



THE UNITED STATES CONFERENCE OF MAYORS

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December 9, 2005

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

315333

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 U.S. Conference of Mayors on the Petition for Declaratory Order filed by National Solid Wastes Management Association, et al, Finance Docket Number 34776.

Sincerely,

Tom Cochran
Executive Director

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Mayor of Long Beach

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MICHAEL A. GUIDO
Mayor of Dearborn

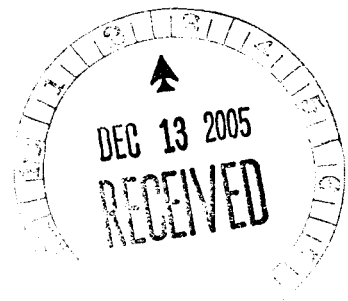
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Executive Director:
TOM COCHRAN

**BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 34776
COMMENTS OF THE U.S. CONFERENCE OF MAYORS
ON THE PETITION OF
NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION (NWWMA), ET AL
FOR DECLARATORY ORDER**



The U.S. Conference of Mayors in June of 2005 adopted formal policy that reasserted our position that cities have the legal right to review and approve solid waste management facilities within their jurisdictions. The Mayors of this nation, who are charged with protecting the health and welfare of their citizens, became concerned when developers of solid waste facilities and transfer stations, which transport municipal solid waste, sought to develop solid waste facilities near railways, i.e., on land not formally or officially designated for these types of operations.

The Conference of Mayors understands the authority given by Congress to amend the Interstate Commerce Act to provide a federal preemption that grants the federal government exclusive jurisdiction over railways, including siting, environmental review, and approval of railway facilities. However, this authority, The U.S. Conference of Mayors believes, should not extend to a facility that is not integrally related to the provisions of rail transportation.

We believe that these developers of solid waste facilities sought to develop solid waste facilities near railways for the purpose of claiming the federal preemption, thereby ignoring or bypassing traditional local and state requirements for development, including environmental and zoning regulations.

This, of course, does not apply to rail based solid waste facilities that are solely intermodal container facilities, at which only containers that are sealed and never opened are handled for purposes of consolidating containers for transport to another location. These types of facilities do not violate local environmental regulations since they are being properly handled.

Our concerns are with those facilities that are described in NSWMA's Petition, which are not true intermodal facilities – rather, they are solid waste management facilities, involved in several aspects of solid waste management. These activities, we believe, do not fall within the Surface Transportation Board's (STB) exclusive jurisdiction.

The STB has no meaningful environmental controls over intermodal facilities, and as mentioned before, true intermodal facilities do not need many environmental controls. Solid waste facilities, including transfer stations, however, manage solid waste and therefore require careful environmental controls. The absence of such controls could potentially create risk to public health and the environment. The facility mentioned in NSWMA's petition is a clear example of this.

The federal government does not regulate solid waste handling facilities, due in large part to the extensive network of applicable state and local laws. Exclusive STB jurisdiction over 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. In addition, if the STB decides that these types of facilities should be included in their preemption, many questions arise regarding their responsibility for such matters that are typically handled by local and state governments. These matters include environmental and public health inspections, the handling of citizen complaints, and responding to environmental emergencies that may be created as a result of the lack of regulation to name a few.

America's cities must preserve the traditional legal rights and authority necessary to perform these important responsibilities and ensure safe and efficient solid waste management, including proper control over zoning, siting, environmental review and approval of solid waste facilities.

Another point to consider is the unfair competitive advantage that these solid waste facilities enjoy over companies that properly go through the local and state zoning requirements and environmental compliance processes. By allowing these facilities to claim a federal preemption, they do not have to comply with these rules and regulations, thereby lessening the expense of siting and operating such a facility. Therefore, if this preemption is allowed, the question arises regarding what would prevent other such developers of solid waste facilities to build many, if not all future transfer stations along railway lines? The potential environmental and public health impact of these facilities could be enormous.

For these reasons, The U.S. Conference of Mayors urges the Surface Transportation Board to grant NSWMA's Petition for Declaratory Order.

Respectfully submitted,

A handwritten signature in black ink that reads "Tom Cochran". The signature is written in a cursive, slightly slanted style.

Tom Cochran
Executive Director