



CITY OF WOBURN
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May 11, 2006

VIA ELECTRONIC FILING AND FEDERAL EXPRESS

Ms. Phillis Johnson-Ball
Surface Transportation Board
Section on Environmental Analysis
1925 K Street, NW
Washington, D.C. 20006

Re: **New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway—
Petition for an Exemption from 49 U.S.C. §10901 to Acquire, Construct, and Operate as a
Rail Carrier on Tracks and Land in Wilmington and Woburn, Massachusetts,
Finance Docket No. 34797**

Dear Ms. Johnson-Ball:

As the Mayor of the City of Woburn, Massachusetts, I am writing in response to your request for comments on the environmental impacts and related issues concerning the Petition for Exemption (the "Petition") of New England Transrail, LLC ("NET") to construct, acquire, and operate rail lines, and to operate a solid waste processing facility on property (the "Site") in Wilmington and Woburn, Massachusetts.

The City of Woburn has indicated its continuing opposition to NET's petitions for exemption through correspondence sent to the Surface Transportation Board ("STB") on September 13, 2004, January 14, 2005, and January 26, 2006. As one of the municipalities directly affected by this proposed facility, the City of Woburn is particularly concerned about the potential public health, safety, and environmental impacts of this project. The City's concerns regarding this project are outlined in greater detail as follows:

- 1. The processing of solid waste is subject to regulation by state and municipal governments under their inherent police power and is not preempted by 49 U.S.C. §10501(B).**

The Petition seeks to combine a solid waste processing facility with a transloading rail facility in order to circumvent the state and local regulations that govern the handling of construction and solid waste. Massachusetts regulates solid waste handling activities under its Solid Waste Management Act, G.L. c. 111 §150A and Massachusetts Department of Environment Protection ("DEP") regulations, 310 CMR 16.00 et seq. and 19.00 et seq. These regulations are designed for the protection of public health, safety, and the environment. The STB's jurisdiction is limited to "transportation by rail carriers," including activities "integrally related to the railroad's ability to provide transportation services." Hi Tech Trans, LLC, Petition for Declaratory Order – Hudson County NJ, STB Finance Docket No. 34192, at 3 (Nov. 20, 2002). Although 49 U.S.C. §10501(B) preempts state law as it pertains to the regulation of rail transportation and integrally related activities, this preemption does not extend to the regulation of health, safety and environmental effects because of the inherent police power of state and municipal governments.

NET has indicated in the Petition that it will be conducting the types of activities that routinely take place at solid waste processing facilities as regulated by DEP and municipal Boards of Health. Solid waste processing facilities exist throughout this state, independent from transloading rail services. Activities such as sorting, recycling, shredding, grinding, baling, and storing waste are not integral to the operation of a transloading rail service, thus, the STB should not accept exclusive jurisdiction of NET's Petition. See Hi Tech Trans, LLC v. New Jersey, 382 F.3d 295, 308, (3rd Cir. 2004) (stating that a third-party processor of construction debris is not engaged in "transportation by rail carrier" and is not within the STB's jurisdiction). Furthermore, given the important health, safety and environmental impacts that arise from such a venture, and the fact that the state has already established a comprehensive regulatory scheme to control such operations, the STB's jurisdictional authority should not preempt the state's police power as it relates to the regulation of NET's solid waste processing activities. The STB does not have the infrastructure, the means, or the regulations required to ensure that NET's activities are properly regulated and subject to ongoing oversight and enforcement.

Therefore, the City of Woburn fully supports the Petition for Expedited Consideration filed by the National Solid Wastes Management Association and other supporting parties. Before the Section of Environmental Analysis ("SEA") proceeds with its environmental review, the STB should first consider the pending jurisdictional objections to the Petition and determine whether the SEA and other parties should invest considerable time and resources in performing an environmental review.

In the event that the SEA elects to proceed with its environmental assessment, the City of Woburn requests that the SEA address the City's following concerns:

2. Remediation of environmental contaminants, under EPA's direction, must precede any redevelopment of the Site.

The Site was recently placed under EPA "Superfund" jurisdiction due to the Olin Corporation chemical contamination on the property. The EPA has indicated that it cannot consent to the redevelopment of this parcel until the EPA has conducted an investigation of the property, performed clean-up operations, and determined that the property is safe for human health and the environment. Accordingly, the SEA should either seek to conduct its environmental assessment in conjunction with the EPA investigation or postpone its assessment until the EPA has determined that the Site is safe for redevelopment activity.

3. Numerous environmental concerns addressed in the original SEA Environmental Assessment must be reevaluated due to the change in scope of NET's Petition.

When NET filed its original petition for exemption, it proposed to operate a truck-to-rail reload facility where waste would be processed prior to arrival at the Site. The project described in the current Petition far exceeds the scope of NET's original application and proposes the processing of construction and solid waste at the transloading facility. Accordingly, the Post Environmental Assessment ("PEA") published by the SEA following its review of NET's original proposal is no longer adequate in that it does not address the waste processing activities which are now proposed.

a. NET has failed to provide sufficient information to evaluate the effects of noise, dust and odors on the surrounding residential properties.

The Petition indicates that NET will engage in solid waste processing, including sorting, shredding, baling, and grinding construction and solid waste. NET has failed to provide the STB with any indication of the extent to which these activities will generate odor and dust, neither has it provided any information regarding the anticipated noise level of these activities. There are residential neighborhoods within ¼ mile from the Site. It is likely that the waste processing activities will have a substantial negative effect due to the close proximity of the neighborhoods to the Site. The PEA does not adequately address these concerns due to the fact NET made material changes to the scope of its initial petition after the completion of the PEA, thus compromising SEA's environmental review and the STB's ability to adequately consider the potential environmental impacts of the proposed action. Thus, the SEA should revisit the issues of dust, odor, and noise in light of the proposed waste processing activities.

The City of Woburn is also concerned that the Petition fails to provide information that is essential for performing a complete review. NET has failed to provide sufficient details, particularly concerning the volume of waste processing, the hours of operation, and the appropriateness of the temporary structures housing the waste processing activities. The SEA should require that NET provide more detailed information on these issues in order to ensure that the SEA is able to conduct a thorough and accurate study of noise, odor, and dust emissions and impose any necessary mitigating actions to minimize these negative effects.

b. Traffic generated by the facility will overburden access highways and local streets.

The City of Woburn is deeply concerned about the traffic which will be generated as a result of NET's proposed waste processing and transloading facility. NET has indicated that it anticipates approximately 400 truck movements through its facility per day. In its initial PEA, the SEA determined that the project would contribute to the poor traffic conditions at the Eames Street and Woburn Street intersection. Although the problems at this intersection are pre-existing, the increase in traffic will substantially exacerbate the existing condition. The City is also concerned that the initial PEA did not adequately analyze the impacts of the facility operation on the I-93/I-95 interchange. The City believes that the increased traffic will substantially overburden this interchange. The potential increased traffic through this area, especially through intersections which are already plagued with difficulties, will also have a detrimental effect on the residential nature of the surrounding neighborhoods. Because of the change in scope of the activities, the SEA must not rely on its prior assessment of the traffic issue but must require accurate and up-to-date traffic information before making a determination as to the effect of 400 truck movements per day through this area.

Furthermore, NET has not provided any detailed information regarding the routes to be traveled by the 400 trucks arriving at its facility. The City is concerned that appropriate restrictions be placed on truck traffic through the City and that the City be able to enforce such restrictions. The City believes that the SEA should require more detailed information from NET about the prospective routes of travel for these trucks and the impact that they will have on local roads so that adequate regulations could be put in place.

c. The potential effect of Site operations on the underlying Dense Aqueous Phase Layer ("DAPL") has not been adequately evaluated.

NET has proposed to conduct operations on a part of the Site where a Dense Aqueous Phase Layer ("DAPL") is located underground. NET has conducted no studies and provided virtually no information about the appropriateness of locating its proposed activities in this area. Before the SEA approves this component of the project, it must be determined that the DAPL will not be disturbed or caused to migrate by the weight of materials such as sand and gravel being stored on the Site. A study must be made to determine the stability of the proposed cap on this area, as well as the subsurface containment walls under the anticipated loads. Such a determination should either be made in conjunction with the EPA review, or should be postponed until the EPA has determined that the Site is appropriate for redevelopment.

d. The excavation of 17,600 cubic yards of soil may disturb soil contaminants and disrupt groundwater flow.

One of the significant changes in the revised Petition is the proposal to excavate 17,600 cubic yards of soil and install concrete foundations and a subterranean vault on the Site. The City is concerned that this activity is inappropriate for this area due to the contaminants in the soil and the potential disruption of groundwater. NET's proposal regarding this excavation provides contradictory information. NET states that it will not excavate below 8 feet, however, the groundwater depth in this area is between 6-9 feet. Contrary to NET's assertions, there is a substantial chance that NET will be disturbing the groundwater in this area. The SEA should not allow such excavation until it is determined that it is environmentally sound to excavate soil in this area and that the groundwater will not be negatively impacted. Furthermore, an assessment must be made as to the appropriateness of redistributing the potentially contaminated soil for regrading purposes.

e. The potential effects of air emissions have not been evaluated.

The City is concerned that the project will significantly increase air emissions in the area. In addition to the odors generated by waste-handling activities, there may also be significant exhaust fumes from the truck traffic through the Site, as well as emissions from the use of diesel engines which will likely be required for the waste processing equipment. The SEA should conduct a study of the combined effect of all of these pollutants on the adjacent residential areas and determine the mitigating action that must be taken to protect the health and safety of the neighboring residents.

f. Emergency procedures have not been established.

Neither the PEA nor the revised Petition addresses the concerns raised by the City in its previous submissions that emergency procedures are lacking. NET has not yet created policy guidelines and emergency procedures for the day-to-day operation of this facility. The City is concerned about the impact this facility may have on its emergency response organizations and the resources which may be required to deal with project-related accidents and emergencies. As part of its assessment, the SEA should require NET to establish such procedures and protocol and apprise the City of said policies.

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In conclusion, the City of Woburn reiterates its opposition to NET's Petition for Exemption to acquire, construct, and operate as a rail carrier on land in Wilmington and Woburn. The activities proposed by NET are inappropriate to the Site in question and far exceed the jurisdictional authority of the STB. All solid waste processing should be under the direct regulatory authority of the state and local governments. The City urges the SEA to postpone its review of this Petition to allow the STB to make a determination on the jurisdictional questions raised in the Petition for Expedited Consideration filed by the National Solid Wastes Management Association and other supporting parties. Should the SEA decide to move forward with its own environmental assessment, the City urges the SEA to defer to the EPA and to carefully reconsider the determinations made in its prior PEA, as the change of the scope of the Petition raises many new public health, safety, and environmental considerations, which must be addressed.

Sincerely,



Thomas L. McLaughlin
Mayor

cc: Woburn City Council
Michael A. Caira, Town Manager, Town of Wilmington, MA
Wilmington Board of Selectman
Siu Tip Lam, Office of the Attorney General, Environmental Protection Division
The Honorable Edward M. Kennedy, United States Senate
The Honorable John F. Kerry, United States Senate
The Honorable John F. Tierney, United States House of Representatives
The Honorable Edward J. Markey, United States House of Representatives
The Honorable Bruce E. Tarr, Massachusetts State Senate
The Honorable Robert A. Havern, Massachusetts State Senate
The Honorable James R. Miceli, Massachusetts House of Representatives
The Honorable Patrick M. Natale, Massachusetts House of Representatives
Secretary Stephen R. Pritchard, Executive Office of Environmental Affairs
Woburn Neighborhood Association
Wilmington-Woburn Collaborative