

## § 1155.22

(Include this paragraph for facilities not in existence on October 16, 2008). Applicant certifies that, based on information in its possession, the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. Applicant further certifies that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law No. 108-421, for which a state has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (state) under The Highlands Conservation Act, Pub. L. No. 108-421, placed at its proposed location). Any relevant documentation in the railroad's possession on these issues will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

The application containing the information set forth at 49 CFR 1155.22 will include the applicant's entire case for the granting of the land-use-exemption permit (case in chief). Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board written comments concerning the application within 45 days after the application is filed.

Comments should contain that party's entire case in support or opposition including the following, as appropriate:

(1) Name, address, and organizational affiliation.

(2) A statement describing commenter's interest in the proceeding, including information concerning the organization or public interest the commenter represents.

(3) Specific reasons why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration provided in 49 U.S.C. 10909(c), (d) and these regulations.

(4) If the applicant files under 49 CFR 1155.23, specific reasons why commenter supports or opposes the Board's accepting the application.

(5) Any rebuttal of material submitted by applicant.

Written comments will be considered by the Board in determining what disposition to make of the application. Parties seeking information concerning the filing of comments should refer to 49 CFR 1155.25.

Written comments should indicate the proceeding designation STB Finance Docket No. \_\_\_\_ (Sub-No. \_\_\_\_ ) and must be filed with the Secretary, Surface Transportation

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Board, 395 E Street, SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each written comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR 1155, each document filed with the Board must be served on all parties to the land-use-exemption-permit proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, and the full land-use-exemption-permit regulations at 49 CFR 1155.

A copy of the application will be available for public inspection on or after (insert date the land-use-exemption-permit application is to be filed with Board). The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

Questions concerning potential environmental issues may be directed to the Board's Section of Environmental Analysis. Where the preparation of environmental documentation under the National Environmental Policy Act is warranted, a Draft Environmental Impact Statement (EIS) (or more limited Environmental Assessment (EA), if appropriate) prepared by the Section of Environmental Analysis will be issued for public review and comment and served upon all parties of record and upon any agencies or other persons who commented during its preparation. The comments received will be addressed in the Final EIS or Post EA. The Board will take into account the results of the environmental review and any final recommended environmental mitigation in deciding what action to take on the application.

### § 1155.22 Contents of application.

Applications for land-use-exemption permits shall contain the following information, including supporting documentation:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

(3) Summary of why a land-use-exemption permit is being sought.

(4) The full address of the solid waste rail transfer facility, or, if not available, the city, state, and United States Postal Service ZIP code.

(5) The line of railroad serving the facility, the milepost location of the facility, and the milepost and names of

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the stations that the facility is located between.

(6) Name, title, and address of representative of applicant to whom comments should be sent.

(7) Citation to all state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility.

(8) Copies of the specific state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility from which the applicant requests entire or partial exemption that would otherwise apply, any publicly available material providing the criteria in the application of the regulations, and a description of any action that the state, local, or municipal authority has taken affecting the siting of the facility.

(9) Certification that the laws, regulations, orders or other requirements from which the applicant requests exemption are not based on Federal laws, regulations, orders, or other requirements.

(10) Certification that the facility complies with all state, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the facility except those for which it seeks exemption.

(11) Citation to the regulations listed in 49 CFR 1155.27(c)(1) through (5).

(12) Certification that the applicant has applied or will apply for the appropriate state permits not affecting siting.

(13) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. For facilities in existence as of October 16, 2008, state whether the facility is located in any of these types of lands.

(14) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law

No. 108-421, for which a state has implemented a conservation management plan, or, that the facility is consistent with the restrictions implemented by the applicable state under The Highlands Conservation Act, Public Law No. 108-421, placed on its proposed location. For facilities in existence as of October 16, 2008, state whether the facility is located in any of these lands, and, if so, address whether the facility is consistent with the restrictions placed on the location by the applicable state under that law.

(15) A detailed description of the operations and activities that will occur/are occurring at the facility.

(16) Detailed map showing the subject facility on a sheet not larger than 8 x 10½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the facility on the rail line and its relation to other rail lines in the area, highways, water routes, population centers and any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1).

(17) Detailed drawing of the subject facility on a sheet not larger than 8 x 10½ inches, drawn to scale, and with the scale shown thereon. The drawing must show, in clear relief, the exact boundaries of the facility, structures at the facility, the location and type of the operations taking place at the facility, the proposed traffic configuration for the solid waste entering and leaving the facility, reasonable future expansion that the applicant requests to be included in the land-use-exemption permit, any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1), and any other information that the applicant would like to show.

(b) *A statement that sets forth in detail the reasons why the Board should grant a land-use-exemption permit to the applicant.* The applicant shall organize its request in terms of the standards for the Board's review and consideration

provided in 49 U.S.C. 10909(c), (d) and these regulations.

(c) *Environmental impact.* The applicant shall certify that it has submitted an environmental and/or historical report containing the information in 49 CFR 1105.7 and 1105.8, if one is required, to allow the Board's Section of Environmental Analysis to determine whether preparation of environmental documentation is warranted, and, if so, whether a full Environmental Impact Statement or a more limited Environmental Assessment should be prepared.

(d) *Additional information.* The applicant shall submit such additional information to support its application as the Board may require.

(e) *Draft FEDERAL REGISTER Notice.* The applicant shall submit a draft notice of its application to be published by the Board. In addition to the regular number of copies that must be filed with the Board, the applicant must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The Board will publish the notice in the FEDERAL REGISTER within 20 days of the application's filing with the Board. The draft notice shall be in the following form:

STB Finance Docket No. \_\_\_\_ (Sub-No. \_\_\_\_)

Notice of Application for a land-use-exemption permit for a solid waste rail transfer facility.

On (insert date application was filed with the Board) (name of applicant) filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility. The solid waste rail transfer station is located at (full address, or, if not available, provide city, state, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a line of railroad known as \_\_\_\_ at milepost \_\_\_\_ between (station name) at milepost \_\_\_\_ and (station name) at milepost \_\_\_\_ . The application explains why applicant believes its request for a land-use-exemption permit should be granted.

(Include this paragraph for facilities not in existence on October 16, 2008). The facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National

Monument. The facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law No. 108-421, for which a state has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (state) under The Highlands Conservation Act, Pub. L. No. 108-421, placed on its proposed location). Any relevant documentation in the railroad's possession will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

Any interested person may file with the Surface Transportation Board written comments concerning the application within 45 days of the filing of the application. Persons seeking information concerning the filing of comments should refer to 49 CFR 1155.25.

Written comments should indicate the proceeding designation STB Finance Docket No. \_\_\_\_ (Sub-No. \_\_\_\_) and must be filed with the Secretary, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each written comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR 1155, each document filed with the Board must be served on all parties to the land-use-exemption permit proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, and the full land-use-exemption-permit regulations at 49 CFR 1155.

A copy of the application is available for public inspection. The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

Questions concerning potential environmental issues may be directed to the Board's Section of Environmental Analysis. Where the preparation of environmental documentation under the National Environmental Policy Act is warranted, a Draft Environmental Impact Statement (EIS) (or more limited Environmental Assessment (EA), if appropriate) prepared by the Section of Environmental Analysis will be issued for public review and comment and served upon all parties of record and upon any agencies or other persons who commented during its preparation. The comments received will be addressed in the Final EIS or Post EA. The Board will take into account the results of

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the environmental review and any final recommended environmental mitigation in deciding what action to take on the application.

(f) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the applicant having knowledge of the facts and matters relied upon.

Verification  
State of \_\_\_\_ ss.  
County of \_\_\_\_

\_\_\_\_ (Name of affiant) makes oath and says that (s)he is the \_\_\_\_ (title of affiant) of the \_\_\_\_ (name of applicant) applicant herein; that (s)he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Surface Transportation Board the foregoing application in STB Finance Docket No. \_\_\_\_ (Sub-No. \_\_\_\_); that (s)he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that (s)he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his/her knowledge, information, and belief.

(Signature)

Subscribed and sworn to before me \_\_\_\_ in and for the State and County above named, this \_\_\_\_ day of \_\_\_\_, 20\_\_.  
My commission expires \_\_\_\_.

**§ 1155.23 Additional requirements when filing after an unsatisfactory result from a State, local, or municipal authority affecting the siting of the facility.**

(a) When an applicant has previously sought permission from the applicable state, local, or municipal authority and received an unsatisfactory result, such as inordinate delay, affecting the siting of the facility, the applicant may petition the Board to accept an application for a land-use-exemption permit. The applicant shall address in its petition why applicant believes it can make the showing required in 49 CFR 1155.23(b). The petition shall be filed simultaneously with the land-use-exemption permit application.

(b) Standard for review. The Board will not consider a land-use-exemption-permit application regarding laws, regulations, or other requirements upon which the applicant has received an unsatisfactory result from a state, local, or municipal authority, unless the Board finds that the laws, regulations, or other requirements affect the siting

of the facility, on their face or as applied, either

(1) Unreasonably burden the interstate transportation of solid waste by railroad, or

(2) Discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility.

**§ 1155.24 Filings and service of application.**

(a) The applicant shall tender with its application an affidavit attesting to its compliance with the notice requirements of 49 CFR 1155.20. The affidavit shall include the dates of service, posting, and newspaper publication of the Notice of Intent.

(b) When the application is filed with the Board, the applicant shall serve, by first-class mail, a copy on the Governor of the state where the facility is located, and the state, local, and/or municipal agency/ies that would have permitting or review authority of the solid waste rail transfer facility if there were no federal preemption. A copy of the certificate of service shall be filed with the Board at the same time.

(c) The applicant shall promptly furnish by first class mail a copy of the application to any interested person proposing to file a written comment upon request. A copy of the certificate of service shall be filed with the Board at the same time.

(d)(1) Upon the filing of a land-use-exemption-permit application, the Board will review the application and determine whether it conforms to all applicable regulations. If the application is substantially incomplete or its filing otherwise defective, the Board shall reject the application for stated reasons by order (which order will be administratively final) within 20 days from the date of filing of the application. If the Board does not reject the application, notice of the filing of the application shall be published in the FEDERAL REGISTER by the Board, through the Director of the Office of Proceedings, within 20 days of the filing of the application.

(2) An applicant may seek waiver of specific regulations listed in subpart C of this part by filing a petition for waiver with the Board. A decision by