

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34662

CSX TRANSPORTATION, INC. – PETITION FOR DECLARATORY ORDER

COMMENTS OF WATCO COMPANIES, INC., ET AL.

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Dated: February 16, 2005

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Pursuant to the decision of the Surface Transportation Board (“Board”) served February 8, 2005, Watco Companies, Inc. (“Watco”) and its ten subsidiary Class III railroads (“Watco Railroads”) file these Comments in support of the petition filed by CSX Transportation, Inc. (“CSXT”) in this proceeding, seeking an order declaring that an ordinance recently passed by the City Council of the District of Columbia (“District”) governing the transportation of hazardous materials moving by rail through the District (“Ordinance”) is preempted by 49 U.S.C. § 10501.

Watco is a non-carrier corporation which currently controls the following ten (10) Class III railroads operating in eleven States: South Kansas and Oklahoma Railroad Company, Palouse River & Coulee City Railroad, Inc., the Timber Rock Railroad, Inc., the Stillwater Central Railroad, the Eastern Idaho Railroad, Inc., Kansas & Oklahoma Railroad, Inc., the Pennsylvania Southwestern Railroad, Inc., the Great Northwest Railroad, Inc., the Kaw River Railroad, Inc., and the Mission Mountain Railroad, Inc.¹

¹ On February 9, 2005, Watco filed a Notice of Exemption to continue in control of the Appalachian & Ohio Railroad, Inc. (“AO”), upon AO’s becoming a Class III railroad. Once AO consummates the lease of certain rail lines owned by CSXT, Watco will be in control of eleven (11) Class III railroads operating in twelve States.

The Ordinance passed by the City Council of the District would make it illegal to transport certain hazardous commodities through the District without obtaining a permit from the District's Department of Transportation. The Ordinance would also make it unlawful to operate a vehicle or rail car that is capable of containing certain hazardous commodities.

Watco and the Watco Railroads have a vital interest in this proceeding. Each of the Watco Railroads transports hazardous materials and collectively the Watco Railroads operate through or near hundreds of communities in eleven States. The Watco Railroads routinely route both loaded cars containing hazardous commodities and unloaded cars capable of containing hazardous commodities through many of these communities. The Watco Railroads handle the hazardous commodities in compliance with the safety regulations of the Federal Railroad Administration and the Hazardous Materials Transportation Act.

If the District's Ordinance is allowed to stand numerous other communities would undoubtedly enact similar measures. The precedent that would be set by this Ordinance would have far reaching and dire consequences not only for the railroad industry but all industries that manufacture or utilize hazardous materials. The resultant patchwork of routing regulations and restrictions would inevitably cripple the railroad industry and deleteriously impact all industries that rely on rail service.

As explained in greater detail by CSXT, the District's Ordinance is preempted by Section 10501(b) which expressly provides that the Board has exclusive jurisdiction over railroad "routes, services, and facilities...." Moreover, the Board's governing statute provides that "the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. § 10501(b).

The legislative history of the Interstate Commerce Commission Termination Act ("ICCTA") is informative about Congress' intent in giving the Board exclusive jurisdiction over railroad operations and services:

This provision replaces the railroad portion of former Section 10501. Conforming changes are made to reflect the direct and complete preemption of State economic regulation of railroads.... Although States retain the police powers reserved by the Constitution, the Federal scheme of economic regulation and deregulation is intended to address and encompass all such regulation and to be completely exclusive. Any other construction would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation.

U.S. Code, Congressional and Administrative News, 1995, Vol. 2, pp 807-08.

The Board, its predecessor agency and courts have consistently held that permitting schemes such as the Ordinance and other local attempts to regulate various aspects of railroad operations are preempted. *See e.g., City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998)(State and local environmental review procedures are not enforceable against a railroad reconstructing a rail line); STB Finance Docket No. 33466, *Borough of Riverdale – Petition for Declaratory Order – The New York Susquehanna & Western Ry. Corp.* (not printed), served September 9, 1999 (State and local permitting provisions governing railroad operations are preempted); *Friberg v. Kansas City Southern Railway Company*, 267 F.3d 439 (5th Cir. 2001)("The regulation of railroad operations has long been a traditionally federal endeavor, to better establish uniformity in such operations and expediency in commerce, and it appears manifest that Congress intended the ICCTA to further that exclusively federal effort...."); *Rodgers v. Burlington Northern Santa Fe Corporation*, 98 F. Supp.2d 1186 (E.D. Wash., 2000)(under ICCTA, Board has exclusive jurisdiction to decide railroad operations and service

matters); *Cedarapids, Inc. v. Chicago, Central & Pacific Railroad Company*, 265 F.Supp2d 1005 (N.D. Iowa, 2003)(ICCTA preempts state court jurisdiction over rail service issues); *Burlington Northern Railroad Company v. Page Grain Company*, 545 N.W.2d 749 (Neb. 1996)(“State courts no longer have jurisdiction to consider the practices, routes, services, and facilities of interstate rail carriers because [ICCTA] grants the [Board] with exclusive jurisdiction over transportation by rail carriers as part of the interstate rail network”); *Appeal of Conservation Law Foundation*, 782 A.2d 909 (N.H. 2001)(ICCTA preempts State laws affecting railroad operations).

In conclusion, Watco and the Watco Railroads strongly support CSXT’s petition and respectfully urge the Board to declare that the District’s Ordinance is preempted by Section 10501.

Respectfully submitted,



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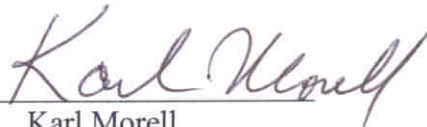
Dated: February 16, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2005, I have caused a copy of the foregoing Comments to be served on:

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