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THOMAS F. McFARLAND

February 1, 2010

By UPS overnight mail

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

FILED

FEB - 2 2010

**SURFACE
TRANSPORTATION BOARD**

226 386

Re: Finance Docket No. 35350, *Drake Cement, LLC -- Acquisition Exemption --
Clarkdale Arizona Central Railroad, LLC in Yavapai County, AZ*

Finance Docket No. 35351, *Drake Switching Company, LLC -- Operation
Exemption -- Drake Cement, LLC in Yavapai County, AZ*

226 387

Dear Section of Administration Chief:

Enclosed please find an original and 10 copies of Notices of Exemption Under 49 C.F.R.
§ 1150.31, for filing with the Board in the above referenced matter.

Also enclosed is a check in the amount of \$3,600 for the filing fee.

FEE RECEIVED
FEB - 2 2010
**SURFACE
TRANSPORTATION BOARD**

Very truly yours,

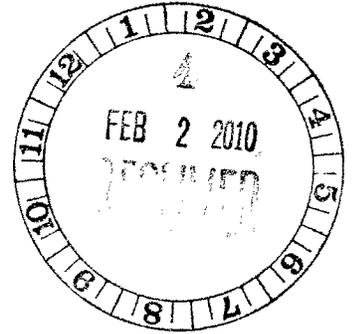
Tom McFarland

Thomas F. McFarland
Attorney for Applicants

ENTERED
Office of Proceedings

FEB - 2 2010

Part of
Public Record



BEFORE THE
SURFACE TRANSPORTATION BOARD

DRAKE CEMENT, LLC -- ACQUISITION)
EXEMPTION -- CLARKDALE ARIZONA) FINANCE DOCKET 226386
CENTRAL RAILROAD, LLC IN) NO. 35350
YAVAPAI COUNTY, AZ)

DRAKE SWITCHING COMPANY, LLC)
-- OPERATION EXEMPTION -- DRAKE) FINANCE DOCKET 226387
CEMENT, LLC IN YAVAPAI COUNTY,) NO. 35351
AZ)

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Office of Proceedings
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Public Record

NOTICES OF EXEMPTION
UNDER 49 C.F.R. § 1150.31

FEE RECEIVED
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SURFACE
TRANSPORTATION BOARD

DRAKE CEMENT, LLC
14500 N. Northsight Blvd.
Suite 317
Scottsdale, AZ 85260

DRAKE SWITCHING COMPANY, LLC
14500 N. Northsight Blvd.
Suite 317
Scottsdale, AZ 85260

Applicants

PATRICK J. BLACK
FENNEMORE, CRAIG, P.C.
3003 North Central Ave., Suite 2600
Phoenix, AZ 85012

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, #1890
Chicago, IL 60604-1112
(312) 236-0204 (ph)
(312) 201-9695 (fax)
mcfarland@aol.com

Attorneys for Applicants

Date Filed: February 2, 2010

FILED
FEB - 2 2010
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DRAKE CEMENT, LLC -- ACQUISITION)	
EXEMPTION -- CLARKDALE ARIZONA)	FINANCE DOCKET
CENTRAL RAILROAD, LLC IN)	NO. 35350
YAVAPAI COUNTY, AZ)	
)	
DRAKE SWITCHING COMPANY, LLC)	
-- OPERATION EXEMPTION -- DRAKE)	
CEMENT, LLC IN YAVAPAI COUNTY,)	FINANCE DOCKET
AZ)	NO. 35351
)	

**NOTICES OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**

AUTHORITY SOUGHT

Pursuant to 49 C.F.R. § 1150.31, DRAKE CEMENT, LLC (DC) and DRAKE SWITCHING COMPANY, LLC (DSC), both of which are non-carriers, hereby provide notice of their class exemption from 49 U.S.C. § 10901 for DC's acquisition and for DSC's operation of the following rail property located at or near Drake, Yavapai County, Arizona:

- (1) a railroad yard consisting of six tracks (Tracks A-F, inclusive) having total length of 18,292.02 linear feet, or approximately 3.46 miles ("the Yard");
and
- (2) two tracks (Tracks G and H) that extend 3,495.84 linear feet, or approximately 0.66-miles, between Track C in the Yard and facilities owned and operated by DC ("the Operating Tracks").

PRINT OF TRACKAGE UNDER CONSIDERATION

Attached to this Notice as Appendix 1 is a print on which the Yard Tracks and the Operating Tracks are shown, referred to as “the Rail Property”. The length of each track in the Yard and the length of each of the Operating Tracks are shown next to the identification of each track on the Print. Also shown are the facilities of DC served by the Operating Tracks to the left of Tracks G and H on the Print.

NEED FOR BOARD AUTHORITY OR EXEMPTION

The Yard Tracks (Tracks A-F) are “switching tracks” within the meaning of 49 U.S.C. § 10906. It is likely that the Operating Tracks are properly classified as “industrial tracks” within the meaning of that statute. Pursuant to that statute, Board authority or exemption generally is not required for acquisition or operation of switching tracks or industrial tracks.

However, pursuant to a principle adopted in *Effingham RR Co. - Pet. for Declaratory Order*, 2 S.T.B. 606 (1997), *aff'd sub nom. United Transp. Union v. STB*, 183 F.3d 606 (7th Cir. 1999), Board authority or exemption is required for acquisition or operation of switching tracks or industrial tracks, where, as here, such acquisition and operation are the initial acquisition and operation of entities not theretofore acting as rail carriers. Inasmuch as this would be DC’s initial acquisition of a rail line and DSC’s initial operation of a rail line, those entities are filing this Notice of Exemption for acquisition and operation of such trackage.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

The following is furnished pursuant to 49 C.F.R. § 1150.33:

(a) *The full name and address of applicants;*

Applicants are Drake Cement, LLC (Finance Docket No. 35350) and Drake Switching Company, LLC (Finance Docket No. 35351), 14500 N. Northsight Blvd., Suite 317, Scottsdale, AZ 85260.

(b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence;*

Applicants' representative who should receive correspondence is Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, #1890, Chicago, IL 60604-1112, 312-236-0204.

(c) *A statement that an agreement has been reached or details about when an agreement will be reached;*

Agreements have been reached between DC and Clarkdale Arizona Central Railroad, LLC for acquisition of the Rail Property by DC, and between DC and DSC for operation of the Rail Property by DSC.

(d) *The operator of the property;*

The operator of the property will be DSC.

(e) *A brief summary of the proposed transaction, including:*

(1) *The name and address of the railroad transferring the subject property;*

The railroad transferring the Rail Property to DC is Clarkdale Arizona Central Railroad, LLC, P.O. Box 154, Ogden, UT 84402.

(2) *The proposed time schedule for consummation of the transaction;*

The transactions will be consummated no earlier than thirty days after the filing of this notice.

(3) *The mileposts of the subject property, including any branch lines; and*

The Rail Property is not described by Milepost numbers. The Rail Property is described as follows:

- (a) a railroad yard consisting of six tracks (Tracks A-F, inclusive) having total length of 18,292.02 linear feet, or approximately 3.46 miles (“the Yard”); and
- (b) two tracks (Tracks G and H) that extend 3,495.84 linear feet, or approximately 0.66-miles, between Track C in the Yard and facilities owned and operated by DC (“the Operating Tracks”).

(4) *The total route miles being acquired;*

A total of approximately 4.12 route miles are being acquired and operated.

(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and*

The required print is attached to this notice as Appendix 1.

(g) *A certificate that applicants’ projected revenues do not exceed those that would qualify them as Class III rail carriers.*

The required certification is attached to this notice as Appendix 2.

VERIFICATION

A verification is included in Appendix 2.

CAPTION SUMMARY

The required caption summary is attached as Appendix 3.

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

Pursuant to 49 C.F.R. § 1105.6(c)(2) and 1105.7(b)(1), there is no requirement of environmental or historic reporting in conjunction with these notices. Applicants believe that the

acquisition and operation of the Rail Lines resulting from this notice will not have a significant adverse effect on the human environment nor on structures of historical significance.

LABOR CONSIDERATIONS

Pursuant to 49 U.S.C. § 10901(c), the Board is prohibited from imposing labor protective conditions in conjunction with acquisition and operation of rail lines by non-carriers. Therefore, no such condition is to be imposed in conjunction with these notices of exemption.

WHEREFORE, notice of these notices should be published in the Federal Register within 16 days of their filing.

Respectfully submitted,

DRAKE CEMENT, LLC
14500 N. Northsight Blvd.
Suite 317
Scottsdale, AZ 85260

DRAKE SWITCHING COMPANY, LLC
14500 N. Northsight Blvd.
Suite 317
Scottsdale, AZ 85260

Applicants

Patrick J. Black 

PATRICK J. BLACK
FENNEMORE, CRAIG, P.C.
3003 North Central Ave., Suite 2600
Phoenix, AZ 85012

Thomas F. McFarland

THOMAS F. McFARLAND
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208 South LaSalle Street, #1890
Chicago, IL 60604-1112
(312) 236-0204 (ph)
(312) 201-9695 (fax)
mcfarland@aol.com

Attorneys for Applicants

Date Filed: February 2, 2010

VERIFICATION

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

THOMAS F. McFARLAND, being duly sworn on oath, deposes and states that he has read the foregoing notices, that he knows the contents thereof, and that the facts therein stated are true and correct. Thomas F. McFarland certifies that the projected revenues as a result of the proposed acquisition and operation will not exceed those that would qualify applicants as Class III rail carriers.



Thomas F. McFarland

THOMAS F. McFARLAND

SUBSCRIBED and SWORN to
before me this 1st day of
February, 2010.

Kathleen Lenihan

Notary Public

My Commission Expires: 1/29/2014

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 35350

*Drake Cement, LLC -- Acquisition Exemption -- Clarkdale
Arizona Central Railroad, LLC, in Yavapai County, AZ*

STB Finance Docket No. 35351

*Drake Switching Company, LLC -- Operation
Exemption -- Drake Cement, LLC in Yavapai County, AZ*

Drake Cement, LLC (DC) and Drake Switching Company, LLC (DSC), non-carriers, have filed notices of their class exemption from 49 U.S.C. § 10901 for DC's acquisition and for DSC's operation of the following rail property located at or near Drake, Yavapai County, Arizona:

- (1) a railroad yard consisting of six tracks (Tracks A-F, inclusive) having total length of 18,292.02 linear feet, or approximately 3.46 miles ("the Yard"); and
- (2) two tracks (Tracks G and H) that extend 3,495.84 linear feet, or approximately 0.66-miles, between Track C in the Yard and facilities owned and operated by DC ("the Operating Tracks").

The above rail property totals approximately 4.12 miles.

Comments must be filed with the Board and served on the representative of DC and DSC, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, 312-236-0204.

The notice is filed under 49 C.F.R. § 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

By the Board