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December 27, 2006

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

218355

Re: PYCO Industries, Inc. - Feeder Line Application
South Plains Switching, F.D. 34890 et al.

Dear Mr. Williams:

This is the reply of South Plains Switching, Ltd. Co. (SAW) in opposition to the relief requested in a letter to you dated December 21, 2006 in behalf of Hanson Aggregates (Hanson). That letter was submitted by Michael H. Hyer, Esq., Vice President and General Counsel of Hanson North America. Presumably, Hanson Aggregates is an affiliate of Hanson North America.

The essence of the relief requested by Hanson is that the Board enforce Ordering Paragraph 4 of the Board's decision served August 3, 2006 in these proceedings. As here pertinent, the Board there prohibited SAW from rescinding any lease of any shipper who supports a feeder line application for acquisition of SAW's rail lines. Hanson supports a feeder line application filed by PYCO Industries, Inc. to acquire SAW's rail lines. Hanson requests that the Board declare that SAW's attempt to cancel Hanson's lease of a SAW track is null and void in violation of the prohibition in Ordering Paragraph 4 described above. Hanson requests that the Board order SAW to provide rail service to Hanson on that track. (Hanson letter dated Dec. 21, 2006 at 2).

Hanson's requests should be denied. SAW did not cancel Hanson's track lease. Hanson's track lease was cancelled by Choo Choo Properties, Inc. (Choo Choo) in accordance with the terms of that lease. By deed executed on April 28, 2006, copy of which is attached as Exhibit A, SAW conveyed the track at issue to Choo Choo, subject to Hanson's lease of that track. Thereafter, by letter dated December 5, 2006, Choo Choo cancelled that lease in

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accordance with Article 16(a). Attached to this reply as Exhibit B is a copy of that lease. It can be seen that Article 16(d) expressly authorizes cancellation of that lease on 30 days' notice.¹

It is recognized that the notice of cancellation of Hanson's lease of track was sent on SAW letterhead, and was signed by the owner of SAW. However, that notice was sent by SAW in behalf of Choo Choo, just as the letter to the Board dated December 21, 2006 was sent by Hanson North American in behalf of Hanson Aggregates. In order to remove all doubt as to the efficacy of the cancellation, Choo Choo is issuing another notice of cancellation to Hanson Aggregates, c/o Hanson North America, by means of a letter signed by Choo Choo's counsel dated December 28, 2006, a copy of which is attached to this reply as Exhibit D.

Cancellation of Hanson Aggregates' lease by Choo Choo did not violate Ordering Paragraph 4 of the Board's decision served August 3, 2006. That order was directed at SAW, not Choo Choo. Neither did Choo Choo's cancellation of Hanson Aggregates' lease violate any other order in that Board decision. Ordering Paragraph 3 of that decision prohibits SAW or Choo Choo, after May 5, 2006, from rescinding leases "concerning PYCO." The Hanson Aggregates lease cancelled by Choo Choo concerns Hanson Aggregates, not PYCO. Ordering Paragraph 2 of that decision provides that transfers of SAW's real property to Choo Choo after May 5, 2006 are void. The transfer of rail property leased by Hanson Aggregates occurred prior to May 5, 2006.

Absent a violation of the Board's order, a rail carrier can lawfully cancel a lease of its rail property, provided that such cancellation is in accordance with the terms of the lease. There is no contention in Hanson's letter that the lease at issue is not cancellable on 30 days' notice in accordance with its terms.

Inasmuch as Choo Choo's cancellation of Hanson Aggregates' lease did not violate any Board order, and was in accordance with the terms of the lease, the Board cannot lawfully declare that cancellation of the lease was null and void. Nor can the Board lawfully order SAW to provide rail service to Hanson Aggregates inasmuch as Hanson Aggregates will not have a private track on which to receive shipments at Lubbock as of the effective date of the lease cancellation.

The foregoing is a complete defense to the claims made in Hanson's letter. However, there are several additional misleading statements in Hanson's letter that should be addressed briefly. Hanson states that it "believes" that a customer is "prepared to" purchase aggregates from Hanson for delivery on the leased track. (Hanson letter dated Dec. 21, 2006 at 1). That is

¹ In January, 2004, the term of the lease was changed from annual to monthly, but the 30-day cancellation provision was retained. (See letter dated January 12, 2004 and follow-up Agreement signed in January, 2004, copies of which are attached as Exhibit C).

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far short of the requisite proof that the leased track actually would be utilized for delivery of rail shipments except for the lease cancellation.

Hanson states that it "believes" that Mr. Larry Wisener controls and directs the operations of SAW. (Hanson letter dated Dec. 21, 2006 at 1). Hanson has not provided a shred of evidence to support that belief. The fact is that Mr. Wisener does not control nor direct SAW's operations. As a representative of Choo Choo, Mr. Wisener advised Hanson that SAW had sold the property at issue to Choo Choo, and that Choo Choo was cancelling Hanson's track lease so that Hanson would not be able to receive rail shipments on that track. In addition, Mr. Wisener advised Mr. Chuck Brewer of Hanson that Hanson should contact Mrs. Delilah Wisener, owner of SAW, to determine whether SAW would be able to provide an alternative track for Hanson's receipt of rail shipments. Mr. Wisener's actions in those respects were fully consistent with his absence of control and direction of SAW's operations.

In behalf of Choo Choo, Mr. Wisener made Mrs. Delilah Wisener, owner of SAW, aware of Hanson's request for delivery of rail shipments on the track as to which Hanson's lease is being cancelled. In behalf of SAW, Mrs. Wisener made a good faith effort to make arrangements for Hanson to use Track 9200 for those shipments. Attached to this reply as Exhibit E is a verified letter from Mrs. Wisener to Mr. Melvin Clemens of the Board's staff, dated December 26, 2006, referring to a telephone conversation between Mrs. Wisener and Mr. Clemens on December 19, 2006 in which Mrs. Wisener requested the Board's permission to use Track 9200 for that purpose. That request for permission was necessary because Track 9200 is covered by the Board's order for alternative rail service for PYCO Industries, Inc. As noted in Mrs. Wisener's letter, Track 9200 is currently being used solely for storage of empty tank cars in the absence of demand for rail service by PYCO.^{2/}

Lastly, it is interesting to note Hanson's extensive disclaimer regarding BNSF rail service in Note 1 on page 2 of the Quotation that was attached as Exhibit A to Hanson's letter. It is quite ironic that Hanson has complained to the Board about SAW's rail service when Hanson apparently has encountered enough difficulty with BNSF's rail service to cause it to include such extensive disclaimers in its bids.

^{2/} Inasmuch as Mrs. Wisener's letter to Mr. Clemens covers subject in addition to Hanson's requests, that letter is being sent under separate cover to Mr. Clemens without the verification page.

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WHEREFORE, for all of the reasons stated in this reply, the relief sought in Hanson's letter should be denied.

Respectfully,



Thomas F. McFarland
*Attorney for South Plains Switching, Ltd. Co. and
for Choo Choo Properties, Inc.*

TMcF:kl:enc:wp8.0\1169-Altrstb6

cc: All parties of record, *by first-class U.S. mail*
Michael H. Hyer, Esq., *by UPS overnight mail*
Mr. Larry Wisener, *by e-mail*
Mrs. Delilah Wisener, *by e-mail*
Mr. Dennis Olmstead, *by e-mail*

EXHIBIT A

After Filing Return to: CHOO CHOO PROPERTIES, INC, P. O. BOX 64420, LUBBOCK, TEXAS 79464-4420

DEED NO.: 53221

QUITCLAIM DEED

**THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §**

KNOW ALL MEN BY THESE PRESENTS:

THAT the SOUTH PLAINS SWITCHING LTD. CO., a Texas Limited Liability Company, of the County of Lubbock, State of Texas, (hereinafter "Grantor") for and in consideration of the sum of **TEN DOLLARS AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration, in hand paid by the grantee herein named, the receipt and sufficiency of which is hereby acknowledged, has **QUITCLAIMED**, and by the presents does **QUITCLAIM** unto **CHOO CHOO PROPERTIES, INC. of P. O. Box 64420, Lubbock, Texas 79464-4420** (hereinafter "Grantee"), all of its right, title and interest in and to the real property situated in Lubbock County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "the Property").

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the Property and premises unto Grantee, its successors and assigns forever, so that neither Grantor nor its legal representatives or assigns shall have, claim or demand any right or title to the Property, premises or appurtenances or any part thereof.

This conveyance is made without warranty of any kind, express or implied and no covenant of warranty shall be implied from the use of any word or words herein contained, including without limitation any warranty that might arise by common law, or the warranties in Section 5.023 of the Texas Property Code (or its successor). By the acceptance of this deed,

COPY

Grantee takes the Property "AS IS". Grantor has not made and does not make any representations as to the physical condition, layout footage, expenses, zoning, operation, or any other matter affecting or related to the Property, and Grantee hereby expressly acknowledges that now such representations have been made. Grantor makes no other warranties, express or implied, of merchantability, marketability, fitness or suitability for a particular purpose or otherwise except as set forth and limited herein. Any implied warranties are expressly disclaimed and excluded.

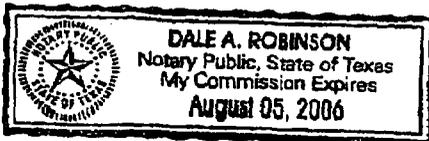
EXECUTED on this the 28th day of April, 2006.

South Plains Switching, Ltd., Co.

Delilah Wisener
By: Delilah Wisener, Owner

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

This instrument was acknowledged before me on this the 28th day of April, 2006 by DELILAH WISENER, Owner of South Plains Switching, Ltd. Co., a Texas Limited Liability Company, on behalf of said company.



Dale A. Robinson
NOTARY PUBLIC, STATE OF TEXAS
Dale A. Robinson
Printed Name of Notary

My Commission Expires: August, 05, 2006

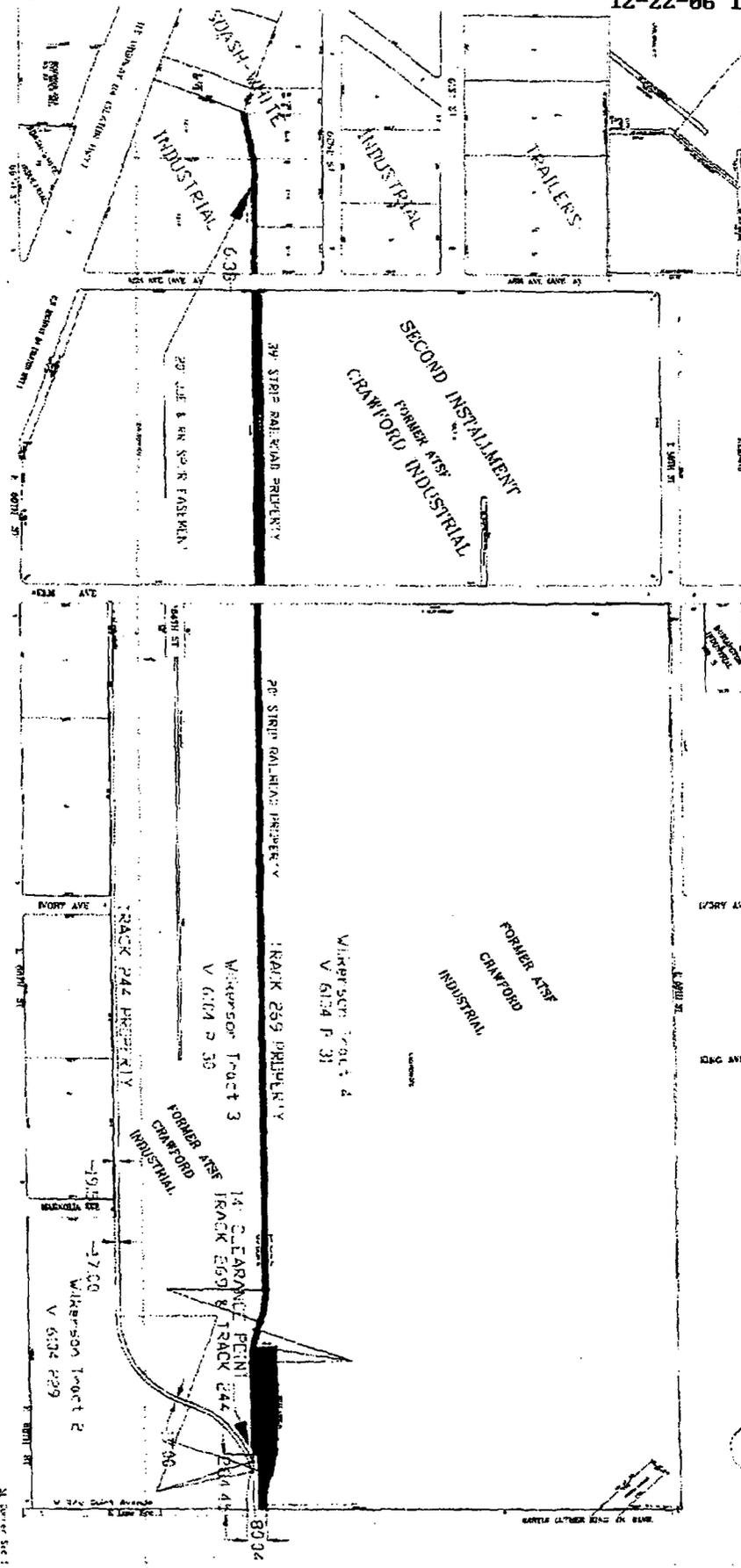
COPY

EXHIBIT "A".

All of that portion of the South Plains Switching, Ltd., Co. (SAW) interest in the property, tracks, easements, and fixtures located with or attached to SAW Lead Track ICC Track No. at 269 Beginning West of its fourteen foot (14') clearance point with ICC Track No. at 244 (Beginning 264.45' West of the intersection of a projection of the Southern Property Line adjacent to ICC Track No. 269 to its intersection with the East Line of Section 1) to the end of track ICC No. 269. Being bordered by 58th Street on the North, 64th Street and ICC Track No. at 244 on the South, Ash Drive on the West and the West Right Of Way Line of Martin Luther King, Jr., Boulevard on the East, all as presently located within Section 1, Block E, GC&SF RR Survey, City of Lubbock, Lubbock County, Texas.

Being the same Track Numbers 269, 268, 282, 283, and 270 described in Deed Dated May 18, 1999 recorded in the Lubbock County, Texas Deed Records in Volume 6814 at Page 162.

COPY



SECTION OF TRACK 269
 SECTION CONVEYED TO CANTON PROPERTY, INC
 INCLUDING SERVICE ADJACENT TO TRACK 244



COPY

Exhibit "A"

Drawing No. 53221

Scale:
 1" = 200'
 Date:
 12/22/06

LEAD TRACK AT COO. N.E. 269
 FORMER ATSF CRAWFORD INDUSTRIAL DISTRICT



South Plains Switching, Ltd. Company
 P.O. Box 64299 -- Lubbock, TX 79464
 Phone: 806-828-4841 -- Fax: 806-828-4863

Landmark Engineering, LLC
 P.O. Box 9255 -- Lubbock, TX 79409
 Phone: 806-741-1111

EXHIBIT B

Contract No. A183228

RETURN TO

Secretary, The A.T. & S.F. RY. CO. Topeka

11024634

LEASE OF LAND AND TRACKAGE
(Short Term)

THIS LEASE, made as of the 5th day of March, 1991, between THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called "Lessor"), and WESTERN ROCK PRODUCTS, INC., a Delaware corporation (hereinafter, whether one party or more, called "Lessee").

WITNESSETH, That the parties hereto for the considerations hereinafter expressed covenant and agree as follows:

1. Lessor hereby leases to Lessee, subject to the rights and easements hereinafter excepted and reserved, and upon the terms and conditions hereinafter set forth, the land, together with those portions of tracks located thereon (hereinafter called "Premises"), situated at or near Lubbock, County of Lubbock, State of Texas, as described or shown on the sketch hereto attached, No. 16552, dated February 22, 1991, and made a part hereof, for a term beginning on March 6, 1991, and continuing on a month to month basis unless or until this Lease shall be terminated as hereinafter provided.
2. Lessor hereby excepts and reserves the right, to be exercised by Lessor and by any others who have obtained or may obtain permission or authority from Lessor so to do, (a) to operate, maintain, renew and relocate any and all existing pipe, power, and communication lines and appurtenances and other facilities of like character upon, over or under the surface of the Premises; and (b) from time to time to construct, operate, maintain, renew and relocate such additional facilities of the same character as will not unreasonably interfere with the use of the Premises by Lessee for the purpose specified in Section 4 hereof.
3. Lessee shall pay to Lessor for the use of the Premises the sum of Twelve Hundred and No/100 Dollars (\$1,200.00) per year. Said compensation shall be subject to revision at three (3) year intervals.
4. Lessee shall use the Premises exclusively as a site for transloading rock.

3114V

COPY

5. If ingress and egress to and from the Premises shall be required by use of Lessor's property adjacent to the Premises, such use is hereby granted, on a non-exclusive basis, by Lessor to Lessee. However, Lessor shall have the right, to be exercised at any time, to designate the location or route to be used for such purpose. For the purpose of this Lease, said ingress and egress route, whether specifically defined or not, shall be and is included under the definition of Premises.
6. (a) Lessee has examined the Premises and accepts the use and occupancy thereof with full knowledge of their condition, and shall observe and comply with any and all laws, ordinances or governmental regulations relating to the use and maintenance of the Premises.
- (b) Lessee covenants and warrants that Lessee either owns, or has obtained from the owner or owners thereof, the right to use any Improvements now on the Premises. Further, Lessee does hereby guarantee that upon termination of this Lease, for any reason whatsoever, Lessee will remove all of said improvements and/or personal property from the Premises and restore said Premises to a reasonably level and cleared condition, satisfactory to Lessor.
- (c) Lessee shall make no change or alteration in nor additions to Premises without first obtaining the written consent of Lessor.
- (d) Lessee shall pay any and all charges for water, gas, sewer, heat, light, power and telephone service and all other services supplied to or used on Premises or available, assessed or taxed to Premises. Lessee agrees that Lessor shall not be required to furnish to Lessee any water, gas, sewer, heat, light, power or telephone service or any other facilities, equipment, labor, materials or services of any kind whatsoever.
7. (a) Lessee shall pay, before the same become delinquent, all taxes, charges, rates, and assessments which may, during the term of this Lease, be levied upon, or assessed against, or be equitably chargeable to or assessed in respect of the Improvements; and where any such tax, rate, charge, or assessment may be embraced in the general amount of taxes charged upon the Premises separately or in connection with other property of Lessor, and Lessor shall pay all of said taxes, then Lessee shall promptly refund to Lessor the amount or part of the tax, charge, rate or assessment equitably or fairly apportionable to the Improvements.

- (b) In addition to the taxes specified above, Lessee shall pay to Lessor any privilege, sales, gross income or other tax (not including federal or state Income Tax) imposed upon the rentals received by Lessor by any agency having the authority so to do.
8. (a) Lessee agrees to keep the Premises and all Improvements thereon free from rubbish and in a neat and safe condition and satisfactory to Lessor. Lessee shall maintain, at Lessee's sole cost and expense, in good condition and repair, satisfactory to Lessor, all Improvements upon said Premises. The Premises and Improvements thereon shall not be used for displaying signs and notices other than those connected with the business of Lessee contemplated by this Lease. Such notices and signs shall be neat and properly maintained. Lessor shall have the right to enter the Premises at reasonable times to inspect the same.
- (b) Lessee shall not use or permit the use of the leased premises in any manner that will tend to create waste or a nuisance. In using the Premises, and in constructing, maintaining, operating and using the Improvements thereon, Lessee shall comply with any and all requirements imposed by federal or state statutes, or by ordinances, orders or regulations of any governmental body having jurisdiction thereover, including, but not limited to, building and zoning ordinances, restricting or regulating or prohibiting the occupancy, use or enjoyment of the Premises or regulating the character, dimensions or locations of any improvements on the Premises. Should any governmental body having jurisdiction in the matter require Lessor to dedicate, restrict or otherwise encumber any portion of the Premises, or any of its adjoining property, as a condition to approval of Lessee's use of the Premises, Lessor may, if said condition is unacceptable to Lessor, terminate this Lease. Lessee covenants to properly notify Lessor accordingly should any of the above occur.
9. (a) Lessee shall indemnify and hold harmless Lessor for any claim, loss, damage, expense or injury, including death, arising out of any act or omission of the Lessee, its employes or agents, to the person or property of the parties hereto and their employes, and to the person or property of any other public body, individual, partnership, corporation, or other legal entity while on or about the Premises or while exercising any right or performing any obligation, pursuant to this Agreement, except to the extent that the claim, loss, damage, expense, death, or injury is due to the sole negligence of Lessor, its officers, agents, or employes.
- (b) Lessee shall indemnify and hold harmless Lessor from any liability or claimed liability arising under the Federal Employees Liability Act (F.E.L.A.) for any incident on or about the Premises regardless of negligence or alleged negligence of Lessor and regardless of any claim or allegation that Lessor was negligent in failing to provide its employes with a safe place to work.

10. (a) In further consideration of the rental to be paid by Lessee to Lessor herein contained, Lessor agrees that Lessee may during the life of this Lease receive service upon those portions of tracks located on the Premises, shown on the Exhibit "A" print attached hereto, it being understood and agreed that Lessor shall have the full right to use said tracks for other than the purposes of serving Lessee, provided such other use does not unreasonably interfere with use of the track for the purpose specified in Section 4.
- (b) Lessee shall at all times, and at its sole expense (or an equitable share in case other industries shall be served over the tracks), maintain, or cause to be maintained, those portions of tracks located on the Premises, in such safe and satisfactory condition as necessary to conform with Lessor's Standards and specifications, and to conform with all applicable Standards promulgated by the Federal Railway Administration, Occupational Safety and Health Administration or any successor agency or agencies, and all other governmental bodies having jurisdiction. Lessee shall indemnify and save harmless Lessor from and against any and all liability for losses and damages resulting from the failure of Lessee properly to maintain those portions of tracks located on the Premises, or failure to conform with Standards promulgated by governmental agencies respecting the condition and maintenance of those portions of tracks located on the Premises. If Lessor should determine that said tracks are unsafe, it may refuse to operate thereover until made safe by Lessee.
- (c) The title to those portions of tracks located on the Premises, and to all property furnished in the maintenance thereof, shall be in Lessor.
- (d) Lessee shall make no realignment, alteration or relocation of those tracks located on the Premises without first obtaining the written consent of Lessor.
11. (a) Lessee shall strictly comply with any and all statutes, ordinances, rules, orders and judgments of all governmental bodies having jurisdiction in the State in which the tracks under Lease are located, governing side clearances and overhead clearances from railroad tracks in that State.
- (b) In the event Lessee desires to install any gates across and adjacent to the tracks, or to install a track scale, unloading pit, loading or unloading device, adjustable loading docks or doors at warehouses, or any other structure which will impair the required clearances along the tracks, Lessee shall first secure any and all required authority from the State or other governmental body or agency having jurisdiction, prescribed by statute or Order of competent public authority, and shall furnish Lessor with a copy of such Order approving installation of the facility which will impair required clearances. Lessee shall submit to Lessor the plans and specifications for such facilities, and shall secure Lessor's written approval thereof before construction of such facilities is undertaken.

- (c) Lessee shall install, use and maintain all facilities described in subsection (b) of this Section 11, at its sole cost and expense, in such a manner and of such materials, satisfactory to Lessor, and as will not at any time be a source of danger to or interference with the safe operations by Lessor on the tracks and on its railroad. Gates across the tracks shall be opened whenever necessary to enable Lessor to operate over the tracks. Unloading pits shall be securely covered when not in actual use and at all times when the tracks are being switched. Doors shall be firmly secured, and adjustable loading docks at warehouses shall likewise be securely fastened in an upright position when not in actual use and at all times when the tracks are being switched. During installation and when using and repairing these facilities, Lessee shall exercise utmost and extraordinary diligence to prevent damage to property of Lessor or injury to its agents or employes.
- (d) Vertical and horizontal clearances from the tracks at entrances to buildings, and such clearances from the tracks for the facilities referred to in subsection (b) of this Section, shall conform with those specified in the Order authorizing such reduced clearances along the tracks.
- (e) Notwithstanding any provision of Section 9 of this Lease, Lessee shall indemnify and save harmless Lessor from any and all claims, loss, damage or expense for loss of or damage to property, including without limitation, the facilities described in subsection (b) of this Section 11, and injury to or death of persons, including without limitation, employes and agents of Lessor, arising out of the breach or alleged breach by Lessee of the obligations of this Section 11 or resulting in any manner from the construction, installation, maintenance, use, state of repair, presence or removal of such facilities along, under, across and adjacent to the tracks, regardless of whether such loss, damage, injury or death be caused or contributed to by the negligence or alleged negligence of Lessor, its agents, or employes, or otherwise. Lessee shall promptly upon receipt of bill pay to Lessor the full amount of any loss or damage that Lessor may sustain, incur or become liable for, and all sums which Lessor may pay or be compelled to pay in settlement of any claims on account thereof. Lessee shall also reimburse Santa Fe for any money which Santa Fe has paid as a result of a violation or alleged violation by Lessee of any statute, ordinance, rule, order or judgment referred to in this Section 11.
12. Lessee shall comply with all statutes, ordinances, rules, regulations, orders and decisions (hereinafter referred to as "Standards"), issued by any federal, state, or local governmental body or agency established thereby (hereinafter referred to as "Authority") relating to Lessee's use of the Premises. In its use of the Premises Lessee shall at all times be in full compliance with all Standards present or future set by any Authority, including but not limited to Standards concerning air quality, water quality, noise, hazardous substances and hazardous waste. In the event Lessee fails to be in full compliance with Standards set by any Authority, Santa Fe may after giving reasonable notice of the failure to

Lessee, and Lessee, within 30 days after such notice fails either to correct such noncompliance or to give written notice to Lessor of its intent to contest the allegation of noncompliance before the Authority establishing the Standard or in any other proper form, take whatever action is necessary to bring the Premises into compliance. Lessee shall reimburse the Lessor for all costs (including but not limited to consulting, engineering, clean up and disposal costs and legal costs) incurred by Lessor in complying with such Standards, and also such costs incurred by Lessor in abating a violation of such Standards, protecting against a threatened violation of such standards, defending any claim of violation of such standards in any proceeding before any Authority or court, and paying any fines or penalties imposed for such violations.

- (a) In case of a breach of the obligations contained in this Section 12 relating to "hazardous waste" and "hazardous substance", regardless of the negligence or alleged negligence of Lessor, Lessee agrees to assume liability for and to save and hold harmless Lessor from and against all claims for injuries to any person or damage to property including without limitation, employees and property of the Lessor and Lessee, and all related expenses including without limitation attorney's fees, investigator's fees, litigation expense, resulting in whole or in part from Lessee's failure to comply with any Standard issued by any governmental authority concerning "hazardous substances" and/or "hazardous waste". Lessee at its cost shall assume the defense of all claims, suits or actions brought for damages, and fines or penalties hereunder, regardless of whether they are asserted against Lessor or Lessee. Lessee also agrees to reimburse Lessor for all costs of any kind incurred as a result of Lessee's failure to comply with this Section 12, including but not limited to fines, penalties, clean up and disposal costs, and legal costs incurred as a result of Lessee's generating, handling, transporting, treating, storing for a period more than 30 days, or disposing of "hazardous waste" or "hazardous substances" on the Premises.
- (b) In case of a breach of Standards concerning air quality, water quality or noise, Lessee shall assume liability for and save and hold harmless the Lessor from any claim of a violation of such Standards regardless of the nature thereof or the Authority or person asserting such claim which results from the Lessee's use of the Premises, unless the claim results from the sole negligence of the Lessor. Lessee at its cost shall assume the defense of all such claims regardless of whether they are asserted against the Lessor or Lessee.

It is understood and agreed that a Lessee which does not now or in the future, generate, handle, transport, treat for more than 30 days, or dispose of "hazardous waste" or "hazardous substances" within the meaning of this Section 12 is not subject to the provisions of this Section 12 hereof. It is further understood that the Lessee is not responsible for clean up costs of any "hazardous waste" and/or "hazardous substances" or contamination resulting therefrom which occurred prior to Lessee's occupancy or use of the Premises.

13. It is the intention of the parties that Lessor's right to indemnity contained in Sections 9(b), 11(e) and 12(a) shall be valid and enforceable against Lessee regardless of negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Lessor, its officers, agents and employees.
14. Upon written notice from Santa Fe, Lessee agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against Lessor by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this Agreement for which Lessee has an obligation to assume liability for and/or save and hold harmless Lessor. Lessee shall pay all the costs incident to such defense including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this Section 14 including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by any statute or ordinance, state or federal.
15. If any rental hereunder shall be due and unpaid, or if default shall be made in any of the covenants or agreements of Lessee herein contained, or in case of any assignment or transfer of this Lease by operation of law, Lessor may, at its option, terminate this Lease by serving five (5) days' notice in writing upon Lessee; but any waiver by Lessor of any default or defaults shall not constitute a waiver of the right to terminate this Lease for any subsequent default or defaults.
16. (a) This Lease may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party, and upon expiration of the time specified in such notice, this Lease and all rights of Lessee hereunder shall absolutely cease and determine. However, upon any such termination, Lessor shall retain a minimum charge for use of the Premises a sum equal to three (3) months rental and any excess unearned portion of the annual rental paid in advance shall be refunded to Lessee.

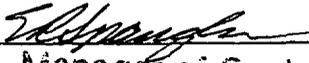
(b) Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease, Lessee hereby waives any right it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, and enforcing the termination provisions contained herein.

17. Any notice to be given by Lessor to Lessee herein, and any notice to be given by Lessee to Lessor herein, shall be deemed to be properly served if it be deposited with the United States Postal Service, or its successor, or other universally acceptable mailing service, postage prepaid, addressed to the other party or parties hereto, at the addresses shown beneath signature of the respective parties hereto, or to such other address as the parties hereto may from time to time designate.
18. Upon the termination of this Lease in any manner herein provided, Lessee shall forthwith surrender to Lessor the possession of the Premises and shall remove the Improvements and all personal property, and restore the Premises to substantially the state in which they were prior to the construction of the Improvements, and in case Lessee shall fail within thirty (30) days' after the date of such termination to make such removal or restoration, then Lessor may, at its election to be exercised within one hundred twenty (120) days' thereafter, either remove the Improvements and all or any part of any personal property and restore the Premises for the account of Lessee, and in such event Lessee shall, within thirty (30) days' after the rendition of bill therefor, reimburse Lessor for the cost so incurred, or may take and hold the Improvements and all or any part of any personal property as its sole property.
19. If Lessee fails to surrender to Lessor the Premises, upon any termination of this Lease, all the liabilities and obligations of Lessee hereunder shall continue in effect until the Premises are surrendered; and no termination hereof shall release Lessee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or the date, if later, when the Improvements are removed and the Premises restored or Lessor elects to take and hold the Improvements as its sole property as referred to in previous Section.
20. In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.
21. Neither Lessee, nor the heirs, legal representatives, successors or assigns of Lessee, nor any subsequent assignee, shall underlease or sublet the Premises or the Improvements, or any part thereof, nor assign or transfer this lease or any interest herein, without the written consent and approval in each instance of Lessor.
22. All the covenants and agreements of Lessee herein contained shall be binding upon the heirs, legal representatives, successors and assigns of Lessee, and shall inure to the benefit of the successors and assigns of Lessor.

IN WITNESS WHEREOF, this Lease has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

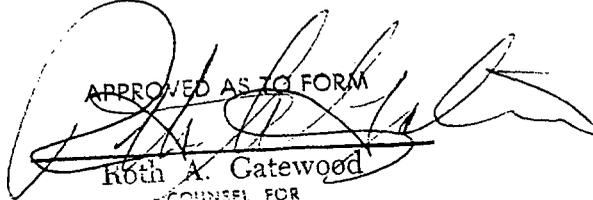
One Santa Fe Plaza
920 Southeast Quincy Street
Topeka, Kansas 66612

By 
Title Manager of Contracts
(Lessor)

WESTERN ROCK PRODUCTS, INC.

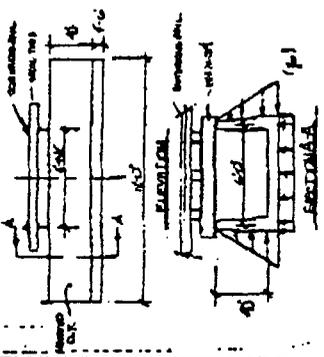
P. O. Box 27019
Albuquerque, New Mexico 87125

By 
Title VICE PRESIDENT
(Lessee)


APPROVED AS TO FORM
Roth A. Gatewood
- COUNSEL FOR
AT & SF RY. CO.

COPY

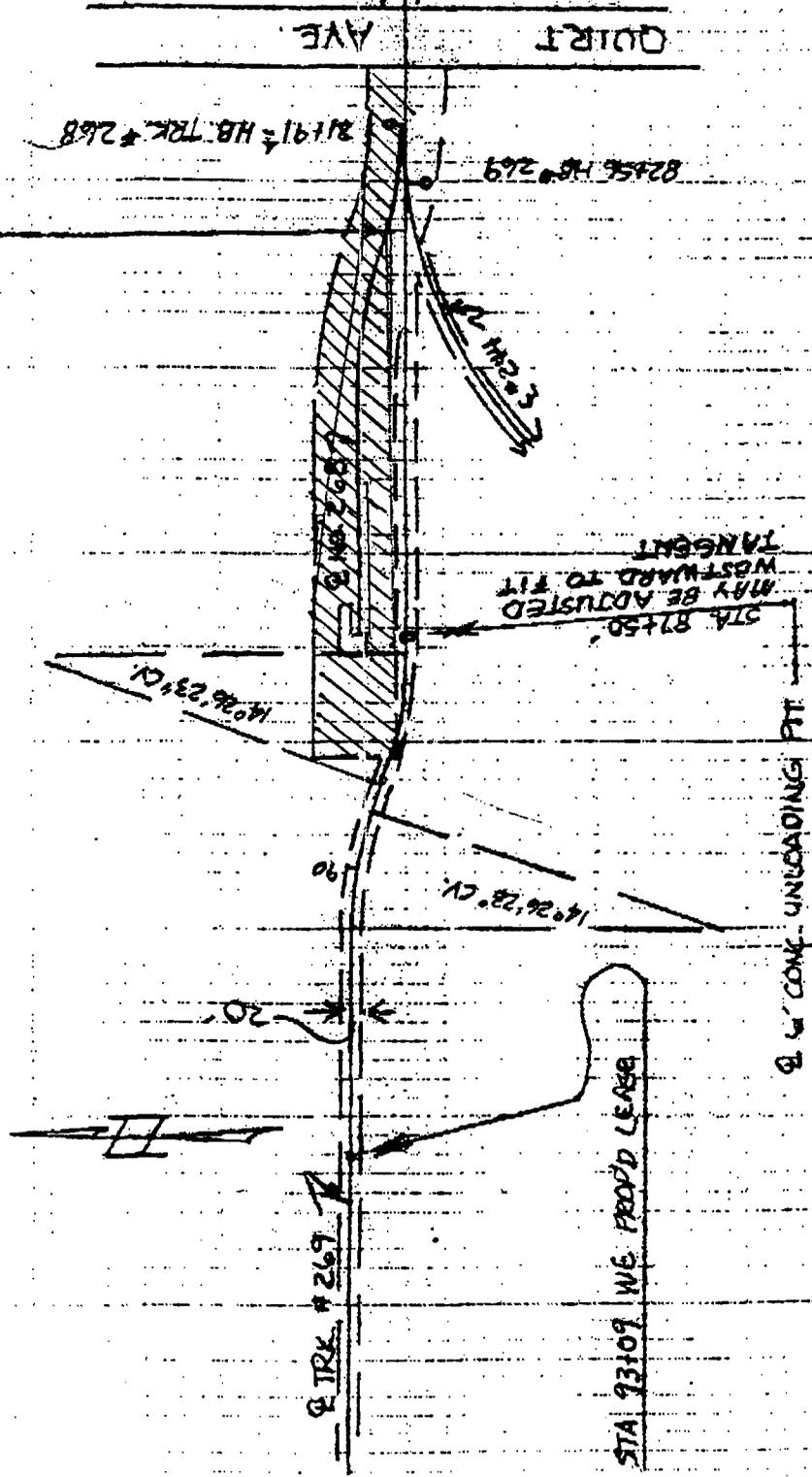
APPROXIMATE SHEET POSITION



PIT DETAIL

11 - BONES OF CO
 12 - ASPHALT CONCRETE - 2 INCHES THICK
 13 - ASPHALT
 14 - ASPHALT

STA. 83107 E.E. PROP'D LEASE



STA 93109 WE. PROP'D LEASE

SKETCH
 SHOWING
 PROP'D LEASE FOR
 WESTERN ROCK
 AT
 WUBBOCK, TEXAS

LUBBOCK SUB + CENTRAL REGION
 FILE # 11015718 TRACING # 1655Z

February 22, 1991

DESCRIPTION:
 PROP'D TEMPORARY TRK # 269, LEASE FOR
 THE UNLOADING OF AGGREGATE. THIS WILL
 NECESSITATE THE PLACEMENT OF A CONCRETE
 UNLOADING PIT.
 TRK # 269 ~ 1000' TRK. LEASE AND 20,000
 SQ. FT. OF ASSOCIATED LAND. (20' X 1000')

103

EXHIBIT C

South Plains Switching, Ltd. Co.
South Plains Lamesa Railroad, Ltd.
P. O. BOX 676 **SLATON, TEXAS 79364**
PHO: (806)828-4841 **FAX: (806)828-4863**

January 12, 2004

COPY

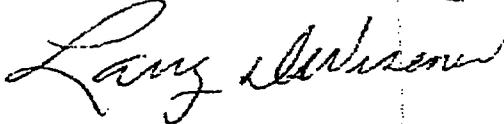
Mr. Bill Winters
VP/GM Northern Sales
Hanson Aggregates, Southwest Region
8505 Freeport Parkway N., Suite 600
Irving, Texas 75063

Dear Mr. Winters:

As per our telephone conversation of 01/12/04, South Plains Switching, Ltd. Co. (SAW) will suspend annual payments for lease of track # 382, Lease Agreement #183228 effective January 01, 2004.

The remainder of Lease Agreement # 183228 including the maintenance agreement will remain in affect. If the enclosed Agreement pertaining to demurrage relief meets with your approval, please sign, date and return it to me for my signature. I will send you a copy of the completed Agreement.

Sincerely,



Larry D. Wisener
President

South Plains Switching, Ltd. Co.
South Plains Lamesa Railroad, Ltd.
P. O. BOX 676 **SLATON, TEXAS 79364**
PHO: (806)828-4841 **FAX: (806)828-4863**

AGREEMENT

Effective January 01, 2004, South Plains Switching, Ltd. Co., (SAW) will afford Hanson Aggregates all of the per diem relief provided to SAW by Burlington Northern Santa Fe (BNSF) on rail cars going to track # 382.

Any accrued charges over 120 hours will be the responsibility of Hanson Aggregates.

This Agreement is to be held confidential.

<p><i>Bill Winters</i> <u>1-16-04</u> Date</p> <p>Bill Winters VP/GM Northern Sales Hanson Aggregates Southwest Region</p>	<p><i>Larry D. Wisner</i> <u>1-22-04</u> Date</p> <p>Larry D. Wisner President South Plains Switching, Ltd. Co.</p>
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EXHIBIT D

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

December 27, 2006

*By certified mail,
(return receipt requested)*

By UPS overnight mail

Michael H. Hyer, Esq.
Vice President & General Counsel
Hanson North America
P.O. Box 660225
Dallas, TX 75266

Michael H. Hyer, Esq.
Vice President & General Counsel
Hanson North America
300 E. John Carpenter Freeway, #1645
Irving, TX 75062

Re: Lease Contract No. 183228

Dear Mr. Hyer:

Pursuant to Paragraph 16(a) of the above Lease Contract, this is to provide notice in behalf of Choo Choo Properties, Inc. (Choo Choo) to Hanson Aggregates WRP (Hanson), c/o Hanson North America, of cancellation of that Lease Contract as of 30 days after the date of this letter, i.e., as of January 26, 2007. Choo Choo acquired the property leased by Hanson by deed from South Plains Switching, Ltd. Co. (SAW) executed on April 28, 2006.

Very truly yours,



Thomas F. McFarland
*Attorney for Choo Choo
Properties, Inc.*

TMcF:kl:wp8.0\1169-A\trMHH1

cc: Mr. Vernon A. Williams
Mr. Larry Wisener
Mr. Dennis Olmstead

EXHIBIT E

South Plains Switching, Ltd. Co.
P. O. BOX 64299 **LUBBOCK, TEXAS 79464**
PHO: (806)828-4841 **FAX: (806)828-4863**

December 26, 2006

Mr. Melvin Clemens
Surface Transportation Board
1925 K Street, N.W.
Washington, D. C. 20423-0001

RE: Telephone conversation of December 19, 2006 between Delilah Wisener and Melvin Clemens

Dear Mr. Clemens:

At your suggestion, I am writing to request the return of track 9200 to SAW for use of aggregate transloading. This track has historically been used for the unloading of aggregates. As discussed in our telephone conversation, PYCO Industries is now using all 3600+ feet of this track solely for empty tank car storage purposes.

The recent filing by Hanson Aggregates dated December 21, 2006 was the reason for my phone call of the 19th. Although I have not personally been contacted by anyone from Hanson, my call to you was an effort to use track 9200, to handle Hanson's shipments. In our conversation, you stated that ... "it was never the intent of the STB to impair or harm rail service to SAW's remaining customers", but this was not evidenced by the Board's decision to make available to WTLC and PYCO over 50% of SAW Yard Storage Tracks and protocol operating hours of 20 out of 24 hours per day. Now for the second week in a row SAW has not had an interchange from WTLC on Thursday, Friday, Saturday, Sunday or Monday. It appears that if PYCO does not need service, SAW does not get service. Where is the WTLC common carrier obligation?

In April 2006, and prior to the STB ruling of August 2, 2006 pertaining to transfers of property after May 5, 2006, SAW conveyed title to the property formerly utilized by Hanson Aggregates on a month to month basis. SAW retained the right to use the property through December 2006. There have been no shipments by Hanson Aggregates to SAW from mid-June 2006 through December 2006 and as referenced by their own letter to this Board (see attachment). SAW had no reason to expect any future shipments from Hanson.

As the owner of SAW I still have not had contact with any Hanson Representatives concerning any shipments to SAW. My only contact has been a letter from Hanson attorney threatening legal action (copy attached). My husband informed me that he had received two cell phone calls from Hanson people stating Hanson's desire to return to the Lubbock market on a limited basis and they wanted to know if SAW would accommodate them. Mr. Wisener stated explicitly that Hanson Aggregates should contact me. Hearing of those conversations prompted my call to you.

Also, I am enclosing copies of statements sent to PYCO Industries and WTLC by me. SAW is requesting the assistance of this Board under the statutes (49 USC 11123 Paragraph B, 2) to receive just and due compensation from WTLC for the use of SAW infrastructure during the period of alternative rail service.

SAW would like to make the Board aware of a similar arrangement with the BNSF at Burris, Texas whereby SAW is compensated in the amount of \$75.00 per loaded revenue car. In this instance, BNSF utilizes far less trackage and time than the WTLC has been granted for the use of SAW infrastructure. I feel this \$75.00 per car is minimal compensation to be paid SAW by the WTLC.

With respect to PYCO surcharges due me, I realize the Board may not have the authority to instruct PYCO Industries to render payment for surcharges and constructive placements as covered by the SAW Tariff. The Board in its rulings (although requested by PYCO) did not relieve PYCO of obligations under the tariff. This may be a District Court matter.

SAW is of the opinion that this Board is prejudiced and discriminatory and is being used by those involved in a conspiracy effort to remove SAW from Lubbock, Texas. I feel the Alternative Rail Service and the Feeder Line Application statutes have been erroneously applied against my business.

I remain,

A handwritten signature in cursive script, appearing to read "Delilah Wisener".

Delilah Wisener
Owner

attachments



December 21, 2006

Hanson North America
Michael H. Hyer
Vice President
& General Counsel

VIA FACSIMILE (806) 828-4863

Delilah Wisener
South Plains Switching Ltd. Co.
P.O. Box 64299
Lubbock, Texas 79464-4299

P.O. Box 660225, Dallas, TX 75266
300 E. John Carpenter Freeway, Suite 1645
Irving, TX 75062
Tel 972 653 6141
Fax 972 653 6213
michael.hyer@hanson.biz

Re: Contract No. 183228

Dear Mrs. Wisener:

This is in regards to your letter dated December 5, 2006 to Mr. Jon Reedy of Hanson Aggregates which, as we understand it, purports to constitute a notice of cancellation of the Lease of Land and Trackage, dated March 5, 1991, between South Plans Switching Ltd., Co. ("SAW") (as the successor to the rights and interests of The Atchison, Topeka and Santa Fe Railway Company) and Hanson Aggregates WRP (as the successor to the rights and interests of Western Rock Products, Inc.) and identified as Contract No. 183228 (the "Track Lease").

This Track Lease is subject to the decision and order of the Surface Transportation Board, dated August 2, 2006 (STB Finance Docket No. 34890, et al.) (the "STB Order"). Paragraph 4 of the STB Order provides in pertinent part that "SAW may not transfer any property interests in, or rescind any leases or agreements concerning . . . any shipper that supports a feeder line application" Hanson has supported a feeder line application in those proceedings and is entitled to the protection and benefit of the STB Order. Accordingly, SAW may not rescind the Track Lease, as your December 5, 2006 letter purports to do, and your attempt to cancel that lease is illegal and void. It is Hanson's position that the Track Lease continues in full force and effect.

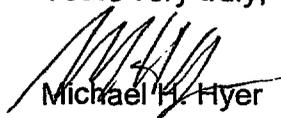
Prior to receipt of your letter, Hanson had submitted a bid to supply construction aggregates to a project in Lubbock, Texas. But for concerns raised by SAW's actions, we understand that customer is prepared to accept the bid and purchase our aggregates for the project, with shipments commencing in mid January 2007.

That bid, of course, was made in reliance on Hanson's rights and SAW's obligations under the Track Lease, the STB Order and the transportation laws of the United States. However, in recent telephone conversations with Hanson representatives, your husband stated that SAW will not allow use of trackage subject to the Track Lease or provide service as to allow Hanson to deliver the materials to that location. Such action by SAW would violate the STB Order as well as SAW's obligations under the Track Lease. Hanson requests that SAW

immediately confirm to Hanson your intention to provide these services. SAW will be liable to Hanson for any losses or additional costs Hanson may incur due to SAW's failure to provide such services, including those related to this pending bid.

In addition, your husband has reported to Hanson representatives that SAW has sold or intends to sell or transfer its interest in the trackage subject to the Track Lease to another party. Such transfer is also prohibited by the STB Order and any purported transfer would be void. Again Hanson requests that you confirm that SAW continues to own those assets, as required by the STB Order.

Yours very truly,



Michael H. Hyer

cc: Jon Reedy
Stan Dacus

c.montange

From: "Hyer, Michael (Irving) NA" <Michael.Hyer@hanson.biz>
To: <c.montange@verizon.net>
Cc: "Dacus, Stan (Irving) NA" <Stan.Dacus@hanson.biz>
Sent: Monday, June 12, 2006 11:23 AM
Subject: PYCO Industries - Feeder Line Application, STB 3484

Mr. Montange,

This confirms our conversation that you are authorized to state in the above referenced Surface Transportation Board proceeding that Hanson Aggregates, Inc. ships constructions aggregates into Lubbock using South Plains Switching LLC rail service and believes that service is inadequate.

Please let me know if you have any questions in this regard.

Mike

Michael H. Hyer
Vice President and General Counsel
Hanson Building Materials America, Inc.
8505 Freeport Parkway, Suite 138
Irving, Texas 75063
Tel (469) 417-1300
Fax (469) 417-1487
michael.hyer@hansonamerica.com

This message and any attached documents contain information from the General Counsel of Hanson Building Materials America, Inc. that may be confidential and/or privileged. If you received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message. Thank you.

6/13/2006

VERIFICATION

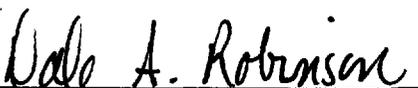
STATE OF TEXAS)
) SS:
COUNTY OF LUBBOCK)

DELILAH WISENER, being duly sworn on oath, deposes and states that she has read the foregoing statement, that she knows the contents thereof, and that the facts therein stated are true and correct.

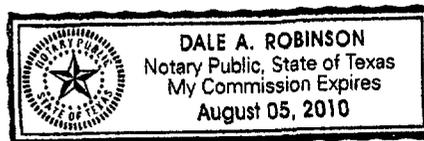


DELILAH WISENER

SUBSCRIBED AND SWORN to
Before me this 28th day
of December, 2006.



Notary Public



My Commission Expires: *August 05, 2010*