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July 16, 2008

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
395 E St. SW
Washington, DC 20423

ENTERED
Office of Proceedings
JUL 17 2008
Part of
Public Record

Re: New York & Atlantic Railway Co. et al v.
Town of Babylon
FD 35057

Honorable Sir:

Enclosed please find the original and ten copies of the veto message of Governor David A. Paterson of the State of New York, dated July 10, 2008, which relates to the issues before the Board in the captioned matter.

Thank you for your attention to this matter.

Very truly yours,

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STATUS:**S6737-A FUSCHILLO** Same as Uni. A 9655-A Sweeney

Environmental Conservation Law

TITLE.....Relates to the special powers of the metropolitan transportation authority and jurisdiction over an entity operating a facility processing solid waste

01/15/08 REFERRED TO ENVIRONMENTAL CONSERVATION

01/23/08 1ST REPORT CAL.103

01/28/08 2ND REPORT CAL.

01/29/08 ADVANCED TO THIRD READING

06/12/08 AMENDED ON THIRD READING 6737A

06/17/08 PASSED SENATE

06/17/08 DELIVERED TO ASSEMBLY

06/17/08 referred to environmental conservation

06/19/08 substituted for a9655a

06/19/08 ordered to third reading rules cal.435

06/19/08 passed assembly

06/19/08 returned to senate

06/27/08 DELIVERED TO GOVERNOR

07/07/08 VETOED MEMO.13

SUMMARY:**FUSCHILLO**

Amd SS27-0701 & 27-0711, En Con L; amd S1266, Pub Auth L

Relates to the special powers of the metropolitan commuter transportation authority to manage, control and direct maintenance and operation of transportation facilities, equipment or real property operated by or under contract, lease or other arrangement and jurisdiction over an entity that operates a facility that processes or conveys contaminated or uncontaminated solid waste.

VOTING:

06/17/08 S6737-A Senate Vote Aye: 61 Nay: 0

06/17/08 S6737-A Senate Vote Ayc: 61 Nay: 0

Aye Adams	Aye Alesi	Aye Aubertine	Aye Bonacic
Aye Breslin	Aye Bruno	Aye Connor	Aye DeFrancisco
Aye Diaz	Aye Dilan	Aye Duane	Aye Farley
Aye Flanagan	Aye Fuschillo	Aye Golden	Exc Gonzalez
Aye Griffo	Aye Hannon	Aye Hassell-Thompson	Aye Huntley
Aye Johnson C	Aye Johnson O	Aye Klein	Aye Krueger
Aye Kruger	Aye Lanza	Aye Larkin	Aye LaValle
Aye Leibell	Aye Libous	Aye Little	Aye Maltese
Aye Marcellino	Aye Maziarz	Aye Montgomery	Aye Morahan
Aye Nozzolio	Aye Onorato	Aye Oppenheimer	Aye Padavan
Aye Parker	Aye Perkins	Aye Rath	Aye Robach
Aye Sabini	Aye Saland	Aye Sampson	Aye Savino
Aye Schneiderman	Aye Serrano	Aye Seward	Aye Skelos
Aye Smith	Aye Stachowski	Aye Stavisky	Aye Stewart-Cousins
Aye Thompson	Aye Trunzo	Aye Valesky	Aye Volker
Aye Winner	Aye Young		

BILL TEXT:

STATE OF NEW YORK

S. 6737--A
Cal. No. 103

A. 9655--A

SENATE - ASSEMBLY

January 15, 2008

IN SENATE -- Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY -- Introduced by M. of A. SWEENEY, ALFANO -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the public authorities law, in relation to special powers of the metropolitan transportation authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision 2 of section 27-0701 of the environmental
2 conservation law, as amended by chapter 253 of the laws of 1988, is
3 amended to read as follows:
4 2. "Solid waste management facility" means any facility employed
5 beyond the initial solid waste collection process including, but not
6 limited to, transfer stations, baling facilities, rail haul or barge
7 haul facilities, facilities that process, transfer, transload or store
8 contaminated or uncontaminated solid waste, processing systems, includ-
9 ing resource recovery facilities or other facilities for reducing solid
10 waste volume, sanitary landfills, facilities for the disposal of
11 construction and demolition debris, plants and facilities for compact-
12 ing, composting or pyrolyzation of solid wastes, incinerators and other
13 solid waste disposal, reduction or conversion facilities.
14 § 2. Section 27-0711 of the environmental conservation law, as added
15 by chapter 399 of the laws of 1973 and as renumbered by chapter 425 of
16 the laws of 1977, is amended to read as follows:
17 § 27-0711. Local laws, ordinances and regulations.
18 1. Any local laws, ordinances or regulations of any governing body of
19 a county, city, town or village which are not inconsistent with this

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[] is old law to be omitted.

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S. 6737--A

2

A. 9655--A

1 title or with any rule or regulation which shall be promulgated pursuant
2 to this title shall not be superseded by it, and nothing in this title
3 or in any rule or regulation which shall be promulgated pursuant to this
4 title shall preclude the right of any governing body of a county, city,
5 town or village to adopt local laws, ordinances or regulations which are
6 not inconsistent with this title or with any rule or regulation which
7 shall be promulgated pursuant to this title provided, however, that the
8 exercise of such right by a county shall relate only to the area thereof
9 outside any city, village or area of any town outside the village or
10 villages therein during such time as such city, village or town has
11 local laws, ordinances or regulations consistent with this title or with
12 any rule or regulation which shall be promulgated pursuant to this
13 title. Any local laws, ordinances or regulations of a county, city, town
14 or village which comply with at least the minimum applicable require-
15 ments set forth in any rule or regulation promulgated pursuant to this
16 title shall be deemed consistent with this title or with any such rule
17 or regulation.

18 2. Notwithstanding subdivision one of this section, the appropriate
19 governing body of any municipality having a population of less than one
20 million, including a county, city, town or village, shall have jurisdic-
21 tion over any entity, other than the metropolitan transportation author-
22 ity or its subsidiaries or statutory affiliates including, without limi-
23 tation, the New York city transit authority or its subsidiaries, that
24 operates a solid waste management facility.

25 § 3. Subdivision 8 of section 1266 of the public authorities law, as
26 amended by section 23 of part O of chapter 61 of the laws of 2000, is
27 amended to read as follows:

28 8. The authority may do all things it deems necessary, convenient or
29 desirable to manage, control and direct the maintenance and operation of
30 transportation facilities, equipment or real property operated by or
31 under contract, lease or other arrangement with the authority and its
32 subsidiaries, and New York city transit authority and its subsidiaries
33 Except as provided under section 27-0711 of the environmental conserva-
34 tion law, or as hereinafter specially provided, no municipality or poli-
35 tical subdivision, including but not limited to a county, city, village,
36 town or school or other district shall have jurisdiction over any facil-
37 ities of the authority and its subsidiaries, and New York city transit
38 authority and its subsidiaries, or any of their activities or oper-
39 ations. The local laws, resolutions, ordinances, rules and regulations
40 of a municipality or political subdivision, heretofore or hereafter
41 adopted, conflicting with this title or any rule or regulation of the
42 authority or its subsidiaries, or New York city transit authority or its
43 subsidiaries, shall not be applicable to the activities or operations of
44 the authority and its subsidiaries, and New York city transit authority,
45 or the facilities of the authority and its subsidiaries, and New York
46 city transit authority and its subsidiaries, except such facilities that
47 are devoted to purposes other than transportation or transit purposes,
48 including a solid waste management facility, as defined in subdivision
49 two of section 27-0701 of the environmental conservation law, on the
50 authority's property, or the property of its subsidiaries or statutory
51 affiliates including, without limitation, the New York city transit
52 authority or its subsidiaries, regardless of whether the property is
53 owned, leased, or under contract to another entity. Each municipality or
54 political subdivision, including but not limited to a county, city,
55 village, town or district in which any facilities of the authority or
56 its subsidiaries, or New York city transit authority or its subsidiaries

S. 6737--A

3

A. 9655--A

1 are located shall provide for such facilities police, fire and health
2 protection services of the same character and to the same extent as
3 those provided for residents of such municipality or political subdivi-
4 sion.
5 The jurisdiction, supervision, powers and duties of the department of
6 transportation of the state under the transportation law shall not
7 extend to the authority in the exercise of any of its powers under this
8 title. The authority may agree with such department for the execution by
9 such department of any grade crossing elimination project or any grade
10 crossing separation reconstruction project along any railroad facility
11 operated by the authority or by one of its subsidiary corporations or
12 under contract, lease or other arrangement with the authority. Any such
13 project shall be executed as provided in article ten of the transporta-
14 tion law and the railroad law, respectively, and the costs of any such
15 project shall be borne as provided in such laws, except that the author-
16 ity's share of such costs shall be borne by the state.
17 § 4. This act shall take effect immediately.

SPONSORS MEMO:

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S6737A**SPONSOR** FUSCHILLO**TITLE OF BILL:**

An act to amend the environmental conservation law and the public
authorities law, in relation to special powers of the metropolitan
transportation authority

PURPOSE:

To ensure that all facilities that process or transfer solid waste in
the state which may be located on property of the MTA operate in compli-
ance with state environmental conservation laws and any appropriate
municipal or political subdivision law, rule or regulation with respect
to such facility

SUMMARY OF PROVISIONS:

This bill amends section 27-0701 of the environmental conservation law
to expand the definition of "solid waste management facility" to include
facilities that process, transfers, transloads or stores contaminated or
uncontaminated solid waste. Also, the bill amends section 27-0711 allow
the appropriate governing body of any municipality having a population
of less than one million to have jurisdiction over any entity, other
than the MTA or its subsidiaries, that operates a solid waste management
facility. Finally, the bill amends subdivision 8 of section 1266 of the
public authorities law to make it clear that municipalities having a
population of less than one million have jurisdiction over entities,
other than the MTA or its subsidiaries, that operate solid waste

management facilities regardless of whether the property is owned, leased or under contract to another entity.

EXISTING LAW:

None.

JUSTIFICATION.

Currently, some contaminated and uncontaminated solid waste handling, processing and hauling operations, including Construction & Demolition (C&D) operations, are avoiding all state and local regulation by affiliating themselves with railroad entities and claiming that the state and municipalities are preempted by the Interstate Commerce Commission Termination Act (ICCTA) from regulating such operations. This is clearly not in the best interest of the public health, welfare and safety. Such arrangements promoting unregulated C&D, solid waste, hazardous waste and other operations clearly threaten the environment and the health and safety of the surrounding communities and have been the subject of challenges in court and at the federal Surface Transportation Board that regulates railroads. In fact, a recent STB decision in the case of a solid waste management facility operating on private property leased by the facility owners from the MTA, found that a facility built and operated as a transloading facility for construction and demolition debris (C&D) on property leased by the MTA does not qualify for Federal preemption under 49 U.S.C. 10501(b) and is therefore fully subject to local regulation by the town that brought the action. This decision, however, is being reviewed. This bill would therefore make it clear that facilities owned by entities, other than the MTA or its subsidiaries, need to be in full compliance with state and local laws that are intended to regulate these facilities and their operations.

LEGISLATIVE HISTORY:

Vetoed 2006. Veto message 357.

Vetoca 2007 Veto message 159.

FISCAL IMPLICATIONS:

None.

LOCAL FISCAL IMPLICATIONS.

None.

EFFECTIVE DATE

Immediately.

VETO MESSAGE:

VETO MESSAGE - No 13

TO THE SENATE.

I am returning herewith, without my approval, the following bill:

Senate Bill Number 6737-A, entitled

"AN ACT to amend the environmental conservation law and the public authorities law, in relation to special powers of the metropolitan transportation authority"

NOT APPROVED

This bill seeks to grant local governments other than New York City jurisdiction over any entity - other than the Metropolitan Transportation Authority ("MTA") or its subsidiaries - operating a "solid waste management facility." This bill would also place municipal jurisdiction over such facilities on par with that of the Department of Environmental Conservation. Finally, this bill would allow municipalities to regulate solid waste management facilities on MTA property, notwithstanding an MTA exemption from local laws regarding transportation-related activities.

This bill - like similar bills vetoed last year by Governor Spitzer and in 2006 by Governor Pataki - was proposed in response to a dispute relating to a construction and demolition rail waste transfer facility operating in the Town of Babylon in Suffolk County. Presently the case is in litigation awaiting final decisions from the Surface Transportation Board and an appellate court.

Although I certainly recognize the desire of local governments to regulate rail facilities operating within their boundaries, as a general rule such local laws and ordinances are preempted by the federal Interstate Commerce Commission Termination Act ("ICCTA"). Encouraging municipalities to regulate in this area could invite costly and unnecessary litigation involving federally preempted areas. But even if no federal preemption were involved, the provisions of this bill raise other significant concerns. For example, the New York State Department of Transportation ("DOT") indicates that closure of the rail facility in Babylon would result in an additional 32,825 loaded 20-ton trailer dump trucks - and an equal number of empty returning trucks - traveling on downstate roads and bridges each year, which would have an adverse impact on traffic congestion, bridge wear and air quality. In addition, the bill would permit localities to impose divergent requirements on solid waste management facility operators, which could result in a patchwork of laws that conflict with or undercut statewide oversight by the Department of Environmental Conservation ("DEC"). Also, MTA's transportation-related activities must remain free from local regulation to allow MTA to provide a uniform mass transit network. The MTA, DOT, DEC, the Department of State and the City of New York all recommend that this bill be vetoed for some or all of these reasons.

I understand the desire of the proponents of this bill to provide greater local control over rail facilities. However, because such restrictions generally are preempted by federal law, this legislation will not achieve its desired goals and could have other adverse consequences. Further, rail transport must be preserved as a viable alternative to truck traffic on local community roads.

The bill is disapproved.

(signed) DAVID A. PATERSON