

Salt Transloading Facility: Court Addresses Whether Local Ordinance is Preempted by Federal Statute



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A United States District Court addressed in a December 7th opinion whether the Interstate Commerce Commission Termination Act (“Act”) preempted a Vermont town’s ordinance regulating a salt transloading facility. See *Vermont Railway, Inc. versus Town of Shelburne*, 2017 WL 6060635.

An ordinance enacted by the Town of Shelburne (“Town”) on August 8 was titled Ordinance Regulating the Storage, Handling and Distribution of Hazardous Substances (“Storage Ordinance”).

The Vermont Railway (“Railway”) developed a salt transloading facility (“Facility”) in the Town of Shelburne (“Town”).

The Storage Ordinance allowed the Town to impose daily fines on the Railway Facility for:

. . . violations of its salt storage and release restrictions, to issue “health orders” directing the Railway to remove the road salt, and to limit the amount of fuel and other commodities the Railway can temporarily store.

The Town stated in a court filing on August 9th that it would enforce the Storage Ordinance along with another ordinance and certain zoning bylaws.

The Railway filed suit asking for a preliminary injunction that was ultimately converted to a request for a permanent injunction enjoining the Town from enforcing the Storage Ordinance. A two-day hearing was subsequently held.

The Court previously determined that the Facility would be used primarily for unloading bulk salt arriving by rail for local distribution by truck and for temporary storage in sheds pending distribution. It further found that the ordinances would impose “severe restrictions on the Railway’s ability to conduct its business.”

The Court concluded that the Storage Ordinance was preempted by the Interstate Commerce Commission Termination Act. The Storage Ordinance was held to not fit within the police power exception to preemption, citing *Green Mountain R.R. Corp. v. Vt.*, 404 F.3d 638, 643 (2d Cir. 2005). The rationale for this conclusion was:

1. It discriminates against the Railway
2. The significant burden it places on the Railway outweighs the Town’s inconclusive and overstated public health and safety concerns

The Court therefore permanently enjoined the enforcement of the Storage Ordinance against the Railway and its Facilities finding an irreparable injury that remedies such as monetary damages would not suffice. It further found that the balance of the hardships tilts in the Railway's favor and that the public interest would not be disserved by a permanent injunction.

The opinion's analysis of whether preemption is applicable includes a review of the Supremacy Clause of the United States Constitution, a history of the Act, and the limited police powers local bodies retain to protect public health and safety.

The Court addresses the Act's vesting the Surface Transportation Board with broad jurisdiction over "transportation by rail carriers" and exclusive jurisdiction over:

1. transportation by rail carriers . . . and
2. the construction, acquisition, operation, or discontinuance of . . . tracks, or facilities.

49 U.S.C. § 10501(b).

[A copy of the opinion can be downloaded here.](#)