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To: New England Transrail Working Group

Date: March 23, 2005

From: Stephen M. Richmond

Re: Proposed Amendment to ICCTA

As we have discussed, there is currently some confusion surrounding the scope of the exclusive jurisdiction granted by the Interstate Commerce Commission Termination Act ("ICCTA") to the Surface Transportation Board ("STB"), particularly in relation to the development of solid waste facilities on rail spurs.

The STB clearly has exclusive jurisdiction over rail carriers and their activities that are integral to rail operations. However, there are several projects in development or currently in operation throughout the country in which a claim has been made that a solid waste facility on a side rail spur falls within the protective umbrella of the STB's exclusive jurisdiction. This would mean that these facilities are exempt from nearly all substantive environmental requirements imposed by state and local governments, and raises additional questions about the applicability of many federal environmental laws. As you know, most solid waste facilities are subject to significant protective state and local environmental controls, but because the U.S. Environmental Protection Agency has deferred regulation in this area to the states, they are subject to very limited federal controls.

Stretching the exclusive jurisdiction of the STB to include the construction and operation of a solid waste facility that happens to be located on a rail spur does not further Congress' interest in enacting the ICCTA to protect the rail industry. The courts have clearly recognized that the STB has exclusive jurisdiction over rail operations, but have set limits on that jurisdiction to clarify that it does extend only to functions that are integrally related to the operation of a railroad.

You have asked that I draft language to clarify the scope of this jurisdiction as it relates to solid waste facilities. Specifically, the intent would be to clarify that the regulation of solid waste facilities does not fall within the exclusive jurisdiction of the STB. The proposed language is attached and the two suggested changes appear in **yellow shading**.

Proposed Amendment to ICCTA

49 U.S.C. § 10501

b) The jurisdiction of the Board over--

(1) transportation by rail carriers, and the remedies provided in this part with respect 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, except for solid waste management facilities as defined in 42 U.S.C. § 6903 (29), even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(c) (2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local government authority or over the processing or sorting of solid waste;