (inaudible) that had been submitted, um -- I did note  
15 that they are proposing to make this (inaudible)  
16 available to other customers. It said something to  
17 that effect in the agreement, um -- (inaudible) I  
18 don't know what other customers (inaudible) materials  
19 would be or what the truck traffic would be in  
20 conjunction with that. (Phonetic)

21           I guess I would also add that, you know,  
22 there are occasions that -- that I looked at where the  
23 STB has found that a trucking operation is not  
24 (inaudible). And, um -- the US Court of Appeals also  
25 (inaudible).

1           CHAIRMAN LOESNER: Uh hum.

2           MS. HOLMQUIST: So it's not unheard of. And  
3 each (inaudible) really rests on the facts (inaudible)  
4 for that particular use. It's a very specialized  
5 area. I (inaudible) and I believe that's why they're  
6 hiding (phonetic) (inaudible).

7           CHAIRMAN LOESNER: Right. Well, that's been  
8 the board's position, I think, all along throughout  
9 these hearings, is that -- we understand the rights of  
10 the railroad to deliver their product by rail car.  
11 Once it's sitting in the yard, we believe that we have  
12 jurisdiction over what goes on at the site. And is  
13 that your -- do you agree with us on that?

14           MS. HOLMQUIST: Yeah. And also to further  
15 that point, um, during my site visit, which I  
16 accompanied Mr. Darmofalski, um, the railroad  
17 representative, it was apparent to me that this will  
18 have a negative impact on the residents (inaudible)  
19 property that back up to the railroad (inaudible).  
20 (Phonetic)

21           Um, there are features that are not shown on  
22 the site plan. He listed many of them (inaudible).  
23 There are standard site plan detail (inaudible). And  
24 the applicant's position is they are not going to show  
25 that (phonetic).

1           Um, therefore, I don't really think the  
2 board can make an educated decision on the application  
3 (inaudible). And I currently don't feel that  
4 providing those details on the plan in any way is an  
5 undue burden for this applicant. (Phonetic)

6           CHAIRMAN LOESNER: I agree. And I feel that  
7 we would be doing the residents a vast injustice if we  
8 didn't -- didn't make sure we got that. We have no  
9 idea what's going on in there.

10           Again, I understand the argument put forth  
11 by the railroad. But, again, once it's offloaded and  
12 sitting on that platform, I think it belongs to us.

13           The thing that frustrates me on it is -- in  
14 my opinion, it's unnecessary. These lines extend  
15 right down into the industrial zone. We talked about  
16 this months -- a few months ago.

17           I can't understand why -- well, I guess it's  
18 all about money. Why a proper offloading and transfer  
19 facility couldn't be constructed a quarter mile down  
20 the road, down the line, in the industrial zone, with  
21 direct access to a truck route and to 23. I -- I  
22 don't understand why we can't get a modern facility.

23           Obviously, the railroad intends on using  
24 this -- this spur for either offloading corn syrup or  
25 bricks, or whatever it is in the future. And I think

1 every time that they change their mind on what use is  
2 going to go in there, we're going to be sitting here  
3 going through the same thing over and over again. And  
4 inconveniencing the people from Munn and the rest of  
5 the town.

6           So I agree, I don't -- I don't know, and I  
7 have been thinking about it since I read the minutes.  
8 I don't know what kind of determination even to make  
9 tonight. I don't feel I have -- I don't feel I have  
10 enough -- information --

11           MAYOR. BUDESHEIM: (inaudible).

12           CHAIRMAN LOESNER: Go ahead, mayor, yeah,  
13 help me out here before I keep stammering around here.

14           MAYOR BUDESHEIM: I share your sentiments  
15 100 percent. And I appreciate all the research you  
16 have done. So I would like to, if possible, make the  
17 recommendation that we appeal to the board, the --  
18 Transportation --

19           MS. HOLMQUIST: (inaudible).

20           MAYOR BUDESHEIM: -- Surface Transportation  
21 Board, to get a ruling. Once we do that, we are  
22 insulated from any lawsuits challenging our position.  
23 And get a determination.

24           I would also like to recommend that the  
25 applicant, if time is of the essence to them, that

1 they amend their application and put it in the  
2 industrial zone where such an activity belongs, and  
3 they can prepare a full site plan that I -- our  
4 planner would determine whether that is a permitted  
5 use. But it would be far more appropriate down there,  
6 as you said, rather than the redevelopment/residential  
7 zones that they are looking to put it in. (phonetic)

8 CHAIRMAN LOESNER: Well, I agree, Mayor, and  
9 that's one of the -- that's why I brought it up.  
10 Because I can understand the railroad's position. And  
11 I know we have nothing to stand on that spur, they can  
12 bring their product in by rail. But why they wouldn't  
13 want to construct a modern, safe, efficient, clean --  
14 transfer facility in the industrial zone just staggers  
15 me.

16 Like again, like I say, I think, you know,  
17 once the brick operation moves out and something else  
18 comes in, we're going to be right back here with the  
19 same thing.

20 UNIDENTIFIED MALE: You made that in the  
21 form of a motion, Mr. Mayor?

22 MAYOR BUDESHEIM: Yes. I would also like to  
23 include the planner's letter where she outlined her  
24 position in much detail, as a part of that resolution.

25 CHAIRMAN LOESNER: Absolutely.

1 COUNCILMAN FALKOSKI: I'll second that.

2 CHAIRMAN LOESNER: Anybody want to add  
3 anything? Any thoughts? John, anything?

4 MR. BARBARULA: No. I gave my opinion the  
5 last time. I have nothing to add. The board has made  
6 a motion. I have nothing to add.

7 CHAIRMAN LOESNER: Okay.

8 CLERK: Okay. Mayor Budesheim.

9 MAYOR BUDESHEIM: Yes.

10 CLERK: Councilman Joseph Falkoski.

11 COUNCILMAN FALKOSKI: Yes.

12 CLERK: Glenn Venza?

13 MR. VENZA: Yes.

14 CLERK: Al Heimall?

15 MR. HEIMALL: No.

16 CLERK: Vincent Pellegrini?

17 MR. PELLEGRINI: Abstain.

18 CLERK: Bradley Clinton.

19 MR. CLINTON: Yes.

20 CLERK: George Lang.

21 MR. LANG: Yes.

22 CLERK: Michael Reilly.

23 MR. REILLY: Yes.

24 CLERK: Vice Chairman Brendan Magennis?

25 VICE CHAIR MAGENNIS: No.

1 CLERK: Chairman Steven Loesner.

2 CHAIRMAN LOESNER: Yes.

3 CLERK: Motion carried.

4 MAYOR BUDESHEIM: We will file that motion  
5 with the -- the -- within the next few days to protect  
6 our rights.

7 MR. BARBARULA: I would suggest that the  
8 board make a motion to (inaudible) to do that, if  
9 you're going to do that.

10 MAYOR BUDESHEIM: I would -- I think this is  
11 a -- this goes beyond the Planning Board.

12 MR. BARBARULA: I think the board should  
13 pick someone that has experience in this area.  
14 Especially in light of my opinion to the board, I  
15 believe that it would be more appropriate to have  
16 someone else --

17 CHAIRMAN LOESNER: I agree.

18 MR. BARBARULA: -- the application.

19 MAYOR BUDESHEIM: And it's not a -- not  
20 trying to diminish you --

21 MR. BARBARULA: You don't have to -- you  
22 don't have to make one comment about it. Its my  
23 recommendation, I just said that to the board.

24 MAYOR BUDESHEIM: Right.

25 MR. BARBARULA: I suggest that the board

1 pick somebody to -- present this position, that they  
2 can (inaudible) that, basically, it could end up that  
3 I could go before the board to be called as a  
4 witness, so I'd rather have an independent person do  
5 that. (Phonetic)

6           MAYOR BUDESHEIM: Right. I will check with  
7 our borough attorney, since this is a, I believe, a  
8 municipal action more than a Planning Board -- I'll  
9 check and see if he has the -- the ability to go  
10 before the board and represent us. Otherwise, I'll to  
11 have to hire someone else.

12           MR. BARBARULA: It isn't municipal. The  
13 board -- this board is acing, this board entered into  
14 the -- you would have to authorize the hiring of an  
15 independent, and you should do so tonight.

16           The -- that can be done very simply, Mr.  
17 Chairman and Mr. Mayor, by authorizing a committee --  
18 two or three people to accept resumés or to confer --  
19 but also conferring with the town attorney would be  
20 very appropriate, because if, in fact, their firm is  
21 to do it, there is no prohibition against that firm  
22 doing it.

23           So I would suggest you make a motion to  
24 authorize the hiring of an attorney to file, if at all  
25 possible, a petition with the Surface Transportation

1 Board.

2           MAYOR BUDESHEIM: All right, then I would  
3 our attorney's suggestion, and first check and see if  
4 our borough attorney could -- or his firm could handle  
5 it. If not, we have used (inaudible) in the past, so  
6 rather than going through an interview process, I  
7 would like to get this going as soon as possible.

8           CHAIRMAN LOESNER: Is that your motion?

9           MAYOR BUDESHEIM: Yes.

10          CHAIRMAN LOESNER: That's fine with me.  
11 We're familiar with Mr. Clemack (phonetic).

12          CLERK: We need --

13          VICE CHAIR MAGENNIS: Are we saying that Mr.  
14 Clemack is going to make the application to the --

15          MAYOR BUDESHEIM: If our attorney cannot.

16          VICE CHAIR MAGENNIS: So he is going to  
17 determine whether he can or he can't.

18          MAYOR BUDESHEIM: Right. And if he can't,  
19 Mr. Clemack has helped us in the past (inaudible)  
20 conflicts with our attorney or with Mr. Barbarula.

21          UNIDENTIFIED MALE: And if it's beyond Mr.  
22 Clemack's scope?

23          CHAIRMAN LOESNER: Then we'll form the  
24 committee and we'll find -- we'll find one.

25          MR. BARBARULA: That's what I would like you

1 to state, whatever motions you need now --

2 UNIDENTIFIED MALE: Whatever motions  
3 (inaudible).

4 MR. BARBARULA: -- (inaudible) --

5 CHAIRMAN LOESNER: We're getting there.

6 MR. BARBARULA: -- since this is the last  
7 formal meeting you have -- (phonetic) --

8 CHAIRMAN LOESNER: We're getting there.

9 MR. BARBARULA: Let's take one -- one motion  
10 at a time. The mayor has made a motion to obtain  
11 independent counsel. That's my recommendation.  
12 Please do a vote on that first.

13 CHAIRMAN LOESNER: Very well.

14 CLERK: Mayor Budesheim.

15 MAYOR BUDESHEIM: Yes.

16 MR. BARBARULA: Please -- there wasn't a --  
17 let's do it right.

18 CLERK: Who was the second?

19 MR. BARBARULA: Who was the second?

20 CLERK: George Lang.

21 CHAIRMAN LOESNER: George Lang.

22 MR. BARBARULA: I didn't hear it, thank you.

23 CLERK: Okay. George -- (inaudible).

24 MR. BARBARULA: Go ahead, sorry.

25 CLERK: Mayor Budesheim.

1           MAYOR BUDESHEIM: Yes.

2           CLERK: George Lang.

3           MR. LANG: Yes.

4           CLERK: Councilman Joseph Falkoski.

5           COUNCILMAN FALKOSKI: Yes.

6           CLERK: Glenn Venza?

7           MR. VENZA: Yes.

8           CLERK: Al Heimall?

9           MR. HEIMALL: No.

10          CLERK: Vincent Pellegrini?

11          MR. PELLEGRINI: Yes.

12          CLERK: Bradley Clinton?

13          MR. CLINTON: Yes.

14          CLERK: Michael Reilly?

15          MR. REILLY: Yes.

16          CLERK: Vice Chairman Brendan Magennis?

17          VICE CHAIR MAGENNIS: Yes.

18          CLERK: Chairman Steven Loesner?

19          CHAIRMAN LOESNER: Yes. Second motion.

20          MR. BARBARULA: Would be to appoint a

21 committee to look at potential attorneys, first being

22 the town attorney, the second would be the (inaudible)

23 attorney. I have -- we have had Mr. Clemack cover for

24 me for this board before. He's very familiar with the

25 town, so that would be number two. And then after

1 consulting with them, go to a third. So that would be  
2 the order.

3 And also with that motion picking at least  
4 two people for a committee for -- to take care of the  
5 communications with the town attorney and Mr. Clemack  
6 and any other attorney that you may need to interview.

7 VICE CHAIR MAGENNIS: All right, just one  
8 question on that. Who is the approving authority? I  
9 know Mr. Clemack can recommend himself. Who is  
10 approving that he is qualified to do this work?

11 MR. BARBARULA: That --

12 VICE CHAIR MAGENNIS: I think that needs to  
13 be stated.

14 MR. BARBARULA: -- that's going to be --

15 VICE CHAIR MAGENNIS: The committee? Or --

16 MR. BARBARULA: -- back to the committee,  
17 you're going to have to authorize the committee if you  
18 want something done quickly.

19 VICE CHAIR MAGENNIS: So the committee is  
20 going to -- the committee should be named --

21 MR. BARBARULA: (inaudible) you authorize to  
22 hire an attorney.

23 VICE CHAIR MAGENNIS: Right.

24 MR. BARBARULA: The committee will have to  
25 authorize by talking to these people --

1 VICE CHAIR MAGENNIS: I think the first one  
2 was that they would hire an attorney, I don't think  
3 that it stated that the committee had --

4 MR. BARBARULA: That's what this motion is  
5 all about.

6 VICE CHAIR MAGENNIS: Okay.

7 MR. BARBARULA: You authorize hiring an  
8 independent attorney with the first motion. Second  
9 motion is -- is to enable a committee to --

10 VICE CHAIR MAGENNIS: Approve --

11 MR. BARBARULA: -- make the selection.

12 CHAIRMAN LOESNER: I'm going to make that  
13 motion with the committee being myself and Vice  
14 Chairman Brendan Magennis.

15 VICE CHAIR MAGENNIS: Actually, I would not  
16 want to be on that committee.

17 CHAIRMAN LOESNER: Okay.

18 VICE CHAIR MAGENNIS: I think I would be  
19 biased.

20 CHAIRMAN LOESNER: Okay. Who is our next  
21 senior member? Heimall -- Mr. Heimall?

22 CLERK: Yes.

23 MR. HEIMALL: You really want (inaudible).  
24 Okay.

25 CHAIRMAN LOESNER: It will be myself and

1 member Heimall.

2 CLERK: I need a second.

3 UNIDENTIFIED MALE: I'll second it.

4 CLERK: Chairman Steven Loesner.

5 CHAIRMAN LOESNER: Yes.

6 CLERK: George Lang.

7 MR. LANG: Yes.

8 CLERK: Okay. Mayor Budesheim.

9 MAYOR BUDESHEIM: Yes.

10 CLERK: Councilman Joseph Falkoski.

11 COUNCILMAN FALKOSKI: Yes.

12 CLERK: Glenn Venza?

13 MR. VENZA: Yes.

14 CLERK: Al Heimall?

15 MR. HEIMALL: Yes.

16 CLERK: Vincent Pellegrini?

17 MR. PELLEGRINI: Yes.

18 CLERK: Bradley Clinton.

19 MR. CLINTON: Yes.

20 CLERK: Michael Reilly.

21 MR. REILLY: Yes.

22 CLERK: Vice Chairman Brendan Magennis?

23 VICE CHAIR MAGENNIS: Yes.

24 CLERK: So that's -- the committee will be

25 Steven Loesner and Al Heimall. Okay.

1 MR. BARBARULA: Motion to close (phonetic).

2 CLERK: No. We have to make a motion to  
3 cancel the July 2<sup>nd</sup> meeting, since we have no agenda.

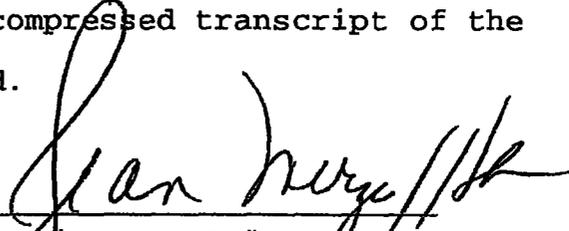
4 MR. BARBARULA: Okay.

5 (Matter requested concluded)

6 CERTIFICATION

7 I, Jean Mirza, the assigned transcriber, do  
8 hereby certify the foregoing transcript of proceedings  
9 on CD is prepared in full compliance with the current  
10 Transcript Format for Judicial Proceedings and is a  
11 true and accurate non-compressed transcript of the  
12 proceedings as recorded.

13  
14 July 15, 2009

  
\_\_\_\_\_  
Jean Mirza, AOC #541  
G & L Transcription of NJ

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**RESOLUTION  
BOROUGH OF RIVERDALE  
PLANNING BOARD**

**APPLICATION**

**NYS&W Railway Corporation  
BLOCK 17 LOT 4  
Paterson Hamburg Turnpike  
at Post Lane  
Site Plan Review as per Consent Order**

**WHEREAS, the application was considered by the Planning Board , after said application was received along with exhibits, photographs and expert reports, as per the attached minutes, which are incorporated herein as if set forth verbatim. The Board having taken testimony of the applicant, experts and the public, and**

**WHEREAS, the Board having determined that the application has not met the requirements of the existing Consent Order, therefore the Board determined that there was a true jurisdictional issue and that based upon the conflicting opinions of the Board's Attorney and Planner that no approval of the application would be appropriate,**

**WHEREAS, The Board has by motion adopted the jurisdictional statements of the Board's Planner Donna Holmquist as enumerated upon the record and incorporated herein. The Board finds that the proposed use requested by the applicant may be subject to the full jurisdiction of the Planning Board and the Board is appealing to the S.T.B. for a determination of jurisdiction. Accordingly the Board finds that the submission is not sufficient as indicated in the Planner's report and will await a jurisdictional determination by the Surface Transportation Board before proceeding,**

**NOW THEREFORE BE IT RESOLVED that the above application be and is hereby dismissed without prejudice, based upon inadequate proofs and documentation and based upon the report of the Board's Planner which is incorporated herein and that jurisdictional issues exist.**

**The undersigned, Secretary of the Planning Board, hereby certifies that the above is a true copy of the resolution adopted by the Board on this 6th day of August, 2009.**

---

**Linda Roetman  
Secretary to the Planning Board**

**F**

## RAIL CAR TRANSLOADING CONTRACT

THIS AGREEMENT made as of this 21<sup>st</sup> day of July, 2009, by and between TRI STATE BRICK, INC., with offices at 151 West 25th Street New York, NY 10001 (hereinafter referred to as "TRI-STATE") and THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION, a New Jersey corporation with offices at 1 Railroad Avenue, Cooperstown, New York 13326 (hereinafter referred to as "NYS&W").

WHEREAS, NYS&W is an interstate carrier by rail and has an existing rail-to-truck transloading facility (the "Facility") at certain real property owned by NYS&W and accessed via Hamburg Turnpike, Riverdale, New Jersey, as more particularly described on Exhibit A annexed hereto; and

WHEREAS, TRI-STATE wishes to make arrangements with NYS&W for (a) NYS&W to transport railcar shipments of brick (the "Commodity") to the Facility; (b) NYS&W to transload the Commodity between truck and rail at the Facility; (c) NYS&W to provide temporary storage in transit of the Commodity at the Facility, and (d) NYS&W to perform administrative functions related to the transportation of the Commodity.

NOW, THEREFORE, in consideration of a mutual exchange of promises and other valuable consideration, the receipt of which is acknowledged by the parties, the parties hereto covenant and agree as follows:

### **1. CONSTRUCTION OF FACILITY; PERFORMANCE OBLIGATIONS; PROPERTY:**

1.1 The Facility currently exists, but was designed to transload liquid commodities. NYS&W and TRI-STATE have cooperated to design modifications to the Facility that are needed to handle the Commodity efficiently and effectively, as shown on Exhibit A. Those modifications will be constructed by contractors selected by NYS&W.

1.2 NYS&W will perform the transportation services, including without limitation transloading services, as requested by and for the benefit of TRI-STATE, as set forth herein. NYS&W will designate space within the Facility sufficient for and facilities and equipment (the "Equipment") needed for handling the Commodity, as well as NYS&W's performance of all its obligations under this Agreement. NYS&W is responsible for all improvements to the Facility, including without limitation all Equipment at the Facility.

1.3 During the Term of this Agreement, NYS&W acknowledges that it shall not perform transloading services at the Facility for the benefit of any person other than TRI-STATE unless such services can be performed in a manner which does not impede in any way NYS&W's handling of commodity tendered by TRI-STATE. In consideration of NYS&W's commitment of the capacity of the Facility for traffic arranged by Tri-State, Tri-State agrees to arrange for no fewer than Two Hundred Fifty (250) loaded railcars of Commodity to be shipped to the Facility during each year of this Agreement. In the event that fewer than Two Hundred Fifty (250) loaded railcars of Commodity are

shipped to the Facility in any year of this Agreement, then Tri-State shall pay to NYS&W a sum determined by multiplying the difference between the actual number of railcars shipped and Two Hundred Fifty (250) by Five Hundred Dollars (\$500.00).

1.4 NYS&W hereby grants to TRI-STATE the right to access the Facility solely for purposes directly related to the transportation of the Commodity, including such actions as inspecting the Commodity for damage, review of NYS&W's unloading and loading procedures, and inspection of shipping documents.

**2. FREIGHT RATES:**

Rail freight rates are to be determined by the NYS&W rate circular or private contract then in effect.

**3. RAILROAD TRANSLOADING:**

3.1 NYS&W hereby agrees that it, or an entity it engages ("Loader"), shall perform bulk loading /unloading of the Commodity, as well as any and all other services required during, and as part of, transporting the Commodity, including without limitation receiving, unloading the Commodity at the Facility, operating equipment, maneuvering railcars over and across the Facility, temporarily storing Commodity, loading Commodity onto trucks for delivery off site, completing all appropriate paperwork, and complying with all applicable laws and regulations governing rail transportation (hereafter and collectively, the "Services").

3.2 Unloading of railcars by NYS&W or Loader shall follow operating procedures mutually acceptable to NYS&W and TRI-STATE.

**4. TRANSPORTATION AND LOADING:**

4.1 In order to assure that unloading of railcars and loading of trucks is performed in a manner acceptable to TRI-STATE, TRI-STATE may station one or more representatives in the location within the Facility to observe such operations.

4.2 TRI-STATE will make all arrangements for trucks to transport the Commodity from the Facility. Neither TRI-STATE nor its trucking contractor may, without prior written permission of NYS&W, store motor trucks or trailers at the Facility, fuel road vehicles at the Facility, or store bulk materials at the Facility.

4.4 TRI-STATE and NYS&W shall ensure that their respective employees, agents and contractors comply with the NYS&W's rules governing safety and other operating issues at the Facility.

[4.5 TRI-STATE and NYS&W agree to meet no less than quarterly to review the operation of the Facility and the costs of the Services to make equitable adjustments in the Actual Costs (as

defined below) to reflect operating efficiencies or inefficiencies, changes in law or application of law, legally enforceable orders of governmental authorities, changes in rates of pay, material costs and unanticipated expenses. If either party should suffer a material inequity in the performance or service level of its obligations under this Agreement as a result of adverse and unforeseen conditions, then the parties hereto shall renegotiate in good faith for the purpose of resolving such inequity, provided that until such renegotiation is concluded, the Actual Costs being charged at the time either party requests a renegotiation shall remain in effect. Any changes to the terms of this Agreement agreed to by NYS&W and TRI-STATE shall be memorialized in writing as an Amendment hereto and signed by the authorized representatives of NYS&W and TRI-STATE.]

**5. TERM / FEE:**

5.1 The initial term of this Agreement shall for a period of five (5) years beginning with its effective date. Unless terminated as provided in Section 5.2, this Agreement shall thereafter automatically renew for renewal terms of 12 months each.

5.2 No less than one hundred twenty (120) days prior to the expiration of the initial or any renewal term of this Agreement, either party may give notice of its intention to terminate this Agreement.

5.3 TRI-STATE shall pay to NYS&W an amount equal to NYS&W's actual reasonable costs in providing Services to TRI-STATE determined in accordance with 23 CFR Part 140, Subpart I (collectively, the "Actual Costs"). Such payments shall be made on a weekly basis by wire transfer to an account designated by NYS&W within seven (7) days of receipt of a detailed line item invoice from NYS&W for such Actual Costs. TRI-STATE shall have the right, at its own cost, on reasonable notice and at a mutually agreeable time, to inspect and audit NYS&W's books relating to the Actual Costs, and any corrections or adjustments in TRI-STATE's favor will be credited to TRI-STATE as against future payments of Actual Costs.

**6. OPERATIONS:**

6.1 NYS&W or Loader will provide all labor, equipment and tools necessary to accomplish the function of transfer of Commodity from trucks to railcars in a manner consistent with this Agreement.

6.2 NYS&W or Loader will provide personnel sufficient to accomplish the functions of transfer of Commodity between trucks and railcars and all associated administrative functions in a manner consistent with this Agreement.

6.3 NYS&W will maintain records and receipts for railcars it unloads identifying the following:

- i. car number;
- ii. shipper;

iii. commodity.

6.4 TRI-STATE, its officers, employees and invitees, while in proximity to rail tracks, shall follow, observe and be governed by railroad safety rules as applicable.

[6.5 NYS&W shall monitor and inspect all unloading/loading equipment at reasonable intervals and shall, immediately upon discovery of any damage or malfunction thereof, notify TRI-STATE of needed repairs and any effect on operations. NYS&W shall arrange and pay for all repairs made to the unloading/loading equipment.]

**7. INDEPENDENT CONTRACTOR STATUS:**

It is the intent of the parties that NYS&W (including Loader) is and shall remain an independent contractor with respect to TRI-STATE. Neither NYS&W nor any employee, other worker, or entity engaged by NYS&W shall be deemed an employee or agent of TRI-STATE under any circumstances or for any purpose, including, but not limited to, federal, state or local payroll taxes, income tax withholding, workers compensation premiums, unemployment tax or TRI-STATE provided benefits of employment. This independent contractor relationship of the parties is paramount to this Agreement, and nothing herein contained shall be construed as inconsistent therewith.

**9. INDEMNIFICATION:**

9.1 TRI-STATE will be responsible for and will indemnify, save harmless and defend NYS&W and each of its officers, shareholders, directors, employees and agents against and from any and all claims and suits for, and any and all liability, loss or expense (including reasonable attorneys fees) arising from or incidental to or in connection with, damage to or loss of property of NYS&W, TRI-STATE, or of agents, servants or employees of either, or of any other person, and against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, injury to or death of persons, including agents, servants, or employees of NYS&W or of Loader, or any other person (including Loader, if a natural person), which said damage, loss injury or death shall arise in any manner, directly or indirectly, out of or incidental to or in connection with, TRI-STATE employees being on NYS&W property, except to the extent caused by the negligent or intentional acts or omissions of NYS&W or other entities allowed to use the Facility by NYS&W pursuant to this Agreement.

9.2 NYS&W will be responsible for and will indemnify, save harmless and defend TRI-STATE and each of its officers, members, managers, employees and agents against and from any and all claims and suits for, and any and all liability, loss or expense (including reasonable attorneys fees) arising from or incidental to or in connection with, damage to or loss of property of TRI-STATE, NYS&W, or of agents, servants or employees of either, or of any other person, and against and from any and all claims and suits for, and any and all liability, loss or expense arising from or incidental to or in connection with, (a) injury to or death of persons, or damage to property, including agents, servants, or employees of TRI-STATE or of Loader, or any other person (including Loader, if a natural person), which said damage, loss injury or death shall arise in any

manner, directly or indirectly, out of or incidental to or in connection with, the transloading operation being performed by NYS&W or Loader at the Property, except to the extent caused by the negligent or intentional acts or omissions of TRI-STATE, (b) any environmental or other conditions on the Property, and (c) the operations of any other person or company on the Property during the Term.

#### **10. INSURANCE:**

10.1 TRI-STATE shall provide and maintain in effect during the Term a policy of public liability insurance including contractual liability covering liability assumed by TRI-STATE under the provisions of the foregoing Section 9 of this Agreement. Said insurance shall be in limits of not less than \$5,000,000.00 combined single limit, and shall be in companies and forms acceptable to NYS&W.

10.2 TRI-STATE shall furnish to NYS&W certificates of all required insurance policies upon request of NYS&W. All such policies shall be endorsed to provide not less than thirty (30) days' notice to NYS&W of any cancellation thereof and of any material change in coverage.

10.3 The providing of said insurance coverages shall not be deemed a limitation on the liability of TRI-STATE as provided in this Agreement, but shall be additional security therefor.

10.4 NYS&W may, from time to time, require increased limits of insurance to reflect changes in the Consumer Price Index since the last such increase.

10.5 NYS&W, Loader and any other person using the Property with the permission of NYS&W shall provide and maintain in effect during the Term a policy of public liability insurance including contractual liability covering liability assumed by NYS&W and Loader under the provisions of the foregoing Section 9 of this Agreement. Said insurance shall be in limits of not less than \$5,000,000.00 combined single limit, and shall be in companies and forms acceptable to TRI-STATE, and shall name TRI-STATE and its officers, members, managers, employees and agents as additional insureds.

10.6 NYS&W shall furnish to TRI-STATE certificates of all required insurance policies upon request of TRI-STATE. All such policies shall be endorsed to provide not less than thirty (30) days' notice to TRI-STATE of any cancellation thereof and of any material change in coverage.

10.7 The providing of said insurance coverages shall not be deemed a limitation on the liability of NYS&W as provided in this Agreement, but shall be additional security therefor.

10.8 TRI-STATE may, from time to time, require increased limits of insurance to reflect changes in the Consumer Price Index since the last such increase.

#### **11. ENVIRONMENTAL REGULATIONS:**

11.1 TRI-STATE covenants that it will not release or dispose of any hazardous or explosive (a) chemical, (b) impurity, (c) waste, or (d) other substance on or near the Facility, provided that it is acknowledged that TRI-STATE is the business of causing Commodity to be delivered to the Facility to be shipped by truck from the Facility. In the event that any court, duly constituted public authority, municipality or agency enters a final and incontestible order or judgment against NYS&W for any such release or disposal by TRI-STATE so long as NYS&W neither authorized nor sanctioned the same, then TRI-STATE shall indemnify and hold NYS&W harmless for all expenses associated with compliance with said judgment to include, but not be limited to, any required clean-up and/or restoration cost of the site to a safe condition together with NYS&W's reasonable costs, attorneys' fees or other costs of litigation.

11.2 Notwithstanding Section 11.1 above, TRI-STATE shall not be responsible for or indemnify NYS&W for any such release or environmental condition, and NYS&W shall indemnify and hold TRI-STATE and its officers, members, managers, employees and agents harmless from and against all costs, liabilities and expenses (including reasonable attorneys fees) for any such release or environmental condition, which (i) predates this Agreement, (ii) is caused by or is the result of any act or omission of NYS&W, its agents, contractors or invitees, (iii) is caused by or is the result of any act or omission of any third person over whom TRI-STATE has no authority or control, including, but not limited to, any person who supplies or furnishes railroad cars that are the effective cause of the release or disposal of said substances, or (iv) is caused by any other person having use of or operating at the Property.

11.3 NYS&W shall conduct all of its operations in compliance with all applicable environmental statutes, ordinances, rules, regulations and requirements of all federal, state and local governmental authorities, and the various departments thereof, now existing or hereafter created.

## **12. REPRESENTATIONS AND WARRANTIES:**

12.1 NYS&W is a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency.

12.2 NYS&W has the full corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement constitutes the valid and binding agreement of NYS&W, enforceable in accordance with its terms.

12.3 TRI-STATE has the full limited liability company power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement constitutes the valid and binding agreement of TRI-STATE, enforceable in accordance with its terms.

## **13. ASSIGNING:**

Neither party shall assign or transfer this Agreement in whole or in part, without the written consent thereto by the other party, such consent not to be unreasonably withheld, conditioned or

delayed, provided, however, that NYS&W shall have the right to assign this Agreement pursuant to any merger of NYS&W or sale of stock or all or substantially all of the assets of NYS&W to a railroad licensed by the Surface Transportation Board. Any assignment or transfer of this Agreement shall not affect any obligations of either party hereunder arising prior to such assignment or transfer. Any assignment or transfer of this Agreement shall not be effective until delivery of a written assumption of the assignor's obligations under this Agreement signed by the assignee/transferee in form reasonably acceptable to the non-assigning party. For the purposes of this Agreement, a sale or change in control of either party shall be considered an assignment of this Agreement.

**14. DEFAULT:**

Default is defined as the failure to discharge any of the covenants herein. If either party to this Agreement fails to correct any default hereunder within thirty (30) days after written notice to do so (unless a longer period is otherwise specified herein), or, if such default cannot with commercially reasonable best efforts be cured within thirty (30) days then as soon thereafter as possible, the party serving such notice may unilaterally terminate this Agreement forthwith. Waiver of any default shall not be construed as a waiver of either a subsequent or continuing default.

The actions and remedies provided in this Agreement in case of default shall not be deemed exclusive but shall be in addition to all other actions and remedies at law or in equity in case of any such default; and no action or remedy taken or omitted by NYS&W or by TRI-STATE in case of default shall be deemed a waiver of such default and waiver of a particular default shall not be deemed a waiver of any other default or a waiver of the same default again occurring, nor shall any failure on the part of NYS&W or by TRI-STATE to compel a fulfillment of any one or more of the covenants, terms and conditions herein contained be held to be a waiver of its right to enforce the same at any time thereafter during the term, or any continued term, of this Agreement.

**15. SEVERABILITY:**

The provisions of this Agreement are severable and it is the intention of the parties hereto that if this Agreement cannot take effect in its entirety because of the final judgment of any court of competent jurisdiction holding invalid any part or parts thereof, the remaining provisions of this Agreement shall be given full force and effect as completely as if the part or parts held invalid had not been included therein.

**16. FORCE MAJEURE:**

In the event that either TRI-STATE or NYS&W is unable to perform as stated in this Agreement due to or as a result of one or more of the following causes: acts of God, including but not limited to floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions; act of public enemy, war, blockade, insurrection, riot, vandalism or sabotage; fire, accident, wreck, derailment, washout, or explosion; strike, lockout or labor dispute; embargoes or AAR service orders; or governmental laws, orders (including court orders) or regulations, this Agreement shall be suspended only insofar as said performance is affected by the described cause

and only for the duration of such cause.

**17. THIRD-PARTY MODIFICATION:**

In the event that the Surface Transportation Board ("STB") or any other governmental authority having jurisdiction shall issue or adopt (or issue or publish notice of its intention of any such issuance of adoption) any law, order, rule or regulation, the effect of which shall be to modify, amend, cancel or terminate any or all of this Agreement, either party shall promptly deliver to the other a full and complete copy thereof; provided, however, that neither party shall seek such action by the STB or other government authority.

**18. NOTICES:**

Any notice required or permitted to be given under the terms, conditions and provisions of this Agreement shall be in writing and considered as having been given upon the mailing thereof by certified mail, return receipt requested, to the office address of the other party set forth above, or to such other address as such party may from time to time specify in writing. Each such notice shall be effective on the date actually received, as indicated on the receipt therefor.

Notice shall be given as follows:

If to NYS&W:           President  
                                  The New York, Susquehanna & Western Railway Corporation  
                                  1 Railroad Avenue  
                                  Cooperstown, New York 13326

If to TRI-STATE:       President  
                                  TRI STATE BRICK, INC.  
                                  151 West 25th Street  
                                  New York, NY 1000

**19. APPLICABLE LAW:**

This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey, without regard to its conflict of law principles.

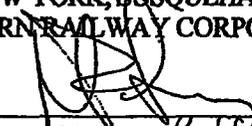
**20. ENTIRE AGREEMENT; AMENDMENTS:**

This Agreement contains the entire agreement of the parties relating to NYS&W transloading of bulk materials between railcars and trucks at the Property. Any purported amendment hereto shall not be effective unless it shall be set forth in writing and executed by both parties.

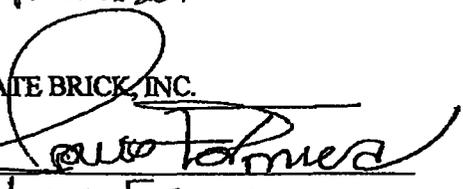
*[The balance of this page intentionally left blank]*

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized respective representatives on the day and year first above written.

THE NEW YORK, SUSQUEHANNA AND  
WESTERN RAILWAY CORPORATION

By:   
Name: NATHAN R. FERRO  
Title: PRESIDENT

TRI-STATE BRICK, INC.

By:   
Name: LOUIS FORMICA  
Title: CFO

