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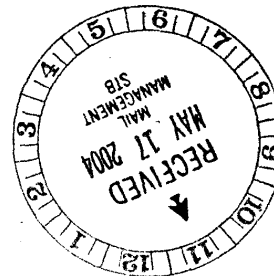
♦ Also Admitted in NY
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May 7, 2004

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Public Record



Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board
Mercury Building, Room 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Petition for a Declaratory Order by Hi-Tech Trans, LLC
Finance Docket No. FD34192

Dear Secretary Williams:

This firm represents respondents Hudson County Improvement Authority and Essex County Utilities Authority in the above-referenced matter. We are in receipt of Hi Tech's letter of May 5, 2004, calling the Board's attention to an unpublished decision in a matter entitled Grafton and Upton Railroad Company v. Town of Milford, No. 03-40291-NMG (D. Mass. 2004), presumably as additional support for its preemption argument. The decision lends no support to Hi Tech's position.

In Grafton and Upton, the plaintiff's status as a bona fide "rail carrier" was uncontested. In this case, Hi Tech's lack of rail carrier status is uncontested. In Grafton and Upton, the commercial activity at issue was the storage and shipment of steel. In this case, it is the handling and disposal of solid waste – a matter with far greater local health, safety and welfare implications than the shipment of steel. In Grafton and Upton, the court was careful to note that the railroad was required to comply with state and local laws "to the extent they do not interfere with interstate commerce." Op. at 15. Here, Hi Tech has not demonstrated, and cannot demonstrate, that the State regulations at issue pose any undue interference with interstate commerce.

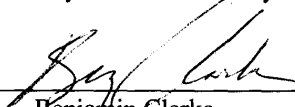
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No case has ever held that the ICC Termination Act exempts non-rail-carriers from State and local environmental laws governing the disposal of solid waste, and Grafton and Upton does not change that state of affairs. The Board's rejection of Hi Tech's overexpansive preemption argument was and is legally sound, and we therefore respectfully join in the request made by the State of New Jersey, Department of Environmental Protection, for timely issuance of a final Board decision in this matter.

Respectfully yours,

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