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215149

November 15, 2005

Via Overnight & Regular Mail

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423

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RE: Formal Comments on Petition for Declaratory Order
National Solid Wastes Management Association, et al
FD-34776

Dear Secretary Williams:

Enclosed please find the comments of the Cape May County Municipal Utilities Authority on the Petition for Declaratory Order filed by the National Solid Wastes Management Association, et al, Finance Docket Number 34776.

In reviewing the attached comments, we urge the Surface Transportation Board to recognize and consider the interests of the members of the public that will be affected by your decision in this matter.

Very truly yours,

CAPE MAY COUNTY
MUNICIPAL UTILITIES AUTHORITY

A handwritten signature in cursive script, appearing to read "George Marinakis".

George Marinakis, P.E.
Executive Director

GM:tag
Enclosure
cc: Mr. Steve Changaris, NSWMA

**BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 34776
COMMENTS OF
CAPE MAY COUNTY
MUNICIPAL UTILITIES AUTHORITY
ON THE PETITION OF
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, ET AL
FOR DECLARATORY ORDER**

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INTRODUCTION

The Cape May County Municipal Utilities Authority (CMCMUA/Authority) is submitting these comments in support of the Petition for Declaratory Order filed by the National Solid Wastes Management Association, and others, with respect to solid waste facilities located along railroad tracks, and the exemption from State and local regulations and permitting requirements now claimed by the operators of such facilities.

In accordance with State law, the County of Cape May has developed and implemented a comprehensive Solid Waste Management Plan (SWMP) with the goal of ensuring the availability of a reliable and environmentally responsible method of disposal for solid waste generated within the County. The strategy set forth in the Cape May County SWMP not only provides for the proper long-term disposal of the County's solid waste but also emphasizes and, in fact, provides financial support for, various local and County-wide recycling initiatives. As the designated implementing agency for the Cape May County SWMP, the Cape May County Municipal Utilities Authority desires to ensure that all solid waste generated within Cape May County is handled, processed and disposed of in a manner that is consistent with the provisions of the State-approved Cape May County SWMP and does not pose a threat to the health and safety of the public or to the environment.

COMMENTS

Several companies are currently operating, or proposing to operate, solid waste facilities along railroad tracks in New Jersey and other States. Notwithstanding the fact that solid waste rail transfer facilities receive and process materials that pose a threat to public health, safety and the environment if such materials are not properly managed, the operators of these facilities claim exemption from the State and local regulations and permitting requirements that typically apply to the construction and operation of such facilities.

Federal law provides that the Surface Transportation Board (STB) has exclusive jurisdiction over transportation by rail carriers, and over the construction, acquisition and operation of rail transportation facilities. Although it is well established that the exclusive jurisdiction of the STB extends to traditional rail facilities that are **integrally related** to the provision of rail transportation, a number of railroad companies have represented that virtually any facilities they construct, operate and/or sublease, are within the "exclusive jurisdiction" of the STB simply because they are located adjacent to a rail line. This interpretation is not supported by either existing case law or prior STB opinions. As a result, there is a need for the STB to now address this matter by providing appropriate guidance.

The CMCMUA does not contest the exclusive jurisdiction of the Surface Transportation Board over legitimate rail facilities and rail functions. Furthermore, the CMCMUA does not contest the STB's exclusive jurisdiction over true intermodal facilities which simply serve to transfer

containers of waste (or any other material) from truck to rail when such containers have been filled and sealed prior to delivery to a rail siding. However, the facility described in the NSWMA's Petition is not a true intermodal facility. Functionally, it is a solid waste facility, involved in the management of solid waste. This type of activity does not, and should not, fall within the exclusive jurisdiction of the STB.

The STB has no meaningful environmental controls over intermodal facilities, and true intermodal facilities do not need many environmental controls. However, rail transfer stations that receive and process non-containerized solid and/or hazardous waste actually participate in the handling of materials that require greater oversight and more careful environmental controls. In the absence of adequate environmental controls, these facilities can create risks to public health and the environment. The facility that is the subject of the NSWMA petition represents a clear example of the need for appropriate environmental safe guards. The STB must address this and similar facilities in a responsible manner by balancing the need to adequately protect the public/environment with the need to ensure that operations that are truly **integral** to the activity of rail transportation are not impeded by unnecessary State and local requirements.

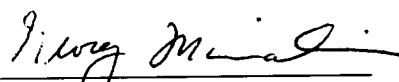
Neither the federal government nor the STB currently regulate solid waste facilities, due in large part to the extensive network of State and local laws that apply to the construction and operation of such facilities. Exclusive STB jurisdiction over solid waste rail transfer stations effectively strips these facilities of any meaningful environmental regulation, oversight or control, and presents a serious risk to public health and the environment. Unless the STB is prepared to assume and actively engage in the role of environmental watchdog for such facilities, the STB

should recognize that protection of public health and the environment related to the construction and operation of such facilities is best provided at the State and/or local level.

The CMCMUA urges the STB to issue a direct and clear ruling that prevents solid waste rail transfer station operators from abusing the exclusive preemption proved to the STB under the Interstate Commerce Commission Termination Act (the "Act"). The operators of solid waste rail transfer facilities abuse the statutory objective of the exclusive jurisdiction granted to the STB under the Act when they claim to be performing services that are integral and directly related to rail transportation when they are, in fact, actually performing the task of handling solid/hazardous waste in a manner inconsistent with State and local requirements and the interests of the public.

For the foregoing reasons, the Cape May County Municipal Utilities Authority urges the Surface Transportation Board to grant NSWMA's Petition for Declaratory Order.

Respectfully submitted,

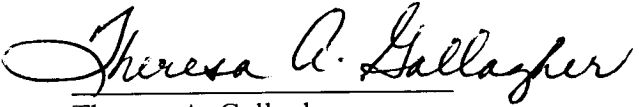

George Marinakis, P.E.
Executive Director

I hereby certify that a true copy of the foregoing Comment was served this 15th day of November, 2005, upon the following by Overnight and Regular Mail:

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