

February 23, 2009

224583

Surface Transportation Board
Attn STB Ex Parte No 684,
395 E Street, S W , Washington, DC 20423-0001

Re Notice of Proposed Rulemaking, Adoption of Interim Rules The Clean Railroads Act of 2008,

Dear Sirs/Madams,

Please except these comments regarding the above referenced Proposed Rulemaking, Adoption of Interim Rules- for the Clean Railroad Act of 2008

I have, as have many of our citizens, been involved from the very beginning regarding the siting and regulation of solid waste facilities by the Surface Transportation Board (STB) through the exemption process of a facility. In particular, New England Transrail proposed a solid waste facility at the Olin Chemical site. This site is now in the Superfund program and still is under investigation by the EPA. I submitted a petition signed by 378 citizens of the Town of Wilmington regarding Finance Docket # 34391- New England Transrail, I.L.C d b a Wilmington and Woburn Railroad and have commented as an individual, while also serving at the time of the Wilmington Board of Selectmen. To say our citizens are still concerned about this site and what the future may or may not bring is an understatement. They are also concerned about what role if any the STB could have in its redevelopment into a trash transfer station.

Although I am pleased that the CRA has passed and that the STB is proposing regulations to address the new legislation, I have serious concerns with the ambiguousness of some of the language regarding what would be a consideration by the STB as unfair treatment by a State.

The STB recognizes that Solid Waste Transfer Stations must now comply with all applicable federal and state requirements respecting pollution prevention and abatement, environmental protection and restoration, and protection of public health and safety, including laws governing solid waste, to the same extent as any similar solid waste management facility. I think we all recognize that the location of such a facility in and of itself could pose a threat to the environment and to the protection of public and safety. Even under the regulations of state and local governments things can go wrong. This is why there are certain safe guards put into place especially to protect water supplies.

It states, if "the Board finds that a State, local, or municipal law, regulation, order, or other requirement affecting the siting of such facility unreasonably burdens the interstate transportation of solid waste by railroad, discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility." This is unacceptable. Does this

mean the STB can make this determination based if one or all of these standards are met?

Although I can understand that a rail carrier may need time to time some relief from bias, this should not mean that the STB, a federal agency of 3 to 4 appointees, should hold such powers, who's opinion could affect hundreds of thousands of lives. Public health and safety should be left up to local communities, not far removed federal officials who live in different states. Yes obviously interstate commerce is of the utmost importance, but this is about affecting the health and safety of people. These are not zoning issues, these are environmental and health issues that surround these facilities if not sited properly. There are laws that protect public health and safety and under NO circumstance should the STB supersede those laws. Leaving these matters in the hands of only a few far removed from the impacts that others may be subject to is not the basis of democracy and leans much closer to dictatorship and elitism.

I strongly suggest that the STB do a better job defining "unreasonably burdens" the interstate transportation of solid waste by railroad and "discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility". There is too much up for interpretation. Who defines discrimination and how? Who will define unreasonably burdens and how? This ambiguity will certainly lead to more conflict than it will resolve and is not fair to all those involved.

Thank you for your consideration of this matter and I appreciate the opportunity to comment.

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