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June 1, 2023
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June 1, 2023

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Dover and Delaware River Railroad, LLC
– Lease (Including Interchange Commitment)
And Trackage Rights Exemption –
Norfolk Southern Railway Company and New Jersey Transit Corporation
Surface Transportation Board Finance Docket 36703

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a verified notice of exemption filed under 49 U.S.C. § 10902. The filing fee has been paid via pay.gov.

Sincerely,

FILED

**June 1, 2023
SURFACE
TRANSPORTATION BOARD**



Justin J. Marks
Counsel to Dover and Delaware River Railroad,
LLC

Enclosure

FEE RECEIVED

**June 1, 2023
SURFACE
TRANSPORTATION BOARD**

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36703

**DOVER AND DELAWARE RIVER RAILROAD, LLC
- LEASE (INCLUDING INTERCHANGE COMMITMENT)
AND TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY
AND NEW JERSEY TRANSIT CORPORATION**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902**

(includes color images)

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*Attorneys for Dover and Delaware River
Railroad, LLC*

Dated: June 1, 2023

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36703

**DOVER AND DELAWARE RIVER RAILROAD, LLC
- LEASE (INCLUDING INTERCHANGE COMMITMENT)
AND TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY
AND NEW JERSEY TRANSIT CORPORATION**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902**

Dover and Delaware River Railroad, LLC (“DDRR”), a Class III railroad, files this Notice of Exemption under 49 U.S.C. § 10902 to exempt from regulation DDRR’s entry into a renewed and amended lease agreement (“Amended Lease”) to amend the existing lease (the “Current Lease”) between DDRR and Norfolk Southern Railway Company (“NSR”) in December 2018. Further, DDRR files this Notice of Exemption to amend the Trackage Rights Agreement between NSR, DDRR, and the New Jersey Transit Corporation (“NJT”) for DDRR’s operation of local trackage rights over connecting NJT rail lines (the “Trackage Lines”).¹ NSR and NJT have entered into an agreement² to adjust ownership of the NSR and NJT lines and the Amended Lease and the amendment to the Trackage Rights Agreement reflect these adjustments.

The Amended Lease will add 0.75 miles of line to the Current Lease of the Washington Secondary. The Washington Secondary will now extend between milepost WD 57.25

¹ *Dover and Delaware River Railroad, LLC – Lease (Including Interchange Commitment) and Trackage Rights Exemption – Norfolk Southern Railway Company and New Jersey Transit Corporation*, STB Docket No. FD 36258 (December 20, 2018).

² *Verified Notice of Exemption*, New Jersey Transit Corporation – Acquisition Exemption – Norfolk Southern Railway Company in the Counties of Morris and Warren, New Jersey STB Docket No. FD 36676 (filed May 30, 2023).

(previously WD 58.0) at Hackettstown, and milepost WD 80.3 at Phillipsburg.³ The Amended Lease will also revise other commercial terms.

DDRR, NSR, and NJT will revise a corresponding segment of the Trackage Lines known as the Morristown Line. The Morristown Line segments previously extended between milepost 7.8 at Newark and milepost 48.1 at Netcong, and between milepost 48.1 and milepost 58.0 at Hackettstown. The combined segments will now extend from milepost 7.8 to milepost 57.25.

The Amended Lease will result in DDRR leasing a total of 27.95 miles of rail line from NSR and the amended Trackage Rights Agreement will result in DDRR operating 79.95 miles of Trackage Lines. These revisions will result in no net change in the mileage operated by DDRR. Together these lines are referred to herein as the “Rail Lines.”

Notice

In accordance with 49 C.F.R. §1150.43, DDRR hereby provides the following information:

(a) The full name and address of Applicant: Dover and Delaware River Railroad, LLC, 20 Toad Lane, Ringoes, NJ 08551.

(b) Applicant’s Representatives:

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.

³ The other lines under the Current Lease are not being modified. The total mileage of the lines covered by the Current and Amended Lease (together, the “Leased Lines”) will be 27.95 miles.

Suite 1300 South
Washington, DC 20004
(202) 772-0916

- (c) DDRR has been operating the Leased Lines under the Current Lease and the current Trackage Rights Agreement. DDRR and NSR have now entered into the Amended Lease for the Leased Lines. In addition, DDRR, NSR, and NJT are amending the Trackage Rights Agreement to cover DDRR's operation of the Trackage Lines.
- (d) The current operator of the Rail Lines is DDRR. DDRR will be the operator after the transaction.
- (e) Brief Summary of the Proposed Transaction: DDRR is currently operating the Rail Lines under the Current Lease and the current Trackage Rights Agreement. This proposed transaction adds 0.75 miles of line to the Leased Lines under the DDRR/NSR Current Lease and subtracts 0.75 miles of the connecting Trackage Lines from the DDRR, NSR, NJT Trackage Rights Agreement.
 - i. The name and address of the company leasing the Leased Lines is Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510. The name and address of the owner of the Trackage Lines is New Jersey Transit Corporation, 1 Penn Plaza East, Newark, NJ 07105.
 - ii. The Amended Lease and the amended Trackage Rights Agreement will each be effective upon the effective date of this Notice of Exemption, thirty days after filing. DDRR is currently operating the Rail Lines under the terms of the Current Lease and Current Trackage Rights Agreement and will continue to do so until the Amended Lease and amended Trackage Rights Agreement become effective.

iii. The mileposts of the Leased Lines under the Current and Amended Lease:

(1) Washington Secondary, between milepost WD 57.25 (previously WD 58.0) at Hackettstown, and milepost WD 80.3 at Phillipsburg; (2) Old Road Industrial Track, between milepost 66.5 TG at Washington, and milepost 67.6 TG at Washington; (3) Pompton Industrial Track, between milepost PQ 21.4 at Mountain View, and milepost PQ 22.2 at Wayne; and (4) Totowa Spur, between milepost TO 18.0 at Totowa, and milepost 21.0 at Wayne.

The mileposts of the Trackage Lines under the amended Trackage Rights Agreement: (1) Morristown Line, between milepost 7.8 at Newark Broad Street, and milepost 48.1 at Netcong; (2) Morristown Line, between milepost 48.1 at Netcong, and milepost 57.25 (previously milepost 58.0) at Hackettstown; (3) Gladstone Branch, between milepost 20.1 at Summit, and milepost 25.7 at Berkeley Heights; and (4) Montclair Line, between milepost 9.0 at Newark Roseville Avenue, and milepost 33.9 at Denville.

iv. The Amended Lease will result in DDDR leasing a total of 27.95 miles of rail line from NSR, and the amended Trackage Rights Agreement will result in DDDR operating a total of 79.95 miles of Trackage Lines. The total mileage of the Rail Lines to be operated by DDDR is approximately 107.9 miles.

(f) Attached as Exhibit A to this Notice of Exemption is a map of the Rail Lines.

(g) DDDR certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier.⁴

⁴ DDDR additionally certifies that its projected revenues after the transactions will not exceed \$5,000,000 per year.

(h) DDDR certifies that an interchange commitment will continue to apply during the term of the Amended Lease. The following additional information is provided by DDDR with respect to the interchange commitment:

- i. The Current Lease contains an interchange commitment that affects interchange with carriers other than NSR at the interchange point shown on the map attached as Exhibit A. The Amended Lease does not change the interchange commitment.
- ii. A confidential version of the Amended Lease is being submitted under separate cover as part of a Confidential Appendix governed by 49 CFR 1104.14(a).
- iii. Shippers who currently use or who have used the Leased Lines in the last two calendar years, and whose traffic is subject to the interchange commitment is attached hereto as Exhibit B.
- iv. The aggregate number of carloads originated or terminated within the last two calendar years by the shippers identified in subparagraph (iii) above is included as part of the Confidential Appendix.
- v. DDDR hereby certifies that, as set forth in the certificate of service, it has provided notice of the proposed transaction and the continued interchange commitment by serving a copy of this Notice of Exemption on the shippers identified in subparagraph (iii) above.
- vi. No carriers other than NSR physically connect with the Leased Lines. However, DDDR could interchange traffic that originates or terminates on the Leased Lines with ME and with DRRV.
- vii. DDDR does not have the information to estimate the difference between the rent with and without the interchange commitment, as the lines were not offered for

lease without the interchange commitment. Under Board precedent, an entity filing a notice of exemption may request an estimate of the difference from the lessor railroad. *Information Required in Notices and Petitions Containing Interchange Commitments*, STB Docket No. EP 714 (served September 5, 2013), *slip op.* at 5-6. DDDR is providing a copy of the NSR response from the original lease proceeding (FD 36258) in the Confidential Appendix as this information has not changed.

- viii. The caption of this Notice reflects the existence of the interchange commitment.

Labor Protection

DDRR is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions.

Environmental and Historic Reports

This is a lease for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for DDDR to discontinue (or for NSR to abandon service), or to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit C is the caption summary required by 49 C.F.R. §1150.44.

Conclusion

Accordingly, DDDR requests that the Board issue a notice allowing the Amended Lease and amended Trackage Rights Agreement to become effective 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



Eric M. Hocky
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ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com


*Attorneys for Dover and Delaware River
Railroad, LLC.*

Dated: June 1, 2023

VERIFICATION

I, Kean Burenga, President of the Dover and Delaware River Railroad, LLC, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on June 1, 2023



Kean Burenga

EXHIBIT A

MAP

Chesapeake & Delaware LLC

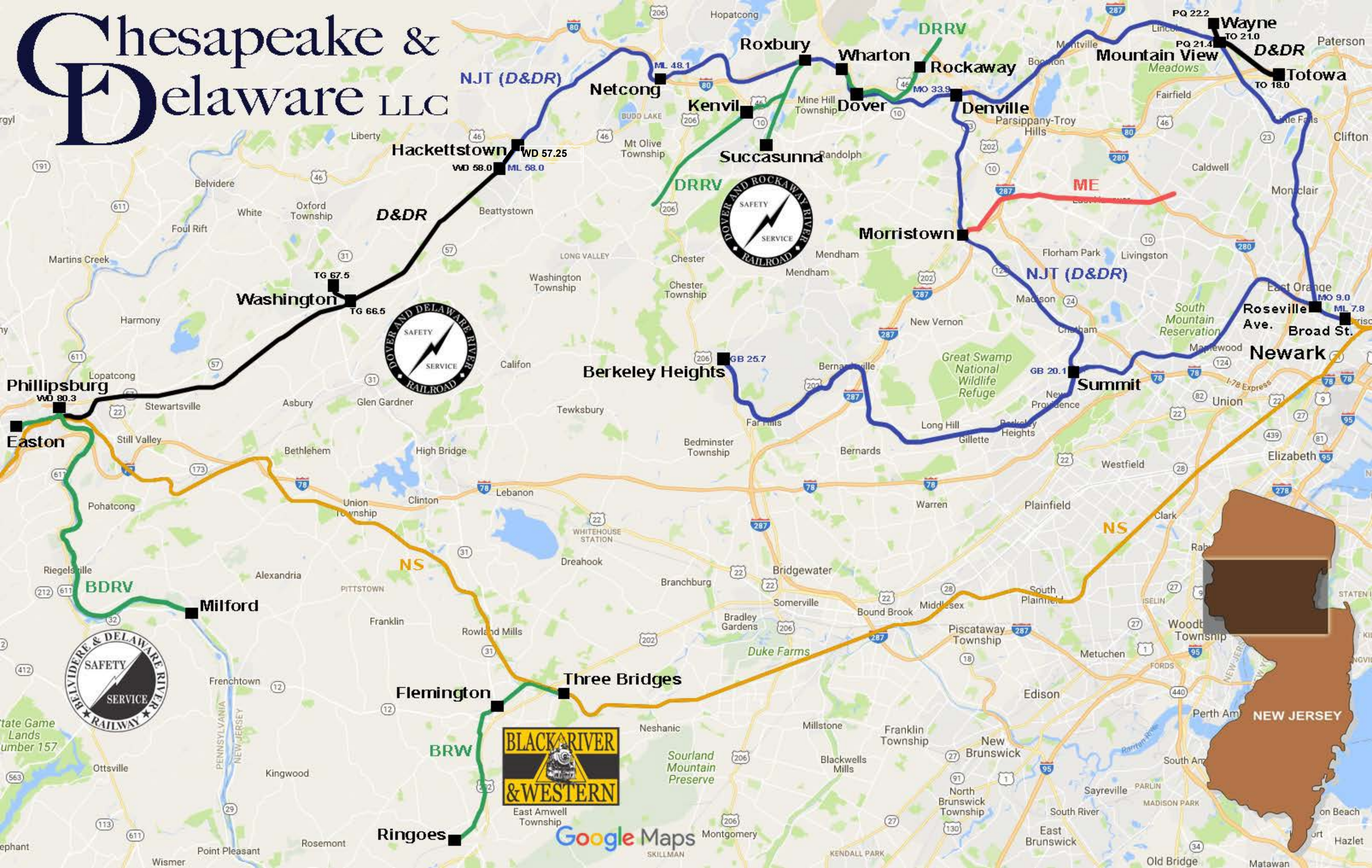


EXHIBIT B

LIST OF SHIPPERS

Borealis Compounds Inc.
176 Thomas Road
Port Murray NJ 07865-4014

KNF Flexpak Corp.
734 West Penn Pike, Suite 1
Tamaqua PA 18252

Omega Warehouse Inc.
859 Riverview Drive
Totowa NJ 07512

Rafco Plastics Inc.
11 Vreeland Avenue
Totowa NJ 07512

Royal Ingredients Inc.
50 Maltese Drive
Totowa NJ 07512-1403

Interstate Brands Corp.
75 Demarest Drive
Wayne NJ 07470

Avantor Performance Materials Inc.
600 North Broad Street
Phillipsburg NJ 08865-1271

Berry Plastics Corp.
190 Strykers Road
Phillipsburg NJ 08865

Yusen Logistics
555 Route 57
Port Murray NJ 07865

BASF Corp.
2 Pleasant View Avenue
Washington NJ 07882-2320

Pechiney Plastic Packaging Inc.
191 State Route 31 North
Washington NJ 07882

EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 36703

**DOVER AND DELAWARE RIVER RAILROAD, LLC
- LEASE (INCLUDING INTERCHANGE COMMITMENT)
AND TRACKAGE RIGHTS EXEMPTION –
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The Amended Lease will add 0.75 miles of line to the Current Lease on the Washington Secondary. The Washington Secondary will now extend between milepost WD 57.25

⁵ *Dover and Delaware River Railroad, LLC – Lease (Including Interchange Commitment) and Trackage Rights Exemption – Norfolk Southern Railway Company and New Jersey Transit Corporation*, STB Docket No. FD 36258 (December 20, 2018).

(previously WD 58.0) at Hackettstown, and milepost WD 80.3 at Phillipsburg. The Amended Lease will also revise other commercial terms.

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The Amended Lease will result in DDRR leasing a total of 27.95 miles of rail line from NSR, and the amended Trackage Rights Agreement will result in DDRR operating 79.95 miles of Trackage Lines. These revisions will result in no net change in the mileage operated by DDRR.

Comments must be filed with the Board and served on DDRR's representative, Justin J. Marks, Clark Hill, PLC, 1001 Pennsylvania Ave. N.W. Suite 1300 South, Washington DC 20004, jmarks@clarkhill.com; (202) 772-0916.

The Notice is filed under 49 C.F.R. §1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Board decisions and notices are available at www.stb.gov.

Decided: _____, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by U.S. first class mail, postage pre-paid on the following shippers subject to the interchange commitment:

Borealis Compounds Inc.
176 Thomas Road
Port Murray NJ 07865-4014

Omega Warehouse Inc.
859 Riverview Drive
Totowa NJ 07512

Royal Ingredients Inc.
50 Maltese Drive
Totowa NJ 07512-1403

Avantor Performance Materials Inc.
600 North Broad Street
Phillipsburg NJ 08865-1271

Yusen Logistics
555 Route 57
Port Murray NJ 07865

Pechiney Plastic Packaging Inc.
191 State Route 31 North
Washington NJ 07882

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734 West Penn Pike, Suite 1
Tamaqua PA 18252

Rafco Plastics Inc.
11 Vreeland Avenue
Totowa NJ 07512

Interstate Brands Corp.
75 Demarest Drive
Wayne NJ 07470

Berry Plastics Corp.
190 Strykers Road
Phillipsburg NJ 08865

BASF Corp.
2 Pleasant View Avenue
Washington NJ 07882-2320



Justin J. Marks

Dated: June 1, 2023