

Wilmington-Woburn Collaborative
c/o Kathleen M. Barry, Chair
14 Powder House Circle
Wilmington, MA 01887

May 11, 2006

Phillis Johnson-Ball
Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attention: Finance Docket No. 34797

Re: New England Transrail, LLC d/b/a/ Wilmington & Woburn Terminal
Railway—Construction, Acquisition and Operation Exemption---In Wilmington and
Woburn, MA

Dear Ms. Johnson-Ball:

Pursuant to your request seeking assistance, comment and specific knowledge of environmental issues and impacts associated with the proposed project submitted to you by New England Transrail, LLC to acquire in part, to construct in part and to operate as a rail common carrier, the Wilmington-Woburn Collaborative (WWC) wishes to express to the Surface Transportation Board (STB) its continued objection of this project on this hazardous site at this time. In addition, the WWC agrees with the Massachusetts Department of Environmental Protection that this operation falls under the jurisdiction and authority of the state and local governers. [1]

The WWC also wishes to support the petition before the Surface Transportation Board filed by Mr. Richmond on behalf of the National Solid Wastes Management Association, et al. We believe that it is essential that the STB immediately rule on the Petition (of the aforementioned parties) for Expedited Consideration of Replies to New England Transrail, LLC's Petition for Exemption from 49 U.S.C. 10901. [2]

A clear decision needs to be rendered on jurisdiction issues prior to proceeding with considerations for a full environmental review under the National Environmental Policy Act (NEPA).

It is the opinion of this collaborative that the Surface Transportation Board and all proceedings thereof be suspended at this time for such a jurisdictional ruling and in order for the STB to comply with comments submitted to you on January 2006, by Mr. Tim Conway of the U.S. Environmental Protection Agency, Region 1. This comment explicitly states that the EPA “cannot consent to any activity at this Site until it makes its own determination that the Site is safe for human health and the environment and that the proposed use will not exacerbate Site conditions or hinder EPA’s remaining investigation or cleanup.” [3]

Until such time that the EPA can consent to redevelopment activity The Board must abide with its own Congressional Declaration in the National Environmental Policy Act, Section 102 [42 USC #4332] wherein it states ‘prior to making any detailed statements, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved’. [4]

On April 19, 2006, the 53 acre property in question owned by Olin Chemical Corporation at 51 Eames Street, Wilmington MA was officially listed on the EPA’s National Priority List as a Superfund Site. According to the EPA, Region 1, “historical wastewater disposal and general handling of chemicals and waste products at the plant led to significant environmental contamination. Principal contaminants of concern include ammonia, sodium, chromium and NDMA (N-nitrosodimethylamine). Groundwater contamination associated with releases from the site stretches in a plume extending about $\frac{3}{4}$ of a mile west from the Olin Chemical property, and has forced closure of five municipal water supply wells which served more than 7,000 people.”
<http://yosemite.epa.gov/opa/admpress.nsf/02026b527e93b1af852570180055b9b9/4c13124b0a2165b885257154006ba096!OpenDocument>

The EPA on April 6, 2006 outlined to our community their plan of action to proceed with a Remedial Investigation, a Baseline Risk Assessment and Feasibility Study with anticipatory critical removal activities on the site culminating to a Record of Decision and a Remedial Design and a Remedial Action. The WWC requests that Section of Environmental Assessment (SEA) and the STB defer this environmental review process and that EPA be given unfettered access to the entire 53 acre property so that they may accurately study this property and prepare a remedial solution. We would suggest that the SEA proceeding should go forward only after the EPA has commented on each of the above reports and at such time the SEA choose the most comprehensive analysis, given the breadth and scope of this contaminated site.

We wish to reiterate that the proposed redevelopment is one that is consistent with solid waste transfer activities along with a construction and demolition operation. This project, when first introduced to us in the community, was to operate a truck to rail facility where all commodities would be transported by railway to the property in closed and sealed containers. Only lumber would be exposed and stored on the property. There would be just one sprung structure. This newest proposal details the activities of transferring solid

waste into hoppers and activities on site would consist of grinding and bailing of this waste. The New Jersey Department of Environmental Protection clearly explains to the Surface Transportation Board that the primary principals on this project have a long history in the solid waste industry and cautions the STB in exempting these types of operations set up beside rail lines solely for the exemption it can offer from local and state oversight. [5]

We support our U.S Congressional leaders in their comment that this proposal is nothing more than a trash transfer station with very little to do with rail transportation. [6] We shall go one-step further and state that we believe that this operation is no more than a solid waste transfer station operating under the ruse of a railroad company. This ruse employs them to seek your exemption status that will usurp local and state authority. We ask that you do not let NET use the federal exemption process to contravene our stringent environmental state and local laws designed to protect our health and our welfare.

If it is the pleasure of the Surface Transportation Board to prematurely continue through the environmental review process under the SEA prior to the EPA's consent, and prior to a jurisdictional ruling, the WWC wishes to comment on the havoc this operation will raise on the environment and the community.

The concerns of this community have been previously raised and are brought forward once again in these proceedings. You ask that we comment on potential shortcomings in the prior environmental analysis and provide any new information that would have bearing on this analysis. There are many shortcomings in the prior environmental analysis, not limited only to the indifference New England Transrail has shown to our community, but that their assumptions and conclusions are based on old data provided by the present owner while under the Massachusetts Contingency Plan. The site is now under the Federal EPA jurisdiction and subject to further investigation and discovery.

Regarding shortcomings in previous proceedings:

First, the previous ruling has falsely interpreted Environmental Justice for us in Wilmington and Woburn. The EPA's definition of Environmental Justice is the **"fair treatment and meaningful involvement** of all people regardless of race, color, national origin, or income with respect to development, implementation and enforcement of environmental laws, regulations and policies."

Fair treatment means that no group of people....should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal or commercial operations or the execution of federal, state, local and tribal programs and policies.

The community of Wilmington and Woburn has a disproportionate number of negative environmental impacts and consequences.

Meaningful involvement means that (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their government and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

<http://www.epa.gov/compliance/basics/ej.html>

New England Transrail has not held one open public meeting to detail their plans to our community and answer questions of the concerned citizens. In a private and selective meeting, in Wilmington only, the principals of NET proposed their project as a benign rail to truck transfer operation where every commodity would be contained in sealed containers. A far different project presents in this proposal and this community should be afforded a public hearing on this matter.

Secondly, NET has sparsely evaluated the cumulative air quality issues of the area in South Wilmington and North Woburn. They have ignored recent trends and reports that there is more to the contamination issue on the property and through-out the site than those presented by the applicants and the present property owner. They have not considered the poor infrastructure and roadways. They have ignored with indifference the residents concerns that live in close proximity of this property evoking only that it is a non-residential area exempting them from any mitigation activity to quell noise and traffic.

Under the Congressional Declaration of National Environmental Policy, Section 101 [42 USC #4321], it is the purposes of this act (NEPA) in part, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man... This policy also states that in order to carry out the policy set forth (in NEPA) it must assure for all Americans a safe, healthful, productive and aesthetically and culturally pleasing surrounding. [4] I would submit to you that if a full and comprehensive environmental analysis were conducted, it would conclude that this property has enormous environmental issues that make this site incompatible for this company's proposed operations and that these operations will further exacerbate and imperil the community, its environment and health.

I respectfully thank you for the opportunity to provide useful comment to these proceedings.

Kathleen M.
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Kathleen M. Barry, Chair
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References:

1. Commonwealth of Massachusetts, January 27, 2006. Comment on Finance Docket No. 34797 to the Surface Transportation Board.
2. Richmond, S. April 27, 2006. Before the Surface Transportation Board, Finance Docket No. 34797; Petition of National Solid Wastes Management Association, et al. Beverage and Diamond, PC.
3. Conway, T. January 26, 2006. Comment on New England Transrail, LLC, Finance Docket No. 34797; United States Environmental Protection Agency, Region 1.
4. The National Environmental Policy Act of 1969, as amended.
Online Reference retrieved on May 9, 2006 at
<http://ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.htm>
5. New Jersey Department of Environmental Protection. January 27, 2006. Comment on Finance Docket No. 34797 to the Surface Transportation Board.
6. United States Legislators, Kennedy, Kerry, Markey and Tierney. January 27, 2006. Comment on Finance Docket No. 34797 to the Surface Transportation Board.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2006, I served a copy of the foregoing to be sent to the following persons by email and/or first class mail:

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