

December 1, 2005

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

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

Dear Secretary Williams:

Enclosed please find the comments of the Boston Mountain Solid Waste District in support of the Petition for Declaratory Order filed by National Solid Wastes Management Association, et al, Finance Docket Number 34776.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven L. Parker".

Steven L. Parker
Director

Enclosure:
-Comments

Official Recordings

**BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 34776
COMMENTS OF THE BOSTON MOUNTAIN
SOLID WASTE DISTRICT
IN SUPPORT OF THE PETITION OF
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, ET AL
FOR DECLARATORY ORDER**

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Steven L. Parker, Director
Boston Mountain Solid Waste District
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Dated: December 1, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 34776
COMMENTS OF THE BOSTON MOUNTAIN
SOLID WASTE DISTRICT IN SUPPORT OF
THE PETITION OF
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, ET AL
FOR DECLARATORY ORDER**

INTRODUCTION

The Boston Mountain Solid Waste District is a local governmental entity located within the State of Arkansas. We provide solid waste management and planning services within Madison and Washington Counties. One of our specific duties and obligations within the solid waste management system of the State of Arkansas is to determine the need for solid waste transfer stations within our District. Solid waste management is a primary function of local government, derived from the police powers, akin to water, sewer, fire and police protection. To allow a railroad to establish a waste transfer facility under the guise of normal railroad activity without state and local government oversight and regulation eviscerates local governmental authority.

COMMENTS

1. Many facilities ship materials by rail. Auto makers ship cars and trucks. Sawmills ship lumber. Coal mines ship coal. Some waste transfer stations ship garbage by rail. Just because these facilities ship goods by rail, does not mean that the Surface Transportation Board ("STB") has jurisdiction over those sites and activities. If a railroad chooses to get into the auto manufacturing, coal mining or waste management business, then they are engaging in activities outside the scope of railroading. Their ownership of and engagement in any of these activities should not extend STB jurisdiction to the exclusive oversight of these activities.
2. STB jurisdiction over inter-modal facilities is not questioned. If a waste transfer station were to load waste into an inter-modal container, truck it to an inter-modal facility and the containers were then loaded onto rail cars, the STB clearly has jurisdiction at the inter-modal facility. There, containers are handled, containing many different types of goods, possibly including garbage. However, the act of collecting the waste and loading it into the containers is not typical railroad business. Instead, this falls into the realm of waste management. Regardless of the entity conducting the loading or where it takes place, the STB should not be entitled to exclusive jurisdiction of this activity. This is in the realm of human and environmental health and safety, and the time-honored jurisdiction of local governments in this arena should not be quashed.

3. The subject Petition has resulted from the activities of a few railroads that are attempting to stretch the rules to gain a competitive advantage as they branch out into other types of business. The need for STB's exclusive jurisdiction concerning interstate railroad transportation of goods is clear. However, this exclusive jurisdiction should not extend outside the narrow realm of transportation, regardless of who owns the facility. The STB does not govern the extraction of coal, the milling of lumber nor the manufacture of automobiles. Likewise, you should not govern the management of solid wastes. Once it is loaded onto a rail car, your authority governs. Until that time, it is a local government issue of management and regulatory authority.

For the foregoing reasons, the Boston Mountain Solid Waste District urges the Surface Transportation Board to grant NSWMA's Petition for Declaratory Order.

Respectfully submitted,


Steven L. Parker, Director

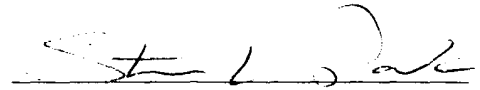
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Comment was served this 1st day of December, 2005, upon the following by first class mail:

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Attn: Nathan Fenno, Esq., General Counsel

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