

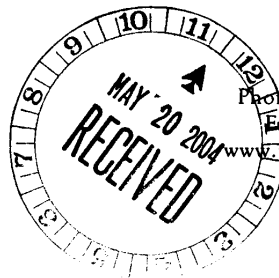
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May 19, 2004



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VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

ENTERED
Office of Proceedings

MAY 20 2004

Part of
Public Record

Re: **Finance Docket No. 34192 -210994**
Hi Tech Trans LLC -- Petition For
Declaratory Order -- Hudson County, NJ

Finance Docket No. 34192 (Sub-No. 1) -210995
Hi Tech Trans LLC -- Petition for Declaratory Order --
Rail Transload Facility at Oak Island Yard, Newark, NJ

Dear Secretary Williams:

We have received the letter dated May 7, 2004 filed by the Hudson County Improvement Authority and Essex County Utilities Authority (the "Counties") in the above-captioned proceedings. In their letter, the Counties seek to argue that the decision in Grafton and Upton Railroad Company v. Town of Milford, No. 03-40291-NMG (D. Mass. 2004) has no relevance to the pending appeal of Hi Tech Trans LLC ("HTT") herein. We note that in our letter of May 5, 2004, we simply provided a copy of the Grafton & Upton decision to the Board without further argument or discussion. Other parties have previously complained when HTT did anything more. See September 22, 2003 letter filing of New Jersey Department of Environmental Protection. In light of the Counties' letter, however, we feel it necessary to explain why the Board should carefully consider the decision in Grafton & Upton.

The facts presented in Grafton & Upton are essentially the converse of the facts presented by HTT's appeal. As the Counties correctly point out, the Grafton and Upton Railroad Company ("G&U") is a certificated rail carrier. However, as the Board knows, the Boston Railway Terminal Corporation ("BRT") is not. In Grafton & Upton, a carrier (G&U) leased property in its yard to a non-carrier (BRT) so that the BRT could operate a facility for unloading cars containing steel products for which it apparently was the consignee. The BRT then used its own trucks to distribute the steel products to its customers who were located throughout New England.

FLETCHER & SIPPEL LLC

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In this case, a rail carrier (Canadian Pacific Railway) has leased the property in its yard facility (Oak Island Yard) to a non-carrier (HTT) so that HTT can transload construction and demolition debris into rail cars which are then transported by Canadian Pacific.

In its decision in Grafton & Upton, the district court concluded that the local zoning and land use ordinances of the Town of Milford had been preempted by the ICC Termination Act of 1995. The court also concluded that the permitting requirements under the Massachusetts Wetlands Protection Act were similarly preempted. Specifically, at page 12 of the slip opinion, the court concluded "that Massachusetts environmental regulations and local zoning bylaws are preempted" by ICCTA. In other words, a facility at a rail yard used by a non-rail carrier to transload steel product from rail cars to trucks was subject to preemption under ICCTA.

As noted above, the facts presented by Grafton & Upton are essentially a mirror image of those presented in this case. The court's finding of preemption is clearly relevant in connection with the Board's determination of Hi Tech's appeal.

Ten copies of this letter are enclosed for filing at the Board. One extra copy also is enclosed, and I would request that you date-stamp that copy and return it to me in the enclosed, self-addressed stamped envelope.

Respectfully submitted,



James A. Fletcher
Attorney for Hi Tech Trans LLC

JAF/pj

Enclosures

cc: Benjamin Clarke, Esq. (via overnight delivery)
Edward D. Greenberg, Esq. (via overnight delivery)
All Other Parties of Record (via regular mail)