



***Federal Regulation of Solid Waste
Transfer Facilities***

Francis P. Mulvey
Vice Chairman
Surface Transportation Board

TransAction 2008
Atlantic City, New Jersey
April 3, 2008



History of Economic Regulation of Railroads

- Gibbons v. Ogden, United States Supreme Court Decision – 1824
 - “Congress shall have the power to regulate commerce . . . among the several states”
 - “Commerce . . . describes the commercial intercourse between nations and parts of nations . . . And is regulated by prescribing rules for . . . [that commerce]”
- Federal preemption of state and local laws regulating rail codified in 49 U.S.C. 10501(b)



Examples of Preemption

- Railroad related yard operations
- Siding, spur track construction or abandonment
- Train horn rules (“whistle bans”)
- Hazardous materials packaging



MSW on Railroad Property

Issue – location of solid waste transfer facilities on railroad property

- *What constitutes rail transportation?*
- *What are the limits of the police powers of the states to regulate health and safety in the public interest?*



New England Transrail

- Issues
 - (1) whether NET would be a rail carrier and thus require Board authorization for the construction, acquisition, and operation of its rail line and, if so,
 - (2) whether NET's various activities involving MSW and C&D would be *integrally related* to rail transportation and thus come within the scope of the Federal preemption in section 10501(b)



New England Transrail

Majority Decision: NET would be a rail carrier

- Baling and wrapping MSW found integrally related to transportation
- Shredding of C&D not integrally related to transportation



NET Decision - Dissent

- MSW is an “atypical commodity”
- NET’s MSW activities do not qualify for preemption
- Handling of MSW should be subject to reasonable, non-discriminatory state regulation
- States and localities are in the best position to protect the health and safety of their citizens
- Concerned about new entrants into the MSW industry blending rail service waste processing to use rail carrier status to avoid local regulations
- Manipulative abuse of Board’s jurisdiction and powers



Consolidated Appropriations Act, 2008

Solid Waste Transfer Facilities

(passed December 19, 2007)

STB may not take *“any action to allow any activity . . . in a case, matter, or declaratory order involving a railroad, or an entity claiming or seeking authority to operate as a railroad, unless the Board receives written assurance from the Governor . . . of the State in which such activity will occur that such railroad or entity has agreed to comply with State and local regulations that establish public health, safety, and environmental standards for the activities . . . other than zoning laws or regulations.”*

---H.R. 2764, SEC. 193.

Expires end of 2008 Fiscal Year



Consolidated Appropriations Act of 2008

Solid Waste Transfer Facilities

- Affected activities
 - Collection, storage or transfer of solid waste outside of original shipping containers
 - Separation or processing of solid waste (including baling, crushing, compacting, and shredding)



STB Response to Act of 2008:
Ex Parte No. 675
Decided: January 15, 2008

- Board continues to accept and process petitions, notices and other filings
- Board decisions issued during this period will not authorize the affected activities without Governor's written assurance of entity's compliance with state and local regulations



Board action following NET

- Evaluating each case more carefully
- Ensuring that Board's processes are not abused
- Balance need of railroads to generate efficiency and avoid patchwork regulation while allowing local governments to protect citizens



Thank you. Questions?