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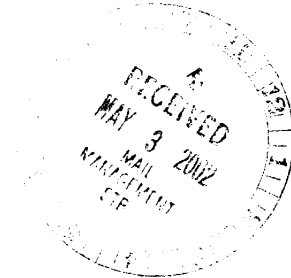
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May 2, 2002

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Building, Room 700
1925 K Street, N.W.
Washington, D.C. 20423



Via Federal Express

Re: HI TECH TRANS, LLC, CANADIAN PACIFIC RAILROAD,
CORP. - PETITION FOR A DECLARATORY ORDER - HUDSON
COUNTY, NEW JERSEY, FD 34192

Dear Secretary Williams:

Enclosed please find the original and ten copies of Hi Tech Trans LLC.'s motion to amend the petition and amended petition, removing the Canadian Pacific Railroad as a party and making other modifications to the petition all pursuant to 49 CFR §1104.11.

Also enclosed is a 3 ½" diskette containing the same in Microsoft Word 6.0 format.

Also enclosed please find an additional copy of the motion and amended petition and a self addressed Federal Express packet. We would greatly appreciate receiving a receipted copy

Thank you for your attention to this matter.

Very truly yours,

John F. McHugh

Copies by Federal Express to:

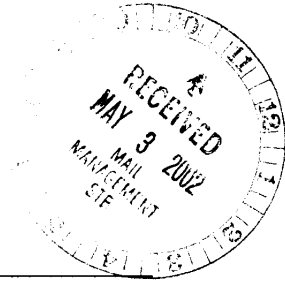
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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET 34192



HI TECH TRANS, LLC, CANADIAN PACIFIC RAILROAD- PETITION FOR A
DECLARATORY ORDER - HUDSON COUNTY, NEW JERSEY,

CERTIFICATION IN SUPPORT OF AN APPLICATION PURSUANT TO 49 CFR
1104.11 FOR LEAVE TO AMEND THE PETITION

John F. McHugh an attorney duly admitted to practice before this Board
certifies under penalty of perjury as follows:

1. Hi Tech Trans, LLC filed this Petition for a Declaratory Order on April 4, 2002. The respondents, Hudson County and the State of New Jersey Department of Environmental Protection, have asked that their time to file responding papers be extended until May 6 and Hi Tech has agreed to that extension, subject to the Board's approval.

2. Though a copy of the Petition was provided to an employee of the Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway ("CPR") before it was filed, the Petition did not receive pre-filing review from CPR's legal staff or any officer of CPR. A mis-communication between the representatives of CPR and Hi Tech then resulted in this petition being filed with CPR as a named party. Because there has not been adequate time for CPR to review the Petition, CPR has asked to be removed from this Petition as a party.

3. On information and belief neither the State of New Jersey nor Hudson County have applied to the Secretary of Transportation for a waiver of preemption under

the Hazardous Materials Transportation Act nor has such an exemption from preemption been granted. If the State and County have failed to exercise their rights under 49 U.S.C. §5125(e), any effort by New Jersey to regulate the interstate transportation of construction and demolition waste and to impose a burden in so doing is preempted by the provisions of that Act. Clearly, any legitimate local concern should have been addressed in such an application. Rather than raise this additional issue in a reply, Hi Tech deemed it in the interests of a full and fair airing of the issues to amend to add that fact and the provisions of that act to this Petition.

4. The annexed amended Petition removes CPR as a party and adds reference to the provisions of the Hazardous Materials Transportation Act as an additional reason for preemption of the subject County Ordinances.

Wherefore the Petitioner respectfully requests that its motion for leave to file the attached amended petition be granted and that the petition be deemed filed as of the date the order granting the motion.

Dated, New York, N.Y.
May 2, 2002

Respectfully Submitted

John F. McHugh, Esq. attorney for
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212-483-0875

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET 34192

HI TECH TRANS, LLC, - PETITION FOR A DECLARATORY ORDER - HUDSON
COUNTY, NEW JERSEY,

Petitioner seeks a declaratory order that the Surface Transportation Board has exclusive jurisdiction over Petitioner's activities and those of its customers who seek to utilize rail services and nullifying the statutes and ordinances of New Jersey which render shipping waste by rail unlawful.

FACTS

Petitioner Hi Tech Trans, LLC is a company organized under the laws of the State of New Jersey which operates a facility on property of Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway ("CPR") in Newark, N.J. Hi Tech contracts for cargos to be shipped by rail, gathers those cargos by truck and then loads those cargos, all construction and demolition debris and contaminated soils, onto railway cars for transport in interstate commerce. Cars move on CPR rail line, and on the lines of connecting carriers, including the Norfolk Southern Railroad Company, Inc. and the CSX Transportation Corp. Hi Tech contracts with the ultimate shipper of the cargos and contracts with truckers, licensed by the State of New Jersey to transport the cargos from the shipper's site, usually a construction site, to the rail loading facility where the cargos are transferred in bulk from the truck to the rail car. Hi Tech inspects all waste moving through the Newark facility to insure that all materials are appropriate for such

transport and fully comply with all federal regulations related to the safe handling of such materials. No materials are held on the site other than in rail cars and then never for more than the time between arrival loading directly from a truck and departure in regularly scheduled trains. The Hi Tech operation is limited to materials deemed non hazardous pursuant to the Hazardous Materials Transportation Act.

Hudson County New Jersey has informed Hi Tech that it has designated the Hudson County Improvement Authority [HCIA] as its agent for the management of waste. By a selection process, that agency has selected a specific facility to receive all Construction and Demolition waste and contaminated soils originating in Hudson County (See: In the Matter of Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Hudson County Solid Waste Management District, Exhibit A). State laws impose fines on any transporter licensed by the State which delivers waste to a facility which, although licensed by the State, has not been designated by a State authorized district, such as Hudson County, to receive waste. The State also imposes fines on any transporter which delivers waste to a facility not authorized to receive waste (licensed) by the State. HCIA has informed Hi Tech that it believes that Hi Tech has accepted cargos, originating in Hudson County. It has also informed Hi Tech that it is not authorized to accept waste by Hudson County or under applicable New Jersey laws. It has informed Hi-Tech that any person delivering waste to Hi-Tech Trans is in violation of law and subject to fines and penalties as provided in New Jersey Revised Statutes 13:1E-9. It has demanded that Hi-Tech provide Hudson County with information as to the identity of entities who have delivered waste to the Hi-Tech facility, Exhibit B and

has rejected arguments that the facilities, as rail facilities, do not require local authority to receive such cargos. Exhibit C.

The language of the State Certified County Flow Control Plan at issue here reads as follows:

All solid waste facility operators and transporters registered with the Department and operating within the County and affected by the amendment contained herein shall operate in compliance with this amendment and all other approved provisions of the County Plan. Any facility operator or transporter who fails to comply with the provisions contained herein shall be deemed to be in violation of N.J.S.A. § 13:1E-1 et seq., in violation of N.J.S.A. 7:25-1 et seq., and in violation of their registration to operate a solid waste facility or a collection system issued thereunder by the Department and shall be subject to the provisions and penalties of N.J.S.A. § 13: 1E-9 and 12 and all other applicable laws.

(Page 9 of Exhibit A)

The relevant provisions of N.J.S.A. § 13:1E-9 read as follows:

g. Any person who knowingly:

- (1) Transports any hazardous waste to a facility or any other place which does not have authorization from the department to accept such waste;
- (2) Generates and causes or permits to be transported any hazardous waste to a facility or any other place which does not have authorization from the department to accept such waste;
- (3) Disposes, treats, stores or transports hazardous waste without authorization from the department;

shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a fine of not more than \$50,000.00 for the first offense and not more than \$100,000.00 for the second and each subsequent offense and restitution, in addition to any other appropriate disposition authorized by subsection b. of N.J.S.2C:43-2.

The relevant provisions of N.J.R.S. §13:1E-12. read as follows:

Revocation or suspension of registration

The department, after hearing, may revoke or suspend the registration issued to any person engaged in the solid waste collection or solid waste disposal upon a finding that such person:

- a. Has violated any provision of this act or any rule, regulation, or administrative order promulgated hereunder; or
- b. Has violated any provision of any laws related to pollution of the waters, air or land surfaces of the State; or
- c. Has refused or failed to comply with any lawful order of the department.

HCIA has demanded that Hi Tech provide the County with information as to the origins of all cargos it has handled. HCIA has informed Hi Tech that it will use that information to fine any Waste Hauler or Materials Handling Facility, including Hi-Tech, pursuant to the above cited State Laws, which has delivered or received Hudson County waste which facility is not authorized under the Certified Waste Management Plan of The Hudson County Waster Management District as amended on March 11, 1999 (hereinafter "The Plan"). Hi Tech Trans, LLC is not licensed by the State of New Jersey to carry waste nor is it authorized to carry waste pursuant to The Plan.

The facility designated by The Plan for Construction and Demolition Waste and Contaminated Soils is a truck to truck facility. By selecting that facility, Hudson County has rendered rail either illegal or noncompetitive. Transshipping the type of waste handled by Hi Tech from a truck to truck facility to a rail facility imposes a tremendous cost burden on the rail mode. Further, passage through the truck based

transfer station serves no purpose. Such a process favors truck contractors over rail carriers.

By excluding rail transport, the County has imposed a burden on interstate commerce. No Legitimate interest of the County is advanced by this ordinance which could not be fully protected by other means available to the County. Hudson County seeks to use its governmental power to regulate Petitioner's rail and intermodal operations and in attempting to do so, Hudson County seeks to invade the exclusive jurisdiction of this Board.

THE JURISDICTION OF THE SURFACE TRANSPORTATION BOARD
IS EXCLUSIVE

CPR, as well as connecting carriers used by Hi Tech, are rail carriers as that term is defined in 49 USC §10102(5), to wit "a person providing common carrier railroad transportation for compensation". Hi Tech Trans is an entity engaged exclusively in handling freight in a continuous intermodal rail move.

Title 49 U.S.C. §10501(b) provides that the authority of the Surface Transportation Board over "(1) transportation by rail carriers and the remedies provided in this part with regard to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services and facilities of such carriers' and (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks or facilities, even if the tracks are located or intended to be located entirely in one state, is exclusive." Such jurisdiction must, of necessity, extend to an application of local law which is applied in such a way as to unduly interfere with interstate commerce.

The Surface Transportation Board has exclusive jurisdiction over any rail activity including the activities of Hi Tech Trans which “regardless of ownership” is engaged in services related to that movement, i.e., the “receipt, delivery, elevation,” ... “transfer in transit”, ... “handling” of property, 49 U.S.C. §10102 (9) (B).

HUDSON COUNTY’S FLOW CONTROL REGULATIONS ARE PREEMPTED TO
THE EXTENT THAT THEY RENDER SHIPPERS UTILIZING RAIL SERVICES
SUBJECT TO FINES

49 U.S.C. §11321(a) specifically proscribes any law which impedes the exclusive authority of the Surface Transportation Board. It states that “a rail carrier...is exempt from the antitrust laws and from all other law, including state and municipal law, as necessary to let that rail carrier...hold, maintain and operate property...acquired through...” (a transaction approved or exempt from approval by the Surface Transportation Board) See: City of Auburn v. United States, 154 F.3d 1025, 1029 (9th Cir. 1998). The exemption from state law contained in the §11321, is to be interpreted broadly, See; Ex Norfolk & Western Ry. V. American Train Dispatchers, Assn. 499 U.S. 117, 127-34. (1991) “The... language in §11321(a) exempting carriers from ...State and municipal law is clear broad and unqualified”. See also, CSX Transportation v. Georgia Public Service Commission, 944 F. Supp. 1573, 1585 (N.D. Ga. 1996). The congressional intent to preempt is express. Congress has made its intent to exempt rail operations from all State and Federal law other than the Interstate Commerce Commission Termination Act clear.

In addition to invading a field given by Congress exclusively to the Surface Transportation Board, Hudson County’s regulations conflict directly with Federal

law. Hudson County ordinances and regulations impose fines on truckers hired by Hi Tech to pick up cargos for intermodal shipment by rail and on Hi Tech and rail carriers for the receipt of cargos for rail shipment from Hudson County as Petitioners' rail intermodal services are not authorized by that County or by the State of New Jersey. Hi Tech Trans and the rail carriers over whose lines its cargo moves, are all allowed under federal law to accept waste for transport. No local governmental agency may, through the use of governmental authority, determine that an entity operating under authority of Federal Law, is unauthorized to do what such Federal law not only allows but mandates, i.e. provide common carrier transportation services to the public on reasonable terms. Where, as here, Hudson County seeks to impose criminal sanctions for exercising a right to use federally authorized transportation services, the County's regulations conflict absolutely with Federal Law and are a nullity. Cipollone v. Liggett Group, Inc. 505 U.S. 504, 515 (1992), Teper v. Miller, 82 F. 3d 989, 993 (8th Cir. 1993).

Hudson County's policies discriminate against rail carriers both by requiring State permits to receive waste and by requiring all waste to move through the county designated truck to truck facility. The county's regulations do not seek to affect only county owned waste but attempt to affect the conduct of private parties. Where a governmental authority seeks to affect the transportation mode choices of private trash interests it is not acting as a market participant but as a transportation regulator, Huish Detergents, Inc. v. Warren County, Kentucky, 214 F.3d 707, 715, (6th Cir. 2000). Where, as here, a county ordinance or regulation directly conflicts with Federal Law, to wit by rendering federally mandated activity illegal, local law is preempted Free v. Bland, 369 U.S. 663, 666 (1962). The Board in reviewing this situation should not confine its

consideration to the facts of the single matter before it but should consider the potential effect on the national transportation regulatory scheme of multiple similar local ordinances. If Hudson County may render rail service illegal, absent concession to local regulation or otherwise, a multiplicity of such regulations would cripple the nation's rail system. The threat to the national interest requires nullification of local action whenever it affects interstate commerce even where the purpose of the action is not overtly discriminatory particularly where a multiple of such local actions have the potential of a national effect. U & I Sanitation. V. City of Columbus, 205 F. 3d 1063, 1071 (8th. Cir. 2000). Indeed in U&I Sanitation the 8th Circuit confronted precisely the type of flow control regulation which Hudson County seeks to impose. After reviewing, and finding wanting, all the City of Columbus's arguments, the Court held the ordinances unconstitutional for the following additional reason:

We conclude that the ordinance's effects upon interstate commerce are far from trivial. Assuming, as we must, that all cities such as Columbus enacted flow control ordinances like the one at issue here, the interstate market in recyclable materials extracted from solid waste could be substantially diminished or impaired, if not crippled. This is no academic problem for:

Over 20 States have enacted statutes authorizing local governments to adopt flow control laws. If the localities in these states impose the type of restriction on the movement of waste that Clarkstown has adopted, the free movement of solid waste in the stream of commerce will be severely impaired. Indeed, persuasive flow control would result in the type of balkanization the [Commerce] Clause is primarily intended to prevent.

Citing C&A Carbone, Inc. v. Town of Clarkstown, New York, 511 U.S. 383, 406 (1994) (O'Connor J. concurring)

The County's regulations are void pursuant to 49 U.S.C. §11321(a).

The laws and ordinances here in question are also preempted as the determination of which materials are hazardous, and thus require special handling, is

covered by The Hazardous Materials Transportation Act 49 U.S.C. §5125. That act and that act alone determines which materials may be subject to scrutiny. Construction and demolition waste is not designated as hazardous by the regulations promulgated under that act. The HMTRA specifically preempts State laws and regulations to the extent that they differ substantively from federal regulations and in particular where they expand the designation of hazardous materials beyond those included in the Federal regulations. The act states in relevant part:

(b) Substantive differences.--(1) Except as provided in subsection (c) of this section and unless authorized by another law of the United States, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter or a regulation prescribed under this chapter, is preempted:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(emphasis added). Subsection (e) of this section provides:

Waiver of preemption.--A State, political subdivision of a State, or Indian tribe may apply to the Secretary for a waiver of preemption of a requirement the State, political subdivision, or tribe acknowledges is preempted by subsection (a), (b)(1), or (c) of this section. Under a procedure the Secretary prescribes by regulation, the Secretary may waive preemption on deciding the requirement--

(1) provides the public at least as much protection as do requirements of this chapter and regulations prescribed under this chapter; and

(2) is not an unreasonable burden on commerce.

(emphasis added)

“A major purpose of the HMTA was the development of a uniform national scheme of regulation regarding the transportation of hazardous materials” Chlorine Inst. V.

California Highway Patrol, 29 F. 3d 495,496 (9th Cir. 1994) quoting Southern Pacific Transportation v. Public Service Comm'n of Nev., 909 F.2d, 352,353(9th Cir 1990). Here, the state regulations are inconsistent with federal regulation in that they deem Construction and Demolition materials to be hazardous and requiring a State license and County designation to transport. These laws impose substantial regulations on the transportation of such materials not found in HMTA regulations. The State regulations are therefore an obstacle to the intent of the Federal scheme which also requires preemption, Chlorine Inst. Supra 26 F.3d at 498.

Finally, states may not impose a burden on interstate commerce unless no other avenue is open to protect a legitimate state interest. The Congressional scheme, in the Hazardous Materials Transportation Act gives local interests the right to seek to substitute local regulations upon an application to be made to the Secretary of Transportation where local conditions mandate a waiver of preemption 49 U.S.C. §5125(e) . No such application is in issue here.

The ordinances of Hudson County are thus, preempted by Federal Law.

THE COUNTY ORDINANCES AND REGULATIONS FAVOR TRUCK OVER RAIL
CARRIAGE AND THUS VIOLATE THE ENVIRONMENTAL MANDATES THE
BOARD IS CHARGED WITH ENFORCING

The County regulations are inconsistent with Federal environmental policy to the extent that they confine County generated waste to truck transport. Such transport generates 40% more emissions than would be generated by a rail haul. Congress made it clear in the National Environmental Policy Act, 42 U.S.C. §4331 et seq., that:

it is the continuing responsibility of the Federal Government to use all practicable means, [to] -

...
(2) assure for all Americans safe, healthful, productive and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

...

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.

Id., 42 U.S.C. § 4331 (b). To achieve these goals, Congress "authorizes and directs . . . all agencies of the Federal Government" to consider:

(C) . . . (i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action, ...

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

42 U.S.C. § 4332. Moreover, the Clean Air Act requires a federal program to favor environmentally sound proposals and disfavor those that adversely affect air quality:

Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, ... to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air quality standard.

42 U.S.C. §7506(d).

Rail haulage of waste, or of any product, is environmentally preferable to truck transport. To move the same tonnage by truck generates not only more emissions, it consumes valuable highway space, constitutes a growing safety problem and imposes a huge highway maintenance bill on the taxpayers. Thus, not only are the County's

regulations preempted by the provisions of the §11321(a), they are arbitrary and in conflict with the principals which must govern any decision by the Surface Transportation Board in exercising its exclusive management of the nation's transportation system.

THE COUNTY'S ORDINANCES AND REGULATIONS NEITHER PROTECT A
LEGITIMATE LOCAL CONCERN NOR CONSTITUTE THE ONLY MEANS TO
PROTECT SUCH AN INTEREST WHICH IS AVAILABLE TO THE COUNTY

The County's designation of a single in county facility through which all county waste of the type here in question must flow, is per se unlawful C&A Carbone, Inc. v. Town of Clarkstown, New York, Supra 511 U.S. 392. The County is not a market participant in that it is providing no services other than administration of flow control. Huish Detergents, Inc. v. Warren County Ky. 214 F. 3d 707, 715 (6th Cir 2000).

It would appear that the County's sole concern in establishing the waste management program is to impose fees on the movement of waste to finance its waste management staff and infrastructure. A purely financial local purpose is insufficient to justify any burden on interstate commerce. U & I Sanitation v City of Columbus, supra 1070. The County can not show that it has no alternative to the regulatory scheme it has established to finance its waste management scheme. It could, as New Jersey communities were invited to do by the Third Circuit Court in Atlantic Waste Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, 112 F. 3d 652, 666 (3rd Cir. 1997) impose a tax or surcharge on all waste to pay the costs of its waste management infrastructure. Such a tax, evenly applied, would not discriminate against rail carriage or against interstate interests nor would such taxes or charges be an attempt

to regulate rail carriers directly or indirectly, "The surcharge may be an annoyance, but it is an equal-opportunity annoyance." Maharg, Inc. v. Van Wert Solid Waste management District, 249 F. 3d 544, 553 (6th Cir. 2001).

CONCLUSION

Rail carriers are authorized to accept cargo for shipment from anyone seeking such services and the rail carrier must accept such proffered cargo for a reasonable fee. Hudson County New Jersey can not forbid its residents from using rail services through the use of its governmental power to impose fines. Such power is specifically preempted by the provisions of §11321(a). The Surface Transportation Boards jurisdiction over rail carriers is exclusive and that includes protecting the right of the public to access to rail carriers.

Dated, New York, N.Y.
May 1, 2002

John F. McHugh, Esq.

Attorney for the Petitioner
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New York, N.Y. 10005
212-483-0875

CERTIFICATION OF SERVICE

John F. McHugh being an attorney duly admitted to practice before the Board certifies under penalty of perjury that he dispatched a copy of the certification in support of the motion to amend and the proposed amended petition by Federal Express overnight regular service to:

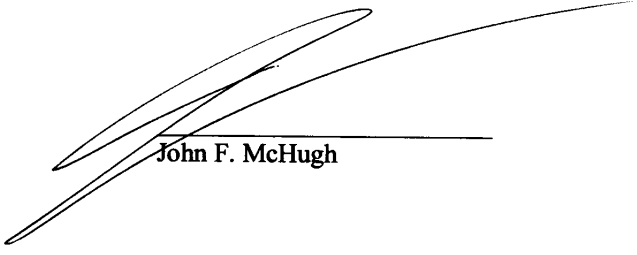
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Conrail
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V-P Law and General Counsel
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this 2nd day of May, 2000.

New York, N.Y.



John F. McHugh