

**SURFACE TRANSPORTATION BOARD SAYS WOODBRIDGE, N.J. MAY GO TO COURT TO ENFORCE CONRAIL'S
NOISE-ABATEMENT COMMITMENTS**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced that the Board today has issued a decision clarifying that the Township of Woodbridge, New Jersey (Woodbridge), may seek court enforcement of two noise-abatement agreements that it has entered into with the Consolidated Rail Corporation, Inc. (Conrail).

Congress has the authority to preempt, that is, to provide for the application of federal rather than state or local law. State and local railroad regulation has long been preempted to a significant extent. Congress broadened the preemption provision of the law [Section 10501(b) of Title 49, United States Code (49 U.S.C. 10501(b))] in the Staggers Rail Act of 1980, and further in the ICC Termination Act of 1995 (ICCTA), to such an extent that the courts have found most state and local regulation of transportation and transportation facilities to be preempted.

This case involves a controversy between Conrail and Woodbridge over Conrail's operation of its Port Reading train yard in Woodbridge. Over the years, nearby residents have complained that locomotives are left on the tracks with their engines idling throughout the late night and early morning hours. In September 1995, Woodbridge filed suit against Conrail. Ultimately, the parties entered into a settlement agreement, after which the suit was dismissed. After disputes continued, Woodbridge filed a motion to enforce and/or clarify the settlement. Shortly thereafter, on August 16, 1999, the parties entered into a Consent Order, which essentially ended the litigation after incorporating and clarifying the prior agreement. The Consent Order specified that either party could go back to court if it believed that the order was being violated.

Arguing that Conrail was not complying with the agreements, Woodbridge went to federal district court for relief. In its first order, the court found that Conrail had violated the agreements. Subsequently, however, the court entered a decision finding that it did not have jurisdiction to provide a remedy in view of the ICCTA's preemption provision. The court dismissed Woodbridge's action without prejudice to its right to seek relief before the Board. Shortly thereafter, Woodbridge filed a complaint with the Board.

In its decision, the Board recognized the broad sweep of the statutory preemption provision. Nevertheless, the agency found that because Conrail had voluntarily entered into the agreements, the preemption provision should not be used to shield the carrier from its own commitments. The Board concluded that it should not rule on the merits of the contract disputes in this case--as such matters are best addressed by the courts--and it encouraged the parties to continue to pursue cooperative efforts. Finding that "[t]hese voluntary agreements must be seen as reflecting the carrier's own determination and admission that the agreements would not unreasonably interfere with interstate commerce," the Board declined to interfere with them.

The Board's decision was issued today in *The Township of Woodbridge, NJ, Et Al. v. Consolidated Rail Corporation*, STB Finance Docket No. 42053. A printed copy is available for a fee by contacting **D~To-D~ Office Solutions, Room 405, 1925 K Street, N.W., Washington, D.C. 20006, telephone (292) 466-5530**. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>