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January 13, 2010

Attorney Anne Peters  
Newtown Inland Wetlands Commission  
Newtown Municipal Center  
3 Primrose Street  
Newtown, Connecticut 06470

Re: Hawleyville Operations

Dear Attorney Peters:

I am in receipt of a copy of a letter from Attorney General Richard Blumenthal to you dated January 8, 2009 which concerns Housatonic Railroad operations at Hawleyville. I will clarify the railroad's position with respect to some of the points raised in the letter. My failure to address other points should not be construed as agreement with them.

Housatonic Railroad agrees that the Clean Railroads Act of 2008 (the "Act") subjects the railroad to "all applicable Federal and State requirements, both substantive and procedural, including judicial and administrative orders and fines, respecting the prevention and abatement of pollution, the protection and restoration of the environment, and the protection of public health and safety, including laws governing solid waste" for solid waste transfer facilities. While the railroad agrees that the Act conferred jurisdiction on the states for the enforcement of state requirements, the railroad does not agree that the Act removed any federal jurisdiction with respect to the enforcement of federal requirements.

While not specifically addressed in Mr. Blumenthal's letter, the railroad notes that the Act does not confer siting authority upon the states with respect to any solid waste rail transfer facility existing prior to the date of enactment of the Act. Accordingly, the railroad acknowledges that the state may impose reasonable operational requirements for the protection of the environment with respect to an existing solid waste rail transfer facility. However, it may not use environmental requirements to prohibit the siting of an existing facility.

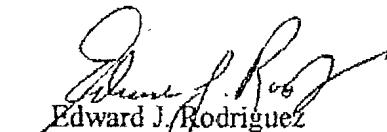
The state's jurisdiction conferred by the Clean Railroads Act extends only to the solid waste rail transfer facility. It does not extend to other areas of rail operation, including yard facilities which are not part of the solid waste rail transfer facility. A "Solid Waste Rail Transfer Facility" is defined in the Act as follows:

The term 'solid waste rail transfer facility'--(i) means the portion of a facility owned or operated by or on behalf of a rail carrier (as defined in section 10102 of this title) where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers. 49 U.S.C. 10908(e)(1)(H).

The track construction which is the subject of the pending application before the Inland Wetlands Commission will not be a part of the permitted solid waste rail transfer facility as defined by the Act and as set forth in the railroad's revised DEP application. None of the activities enumerated in the definition will occur on the track. The track will be used for the switching of railcars for all activities within the Shepaug Terminal Facility and may be used for the loading or unloading of non-waste commodities, primarily lumber and plywood.<sup>1</sup>

As I have reiterated in the past, Housatonic Railroad remains committed to working on a voluntary and reasonable basis with the Newtown Inland Wetlands Commission and other state and local agencies involved with the protection of the environment to help to preserve and protect important environmental resources.

Very truly yours,

  
Edward J. Rodriguez  
General Counsel

cc: Attorney General Richard Blumenthal

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<sup>1</sup> The application filed with the DEP relocates the solid waste rail transfer activities so that none of those activities occur in the upland review area and so that all loading will occur in a building. During the interim period of operations, the railroad will continue to handle waste materials in the same area as such material has historically been handled with an active loading area for two rail cars.