REPORT

DATE: January 5, 2005

TO: Regional Council

FROM: Energy and Environment Committee
Jacob Lieb, Acting Lead Regional Planner, (213) 236-1921, lieb@scag.ca.gov

SUBJECT: S1607 Solid Waste on Railroad Properties

EXECUTIVE DIRECTOR'S APPROVAL:

RECOMMENDED ACTION:
Support Solid Waste Environmental Regulation/Railroads, S1607/HR 3577.

SUMMARY
The Energy and Environment Committee (EEC) and the Solid Waste Task Force recommend support of federal legislation to clarify jurisdiction of solid waste facilities on railroad properties. Existing Federal Law exempts railroads from State and local environmental regulation, and grants sole jurisdiction over these matters to the Surface Transportation Board. The proposed legislation would create an exception for solid waste management facilities.

BACKGROUND:
The sole jurisdiction of the Federal government over railroads has created the unintended consequence of allowing solid waste disposal facilities on railroad property to be unregulated. In practice, this lack of oversight leads to environmental hazards and difficulty in implementing integrated waste management practices.

The proposed legislation, S1607 (Corzine) and HR 3577 (House companion bill) would simply remove solid waste from among the responsibilities of the Surface Transportation Board, thereby subjecting sites to whatever other regulation would otherwise apply.

The Solid Waste Task Force considered this item at its meeting on September 22, and unanimously recommended support for this legislation.

FISCAL IMPACT:
All work related to adopting the recommended staff action is contained within the adopted FY05/06 budget and adopted 2005 SCAG Legislative Program and does not require the allocation of any additional financial resources.

Attachment:
Text of legislation

109TH CONGRESS
1ST SESSION

S. 1607

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2005

Mr. LAUTENBERG (for himself and Mr. CORZINE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005".

0000240

1 **SEC. 2. AMENDMENTS TO EXCLUDE SOLID WASTE DIS-**
2 **POSAL FROM THE JURISDICTION OF THE**
3 **BOARD.**

4 Section 10501 of title 49, United States Code, is
5 amended—

6 (1) in subsection (b)(2), by inserting "except
7 solid waste management facilities (as defined in sec-
8 tion 1004 of the Solid Waste Disposal Act (42
9 U.S.C. 6903))," after "facilities,"; and

10 (2) in subsection (c)(2)—

11 (A) by striking "over mass" and inserting
12 the following: "over—

13 "(A) mass"; and

14 (B) by striking the period at the end and
15 inserting the following: "; or

16 "(B) the processing or sorting of solid
17 waste.".

○

109TH CONGRESS
1ST SESSION

H. R. 3577

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2005

Mr. MENENDEZ (for himself, Mr. PALLONE, Mr. PASCRELL, Mr. ANDREWS, and Mr. ROTHMAN) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

---

A BILL

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO EXCLUDE SOLID WASTE DISPOSAL FROM THE JURISDICTION OF THE BOARD.

Section 10501 of title 49, United States Code, is amended—

(1) in subsection (b)(2), by inserting "except for solid waste management facilities (as defined in

1 section 1004 of the Solid Waste Disposal Act (42
2 U.S.C. 6903)),” after “facilities,”; and
3 (2) in subsection (c)(2)—
4 (A) by striking “over mass” and inserting
5 the following: “over—
6 “(A) mass”; and
7 (B) by striking the period at the end and
8 inserting the following: “; or
9 “(B) the processing or sorting of solid
10 waste.”.

O

S. 1607 - July 29, 2005
Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005
(Companion House of Representative, H.R. 3577)
Mike Mohajer

On 7/29/05, Senators Lautenberg (D-NJ) and Corzine (D-NJ) introduced **S. 1607** addressing the loop hole in the Interstate Commerce Commission Termination Act of 1995 that gives the Federal Surface Transportation Board the authority to exempt rail operators from complying with state and local solid waste laws and regulations. Below is an excerpt from the Congressional Record with the legislative language and statements from the two New Jersey Senators.

CONGRESSIONAL RECORD -- July 29, 2005 SENATE (PP: S9531 & 2)

By Mr. LAUTENBERG (for himself and Mr. **CORZINE**):

S. 1607. A bill to amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board; to the Committee on Commerce, Science, and Transportation.

Mr LAUTENBERG. Mr. President, I rise to introduce legislation to address a serious problem in New Jersey and across the nation—the unregulated sorting and processing of garbage at rail facilities in our communities.

A conflict in Federal laws and policy has resulted in certain solid waste-handling facilities located on railroad property being unregulated. Environmental laws such as the Solid Waste Disposal Act should apply to the operation of these facilities. However, a broad-reaching Federal railroad law forbids environmental regulatory agencies from overseeing the safe handling of trash or solid waste at these sites.

These unintended consequences require our attention, and are the reason for the Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005.

The Federal railroad law in question was enacted most recently in the Interstate Commerce Commission Termination Act of 1995 to protect the operation of interstate rail service. The law gives 'exclusive' jurisdiction over rail transportation—and activities incident to such transportation—to the Federal Surface Transportation Board.

I realize this law is necessary for the efficient operation of commerce in our modern economy. I serve on the Committee on Commerce, Science and Transportation, as well as the Subcommittee on Merchant Marine and Surface Transportation, which oversees

the Surface Transportation Board and considers nominations of its members. The board's reputation and expertise in rail regulation is second to none.

However, the Board is limited to only a passive role in ensuring that rail facilities are operated with minimal detriment to the public health and safety. These sites require active environmental regulation, just like other solid waste handling facilities.

The recent proliferation of solid waste rail transfer facilities has affected the ability of State and local governments to engage in long-term waste management planning. These agencies also are responsible for responding to accidents and incidents occurring at these facilities.

Although transporting solid waste by rail can reduce the number of trucks hauling solid waste on public roads, handling this waste without careful planning and management presents a danger to human health and the environment.

These transfer operations create thick dust, which is potentially hazardous and is breathed in by local residents and business owners.

Some transfer facilities don't have proper drainage on site, leading to the potential contamination of surface and groundwater and nearby wetlands.

In addition, these facilities raise serious concerns about the safety of their workers and the exemptions they claim from strong State worker protection laws.

As a result of these chilling reports, I asked state agencies in New Jersey, railroads, and other interested groups to provide input into possible legislation to address this problem.

Many experts in New Jersey, including the Department of Environmental Protection, the Meadowlands Commission, the Pinelands Commission, and the Rutgers Environmental Law Clinic, provided excellent suggestions. I look forward to working with them throughout the process to find a solution to this problem.

I have also met with railroad interests, who are concerned about their ability to continue hauling solid waste. Some operators of these rail facilities have voluntarily complied with State environmental laws, even though they could claim that Federal railroad law preempts any enforcement action States could take. I would like to thank members of the solid waste handling industry for their concern and input as well.

One reason this legislation is needed is that the Surface Transportation Board has never clarified whether it even has jurisdiction over the processing and sorting of solid waste at a rail facility.

This bill would make it clear that Congress' intent was not to subvert the policies of the Solid Waste Disposal Act and other environmental laws covering the handling of garbage.

The bill will clarify the intent of Congress in passing these two important laws, and ensure that they work together to provide for a robust, environmentally responsible rail system.

Some have suggested that perhaps this clarification should not be limited to the processing and sorting of solid waste. But these are the activities that require the greatest environmental oversight, because they pose the greatest environmental risk.

Many towns across the country are beginning to understand the problem of having an unregulated polluting neighbor, and having nowhere to turn for help. Many influential organizations support this effort, including: United States Conference of Mayors, National Governors Association, Solid Waste Association of North America, Mass Municipal Association, National Solid Wastes Management Association, Integrated Waste Services Association, and Construction Material Recyclers Association.

These garbage transfer facilities should not be able to circumvent and ignore our environmental and safety laws. I realize that the Surface Transportation Board must have broad jurisdiction over rail transportation, but that jurisdiction should not be interpreted in a way that puts our environment at risk.

Railroading has a bright future in New Jersey and throughout our country, as freight loads have increased to levels we have not seen in some time. I have fought for many years to ensure that our freight transportation system, the backbone of our national economy, continues to flourish. But we need this legislation to ensure that these solid waste rail transfer facilities are run in the same environmentally responsible manner as other solid waste sites.

I ask unanimous consent that the text of the bill be printed in the **RECORD**.

There being no objection, the bill was ordered to be printed in the **RECORD**, as follows:

S. 1607

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005".

SEC. 2. AMENDMENTS TO EXCLUDE SOLID WASTE DISPOSAL FROM THE JURISDICTION OF THE BOARD.

(3)

Section 10501 of title 49, United States Code, is amended --

(1) in subsection (b)(2), by inserting ''except solid waste management facilities (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)),'' after ''facilities,''; and

(2) in subsection (c)(2) --

(A) by striking ''over mass'' and inserting the following: ''over --

''(A) mass''; and

(B) by striking the period at the end and inserting the following: ''; or

''(B) the processing or sorting of solid waste.''.

Mr. CORZINE. Mr. President, I rise in support of legislation being introduced today by my colleague from New Jersey, Senator **LAUTENBERG.** This legislation, the Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005, would deal with a growing problem in my state: the problem of railroads avoiding strict environmental standards by constructing waste transfer facilities next to rail lines. I am proud to cosponsor this important legislation.

I first became aware of this problem when constituents contacted me about a waste transfer facility proposed to be built by a railroad in Mullica Township, New Jersey. There could not be a worse place for such a facility. Mullica Township is located in the Pinelands National Reserve, which encompasses more than 1.1 million acres of ecologically sensitive land. The Pinelands was designated as our nation's first national reserve in order to protect its streams, bogs, and cedar and hardwood swamps, as well as the many species that live there. Yet many of these protections could be circumvented if this proposed facility is built. The railroad argues that federal statute provides a shield from all environmental standards for any trash facility built adjacent to a rail line. This same argument has been used by railroads in the case of 5 similar facilities that are already in operation in North Bergen. These facilities lie near New Jersey's Meadowlands, another environmental treasure.

The statute being used by the railroads establishes the Surface Transportation Board, STB, as the regulatory agency for the nation's railroads, title 49 of the United States Code. Under section 10501, the STB has exclusive jurisdiction over the ''construction, acquisition, or operation'' of ''facilities'' located adjacent to a rail line. The railroads argue that facility means any facility, including a trash transfer station. They argue that because of this statute, federal law preempts all other state and local protections.

I cannot believe that Congress intended these types of facilities to be exempt from State and local environmental standards. The risk to the surrounding communities from the air

pollution and groundwater contamination that could occur when open rail cars carrying solid waste are allowed to load and off-load is too great. However, I believe that we must take steps to clarify the law's intent. The "Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005 will do this. The Act makes it clear that all state and local environmental laws and restrictions apply to these facilities.

This is a commonsense measure that insures that the public remains fully involved in decisions relating to these facilities, regardless of where they are built. I urge its enactment.

MMM – 8/17/05

Proposed amendments by S. 1607 (& H.R.3577) to Section 10501 of Title 49, United States Code. Deletions are shown by strikethrough and addition in bold and underlined.

1. Subsection (b)(2) – the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, **except solid facilities (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)),** even if the tracks are located, or intended to be located, entirely in one state, ; and

2. Subsection (c)(2) – Except as provided in paragraph (3), the board does not have jurisdiction under this part ~~over mass~~ **over - (A) mass** transportation provided by a local government authority~~.~~ **; or (B) the processing or sorting of solid waste.**

MMM – 8/17/05

109TH CONGRESS
1ST SESSION

H. R. 3577

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2005

Mr. MENENDEZ (for himself, Mr. PALLONE, Mr. PASCRELL, Mr. ANDREWS, and Mr. ROTHMAN) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

---

A BILL

To amend section 10501 of title 49, United States Code, to exclude solid waste disposal from the jurisdiction of the Surface Transportation Board.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. AMENDMENTS TO EXCLUDE SOLID WASTE DIS-**
4 **POSAL FROM THE JURISDICTION OF THE**
5 **BOARD.**
6 Section 10501 of title 49, United States Code, is
7 amended—
8 (1) in subsection (b)(2), by inserting "except
9 for solid waste management facilities (as defined in

000050

1 section 1004 of the Solid Waste Disposal Act (42
2 U.S.C. 6903)),'' after ''facilities,''; and
3 (2) in subsection (c)(2)—
4 (A) by striking ''over mass'' and inserting
5 the following: ''over—
6 ''(A) mass''; and
7 (B) by striking the period at the end and
8 inserting the following: ''; or
9 ''(B) the processing or sorting of solid
10 waste.''.

○

Proposed amendments by S. 1607 (& H.R.3577) to Section 10501 of Title 49, United States Code. Deletions are shown by strikethrough and addition in bold and underlined.

1. Subsection (b)(2) – the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, **except solid facilities (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)),** even if the tracks are located, or intended to be located, entirely in one state, ; and

~~2.~~ Subsection (c)(2) – Except as provided in paragraph (3), the board does not have jurisdiction under this part ~~over mass~~ **over - (A) mass** transportation provided by a local government authority~~.~~ **; or (B) the processing or sorting of solid waste.**

MMM – 8/17/05