



ONONDAGA COUNTY
RESOURCE RECOVERY AGENCY

OCRRA

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215375

December 9, 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 Waste Management Association, et al FD-34776

Dear Secretary Williams:

Enclosed please find the comments of the Onondaga County Resource Recovery Agency on the Petition for a Declaratory Order filed by National Solid Waste Management Association, et al, Finance Docket Number 34776.

Sincerely yours,

A. T. Rhoads
Executive Director

ATR/pe
Enclosure

cc: Stephen M. Richmond
NY Susquehanna & Western Railway Corp.
RailTech, LLC

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**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**



**A. T. Rhoads, Executive Director
Onondaga County Resource Recovery Agency
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Dated: December 9, 2005

INTRODUCTION

The Onondaga County Resource Recovery Agency ("OCRRA") is a local public benefit corporation created by the State of New York to manage solid waste in Onondaga County. OCRRA has received numerous recycling awards both on a national (EPA) and state level. The Agency has been managing solid waste in Onondaga County for fifteen years and has permitted four solid waste facilities in compliance with both State and Federal environmental statutes. In New York, the New York State Department of Environmental Conservation ("DEC") has special expertise in the permitting of such solid waste facilities. In New York, the public and the environment are protected by both the State Environmental Quality Review Act ("SEQRA") and by applicable State statutes and regulations. Not long ago our Agency participated in and opposed the proposed permitting of an open air construction waste processing facility that would have been located next to an environmentally sensitive State Wildlife Management Area. The applicant had proposed open air grinding of drywall and other friable materials and proposed that run off from this grinding operation would drain by pipe into the adjacent Wildlife Management Area. It was the strictures of these State regulations that prevented this environmental disaster from happening. Another proposed waste facility in our area, to be located on a rail spur, requested permission to operate a waste transfer station across from a residential neighborhood and nearby schools. When the DEC requested necessary environmental assurances to protect the environment and the neighborhood, the applicant refused to respond and the project was ultimately dropped. It is critically important to note that the U.S. Congress in its Congressional findings, as a preamble to the Resource Conservation and Recovery Act 42 USCA § 6901-6992K, stated in § 6901(a) (4) that "the collection and disposal of solid wastes should continue to be primarily the function of State, regional and local agencies..." To allow a railroad to establish a waste transfer or processing facility without State environmental review and controls would fly in the face of Congress' expressed intent and would allow a railroad to eviscerate Congress' finding in 42 USCA § 6901 (b) (2) that "disposal of solid waste in or on the land without careful planning and management can present a danger to human health and the environment." For the reasons set forth below, the Onondaga County Resource Recovery Agency urges the Surface Transportation Board to grant NSWMA's Petition for a Declaratory Order.

COMMENTS

- OCRRA has absolutely no problem with the STB having unfettered control over the rail transport issues of solid waste transportation. However, the environmental and social issues associated with waste storage and processing have, as stated by Congress in 42 USCA § 6901 (a) (4), traditionally been the function of State, local and regional authorities. Attempting to assert that they now should be within the discretion of the STB, an Agency that has neither the experience, personnel nor regulations to deal with such issues, is illogical and flies in the face of Congress' recognition that these are not even Federal issues.
- The Onondaga County Resource Recovery Agency has permitted two solid waste transfer stations in Onondaga County, New York. We operate these transfer

stations under specific DEC permit conditions that provide critical environmental and health controls to assure that risks to the public are minimized.

- Both the State and Federal governments have long recognized that public input on the permitting of solid waste facilities is critical to minimizing environmental, social and health impacts. New York State has, for many years, operated under the State Environmental Quality Review Act ("SEQRA") where public hearings and input are sought on environmental, traffic, wetlands and other issues. These issues identified in the SEQRA process are often dealt with by specific permit conditions developed in the permitting process. These are clearly the types of issues that are properly local in nature and that cannot be effectively dealt with in the STB transport review.
- Solid waste facilities that have rail transport aspects do not operate in an environmental vacuum. State and local governments should be pre-empted from attempting to regulate the transport aspects of a waste facility but not the storage and processing aspects. Nor should State and local governments be prevented from taking reasonable measures to ensure that waste transport by local collection vehicles to the intermodal rail facility meets all local and State environmental and health guidelines. For instance, the State and local authorities have an interest that waste that is in transit on municipal streets going to the rail transport facility is transported in covered or enclosed trucks so that waste is not scattered along the rail facility's access routes. Similarly, environmental restrictions on extended waste storage will protect the public from vermin infestations and potential disease vectors. These issues clearly fall within the reserved police powers of local communities.
- Allowing these types of solid waste processing and storage facilities to be permitted by the STB with pre-emption of local and State environmental and health regulations and laws will open up the floodgates to an abuse of the rail transport process, and will be used as a means of circumventing critical environmental and health laws and regulations.

For the foregoing reasons, the Onondaga County Resource Recovery Agency urges the Surface Transportation Board to grant NSWMA's Petition for a Declaratory Order.

Respectfully submitted,



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I hereby certify that a true copy of the foregoing Comment was served this 9th day of December, 2005, upon the following by first class mail:

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