Statement of Gregory J. Schmidt

Mayor, Village of Croton-on-Hudson, New York

Before the

Subcommittee on Railroads, Pipelines, and Hazardous Materials

Committee on Transportation and Infrastructure

U.S. House of Representatives

Hearing on Railroad-Owned Solid Waste Transload Facilities

October 11, 2007

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Thank you, Mr. Chairman and members of the Committee. My name is Dr. Gregory Schmidt. I am the mayor of the Village of Croton-on-Hudson, New York. We are a small village in the northern suburbs of New York City, with a population of about 8,000 people and an area of less than five square miles. Despite our small size, we find ourselves besieged with solid waste operators masquerading as railroads and abusing federal law to prevent us from protecting the health and safety of our residents.

For many years, a ten-acre parcel in our village has been used for various materials handling operations. About ten years back, one of the solid waste operating companies leasing the property built a 1600 foot rail siding on it to enable it to directly load rail cars after processing the waste. This 1600 feet of track is the linchpin of various solid waste companies' efforts to avoid state and local regulation of their waste hauling operations by taking advantage of the exemption from state and local regulations enjoyed by railroad operations.

The 10-acre parcel is owned by Greentree Realty LLC, whose primary owner is the estate of an associate of the Genovese organized crime family. In 2000 Greentree leased the land to a company known as Metro Enviro Transfer, for use as a construction and demolition debris transfer station. The transfer station required a special permit from the Village, which regulated the hours of operation, types of waste that could be accepted, capacity limits, and required training of personnel. Metro Enviro accumulated an appalling compliance record – for exceeding waste limits, falsifying records, accepting industrial and municipal waste, and failing to train personnel – and in January 2003 we ordered it to close. In July 2005, after two and a half years of litigation that cost the Village 3/4 of a million dollars, the state's highest court upheld the Village's 2003 order, and the facility closed.

Now that Metro Enviro Transfer could no longer operate at the site, Greentree entered into a lease with an entity called Northeast Interchange Railway (NIR). Despite its name, NIR is not a railroad; it's a solid waste company. Another 2-1/2 years of litigation ensued among the Village, Greentree and NIR – and it's still ongoing. A New York State Supreme Court judge barred NIR from operating a waste transfer station at the site without first obtaining a permit from the Village. He ruled that "the Village has the right to impose conditions necessary to prevent harm to the community and the environment."

NIR then attempted to evade that requirement by filing with the Surface Transportation Board a Notice of Exempt Transaction, stating that it planned to become a common carrier by rail and to lease and operate its 1,600-foot "rail line" for the transloading of C&D waste and other materials. The Village – which was not notified of

the filing and learned about it purely by accident – filed with the STB and demonstrated that NIR had not shown it was practically, or legally, able to transform the 1,600-foot private spur track into a rail line operated by a common carrier. The STB rejected the notice and ruled that NIR would have to make a full filing with the STB.

Now, both the New York State Supreme Court and the STB had ruled that NIR must file applications before the Village and the STB in order to operate at the site.

The Village expected to see these applications, but never did. Instead, late one afternoon in May 2006, the Village Attorney received a phone call from the lawyer for NIR who said he was now also representing a company called Buffalo Southern Railroad (BSR) and saying that BSR was suing the Village in federal court, and that a temporary restraining order hearing would be held the next morning.

Prior to this telephone call, no Village official had ever heard of BSR – which we later learned was a small railroad with a total of 32 miles of track running from Buffalo to Jamestown, New York, 300 miles away from Croton-on-Hudson. It turns out that an NIR affiliate had entered into a two-year sublease with BSR, and that BSR was claiming that Village authority over the site was preempted by the Interstate Commerce Commission Termination Act.

Never mind that BSR's real operation was at the other end of the state and that it was just fronting for NIR's waste hauling and processing operations. The federal court granted BSR's motion for a preliminary injunction against the Village, preventing us from interfering with BSR operations. We were completely stymied.

BSR threatened a massive operation with solid waste and lots of other materials, all under cover of federal law that would prevent the Village from having any control

over it. With a railroad as a cover for the waste hauling and processing operations, the Village could not zone out the use altogether; it could not regulate the hours of operation even though the site shares an access road with the Village's 2000 plus space commuter parking lot; it could not monitor the types of waste being trucked through Village streets to the transfer station; and it would have no enforcement power over any limitations that might be put on the operation by other agencies, such as the STB or the federal Environmental Protection Agency. Fortunately, for business reasons that were never clear to us, the BSR operation never got off the ground and earlier this year BSR cancelled its lease.

The Village's fears are far from resolved, however. In the course of negotiating with the property owner over the Village's possible acquisition of the property, Greentree told us that they have other railroads waiting in the wings to move back in and handle solid waste.

Mr Chairman, the Village, the County of Westchester and the State of New York have worked together for decades to remove the influence of organized crime from the waste industry and to make sure that solid waste facilities are operated with environmental safeguards. Our efforts have been successful. This has resulted in a waste industry that is properly regulated by local, county and state governments, each regulating a different facet of the industry. Allowing railroads (or waste operators masquerading as railroads) to perform the handling of waste would completely undermine the gains we have made.

Mr. Chairman, our little village has already spent $1.2 million in legal fees to defend itself from these solid waste operators who are disguising themselves as

railroads and who are claiming federal immunity from our control. We don't think that's what Congress had in mind when it created the STB, and we call upon Congress now to amend the law to make that perfectly clear.