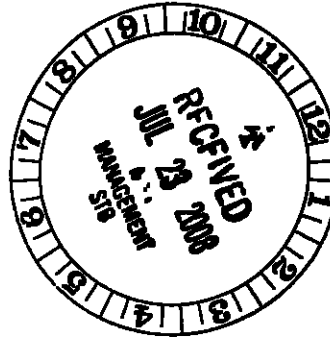


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VIA FEDEX

Mr Vernon A Williams, Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

**Re Response of Town of Babylon and Pinelawn Cemetery – Petitions for
Reconsideration of Coastal Distribution LLC and New York and Atlantic Railway
Company of Decision dated January 31, 2008
Finance Docket No. 35057**

Dear Secretary Williams.

Yesterday, we received a copy of the July 16, 2008 letter to the Board from counsel for Coastal Distribution LLC ("Coastal") forwarding a copy of a message by Governor David Paterson vetoing a bill which would have amended New York's environmental conservation law. Since Coastal forwarded the message without any kind of explanation, we are writing on behalf of the Town of Babylon (the "Town") and Pinelawn Cemetery ("Pinelawn") to explain why the veto message is irrelevant.

On January 31, 2008, the Board issued its decision in this matter holding that it "does not have jurisdiction over Coastal's activities, and the Federal preemption in section 10501(b) does not apply." Coastal subsequently moved for reconsideration based, in part, on a veto message by former Governor Spitzer who wrote that, while he understood "the desire of the proponents of this bill to provide greater local control over rail facilities, . . . such restrictions generally are preempted by federal law" (See Exhibit A to Coastal's Motion for Reconsideration). When Governor Spitzer issued his veto message, the Board had not yet rendered its January 31, 2008 decision. The veto message was thus based on the Governor Spitzer's belief that Coastal's activities were subject to federal preemption. Although the Board's decision very clearly establishes that Governor Spitzer's belief was mistaken, parts of Governor Paterson's recent veto message were cut and pasted – almost word-for-word – from Governor Spitzer's earlier veto message, including its erroneous reference to federal preemption. Thus, just as Governor Spitzer wrote that "such restrictions are generally preempted by federal law," Governor Paterson wrote

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Hon Vernon A Williams, Secretary
July 22, 2008
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that "as a general rule such local laws and ordinances are preempted by the federal Interstate Commerce Commission Termination Act" – even though the Board has held that Coastal's operation is not subject to federal preemption. Governor Paterson did, however, recognize that it is up to the Board to determine whether Coastal's operation is subject to state and local regulation

In addition to copying the part of Governor Spitzer's veto message that mentioned federal preemption, Governor Paterson's veto message also recited some statistics about truck traffic. As the Town and Pinelawn pointed out in opposition to Coastal's petition for reconsideration, the supposed statistics about truck traffic do not constitute new evidence, nor are they relevant to any issue before the Board. The Interstate Commerce Commission Termination Act ("ICCTA") did not empower the Board to exempt a business from state and local regulation whenever doing so would help reduce truck traffic. On the contrary, as the Board held in Suffolk & Southern Rail Road – Lease and Operation Exemption – Sills Road Realty, LLC, STB Finance Docket No 35036 at 6, STB LEXIS 752, at * 14 (Dec. 20, 2007), where it denied an application for reconsideration of a cease and desist order barring the operation of an unauthorized transloading facility, "the need for additional transloading and intermodal freight facilities on Long Island does not mean that the Cease and Desist Order should not have been issued."

Coastal is not itself a rail carrier or under the control of a rail carrier. For this reason, it is not subject to the Board's jurisdiction and is not entitled to federal preemption – whether or not its operation somehow helps remove trucks from the road. Accordingly, the Board should deny Coastal's request for reconsideration of the January 31, 2008 decision in this proceeding.

Respectfully,



Fran M. Jacobs

cc John F. McHugh, Esq. (by FedEx)
Ronald Lane, Esq. (by FedEx)
Howard M. Miller, Esq. (by FedEx)
Mark A. Cuthbertson, Esq. (by FedEx)