

Road Salt Transloading Facility/Hazardous Substances: Federal Appellate Court Addresses Interstate Commerce Commission Termination Act Preemption Issue



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The United States Court of Appeals for the Second Circuit (“Court”) addressed in a March 7th opinion a judicial challenge to a Shelburne, Vermont ordinance regulating hazardous substances and certain bylaws related to a salt transloading facility (“Facility”). See *Vermont Railway, Inc. v. Town of Shelburne*, Docket No. 18-188-cv.

The Vermont Railway (“Railway”) argued that ordinance and zoning bylaws were preempted by the Interstate Commerce Commission Termination Act (“ICCTA”).

The Town of Shelburne, Vermont, (“Town”), enacted a provision that was applicable to the Railway Facility titled:

Storage, Handling and Distribution of Hazardous Substances

Performance Standards §§ 1950.1 and 1950.2(A) of the Town’s zoning bylaws were also enacted (collectively “Ordinance”).

Railway developed property for use as a road salt transloading facility in the Town. The Town attempted to enforce the Ordinance against the Railway.

The Railway sought injunctive relief against the Ordinance in the United States District Court. The United States District Court determined that the Ordinance (as applied to the Facility) were preempted by the ICCTA. 49 U.S.C. §§ 10101 et seq. As a result, the United States District Court granted a permanent injunction.

The Town appealed.

The Court addressed on appeal whether the Ordinance falls within an exception to the ICCTA preemption. The exception cited was whether the continued application of state and local regulations affecting rail transportation constitute a valid exercise of the local body’s police powers.

The Court determined that the Ordinance imposes on the Railway activity restrictions that do not provide meaningful protection of public health and safety. As a result, the restrictions are deemed to not meet the “police powers” exception. Therefore, the Court holds that the previously referenced local provisions are preempted by the ICCTA.

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