

New York State Department of Environmental Conservation

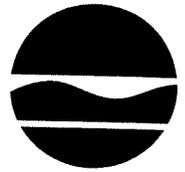
Deputy Commissioner & General Counsel

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Denise M. Sheehan
Acting
Commissioner

November 16, 2005

VIA ELECTRONIC FILING

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Formal Comments by New York State Department of Environmental Conservation
Petition for Declaratory Order, National Solid Wastes Management Association, et al
FD-34776

Dear Secretary Williams:

Enclosed please find the comments of the New York State Department of Environmental Conservation on the Petition for Declaratory Order filed by the National Solid Wastes Management Association, et al, Finance Docket Number 34776.

Sincerely,

James H. Ferreira

James H. Ferreira
Deputy Commissioner and
General Counsel

Encl.

cc: service list

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34776

COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ON THE PETITION OF
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, ET AL
FOR DECLARATORY ORDER

James H. Ferreira, Deputy Commissioner and General Counsel
New York State Department of Environmental Conservation
625 Broadway
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ON THE PETITION OF
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, ET AL
FOR DECLARATORY ORDER

The New York State Department of Environmental Conservation (Department) submits the following comments to the Surface Transportation Board (STB) in connection with the Petition of the National Solid Wastes Management Association (NSWMA), et al., for a Declaratory Order, Finance Docket No. 34776 filed on October 27, 2005. Petitioners request that the Board confirm:

(i) that the solid waste facility located at the [North Bergen] Site, and any similarly situated facility, is not within the exclusive jurisdiction of the Board because the solid waste management and processing operations conducted at the Site are not integrally related to the provision of rail transportation, and (ii) that state and local solid waste laws are therefore not preempted by the ICCTA, 49 U.S.C. §10501(b), as they apply to the solid waste activities at the Site and at similarly situated locations.

The Department has a specific interest in the issue of federal preemption of certain rail carrier activities, namely at solid waste transfer stations, since the Department is responsible for the regulation and permitting of solid waste transfer facilities in New York State. The Department questions whether the exclusive jurisdiction of the STB extends to solid waste transfer activities taking place next to rail lines, when those activities include tipping, processing, sorting, crushing and storage of non-containerized waste. These activities, when not

properly conducted, pose environmental hazards and threats to public health and safety and appear to go beyond the congressional intent behind the statutory preemption intended to facilitate the use of railroads for activities that are truly related to rail-haul. It is essential that states retain their traditional permitting/police power jurisdiction over operations of such facilities even if the facilities also ship wastes by rail.

Solid waste management facilities are regulated in New York State pursuant to Environmental Conservation Law (ECL) Article 27, Title 7 and 6 NYCRR Part 360 (Part 360). The Part 360 requirements for transfer stations were developed based on the Department's knowledge and experience with the proper design, construction, and operation necessary for these facilities to be protective of public health, safety and the environment. In most cases where solid waste collection companies transfer waste for subsequent shipment to a disposal facility, the transfer station must be constructed and operated in accordance with a Part 360 permit. Absent the requirement to obtain a permit, rail-haul transfer station operators would have the ability to construct and operate a facility as they see fit, and economic savings may outweigh an operator's health and safety concerns. The Department is not advocating against the use of railroads for hauling solid waste, but rather that any preemption of traditional state police powers, including permitting, be narrowly construed.

The Department also recognizes the inequity between a Part 360 permitted transfer station and a rail-haul transfer station that claims it can operate free from state oversight of all activities. When the transfer station is located next to a rail line or has a connection to a railroad, it is being argued that the federal preemption applies. Part 360 does not include specific provisions addressing the preemption of certain rail carrier activities. However, despite the fact

that the activities occurring at both a Part 360 permitted transfer station and a rail-haul transfer station often are nearly identical – the only difference being that a rail line is utilized to ship wastes off-site – some rail-haul operators claim the right to different treatment and freedom from all state oversight. Absent the issuance of a permit, the Department has significant concern over the unfair economic advantage given to rail-haul transfer stations exempt from all state regulation, as well as the potential impacts to public health and the environment from the unregulated handling of waste.

An applicant for a Part 360 permitted transfer station must submit a comprehensive permit application, which includes detailed engineering designs and reports prepared by a New York State licensed professional engineer describing the construction and design of the facility and its operation. The Department reviews these documents to ensure that the proposed facility meets criteria so as to operate in a manner that is protective of public health and safety and the environment. Additionally, most large transfer stations are typically required to obtain financial assurance for closure. For most Part 360 permit applications, there is also an environmental review pursuant to the State Environmental Quality Review Act (SEQRA), ECL Article 8. As a result of this review, additional operational requirements may be required to minimize and mitigate environmental impacts. Further, the SEQRA process also gives the public an opportunity to voice its concern regarding a proposed project. The Part 360 permit is not issued until public comments have been addressed and the Department is satisfied that the transfer station can be constructed and operated in a manner that will not pose a threat to public health and safety and the environment. Once the permit is issued, the applicant must comply with stringent operational requirements and the transfer station is regularly inspected by the Department. Obviously, when an operator of a solid waste facility is not subject to these state

requirements and procedures, not only is there a great likelihood that public will not have a forum in which to voice concerns, but the safeguards that can be built into a facility through pre-construction review and the permitting process may well be absent.

Solid waste handling, sorting, crushing and storage activities are separate and independent from transportation and the operation of the railroad, and these activities should be addressed within the jurisdiction of the Department. The handling of solid waste has long been a state and local issue usually addressed – and handled most efficiently – during a permitting process. The term “transportation” is broadly defined by the STB to include property and facilities related to the movement of passengers or property by rail; some STB decisions have stated, in broad language, that services related to that movement, including receipt, delivery, transfer, handling, and processing of property, also appear to fall within the definition of “transportation.” See City of Crede, Co- Petition for Declaratory Order, STB Finance Docket No. 34367. The Department urges the STB to narrow this broad language and recognize the exercise of jurisdiction by state permitting agencies over solid waste activities, including the processing, sorting, crushing and storage of non-containerized waste. Such solid waste activities are not preempted from state regulation because they are not essential to the operation of rail-haul facilities.

When the “property” at issue is construction & demolition debris, putrescible waste, or even industrial waste, the opportunity for environmental concerns and disasters are significant. This is especially true if the Department can only rely on its police powers to control odor, noise and vermin complaints. The ability to regulate a facility pursuant to a Part 360 permit is critical when waste is being handled, since construction, design and operational requirements are

required for the protection of health and safety and the environment. Indeed, cleaning up after the environment has been damaged is much more difficult, expensive and often less successful than taking measures designed to prevent environmental injuries when designing, constructing and operating a facility.

Even in other areas where federal regulation preempts direct state regulation, the concept that the State's substantive requirements must be met is well established. This is perhaps most notable in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, which requires that federal records of decision for activities undertaken through CERCLA must incorporate both federal and state "applicable or relevant and appropriate requirements" (ARARs). This excuses these activities only from administrative and procedural requirements of a state, but not from the applicable environmental standards. We strongly encourage the STB to consider the incorporation of ARARs into its regulatory scheme.

For the reasons described above, the Department is concerned with the potential for public health and safety and environmental issues arising from unpermitted rail-haul transfer stations that are deemed to be exempt from state regulatory oversight. Although the STB has broad jurisdiction over a number of railroad activities, the management and handling of solid waste should continue to be regulated by the Department. The Department is not persuaded that the STB can provide adequate, meaningful environmental regulation, oversight or control at unpermitted rail-haul transfer stations. Certainly, this has not been demonstrated in New Jersey, where a number of transfer stations claiming preemptions by the STB appear to have been operated poorly and with disregard for public health and safety and the environment. Of great

concern is that unpermitted rail-haul transfer stations will start handling putrescible waste, increasing the potential to cause even more adverse impacts to public health and safety and the environment. In sum, the Department believes that allowing rail-haul transfer stations, which handle, manage, and store waste, to claim the STB federal preemption not only creates an unlevel playing field among transfer stations, but also enhances the potential for serious health and safety problems in New York State. For the foregoing reasons, the Department urges the STB to grant NSWMA's Petition for Declaratory Order.

Respectfully submitted,

James H. Ferreira

James H. Ferreira
Deputy Commissioner and
General Counsel

I hereby certify that a true copy of the foregoing Comment was served this 16th day of November, 2005, upon the following by first class mail:

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The Record (Bergen County, NJ)
December 14, 2005 Wednesday
All Editions

SECTION: LOCAL; Pg. L03

LENGTH: 578 words

HEADLINE: Official: transfer stations 'unsafe';
Judge tells railroad to work with state

BYLINE: By PETER J. SAMPSON, STAFF WRITER, North Jersey Media Group

DATELINE: NEWARK

BODY:

NEWARK - A state official testified Tuesday that the enclosed waste-transfer stations the New York Susquehanna & Western Railway Corp. is building in North Bergen failed to comply with basic building code and environmental safeguards.

The so-called "transload" facilities, which have not received zoning and planning approvals, lack sprinkler systems, restrooms and such basic emergency equipment as eye washes in the event a worker is exposed to dust, said Thomas R. Marturano, director of solid waste and natural resources for the New Jersey Meadowlands Commission.

"It's unconscionable to be inside these buildings in such unsafe conditions," Marturano testified during the second day of a hearing before U.S. District Judge Katherine S. Hayden.

The judge continued the hearing until March but directed the railroad to work with the state to address concerns about the transfer facilities, where tons of construction and demolition debris and contaminated soils are delivered by truck to be loaded onto rail cars for out-of-state disposal.

Hit with a \$2.5 million fine for violating 2004 regulations governing the design, construction and operation of rail transload facilities, NYS&W sued the state Department of Environmental Protection and the Meadowlands Commission in August, contending the DEP regulations are preempted by federal law.

The judge temporarily blocked the state from enforcing the regulations and collecting the fines. She allowed the railroad and its loading contractors to continue operating the transfer sites as NYS&W moved to replace four "open air" dumps with enclosed facilities that are supposed to control dust, pests, odors and wastewater runoff.

But Marturano said the new facilities are fraught with problems.

In addition to failing to comply with building and safety codes, he said, the scales to weigh trucks were not located properly and could lead to dangerous backups along a street that crosses the tracks.

"Traffic is a huge issue," he said, noting there's been no assessment of the effects of hundreds of daily truck trips on local roads.

Marturano said the sites were being operated by solid waste haulers who didn't want to spend the time or money to create legitimate transfer stations.

He also asserted that the railroad's recently instituted "flow control" measures, intended to prevent dangerous mountains of construction and demolition debris from accumulating at transfer sites, have led to illegal dumping in the district.

Truckers who find the gates closed early often dump their loads in deserted parts of the Meadowlands, he said.

Hayden has been pushing the parties to settle. She noted that any decision she made would likely be appealed by the losing party, take years to resolve and not serve the people of New Jersey now.

Finding that the railroad, which operates 400 miles of track in New Jersey, New York and Pennsylvania, has made progress in improving its facilities, she directed it to continue the dialogue with the state and identify which state regulations it intends to obey and which it won't.

She said she also would entertain a request by the state to have the rail line post a bond to cover its potential fines and asked both sides to suggest a fair amount. The judge also said she wants to see a traffic study done.

Paul Moates, a NYS&W attorney, said the rail line expects to finish the facilities and be in substantial compliance by the time the parties return to court in March.

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LOAD-DATE: December 14, 2005

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Lowell Sun (Lowell, MA)
January 31, 2006 Tuesday

SECTION: NEWS

LENGTH: 586 words

HEADLINE: Wilmington officials rip waste-site proposal Say N.J. company is dismissing contamination of suggested area

BYLINE: ALEXANDRA MAYER-HOHDAHL, Sun Staff

DATELINE: WILMINGTON

BODY:

In a scathing reply to New England Transrail's newest plans for a waste-transfer facility in Wilmington, town officials have accused the company of brushing off demands for more detailed information and glossing over the pervasive contamination at the proposed site.

"NET again requests a green light to place its untested racecar of a project onto a track full of potholes, blind curves, foundations under construction and oncoming traffic," Town Counsel Daniel Deutsch wrote on behalf of the town.

The town, and a handful of other opponents, was responding to a petition filed by the New Jersey-based company with the federal Surface Transportation Board last month.

New England Transrail is seeking an exemption from state and federal laws for the railroad-transfer facility, arguing that its operation would fall under an umbrella exempting railroads. If the board were to side with the company, the waste-transfer station would not have to comply with costly environmental and public-health laws.

The Surface Transportation Board had voted to dismiss the company's previous petition without prejudice last May, siding with Wilmington officials, who had argued that changes made to the plan since it had first been introduced undermined the exemption.

In its new petition, New England Transrail attempted to address several of its opponents' concerns. For instance, it assured the board that no hazardous waste would be handled at the facility. It also emphasized that it would "comply with all applicable state substantive health and safety regulations" despite the exemption.

But those assertions did not satisfy the project's opponents, especially when it comes to the facility's impact on its proposed location, the contaminated Olin Chemical site on Eames Street.

The property is being considered by the state Environmental Protection Agency for inclusion on the National Priorities List, which features locations throughout the country that are dealing with hazardous substances, pollutants or contaminants.

"I am amazed that anybody would even consider this site for any project until the site is cleaned up," state Rep. Jim Miceli, a Wilmington Democrat and staunch opponent of the project, wrote in his reply. "The property ... is an absolute cesspool."

The project's opponents also argued that New England Transrail's petition remains vague about major aspects of the project, including planned connections to existing rail lines.

"NET's new petition suffers from the same lack of specificity and candor that ultimately doomed its initial petition," the National Solid Wastes Management Association wrote in its reply. "The board should recognize this petition for what it is: an anti-competitive scheme to avoid reasonable state and local laws."

New England Transrail's new petition also generated a slew of support statements, most of them generated through the same response template.

A series of African-American organizations applauded New England Transrail, a minority-owned company, for "trying to develop a project in an industry that continuously lacks African-American ownership."

Several members of the Regional Transportation Advisory Council Freight Committee also expressed support for the railroad-transfer facility, arguing that it would revitalize rail-freight transportation in the Boston metropolitan area, and counter the impacts of long-haul trucking, including pollution.

Alexandra Mayer-Hohdahl's e-mail address is amayer-hohdahl@lowellsun.com.

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The Record (Bergen County, NJ)
June 1, 2006 Thursday
All Editions

SECTION: NEWS; Pg. A01

LENGTH: 1039 words

HEADLINE: Rail spill renews fears;
Pascrell demands federal safety review

BYLINE: By RICHARD COWEN and TOM DAVIS, STAFF WRITERS, North Jersey Media Group

BODY:

A Paterson train derailment that destroyed two businesses late Tuesday and could take two days to clear has once again raised questions about the safety of hauling solid waste by rail.

Rep. Bill Pascrell Jr., D-Paterson, wrote a letter to Federal Railroad Administration chief Joseph H. Boardman on Wednesday calling for a full review of safety precautions.

Pascrell, appearing at the scene with Paterson Mayor Joey Torres, said the accident which caused no injuries could have been much worse.

The 70-car train which left North Bergen loaded with construction debris and was en route to Binghamton, N.Y. was about to pass through the Paterson solid waste transfer station when eight cars jumped off the track. The New York Susquehanna & Western Railway line runs through Hudson, Bergen, Passaic and Morris counties before turning north into Sussex County.

At least three of the cars buckled and dumped tons of debris onto an auto repair shop and a car wash, which are only a few feet from the tracks. A broken rail is thought to have played a role in the crash, but no cause has been determined. The FRA is investigating.

In his letter, Pascrell pointed out that rail traffic in northern New Jersey is expected to increase in the coming years to the detriment of people who live and work near railroad tracks.

"The safety of those families living around rail lines is imperative and should be of primary concern," he wrote.

FRA officials, however, said railroad safety is improving despite recent incidents that generated anxiety about the vulnerability of communities through which trains pass.

In March, a 20-foot-high blaze destroyed a NYS&W car parked on a siding in Ridgefield Park. Two landscape workers died in April when they attempted to beat an oncoming locomotive at an Oakland grade crossing on the NYS&W line.

The FRA said it hopes to triple its railroad inspection coverage by the end of the year. The agency also provides \$220 million each year to help communities and railroad systems improve or replace grade crossings.

The railroads themselves are working to better maintain their inventory, and they're building cars that are better equipped to handle heavy and hazardous materials, said Steve Kulm, an FRA spokesman.

"There are a lot of [safety initiatives] going on out there that already exist that people should know about it," Kulm said.

NYS&W, however, is hauling materials that have generated additional anxiety about the unregulated solid waste that's transported by train.

Seven cars of the derailed train contained contaminated soil that was encased in heavy-duty wrapping, said Nathan Fenno, executive vice president and general counsel of NYS&W. None of those cars tipped over.

Worried local officials and residents, however, point to last July, when a North Bergen waste-transfer station operated by NYS&W was fined \$2.5 million by the state Department of Environmental Protection for failing to meet basic building codes and environmental safeguards.

The railroad sued, contending DEP regulations are preempted by federal law. The case is still in litigation with both sides trying to reach an agreement.

That month, a federal judge barred Paterson officials from interfering with the construction of a waste-transfer station along the railroad in the Riverside neighborhood.

Pam Brown, 52, of Paterson, said her back yard is within a few feet of the rail yard, where large trains stacked with solid waste are loaded every day for their run to Binghamton, and then on to a landfill in Ohio.

"These trains run all hours of the night, seven days a week," Brown said. "I'm not surprised because this was an accident waiting to happen."

Brown and her Riverside neighbors waged an unsuccessful battle to stop the transfer station from opening last year. "We spoke to the railroad, but they didn't want to listen," she said. "This should never have come to Paterson."

Kulm said development near railroad tracks is a "local zoning issue" over which railroads have no control.

At the FRA's request, some railroads provide towns with a list of materials that trains regularly haul through their communities. But Fenno said it's impossible to do that for every community.

Residents, meanwhile, said Tuesday's accident was a little too close for comfort.

Residents described a screeching wail of brakes piercing the air around 9:20 p.m. Tuesday. The eight cars that derailed scrunched together like an accordion and spilled loads of debris onto the small businesses at 12th Avenue and East 16th Street. The crash pierced a gas line and punched a hole in an underground water main. There was no explosion.

"It was like 9/11," recalled Jerry Boahene, 40, who was enjoying the warm late spring evening on his front porch when the train derailed. "First I hear this loud 'boom!' and then all I can see is the dust. There was a huge cloud of dust that went up. It reminded me of the World Trade Center when it collapsed."

Police and firefighters arrived and quickly evacuated the neighborhood. An emergency shelter was set up at the Riverside Veterans Home nearby. Boahene fled to a corner on Madison Avenue a block away. The gas main was turned off, and police allowed people to return to their homes around 1 a.m.

"There's always a danger that when a gas main breaks that a pocket of gas could accumulate," said Paterson Police Chief James Wittig.

"Someone could light a cigarette and blow up the whole apartment."

The accident occurred along a grimy stretch of NYS&W railroad near the crossing of Godwin Avenue, on a section of track that is littered with big chunks of asphalt and debris.

That stretch of the rail line is notorious for being a place where homeless people and drug users congregate.

"That's where all the crackheads go," said a resident who was standing in front of the barber shop at East 18th Street. "When the train hit, the first word was that someone had been hit. People hang out on those tracks all the time."

(SIDEBAR)

By the numbers

Railroad accidents, nationwide

2000: 16,919

2001: 16,086

2002: 14,403

2003: 14,302

2004: 14,409

2005: 13,657

Source: Federal Railroad Administration

Staff Writers Justo Bautista and Douglass Crouse contributed to this article. E-mail: cowen@northjersey.com and davist@northjersey.com

GRAPHIC: COLOR STAFF PHOTOS BY JAMES W. ANNESS;

Eight cars of a 70-car freight train carrying solid waste derailed in Paterson on Tuesday night, and it could take days to clean the wreckage.

At least three cars dumped tons of debris onto two businesses on either side of the tracks. The train was headed to Binghamton, N.Y.

PHOTO, JAMES W. ANNESS, STAFF PHOTOGRAPHER - At left, a Paterson police officer guarding the derailment site.

PHOTOS - AMY NEWMAN, SPECIAL TO THE RECORD;

4,5 - It is thought that a broken rail may have played a role in the accident, but the Federal Railroad Administration is still investigating.

Copyright 2005 The New York Times Company
The New York Times
October 9, 2005 Sunday
Late Edition - Final

SECTION: Section 14WC; Column 1; Westchester Weekly Desk; INDUSTRY; Pg. 4

LENGTH: 902 words

HEADLINE: Rail Spur May Sidetrack A Waste Station's Closing

BYLINE: By ALICE KENNY

DATELINE: Croton-on-Hudson

BODY:

JUST this summer, it looked as if Croton would finally be able to evict a construction-debris transfer station saddled with a history of violations and ties to organized crime.

The state's highest court, the Court of Appeals in Albany, had unanimously upheld a lower court decision backing the village. The basis of the case was a federal monitor's report on the transfer station -- a place where building and demolition waste is parked temporarily before its final disposal. The monitor found that station officials had doctored records and disposed of unauthorized, possibly hazardous, substances, as well as maintaining links with the Genovese crime family.

In a further effort to ensure the station's departure and to keep new companies from assuming the business, Croton officials had also enacted prohibitive changes in local zoning laws.

But it now seems that the transfer station, Metro Enviro, may have outmaneuvered them. It filed a \$50 million suit against the zoning changes. While that suit is being heard, an injunction is protecting its right to stay afloat -- with the help of another business if need be.

Moreover, the presence on Metro Enviro property of a 1,600-foot spur connecting to Metro-North rail tracks has given it yet another means of protection: rebirth as a railroad company. The waste-transfer industry may be tightly monitored, but according to federal Surface Transportation Board law, the railroad business is not. In February Saniserv, another transfer-station business, applied to the Westchester County Solid Waste Commission for a permit to take over Metro Enviro. Then, in August, Saniserv notified the commission that it had a brand-new name, Northeast Interchange Railway. The name change also allowed it to apply to the Surface Transportation Board for a railway-status exemption, which would liberate it from regulatory strictures.

Both applications are pending, according to spokesmen for the Solid Waste Commission and the Surface Transportation Board. But, at least at the Solid Waste Commission, there are signs of resistance. Commission members have said it appears that Northeast Interchange is trying to play both sides of the coin by applying simultaneously for a waste permit and for railway-status exemption. Because the application is so highly contested, the panel has decided to postpone its decision a few more weeks.

Senator Charles E. Schumer and officials at the State Department of Environmental Conservation are among those who have voiced concerns on the issue, fearing that if the new entity is approved as a railway, the effects may be far-reaching. In a protest to the transportation board, Senator Schumer wrote, "There would be no end to the industrial facilities that happen to be on rail spurs and that will attempt to use the same technique to avoid environmental regulation."

While this is the first such case to hit Westchester, similar cases have sprung up recently throughout the Northeast. In Bergen County, N.J., officials are fighting to close five unauthorized waste-rail businesses. Senators Jon S. Corzine and Frank R. Lautenberg drafted legislation to close what they called a loophole in federal legislation that began in 1995 with the creation of the Surface Transportation Board.

But Northeast Interchange Railway contends that there are strong reasons to consider it a rail carrier. For one thing, its own rail cars will be used to haul debris from the 1,600-foot spur and onto other track after sorting, crushing and unloading from trucks. Further, the company's parent, Regus Industries, is one of the largest companies in the country relying on rail lines to dispose of solid waste.

"Everything we do has a rail component," Andreas Gruson, Regus's chairman, said recently, "and this is a natural extension of what we do."

But court documents tell another story about the Croton business that Mr. Gruson wishes to call a railroad. They outline its checkered history as a waste transfer station with changing ownership. Several years ago a federal monitor, Walter Mack, was assigned to review the Croton site, as well as similar sites in Mount Kisco and Mamaroneck, as part of a government effort to wrest control of the waste industry from organized crime.

In a May 2003 report on his findings, he wrote that the original owner of the Croton site, James Hickey, had ties to the Genovese crime family. In 2002 Mr. Hickey sold the business (though not the property it was on) to a company called Allied Waste Industries, the second-largest waste hauler in the United States. Allied initially retained all Metro Enviro's employees -- perpetuating, Mr. Mack wrote, "a 'culture' in which unlawful conduct was condoned."

He also found that Allied had accepted hundreds of loads of unauthorized industrial waste at its Westchester transfer stations, as well as processing the waste and concealing evidence of its activities. James Hickey has since died, but his estate remains landlord of the property.

The Mack report gave Croton what it needed to close the site, the Court of Appeals decided in July. But the village's victory may be short-lived. In applying to the Surface Transportation Board, Northeast Interchange Railway vowed, if necessary, to "avail itself of the ability to seek the pre-emption of such state and local regulations if their application interferes with or prevents rail operations."

URL: <http://www.nytimes.com>

GRAPHIC: Photos: The presence of the railroad spur on the Metro Enviro site in Croton-on-Hudson may allow the site to keep operating. Andreas Gruson is chairman of Regus Industries, parent company of Northeast Interchange Railway, which wants to take over the site. (Photographs by Suzanne DeChillo/The New York Times)

LOAD-DATE: October 9, 2005

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Philadelphia Inquirer

August 21, 2005 Sunday JERSEY EDITION

SECTION: PHILADELPHIA; Pg. B01

LENGTH: 928 words

HEADLINE: State trying to throw out waste depots

BYLINE: By Kaitlin Gurney; Inquirer Trenton Bureau

BODY:

For years, stowing the millions of tons of garbage that New Jersey generates each year has been Pennsylvania's problem.

But as the cost of sending hundreds of landfill-bound trucks across the Delaware River has spiked, waste haulers have turned to New Jersey's rail lines for dispensing with the debris.

Confronted with what they see as the first trash crisis since the 1980s, alarmed state lawmakers are attempting to shut down the open-air trash transfer depots sprouting up next to the railroads that will cart the garbage out to dumps in the Midwest. They say the transfer station operators exploit a loophole in federal law that exempts railroad businesses from state regulations, allowing them to violate environmental rules with little recourse.

Just like Massachusetts, New York and other Northeastern garbage exporters who have seen the growth of these "transload companies," as the railroads call them, New Jersey officials have levied fines and haled them into court, with mixed success. Of the nine transfer facilities operating or proposed in New Jersey, seven are locked in court battles with the state. A bid to begin a transload operation in Atlantic County's Mullica Township has its first federal court hearing tomorrow in Camden.

Acting Gov. Richard J. Codey, who in June directed state attorneys to join the Pinelands Commission in the Mullica case, has vowed to "harass the hell" out of companies that "exploit federal loopholes and jeopardize the health of our residents and our environment." Last month, Codey levied \$2.5 million in environmental fines on five Meadowlands trash transfer facilities - who swiftly took the state to court.

The railroad companies argue that the transfer stations actually perform an environmental benefit by removing thousands of garbage-laden trucks from the road. They note that the facilities store largely clean construction debris from the Northeast's active home-renovation industry, not the municipal garbage that is more likely to contaminate groundwater.

"Railroads are a clean operation willing to take the material at a much lower price and ship it in a safe way to Ohio, where they actually want to take the stuff," said John Fiorilla, a Mount Laurel railroad lawyer who is representing Southern Railroad Co.'s interests in Mullica Township.

The federal statutes designed to encourage the maintenance of a national rail system were passed in the 1990s, but never employed for these waste-hauling side businesses until recently, said Bruce Parker, president of the National Solid Wastes Management Association in Washington.

Businesses that are an "integral part of the railroad" aren't required to obtain the expensive environmental and zoning permits that New Jersey and other states imposed on traditional garbage companies in the 1980s, he said.

"Some of these facilities are just renegades, truly open dumps, and may not qualify for the exemption, while others are an arm of the railroad," Parker said. "Ultimately, we'll see the courts or the federal government decide - and we'll see it soon."

The federal Surface Transportation Board, which has jurisdiction over the railroads' activities, declined to comment on cases pending before it.

Sens. Frank Lautenberg and Jon S. Corzine (D., N.J.) introduced legislation last month that would require the railroad transfer stations to meet the same environmental standards as other garbage facilities. New Jersey's Democratic congressmen have introduced companion legislation in the U.S. House.

Alan Marcus, a spokesman for the New York Susquehanna & Western Railroad, which operates several Meadowlands transfer facilities, called the senators' action "political pandering." He noted that federal lawmakers have been reluctant to disrupt interstate commerce for garbage complaints from states such as Pennsylvania, unhappy with its status as the country's number-one trash importer.

Pennsylvania has benefited from New Jersey's problem. The state reported last month that waste imports had decreased for the third straight year, though it still took in 5.3 million tons of garbage from New Jersey. Pennsylvania's Department of Environmental Protection attributed the dip to the popularity of railroad trash transfer stations, noting that the state had no rail-accessible landfills.

Each new trash transfer station has met with tremendous local opposition, as well. In Mullica, Mayor Kathy Chasey estimates that there are 950 signs opposing the proposed facility on lawns of the township's 2,300 homes.

The transfer station's location in the most protected area of the Pinelands has led the Pinelands Preservation Alliance to get involved in the lawsuit.

"Given the Pinelands' sandy soil, you always worry about contaminating groundwater - especially with a dump," said Carleton Montgomery, executive director of the alliance. "It sows the seeds of further destruction for the area's protection plan."

But the Meadowlands, with its five trash transfer stations, is also a state-protected natural area. Andrew Willner, the New York-New Jersey baykeeper, said the facilities were 30-foot-tall open garbage dumps that let contaminated waste run off into sensitive marshes and creeks.

"When it comes to trash, there are few alternatives - and it's more environmentally sound to move it by rail or boat," said Willner, whose group is preparing its own lawsuit against the five facilities. "But we can't have these companies operating like outlaws."

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Copyright 2005 The New York Times Company
The New York Times
September 18, 2005 Sunday
Late Edition - Final

SECTION: Section 14NJ; Column 1; New Jersey Weekly Desk; Pg. 6

LENGTH: 1115 words

HEADLINE: Not Next To My Train Track

BYLINE: By JOHN HOLL

DATELINE: NORTH BERGEN

BODY:

ONE by one, the dump trucks grumble into the lot of a waste transfer station at 5800 West Side Avenue, are weighed, then pull around back to drop their cargo.

The tons of construction debris (concrete, scrap metal, glass, wallboard) that is unloaded from the trucks thunders to the pavement and kicks up a cloud of dust.

As the empty trucks rumble away from the depot, which is run by the New York, Susquehanna & Western Railway Corporation, workers in backhoes, bulldozers and other construction equipment scoop up the steel, concrete and glass and load it onto nearby freight cars. Another worker, using a fire hose, sprays the debris, trying to keep the dust down.

After the debris is loaded and secured on the rail cars, it is shipped out of state to landfills in places like Ohio, Utah and Canada. The scene is repeated dozens of times a day at seven rail waste-transfer stations throughout the state.

On the surface, it would appear to be an environmentally sound practice. Railroad companies and environmental watchdogs both agree that shipping such waste by rail is an effective way of keeping thousands of exhaust-belching trucks off the roads.

But, in a situation where federal laws and local governance have come into conflict, the New Jersey Department of Environmental Protection says that pollution at the waste depots has gone unchecked.

Environmental officials say that at many of the sites, air pollution from clouds of dust and dirt and the runoff of potentially contaminated water pose serious health and environmental risks.

The transfer stations, alongside railroad tracks, have been able to ignore local environmental and zoning concerns because of a federal law that bars towns and states from regulating rail facilities. But in the last year, New Jersey's waste transfer stations have come into the spotlight as the environmental agency issued regulations that address solid-waste transfer and removal by rail carriers.

Of the seven rail transfer stations currently operating in the state, only one, in Kearney, is operating in compliance, said Bradley M. Campbell, the D.E.P.'s commissioner. The other six, including five operated by New York, Susquehanna in Hudson County, are open but not operating under the environmental agency's new standards, which took effect late last year.

The D.E.P. fined New York, Susquehanna \$2.5 million for air-pollution and solid-waste violations at its facilities.

After an investigation, the environmental agency stated that it had found the company was "loading solid and hazardous waste materials outdoors, failing to regularly clean areas in which solid waste is handled and failing to contain, collect and dispose of waste water."

The agency also said that the company "failed to control insects and rodents and emitted odor, dust and solid waste particles into the outdoor atmosphere in quantities resulting in air pollution."

For its part, New York, Susquehanna officials say the company is in compliance with all federal regulations and is in the process of meeting New Jersey's regulations, too.

On an overcast afternoon last month, Nathan R. Fenno, executive vice president and general counsel for New York, Susquehanna, walked briskly through one of the company's facilities on a busy industrial strip in North Bergen. The depot, with railroad tracks on one side and meadowlands on the other, was largely empty. Most of the work, he said, was done at night or early in the morning.

Several rail cars at the 43rd Street depot sat idle. Contaminated soil had been loaded earlier in the day and was waiting to be shipped. A heavy blanket, called a "burrito," was wrapped tightly around the soil, to prevent leakage.

"It's not what you think of when you think of garbage," Mr. Fenno said. "This is not the stuff that ordinary people throw out. There is no food or waste. We're not even in the disposal business. We're in transportation."

Mr. Fenno said the depot here fills seven or eight rail cars a day, roughly 100 tons, but operates according to environmental standards and recently constructed a building in which the transfer from truck to train actually takes place. He said the company, based in Cooperstown, N.Y., plans to open three more facilities in New Jersey in the next few months, two in North Bergen and one in Paterson.

"We are conscious about the environment," Mr. Fenno said.

One reason the business is growing is that, as landfills on the East Coast fill up, it has become more profitable for railroads in New Jersey to ship waste out of state.

After the D.E.P. levied the recent fines on the company, New York, Susquehanna countersued the state in United States District Court in Newark. The company said the environmental agency had overstepped its bounds in trying to regulate the facilities and asked the court to declare the regulations invalid.

Last month, United States District Judge Katherine S. Hayden temporarily blocked the D.E.P. from enforcing the administrative order against New York, Susquehanna and from collecting the \$2.5 million in fines. A hearing is scheduled for Sept. 26.

Mr. Campbell called the lawsuit "more flapdoodle from lawbreakers."

At the other end of the state, in Mullica, a town of nearly 6,000 in Atlantic County, the state has filed an injunction against a waste transfer company, Magic Disposal, and Southern Railroad Company of New Jersey. The companies had been developing a transfer station in the Pinelands National Reserve. Mr. Campbell said the companies were not seeking the approvals required by the Pineland Commission's comprehensive management plan.

The Pinelands Commission's chairman, James J. Florio, said the facility threatened the Kirkwood-Cohansey aquifer, a mammoth underground water reservoir that fuels the Pineland's ecosystem and provides water for thousands of nearby residents.

Tom Collard, vice president of the Southern Railroad Company of New Jersey, said he could not comment on the matter, citing pending litigation.

Responding to the federal rules that the companies have been operating under, Senators Frank R. Lautenberg and Jon S. Corzine introduced legislation last July that would require rail facilities to meet stronger environmental standards.

Mr. Fenno said that the company was committed to meeting the environmental agency's standards. Facilities to reduce pollution have already been built, he said, and additional plans have been submitted to the state.

"We are good corporate citizens," Mr. Fenno said. "We have not operated everything as good as we should have. We are cleaning up. We are complying to make things better. There is no perfection in this world."

URL: <http://www.nytimes.com>

GRAPHIC: Photos: A waste depot in North Bergen run by New York, Susquehanna & Western Railway. Railroad executive Nathan R. Fenno, at right in photo, and Tom O'Neill, a spokesman. (Photographs by Norman Y. Lono for The New York Times)

Copyright 2005 The Philadelphia Inquirer
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The Philadelphia Inquirer
MAY 26, 2005 Thursday JERSEY EDITION

SECTION: SOUTH JERSEY; Pg. B04

LENGTH: 467 words

HEADLINE: Codey opposes waste station;

Its proposed Pinelands site on railroad property would prevent regulation by the state, he said.

BYLINE: Robert Moran INQUIRER TRENTON BUREAU

BODY:

Acting Gov. Richard J. Codey yesterday decried a proposed "unregulated" waste-transfer station in the Pinelands National Reserve.

Southern Railroad of New Jersey plans to build what it calls a "transloading" facility, a 20-acre site in Mullica Township where waste will be trucked and then shipped out on trains.

Codey said that the facility should be regulated by the state, but that a "loophole" in federal law might allow the station to be built without state approval because it is on railroad property.

State officials also suspect that the facility is meant to replace a waste-transfer station in Egg Harbor Township that lost its Department of Environmental Protection permit in January because of various alleged violations.

The land is owned by the family of Steve Waszen, Codey said, and is leased to the railroad company. The Waszen family, Codey said, owned and operated the Egg Harbor facility.

DEP Commissioner Bradley M. Campbell said it appeared the facility would resurrect "Waszen's prior lawbreaking operation under the sham mantle of the railroad."

John Fiorilla, the railroad company's lawyer, said the railroad would build and operate the facility and comply with all state environmental laws.

But under federal law, "we don't need to get permits or pay fees," he said.

Waszen would not be involved in the operation, but would deliver construction and demolition debris to the facility, Fiorilla said.

Waszen's lawyer, David DeClement, said he was not certain whether his client would be doing business at the facility.

"He may. He may not," DeClement said.

Depending on Waszen's role, Campbell said, a state permit would not be processed "when someone has pending unresolved enforcement actions."

Fiorilla said the railroad was meeting with township officials next month and would be happy to meet with Codey or other state officials to discuss the matter.

Fiorilla said the facility would benefit New Jersey by shifting more waste hauling to trains. "We're taking thousands and thousands of trucks off the road between here and the state of Ohio," where much of the Garden State's waste is sent, he said.

In a letter to Jim Florio, chairman of the Pinelands Commission, Codey wrote that "this marriage of convenience between the Waszen family and Southern Railroad is designed to circumvent state law."

Codey also said the proposed station "is part of an alarming trend that is occurring not just in the Pinelands but also elsewhere in New Jersey and across the country."

He directed his office to work with the Pinelands Commission, the DEP, and the state Attorney General's Office to take appropriate action "to prevent this facility from beginning its operation."
Contact staff writer Robert Moran at 609-989-9016 or bmoran@phillynews.com.

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Herald News (Passaic County, NJ)

April 5, 2006 Wednesday
All Editions

SECTION: OUR TOWNS; Pg. B01

LENGTH: 468 words

HEADLINE: Fire erupts at rail waste station;
Despite opposition, site has been in operation since May

BYLINE: By ALEXANDER MacINNES, Herald News, North Jersey Media Group

BODY:

A controversial rail-waste transfer station on Passaic Street which stores on average 320 tons of construction and demolition debris caught fire Tuesday morning and was still not completely extinguished by early evening, fire officials said.

Two Passaic firefighters received minor injuries but declined medical care. Fire crews cautiously extinguished the blaze from the perimeter of the property, rather than entering the corrugated-metal building where the debris burned.

"The contents were unknown, and it was too dangerous to make an attempt" to get inside, said Deputy Fire Chief Jose A. Roman.

John Miskovsky, the city's fire inspector, would not comment on the cause of the fire.

The transfer site began operating last May over objections by some city officials and residents. Because the site is a rail-based station, it does not need local or state permits under a pre-emption clause in the 1995 Interstate Commerce Commission Termination Act.

Passaic land-use and zoning boards had no oversight on its operations, and city officials cannot cite it for violations.

Jim Wilson, president of the New York and Greenwood Lake Railway Co., which operates the transfer station, said the cause of the fire was undetermined, but there were 160 tons of mostly wood and plaster construction debris in two freight cars on site at the time of the fire. He said there was no asbestos or chemicals "that we know of" in the fire.

County health officials at the scene conducted environmental air tests. They concluded that the burning trash was not a chemical danger to the surrounding residents, according to Deborah Drake, a health officer with the Passaic County Health Department.

Fred Mumford, a spokesman with the state Department of Environmental Protection which is responsible for inspecting the facility said the agency will investigate the fire. The company ships out between four and five rail cars loaded with debris daily, 90 percent of which comes from Passaic and Bergen counties, Mumford said.

City Council President and Assemblyman Gary Schaer said the city was negotiating with the operators to gain more oversight over its operations.

"We have learned and reaffirmed that our control, in fact, is almost zero," Schaer said.

Though Schaer received \$5,000 in campaign contributions from the company for his Assembly campaign last year, according to state campaign filings, he said still remains a vocal opponent of the facility.

Schaer said he is concerned with the air quality in that area, and that dust from the transfer station could exacerbate some residents' respiratory problems.

Deana Robinson, who lives across from the station, is one of those residents with health concerns.

"We don't know what we're inhaling," Robinson said Tuesday morning. "I'm asthmatic, and I don't know what I'm breathing."

GRAPHIC:

COLOR PHOTO, Leslie Barbaro, Herald News - Passaic firefighters readjust hoses as they douse a burning trash heap at the Passaic Street rail waste-transfer station Tuesday morning. Fire officials did not know how the blaze started or what contents were inside the site.

LOAD-DATE: April 5, 2006