



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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JON S. CORZINE
Governor

LISA P. JACKSON
Commissioner

April 5, 2007

R. Steven Brown, Executive Director
ECOS
444 N. Capitol Street, NW
Suite 445
Washington, DC 20001

Dear Mr. Brown:

I am writing to convey our growing concern over a serious matter that jeopardizes the environment and the health and safety of our citizens and to urge action on all fronts. As you may be aware, New Jersey, among many other states, has been embroiled in an ongoing battle with solid waste operators and complicit railroads, as well as solid waste operators endeavoring to become designated as railroads, which have sought and continue to seek to shield their solid waste disposal activities and operations from necessary state regulation by claiming preemption under the Interstate Commerce Commission Termination Act (ICCTA), 49 U.S.C. § 10101 *et seq.* Solid waste poses unique hazards to the public and the environment, and solid waste activities have *always* been left to the states to regulate and manage. These entities, however, have claimed – erroneously – that ICCTA preempts *all* state health, safety and environmental regulations. The result has been solid waste operations run amuck.

To demonstrate the severity of the problem that New Jersey faces, we are forwarding to you letters from our respective agencies that were recently sent to one such railroad, The New York, Susquehanna & Western Railway Corporation (NYS&W). As depicted in the photograph attachments, the situation at one facility in particular has reached a critical point.

- There is simply too much waste being accepted. The result: waste piles over twenty-five feet high and coming out the building doors for indefinite periods of time.
- The building has no fire suppression system, heightening the risk of injury to workers, neighbors, firefighters, and other emergency response personnel in the event of a fire.
- The structural integrity of the building is impossible to determine because the facility has failed to provide adequate and accurate building code plans and information.

- The facility does not control air pollutants, allowing dust and other emissions that may contain hazardous constituents such as asbestos and lead to be released into the environment.
- Poor wastewater and storm water management systems cause wastewater to clog drains and mix with the waste to create leachate, which, along with storm water running off waste pollute the environment.

This facility, like many others, has steadfastly refused for over a year to implement basic safeguards by claiming that federal law protects it and its environmentally unsound activities. Nor is this an isolated situation. Instead, it represents the same outrageous and untenable position that New Jersey is vigorously fighting in courts throughout the state, including in the Third Circuit Court of Appeals which just granted the State's motion for expedited review of its appeal of a recent adverse district court decision.

I urge you to take action on your respective fronts to ensure that all solid waste operations are conducted in a responsible manner under proper state oversight. Pending now are bills in Congress that would clarify that ICCTA *does not and was never intended* by Congress to preempt all state health, safety and environmental regulation. Also pending is a proceeding before the federal Surface Transportation Board to decide, among other issues, whether solid waste processing activities are integrally related to rail transportation, which New Jersey maintains are not. By pressing forward, New Jersey and other states will no longer have to face down challenges by purported rail facilities that set up shop and hamstring the states' compliance and enforcement efforts under the misguided notion that federal law prohibits the states from regulating for the public health, safety and environment. My goal is simply to ensure that *all* solid waste operations are conducted in a safe and environmentally sound manner. The alternative is what is seen in these pictures.

I thank you for your consideration.

Sincerely,



Lisa P. Jackson
Commissioner

Attachments