

**SURFACE TRANSPORTATION BOARD CONCLUDES DECLARATORY-ORDER PROCEEDING IN "RIVERDALE" CASE,
SUMMARIZES RECENT DECISIONS ON PREEMPTION**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision concluding its declaratory-order proceeding addressing "preemption" issues in a case involving the Borough of Riverdale, N.J. (the Borough) and The New York, Susquehanna and Western Railway Corporation (NYSW).

To a significant extent, Congress has long "preempted," that is, applied federal rather than state or local law, relative to railroad regulation. In 1995, as part of the ICC Termination Act, Congress broadened the express preemption provision of Section 10501(b) of Title 49, United States Code (49 U.S.C. 10501(b)) relating to railroad facilities. The "declaratory-order" proceeding (where the Board is asked to issue a decision stating its position in a matter of dispute) before the Board involved the Borough's request for guidance on the extent to which the Borough could address certain NYSW activities in Riverdale.

In its September 10, 1999 decision in this proceeding, *Borough of Riverdale--Petition for Declaratory Order--The New York Susquehanna and Western Railway Corporation*, STB Finance Docket No. 33466, the Board provided general views about the nature and reach of preemption as it relates to railroad facilities. In that decision, the Board pointed out that local land-use or other permitting processes are generally preempted, but that state and local jurisdictions may exercise their police powers in other ways concerning health and safety matters (see Surface Transportation Board "News" Release No. 99-37, issued September 10, 1999). Because the Board had only limited information at the outset concerning the "Riverdale" matter, public comment was requested and the Board stated that it would issue a further decision after reviewing the comments. During the comment period, however, the Borough and NYSW resolved the matter privately. Therefore, there was no longer a need for the Board to address the specifics of the case. In the decision issued today, the Board instead reaffirmed the views expressed in its prior decision and summarized recent court rulings addressing the preemption issue.

One of the court rulings noted by the Board in its September 1999 decision found that a railroad refueling facility would have to comply with local electrical, building, fire, and plumbing codes, unless such codes restrict the railroad from conducting its operations or unreasonably burden interstate commerce. Another court ruling cited by the Board found that although zoning regulations and common-law nuisance remedies regarding matters such as air and noise pollution are preempted, the railroad involved in that case must work with the community relative to any normally required permits, and that the railroad could be required to submit a site plan to local government officials for post-construction review. A third court ruling cited found that federal law precludes state condemnation of a railroad's "passing track" integral to the railroad's operation of its "single-track" line, and a fourth ruling cited determined that a city could apply its zoning and licensing regulations to a facility that, although owned by a railroad, is not used in rail transportation.

Finally, the Board referred to its December 1, 2000 decision in *The Township of Woodbridge, NJ, et al. v. Consolidated Rail Corporation, Inc.*, STB Docket No. 42053 (summarized in Surface Transportation Board "News" Release No. 00-46 issued December 1, 2000), wherein the Board expressed its view that a town may seek court enforcement of two noise-abatement agreements into which a railroad had entered voluntarily. The railroad involved has since asked the Board to clarify its decision, and has also challenged that decision in court.

A printed copy of the Board's decision issued today in STB Finance Docket No. 33466 is available for a fee by contacting **D~To-D~ Office Solutions, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 466-5530**. The decision is also available for viewing and downloading via the Board's Website at <http://www.stb.dot.gov>

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