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December 10, 2002

ENTERED
Office of Proceedings
DEC 11 2002
Part of
Public Record

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Building, Room 700
1925 K Street, N.W.
Washington, D.C. 20423

Via Federal Express

FD-34281

Re: LB Railco, Notice of Exemption pursuant to 49 C.F.R.
§1150.42

Honorable Sir:

Enclosed please find the unbound original and ten bound copies of LB Railco's reply to the motions of the Massachusetts Department of Environmental Protection to reject the Notice of Exemption and the motion of the town of Millbury, Massachusetts to stay the effect of the Notice of Exemption filed. Also enclosed please find a 3 1/2 disk containing the text of the motion. This office is not equipped to place the exhibits on a disk.

Thank you for your attention to this matter.

Very truly yours

John F. McHugh

cc: Mary Jude Pigsley
Senior Regional Counsel
Commonwealth of Massachusetts
Department of Environmental Conservation

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Worcester, MA 01608

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Michael Creasey
Blackstone River Valley National Heritage Corridor Commission,
One Depot Square,
Woonsocket, RI 02895

206809

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
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FINANCE DOCKET NO. 34281

LB RAILCO, INC.
-- LEASE AND OPERATION EXEMPTION --
PROVIDENCE AND WORCESTER RAILWAY COMPANY



**LB RAILCO'S REPLY TO MOTION TO STAY OF THE NOTICE OF
EXEMPTION FILED BY THE TOWN OF MILLBURY AND TO THE MOTION
BY THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL
PROTECTION TO REJECT THE NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.42**

PRELIMINARY STATEMENT

LB Railco (the Petitioner) requests that the Board deny the two pending motions and lift the stay imposed on its authorization to operate by the Board's order dated November 22, 2002 as no basis for the relief demanded in either motion exists and therefore no basis exists for the stay imposed. This submission is in response to the motion by the Massachusetts Department of Environmental Protection to reject the Notice of Exemption and to the Town of Millbury's motion to stay the effectiveness of the Notice of Exemption.

While the handling of any kind of waste causes local opposition to any project, waste is a commodity which must be dealt with. It is also a commodity which is moving increasingly by rail. Railroads generally enter into agreements with non-carriers to deal with the marketing of rail movements of this kind and those activities, conducted

on rail property are exempt from local regulation. But in this case LB Railco is itself a rail carrier. Due to the questions raised by the commodity, and the general lack of understanding of how it is handled, distortions of fact are common. In this case, the questions raised by concerned citizens have been communicated to the Board by many distinguished third parties who apparently misunderstand the project. As will be shown below, LB Railco seeks only to operate a rail service from a transload facility in Millbury, Massachusetts. It will transport cargos only. It will not own, store, process or dispose of cargos at this facility. The terminal at issue is **not** a transfer station as that term is defined in Massachusetts regulations, at 310 CMR 16.02.

“Transfer station means a handling facility where solid waste is brought, **stored and transferred.....**” (Emphasis added)

The terminal facility will be an intermodal rail transload terminal only. LB Railco’s statement that no unresolved environmental issue was raised by this project, was based upon the fact that its operation would be protective of human health, safety and the environment, that local environmental regulations were used as guidelines for the design of the Millbury terminal, and that as a result the Millbury site and all other aspects of the operation are suitable for the planned operation as every possible step has been taken to comply with all applicable local regulations and concerns. However, as is typical for any such project, compliance with regulations and dealing with local concerns does not end opposition, even that relating to a site in an industrial area a few hundred feet from an asphalt plant. As will be demonstrated below the Notice of Exemption was accurate, therefore no basis exists in fact or law for the stay.

For the purposes of this motion LB Railco will be referred to as the Petitioner. The State of Massachusetts Department of Environmental Protection (the Department), the Town of Millbury (Millbury) as well as the authors of the various ex-parte communications referred to in footnote 1 of the Board's November 22, 2002 decision (the Decision) will be referred to collectively as the Applicants. The Notice of Exemption filed by LB Railco will be referred to as the Notice.

BACKGROUND

On November 22, 2002 the Board stayed the effect of the Notice of Exemption filed by Petitioner. The Notice would have become effective on November 25. As the result of the stay all activity on the site has ceased, activity which should have involved removal of rubble left on the site by the prior use.

While the Decision refers to numerous letters seeking to intervene in this proceeding, none of these letters were copied to the applicant. These parties have not filed a motion or appeared in this proceeding. The State of Massachusetts Department of Environmental Protection filed a motion seeking to reject the Notice pursuant to 49 CFR 1150.42 (c) alleging that the notice was false and misleading, and the Town of Millbury has sought a stay pending an engineer's report they had commissioned which it promised would provide some environmental ground for a stay. But the correspondences from both parties were apparently received by the Board after the stay here in issue was already in effect. LB Railco here responds to these motions as well as to the arguments for a stay referred to in the Board's November 22, 2002 decision.

FACTS

The Notice reviewed all environmental questions raised about the proposed transaction and stated that they were resolved as the project had been designed to protect the public and the environment and complied with the spirit of and in fact with local health, safety and indeed, zoning regulations.

Petitioner is a small retail railroad. The stay puts the applicant's proposed operation out of business for an indefinite period for the purpose of filling an undefined void in the Notice. The losses imposed cannot be recovered, thus, Petitioner is irreparably harmed by the stay.

The public is also harmed by the stay. Massachusetts has a limited amount of landfill capacity remaining. It must move a sizable percentage of its waste out-of-state for disposal. Without facilities such as that of Petitioner, that traffic must move on the public highways. Each railcar which cannot be moved by LB Railco must be replaced by approximately five trucks moving the entire length of Massachusetts, and in many cases across all of New York State to Pennsylvania and Ohio. Based upon well known fuel efficiency differences between modes, trucking this waste will consume about 40% more fuel and generate 40% more air emissions than would be used and produced to move the cargos by rail via LB Railco's service. Road damage is also a cost which is paid by the taxpayers.

The stay was apparently based upon the incorrect assertion that the facility was located within the fifty foot buffer of the Blackstone River. That was made by the Blackstone River Valley National Heritage Corridor Commission in its letter to the Board dated October 25, 2002 and not provided to the Petitioner. The fact that the facility would

not invade the 50' buffer was clearly stated in the Notice. The project is also located on private property, owned by the Providence and Worcester Railroad and a private owner who, in conjunction with the railroad, ran a lumber re-load facility on the land until two years ago. The terminal is entirely on industrial land used in the past for a rail-to-truck operation. Except for the materials handled, there is no change in land use. The site is surrounded by highways and by industrial uses, including an asphalt plant. Further, as Petitioner is a private entity, it does not have the ability to use an alternative site. Alternatives must therefore be confined to means of environmental protection, not to simply locating the facility in another jurisdiction.

The Notice contained an extensive summary of the environmental concerns, related to the location of its terminal in Millbury and of the steps the Petitioner was taking to comply with local regulations and concerns. The notice stated that full operation would not start until April 2003, i.e. handling non-containerized waste. The Notice states that Petitioner has generally complied with State and Local health and safety laws and regulations other than licensing and that the terminal has been designed and will be operated in compliance with those requirements. As will be demonstrated below, that assertion was correct. The notice also stated that full operation would be delayed until April 1, 2003. That delay in operations was to accommodate local concerns not to resolve any environmental issue.

The attorney for the Department moves to strike the Notice claiming fraud. The Department bases its case upon a statement that no environmental assessment has been submitted by the Petitioner and that the Department therefore has no means to evaluate the project. A summary of the project submitted by LB Railco to Department

officials on August 24, 2002 is the only document submitted by the Department's attorney as an exhibit to its motion. While claiming that the submission is inconsistent with the Notice, that statement is not explained nor supported in the motion submitted. But more importantly, **that brief August introductory summary was not the only document submitted by the Petitioner to the Department.** Two major submissions made by LB Railco to the Department after August 24, as well as meetings and discussions with the Department, are not mentioned in the Department's motion. In fact there is continuing dialogue.

The submissions which the Department's attorney fails to mention include the Informational Submittal to the Massachusetts Department of Environmental Protection, submitted to the Department on September 16, 2002, which is submitted here as Exhibit A. That document complies generally with Massachusetts law and regulations as to the contents of an environmental assessment submitted in support of a license application for a new or expanded solid waste transfer facility even though the Petitioner, as stated above, is not seeking to open a transfer station. On October 25, 2002 LB Railco submitted specific answers to questions raised by the Department, many addressing the same concerns now raised by the Department's attorney on this motion, representing, incorrectly, that Petitioner has provided no information on these specific issues. Compare Exhibit B with the motion.

The November 22, 2002 letter-motion addressed to the Board from the Town of Millbury, by its attorneys, also contains factual misstatements. It states that the facility will be a transfer station handling both construction and demolition waste (C&D) and municipal solid waste (MSW). That is incorrect. No MSW will be handled at the

facility unless it is completely containerized prior to arrival at the terminal. The Notice correctly stated that only C&D and non-RCRA soils would be transloaded at the facility. As stated above, the terminal will not include a transfer station.

Millbury asks the Board to stay all action as Millbury intends to provide a report within 14 days of an engineer who will apparently state that the facility ignores significant environmental problems. However, this project is not new. Millbury has been aware of it since August. It was copied on all submissions to the Department and has had Exhibit A since about October 1, 2002, a detailed description of the project and a review of all environmental factors and the site and project features designed to address such factors. Obviously its engineer's report is an after thought. As the results of a report just commissioned have already been stated by Millbury, the report will not be credible as the engineers have not been commissioned to evaluate the project at all, they have been retained to opine that some unknown environmental problem exists. Indeed, as of December 6, 2002 no engineer retained by Millbury had contacted the Petitioner to discuss the project or to gain permission to inspect the property. The decisions of the Massachusetts Department of Environmental Protection show that the Department, in other cases, refused to delay the grant of authority to build a facility based upon a prediction by an objecting party that a study to be delivered in the future will support opposition to a proposed project, see In the Matter of Vineyard Limited Partnership, 1989 WL 385015*4. (Docket No. 88-186, Massachusetts Dept. of Environmental Protection Feb 3. 1989). Therefore the Board should not consider Millbury's objection based upon an engineers report which does not now exist and the conclusions of which have been predicted, rendering them ultimately suspect.

Petitioner has been engaged in discussions with Millbury since August. On October 15, 2002 Petitioner's representatives attended a meeting hosted by the Millbury Board of Selectman. At that meeting LB Railco described the proposed operation to the public and to the Selectmen and solicited comments from both the public and from the Selectmen. On November 12, 2002 LB Railco met with the technical and planning representatives of the Town of Millbury and the Blackstone River Valley National Heritage Corridor Commission. At that meeting there was extensive discussion of the project and of various site design options to address specific concerns raised. On November 20, 2002, LB Railco responded in writing to these concerns in a letter to Ms. Megan T. DiPrete, the Town Planner (Exhibit C) and a second letter to Raymond W. Houle, Jr., Town Manager (Exhibit D). Many of the issues addressed in the letter to Ms. DiPrete, had already been covered in the prior communications with the State on which the Town was copied. These two letters offered Millbury alternatives to LB Railco's site plan in order to meet specific local concerns, mostly aesthetic. As can be seen by the letters, no issue of health and safety, other than storm water run off control had been mentioned up to that time; in particular, there is no mention of a public water supply issue. Millbury's concerns were focused upon the mitigation aspects of the project, traffic patterns, the preservation of the river buffer, and storm water run off controls. These concerns were addressed in the document submitted to the Department on September 16, 2002 which Millbury received on or about October 1. In the November 20 letters, Petitioner agreed to specific modifications to its plan to deal with each concern raised by Millbury. Finally, Millbury's concerns relating to the Blackstone River are suspect. Millbury already has allowed the construction of a waste

handling facility within a Zone II public water supply and within the protected area along the river,

To state that LB Railco has failed to mention any aspect of environmental concerns, and to thus, infer an attempt to circumvent the Board, is not supported by the record and is not a fair characterization of LB Railco's extensive efforts to accommodate local and State concerns. The documents submitted to the State and Town, and now submitted here, establish that LB Railco's summary in the Notice of Exemption was correct and its conclusion that this project raises no serious environmental problem as among other things, Petitioner has complied in fact with local regulations (other than licensing), is correct. Therefore, LB Railco's statement that no environmental review should be required is correct.

ARGUMENT I

THE STAY WAS IMPROVIDENTLY ISSUED

A stay of a notice proceeding cannot be granted without a showing that the applicant for the stay has a high probability for success on the merits, that the applicant will be irreparably harmed by the granting the rights sought to be withheld, that the grant of the stay will not harm the petitioner and that granting the stay is consistent with the public interest, Morristown & Erie, Inc-Operation Exemption-Somerset Terminal RR Corp. F.D, 34267 (November 26, 2002), Washington Metropolitan Area Transit Comm. V. Holliday Tours, Inc. 559 F.2d 841 (D.C. Cir. 1977). The applicant for the stay has the burden of proof on all four elements of that test, Morristown & Erie, Supra; Canal Authority of Fla. v. Callaway, 489 F. 2d 567, 573 (5th Cir. 1974). No motion was filed in opposition to the petition until November 22, 2002. The only ground for revoking a grant

of authority in a Notice proceeding is a material misrepresentation in the Notice, See 49 C.F.R. 1150.42(c). As the Notice provided that only materials from site preparation work and some fully containerized cargos would be handled on the site until April 2003, a showing irreparable harm by the applicants and the lack of harm to the Petitioner and to the public was not possible on this record. Therefore, measured by the long accepted criteria for granting a stay, this stay was improvidently granted.

The Notice correctly asserted that this transaction is not within the category of transactions which must be preceded by the submission of an environmental review, See 49 CFR §1105.1, Introduction. This is a proceeding under 49 USC 10902 and not 10901 to which the environmental regulations referred to by Millbury apply. Therefore, the requirements of 49 CFR 1105.06 and 1105.07 are inapplicable. While the Board may order such a review on any transaction, only new track connections or increases in traffic above specified levels within a major transaction require an environmental review in advance of a Notice. Here, the transaction includes only the transfer of a 750' existing track, located at about MP 38.5 on the Providence and Worcester main line, from one railroad to another and an increase in rail traffic of about seven to eight cars per day at most. (750 tons = 7-8 100 ton cars with a maximum possible through put of 1,000 tons or ten cars), see Exhibit A page 2 §2.2.2. The notice provided the Board with sufficient information to determine that the operation contemplated would have no significant impact on the environment. See 49 C.F.R. 1105.09. The facility is in an industrial neighborhood, surrounded by heavy industrial activity including an asphalt plant.

ARGUMENT II

THE PROJECT COMPLIES WITH LOCAL HEALTH AND SAFETY LAWS AND REGULATIONS AND THEREFORE THERE ARE NO UNRESOLVED ENVIRONMENTAL ISSUES

LB Railco is a retail railroad. It operates rail terminals for the purpose of transporting goods by rail in interstate commerce. A rail carrier is not subject to local licensing criteria, even as they relate to environmental concerns, but a rail carrier must comply in fact with local health and safety regulations, City of Auburn v. United States, 154 F.3d 1025, 1029 (9th Cir. 1998). LB Railco has complied with applicable local regulations, as it stated in its Notice. Exhibits A, B, C, D, E, F and G establish the accuracy of statements in the Petitioner's Notice. No basis to stay the notice or to reject the notice exists, 49 C.F.R. 1150.42 (c).

The Millbury terminal is similar in concept to that operated in San Francisco by LB Railco¹. It includes an existing 750 foot siding with a switch into the main line of the Providence and Worcester Railroad at the Eastern end of the site all located at approximately Mile Post 38.5 on the railroad's Providence to Worcester main line. The Notice of Exemption filed represented that the facility would comply with local and state environmental, zoning and health regulations and would continue the site's prior railroad use, that as a rail-to-truck transload facility. Exhibit A, Attachment 5 lists Massachusetts regulations and sets forth how the project complies with those regulations. Exhibit A, Attachment 6 lists Millbury's regulations and by-laws and sets forth how the project complies with each of them.

¹ LB Railco's operation in California also includes service to additional rail customers. However, the major share of the business is also transloading waste from truck to rail for shipment by rail to out of state locations.

The facility at issue is not a transfer station. No material will be held on the site longer than the time it takes to pick dumped material out of the transload container and place it into rail cars. See Exhibit A Attachment 3 pg. 4 Para 3.2.4. and 3.2.5. The transload operation is not interrupted by any period of storage of the cargos on site. A facility which does not store cargos is not a transfer station under applicable Department regulations, See: 310 CMR §16.02 quoted supra.

Storm water run off is not an issue particularly with the contemplated materials. Non-RCRA soils are dirt which contains low levels of contaminants. Such soil will generally absorb all water it is exposed to either due to normal rain fall or due to sprays used to control dust. Where weather conditions would be likely to cause water to exceed the absorption capacity of the cargo, means for capturing the surplus have been provided. See Exhibit B, No. 4. If weather conditions threatened to exceed the capacity of the safety system, the facility will be closed, Exhibit A, Attachment 3 pg. 9 Para. 6.3. Thus, no contaminants within the cargos will be allowed to escape onto the ground. No materials in the waste handled will escape into the ground water, storm water, or into the Blackstone River.

The Notice correctly stated that the operations contemplated would not invade the 50-foot set back from the Blackstone River required by the Zoning By-Law. However, the Board opined in its November 22 order that the basis for the stay was the allegation that the facility was to be built within that buffer. This misinformation apparently originated with the letter from the Blackstone River Valley National Heritage Corridor Commission, which had had no meeting with Petitioner prior to the submission of its letter. A subsequent meeting with Petitioner followed the date of its letter to the

Board, perhaps explaining its error in making that incorrect assertion in that letter. **The Notice correctly states that the project does not involve any development or activity within the fifty foot river buffer.** The use is industrial, fully consistent with the prior use of the property and it is entirely on private property and therefore not within the jurisdiction of the Commission. There are no historic factors on or related to the site. Indeed one neighbor of the site is an asphalt plant, thus, the terminal is not at odds with the nature of the neighborhood.

Attached hereto as Exhibit E is the site plan showing the location of all proposed improvements at the Millbury Terminal site. As can be seen on this plan, scaled at 50' to an inch, a relatively small portion of the leasehold abuts the Blackstone River buffer, for a distance of just under 300 feet. Also 250 feet borders the river buffer between the abutments for a bicycle path bridge built under and next to the McCracken Road overpass, and the abutment for a Route 146 exit ramp. A second 50 foot section lies at the north end of the site. Both abutments support the southern end of bridges over the Blackstone River. The exit ramp continues past the bridge on a high banking protected by retaining walls bordering the Northeastern side of the site. The McCracken Road river bridge crosses the river and leasehold, all can be seen in the photographs submitted herewith as Exhibit F. The site plan, Exhibit E, shows that the fifty foot river set back is outside the leasehold. That buffer is now sparsely vegetated with weeds. The terminal site itself is a hard packed gravel surface with no vegetation, as can be seen in Exhibit F.

In the site plan submitted to the Department and Town by Petitioner (Exhibit E), the river barrier is protected from accidental encroachment by traffic by a

barrier of large rocks, a barrier which can also be seen in the Exhibit F photographs. No transportation related facility or activity will be allowed within the 50' buffer area and the rock barrier will prevent even inadvertent invasion of the river buffer. Indeed, the only work to be done within fifty feet of the Blackstone River will be to plant vegetation within the barrier, suggested by the Massachusetts Highway Department, which is consistent with plants used by the Highway Department on the Rt. 146 project which literally surrounds the terminal. The plantings also will create a natural filter to reduce sediment infiltration of the river from the site a flow which is now unobstructed and will be fully controlled by the terminal development. However, the Petitioner has also given Millbury the option of allowing the Petitioner to install storm water holding facilities within the buffer, a step LB Railco deems unnecessary. See: Exhibit A Page 5 §4.1.2. Should Millbury deem this additional step desirable to provide added insurance against run off of sediment from the site beyond that achievable by the renewal of the vegetative barrier, the Petitioner is willing to install these facilities. That option is one of three suggestions made by the Petitioner to Millbury to maximize the containment of storm water (Exhibit C). The Petitioner will implement any of the three options or any other which is presented which is reasonable to prevent storm water run off into the river and to beautify the property.

The presence of the elevated highways on the northeastern border of the site makes the site difficult to view from most surrounding areas. To the South of the site the ground rises abruptly and the facility is not in view of any residential units. A bike path parallels the McCracken Road Bridge over the Blackstone River. Once across the river, next to the site, the bike path descends on an extension of the bridge abutment to

grade passing under the McCracken Road Bridge which continues across the site to the hill beyond. The bike path is currently fenced to prevent any incursion into the facility, due to safety concerns. In its letter to Millbury the Petitioner has offered to screen the bike path, also offering three alternatives to local officials, Exhibit C.

Contrary to the Department's claim, the Petitioner did identify the site as potentially within a wellhead protection area (Interim Wellhead Protection Zone, or IWPA) and proposed that any impact would be mitigated by environmental controls (See Attachment 5 of Exhibit A). The two groundwater wells in question are located on the other side of the Blackstone River from the transload operation approximately one-third of a mile down gradient of the site

Regardless of which wellhead protection zone may apply (Zone II versus IWPA) the planned location of the site within such a zone does not preclude development and operation of the transload facility. There are many permitted solid waste facilities in the Massachusetts Department of Environmental Protection's Central Region that are sited within 100 year flood plains, Protected Open Spaces, and/or the Wellhead Protection Areas (Zone 2) public water supplies. Of particular interest here is the Town of Millbury Transfer Station, located about two miles from the Petitioner's terminal partially in a Zone II as it is on Dorothy Pond. Another is the Martone Landfill at Depot Road in Barre, MA. That currently active landfill accepted over 90,000 tons of material in 1999 and 2000. The facility, bordering the Ware River, is within Zone II of a public water supply. Indeed, a review of the Department's records reveals up to a dozen facilities in the Central District of Massachusetts located in Zone II areas and numerous additional facilities which are within 100 year flood plains and protected areas.

The Department states that the subject groundwater wells have been determined to be influenced by the surface water of the Blackstone River. The Petitioner has proposed a transload operation designed to minimize impact to the Blackstone River. Safeguards including the configuration of the transload container, the planned operational procedures and site features (e.g. the 50 foot vegetative buffer along the Blackstone River) which have been proposed to minimize negative impacts on the Blackstone River and all other surrounding properties. These controls are described in Exhibit A and further detailed in Exhibit B. The Petitioner acknowledges that proper storm water management is necessary for the operation and has taken steps to implement that management. Further additional controls have been discussed with the Department, Millbury, and the Blackstone River Valley National Corridor Commission (see Exhibit C) as noted above.

Furthermore, contrary to the Department attorney's comments, the regulation relating to Zone II, promulgated under Massachusetts General Laws Chapter 111 §§150 A and A1/2, found at 310 CMR §16.40 (d)(2) relating to the location of a waste handling facility, does not prohibit that use. It merely requires that "...restrictions have been imposed to minimize the risk of an adverse impact to the groundwater and the proponent can demonstrate to the satisfaction of the Department that the facility cannot reasonably be sited outside the IWPA or Zone II" Exhibit A page 5 §4.1.2 and Attachment 3 page 9 §6.3 demonstrates that the facilities will not operate in weather which threatens the environment. Exhibit B at 4, specifically addressed the storm water problem and sets forth the reason why no water would be released onto the ground at any

time from the transload operation. Petitioner, in discussions with the Department, has agreed to enter into any reasonable agreement to facilitate the State's supervision of Petitioner's activities so that the area in question, if it is within a Zone II public water source, will be protected. Where, as here, adequate protection has been incorporated into a project the project is allowed under Massachusetts regulations, see In the Matter of Vineyard Limited Partnership, supra, 385015*2.

The Department's attorney claims fraud in the Petitioner's use of the description of the cargos to be handled as "non-hazardous". Neither C&D nor non-RCRA soils are considered "hazardous" under the Hazardous Materials Transportation Act. The Department's attorney cites the presence of small amounts of oil in contaminated soils and the possible presence of asbestos in loads of C&D as making the cargos dangerous and therefore "hazardous".

Asbestos is not an allowable component of Construction and Demolition waste or of contaminated soils. Exhibit A contains a specific statement that dangerous components such as asbestos will not be handled by this service, Exhibit A, Attachment 3 pg. 2 Para 3.1.2. That document also contains an extensive narrative on how terminal personnel will inspect all loads for compliance with the facilities limits on acceptable waste, id pg. 2-3, Para 3.1.3. Facility personnel will be trained to follow the guidelines contained in Massachusetts regulations, 310 CMR 19 Parts I & III and to recognize unacceptable loads and to reject them. See Exhibit A, Attachment 3 pg. 6 Para 4.2. Any unacceptable waste found within the system will be segregated and disposed of at a proper offsite facility. See Exhibit A pg. 6 §4.2 and pg. 10 §6.5.2.

Although the Petitioner believes that the controls described in Exhibit A are sufficient to address potential asbestos concerns in C&D loads, it is willing to consider additional controls (such as increased training and monitoring) if those controls will improve health and safety. In addition, Petitioner will require those delivering C&D to certify that demolition activities were conducted in accordance with the Department's Policy Concerning Non-Friable Asbestos-Containing Materials (Bureau of Waste Prevention Policy #BWP-96-012)², which outlines the proper handling and segregation of demolition materials that may contain non-friable asbestos. The Petitioner is in active negotiations with the Department and intends to resolve this issue appropriately with the Department during the four-month interim period.

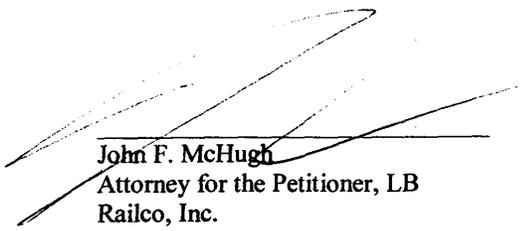
CONCLUSION

The Millbury terminal facility, part of the operation for which this Notice was filed, is accurately described in the Notice and that Notice correctly states that as the facility will comply with applicable State and Local health and safety laws and regulations, including environmental laws and regulations, there is no environmental issue and the operation in issue will have no effect on the environment. The Notice fully complies with all requirements of 1150.42 and is not either fraudulent or misleading. Therefore no basis exists to either stay this proceeding or to revoke the petitioner's operating authority. The motions of Millbury and the Department should be denied.

Dated, New York, N.Y.
December 10, 2002

Respectfully submitted,

² The Departments policy on non-friable asbestos may be viewed at <http://www.state.ma.us/dep/bwp/.asbestos/96-012.htm>

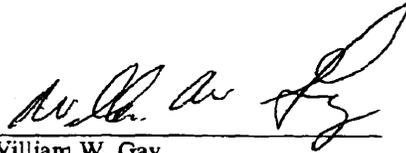


John F. McHugh
Attorney for the Petitioner, LB
Railco, Inc.
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875

VERIFICATION

William W. Gay declares under penalty of perjury that I am the Chief Financial Officer of Petitioner, LB Railco, Inc. and as such I am fully familiar with the facts as I was the agent of Petitioner managing the development of the rail terminal in Millbury, Ma. I have read the motion to lift the Stay and the materials in opposition to the Motions of the Massachusetts Department of Environmental Protection and the Town of Millbury and verify that the facts stated therein are correct based upon my personal knowledge.

Dated, Harrison, N.Y.
December 10, 2002



William W. Gay

CERTIFICATION OF SERVICE

Sylvia Cruz declares under penalty of perjury that on this 10th day of December, 2002 I served a true copy of this motion upon:

Mary Jude Pigsley, Esq.
Senior Regional Counsel
Massachusetts Department of Environmental Protection
627 Main Street
Worcester, MA 01608

John W. Giorgio, Esq.
Kopelman & Paige, P.C.
31 St. James Avenue
Boston, MA 02116-4102

Michael Creasey
Blackstone River Valley National Heritage Corridor Commission,
One Depot Square
Woonsocket, RI 02895

by regular mail.

Dated, New York, N.Y.
December 10, 2002

Sylvia Cruz

Exhibit A

L B R A I L C O



September 16, 2002

Mr. John Regan, Section Chief
Division of Solid Waste Management
Massachusetts Department of Environmental Protection
627 Main Street
Worcester, MA 01608

RE: Informational Submittal for a Truck-to-Rail Transload Facility
Route 146 & McCracken Road
Millbury, Massachusetts

Dear Mr. Regan:

LB Railco, Inc. ("LBRR") is pleased to present the following Informational Submittal describing our planned truck-to-rail transload facility. This Submittal describes the site upon which the transload facility will be constructed, the transload operation and health and safety measures to be implemented by LB Railco to ensure that the environmental integrity of the site and surrounding area is maintained.

LBRR has identified several difficult-to-dispose waste materials (e.g., non-hazardous soils, construction and demolition debris) generated in Massachusetts that it proposes to handle at our Millbury facility. Given the limited and ever decreasing amount of disposal capacity within Massachusetts, the planned transload facility offers an effective, efficient and environmentally sound means of handling these materials.

We trust that the information provided herein is acceptable and complete and will assist the Central Region Division of Solid Waste Management in its monitoring of this operation.

Should any questions arise during the review of the attached document, please feel free to contact me at (914) 381-8570.

Sincerely,

William Gay
Chief Financial Officer

**INFORMATIONAL SUBMITTAL
TO THE
MASSACHUSETTS DEPARTMENT
OF
ENVIRONMENTAL PROTECTION**

**LB RAILCO, INC.
SOLID WASTE
TRANSLOAD FACILITY**

**ROUTE 146
MILLBURY, MASSACHUSETTS**

SEPTEMBER 16, 2002

Prepared for:

LB RAILCO, INC.

By:

**St. Germain & Associates, Inc.
172 U.S. Route One
Scarborough, ME 04074**



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1.0 INTRODUCTION

LB Railco, Inc. (LBRR) is a federally-chartered railroad that plans to operate a rail transload facility in Millbury, Massachusetts beginning this Fall. LBRR specializes in economically viable and environmentally responsible rail transportation services, with a focus on the interstate movement of waste materials. The planned LBRR-Millbury transload facility (hereinafter referred to as the "Facility") will receive a variety of non-hazardous bulk solid wastes by truck and transload the materials into waiting railcars for transport to appropriate disposal and/or processing facilities.

In conjunction with the Providence & Worcester Railroad (P&W), LBRR is developing this project to provide an additional means to meet growing waste transportation demand in the region. St.Germain & Associates, Inc. and Taconic Engineering Corp. are assisting LBRR in developing the Facility in a manner that both meets this solid waste management demand and is responsive to local and state health, safety and environmental concerns. This document has been prepared to address these concerns and is being provided as an informational submittal for the Massachusetts Department of Environmental Protection (DEP) and the Town of Millbury.

2.0 PROJECT LOCATION & DESCRIPTION

2.1 PROJECT LOCATION

The LBRR-Millbury transload operation will be located on 3.5-acres in north Millbury. This project site is bordered to the south by an elevated portion of Route 146, to the north by land owned by Mass Highway, to the west by the Providence & Worcester railroad and to the east by the Blackstone River. A Site Location Map (Figure 1) indicating site location is included in Attachment 1 of this submittal.

The project site is comprised of two properties, one owned by the Providence & Worcester Railroad (upon which the rail line is located) and one owned by the C & S Lumber Company, Inc (remainder of site). The C&S Lumber Company utilized the site as a rail unloading and staging area for wood products. The site is within an industrial district and is identified as Lot 10 on the Millbury Assessors Map No. 36. The project site is currently unused with the exception of the P&W rail line.

2.2 PROJECT DESCRIPTION

The Facility will be a truck-to-rail waste material transloading operation. In general terms, waste materials will be delivered to the Facility, unloaded onto a contained area and immediately loaded into rail cars. When filled, the rail cars will be transported to appropriate disposal or material processing facilities. All materials accepted at the Facility will be non-hazardous, difficult-to-dispose materials including:

- Processed and unprocessed construction and demolition debris
- Non-RCRA contaminated soils
- Containerized municipal solid waste

The operation will not accept non-containerized municipal solid waste, sludge, or any other material that the Facility has not been designed to handle. In addition, the Facility will also attempt to enforce the provisions of the DEP waste ban compliance plan. Waste materials will not be disposed at the Facility. Further, the material handling process has been designed to keep the waste material away from direct contact with the ground surface during the transload operation.

Materials will be delivered to the Facility by various types of commercial trucks. Trucks delivering non-containerized material to the Site will unload soils into a Soils Container (steel floor pad with concrete barrier walls, approximately 40 ft. x 40 ft. x 2.5 ft.) or construction and demolition debris (C&D) into a C&D Container (steel walls and floor, sized approximately 40 ft. x 40 ft. x 8 ft.). An excavator or front-end loader will then transload the waste to a waiting railcar. Containerized waste will be loaded directly from trucks onto railcars. At the end of each operational day, all material received will have been placed in railcars. The full railcars will be switched out by LBRR and the P&W daily and transported to appropriate disposal or processing facilities.

A description of LBRR is included in Attachment 2 of this document.

2.2.1 SITE DEVELOPMENT

The Facility will be comprised of a paved access drive with locking gate, vehicle weigh station, paved vehicle queuing area and a material offload and transload area. The paved access drive will be of sufficient width to allow vehicles to enter and exit the site in separate travel lanes. A portable office and truck scale will be installed in a location appropriate for efficient vehicle movement on site. The vehicle queuing area will be the Facility access drive and the unloading area will be of sufficient size to handle up to 4 vehicles at any one time.

The C&D Container will be a steel lined container approximately 40 ft. square by 8 ft. high for transloading C&D waste. Three walls and the floor of container will be made of welded steel plates to contain the waste without spillage. The fourth wall will be open to allow for the offloading of material from trucks to the container floor. The steel plate for the walls will be welded to 8 ft. square by 40 ft. long shipping containers for support. Two of these containers will be reinforced and will serve as both the rear wall and as the excavator platform. On the other side of the excavator platform, the Soils Container will be approximately 40 ft. square by 2.5 feet high for transloading soils. The floor will be made of welded steel plates and the excavator platform will make up the rear wall. The side walls will consist of concrete barriers. The two containers together will be referred to as the Transload Area.

Steel plates will be erected on supports on either side of the rail spur by the C&D Container as slides to direct C&D material dropped by the excavator back into the railcar or C&D Container. Attachment 1 includes a Site Sketch (Figure 2) of the Transload Area and a Site Layout (Figure 3) of the Facility, showing vehicle queuing, unloading and transload areas.

2.2.2 FACILITY CAPACITY AND EXPECTED SERVICE AREA

As designed, the Facility can handle up to 1,000 tons per day (tpd) of difficult-to-dispose material. It is anticipated that the average daily tonnage handled at the Facility will be 750 tpd. The Facility is expected to service central Massachusetts for construction and demolition debris disposal. Due to limited disposal/handling options for impacted soils in Massachusetts, it is expected that contaminated soils will originate from locations within a 100 mile radius of the

Facility. Containerized MSW is expected to be transported to the Facility from solid waste transfer facilities within a 50 mile radius.

2.2.3 ESTIMATED TRAFFIC VOLUME, DISTRIBUTION AND IMPACTS

The Facility is expected to transload an average of 750 tons per day (tpd) of impacted soil, C&D materials and/or containerized MSW. In general, soil will be transported to the Facility in dump trucks (e.g., end-dumps with a 20-60 cubic yard capacity), C&D will be transported to the facility in roll-off containers as well as small trucks, and the MSW containers will be transported via flat bed trailer.

On a typical day when 750 tpd is received, it is expected that a total of 66 vehicles will enter and exit the Facility. Table 1 provides a summary of the total trips expected on a typical 750-tpd day. As the table shows, vehicle trips range from 8 per hour (early morning and late afternoon) to 18-20 per hour (during the midday hours of 11:00 AM to 1:00 PM).

Table 1: Estimated Traffic Count Data

TIME	END DUMPS IN	END DUMPS OUT	10-20yd ROLL-OFFS IN	10-20yd ROLL-OFFS OUT	30-40yd ROLL-OFFS IN	30-40yd ROLL-OFFS OUT	SMALL TRUCKS IN	SMALL TRUCKS OUT	CONTAINERS IN	CONTAINERS OUT	TOTAL
6AM - 7AM	2	2	1	1	1	1	0	0	0	0	8
7AM - 8AM	1	1	1	1	1	1	1	1	0	0	8
8AM - 9AM	1	1	1	1	1	1	1	1	0	0	8
9AM - 10AM	2	2	1	1	1	1	2	2	1	1	14
10AM - 11AM	2	2	1	1	1	1	2	2	1	1	14
11AM - 12PM	1	1	1	1	1	1	4	4	2	2	18
12PM - 1PM	2	2	1	1	1	1	4	4	2	2	20
1PM - 2PM	2	2	1	1	1	1	1	1	0	0	10
2PM - 3PM	2	2	1	1	1	1	1	1	0	0	10
3PM - 4PM	2	2	1	1	1	1	3	3	0	0	14
4PM - 5PM	2	2	0	0	0	0	2	2	0	0	8
5PM - 6PM	0	0	0	0	0	0	0	0	0	0	0

Notes

1. It is estimated that soil is to be transported in end dump trucks, C&D transported in roll-offs and small trucks and other wastes in containers.
2. Containerized waste is loaded directly onto railcars.
3. Small trucks refers to small (5 tons or less) loads.
4. Average tons per end dump - 18
 Average tons per 10-20 yd roll off - 8
 Average tons per 30-40 yd roll off - 16
 Average tons per small truck - 2
 Average tons per truck with MSW container - 20

It is anticipated that nearly all of the vehicles traveling to and from the facility will utilize Route 146. Based on the expected areas that the Facility will service, it is estimated that approximately 70 percent of the vehicles will enter/exit from the north and 30 percent will enter/exit from the south. From the north, vehicles will exit southbound Rte. 146 onto the newly constructed McCracken Road Extension ramp, proceed straight on McCracken Road and turn left into the Facility entrance drive. From the south, vehicles will exit northbound Rte. 146 onto the North Main Street ramp, turn left onto McCracken Road, cross over Rte. 146, turn right

continuing on McCracken Road and immediately turn left into the into the Facility entrance. The Facility entrance loops back under McCracken Road and onto the site. Once in the Facility, ample space is available for vehicle queuing and unloading. The Site Layout (Figure 3) provided in Attachment 1 illustrates the anticipated traffic pattern within the Facility.

Field observations throughout the above-described roadways indicate that the roads are in good condition and that sight distance at each intersection is adequate.

Daily traffic counts taken in the vicinity of the Facility during peak travel periods show that the percent increase of daily traffic on McCracken Road due to the additional truck traffic generated by the Facility is expected to be minimal. Based on the daily traffic count data, the facility-related traffic is not expected to impact the level-of-service at any area intersection. Accordingly, traffic operations in the vicinity of the Facility are not expected to degrade as a result of the planned operation.

3.0 DESCRIPTION OF TRANSLOAD OPERATION

A copy of the Facility Operations & Maintenance Plan is included in Attachment 3 and contains additional details of the transload operation.

3.1 MATERIAL RECEIVING

Incoming waste materials will enter the Facility and proceed to the weigh station. At the weigh station, information including, but not limited to: date and time of vehicle check in; waste material identification; vehicle type and identification; vehicle owner information; and gross vehicle weight will be recorded. Once the vehicle has been checked in, it will proceed toward the vehicle queuing area and wait until directed by Facility personnel to the Transload Area. Once unloaded, the vehicles will exit the Facility. If a vehicle tare weight is not known by the Facility, the vehicle will be directed to the scale and weighed prior to exiting.

3.2 MATERIAL TRANSLOAD

Material placed in the C&D Container will be loaded into railcars located on the adjacent rail spur using an excavator on an elevated platform. Metal plates (slides) will be located on either side of the railcar to help guide the C&D materials into the railcar and minimize spillage during the transload process. Soils placed in the Soils Container will be loaded into railcars using either the excavator or a front-end loader. All materials delivered will be loaded into railcars prior to the end of each operating day. Containerized MSW will be offloaded from trucks and loaded directly onto flatbed railcars. Once loaded, rail cars will be properly secured for off-site transport.

3.3 RAILCAR SCHEDULING & TRANSPORT

LBRR and the P&W Railroad will work closely to ensure that the Facility has an adequate supply of railcars available to accomplish the transload operation on a daily basis. Working with the P&W Railroad, LBRR will extend the existing siderail to allow for the storage of at least 8 railcars at any time. As currently planned, the P&W Railroad will transport full railcars off-site on a daily basis. LBRR will be responsible for preparing the full railcars for pick-up on a daily basis.

3.4 ENVIRONMENTAL CONTROLS

3.4.1 EROSION & SEDIMENT CONTROL

Several controls will be implemented and maintained to minimize erosion and sediment transport during the construction and operation of the Facility. Controls will also be implemented to reduce the potential for spillage or pollution into the adjacent Blackstone River.

Prior to construction and installation of Facility infrastructure, LBRR will install a silt fence and hay bale barrier along the top of bank of the Blackstone River, adjacent to the site. The largely unvegetated ground surface in the 50 foot setback from the Blackstone River will be loamed and seeded to create a vegetated buffer. The hay bale and silt fence barrier will be maintained until site grading has been completed and the vegetation has been established.

Paved surfaces will be sloped in a manner that will allow surface water to sheet flow off the site. Erosion and sediment controls will be visually inspected by Facility personnel on a regular basis and maintained as required.

3.4.2 AIR EMISSION CONTROL

To minimize dust generation resulting from Facility operation, LBRR has elected to pave the surface area that will be utilized for vehicle access, queuing and unloading. To further reduce dust generation, paved areas within the site will be swept as necessary. Also during offloading of dry materials, water spray will be used as necessary.

To reduce emissions from vehicles entering and exiting the Facility, the Facility will inform all personnel of the state-wide requirement of limiting unnecessary vehicle idling to five minutes (in accordance with MGL Chapter 90: section 16A and 310 CMR 7.11).

4.0 REGULATORY CONSIDERATIONS

4.1 FEDERAL

4.1.1 SURFACE TRANSPORTATION BOARD

As a federally-chartered railroad, the LBRR transloading operation is regulated by the Surface Transportation Board which preempts State, County, or Local government control and allows the railroad to operate this facility without permits and approvals from those entities, provided that local health and safety laws are met. This Informational Submittal and attachments describe compliance with these requirements. An Advisory Letter on this regulatory area is included in Attachment 4.

4.1.2 BLACKSTONE RIVER

The Blackstone River runs along the northeast boundary of the project site. The Facility design negates the impact of the operation on the River and maintains open space to the extent possible. Structures are temporary in nature, located greater than 50 feet from the river and can be removed at the conclusion of Facility operations. Paved areas, necessary for dust minimization and efficient traffic movement, will be minimized. Runoff from the project site is not expected to increase, as the pre-development surface of compacted earth is similar in its permeability to asphalt paving. Paving will decrease the amount of sediment runoff from the project site. Waste materials and any water contacting waste will be contained during

operations, and waste will not be stored overnight unless it is containerized and awaiting transport.

As there is no plan for permanent structures or significant excavation, no damage will occur to historical or environmental features, nor will the potential use of the site as part of the Blackstone River National Heritage corridor be impaired.

4.2 STATE

4.2.1 DEP DIVISION OF SOLID WASTE MANAGEMENT

LBRR is committed to developing a transload operation that protects human health, safety and the environment. Although federal rail regulations preempt application of the DEP Site Assignment regulations, LBRR considered DEP site specific criteria (as described in 310 CMR 16.40 (3)(d)) and general criteria (as described in 310 CMR 16.40 (4)) to help determine if the project site is suitable for the transload operation. The State of Massachusetts Regulatory Criteria are listed and discussed in Attachment 5 of this submittal. Based on characteristics of the site, the type of planned transload Facility and its intended operation, LBRR has determined that the site is suitable for the transload operation.

4.3 LOCAL

In an effort to conform to the intent of local planning requirements, LBRR also considered Town of Millbury zoning requirements and related development by-laws when designing the Facility. The Town of Millbury Regulatory Criteria are listed and discussed in Attachment 6 of this submittal.

5.0 PROJECT SCHEDULE

The following schedule is anticipated for the project.

Provide Information Submittal to DEP, Town of Millbury.....	September 17, 2002
Begin Facility Construction	September 25, 2002
Commence Operation (Soils)	October 15, 2002
Commence Operation (C&D)	November 15, 2002

**INFORMATIONAL SUBMITTAL
LB RAILCO, INC. SOLID WASTE TRANSLOAD FACILITY
ROUTE 146, MILLBURY, MASSACHUSETTS**

ATTACHMENT 1

Maps



SOURCE: MAPTECH TERRAIN NAVIGATOR,
WORCESTER SOUTH QUADRANGLE, DATED 1983.

**FIGURE 1
SITE LOCATION MAP
SOLID WASTE TRANSLOAD FACILITY
LB RAILCO, INC.
ROUTE 146
MILLBURY, MASSACHUSETTS**

PREPARED FOR
LB RAILCO, INC.
600 MAMARONECK AVENUE
SUITE 427
HARRISON, NEW YORK

JOB# 2426.1

DATE: 09/16/02

SCALE: 1" = 2000'

FILE: SITE

ST.GERMAIN & ASSOCIATES, INC.
172 US ROUTE ONE
SCARBOROUGH, MAINE 04074
(207) 885-0003 ENVNGMT@STGERMAIN.COM



**ST. GERMAIN
& ASSOCIATES, INC.**
ENVIRONMENTAL MANAGEMENT

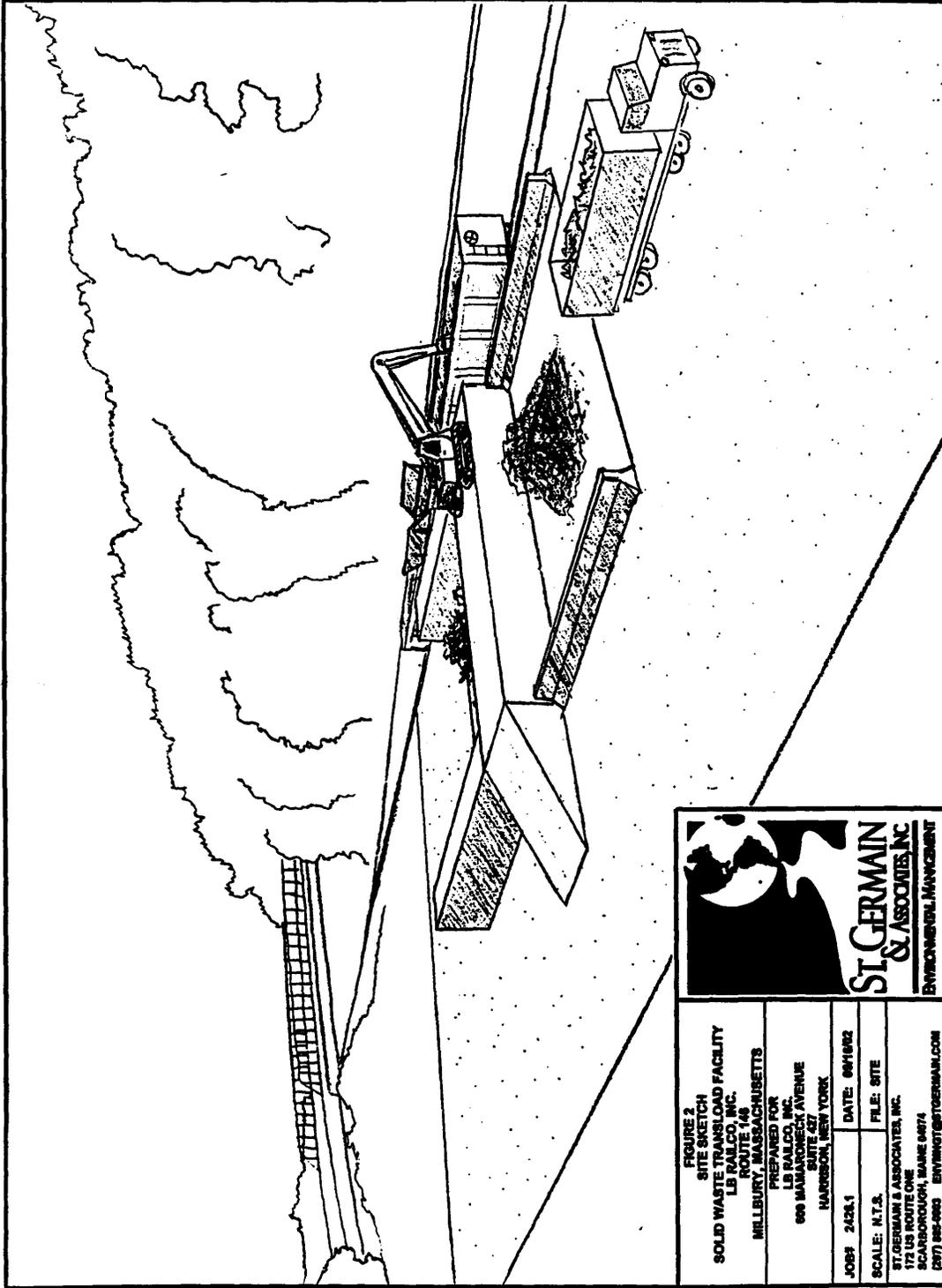
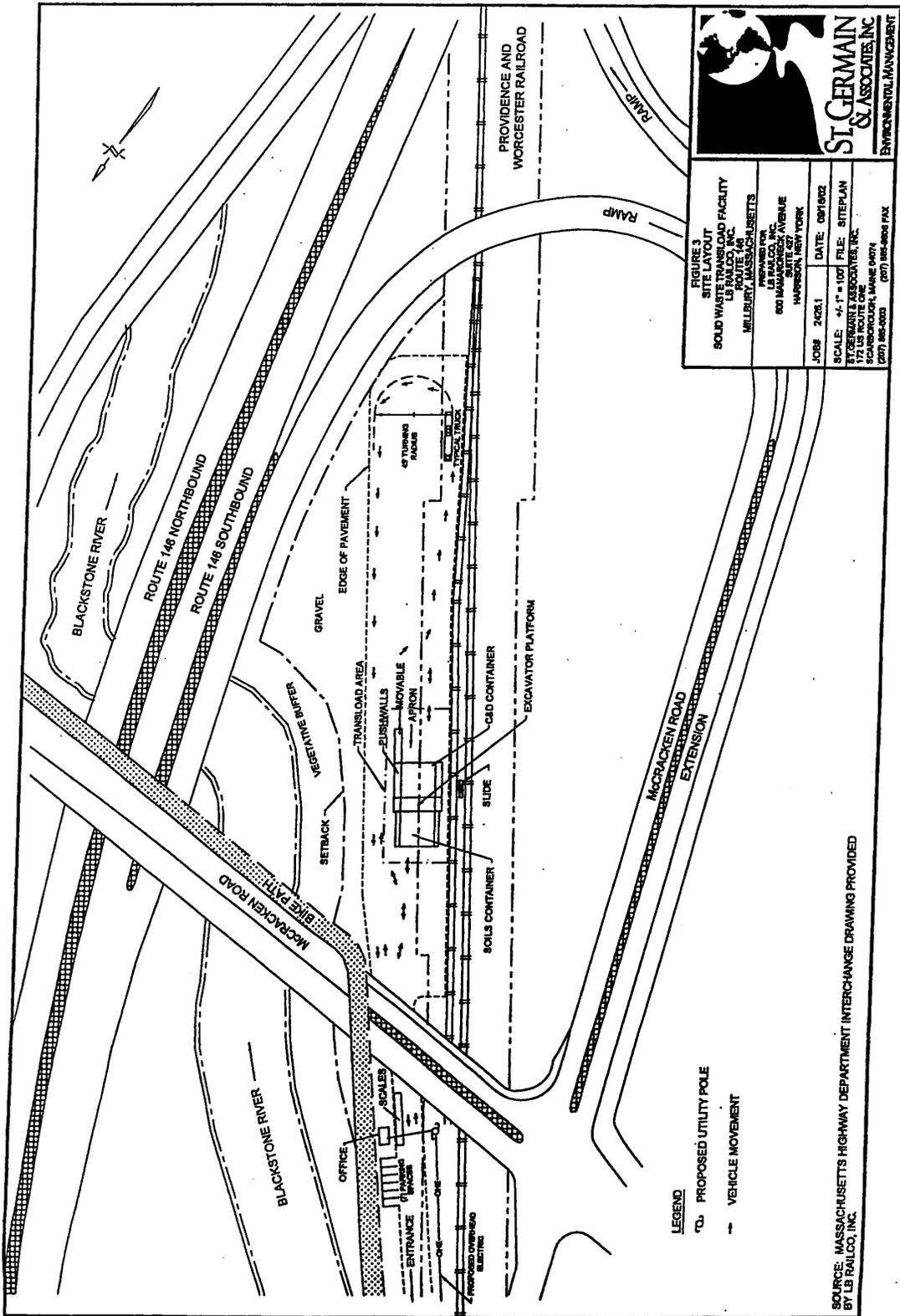


FIGURE 2
SITE SKETCH
SOLID WASTE TRANSLOAD FACILITY
LB RALCO, INC.
ROUTE 148
MILLBURY, MASSACHUSETTS
 PREPARED FOR
LB RALCO, INC.
699 MAHARONCK AVENUE
SUITE 437
HARTFORD, NEW YORK
 JOB# 2428.1 DATE: 06/18/02
 SCALE: N.T.S. FILE: SITE
ST. GERMAIN & ASSOCIATES, INC.
172 US ROUTE ONE
SCARBOROUGH, MAINE 04874
(207) 885-0883 ENVINFO@STGERMAIN.COM



SOURCE: MASSACHUSETTS HIGHWAY DEPARTMENT INTERCHANGE DRAWING PROVIDED BY LB RAILCO, INC.

**INFORMATIONAL SUBMITTAL
LB RAILCO, INC. SOLID WASTE TRANSLOAD FACILITY
ROUTE 146, MILLBURY, MASSACHUSETTS**

ATTACHMENT 2

Description of LB Railco

DESCRIPTION OF LB RAILCO

LB Railco, Inc. (LBRR) is a federally-chartered railroad that provides economically viable and environmentally responsible rail transportation services, with a focus on the interstate movement of waste materials. LBRR, and its sister company, Waste Solutions Group (WSG), are headquartered in San Francisco, California and have operations in Allston, MA, Harrison, NY, and Eureka, CA. Since 1999, LBRR has been operating the Port of San Francisco's railyard and a shortline railroad line in San Francisco, under contract with Union Pacific Railroad, a national Class 1 railroad.

Since 1991 LBRR's WSG affiliate has had a long-term contract with ECDC Environmental, a subsidiary of Allied Waste Industries, under which the Company has provided ECDC on the West Coast (since 1991) and in the mid-Atlantic and New England states (since 1996), rail transport and logistics services for all of their industrial waste-by-rail projects. Under that agreement, the Company manages Allied's municipal and industrial waste-by-rail projects in the East, including the rail movements to landfills in New York, Virginia, and South Carolina of 1,500 tons per day of containerized municipal solid waste from Boston; up to 1,000 tons per day of non-hazardous industrial soil projects in the Northeast; and 400 tons per day of incinerator ash from Maryland. The Company also manages the rail movements of over 100,000 tons annually of industrial and contaminated soils from Northern California to the ECDC landfill in Utah. In each of these projects, LBRR and WSG assure the environmentally sound transport of waste.

***LB Railco and its Affiliates Manage
the Rail Movements of Almost
4,000 Tons of Waste Per Day
on the East and West Coasts.***

LBRR's principals have particular expertise in the areas of environmental program development and management. The Company's CEO, David Gavrich, served as Director of the San Francisco Waste Management Program under Mayor Dianne Feinstein, and during his tenure, the program initiated the largest environmental curbside collection and recycling program in the country. Today, more than twenty years later, that program has 225,000 participating households and businesses and diverts from landfills in excess of 500 tons per day of solid waste. It is arguably the most effective big city recycling endeavor in the U.S.

Consequently, Mr. Gavrich has advised other cities on the development and implementation of environmental programs, and he served for six years on the National Recycling Coalition's Board of Directors. From 1993-1997, he taught two courses at the University of California at Berkeley in the Economics of Recycling and Solid Waste Management. LBRR's principals have served as top management in both the public and private sectors of the solid waste and rail transportation fields, and have managed environmental companies with annual revenues of \$250 million. They understand the economic, political and regulatory factors impacting both the private and public sectors, and share a strong commitment to the environment.

DAVID A. GAVRICH

President & CEO

Before co-founding LBRR and Waste Solutions Group, Mr. Gavrich served as Senior Vice President of Corporate Development for San Francisco-based Norcal Waste Systems, one of the nation's largest waste management firms. He has more than 20 years of experience developing and implementing waste and rail transportation projects, with emphasis on the contractual, political and regulatory aspects of recycling and solid waste projects. Until 1990, Mr. Gavrich was Director of Browning-Ferris Industries' Recycling and Resource Recovery operations in the Pacific Region where he initiated, developed, and negotiated in excess of \$300 million in long-term landfill and recycling contracts. He initiated and raised state bond financing for BFI's first materials recovery and waste diversion project, The Recyclery™ in San Jose.

Prior to joining BFI, Mr. Gavrich was the Director of Solid Waste Management under Mayor Dianne Feinstein of the City and County of San Francisco, where he was in charge of overseeing the City's solid waste program and assessing the impact of changes to collection and disposal operations. During Mr. Gavrich's tenure, the City's Solid Waste Management Program accomplished two major, long-term goals: (1) embarked upon one of the nation's most ambitious curbside collection and recycling programs; and (2) negotiated and ultimately contracted for long-term (60 years) of landfill capacity. Mr. Gavrich is an appointee to the California State Senate Task Force on Solid Waste Management and was a member of the Board of Directors of the National Recycling Coalition from 1985 to 1992. He served as a member of the Advisory Committee on Integrated Waste Management Curriculum at UC Berkeley and taught two courses in solid waste management at UC Berkeley. He has a Masters degree in Planning from Harvard University, and an undergraduate degree from Rutgers College.

WILLIAM W. GAY

Executive Vice President & Chief Financial Officer

A co-founder of LBRR and Waste Solutions Group, until 1991 Mr. Gay was Treasurer and Chief Financial Officer for Norcal Waste Systems, Inc. and was in charge of the budgeting and capital acquisition for over 40 operating subsidiaries, with annual revenues approaching \$250 million. Since late 1996, Mr. Gay has headed up WSG's East Coast operation. He is in charge of the daily movements of approximately 3,000 tons of solid waste per day, plus new business development on the East Coast.

As Allied Waste's East Coast waste-by-rail expert, Mr. Gay headed up Allied's proposal development for the New York City Department of Sanitation, for long-term export of municipal solid waste. Mr. Gay's proposal, to reuse/retrofit the existing Marine Transfer Stations for recycling and landfill diversion efforts, and to rail transport the waste from the New York Metropolitan area was recently embraced by the City in their long-term export plan.

Prior to joining Norcal in early 1990, Mr. Gay worked for The Chase Manhattan Bank, N.A. as the head of their solid waste corporate finance group, where he initiated and/or worked on over \$250 million in solid waste transactions. He has over 10 years of experience in the banking industry. Mr. Gay's specialties are in the areas of credit and transaction structuring, as well as contractual issues in environmental-related project finance transactions.

Mr. Gay has a business degree from New York University and an undergraduate degree from Colgate University. He is a registered representative of the National Association of Security Dealers.

DARNELL BLACKWELL

Marketing Director

Formerly with LBRR's San Francisco Office, Mr. Blackwell recently relocated to New England to expand the company's presence in the Northeast. He has identified and managed projects for LBRR since early 1999, and has been responsible for regulatory compliance and health and safety. Prior to this, Mr. Blackwell worked for Environmental Systems Company, Advanced Environmental Technical Services, and Smith Environmental Services, Inc. His duties included supervision and management of lab pack and remediation projects, including the Lawrence Berkeley National Laboratory Hazardous Waste Program.

Mr. Blackwell has a Masters Degree in Business Administration from John F. Kennedy University, and a Bachelors Degree in Biology and English from Williams College. He lives in Northampton, MA..

PHIL EMBRESCIA

Operations Manager

Mr. Embrescia has spent over 15 years in the waste-by-rail business, and has moved in excess of 5 million tons of material during this period. As Operations Manager for WSG and LBRR since 1998, Mr. Embrescia coordinates the daily rail logistics for the Allston, MA operation and for special waste projects throughout the Northeast. He has extensive hands-on experience with the purchase, operation and maintenance of heavy equipment and worked as an Operating Engineer for ten years. In addition to rail and equipment logistics, Mr. Embrescia oversees health and safety programs for the company's rail operations. He is a volunteer firefighter and a hazardous materials technician for emergency spill response.

**INFORMATIONAL SUBMITTAL
LB RAILCO, INC. SOLID WASTE TRANSLOAD FACILITY
ROUTE 146, MILLBURY, MASSACHUSETTS**

ATTACHMENT 3

Operations & Maintenance Plan

**OPERATION & MAINTENANCE PLAN
FOR THE
LB RAILCO, INC.
SOLID WASTE
TRANSLOAD FACILITY**

**ROUTE 146
MILLBURY, MASSACHUSETTS**

SEPTEMBER 16, 2002

Prepared for:

LB RAILCO, INC.

By:

**St. Germain & Associates, Inc.
172 U.S. Route One
Scarborough, ME 04074**

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1.0 INTRODUCTION

This Operations & Maintenance Plan (Plan) has been prepared by St.Germain & Associates to provide LB Railco, Inc. (LBRR), a federally-chartered railroad, with the necessary information regarding the operation and safe use of the construction and demolition debris (C&D), contaminated soil, and containerized waste Transload Facility hereby referred to as the LB Railco Transload Facility (Facility) at Route 146 and McCracken Road in Millbury, Massachusetts.

This Plan presents operational procedures for the receiving and loading of C&D materials, contaminated soil, and containerized waste at the Facility prior to rail transport to commercially-licensed waste facilities outside of Massachusetts. The Plan also outlines Facility compliance with the solid waste regulations of the Massachusetts Department of Environmental Protection (DEP).

LBRR personnel involved with the Facility shall read this Plan in its entirety and be familiar with all operating and safety procedures. Copies of this Plan shall be kept at the Facility.

2.0 OVERVIEW

The Facility operation entails the receiving of truck delivered, non-hazardous wastes and the loading of the materials into waiting railcars for shipment to disposal and processing facilities outside of Massachusetts. The Facility is designed to handle the following wastes:

- Processed and unprocessed construction and demolition debris
- Non-RCRA contaminated soils
- Containerized waste

The Facility does not accept non-containerized municipal solid waste, sludge, or any other putrescible material that LBRR deems unacceptable. Disposal shall not occur at the Facility and the handling process is designed to keep the waste material from direct contact with the ground surface during the transload operation.

Materials are delivered to the Facility by various types of commercial trucks. Trucks delivering non-containerized material to the Site unload soils into a Soils Container (steel floor pad with concrete barrier walls, approximately 40 ft. x 40 ft. x 2.5 ft.) or construction and demolition debris (C&D) into a C&D Container (steel walls and floor, sized approximately 40 ft. x 40 ft. x 8 ft.). An excavator or front-end loader then transloads the waste to a waiting railcar. Containerized waste is loaded directly from trucks onto railcars. At the end of each operational day, all material received will have been placed in railcars. The full railcars are switched out by LBRR and the P&W daily and transported to appropriate disposal or processing facilities.

3.0 OPERATIONS

3.1 WASTE STREAM

3.1.1 Acceptable Wastes

The following wastes are acceptable for transloading at the Facility:

- Processed and unprocessed construction and demolition debris (C&D)
- Non-RCRA contaminated soils (Soils)
- Containerized waste

C&D waste shall meet the definition of Construction and Demolition waste per 310 CMR 16.02.

Soils shall be non-hazardous in accordance with Federal regulations (40 CFR 261.3).

Containerized waste shall be packaged in accordance with applicable U.S. Department of Transportation (DOT) regulations, prior to arriving onsite (49 CFR 392, 171-180).

3.1.2 Unacceptable Wastes

Consistent with the Waste Control provisions of 310 CMR 19.017(3), the Facility shall not accept for transfer or disposal lead acid batteries, leaves, tires, white goods (appliances), segregated yard waste, or cathode ray tubes. Recyclable material, such as single polymer plastics, aluminum and metal containers, and recyclable paper shall be discouraged.

Other wastes that shall not be accepted by the Facility include, but are not limited to:

- Asbestos
- Bio-medical waste
- RCRA Hazardous waste
- Radioactive waste
- Liquid wastes
- Non-containerized municipal solid waste (MSW)

3.1.3 Waste Approval Process

All delivery contractors shall be informed of acceptable and unacceptable wastes for the Facility, prior to the delivery of waste shipments from the contractor. Contracts with those haulers and contractors shall hold them responsible for all remedies, including costs and penalties associated with the delivery of unacceptable waste to the Facility. These remedies may include the collection, classification (testing), removal and administrative expense associated with the proper handling and disposal of any such unacceptable wastes. Any unacceptable waste discovered shall either be delivered back to the generator, or removed by an appropriately licensed waste management company.

For materials transloaded through the Facility for transportation to various disposal facilities, the customer shall be required to certify under financial penalty that the waste is non-hazardous in accordance with Federal regulations and that the waste complies with the acceptance criteria of the destination facility.

Should a load of unacceptable waste be transloaded through the Facility and not discovered until reaching the disposal site, the disposal facility shall ensure the proper handling and disposal in accordance with its own contingency response program. Each such incident shall be recorded and all efforts shall be made to trace the load to the responsible contractor. Haulers and Contractors that do not adhere to the requirements of acceptable waste shall be barred from the Facility.

In addition, the following process shall be followed for each waste stream.

3.1.3.1 C&D

Facility staff shall visually inspect incoming shipments of C&D to ensure the waste meets the definition of C&D in accordance with DEP regulations (310 CMR 19.006), as follows:

"Construction and Demolition Waste means the waste building materials and rubble resulting from the construction, remodeling, repair or demolition of buildings, pavements, roads or other structures. Construction and demolition waste includes but is not limited to, concrete, bricks, lumber, masonry, road paving materials, rebar and plaster."

Any shipments not in compliance with those regulations or containing unacceptable wastes shall be rejected.

3.1.3.2 Soils

Soils shall be characterized and accepted prior to delivery at the Facility. Generators shall obtain waste profile acceptance through LBRR and from the receiving, out-of-state facility that demonstrates that the soil is non-hazardous in accordance with Federal regulations (40 CFR 261.3). The generator shall supply LBRR with copies of the approved profile and any associated sample data. A copy of the approved profile shall accompany each soil shipment to the Facility. Facility staff shall visually inspect each load of soil for compliance with the waste profile and for the presence of unacceptable waste.

3.1.3.3 Containerized Waste

Contractors providing containerized waste to the Facility shall provide documentation to LBRR demonstrating compliance with the applicable waste characterization regulations and any destination facility acceptance criteria, prior to sending waste through LBRR to the Facility. LBRR staff shall inspect incoming containers to verify the containers are sealed properly and that the integrity of the container is intact. LBRR will reject containers that do not meet these criteria.

3.2 TRANSLOADING OPERATIONS

3.2.1 Waste Approval

All waste deliveries shall be subject to the waste acceptance process outlined above. Facility staff shall inspect incoming loads prior to unloading. Deliveries that do not meet the acceptance process shall be rejected.

3.2.2 Delivery Of Waste

3.2.2.1 Hours Of Operation

Prior to accepting waste at the start of each day, the Facility Manager or designee shall verify that empty railcars are available for loading. If railcars are not available, the Facility shall remain closed and no wastes will be accepted until railcars are available. If railcars become unavailable in the course of the day, the Facility will close until railcars are available again.

As a standard business practice, the Facility will typically receive and transload wastes according to the following schedule:

Transfer Facility Operating Hours

Monday through Friday:	6:00 AM - 6:00 PM
Monday through Friday: (after 6:00 PM):	as necessary
Saturday:	7:00 AM – 12:00 Noon
Saturday after 12:00 Noon and Sunday:	as necessary
Holidays	as necessary

3.2.2.2 Site Access

Vehicles delivering waste shall enter the Facility through the gated entrance off McCracken Road. This is the only entrance to the Facility and the gate shall be locked when the Facility is closed. Signs direct delivery vehicles to the scale and inform drivers of the Facility rules, including a list of unacceptable wastes.

3.2.3 Weighing

After entering the Facility and verifying that they contain only acceptable wastes, all delivery vehicles shall weigh in at the Facility scale, where load information and weight shall be recorded with the Scale Master for each waste delivery.

After emptying the material into the container, the truck shall drive back over the entrance/exit scale, recording the tare weight of the vehicle, at which time the tonnage of material delivered will be calculated. The truck driver will be given a weight ticket and will then depart the Facility utilizing the exit land on the same route as entry.

3.2.4 Offloading Non-containerized Waste

After weighing, vehicles shall proceed to the Transload Area to offload waste materials. Drivers and Facility staff shall coordinate offloading operations to minimize dust generation and spillage. C&D materials are offloaded into the C&D Container and soils are offloaded into the Soils Container.

Dust generation shall be minimized as necessary through the use of water spray during offloading of dry materials. Any spillage outside of the Transload Area containers shall be cleaned up immediately. The Transload Area shall be inspected after offloading for spillage and cleaned up as necessary.

3.2.5 Transloading Waste

Material placed in the C&D Container is loaded into railcars located on the adjacent rail spur using an excavator on an elevated platform. Metal plates (slides) located on either side of the railcar help guide the C&D materials into the railcar and minimize spillage during the transload process. Soils placed in the Soils Container are loaded into railcars using either the excavator or a front-end loader. Containerized MSW is offloaded from trucks and loaded directly onto flatbed railcars. Once loaded, rail cars shall be properly secured for off-site transport. No wastes shall remain at the Facility at the end of each day unless it is loaded and awaiting rail transport.

3.3 RAIL SHIPPING

After a railcar has been loaded, the car shall be secured and inspected, then billed with the LBRR and the P&W. A standard railroad Bill of Lading (BOL) shall be used. The BOL identifies the commodity, origin site, destination, routing, and billing information. The BOL shall be faxed or electronically transmitted to P&W at the end of the day. Simultaneously with the billing, the Facility Manager shall inform the local P&W Yardmaster that the railcars are available to be "pulled" (i.e. are ready to be shipped).

Federal Railroad regulations prohibit the movement of railcars that are not properly secured or have faulty equipment. An LBRR Engineer followed by P&W Engineer shall conduct inspections of each railcar in accordance with guidelines and good practices before pulling it.

While railcars are in transit (empty or loaded), LBRR staff shall electronically track the location of each car daily to determine the location of the car, if the railcar is properly billed and/or on the appropriate train. If billing is incorrect or the railcar is misdirected, LBRR staff shall correct the error immediately.

In the unlikely event of a derailment or accident, the affected railroad will contact LBRR immediately. If the accident involves waste hauling cars from the Facility, the Facility Manager shall notify the DEP regarding the degree of impact and efforts to clean-up the accident.

3.4 DESTINATION FACILITIES

LBRR shall ship waste by rail to permitted rail-accessible disposal facilities. Those facilities may vary from year to year depending on such factors as the type of wastes being received at the Facility and the requirements of the destination disposal sites.

4.0 PERSONNEL AND TRAINING

4.1 PERSONNEL

4.1.1 Facility Manager

The LBRR Facility Manager is responsible for the overall supervision and direction of the Facility. The Facility Manager is a qualified and responsible individual experienced in the matters of solid waste management and rail transportation and is knowledgeable of 310 CMR 19, Parts I & III. The Facility Manager also acts in the capacity of the "Facility Safety Officer", with responsibilities that include, but are not limited to: 1) monitoring and enforcing safety rules and regulations relevant to Facility operations, 2) monitoring and ensuring that adequate training and safety education is provided to all LBRR personnel associated with the Facility, and 3) performing periodic inspections of the Facility to ensure appropriate maintenance of safety equipment and supplies and compliance with procedures outlined in this Plan.

The Facility Manager is directly responsible for the day-to-day operations of the Facility. The Facility Manager is responsible for inspecting the incoming materials as unloaded into the Transload Area containers, to ensure that unacceptable wastes are not being transported to the Facility. If unacceptable material is identified, the driver shall be notified immediately. An attempt to identify the source shall be made in order to educate the generator. The Facility Manager is also responsible for contacting the Millbury police and fire departments, emergency

medical service, the Massachusetts Department of Environmental Protection and appropriate waste management companies, if necessary.

4.1.2 Equipment Operator

LBRR equipment operators are responsible for the safe and efficient transload of materials and ensuring the proper maintenance of equipment. Equipment operators shall work with truck drivers to ensure proper unloading of materials and that wind-blown litter and dust is controlled at the Facility. An equipment operator shall be on-site during all times the Facility is open.

4.1.3 Scale Master

The Scale Master is responsible for recording and maintaining all waste related data including vehicle type, material type, date received, tonnages, and generation source of all incoming material.

4.2 TRAINING

All personnel shall be responsible to become familiar with this Plan. The Facility Manager shall be responsible for providing each employee a copy of the Plan and providing an orientation of the Facility. New employees shall be notified of the location of all posted notices, all manuals for equipment, the employee safety plan and the handling, sorting and transloading of materials. Employees shall be trained in the identification of unacceptable and hazardous materials, first-aid, safety and operational procedures to prevent accidents.

LBRR personnel shall successfully complete a program of classroom instruction and/or on-the-job training that teaches them to perform their duties in a way that ensures that the Facility is operated in accordance with this Plan. Proper licensing by employees is required, where applicable. After training, employees shall be tested on the specific equipment and Facility operations. Facility personnel shall have successfully completed this program as described by the effective date of this Plan or within three months after the date of their employment or assignment to the Facility, or to a new position at the Facility. Employees hired after the effective date of this Plan shall not work in unsupervised positions until they have completed the training requirements as outlined. LBRR personnel shall take part in an annual review of the initial training.

In addition to providing guidance on responding to non-emergencies, such as discovering unacceptable waste, leaking containers, etc., the training program shall be designed to ensure that field personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

- a) Procedures for using, inspecting, repairing, and replacing Facility equipment as applicable;
- b) Communications or alarm systems;
- c) Response to fires or explosions;
- d) Response to releases into the environment; and
- e) Shutdown of operations.

5.0 MAINTENANCE

5.1 FACILITY

5.1.1 Fire Protection

LBRR shall have at all times at the Facility a 3,000 to 5,000 gallon capacity portable tank of non-potable water. The water shall, either through gravity or mechanical means, have sufficient pressure to mitigate dust hazards on the site, or to extinguish fires, if appropriate. Fire extinguishers will be mounted on equipment and at various locations at the Facility. "Hot loads" shall not be accepted, and LBRR shall make arrangements with the Town of Millbury Fire Department to provide service if necessary.

5.1.2 First Aid

A first aid kit shall be maintained and accessible on the site during hours of operation.

5.1.3 Daily Inspection Check List

A daily inspection shall be performed and recorded on a copy of the inspection form in Appendix C and shall include the following parameters:

Yard Area

- Inspect adjacent parcels for litter on a daily basis
- Inspect the site for litter on a daily basis
- Inspect for evidence of scavenging animals
- Inspect for problems with erosion, stormwater run-off

Transload Area and Scale Area

- Integrity of Transload Area containers
- Clear traveled ways
- Sufficient clear area for personnel and equipment
- No overnight waste storage
- Sweep after material transload is completed
- Personal protection (i.e. eye wear, gloves, etc.)

5.1.4 Access & Signs

The Facility is only accessible from McCracken Road. Facility access is controlled by a gate, which shall be locked during any non-operating hours. Signs shall be maintained at the entrance to the Facility off McCracken road and at the entrance/exit scale. Signs direct delivery vehicles to the waste handling area, and inform drivers of the Facility rules, including a list of unacceptable wastes. The paved areas on the site are to be inspected periodically and repaired as needed.

5.1.5 Litter

Non-containerized wastes are directly offloaded into one of two Transload Area containers and transloaded into waiting railcars, which greatly reduces the problem of blowing litter. The Facility workers shall assist the truck drivers in ensuring that wind-blown litter is minimized at the Facility. The staff shall routinely patrol the Facility for wind-blown litter. If material is observed, the Facility staff shall collect and dispose of the material.

5.1.6 Dust, Vectors And Odor Control

Control of dust during transload operations is addressed above. Certain areas of the Facility are gravel surfaced or unimproved soil. If dust becomes a problem, the Facility personnel shall use water from an onsite water tank for dust control. All other areas of the site are paved or have vegetative cover.

Disease and disease born vectors are not expected to be present at the Facility. All MSW wastes handled at the Facility shall remain in sealed containers. Should vectors be noted at the Facility, a vector control program shall be initiated to include spraying and trapping as necessary.

Odors associated with the MSW are not expected to be present outside of the sealed transport containers.

5.1.7 Open Burning

Burning of waste materials is not permitted at the Facility.

5.1.8 Household Hazardous Waste Collection

Household hazardous waste collection programs are not offered at the Facility.

5.2 EQUIPMENT

The equipment operators shall inspect the on-site equipment on a daily basis to ensure that the equipment is in a condition to adequately meet safe and efficient operating requirements. The equipment operators shall ensure that proper and timely routine maintenance is performed on equipment as needed. In the event that equipment essential to the operation of the Facility becomes inoperable or insufficient, LBRR shall provide back-up equipment. If back-up equipment is not made available to the Facility in a timely manner, Facility operations shall cease until such time as sufficient, fully functional equipment is obtained.

All mechanical equipment will be serviced under maintenance contracts according to the manufacturer's recommendations to assure maximum availability. Back-ups for equipment, such as the excavator, are readily available from local rental companies.

To assure reliability and availability, the Facility includes contracted preventative maintenance and on-site duplication. LBRR contracts with vendors and service companies to provide periodic inspection and service of all equipment. Equipment maintenance is contracted out as part of lease arrangements. All railcar maintenance is conducted at major rail repair facilities.

On a weekly basis the Transload Area containers shall be cleaned and carefully inspected for damage and wear and tear of its structural members, joints and hinges. If the integrity of the Transload Area containers has been compromised, either LBRR staff or a qualified contractor will repair or replace the affected area.

6.0 CONTINGENCIES

6.1 EMERGENCY PHONE NUMBERS

For emergencies requiring outside assistance, temporarily close Facility operations to waste deliveries, as necessary, and contact the appropriate organization below:

Town of Millbury Fire Department	911
Ambulance	911
Town of Millbury Police Department	911
Town of Millbury Department of Public Works	508-865-4966
DEP, Spills	888-304-1133
DEP, Central Region Office – Solid Waste Section	508-792-7650
Providence & Worcester Railroad	508-755-4000
LBRR Office, Harrison NY	914-381-8570
LBRR, 24-hr. contact numbers	732-673-7523, 510-684-7000

6.2 FIRE

The following steps shall be taken in the event of an onsite fire:

1. Direct all non-emergency equipment and staff away from the fire.
2. For small fires, use portable extinguishers or onsite water supply as appropriate.
3. Contact the Millbury Fire Department.

Note: Use only dry chemical or foam type fire extinguishers on fuel fires. The use of water on a fuel fire may result in further spreading the fire and should not be the method used for fire suppression for fuel fires.

The Millbury Fire Department is available to answer any emergency needs. A fire hydrant is located nearby the Facility on McCracken Road. Fully charged fire extinguishers are maintained in the Facility office trailer and in the operator compartments of the on-site equipment.

6.3 WEATHER

The Facility Manager shall close the Facility if adverse weather conditions threaten the health and safety of workers and/or the environment.

6.4 SPILLS

If spills of fuel products, chemicals or unknown liquid wastes occur onsite, notify the Facility Manager who shall contact DEP immediately at 1-888-304-1133. For large spills or spills of unknown liquid wastes, contact the Millbury Fire Department as well.

For fuel spills, isolate the area and contain the spill if possible. Begin cleanup immediately. For chemicals and unknown liquids, isolate the area and wait for personnel experienced in unknown chemical identification and spill control (DEP, Hazmat team, etc.).

6.5 OPERATIONS

6.5.1 Waste Volume

In the event that incoming waste volumes exceed the Facility handling capacity, the following options are available, at the discretion of the Facility Manager:

- Call in additional personnel.
- Operate the Facility on extended hours or Sundays or holidays.
- Call in, purchase and/or lease additional equipment.
- Close the Gate to additional vehicles.

6.5.2 Unacceptable Waste

The Facility staff shall visually inspect loads of waste incoming to the facility for unacceptable waste. The staff shall be trained in the identification of unacceptable waste. If unacceptable waste is inadvertently transported to the Facility or encountered during offloading of materials at the Facility, the waste will be transferred into a separate container and the container shall be covered and temporarily segregated from all other containers. The Facility worker shall contact the Facility Manager who shall make immediate arrangements for the off-site disposal of the segregated material.

6.5.3 Sick Call

Employees are asked to give a minimum of 1-hour notice to the Facility Manager if they are unable to work for the day. This gives time for a replacement to be notified. Should an employee become sick during the hours of operation, he/she shall report to the Facility Manager and a qualified replacement will be found.

7.0 RECORDS

A daily report shall be prepared providing summary data on the tonnage of each material loaded and the tonnage shipped to each disposal facility. The report shall also include a record of the equipment, maintenance performed, personnel or Contractors used, environmental incidents, including the detection of unacceptable waste, spills, derailments and accidents. This report shall be available for review at the Facility.

8.0 CLOSURE

LBRR shall notify DEP within 90 days prior to the anticipated date of cessation of Facility use for the transload of waste.

On cessation of transload operations at the Facility, the following closure procedures shall be followed:

- First the Facility shall be cleaned of any and all debris or waste.

- Second, all machine and equipment at the Facility shall be cleaned, and removed from the Facility after cleaning;
- Third, a final inspection shall be conducted at the Facility to determine whether all debris and waste have been removed from the Facility.

**OPERATIONS & MAINTENANCE PLAN
LB RAILCO, INC. SOLID WASTE TRANSLOAD FACILITY
ROUTE 146, MILLBURY, MASSACHUSETTS**

APPENDIX A

SITE MAP

A copy of the Site Map will be inserted
into the Facility's copy of the Operation & Maintenance Plan.

**OPERATIONS & MAINTENANCE PLAN
LB RAILCO, INC. SOLID WASTE TRANSLOAD FACILITY
ROUTE 146, MILLBURY, MASSACHUSETTS**

APPENDIX B

310 CMR 19 PARTS I & III

**A copy of 310 CMR 19, Parts I & III will be inserted
into the Facility's copy of the Operation & Maintenance Plan.**

**OPERATIONS & MAINTENANCE PLAN
LB RAILCO, INC. SOLID WASTE TRANSLOAD FACILITY
ROUTE 146, MILLBURY, MASSACHUSETTS**

APPENDIX C

DAILY INSPECTION FORM

**LB Railco Millbury Transload Facility
Daily Inspection Form**

Area	✓	Inspection Criteria
Yard		No litter on the Site
		No litter from the Facility exists on adjacent parcels
		No evidence of scavenging animals
		No soil erosion, problems with stormwater run-off
	Notes:	
Transload Area and Scale Area		Integrity of Transload Area containers
		Travel ways are clear
		Areas are sufficiently clear for personnel and equipment
		No wastes are stored overnight
		Loaded railcars have been inspected and properly secured.
		Area is clean/swept after material transload is completed
		Personnel are wearing appropriate protection (i.e. eye wear, gloves, etc.)
	Notes:	
Date of Inspection:		Name of Inspector:
Signature:		

**INFORMATIONAL SUBMITTAL
LB RAILCO, INC. SOLID WASTE TRANSLOAD FACILITY
ROUTE 146, MILLBURY, MASSACHUSETTS**

ATTACHMENT 4

Advisory Letter

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Attorney at Law
6 Water Street, Suite 401
New York, NY 10004

Phone: (212) 483-0875
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Of Counsel
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201-444-5990
Fax 201-444-5094

CONFIDENTIAL

August 28, 2002

William W. Gay, Chief Financial Officer
LB Railco, Inc.
600 Mamaroneck Avenue, Suite 427
Harrison, N.Y. 10528
Fax: 914-381-8571

Re: Millbury Massachusetts

Dear Mr. Gay:

You have asked me to review the interstate commerce and rail transportation legal issues related to LB Railco's establishing a transport operation on lands leased by LB Railco, Inc. from the Providence and Worcester Railroad (P&W) and C&S Lumber in Millbury, Massachusetts. I understand that the operation will receive C&D waste and non-hazardous contaminated soils by truck. These products will be unloaded from the truck into a bin or other sort of containment device or pad and will then be immediately transloaded to rail cars by an appropriate machine of some sort. I understand that the purpose of the containment device and loading machine is to facilitate the proper loading of the rail cars. The rail cars will be shipped by rail to remote locations where the cargos will be delivered to a landfill operator. LB Railco will contract directly with waste generators and will hire truckers to pick up the waste and to deliver it to the proposed facility. LB Railco is a rail common carrier and will accept cargos delivered to the facility by truckers retained by shippers. In either case LB Railco will issue a bill of lading from its point of origin to its point of delivery including the highway, transload and rail services it provides.

This letter is to advise you as the applicability of local regulations to your proposed operation and whether any local regulation can bar local shippers and truckers from using your facility.

49 U.S. C. §10501(b) grants to the Surface Transportation Board exclusive jurisdiction over rail carriers and provides that the remedies provided in the Act with respect to regulation of rail transportation are exclusive and preempt the remedies provided under any other Federal or any State Law. 49 U.S.C. § 11321(a) defines the scope of the authority of the Surface Transportation Board. It then states that "a rail carrier...is exempt from the antitrust laws and from all other law, including state and municipal law, as necessary to let that rail carrier...hold, maintain and operate property...acquired through..." (a transaction approved or exempt from approval by the Board) See: City of Auburn v. United States, 154 F.3d 1025, 1029 (9th Cir. 1998). The courts of the United States have held that the exemption from state law contained in the §11321, is to be interpreted broadly, See; Ex Norfolk & Western Ry. v. American Train Dispatchers Assn. 499 U.S. 117, 127-34. (1991) "The... language in §11321(a) exempting carriers from ...State and municipal law is clear broad and unqualified". See also, CSX Transportation v. Georgia Public Service Commission, 944 F. Supp. 1573, 1585 (N.D. Ga. 1996).

LB Railco is a rail carrier, having received authority to operate from the Surface Transportation Board effective December 29, 2000. Finance Docket No. 33985. Thus, LB Railco is an entity under the Board's jurisdiction. It must, as part of the proposed operation, file a new exemption to commence the Millbury operation as that is an expansion of its operations.

While LB Railco's transload operation is confined to the property in Millbury, that operation is but part of the movement covered by the bills of lading. Where a movement of cargo is by multiple modes, such as truck and then rail, as you contemplate, but under a single bill of lading, it is an intermodal move. If the bill of lading is issued by LB Railco either in its own right or as agent for P&W, the entire move is a rail move from point of origin to point of destination, such points to be determined by the shipping document. The jurisdiction of the STB extends to "...a person providing common carrier railroad transportation for compensation" or engaged in services related to that movement, i.e., the "receipt, delivery, elevation,"..." transfer in transit,"..."handling" of property, 49 U.S.C. § 10102(9)(B). As LB Railco is engaged exclusively in handling freight in a continuous intermodal rail move then, that entire movement, including highway pick-up and delivery service commissioned by LB Railco is a rail move exclusively controlled by the STB. Central States Motor Freight Bureau Inc. v. Interstate Commerce Commission, 924 F. 2d 1099,1102 (D.C. Cir. 1991).

The prohibition on local efforts to regulate railroad operations was resoundingly upheld this June by the U.S. District Court for the District for Massachusetts. In ordering the Town of Ayer, Massachusetts to pay the attorney's fees of the Boston and Maine Railroad the Court stated, "By conferring exclusive jurisdiction over railroad matters to the STB the ICCTA imposes a binding obligation on the states not to regulate railroads with respect to those matters" Boston and Maine Corp v. Town of Ayer, ___ F. Supp ___ 2002 WL 1286098 (D. Mass. Civ. A. 99-12606*2, June 10, 2002). The court found that the town's attempt to regulate the railroad was an attempt to use State law to interfere with a federally granted right, thus exposing the town to an

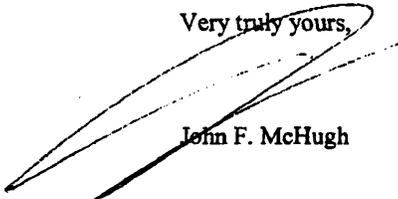
award of damages under 42 U.S.C. § 1988(b) due to town's violation of 42 § 1983, (a civil rights law). The court held that the right to operate a railroad pursuant to its federal franchise is a civil right enforceable, notwithstanding sovereign immunity, under federal law.

Local authorities retain police, health and safety and other authority, the limits of which are not clearly defined. Clearly your trucks must stop at traffic lights and your operation can not create a nuisance or a genuine safety problem. While you can not be required to obtain permits to develop your site for the intended uses and while local zoning laws do not apply, you can be required to comply with local building code construction standards. By making sure your operation complies with basic health and safety standards LB Railco can avoid all legal problems related to the transport-transload operation proposed.

Therefore, it is my opinion that the proposed Millbury project is exempt from local regulation under both the letter of existing law and under current case law. I do not anticipate any major changes in these laws or their interpretation in the near future.

Hopefully this reviews any issues raised by this proposal.

Very truly yours,



John F. McHugh

**INFORMATIONAL SUBMITTAL
LB RAILCO, INC. SOLID WASTE TRANSLOAD FACILITY
ROUTE 146, MILLBURY, MASSACHUSETTS**

ATTACHMENT 5

State of Massachusetts Regulatory Criteria

STATE OF MASSACHUSETTS REGULATORY CRITERIA

This attachment to the LB Railco Solid Waste Transload Facility Informational Submittal provides Facility information as it regards Massachusetts DEP site criteria.

DEP Site Suitability Criteria for Solid Waste Handling Facilities

Regulation 310CMR 16.40 (3)(d)	Transload Facility
1	The Facility is not within Zone I of a public water supply.
2	The Facility is not within Zone II of an existing public water supply well or within a proposed drinking water source area. Any potential impact to an IWPA will be mitigated by environmental controls.
3	The Facility is not within Zone A of a surface drinking water supply.
4	The Facility is not within 500 feet upgradient or otherwise within 250 feet of an existing or potential private water supply well.
5.b	The waste handling area is not within 500 feet of: an occupied dwelling; health care facility; prison; elementary school; middle school; high school; children's pre-school; licensed day care center; senior center; and youth center.
6	The waste handling area of the Facility is within the riverfront area of the Blackstone River (as defined at 310 CMR 10.00). Environmental controls for the Facility are designed to maintain the integrity of the river.
7	The maximum high groundwater is not within two feet of the existing ground surface.

DEP General Site Suitability Criteria

Regulation 310CMR 16.40 (4)	Transload Facility
(a) Agricultural Lands	The Facility is not located on any land is classified as Prime, Unique, or of State/Local importance by the United States Department of Agriculture, Natural Resources Conservation Service, nor deemed Land Actively Devoted to Agricultural or Horticultural Uses, nor are there any active farmlands within 100 feet of the operation.
(b) Traffic and Access to the Site	The Facility is expected to generate approximately 132 vehicle trips per day. During morning and evening peak periods, the Facility is expected to generate 8 vehicle trips per hour. During the midday period, (11AM – 1PM) the Facility is expected to generate approximately 18-20 vehicle trips per hour. Given recent improvements to the Route 146 travel corridor in the vicinity of the subject transload Facility, traffic operations in the vicinity of the Facility are not expected to degrade as a result of the Facility-related traffic.
(c) Wildlife and Wildlife Habitat	The project site is not identified as an area of concern for endangered, threatened, or special concern species by the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife.
(d) Areas of Critical Environmental Concern	The Facility is not located in an Area of Critical Environmental Concern.
(e) Protection of Open Space	<p>The project site is not classified as open space within the Town of Millbury. It is unlikely that the Facility will have an adverse impact on the physical environment of, or on the use and enjoyment of:</p> <ul style="list-style-type: none"> • state forests; • state or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with Article 97 of the Massachusetts Constitution; • MDC reservations; • lands with conservation, preservation, agricultural, or watershed protection restrictions approved by the Secretary of the Executive Office of Environmental Affairs; or • conservation land owned by private non-profit land conservation organizations and open to the public.
(f) Potential Air Quality Impacts	The anticipated emissions from the Facility would come from the operation of its loading equipment, which by manufacturer's specifications meet the criteria of state and federal air quality standards. Overall, the anticipated air quality impacts associated with the Facility operation are expected to be minimal due to the industrial development and highways within close proximity to the Facility.

Regulation 310CMR 16.40 (4)	Transload Facility
(g) Potential for the Creation of Nuisances	Issues of vermin (including birds) and odors are not expected for the Facility given the nature and waste materials to be transloaded. Litter will be controlled through procedures outlined in the attached Operations & Maintenance Plan. The Facility's nearest northerly neighbor is an asphalt batching plant at 18 McCracken Road, Route 146 runs parallel to the east, and a stand of trees lies upgrade to the west. Property to the South is undeveloped. Additionally, Routes 122A and 146 represent significant noise sources. Therefore, the current background noise level will not be exceeded or noticeably added to by the Operation.
(h) Size of Facility	The project site is of sufficient size to provide adequate buffers between the waste handling area and project site property boundaries.
(i) Areas Previously Used for Solid Waste Disposal	The project site was not previous used for solid waste handling or disposal.
(j) Existing Facilities	The Facility would enable local Municipalities and regional businesses to continue environmentally sound waste management practices while providing alternative waste diversion and disposal options for construction debris and contaminated soils.
(k) Consideration of Other Sources of Contamination or Pollution	A solid waste incinerator is located along Route 20 within the Town of Millbury.
(l) Regional Participation	The Town of Millbury does not participate in a regional solid waste management program.

**INFORMATIONAL SUBMITTAL
LB RAILCO, INC. SOLID WASTE TRANSLOAD FACILITY
ROUTE 146, MILLBURY, MASSACHUSETTS'**

ATTACHMENT 6

Town Of Millbury Regulatory Criteria

TOWN OF MILLBURY REGULATORY CRITERIA

This attachment to the LB Railco Solid Waste Transload Facility Informational Submittal provides Facility information as it regards Town of Millbury Zoning criteria.

Fiscal Impact Summary

Fiscal Assessment Category	Impact to the Town of Millbury
Utilities	There will be no water or sewer service to the Facility. Drinking water will be provided for workers and visitors through the use of refillable water coolers. Portable water for dust suppression will come from offsite sources. Water for fire fighting will come from offsite sources and a nearby hydrant. No sewer lines are proposed for the Facility. A portable toilet will be provided by a private contractor for employee and visitor use. Municipal solid waste generated by the workers at the Facility will be disposed with a private contractor.
Police	Limited to traffic incidents on Public roads, which are not anticipated as indicated by the Traffic analysis.
Fire	Minimal impact through reduced fire risk. Operational controls prevent stockpiles by limiting the amount of waste onsite and prohibiting overnight storage of non-containerized waste.
Tax Revenue	No significant impact.
Employment	Estimated five new, full-time positions at the facility.
Value of Public Infrastructure	Millbury will benefit directly through the potential for lower waste disposal costs for municipal and private facilities for C&D waste, contaminated soil, and containerized MSW shipping.
Effect on Adjoining Properties	No Impact (The Facility is surrounded by the new interchange at Route 146 and McCracken Road).

Industrial I District Criteria

Category	Industrial I Criteria	Transload Facility
Permitted Use	Not specified	Use is consistent with intent of industrial district.
Minimum Lot Area	80,000 sq. ft.	150,000 sq. ft.
Minimum Lot Frontage	150 ft.	Approximately 500 ft.
Minimum Front Yard	30 ft., 30% of front yard shall be free of any paving and maintained with vegetation and entire yard free of outdoor storage of materials	Minimum 30 ft., >30% free front yard, no overnight storage
Minimum Side, Rear Yards	20 ft.	Minimum 20 ft.
Maximum Lot Coverage	40%	<40%
Maximum Building Height	50 ft.	< 20 ft.

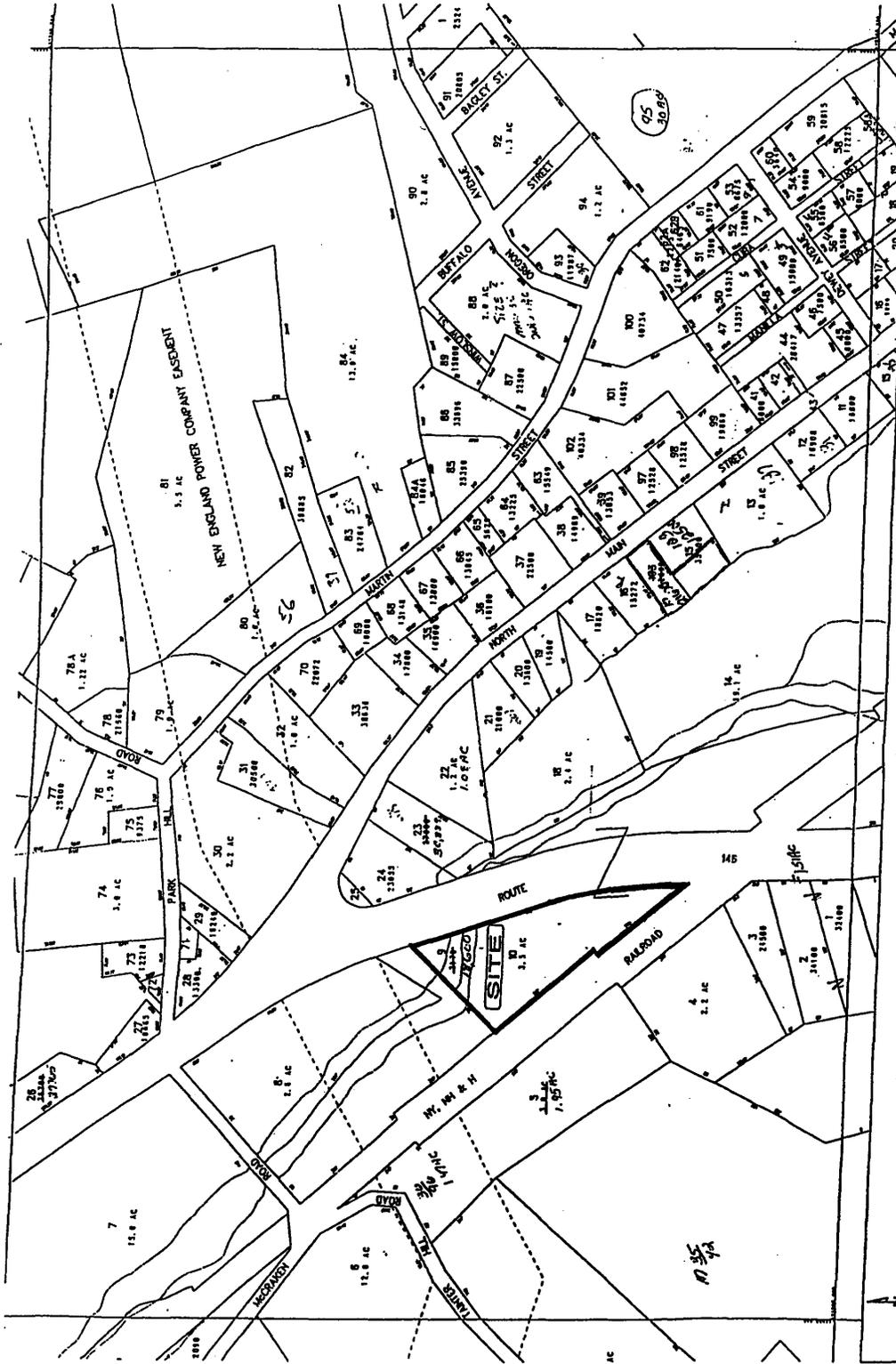
Environmental and Other Controls

Criteria	Description
Signage	LBRR plans to erect a single entry sign on the Facility with approximately 9 square feet of surface area constructed of wood or vinyl. Additional signage will be provided on the access driveways throughout the Facility to clearly delineate Facility traffic and waste controls.
Disturbances	Based on experience with similar facilities, the Facility is not expected to generate sound, noise, vibration, odor, or flashing (except for warning devices, temporary construction work, assemblies of people, or other special circumstances) perceptible without instruments more than four hundred feet from its boundaries.
Water Body Protection	No permanent structures will be erected on the Facility. The paved area of the Facility will not exist within 50 horizontal feet from the normal bank of the Blackstone River. Grass planted within this buffer will assist in stormwater control of the Facility. No filling is proposed that would reduce the peak flood channel of the River. No removal, filling, dredging, or construction will occur on the bank of the River.
Pollution Control	No permanent sanitary facilities are planned for the Facility. Potential air contaminants will be limited to mobile sources (excavator, front-end loader, dumptruck, etc.) and fugitive dust emissions which will be controlled through the use of best management practices (water spray, sweeping, etc.)
Screening	Existing vegetation will be used for visual barriers from public ways. No additional screening is planned.
Hazard	Use of the Facility will not create a hazard due to explosion or fire. Physical hazards inherent to the operation of heavy equipment will be present, but minimal. There will be no pedestrian access to the Facility and vehicle access to the Facility will be restricted by a locked gate when the facility is not open.
Vegetation Removal	Vegetation removal will be limited to clearing brush and small trees that have grown during site inactivity on the existing rail spur. Additional vegetation (grass) will be added to the 50-foot river buffer. Existing mature trees on the east side of the Facility will not be removed.
Fences	No fences are proposed for the Facility.
Floodplain	The Facility site and the P&W rail line exist within the 100-year flood plain of the Blackstone River. No permanent structures will be erected at the Facility. No overnight storage of waste will occur at the Facility. Debris currently stored on the Facility site will be removed.
Route 146 Highway Corridor Overlay District	The Facility does not meet the definition for Route 146 Highway Corridor Overlay District (HCOD) Node Classifications I or II due to its small size (<4 acres). Given the limited nature of the development of the Facility site (use of existing grade, no permanent structures, etc.) no additional HCOD criteria are applicable to the site.

Property Owners and Abutters

Site Owner	Map #36 Tax Parcel	Address
Elizabeth Aubin	10	46A Davis Rd., Millbury, MA 01527
Abutting Property Owners	Map #36 Tax Parcel(s)	Address
Elizabeth Aubin	6	46A Davis Rd., Millbury, MA 01527
Mass Highway	3, 4, 5, 7, 8, 22, 23, 24	10 Park Plaza, Boston, MA 02116
Henry J. Lane, Trustee	1-2	Gagliardi Way Realty Trust, c/o George Lamothe, Shrewsbury, MA 01545
Mass Water Works	14	24 Providence St., Millbury, MA 01527
Nancy Burbank	18	199 Main St., Millbury, MA 01527
New England Power Co.	25	Property Tax Dept., 20 Turnpike Rd., Westboro, MA 01581

Insert Millbury Tax Map



JUNE 1991

MILLBURY

SCALE 1 inch = 100 feet

36

7	28	29
35	36	37
43	44	45

Exhibit B

10

172 U.S. ROUTE ONE
SCARBOROUGH, MAINE 04074
ENVMNCT@STGERMAIN.COM
TELEPHONE 207-885-0003
FACSIMILE 207-885-9806

October 25, 2002

Mr. John Regan, Section Chief
Division of Solid Waste Management
Massachusetts Department of Environmental Protection
627 Main Street
Worcester, MA 01608



RE: Supplement to Informational Submittal Dated 9/16/02
Truck-to-Rail Transload Facility
Route 146 & McCracken Road
Millbury, Massachusetts

Dear Mr. Regan:

On behalf of LB Railco, Inc. ("LBRR"), St. Germain & Associates is pleased to submit responses to questions raised by you and Lee Adams during your visit to the above referenced site (the "Site") in Millbury on Tuesday, October 1, 2002. This information supplements the Informational Submittal provided to the Massachusetts Department of Environmental Protection (DEP) on September 16, 2002.

Responses to DEP Questions:

1. **Detailed Plans.** Enclosed with this letter are plans that provide additional detail regarding the transload containers and the Site layout (including Blackstone River setback and traffic flow). Additional information on each of those topics is provided below.
2. **River Setback.** As stated in the above-referenced Information Submittal, no permanent structures or paved areas of the Facility are proposed within 50 feet from the normal bank of the Blackstone River, as shown on the enclosed plan. The 50 ft. setback is in accordance with the Town of Millbury dimensional setback requirements (Section 35.21 of the Town of Millbury bylaws). In addition, development of the Site is expected to meet Massachusetts' requirements for a Riverfront Area in accordance with the Massachusetts Wetland Protection Act (310 CMR 10.58). In those regulations, the Site is characterized as a degraded site and redevelopment is expected to meet the performance standards outlined therein.
3. **Visual Impact to Bike Path.** The visual impact of the Site is similar to other industrial areas within the zoning district. To improve the aesthetic conditions of the Site, LBRR proposes to establish a vegetative buffer along the river. In addition, structures near the bike path can be accented with the same color as the bike path railing (purple) to match the aesthetic quality of the path. LBRR has already begun to place large rocks in the buffer strip.

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4. **Stormwater.** As you will note on the enclosed plans, the transload containers will be sloped approximately 3% toward the rear of the container. This slope will allow the containers to hold the volume of a 100-year storm event (6.4 inches of rain). Rainwater will be absorbed by materials in the container. If necessary, water will be pumped from the container and disposed at an appropriately licensed facility offsite.
5. **Dust Suppression.** Vehicle driving areas will be paved to minimize dust generation. Paved areas will be wet vacuum-swept daily if fugitive debris is present, and more frequently if fugitive debris occurs during precipitation. A water mist system will be installed in both transload containers to control dust when necessary during offloading and transfer of soils and/or C&D materials. Water mist is more effective at removing dust from the air than water spray and minimizes water usage. These facility management practices for dust suppression will be incorporated into the Operations & Maintenance Plan for the transload facility.
6. **Asbestos.** Asbestos waste will not be accepted at the Site. Asbestos awareness training will be required as part of personnel training as described in the Operations & Maintenance Plan of the Information Submittal. Soils will be tested at the point of generation as part of meeting the destination facility's acceptance criteria. Incoming loads of construction and demolition debris will be visually inspected by appropriately trained Site personnel. If asbestos is encountered in incoming materials, the load will be covered, segregated and properly disposed as described in the Operations & Maintenance Plan.
7. **Onsite Traffic.** Traffic flow is shown on the enclosed plan. Incoming materials will enter the Facility and proceed to the scale house. At the scale house, drivers will be informed of the requirement to limit unnecessary vehicle idling to five minutes in accordance with MGL Chapter 90: Section 16A and 310 CMR 7.11. Once the vehicle has been checked in, it will proceed toward the vehicle queuing area (as indicated on enclosed plan) and wait until directed by Facility personnel to the transload containers. Unloaded vehicles will weigh again at the scale before exiting the Facility. Queuing will also be minimized by scheduling with transporters to distribute the timing of deliveries over the business day.
8. **Insurance.** LBRR will add the DEP and the Town of Millbury as an additional insured under its \$6 million (aggregate) commercial liability insurance policy.

I trust that the information provided herein is acceptable and complete. If you require additional information, please call Bill Gay of LBRR at (914) 381-8570, or me at the number listed below.

Sincerely,


Patrick Coughlin
Project Manager

cc: William Gay, LB Railco, Inc.
Lee Adams, DEP

Exhibit C

L B R A I L C O



November 20, 2002

Ms. Megan T. DiPrete
Millbury Town Planner
127 Elm Street
Millbury, MA 01527

RE: LB Railco Transload Facility on McCracken Street

Dear Ms. DiPrete:

Thank you for meeting with us this past week to discuss the subject project. We found the comments you and Nancy Brittain raised on potential project impacts to be helpful and constructive. This dialogue has assisted us in finalizing the design and operation plan for this site. Please note that in the interest of working cooperatively with your office and the Blackstone River Valley National Heritage Corridor Commission ("Corridor Commission") we, in our recent filing with the Surface Transportation Board, voluntarily agreed to delay start-up of the transload operation for four months¹. We would like to use this interim time period to work with the Town of Millbury and the Corridor Commission to finalize some of the design and operations ideas already discussed.

We trust that you have already received a copy of LB Railco's September 16th Informational Submittal to the Massachusetts Department of Environmental Protection. I attach a copy of an October 25, 2002 supplemental submission to the Massachusetts DEP, which you may not have seen. In that letter we highlight how we plan to handle several important issues including setbacks along the River, dust, traffic, insurance, etc.. We would like to offer the Town and Corridor Commission one or more options in order to address specific concerns we discussed last week. We will identify the remedial options and indicate which option LB Railco intends to pursue. Some of the remedial options we have identified have to be pursued by LB Railco, because other options may require Town approval under its By-Laws. If you can think of a further option that may be taken, that is not on our list, please let us know. We are open to other reasonable options that may not be listed. We encourage your review of the options and we look forward to your input and direction.

¹We do plan to ship out one or two gondolas worth of debris already on-site (which will improve the current condition and aesthetics) and may handle some fully containerized waste in the four month interim period.

Ms. Megan DiPrete
November 20, 2002
Page Two

Bike Path Visuals:

- Option #1 - No additional controls, as the bike path currently looks at a dilapidated site, and new operation will be better than what is currently there.
- Option # 2 - Place opaque screening along bike path (either on Mass. Highway property or LB Railco property) to completely block view of the site.
- Option # 3 - Place a moderately high fence (approximately 6 feet high) around entire site. It won't block view from the bike path, but may moderate visual impacts.

Visuals From Proposed Shopping Center:

- Option #1 - No additional controls. The Shopping Center parking lot will not have direct view of site, particularly in the Spring through early Fall as foliage on existing trees essentially blocks line of sight.
- Option # 2 - If allowed, plant some evergreen trees at the Shopping Center, next to parking areas that might have line of sight to the LB Railco site. This would require approval from the owners of the Shopping Center and possibly the Millbury Planning Department.
- Option # 3 - Extend and/or raise the height of the planned 17' fence between the LB Railco transload container/track and the Providence & Worcester mainline.

Protection of the River:

- Option #1 - Work with the Town of Millbury, Corridor Commission and Mass. Highway to create 50-foot vegetative buffer along the Blackstone River. Besides filtering sediment from runoff, the buffer will improve the visual aesthetics. A list of plant species the Massachusetts Highway Department is utilizing throughout the 146 Highway construction project is attached. LB Railco would suggest choosing species on the Massachusetts Highway list.
- Option #2 - Same as #1 above, only that the Town and/or Corridor Commission chooses the plant species utilized.
- Option #3 - A permanent concrete (or similar) wall is built from the boundary of the bike path along the entire River perimeter of the site.

Ms. Megan DiPrete
November 20, 2002
Page Three

Stormwater:

Option #1 - Utilize the site as is with no additional stormwater controls.

Option # 2 - Develop the site using operating surface materials that are more permeable than asphalt paving with no additional fill. LB Railco will work with the Town to identify a preferred material (examples may include stone dust, gravel, etc.)

Option # 3 - Pave operating surfaces of the site (outside of the 50-foot buffer) with asphalt on top of clean fill to allow surface runoff to sheet flow off of the paved areas.

Given the proximity of the site to the Blackstone River, LB Railco will explore the possibility of directing stormwater runoff from paved areas into retention ponds (to be located within the 50-foot vegetated buffer zone) that do not outlet directly into the Blackstone River (e.g. collected water will infiltrate and evaporate and will not outlet directly into the Blackstone River).

LB Railco will pursue Option #1 unless informed by Town (and Corridor Commission if required), in writing, of its desire for LB Railco to consider another option. We request that the Town give LB Railco written notice by January 20, 2003 to implement options #2 & #3, otherwise Option #1 will be implemented.

Truck Traffic:

As has been indicated, LB Railco will work with truckers utilizing the site to direct them to use Route 146 as the primary access point to the site (i.e. are not running down the residential portion of McCracken Street).

We will discuss with the property owner the potential for allowing the angling of the curb entrance to the site to discourage truckers from coming into the site incorrectly. The property owner may or may not (since she has an ambulance dispatching company also utilizing the same entrance ramp) allow this change.

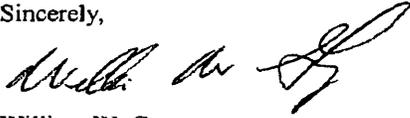
Parking:

Some questions were raised because the employee parking appears to be very close to the bike path and scale. We will endeavor to move the employee parking to another portion of the site and will ask the property owner if employees can park on the side of her property not currently leased by LB Railco.

Ms. Megan DiPrete
November 20, 2002
Page Four

Please review the above options and get back to me with any questions/suggestions. I would think that it would make sense to schedule another meeting in about two weeks to discuss next steps.

Sincerely,



William W. Gay
Executive Vice President & Chief Financial Officer

Attachments

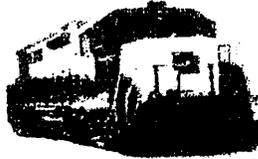
cc: Millbury Town Manager
Blackstone River Valley National Heritage Corridor Commission
Massachusetts Department of Environmental Conservation

Exhibit D

L B R A I L C O

November 20, 2002

Mr. Raymond W. Houle, Jr.
Town Manager
Town of Millbury
Municipal Office Building
127 Elm Street
Millbury, MA 01527-2632



RE: Transload Facility - McCracken Road

Dear Mr. Houle:

When we met several weeks ago to discuss LB Railco's Railyard development on McCracken Road I indicated to you that it was our strong desire to be a good neighbor in the Town, to work cooperatively with Town officials and residents, and to operate a facility in the most environmentally secure and conscious manner available. I also offered to meet with any Town official, Town department or environmental group that wished to discuss constructive ways to design and/or operate the site. I am pleased to report that since that time we have a) hosted a Town informational forum, b) met numerous times with the Massachusetts Department of Environmental Protection, c) met with Millbury's Town Planner and with a representative of the Blackstone River Valley National Heritage Corridor Commission, and d) discussed the site with some property owners in the vicinity.

We appreciate the input received at these various meetings and found the information to be both constructive and helpful with our development of our Railyard. We have already incorporated several of the suggestions into our plans. We also pledge to work diligently with Town residents, and to be open-minded with respect to constructive suggestions that may assist us in developing an environmentally protective facility. We will operate our business in conformance with all appropriate health and safety regulations, environmental standards, and always in the spirit of being a good neighbor. In the submission that follows to your Planner, Megan DiPrete, we would like to highlight how we intend to operate and the environmental controls that will be implemented. Where there are differing methods to achieve a desired result (e.g. best ways to manage aesthetics) we have offered a menu of options the Town may choose from, that we are prepared to implement. Further, in an effort to give the Town plenty of time to assess the best management practices it would like to jointly develop with LB Railco for managing the site, we will not begin transloading of construction and demolition material and/or soils for four months. We may accept fully containerized materials prior to that time, but want to give the Town the time it may feel it needs to get comfortable with this operation and to finalize our proposed host fee arrangement. Our recent filing with the Surface Transportation Board mentions that we have voluntarily agreed to this four month delay.

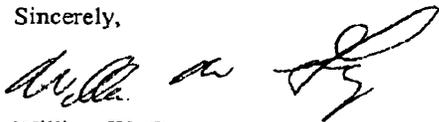
Mr. Raymond W. Houle, Jr.
November 20, 2002
Page Two

We look forward to working with Millbury and the Blackstone River Valley National Heritage Corridor Commission to finalize an operations plan that meets our operating requirements and protects the Town and State's environmental interests.

In addition, in an effort to present factual and constructive information, we have attached a short project description that addresses many of the more important issues we have discussed with various groups and individuals we have met with over the past few weeks. We would appreciate it if you would share this summary with members of the Board of Selectman and the community.

Should you or your staff have any questions or comments on the environmental submittal please contact me. We are happy to meet with you or your staff at any time.

Sincerely,



William W. Gay
Executive Vice President & Chief Financial Officer

Attachments

cc: Board of Selectman
Millbury Town Planner
Blackstone River Valley National Heritage Corridor Commission
Massachusetts Department of Environmental Conservation

LB Railco - Millbury Transload Operation Fact Sheet

- LB Railco is a federally-chartered railroad company that has significant experience in the transloading of fully containerized materials, non-hazardous construction & demolition debris and/or federal non-hazardous soils.
- The location of the LB Railco transload facility in Millbury is the location of the former C&S Lumber Yard. This site was chosen for several reasons including its close proximity to Route 146 and the MassPike and its distance from residential areas.
- This transload operation involves the expeditious transloading of materials transported by trucks into railcars and then moving materials by rail to out-of-state disposal sites. If railcars are not available to load the site will restrict incoming vehicles.
- The site will be used in a manner that allows for the efficient transloading of materials and will **not** be used as a disposal site. In addition, the transload facility will be developed in a manner that will improve the existing conditions and aesthetic quality of the site.
- The LB Railco facility **will comply with all applicable health and safety regulation** by the Massachusetts Department of Environmental Protection and the Town of Millbury.
- The LB Railco facility will comply with all "Best Management Practices" required by the Commonwealth of Massachusetts.

- Trucks entering the facility will **not pass any private homes**. LB Railco will require that all trucks utilizing the site only enter/exit off of Route 146.
- LB Railco has offered the Town a host fee of up to \$.75/ton.
- The LB Railco facility will allow the Commonwealth of Massachusetts to remove trucks from its highways (improving air quality), will help maintain existing in-State landfill capacity, and may result in lower transportation and disposal fees for all tax and ratepayers in the State.

Exhibit E

**MAP WILL BE SCANNED
AT A LATER DATE**

Exhibit F

