

(H) SOLID WASTE RAIL TRANSFER FACILITY.—The term “solid waste rail transfer facility”—

(i) means the portion of a facility owned or operated by or on behalf of a rail carrier (as defined in section 10102 of this title) where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers; but

(ii) does not include—

(I) the portion of a facility to the extent that activities taking place at such portion are comprised solely of the railroad transportation of solid waste after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing solid waste shipments; or

(II) a facility where solid waste is solely transferred or transloaded from a tank truck directly to a rail tank car.

(I) SLUDGE.—The term “sludge” means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), the terms “household waste”, “commercial and retail waste”, and “institutional waste” do not include—

- (A) yard waste and refuse-derived fuel;
- (B) used oil;
- (C) wood pallets;
- (D) clean wood;
- (E) medical or infectious waste; or
- (F) motor vehicles (including motor vehicle parts or vehicle fluff).

(3) STATE REQUIREMENTS.—In this section the term “State requirements” does not include the laws, regulations, ordinances, orders, or other requirements of a political subdivision of a State, including a locality or municipality, unless a State expressly delegates such authority to such political subdivision.

(Added Pub. L. 110-432, div. A, title VI, §603(a), Oct. 16, 2008, 122 Stat. 4900.)

REFERENCES IN TEXT

The date of enactment of the Clean Railroads Act of 2008, referred to in subsec. (b), is the date of enactment of title VI of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

The Solid Waste Disposal Act, referred to in subsec. (e)(1)(D), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

§ 10909. Solid waste rail transfer facility land-use exemption

(a) AUTHORITY.—The Board may issue a land-use exemption for a solid waste rail transfer fa-

cility that is or is proposed to be operated by or on behalf of a rail carrier if—

(1) the Board finds that a State, local, or municipal law, regulation, order, or other requirement affecting the siting of such facility unreasonably burdens the interstate transportation of solid waste by railroad, discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility petitions the Board for such an exemption; or

(2) the Governor of a State in which a facility that is operating as of the date of enactment of the Clean Railroads Act of 2008 is located, or his or her designee, petitions the Board to initiate a permit proceeding for that particular facility.

(b) LAND-USE EXEMPTION PROCEDURES.—Not later than 90 days after the date of enactment of the Clean Railroad¹ Act of 2008, the Board shall publish procedures governing the submission and review of applications for solid waste rail transfer facility land-use exemptions. At a minimum, the procedures shall address—

(1) the information that each application should contain to explain how the solid waste rail transfer facility will not pose an unreasonable risk to public health, safety, or the environment;

(2) the opportunity for public notice and comment including notification of the municipality, the State, and any relevant Federal or State regional planning entity in the jurisdiction of which the solid waste rail transfer facility is proposed to be located;

(3) the timeline for Board review, including a requirement that the Board approve or deny an exemption within 90 days after the full record for the application is developed;

(4) the expedited review timelines for petitions for modifications, amendments, or revocations of granted exemptions;

(5) the process for a State to petition the Board to require a solid waste transfer facility or a rail carrier that owns or operates such a facility to apply for a siting permit; and

(6) the process for a solid waste transfer facility or a rail carrier that owns or operates such a facility to petition the Board for a land-use exemption.

(c) STANDARD FOR REVIEW.—

(1) The Board may only issue a land-use exemption if it determines that the facility at the existing or proposed location does not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility’s potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

(2) The Board may not grant a land-use exemption for a solid waste rail transfer facility

¹ So in original. Probably should be “Railroads”.

proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, a National Monument, or lands referenced in Public Law 108-421 for which a State has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

(d) **CONSIDERATIONS.**—When evaluating an application under this section, the Board shall consider and give due weight to the following, as applicable:

(1) the land-use, zoning, and siting regulations or solid waste planning requirements of the State or State subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) the land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) regional transportation planning requirements developed pursuant to Federal and State law;

(4) regional solid waste disposal plans developed pursuant to State or Federal law;

(5) any Federal and State environmental protection laws or regulations applicable to the site;

(6) any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

(7) any other relevant factors, as determined by the Board.

(e) **EXISTING FACILITIES.**—Upon the granting of² petition from the State in which a solid waste rail transfer facility is operating as of the date of enactment of the Clean Railroads Act of 2008 by the Board, the facility shall submit a complete application for a siting permit to the Board pursuant to the procedures issued pursuant to subsection (b). No State may enforce a law, regulation, order, or other requirement affecting the siting of a facility that is operating as of the date of enactment of the Clean Railroads Act of 2008 until the Board has approved or denied a permit pursuant to subsection (c).

(f) **EFFECT OF LAND-USE EXEMPTION.**—If the Board grants a land-use exemption to a solid waste rail transfer facility, all State laws, regulations, orders, or other requirements affecting the siting of a facility are preempted with regard to that facility. An exemption may require compliance with such State laws, regulations, orders, or other requirements.

(g) **INJUNCTIVE RELIEF.**—Nothing in this section precludes a person from seeking an injunction to enjoin a solid waste rail transfer facility from being constructed or operated by or on be-

half of a rail carrier if that facility has materially violated, or will materially violate, its land-use exemption or if it failed to receive a valid land-use exemption under this section.

(h) **FEES.**—The Board may charge permit applicants reasonable fees to implement this section, including the costs of third-party consultants.

(i) **DEFINITIONS.**—In this section the terms “solid waste”, “solid waste rail transfer facility”, and “State requirements” have the meaning given such terms in section 10908(e).

(Added Pub. L. 110-432, div. A, title VI, §604(a), Oct. 16, 2008, 122 Stat. 4903.)

REFERENCES IN TEXT

The date of enactment of the Clean Railroads Act of 2008, referred to in subsecs. (a)(2), (b), and (e), is the date of enactment of title VI of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

Public Law 108-421, referred to in subsec. (c)(2), is Pub. L. 108-421, Nov. 30, 2004, 118 Stat. 2375, known as the Highlands Conservation Act, which is not classified to the Code.

§ 10910. Effect on other statutes and authorities

Nothing in section 10908 or 10909 is intended to affect the traditional police powers of the State to require a rail carrier to comply with State and local environmental, public health, and public safety standards that are not unreasonably burdensome to interstate commerce and do not discriminate against rail carriers.

(Added Pub. L. 110-432, div. A, title VI, §605(a), Oct. 16, 2008, 122 Stat. 4905.)

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SUBCHAPTER I—GENERAL REQUIREMENTS

§ 11101. Common carrier transportation, service, and rates

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board

² So in original. Probably should be followed by “a”.