

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel

625 Broadway, 14th Floor, Albany, New York 12233-1010

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[www.dec.ny.gov](http://www.dec.ny.gov)

December 19, 2017

David Michaud  
General Counsel & Vice President  
of Human Resources  
Iowa Pacific Holdings  
118 South Clinton St., Suite 400  
Chicago, IL 60661

Re: **Saratoga & North Creek Railway – Tahawus Branch  
Commercial Railcar Storage in the Adirondack Forest Preserve**

Dear Mr. Michaud:

We are writing to put you on notice that the New York State Department of Environmental Conservation (Department) will be filing an application to the federal Surface Transportation Board (STB) seeking adverse abandonment of the authority of Saratoga & North Creek Railway to operate over the rail line that runs from Tahawus in Essex County to North Creek in Warren County (Tahawus Branch). As such, the Department demands that Saratoga & North Creek Railway immediately cease and desist receiving and storing any future railcars on the Tahawus Branch, and to remove the existing railcars stored on this rail line, until a decision regarding this application is rendered by the STB. Saratoga & North Creek Railway proceeds at its own risk in taking any action in support of storing railcars, and the State reserves all rights with regard to taking any legal action necessary to have the railcars removed from the Tahawus Branch.

This Department has the power and duty provide for the care, custody and control of the Forest Preserve in the Adirondack Park. All state-owned land within the Adirondack Park is Forest Preserve land, and it has been protected in accordance with the will of the New York's voters since 1894 pursuant to Article XIV of the state's Constitution. It is to be kept "forever wild," in recognition of the importance of preserving and protecting its irreplaceable aesthetic beauty and natural resources. It is the largest parkland in the continental United States.

The Tahawus Branch was originally intended to facilitate the transportation of freight from the former mine owned and operated by NL Industries. In 2012, the Saratoga & North Creek Railway, a subsidiary of Iowa Pacific Holdings, obtained STB authorization to become a common carrier for freight along this line. As you may recall, the Department initially objected to Iowa Pacific's application for the Railway to resume these operations. However, Iowa Pacific emphasized the employment, environmental and energy benefits that would be created through the operation of a freight line, and



committed that in the event it ever sought to discontinue service, upon abandonment it would designate the railroad right of way for the use as a trail under the terms and conditions of the National Trails Act. Iowa Pacific also agreed to allow the use of snowmobiles on its right of way over the winter. Enclosed is a copy of Iowa Pacific's 2012 letter to the Department in which it made these commitments.

As a result of these assurances, the Department withdrew its objections to the application by Iowa Pacific to use the Tahawus Branch for freight. However, Iowa Pacific's operations have never satisfied these objectives nor has it fulfilled its commitment to provide for snowmobile use.

The Department's earlier support of the Saratoga & North Creek Railway's application for a freight line on the Tahawus Branch through the Forest Preserve was intended to provide an environmentally sound alternative to truck traffic, foster economic development within the region, as well as a recreational opportunity for snowmobile use in the winter. The Department never intended, nor has it ever agreed, that Iowa Pacific should turn this 30-mile corridor in the Forest Preserve into a commercial disposal site.

The Department's application will be filed with the STB today, and I am available to discuss this demand with you at your convenience.

Sincerely,



Thomas S. Berkman  
Deputy Commissioner  
and General Counsel

Attachments

232069



State of New York  
Department of  
Environmental Conservation  
625 Broadway, Albany, NY 12233  
Marc S. Gerstman  
Executive Deputy Commissioner



State of New York  
Department of  
Transportation  
50 Wolf Rd, Albany, NY 12232  
Stanley Gee  
Executive Deputy Commissioner

March 15, 2012

ENTERED  
Office of Proceedings

MAR 19 2012

Part of  
Public Record

Ms. Cynthia A. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

RE: FD 35559 – Saratoga & North Creek Railway LLC – Operation Exemption –  
Tahawus Line

Dear Ms. Brown:

We are writing to urge the Surface Transportation Board to approve Saratoga & North Creek Railway LLC (SNCR)'s Notice of Exemption for operation of the Tahawus Line. Based on an extensive examination of the merits of SNCR's proposal, both the New York State Department of Environmental Conservation (DEC) and the New York State Department of Transportation (NYSDOT) agree that the environmental, economic, recreational and safety issues associated with the rail operations have been addressed satisfactorily.

From an environmental perspective, the resumption of the rail line can result in the dramatic reduction of truck traffic in this sensitive area of the Adirondack Park, thereby reducing harmful emissions, lowering the region's carbon footprint and greatly diminishing dust and noise, while unsightly piles of aggregate are removed. Furthermore, SNCR has agreed to allow snowmobile use on the line during the winter months, and also committed to dedicating the line to trail use upon abandonment.

The resumption of the rail line will also add to the year round employment base of the region, improve the safety and environmental costs of aggregate removal, ensure that this product is recycled, and reduce expensive road maintenance costs.

DEC, as stewards of the public lands through which the Tahawus Line runs, has plans for the use of this rail corridor through the public property, including winter use to establish a snowmobile trail

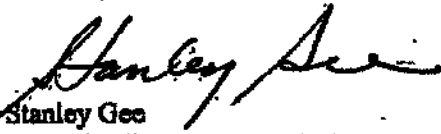
connection between communities north and south along this line. We are now assured by SNCR that should the exemption be granted, snowmobile use will be allowed. Thus, DEC's plans to create a snowmobile community "connector" can come to fruition in the near term. The longer term goal of ultimately creating a pedestrian friendly trail along this corridor can also be realized upon future abandonment.

Enclosed is a copy of correspondence from representatives of SNCR to DEC dated March 8, 2012 concerning the request before the Surface Transportation Board. In its letter to Commissioner Martens, SNCR stated it will not oppose the use of the rail line for outdoor recreational purposes upon abandonment. In addition, SNCR agreed that DEC could authorize the use of the railroad right of way as a snowmobile trail during the winter season when trains will not be operated.

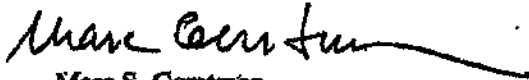
The NYSDOT has adopted general policies to promote the use of rail for the movement of goods<sup>1</sup>. The restoration of the Tahawus Line to service by the Saratoga & North Creek Railway would be consistent with these goals. It would reduce truck traffic within the Adirondack Park, with corresponding reductions in emissions and wear and tear on the region's highways, and will foster economic development within the region.

We therefore urge the Board to grant the SNCR's appeal of the Acting Director of the Office of Proceedings' decision to reject the Notice of Exemption and restore SNCR's Notice of Exemption to the active docket. Should the Board require information which was not included in the original Notice or subsequent filings, it should impose a housekeeping stay, solicit and receive the necessary information, and ultimately render a decision on the merits of the SNCR's Notice.

Sincerely,



Stanley Gee  
Executive Deputy Commissioner  
New York State Department of Transportation



Marc S. Gerstman  
Executive Deputy Commissioner  
New York State Department of Environmental Conservation

Enclosure

<sup>1</sup> See the 2009 New York State Rail Plan – Strategies for a New Age, available at <https://www.dot.ny.gov/divisions/policy-and-strategy/planning-bureau/state-rail-plan>.

# Strasburger

ATTORNEYS AT LAW

March 8, 2012

JOHN D. HEFFNER

Direct Fax 202-742-8687  
Direct Phone 202-742-8607

Commissioner Joseph J. Martens  
New York State Department of Environmental Conservation  
625 Broadway,  
Albany, NY 12333-1010

Dear Commissioner Martens:

**RE: Saratoga and North Creek Railway, LLC**

Dear Commissioner Martens:

I am writing you at the suggestion of Deputy Commissioner Mark Gerstman in connection with the notice that the Saratoga and North Creek Railway, LLC ("Saratoga") filed at the federal Surface Transportation Board ("STB") for authority to provide common carrier railroad service over a line of railroad in New York State known as the Tahawus Line. Rob Davies of your office had filed a letter with the STB expressing some concerns about this transaction. It is our understanding that the New York State Department of Transportation would like to work with your agency on preparing a joint support letter to be filed with the STB.

Saratoga's representatives have been conferring with members of your agency in an attempt to provide a letter of comfort to get your support. At the end of a recent conference call between the DEC and the railroad's representatives, Saratoga agreed to provide your agency with a letter addressing four issues raised during that call by your staff. We were informed that acceptable responses would be very helpful in obtaining your agency's support for this transaction. Specifically, those issues and our responses are as follows:

1. Rail trail creation. Should Saratoga ever seek to discontinue service over and abandon the Tahawus Line between MP NC 0.0 at North Creek and the end of the line at Newcomb at MP NC 29.71, would Saratoga commit to designating the right of way for use as a trail under the National Trails Act?

Strasburger & Price, LLP

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Commissioner Joseph J. Martens

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Yes, Saratoga would commit to making the line available for trail use under the terms and conditions of the Trails Act and the implementing regulations at 49 CFR 1152.29 upon abandonment.

2. Snow mobile use. Will Saratoga permit the operation of snow mobiles on its right of way during the winter?

Yes.

3. Economic and employment impacts. What are the likely economic and employment impacts resulting from initiation of rail service over the Tahawus Line?

In terms of direct employment impacts, Saratoga anticipates having to employ as many as four people locally to operate and maintain rail service over the Tahawus Line. Saratoga believes that the major shipper, NL Industries ("NL"), would likely add one to two people at its local facility as well. Moreover, Saratoga anticipates employing approximately 15 to 20 people for a major rehabilitation of this rail line. In terms of indirect benefits to the local economy, Saratoga's payroll associated with the Tahawus Line would add \$160,000 per year to the local economy. This figure does not include any employment or other impacts generated by NL or Saratoga's track rehabilitation program of the Tahawus Line.

4. Environmental and energy impacts. What are the beneficial environmental and energy impacts associated with the initiation of rail service over the Tahawus Line?

As discussed with Rob Davies, an accurate answer to this question requires information that Saratoga currently lacks. Among other variables, the answer is a function of the total amount of aggregate available to be mined, NL's ability to find markets for its product, and Saratoga's ability to negotiate a freight rate with its connecting railroad, CP Rail, that NL finds acceptable. However, based upon current information, Saratoga and NL estimate the total amount of aggregate market to be mined and shipped is in the range of 100

Commissioner Joseph J. Martens

March 8, 2012

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million tons. Assuming that NL moves 50% of this traffic by rail, that translates into approximately 500,000 rail car equivalents over the life of this resource. Further assuming the diversion to rail of a typical truck payload, use of rail to move NL's traffic would divert some 2,000,000 trucks off the road during the life of this resource.

As you may know, the Association of American Railroads has done extensive research on the greater environmental and energy efficiency of rail over truck transportation. This information can be found at [www.aar.org/environment.aspx](http://www.aar.org/environment.aspx). A freight train moves a ton of freight an average of 484 miles on a single gallon of fuel. According to a recent independent study produced for the Federal Railroad Administration, railroads on average are four times more fuel-efficient than trucks. Railroad fuel efficiency is up 106 percent since 1980.

- Because greenhouse gas emissions are directly related to fuel consumption, railroads have a lower carbon footprint. In fact, moving freight by rail instead of truck reduces gas emissions by 75 percent, on average.
- If just 10 percent of long-distance freight that currently moves by highway switched to rail, national fuel savings would exceed one billion gallons a year and annual greenhouse gas emissions would fall by some 12 million tons.
- From 1980 through 2010, U.S. freight railroads emitted 658 million fewer tons of carbon dioxide thanks to their fuel efficiency gains.
- A single freight train can take the load of 280 or more trucks — equivalent to 1,100 cars — off our overcrowded highways. Moving freight by rail also reduces the pressure to build costly new roads and helps cut the cost of maintaining the roads we already have.

Suffice it to say that the environmental and energy benefits of rail over motor transportation in terms of fewer pollutants in the air, a lower "carbon footprint," lower fuel consumption, ability to use different types of fuel or power, and reduced dependence upon imported oil are so well documented as to be common knowledge. Equally known is rail's superiority over truck from a safety perspective particularly over narrow winding two lane roads in an area that experiences bad winter weather. Finally, use of rail is beneficial to our highways

**Strasburger**  
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Commissioner Joseph J. Martens

March 8, 2012

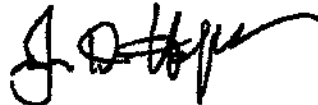
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and motorists by reducing traffic congestion and preserving our roads from the debilitating effects of heavy trucks moving over a deteriorating highway network. In fact, rail is highly beneficial because it reduces the burden on publicly-financed infrastructure by shifting freight to privately-financed railroad trackage.

Saratoga hopes that this letter provides your agency with the information it seeks and looks forward to receiving a draft of a joint support letter from the Departments of Environmental Conservation and Transportation.

Sincerely yours,



John D. Heffner

cc: Mr. Edwin Ellis