

**United States House of Representatives  
Committee on Transportation and Infrastructure**

**Subcommittee on Railroads, Pipelines, and Hazardous Materials  
Railroad-Owned Solid Waste Transload Facilities  
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**Testimony of  
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Thank you Chairwoman Brown and members of the committee for inviting me to testify on rail-affiliated solid waste transfer facilities and the State of New Jersey's efforts to ensure that such facilities are operated safely and with minimum impact to public health and the environment. I want to commend all the committee members on both sides of the aisle for holding this hearing and taking the steps necessary to address the severe negative environmental and health impacts of railroad-owned solid waste transload facilities. My name is Wolfgang Skacel, and I am the Assistant Commissioner for Compliance and Enforcement in the New Jersey Department of Environmental Protection. Let me start by saying that New Jersey fully supports the movement of solid waste by rail. With shrinking in-state capacity for solid waste disposal, and new solid waste facilities virtually impossible to site in and around our urban areas, solid waste must be transported longer distances for proper final disposal. There are clear advantages to public health, safety, and environmental quality for this solid waste to move by rail; reduced traffic congestion on our roadways, and reduced fuel consumption and air emissions from diesel truck engines. We firmly believe, however, that these environmental benefits can – and must – be had without the current detrimental effects of an unbridled industry.

New Jersey has a long history in solid waste management. Haphazard, unregulated, indiscriminate dumping without consideration of engineering controls and impacts to public health and environmental quality as well as the influence of criminals historically entrenched in the trash business has led to countless contaminated sites. Many of these sites have required cleanup with public funds under the federal Superfund and our own state level cleanup programs. In response, New Jersey over the years has implemented a strong regulatory program that ensures that industry and waste disposal no longer create new contaminated sites as a matter of routine. However, solid waste operators and railroads transporting solid waste have been abusing the preemption provisions of the Interstate Commerce Commission Termination Act (ICCTA) by arguing that public health and environmental regulations do not apply to them. In addition, the Courts and the Surface Transportation Board (STB) have incorrectly interpreted the

preemptive effect of ICCTA. The result in New Jersey has been a step backward in environmental protection and a return to open dumps, something State regulatory officials were charged with closing or upgrading over twenty-five years ago. This is a direction in which none of us as responsible public officials and charged with protecting the public interest can afford to go.

While there are strong federal programs addressing air and water pollution, solid waste regulation has traditionally been and continues to be the purview of the States. The STB simply does not have the expertise, staff, or regulatory tools available to address the diverse and serious consequences of mismanaging solid waste. Trash is not innocuous; it often contains hazardous, toxic and even radioactive materials which can not be ascertained until the trash is unloaded from its containers. Consider, for example, what is in municipal solid waste and construction and demolition debris. Building lumber has been treated with copper and arsenic. Our homes and businesses have been treated with pesticides and rodenticides. Even the bright colors in our paints, ceramic tiles and fixtures come from a myriad of toxic materials. PCBs (polychlorinated biphenyls) were used for many years in sealants and adhesives. Asbestos was used not only in insulation, but in roofing and siding materials as well. We have all heard the experts talking about the health effects suffered by the responders and clean-up workers at ground zero from breathing the dust from the World Trade Center. Construction and demolition waste are materials these rail-affiliated transfer facilities are handling today. How long before one of these facilities attempts to handle municipal solid waste or animal waste, septic tank and cesspool waste, and of course sewage sludge.

Consider also that while the STB has exclusive jurisdiction over transportation by rail carriers, it does not have any direct regulatory role over rail related facilities once the railroad is established. As a result, once established, a rail carrier may build rail related facilities such as transload facilities with no STB oversight at all and no state or local permits. This is problematic since establishing a new railroad is not difficult. Under ICCTA and existing STB rules, such as the Notice of Exemption process, short line railroads can be established as virtual railroads, with no actual ownership of track, railroad cars, locomotives, or trackage rights agreements with other rail carriers. This not

only opens the door for sham railroad operations, but undermines existing solid waste facility operations that do comply with environmental and public health regulations.

Lastly, we believe the STB's exemption process as applied to the solid waste industry is insufficient to protect public safety and may unintentionally act as a magnet for persons with organized crime or other criminal backgrounds, or repeat major environmental offenders to enter the rail industry. New Jersey's experience regulating solid waste collection, transport and disposal shows how organized crime is able to infiltrate this industry, resulting in murder, extortion, arson, and price-fixing. New Jersey addressed this threat through a program called A-901, which requires a detailed background investigation of principals of solid waste entities, and allows NJDEP to exclude such entities from the industry if they are found to have organized crime connections, disqualifying felony convictions, or a poor environmental compliance history. Several other jurisdictions, including New York City, Westchester County in New York, Vermont, and Ohio, have adopted similar statutes. This background investigation is much more extensive than the review provided in connection with the STB's Notice of Exemption procedure, and is necessary to protect the public safety by keeping out dangerous and irresponsible elements.

When we first learned of ICCTA and our apparent inability to require public safety and environmental controls through our traditional permit processes, and saw how railroad-owned solid waste transload facilities were being conducted, we began a process to establish minimum baseline criteria for their construction and operation. We drafted regulations, commonly known as the "2D regulations"; sought out stakeholder input including from rail carriers; and adopted environmental, health and safety standards applicable to railroad owned and operated facilities to guard against harmful releases to air, land and water resources and to ensure public health and safety. The railroads would like you to believe these are onerous standards but we submit that they are the minimum measures that must be followed to protect against hazardous dust from polluting the air that we all must breathe, toxic metals and chemicals from contaminating our drinking water supplies, necessary wetlands, flood plains and other important natural resource lands from being wantonly destroyed, rats and other vermin from being attracted in hordes, and increased risk of fire endangering our citizens, nearby businesses and our

community assets. In fact, even though all waste transfer facilities in New Jersey must comply with these same standards and more, the rail-affiliated transfer facilities have refused to abide by these minimal requirements by claiming broad preemption. (See attached declaration of John A. Castner concerning the historical status of compliance with the 2D regulations by the NYS&W facilities located in North Bergen.)

The real dangers posed by solid waste are documented in our history of regulating the trash industry and seen in examples manifested by these so-called railroad operations. Unregulated waste transfer stations, rail carrier operated or otherwise, present many risks to human health and the environment. Stormwater runs off through the piles of waste collecting contaminants and then entering nearby surface waters and wetlands. Garbage, dust, and odors contaminate developed areas and wetlands as well. Waste that is allowed to sit creates large piles that decompose, smolder, catch fire, and/or attract rats and other disease carrying vermin. Improper storage of hazardous materials found in waste endanger public health and the environment. And these are only some of the problems that have been presented by the railroad-affiliated solid waste transload facilities in our State.

Incredibly, a handful of these facilities actually began operations as open air dumps – these are depicted in the photographs in your package of materials. It was only after we threatened a \$2.5 million penalty that rudimentary structures were constructed. Walls and a roof, however, are not enough. Systems to control air pollution and manage or capture stormwater runoff, leachate, and wastewater are necessary but still lacking at the rail waste facilities. Moreover, a building does not mean that the waste is handled inside of the building. We have seen facilities consistently dump or spill waste outside because the facility was not designed to, and therefore cannot handle, the volume of waste being dumped at the facility. Waste heaped high above the walls of open top gondola cars regularly spills over the sides onto tracks littering our communities. Numerous fires have occurred and clouds of dust spew from the building openings, covering the grounds surrounding the operation and nearby neighborhoods. Examples of rail affiliated transfer facilities that continue to operate in an environmentally unsound manner are also among the materials provided. Also included is an inventory of current

and proposed rail affiliated transfer facilities in New Jersey – at least the ones of which we are aware.

New Jersey’s legal efforts to address these serious environmental and public health issues at rail transfer facilities stretch back five years and are still ongoing. Over the last five years, New Jersey DEP and the New Jersey Meadowlands Commission have been embroiled in numerous lawsuits and legal proceedings before the STB and the courts in multiple jurisdictions to defend our authority to regulate solid waste activities undertaken by or in conjunction with rail carriers. The decisions rendered in these proceedings have been inconsistent, confusing and done little to resolve the issue. In fact, the only light we have seen at the end of this tunnel, is the oncoming train loaded with trash.

In conclusion, New Jersey’s efforts to regulate and hold accountable rail-side solid waste transfer facilities resulted in our strong belief that a legislative solution is necessary to resolve this issue. The goal of effective competition between modes of transportation through ICCTA has been lost. In its place, states such as New Jersey are faced with a tidal wave of solid waste facilities linked to railroads, claiming preemption from the very public health and environmental regulations with which their competitors in the solid waste industry have complied for decades. History has shown the risks of leaving any aspect of the solid waste industry unregulated, and intervention by Congress is warranted to reaffirm the States’ primary responsibility for solid waste management, the States’ authority to regulate solid waste activities, and the States’ ability to address the problems attendant with waste management.

I thank the Subcommittee for its continued interest in and efforts on this pressing issue and for the invitation to testify today. Given the serious nature of this issue, I respectfully request that the committee keep the testimony open so that we may submit additional comments at a later date. I am happy to answer any questions the committee may have.