



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

August 11, 2016

Curt Spalding
Administrator
Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

Re: Docket No. FD 34797 (Sub-No. 1), New England Transrail, LLC, d/b/a
Wilmington & Woburn Terminal Railway—Construction, Acquisition & Operation
Exemption—in Wilmington and Woburn, Mass.

Dear Mr. Spalding:

I am writing to invite the U.S. Environmental Protection Agency (EPA), Region 1 to participate as a cooperating agency in the development of an Environmental Impact Statement (EIS) for the above referenced proceeding.

As you are aware New England Transrail, LLC (NET) has filed an updated petition with the Surface Transportation Board (Board) to acquire, construct and operate various rail lines and transloading facilities at 51 Eames Street in Wilmington, Massachusetts. Because EPA is overseeing a study of the environmental conditions at this site under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Board's Office of Environmental Analysis invites EPA, Region 1 to be a cooperating agency in the preparation of this EIS based on your agency's expertise of environmental matters at this site and jurisdiction by law consistent with 40 C.F.R. § 1501.6.

In the event EPA Region 1 accepts our invitation, I have attached a draft Memorandum of Agreement (MOA) that outlines the roles and responsibilities of the lead agency and cooperating agency. If the MOA is acceptable as written, please sign, date, and return the document to Danielle Gosselin of my staff. Once received, I will execute the document and return a copy for your files.

Please send signed documents to:

Ms. Danielle Gosselin

Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001
Attention: Docket No. FD 34797 (Sub-No. 1)

If you have any questions, including any proposed revisions to the MOA, please feel free to contact Danielle Gosselin at 202-245-0300 (e-mail address: danielle.gosselin@stb.dot.gov). I would appreciate your response by September 9, 2016. We look forward to working with you and appreciate your continued assistance in providing information on the site investigation as your agency completes its work.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with the first name "Victoria" written in a larger, more prominent script than the last name "Rutson".

Victoria Rutson
Director
Office of Environmental Analysis

Enclosure: MOA
CC: William Walsh-Rogalski, EPA
James DiLorenzo, EPA
Kevin Pechulis, EPA
Timothy Timmermann, EPA

**MEMORANDUM OF AGREEMENT
BETWEEN
SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS
AND
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 1
FOR THE
NEW ENGLAND TRANSRAIL
ENVIRONMENTAL IMPACT STATEMENT**

I. Introduction and Purpose:

The purpose of this Memorandum of Agreement (MOA) is to establish an agreement between the Surface Transportation Board (Board) and the U.S. Environmental Protection Agency, Region 1 (EPA Region 1) regarding the conditions and procedures to be followed in preparing an Environmental Impact Statement (EIS) that complies with applicable statutes and regulations regarding New England Transrail, LLC's (NET's) proposal to acquire, construct and operate various rail lines and transloading facilities (proposed project). The Board is the lead federal agency for the EIS, and EPA Region 1 will be a cooperating agency. NET has filed a petition for exemption with the Board pursuant to 49 U.S.C. § 10502 for authority to acquire, construct and operate as a rail carrier on tracks and land in Wilmington and Woburn, Massachusetts. NET proposes to acquire 5,727 feet of track and to construct 10,838 feet of track and the transloading facilities on property currently owned by the Olin Corporation at 51 Eames Street in Wilmington, Massachusetts. NET anticipates moving goods and materials (e.g., bricks, newspaper, steel, glycols, biofuels, liquid natural gas, vegetable oils, wood chips, sand, and gravel) and transloading them from rail cars directly onto trucks, into holding tanks, or into a warehouse on site for temporary storage.

The EIS is being prepared as required by the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. § 4321 et seq.), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [C.F.R.] parts 1500-1508), and the environmental rules of the Board at 49 C.F.R. Part 1105. EPA Region 1 has agreed to act as a cooperating agency for the EIS. EPA Region 1 will provide the Board with relevant information needed to describe actions that EPA Region 1 would take to enable the proposed project, and will provide special expertise with respect to environmental issues associated with the proposed project.

A. EPA Region 1 Responsibilities:

- 1) EPA Region 1 will provide the Board with relevant information needed to describe actions required as part of clean up activities at the site, and will provide special expertise with respect to environmental issues at the site.
- 2) EPA Region 1 will attend meetings (in person or via telecon) along with the Board, federal, state, regional, and local agencies and interested individuals and groups, where appropriate, to protect EPA Region 1's interests or otherwise aid its decision making process, for the purpose of increasing communication and receiving comments on the project.

- 3) EPA Region 1 agrees that it will not directly contact the Board's third-party contractor with respect to any requests for preparing or amending portions of the content of the EIS unless first permitted to do so by the Board.
- 4) EPA Region 1 will ensure cooperative coordination of efforts and exchange of information with the Board's third-party contractor, using procedures agreed upon by the lead agency.
- 5) Upon completion of the preliminary Draft EIS and preliminary Final EIS, EPA Region 1 will review and provide feedback to the Board on these documents.
- 6) Upon receipt of comments on the Draft EIS, EPA Region 1 will assist the Board in responding to comments that pertain to their special expertise or jurisdiction.

B. Board's Responsibilities:

- 1) As the lead federal agency in this cooperative effort to prepare an EIS, the Board is ultimately responsible for assuring compliance with the requirements of NEPA.
- 2) The Board has selected an appropriate organization to perform as the third-party contractor for the EIS. The contractor will work under the supervision, direction and control of the Board. The Board's third-party contractor executed a disclosure statement specifying that it has no financial or other interest in the outcome of the project.
- 3) The Board will ensure that the third-party contractor provides technical and environmental information, data, and reports required for EIS preparation to EPA Region 1, as requested and applicable.
- 4) The Board will advise EPA Region 1 of all EIS events, meetings, or milestones in a timely manner prior to any such scheduled event, meeting, or milestone.
- 5) The Board will be responsible for planning, advertising, conducting, and memorializing scoping meetings and public hearings/meetings with the assistance of its third-party contractor, as needed. The third-party contractor and the Board will make arrangements and prepare all materials necessary for the scoping and public meetings. EPA Region 1 will attend (in person or via telecon) as an agency representative.
- 6) The Board, assisted by the third-party contractor, is responsible for printing and distributing the Draft EIS and Final EIS.
- 7) The Board will release the Draft EIS to the public and to federal, state, and local agencies for review and comment. The Board will be responsible for filing the Draft EIS with the U.S. Environmental Protection Agency (EPA). A public comment period of no less than 45 calendar days will be initiated when EPA publishes the "Notice of Availability" of the Draft EIS in the *Federal Register*.
- 8) The Board will be the recipient of all comments on the Draft EIS resulting from the review and comment period. The Board will share comments with EPA Region 1 in a timely manner after the end of the comment period. As

appropriate, the Board and EPA Region 1 will consider and address any comments on the Draft EIS that are specific to EPA Region 1's expertise or jurisdiction by law.

- 9) After the close of the Draft EIS review and comment period, the Board will respond to comments and modify the text, as appropriate. Any such modifications will be incorporated in the Final EIS by the Board and the third-party contractor.
- 10) The Board will file the Final EIS with EPA.

C. Disclaimer:

This MOA is not intended or should otherwise be construed to in any way limit EPA Region 1's deliberative process in their decisionmaking under the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

D. Dispute Resolution:

- 1) Both parties agree that if a dispute regarding the provisions of this MOA arises, efforts will be made to settle them amicably at the lowest possible level. If efforts to settle at the lowest level are unsuccessful, then the dispute will be elevated to the next higher level of management within each agency. If the next higher level of management for each agency is unable to resolve the dispute, then the dispute will continue to be elevated within the agencies until the dispute is resolved.
- 2) If a dispute concerns substantive environmental issues addressed in the EIS rather than procedural issues covered by this MOA, EPA Region 1 has the option of referring an interagency disagreement to CEQ, consistent with the CEQ regulations implementing NEPA. However, such a referral should be reserved as a last resort, after agencies have exhausted all reasonable efforts to resolve a dispute.

E. Termination:

Each party to this MOA may terminate this Agreement after 30 days prior notice, in writing, to the other party. During the intervening 30 days, the parties agree to actively attempt to resolve any disputes or disagreements.

F. Duration of Agreement:

This MOA is effective as of the last signature date and will terminate when the Board issues a Final Decision (which also serves as the Board's "Record of Decision" under NEPA), unless terminated earlier pursuant to Section E above.

G. Agency Representatives:

Each party will designate a representative to ensure coordination between EPA Region 1 and the Board during the NEPA process. Each party may change its representative by providing written notice to the other Party. The Board representative will be Danielle Gosselin (202-245-0300; Danielle.gosselin@stb.dot.gov). The EPA Region 1 representative will be **Name (Phone Number; Email address)**.

II. Signatures

The parties hereto have executed this MOA on the dates shown below.

FOR THE SURFACE TRANSPORTATION BOARD:

Signature _____

Date: _____

Victoria Rutson
Director, Office of Environmental Analysis

FOR THE ENVIRONMENTAL PROTECTION AGENCY, REGION 1:

Signature _____

Date: _____

Curt Spalding
Administrator, EPA Region 1