

Written Document Submitted to the Honorable Corrine Brown, Chair US House Subcommittee on Railroads, Pipelines and Hazardous Materials

I wish to thank Chairwoman Corrine Brown and this subcommittee for allowing this hearing to support a Legislative fix to eliminate the 11-year loophole in the ICCTA regulations that allow the operations of unregulated solid waste facilities. I am here today to convey the personal experience that we faced in my town when we discovered there was a plan to construct one of these exempt waste sites. I am here not only as an elected official representing my constituents but also as a resident whose town was subjected to something unknown to most people at that time in 2003. The following facts are important because they give you a visual look into the geographical make-up of my town. Mullica Township is 56 square miles, and we are situated in Atlantic County in South Jersey. We are also located in the heart of the 1.1 million acres of the Pinelands National Preserve and all of our zoning and land use is dictated by the Pinelands Comprehensive Management Plan known as the CMP. There are 2,200 existing homes with 6,000 residents. We have no public sewer or water thus relying fully on personal wells and septic systems. Our tax ratables are comprised of 98% residential and 2% commercial. Although we have 10 miles of state highway Route 30 running through Mullica we have no industrial parks, shopping centers, banks or even a strip mall. We also have running through our town 10 miles of east-west railroad track with a LICA siding but no train stop. The track is owned by New Jersey Transit, a passenger line with a company by the name of JP Rail that leases the trackage rights through there.

As a member of the Atlantic County Solid Waste Advisory Committee, I am familiar with the procedure the owner of a solid waste company must follow in order to start up or expand their operation including the involvement of the State DEP, the local town and the County Freeholder Board. In Mullica's case the starting point and added layer of the Pinelands would be an integral part of the procedure. When we were first made aware of the transrail transfer station proposal I felt safe in my knowledge of the procedure in place. Imagine my shock in finding out there exists federally exempted solid waste operations whose only criteria that needs to be met is that they are located next to or near a set of railroad tracks. Can you picture me trying to explain to a resident who had to make an application to the Zoning Board for a variance for a side-yard setback to install a handicap ramp for his son because of local zoning laws that an operation that is proposing to move hundreds of tons of household trash day and night less than a half a mile from his home did not have to apply to any entity for anything. No applications, no public involvement, no limits in regards to the number of trucks, tonnage or materials including possible hazardous waste. These are 7 day a week, 365 day a year operations running 24 hours a day without the obligations to the districts they reside in the normal and accepted permitting process would afford their neighbors. As I learned about these sites and the laws that govern them, I quickly realized that this is not a local issue but a national one, if it could happen in my town it can and does occur anywhere.

The proposed site in Mullica is a 20-acre parcel in a residential zone located on a four lane divided highway. Because of the medium, there is no way to access the property heading west and there are no u-turns for 10 miles, only small local roads to turn around

on. It is less than a quarter of a mile from our 800 student local K thru eighth grade school. There are 500 homes within a half-mile of the site, with dozens of homes directly surrounding it, that being the most condensed area of our town. There are also five residential facilities within a half-mile with approximately 75 handicapped occupants many of who walk or wheelchair throughout the area.

In Mullica's case, the railroad company was to lease the property for \$1.00 per year from the owner. The owner, not so ironically, is a notorious South Jersey waste hauler. This waste hauler has managed over the past four and a half years to build up over a million dollars in unpaid fines assessed by the DEP, the County Health Department and the neighboring town where his trash business was operating. He plead guilty to two counts of illegal dumping in Mullica and was fined \$199,000.00. According to DEP documents, he has frequently failed to comply with the conditions of his solid waste permit. The DEP finally denied his permit renewal application, terminated his exiting permit and revoked his authority to operate his solid waste facility in 2005, but he retains his hauling license. This same individual was to operate the Mullica transrail facility under two newly formed companies called Elwood Brokerage and Elwood Transloading LLC.

Mullica's journey through the process of fighting our proposed transrail transfer station was different from any other towns up to that point, we were very lucky. Because we are 100% Pinelands, we had the full weight of the Commission and the States Attorney Generals office to deal with the legal strategy along with our town solicitor and the Atlantic County legal staff. The fight took a great emotional toll on myself, our governing body and the residents of our town who of course had to bear the financial impact of this battle. I was personally named in the lawsuit the railroad company filed in federal court regarding intergovernmental plans and "the Mayor's efforts to frustrate and block the project". Unlike any other town that has faced this issue, Mullica's story has a successful conclusion. U.S. District Court Judge Simandle granted a temporary injunction against construction of the waste facility in December of 2005, which was never appealed. The railroad withdrew their complaint this year and on March 26, 2007 the Judge signed a consent order permanently banning construction of a solid waste facility on this site. As an extra protection, Mullica Township and Atlantic County purchased an easement on this property running the length of the tracks 30 feet in.

I made a promise that I would continue to do what I could to protect other towns from going through the horrors of these unregulated sites. The towns seeking relief in the form of regulation where these exempted operations are concerned are not NIMBYS. We are not saying we do not want you in our town so go to the next one; there are laws in place now that prevent that from happening with regulated sites. This is not about the railroad or the trucking industry; it is about a normally much regulated industry and what happens when those regulations are not enforced consistently. With respect to solid waste, we are asking that laws be distributed fairly and without prejudice, that the solid waste industry as a whole be required to operate in an environmentally responsible manner under state and local control. When it comes to a private industry that operates on a national level there is only one practical solution, anyone receiving and transporting solid waste needs

to be regulated under the same set of laws. Although there have been a few encouraging court rulings regarding this regulation recently they are local and always open to appeal. The number of towns that are grappling with this issue are growing daily and the outcry of their residents is becoming louder. I am convinced that the only solution is a legislative one. Give us the tools we need to insure the health and safety of our constituents, the ability to regulate solid waste operations equally on a State and local level.

Respectfully Submitted by
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