

Office of Proceedings

JUN 19 2003

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DID# 0102197001

JACOBI & CASE, P.C.

ATTORNEYS AT LAW

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e-mail: info@jacobicase.com

Paul Jacobi*
Max S. Case
Louis J. Bonsangue*
David Speranzini
Ryan McKain*

* Also Admitted in New York

June 18, 2003

FILED

JUN 19 2003

SURFACE

TRANSPORTATION BOARD

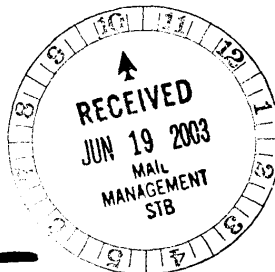
208126

New York Office
350 Broadway
Suite 1100
New York, NY 10013

Please Reply to Milford

Via Federal Express

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Building, Room 700
1925 K Street, N.W.
Washington, D.C.



FREE RECEIVED

JUN 19 2003

**SURFACE
TRANSPORTATION BOARD**

FD 34365

Re: New England Transload-Notice of Exemption-Boston and Maine Railroad

Dear Secretary Williams:

Enclosed please find a check in the amount of \$1,300.00 for the STB filing fee regarding the above-referenced matter. Please accept for filing an original, ten (10) copies of the Caption Summary and a 3 1/2" diskette containing the same in Microsoft Word and Acrobat Reader Format related to the above entitled transaction.

Per discussions with Mr. Tim Cambridge, we will file the verification sheet under separate cover once my client has executed same. It is my understanding that this will not delay the filing process.

Also, enclosed please find an additional copy of the petition and a self addressed Federal Express packet. We would greatly appreciate receiving a dated copy of the documents as filed with the Finance Docket Number.

If you should have any questions, please do not hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,

Paul Jacobi

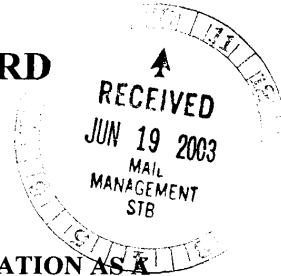
PJ/gm
Enclosure

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. FD 34365

**NEW ENGLAND TRANSRAIL, LLC, EXEMPTION FOR OPERATION AS A
CLASS III CARRIER OVER LINES OWNED BY THE BOSTON AND MAINE
RAILROAD COMPANY**



Caption Summary

New England Transrail, LLC d/b/a the Wilmington and Woburn Terminal Railroad, Co. has filed a notice of exemption, pursuant to 49 CFR 1150.31 to commence operations as a class III rail common carrier over lines with running rights acquired from the Boston and Maine Railroad between a junction with the Massachusetts Bay Metropolitan Transportation Authority Boston -Concord main line at about MP 13.25 in Woburn,, MA (on which the Boston and Maine retains freight service rights) to a junction with the Boston and Main Wilmington-Woburn-West Medford branch just south of Eames Street, M.P. 14. in Wilmington, MA, including the portion of the said branch lying South of Eames Street. The line is to include the reinstallation of track on industrial siding rights of way on a parcel of property acquired from Olin Corporation, lying between the two railway rights of way and approximately one half mile of new line to connect a spur under an easement from the New England Resins and Pigment Company in Woburn with the track being re-installed¹. This connection will rationalize Boston and Maine freight service by allowing trains to move through the track to be installed after servicing existing Boston and Maine customers north of Eames St. and to allow a single drop for all customers to be served by New England Transrail South of Eames Street. The railroad

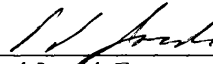
¹ The route of the track proposed herein is based upon initial discussions with the property owners. When the route is finally determined, based upon cost and the problems associated with construction, this route may vary somewhat. However the object will remain to connect the MBTA line to the Boston and Maine branch across the Olin property so as to reduce the time it takes the Boston and Maine to service customers on the branch and to efficiently deliver and pick up cars for NET as well as to facilitate the development of a reload center on the Olin property serviced by the new railroad.

will include the construction of reload facilities as needed on lands acquired from Olin Corporation to facilitate rail access for area industries now precluded from direct service by the limited window allowed to B&M freight service on the MBTA line. As this transaction will cause an increase in traffic on at least one area road, an environmental assessment has been filed with all state and local officials and comments which have been received. Petitioner's representative is:

Paul Jacobi, Esq.
Jacobi and Case, P.C.
300 Bic Drive
Milford, Connecticut 06460-3055
203-874-7110

No other class exemptions are being used by the petitioner.

Dated: Milford, Connecticut
June 18, 2003



Paul Jacobi, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. FD 34365

NEW ENGLAND TRANSRAIL, LLC, EXEMPTION FOR OPERATION AS A
CLASS III CARRIER OVER LINES OWNED BY BOSTON AND MAINE
RAILROAD

EXEMPTION

a. New England Transrail, LLC, d/b/a the Wilmington and Woburn Terminal Railroad, Co. files this Notice of Exemption pursuant to 49 CFR 1150.31, to commence the operation of common carrier rail service on lines in Woburn and Wilmington Massachusetts. The lines include the portion of the Boston and Maine Railroads Wilmington-Woburn-West Medford (the branch) lying south of Eames Street in Wilmington, M.P. 14-14.5, and an easement to use a certain industrial track, owned by New England Resins and Plastics in Woburn connecting to the MBTA, (former Boston and Maine Boston-Concord line) at about MP 13.5, and upon certain rights of way on the former Olin Corporation 51 Eames Street facility in Wilmington. The petitioner will also be installing about one half mile of new track to connect the Wilmington, Woburn and West Milford branch at a point just South of Eames Street to the MBTA main line in Woburn.

b. New England Transrail LLC is represented by:

Paul Jacobi, Esq.
Jacobi & Case, P.C.
300 Bic Drive
Milford, Connecticut 06460-3055
203-874-7110

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MANAGEMENT
STB

c. Petitioner is negotiating with the Boston and Maine, with Olin Corporation and with New England Resins and Pigments to acquire the lands and rights in question.

d. The name of the rail service operator will be New England Transrail, LLC d/b/a the Wilmington and Woburn Terminal Railroad Co. The operation will be over rights of way acquired on lines of the Boston and Maine Railroad, on tracks and rights of way purchased from Olin Corporation and an easement and tracks obtained from New England Resins and Pigments as well as on track to be constructed.

e. New England Transrail LLC will be a common carrier.

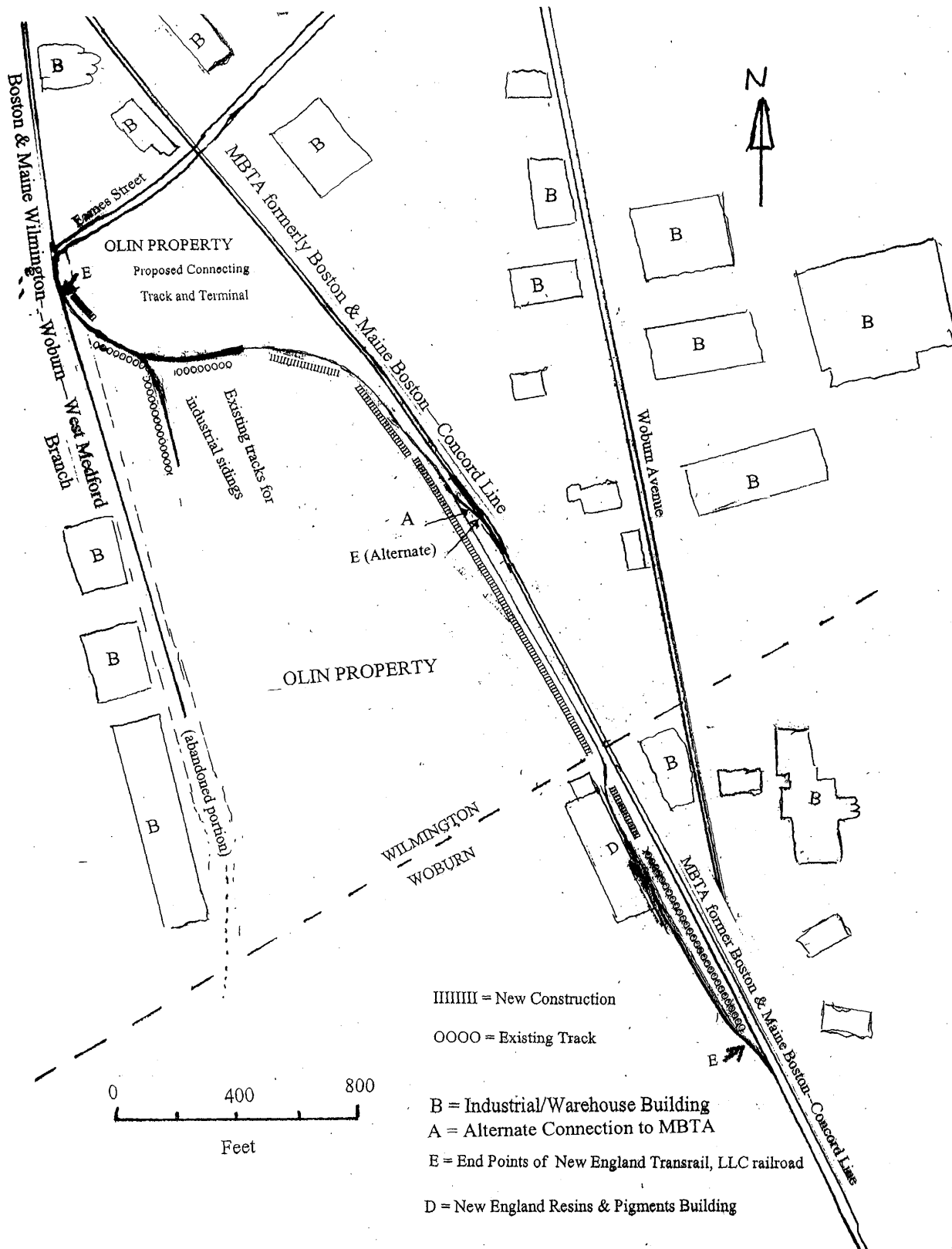
1. The address of the line owner which last provided service on the track is Boston and Maine Railroad Company, c/o Guilford Rail System, Iron Horse Park, North Billerica, MA 01862.

2. The line will extend from the property line of the Massachusetts Bay Area Transit Authority line on the New England Resins and Pigments spur², approximately MP 13.25 on the Boston-Concord main line to M.P. 14 on the Wilmington-Woburn-West Medford Branch of the Boston and Maine railway, and also south on that branch approximately one half mile.

4. Total miles, about 1.5.

f. The route commences in Woburn and terminates in Wilmington, MA

² The route of the track proposed herein is based upon initial discussions with the property owners. When the route is finally determined, based upon cost and the problems associated with construction, this route may vary somewhat. However the object will remain to connect the MBTA line to the Boston and Maine branch across the Olin property so as to reduce the time it takes the Boston and Maine to service customers on the branch and to efficiently deliver and pick up cars for NET as well as to facilitate the development of a reload center on the Olin property serviced by the new railroad.



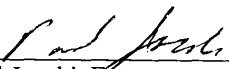
g. Applicant certifies that its projected revenues will not exceed those which would qualify it as a Class III carrier.

8. This operation does not anticipate displacement of any railroad employees. Thus, no labor protection is required.

9. As the reload facility, to be built as needed, will add more than 50 vehicles per day on some road segments, an Environmental Assessment Form ("EAF"), has been prepared and served upon the entities specified in 49 CFR Section 1105.7 as **Exhibit A**. The form of cover Transmittal Letter to the EAF, following the prescribed form set forth in 49 CFR Section 1105.11, is attached hereto as **Exhibit B**, was mailed to each of the entities set forth at the end of the Environmental Assessment Form on May 17, 2003. Comments received on the EAF are attached hereto as **Exhibit C**. The railroad's responses to the aforesaid Comments are attached hereto as **Exhibit D**. A list of public meetings and meetings held by the railroad with governmental and legislative officials and employees regarding its planned operations and the EAF are attached hereto as **Exhibit E**.

Dated: Milford, Connecticut
June 18, 2003

Respectfully Submitted,



Paul Jacobi, Esq.
Jacobi & Case, P.C.
300 Bic Drive
Milford, Connecticut 06460-3055
203-874-7110

VERIFICATION

Ronald Klempner verifies under penalty of perjury pursuant to 2.8 U.S.C. §1746 that he is a managing member of New England Transrail, LLC and has reviewed the information set forth in this Notice of Exemption and the Environmental Assessment which he prepared and knows that the information herein accurately describes the operation, environmental facts and financial results contemplated by applicant to the best of his knowledge and belief.

Dated, June 18, 2003

Ronald Klempner

EXHIBIT A

Executive Office of Community Development
One Congress Street
10th Floor
Boston, MA 02114

Massachusetts Department of Environmental Protection
One Winter Street
Boston, Massachusetts 02108-4746

Massachusetts Office of Coastal Zone Management
251 Causeway Street, Suite 900
Boston, Massachusetts 02114-2199

Middlesex County
40 Thorndike Street
Cambridge, Massachusetts 02141

New England, Region I
United State Environmental Protection Agency
One Congress Street
Suite 1100
Boston, MA 02114-2023

United States Fish & Wildlife Service
70 Commerce Street
Suite 300
Concord, NH 03301

New England District
United States Army Corps of Engineers
696 Virginia Road
Concord, NH 01742-2751

The National Park Service
Northeast Region
US Customs House
200 Chestnut Street
5th Floor
Philadelphia, PA 19106

(central office)
1849 C Street, NW
Washington, DC 20240

Natural Resources Conservation
(formerly The U.S. Soil Conservation Service)
319 Littleton Road
Suite 205
Westford, MA 01886-4133

The National Geodetic Survey
(formerly known as the US Geological Survey)
as designated agent for the National Geodetic Survey and the U.S. Geological Survey
SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 02108-4746

Town of Wilmington
121 Glen Road
Wilmington, MA 01887

City of Woburn
10 Common Street
Woburn City Hall
Woburn, MA 01801

NEW ENGLAND TRANSRAIL, LLC

843 Red Road, Teaneck, New Jersey 07666

(201) 692-0826

Fax (201) 287-0886

e-mail:ronklem@erols.com

May 10, 2003

(Addresses)

Re: Class III Railroad Submission and Railyard Construction

On June 5, 2003, we expect to be filing with the Surface Transportation Board a Notice of Exemption seeking authority to establish a Class III rail carrier and construct a bulk and container rail reload center located at 53 Eames Road in the Town of Wilmington, County of Middlesex, Commonwealth of Massachusetts. Attached is an Environmental Report describing the proposed action and any expected environmental effects, as well as a map of the affected area. We are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, or if you believe the pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423, telephone (202) 565-1552. Because the applicable statutes and regulation impose stringent deadlines for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within 3 weeks. Your comments will be considered by the Board in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is Paul Jacobi, Esq who may be contacted by telephone at (203) 874-7110 or by mail at Jacobi & Case, PC, 300 Bic Drive, Milford, CT 06460 (or you may contact me directly at (201) 692-0826).

Very truly yours,

Ronald A. Klempner
Managing Principal



LAW OFFICE OF
MICHAEL J. NEWHOUSE & ASSOCIATES, P.C.

20 MIDDLESEX AVENUE
WILMINGTON, MASSACHUSETTS 01887

TEL: 978/694-7600
FAX: 978/694-1661

MICHAEL J. NEWHOUSE
ATTORNEY

PAUL D. LAMBERT
ATTORNEY

DANIEL J. VEERMAN
ATTORNEY

MELISSA L. TODT
OFFICE MANAGER

DARLENE M. RANDONE
PARALEGAL

DONNA M. TERNULLO
ASSISTANT

June 4, 2003

Mr. Ronald A. Klempner, Managing Principal
New England Transrail, LLC
843 Red Road
Teaneck, New Jersey 07666

**RE: Class III Railroad Submission and Railyard Construction
on the Contaminated Olin Chemical Property Located at
51 Eames Street, Wilmington, Massachusetts 01887**

Dear Mr. Klempner:

Please be advised that the Town of Wilmington and its Board of Selectmen, acting through its Town Manager, Assistant Town Manager, and various Department Heads, has reviewed the "Environmental Assessment Form" that you have provided relative to the above referenced property (the "Premises"). It is the Town's understanding that you intend to file a Notice of Exemption with the Surface Transportation Board ("STB"), in order to establish a Class III rail carrier and construct a bulk and container rail reload center at the Premises.

Please find attached memoranda from the Wilmington Health Director, the Wilmington Chief of Police, the Wilmington Fire Chief and the Director of Planning and Conservation. While these issues alone pose significant questions relative to your planned project, the Town reserves its right to provide additional and more comprehensive input throughout the STB process.

As you will note, the individual departmental memoranda raise specific points relative to their respective regulatory responsibilities. Taken as a whole, however, they present common themes which cause grave concerns for the health and safety of the entire community. As you are aware, the extreme contamination present at Olin Chemical site at 51 Eames Street is of such a nature and degree that it has been classified by the Massachusetts Department of Environmental Protection as a Tier 1A site. However, you

have failed to appreciate the extraordinary extent of the contamination. You also have not considered the site's location *vis a vis* the Town's well recharge area for the municipality's public water supply.

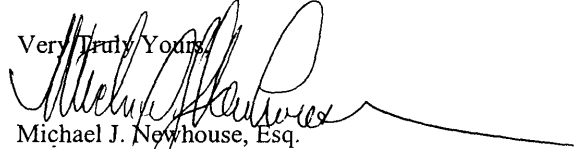
As set forth in Board of Health Director Gregory Erickson's comment, there exists on the site a diffuse layer of contaminants, including a number of serious carcinogens not referenced in your Environmental Assessment, which have indeed reached the Town's public water supply, and have recently forced a complete shutdown of five of the Town's nine wells. In our meeting you indicated that hazardous materials would be carried to and from the site on a regular basis, and in fact stored on site for a period of time. Any accidental spill, release or discharge of hazardous materials at the site, similar to one recently at the railway in neighboring Lowell, Massachusetts, would be disastrous to both the Maple Meadow Brook Aquifer and the current efforts to remediate what has become the Town's most serious environmental threat. Wilmington Fire Chief Daniel R. Stewart details the disastrous implications of such an occurrence in his comment. The impact of your proposed use of the site poses ominous health concerns to our community.

Further, as explained by Police Chief Bernard P. Nally and Director of Planning and Conservation Lynn G. Duncan, the planned routes of ingress and egress to the site are woefully inadequate for your stated use, and pose significant traffic and safety concerns. These issues have been previously raised by the Town to the current owner, culminating in Fifty-Eight (58) specific Orders of Condition imposed by the Town of Wilmington Conservation Commission. Despite the Town's position that your planned use is an extension of the current use, in any event it is clear that the site's surrounding infrastructure is incapable of accommodating the level and extent of traffic you propose. New England Railway's planned activities also will adversely affect the Town's air quality. Fire Chief Stewart, in his comment provided, clearly sets forth the significant threat to the environment posed by the constant diesel exhaust emissions inherent in your proposed operation.

The Town is in the process of preparing additional comment, as well as engaging environmental engineers and consultants to demonstrate the impact your proposed use of this contaminated site may have on the health and well-being of the residents of Wilmington. I also anticipate a number of interested citizens and members of the Board of Selectmen will participate in this process, and we encourage you to address their comments and concerns thoroughly, as your submittal does not sufficiently evaluate the environmental impacts of your proposal.

Thank you for the opportunity to provide this initial comment on your proposed submission to the Surface Transportation Board, and I fully expect it will be included with your Notice of Exemption.

Very Truly Yours,



Michael J. Newhouse, Esq.
Wilmington Town Counsel

Enclosures

cc: Town Manager



Town of Wilmington

Board of Health

121 Glen Road
Wilmington, Massachusetts 01887

To: Town Counsel

From: Greg Erickson, Director
Board of Health 

Date: May 30, 2003

RE: Class III Railroad Submission and Railyard Construction at 51 Eames Street

I wish to inform you I have reviewed the submitted by New England Transrail, LLC and have comments relative to inaccuracies and/or discrepancies contained in the document relative to environmental issues.

The document, on Page 1 – Site History, states, “There is also approximately five acres contaminated with chromium on the west central border of the site....” I would point out that a much larger environmental concern is not being disclosed. It is true that a chromium dense aqueous layer begins on the site, which is the up gradient source, but the document fails to describe the magnitude of the contamination as it continues off site and extends a great distance to the west, contaminating over a billion gallons of ground water based on reports from the current site owner’s investigation report (see attached map). There is also a “diffuse layer” of contaminates consisting of sulphates, chlorides, sodium, and ammonia. The diffuse layer extends far beyond the limits of the chromium layer and has reached the Town’s public water supply wells located quite some distance from the site.

The document also fails to address the discovery of N-nitrosodimethylamine (NDMA) in the same location as the above-mentioned contaminated layers. NDMA is believed to be a strong human carcinogen and has a drinking water standard of 10 ng/L or 10 parts per Trillion . Its

Tel: (978) 658-4298 Fax: (978) 694-2045 TTY: (978) 694-1417
email: boh@town.wilmington.ma.us

presence in the aquifer has made it necessary for the Town to discontinue use of five Water Supply Wells for the Town of Wilmington.

In Section 9. Water, subsection (i.) Water Quality Standards, it is stated, "the site is not within any public water supply source area and the proposed action will not affect any public water use or wells, as designated by the Massachusetts Department of Environmental Protection." This is factually incorrect. The recharge area for the Town wells does extend onto the site. This area, referred to as Zone II, is approved by the Department of Environmental Protection (DEP) and is shown on the attached DEP Map of Zone II recharge areas in the Town of Wilmington. And as I have already pointed out, five Municipal Water Supply Wells have already been discontinued in use because of the contamination from the Site.

A wide assortment of chemicals originating from this up gradient Site has significantly degraded the Maple Meadow Brook Aquifer to the extent that it has taken many years to identify the extent of the contamination. Because of the Site's direct impact on a public water supply, the Site is classified by the DEP as a Tier 1A Site under the Massachusetts Contingency Plan, and its cleanup is under the direct supervision of the Massachusetts DEP.

The document under Safety, (ii) Hazardous Materials states "Hazardous Materials are not expected to be transported at the re-load site." However, the use of "chemicals" is expected, and the use of Gasoline and Propane has also been expressed verbally. I am not sure what definition of "Hazardous" is being used here, but in the Town of Wilmington, these chemicals are certainly considered hazardous. The Town of Wilmington has an Aquifer Protection Bylaw which restricts these materials on parcels such as this which are wholly or partially located in a DEP approved Zone II recharge area. When a common substance such as gasoline is spilled to the ground, it becomes a hazardous waste under the Massachusetts Contingency Plan. These products should not be allowed on this Site due to it's classification as being in the Zone II Aquifer Protection District.



TOWN OF WILMINGTON
MASSACHUSETTS

POLICE DEPARTMENT

One Adelaide Street
Wilmington, MA 01887



978-658-5071
FAX 978-658-0035

Chief Bernard P. Nally

June 2, 2003

To: MICHAEL NEWHOUSE, TOWN COUNSEL

From: CHIEF NALLY

Subject: New England Transrail, LLC rail reload center proposal

After a review of the written proposal from N.E. Transrail and the verbal presentation to Town officials on May 28, 03 by Mr. Ronald Klempnel and Mr. Rob Jones, I have the following comments to make.

As I understand the project; N.E. Transrail intends to purchase some 50 acres from Olin Chemical. They will bring one or two railroad spur lines into the property and construct a facility to offload railroad cars to trucks, which would distribute throughout the Boston area.

I have a number of serious reservations about this project. The Olin property has been undergoing a hazardous waste cleanup for a couple of years already with no realistic end in site. Toxic material from this site has gravitated to the water aquifer and forced the shut down of a major portion of our municipal water system. The long-term effect of this toxic pollution is unknown at this time.

Placing a railhead center on this same property only opens up the possibility of further pollution issues resulting from possible accidents at the site. There can be no assurances that toxic materials that were brought onto the site for transfer from rail to truck might not spill due to accident or carelessness in some manner. I will leave specialized comment on this issue to others more experienced than I.

Traffic issues from such a rail center are a serious concern to my office. The suggested truck route from the rail yard to Route 93 passes several homes within .3 of a mile to a sharp right hand turn onto Woburn Street. This turn is extremely tight for trailer trucks to make. The intersection of Eames St. and Woburn St. also includes Ox Bow Drive located opposite Eames St. Thus the residential area lies on the northerly side of Eames Street and across the intersection on Ox Bow.

The intersection of Woburn St., Eames St. and Ox Bow Dr. is actually the beginning of a densely populated residential area including several side streets that intersect with Woburn Street. There is also a school bus stop for children in the immediate neighborhood located at the end of Ox Bow Dr within the intersection.

The intersection of Eames St. and Woburn St. is at a sharp angle, providing limited visibility and limited turning area. In fact we recently had a traffic jam caused by a trailer unit attempting to exit right from Eames St as another trailer unit attempted to exit left from Woburn Street to Eames Street. There was not enough room for these large trucks to maneuver.

The need to rebuild this intersection is quite obvious to the observer. Land taking would be required in order to straighten out the intersection and make it safer for all to use..

This area of Woburn Street already suffers from extensive truck traffic. This department has been requested to restrict truck traffic from the industrial part of Woburn St. through the residential area to the intersection of Route 129. Plans are in the works to limit parts of Woburn Street to one way traffic and to direct north bound trucks to exit westerly onto Eames Street.

The addition of the petitioners suggested numbers of up to 385 truck trips a day through the above-described intersection is difficult to comprehend. Once trucks have entered Woburn Street heading for Route 93 they have to pass along a road that was never built to handle the amount of traffic it receives now, never mind the projected additional traffic that the petitioner predicts.

Trucks leaving the rail site would drive 3/10 of a mile to Woburn St., then travel 6/10 of mile on Woburn Street to make a left turn onto Presidential Way, (in Woburn) proceed through a recently built industrial area on the way to Interstate 93. Woburn Street is not built to the size or standards of what is needed in a heavily traveled industrial zone. The roadway, although straight is narrow for its entire length with sections in disrepair, due to the current overuse of the street.

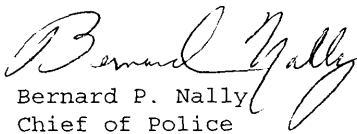
The alternative truck route, which is not recommended by the petitioner, would take trucks in the opposite direction from the rail yard, but through a residential area along State Route 38 into the City of Woburn.

The extended hours of the proposed rail off loading site is also not far from a residential area, which could cause serious nighttime noise problems for the residents. Even though the site may not plan for a 24-hour operation the time frame to bring freight cars to the site would tend to be late at night due to the busy commuter rail traffic that the freight operation must work around.

When all is said and done: the large scale increase in truck traffic on the streets of Wilmington; the potential for accidents: predictable damage to the roadway; the potential for release of hazardous material to the air and to the ground; the present contamination that is on the site as well as the slowly spreading underground contamination will have a deleterious affect on the town of Wilmington and the quality of life of its residents.

If I can be of further assistance, please advise.

Yours truly


Bernard P. Nally
Chief of Police



TOWN OF WILMINGTON

121 GLEN ROAD
WILMINGTON, MA 01887

PLANNING & CONSERVATION
DEPARTMENT

(978) 658-8238
(978) 658-3311
FAX (978) 658-3334

Memorandum

To: Michael Newhouse, Town Counsel
From: Lynn Goonin Duncan, Director of Planning & Conservation *LD*
Re: **Olin site - Class III Railroad Submission and Railyard Construction**
Date: June 2, 2003

Based on the previous reviews and conditional approvals by the Planning Board and the Conservation Commission, I note the following issues:

1. In the Environmental Report submitted by Ronald Klempner, Managing Principal of New England Transrail, LLC, it states that the Town of Wilmington granted its approval on the warehouse applicant's estimate of 385 truck trips per day, almost double the amount estimated by NET for the Olin site. I note that the approval of the Planning Board was conditional upon traffic mitigation of said truck trips. The intersection of Eames Street and Woburn Street was to be improved in accordance with engineered plans to be approved by the Town of Wilmington. The applicant's Certificate of Occupancy was conditioned upon completion of the final engineering design of the approved intersection plan and the award of a construction contract to implement said improvements. Specifically the applicant committed to acquisition of the right-of-way necessary to implement the intersection improvements. The Town of Wilmington intended to submit a PWED application (to be prepared by Olin's consultant) for construction funds for the intersection work.

The Planning Board would not have permitted the proposed warehouse development with the associated truck traffic without the roadway improvements at the intersection. There is an existing safety hazard associated with the geometry of the existing intersection and the insufficiency of available sight distance from Eames Street. About half the accidents at the intersection are

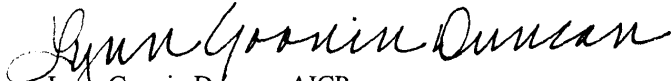
Mr. Michael Newhouse
June 2, 2003
Page 2

associated with this problem. Without the necessary traffic mitigation, the safety hazard at this intersection will be exacerbated.

2. The conservation issues were extensive. I have attached a copy of the Order of Conditions with 58 special conditions. I specifically note the following conditions. Condition #22 states that the applicant has agreed to restrict development on 20.28 acres through a Conservation Restriction. Condition #45 references the potential need for a Section 404 Permit under the Federal Clean Waters Act and a Water Quality Certificate from DEP. Condition #46 addresses the requirement for compensating wetlands. Condition #54 identifies the need for implementation of a Release Abatement Measure (RAM) pursuant to M.G.L. Chapter 21E and the Massachusetts Contingency Plan, 310 CMR 40.0000. Condition #55 references mitigation measures required by the 401 Water Quality Certification to be issued by MADEP for this project, including specifically the establishment of a \$50,000 fund by Olin Corporation for wetland projects.

If you have any questions or need further information, please contact me.

Sincerely,


Lynn Goonin Duncan, AICP
Director of Planning & Conservation

Cc: Michael A. Cairra, Town Manager

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 - Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, Section 40

A Applicant Information

From: Wilmington

Wilmington

Conservation Commission

DEP File #344-733

Project DEP File Number

To:

Olin Environmental Management

Applicant Name

P.O. Box 248, 1186 Lower River Road

Mailing Address

Charleston, TN 37310

State Zip Code

The project site is located at:

Eames Street

The Notice of Intent for this project was filed on:

May 5, 2000

Date

The public hearing was closed on:

July 5, 2000

Date

Title and Date of final Plans and Other Documents

see attached

Map 37 Parcel 10 & Map 24 Parcel 121

Assessors Map/Plat#

Parcel/Lot #

and the property is recorded at the Registry of Deeds for:

Middlesex -North LC240 3 & 1426 319

County Book Page Book Page

Certificate (if registered land)

B Findings

Findings pursuant to the Massachusetts Wetlands Protection Act.

Furthermore, the Commission hereby finds that the project, as proposed, is:

(check one of the following boxes)

Following the review of the above-referenced Notice of Intent and based on the information provided in this presented at the public hearing, this commission finds that the area in which work is proposed is significant to the area in which work is proposed is significant to the following interests of the Wetlands Protection Act (check all that apply):

- | | |
|--|---|
| ☒ Public Water Supply | ☒ Fisheries |
| ☒ Private Water Supply | ☒ Prevention of Pollution |
| ☒ Storm Damage Prevention | ☒ Groundwater Supply |
| ☒ Protection of Wildlife Habitat | ☒ Flood Control |
| ☐ Land Containing Shellfish | |
| ☒ Storm Damage Prevention | |

Bureau of Resource Protection - Wetlands

Approved subject to:

☒ the following conditions which are necessary, in accordance with the performance standards set forth in the wetlands regulations, to protect those interest checked above. This Commission orders that all the work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and all other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, Section 40

B Findings (Cont.)

Denied because:

☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetlands regulations to protect those interests checked above. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued.

☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(b)(c).

General Conditions

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a) the work is a maintenance dredging project as provided for in the Act; or
 - b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set for as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or

debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe tires, ashes, refrigerators, motor vehicles, or parts or any of the foregoing.

7. This Order does not become final until all administrative Appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of the work.

9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words: "Massachusetts Department of Environmental Protection" (or, "MA DEP") "File Number _____"
DEP File #344-733
Project File Number _____
10. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
12. The work shall conform to the following attached plans and special conditions:

Final Approved Plans (attach additional plan references as needed):

See attached
Title _____
Dated _____
Signed and Stamped by _____
On file with _____

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 - Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, Section 40

B Findings (Con't)

13. Any changes to the plans identified in Condition #12 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.

14. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to the Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.

15. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.

16. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall serve as the limit of Work (unless another limit of work line has been noted in the plans of record) and be maintained until a Certificate of Compliance has been issued by the Conservation Commission.

17. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove

Special Conditions (Use additional paper if necessary)

See attached

Findings as to municipal law, bylaw, or ordinance

Furthermore, the

Wilmington
Conservation Commission

hereby finds (check on that applies):

☐ that the proposed work cannot be conditioned to meet the standards set forth in a municipal law, ordinance, or bylaw, Specifically

Name and citation of municipal law, bylaw or ordinance

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

☐ that the following additional conditions are necessary to comply with a municipal law, bylaw, or ordinance, specifically.

Name and citation of municipal law, bylaw, or ordinance

The Commission orders that all the work shall be performed in accordance with the said additional conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

Additional conditions relating to municipal law, bylaw, or ordinance:

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, Section 40

B Findings (cont.)

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

7/25/2000
Date

This Order must be signed by a majority of the Conservation Commission. The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate regional office of the Department of Environmental Protection.

Signatures:

[Signature]
[Signature]
[Signature]

[Signature]
[Signature]

On this 19th day of July 2000 before me personally appeared all of the above members, to me known to be the person described in, and who executed, the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.

[Signature]
Notary Public

April 17, 2002
My commission expires

This Order is issued to the applicant as follows:

by hand delivery on: 7/25/00
by certified mail, return receipt requested, on: _____

C Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate Department of Environmental Protection Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department with the appropriate filing fee and a completed Appendix E; Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not appellant. The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, section 40) and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal by law, and not on the Massachusetts Wetlands Protection Act or regulations, the Department of Environmental Protection has no appellate jurisdiction.

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 - Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, Section 40

D Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information shall be submitted to the

Wilmington Conservation Commission
Conservation Commission

on the form below, which must be stamped by the Registry of Deeds.

TO: Wilmington Conservation Commission
Conservation Commission

Please be advised that the Order of Conditions for the project at Olin Corporation, Eames Street
Map 37 Parcel 10 DEP File # 344-733 has been recorded at the Registry of Deeds of _____
_____ and has been noted in the chain of title of the affected property in Book _____
_____ Page _____ in accordance with the Order of Conditions issued on _____
(date).

If recorded land, the instrument number that identifies this transaction is: _____

If registered land, the document number that identifies this transaction is: _____

Signature of Applicant: _____

ORDER OF CONDITIONS

#344-733

Eames Street
map 37 parcel 10, map 24 lot 121
Olin Environmental Management (applicant)

SPECIAL CONDITIONS:

(Please review the General Conditions on previous page.)

18. The work shall conform to the following plans and documents, unless otherwise specified in this Order:

- a) Notice of Intent received 5/5/2000.
- b) Plans entitled "Eames Street Redevelopment Project", signed and stamped by MD. F. Siddique, PE.:
 - 1) Sheet L-01, dated 5/3/00 and last revised 7/5/00.
 - 2) Sheet L-02, Grading & Utilities, dated 5/3/00 and last revised 7/5/00.
 - 3) Sheet L-02a, Erosion Control, dated 5/3/00 and last revised 7/5/00.
 - 4) Sheet L-03, Layout & Materials, dated 5/3/00 and last revised 7/5/00.
 - 5) Sheet L-04, Landscape Plan, dated 5/3/00 and last revised 6/12/00.
 - 6) Sheet L-05, Typical Details, dated 5/3/00 and last revised 7/5/00.
 - 7) Sheet L-06, Typical Details, dated 5/3/00 and last revised 7/5/00.
 - 8) Sheet L-07, Typical Details, dated 5/3/00 and last revised 7/5/00.
- c) Plan entitled "Wetland Delineation" dated 1/20/00, signed and stamped by Gregory R. Corcoran, PLS.
- d) Plan entitled "Erosion Control/Dewatering/Stockpiling Plan fig. 3a" dated 5/5/00, signed and stamped by Thomas W. Kahl, PE.
- e) Plan entitled "Erosion Control/Dewatering/Stockpiling Plan fig. 3b" dated 5/5/00, signed and stamped by Thomas W. Kahl, PE.
- f) Plan entitled "Slurry Wall Plan fig. 4" dated 5/5/00, signed and stamped by Thomas W. Kahl, PE.
- g) Plan entitled "Wall Envelope Section and Details fig. 5" dated 5/5/00, signed and stamped by Thomas W. Kahl, PE.

Order of Conditions #344-733

Olin – Eames Street

Special Conditions Page 2

- h) Plan entitled "Sediment Removal fig. 6" dated 5/5/00, signed and stamped by Thomas W. Kahl, PE.
 - i) Plan entitled "Final Grading Plan for Containment Wall Construction fig. 7" dated 5/5/00, signed and stamped by Thomas W. Kahl, PE.
 - j) Plan entitled "Notice of Intent, Supplemental Filing #1", Olin Environmental Management, Inc. & Eames Road, LLC dated May 5, 2000, amended May 10, 2000 and signed by Steve Morrow and John Kelly.
 - k) Correspondence dated June 1, 2000: Supplemental Filing #2, Response to Questions and Concerns, and Appendix 6 Wildlife Habitat Evaluation dated June 1, 2000.
 - l) Correspondence dated June 15, 2000, Supplemental Filing #3, and Revised Section 4.
 - m) Correspondence dated June 30, 2000, Supplemental Filing #4 and revised Sections 5 and 6 dated revised June 29, 2000.
 - n) Correspondence dated July 5, 2000 from Olin Corporation to Ralph Perkins, DEP re: Water Quality Certification, Transmittal No. W012322.
 - o) Document entitled "Revised Silt Fence Detail", dated July 2000, prepared by GEI Consultants, Inc.
 - p) Document entitled "Operation and Maintenance Plan", dated July 5, 2000, prepared by CDW Consultants, Inc.
 - q) Plan entitled "Conservation Restriction Area", dated July 7, 2000.
19. The proposed work is within the following wetland resource areas: bank, land under water, bordering vegetated wetland .
20. Prior to the start of any work, and in compliance with condition number 9, a sign shall be displayed showing D.E.P. File No. 344-733. This sign shall not be posted on a live tree.
21. This document and the approved plans shall be included in all construction contracts and subcontracts for the proposed work and shall supersede any conflicting contract requirements. It shall also be kept on file at the job site at all times during construction. Thereafter, the contractor shall be held jointly liable for any violation of this Order.
22. The applicant has voluntarily agreed to restrict development of the remainder of the property from the wetlands associated with the south ditch to the southern property line. This will be accomplished through a Conservation Restriction (see plan reference above) , foregoing development opportunities in the area of the sulfate landfill and other "upland" areas, and no further resource area alteration on the property. The applicant has voluntarily agreed to these restrictions. The area of the Conservation Restriction is 20.28 acres (5.39 acres wetlands, 14.89 acres upland). An additional area of wetlands north of the Conservation Restriction is wetlands, an no future additional alteration of these wetlands shall be permitted, except as required for hazardous waste investigation/remediation.

Order of Conditions #344-733
Olin – Eames Street
Special Conditions Page 3

23. A copy of the Conservation Restriction shall be provided to the Conservation Commission prior to the issuance of a Certificate of Compliance.
24. Prior to any work on site the Applicant or his agents shall meet with an agent of the Commission on the site to review the proposed work and measures designed to mitigate any impact on wetlands and to ensure that all of the Conditions of this Order are understood. The applicant's wetland consultant shall be present at this meeting.
25. Wetland boundary markers (flags) shall be maintained until all construction activity is completed.
26. Prior to any activity on the site, a siltation fence and staked haybales shall be placed between all construction areas and wetlands. This erosion control shall act as a limit of work. The erosion control barrier will be properly installed (trenched and toed-in) and placed according to the approved plan and shall be inspected and approved by the WCC prior to the start of construction. This barrier shall remain intact until all disturbed areas have been permanently stabilized to prevent erosion.
27. The Applicant shall notify the Conservation Commission immediately and move swiftly to control any erosion problems that occur on site. Any other erosion and sediment controls found to be necessary by the Commission or its Agent during construction shall be implemented by the Applicant.
28. Prior to the commencement of any work on site, the Applicant shall submit to the Conservation Commission for approval a detailed Sequence of Construction with a timetable and details, including the construction of a compensation and retention areas and re-vegetation, to be completed before other work begins on site. The Applicant shall also include the name(s) and telephone number(s) of the person(s) responsible on site for compliance with this Order.
29. The storm drainage system and detention basins shall be kept free of silt and debris so as to ensure their proper operation. All storm drains shall have siltation control fabric placed on top under the covers, which shall be cleaned after each storm event until construction is completed.
30. At least weekly the Applicant shall submit a report to the Conservation Commission, certifying that, to the best of his knowledge and belief based on a careful site inspection, all work is being performed in compliance to the plan and these conditions. This report shall detail work which has been done in or within 100 feet of wetlands and what work is anticipated over the next period. This will update the construction sequence.
31. Grading shall be accomplished such that grading shall not direct runoff to the property of others. This project shall not increase runoff, nor cause flood or storm damage, to abutters or the property of others.
32. There shall be no stockpiling of any soil or other materials within twenty-five (25) feet of any

resource areas without the express written permission of the Conservation Commission.

33. Any dewatering activities on the project shall make use of a settling pond or similar device to remove sediment before water is released. This system must be approved by the Commission's agent prior to implementation. There shall be no direct discharge of water to wetlands or catch basins.
34. Equipment fuel storage and refueling operations shall be situated in an upland area at a horizontal distance greater than 100 feet from wetland resource areas.
35. All stumps, brush, waste and debris shall be removed from the construction site, including existing debris. Construction refuse and debris shall be disposed of promptly and properly and the construction site shall be maintained in a clean condition. Records as to the destination of all materials to be removed from the site; including stumps, brush, waste, debris excess fill, loam and peat shall be kept and supplied to the Commission if requested.
36. All disturbed areas, slopes and proposed landscape areas shall be loamed and seeded or erosion controlled in accordance with NRCS (Natural Resources Conservation Service) specifications on file with the WCC. All disturbed areas shall be permanently stabilized by vegetation or as otherwise shown on the above-referenced plans, within 60 days of final grading for this project.
37. The Applicant shall designate a professional wetland scientist as an "Erosion Control Monitor" to oversee any emergency placement of controls and regular inspection or replacement of sedimentation control devices. The name and phone number of the Erosion Control Monitor must be provided to the WCC in the event that this person has to be contacted, due to an emergency at the property, during any 24-hour period, including weekends. This person shall be given the authority to stop construction for erosion control purposes. The Erosion Control Monitor will be required to inspect all such devices and oversee maintenance activities. At least once a week, or as agreed to by WCC, during construction activities on-property and for as long thereafter as ground remains unstabilized, the Applicant shall submit a written report from the Erosion Control Monitor to the WCC certifying that, to the best of his/her knowledge and belief based on a careful property inspection, all work is being performed in compliance with this Order of Conditions. The Erosion Control Monitor must visually inspect all sedimentation/erosion control measures and assure that they are functioning as intended. In addition, all wetland resource areas must be visually inspected for siltation, turbidity, and/or other water quality impacts.
38. If any unforeseen problem occurs during construction which affects any of the eight statutory interests of the Wetlands Protection Act, upon discovery, the Applicant shall notify the Commission immediately and a meeting shall be held between the Commission (or its Agent), the Applicant and other concerned parties to determine the correct measures to be employed. The Applicant shall then act to correct the problems using the corrective measures agreed upon.

Order of Conditions #344-733
Olin – Eames Street
Special Conditions Page 5

39. Any changes in the submitted plans, Notice of Intent, including those due to review by other boards or State or Federal agencies, or resulting from the aforementioned conditions must be submitted to the Wilmington Conservation Commission for approval prior to implementation. If the Wilmington Conservation Commission finds said changes to be significant, the Wilmington Conservation Commission will call for another public hearing (at the expense of the applicant). Any errors found in the plans or information submitted by the applicant shall be considered as changes.
40. With respect to all conditions the Wilmington Conservation Commission designates the Assistant Director of Planning & Conservation as its administrative agent with full powers to act on its behalf in administering and enforcing this Order.
41. The members and agents of the Conservation Commission shall have the right to enter the site to verify compliance with the Order, to perform their duties under M.G.L. Chapter 131, s.40, as amended, and to require the submittal of any additional data deemed necessary by the Commission for that verification, prior to issuance of a Certificate of Compliance.
42. This Order shall apply to any successor in control or successor in interest of the property described in the Notice of Intent and accompanying plans. Within ten (10) calendar days inclusive of the transfer of ownership of the subject parcel, in whole or in part, including lots or buildings conveyed under individual deeds, the Conservation Commission shall be notified in writing of the name and address of the new owner. Within ten (10) calendar days inclusive of such transfer, a written, notarized affidavit shall be filed with the Conservation Commission by the new owner, stating that he or she has read and understood the Order of Conditions and all terms applicable to the project site and intends to comply with all provisions of the Order.
43. Upon completion of this project the Applicant shall submit the following to the Conservation Commission to receive a Certificate of Compliance per DEP Condition #11: (1) a letter from the Applicant requesting a Certificate of Compliance for DEP File # 344-733, (2) a written statement from a registered professional civil engineer of the Commonwealth certifying that the work has been completed in compliance with this Order of Conditions and the approved plans referenced herein (or approved revisions). Any discrepancies shall be noted, (3) an as-built topographic plan signed and stamped by a registered professional land surveyor of the Commonwealth, for the public record. The as-built must also show elevations and grades of all filled, altered or replicated wetlands. This plan should include as-built elevations of all drainage ways constructed within 100 feet of any wetland, distances to all structures and elevations within 100 feet of wetlands, (4) P.E. stamped calculations certifying as-built detention area volumes and (5) a letter from a qualified wetland scientist certifying compliance with state regulations and this Order of Conditions regarding wetland restoration/replication.
44. No underground storage of fuels is allowed within 100 feet of wetlands.

45. Since the project involves the filling of Bordering Vegetated Wetland (B.V.W.), the applicant is served notice that a filing with the United States Army Corps of Engineers (USACOE 1-800-362-4367) relative to securing a Section 404 Permit under the Federal Clean Waters Act may be required and the issuance of a Water Quality Certificate from the MA Department of Environmental Protection (DEP) may be required BEFORE any FILLING commences. This Order of Conditions issued under MA. Gen. Law Chap. 131, s.40, as amended (MA Wetlands Protection Act) does not relieve the Applicant of his/her responsibilities to secure these additional permits/certificates or any other necessary local permits or licenses.
46. The compensating wetland area shall be excavated to base grade shown on the plans with the side-slopes being immediately stabilized. The wetland vegetation and plants to be placed in the compensatory wetland shall be carefully dug with attention to the root system, balled and/or burlapped in a professional manner and temporarily stored in a shady location and watered on a daily basis. At least 75% of the surface area of the replacement area must be established with indigenous wetland plant species (listed as OBL, FACW or FAC by USF&W) within two growing seasons. (Purple loosestrife is not indigenous, and shall not count toward the 75%). One growing season is considered approximately from March 15 to October 15.
47. A qualified wetland/wildlife biologist shall monitor and supervise construction of the wetland replication and wildlife habitat replication over two growing seasons and shall provide detailed written reports describing the progress and functionality of the replication to the Commission after each growing season following initial construction of these areas
48. All disturbed areas located within wetland resource areas which are to be only temporarily disturbed during construction, shall be restored to their original grade, soil profile and vegetative cover. The area must be 75% re-vegetated with species similar to those disturbed within two growing seasons.
49. The Applicant(s), owners and their successors and assignees shall maintain all elements of the drainage systems within any areas subject to the Commission's jurisdiction under M.G.L. Chapter 131, s.40 (as amended) and 310 C.M.R. 10.00; unless put into an easement to the Town, in order to avoid blockages and siltation which might cause failure of the system and/or detrimental impacts to on-site or off-site resource areas and shall maintain the integrity of vegetative cover on site. This condition shall survive the issuance of a Certificate of Compliance.
50. Catch basins and manholes shall be equipped with sumps, and oil traps, acceptable to the Town Engineer, which shall be inspected and cleaned on a semi-annual basis or as needed. After each inspection and cleaning, the Applicant shall provide to the Conservation Commission written confirmation from the cleaning contractor that the inspection and cleaning were conducted.
51. All catch basin drainage points or other point source discharge drainage points shall be

riprapped to disperse stormwater energy.

52. A paved berm shall be installed around the perimeter of the parking lot to contain and direct flow of water towards catch basins.
53. The Conservation Commission shall be notified in writing when any maintenance functions that may impact wetlands, such as but not limited to, replacing backfill and repairing drains are to be performed.
54. Phase I of the proposed project is a Limited Project under the Massachusetts Wetlands Protection Regulations (MWPR) 310 CMR 10.53 (3) (q), involving the implementation of a Release Abatement Measure (RAM) pursuant to M.G.L. Chapter 21E and the Massachusetts Contingency Plan, 310 CMR 40.0000. The Massachusetts Department of Environmental Protection (MADEP) will have primary jurisdiction over the remedial project, including specification of the monitoring program and reporting requirements for the work. RAM reports, including update and completion reports, will be provided to the Conservation Commission throughout the implementation of Phase I and Phase II of the project.
55. Prior to the completion of the project, the Applicant shall comply with the mitigation measures required by the 401 Water Quality Certification to be issued by MADAP for this project, including specifically the establishment of a fund of \$50,000, by Olin Corporation, for wetland projects that will achieve wetland replication, restoration and/or recharge enhancement in the Ipswich River Basin in the Town of Wilmington, and the creation of an appropriate conservation restriction on certain upland and wetland areas at the southern portion of the 51 Eames Street property, as described and confirmed by the Applicant in a letter from Olin Corporation to Mr. Ralph Perkins, MADEP, dated July 5, 2000, a copy of which is attached to this Order of Conditions. The Town of Wilmington, acting through its Conservation Commission, will propose the wetland projects to DEP and Olin. Olin's approval shall not unreasonably be withheld on projects acceptable to DEP and the Commission.
56. No further development shall occur on any portion of this property. A Conservation Restriction, as noted above, shall be recorded to preserve the remaining open space.
57. No further alteration of wetland resource areas, other than for investigation/remediation of hazardous waste shall be permitted on any portion of this property.
58. The following special conditions shall extend beyond the issuance of a Certificate of Compliance, in perpetuity, and shall be referred to in all future deeds to this property:
 - #42. Regarding transfer of ownership.
 - #44. Regarding prohibition of storage of fuels underground.
 - #49. Regarding maintenance of catch basins/drainage system.
 - #56. Regarding Conservation Restriction.
 - #57. Regarding prohibition of future wetland resource area alteration.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
New England Field Office
70 Commercial Street, Suite 300
Concord, New Hampshire 03301-5087



June 10, 2003

Reference: Project Location
 Rail reload center Wilmington, MA

Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Gentlemen:

This responds to New England Transrail's recent correspondence requesting information on the presence of federally-listed and/or proposed endangered or threatened species in relation to the proposed activity(ies) referenced above.

Based on information currently available to us, no federally-listed or proposed, threatened or endangered species or critical habitat under the jurisdiction of the U.S. Fish and Wildlife Service are known to occur in the project area(s). Preparation of a Biological Assessment or further consultation with us under Section 7 of the Endangered Species Act is not required.

This concludes our review of listed species and critical habitat in the project location(s) and environs referenced above. No further Endangered Species Act coordination of this type is necessary for a period of one year from the date of this letter, unless additional information on listed or proposed species becomes available.

Thank you for your coordination. Please contact us at 603-223-2541 if we can be of further assistance.

Sincerely yours,

A handwritten signature in black ink that reads "Michael J. Amaral".

Michael J. Amaral
Endangered Species Specialist
New England Field Office



TOWN OF WILMINGTON

1 ADELAIDE STREET
WILMINGTON, MA 01887

THE OFFICE
OF FIRE CHIEF

VOICE (978) 658-3346
FAX (978) 988-9181

interoffice memorandum

To: Michael Newhouse, Town Counsel
From: Chief Daniel R. Stewart
Subject: Class III Railroad Submission & Rail Yard Construction Proposal
Date: June 3, 2003
CC:

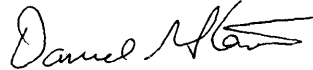
In response to the Class III Railroad Submission and Rail Yard Construction Proposal for the property at 53 Eames Street, I have the following concerns:

1. The letter submitted by Mr. Ronald Klemper to the Town of Wilmington identifies the property at 53 Eames Street when I believe the Olin address to be 51 Eames Street.
2. The proposed use identifies service to nearby plastic resin manufacturers. This would most certainly involve transportation and handling of hazardous materials which appears to be inconsistent with the proposal regarding handling of non-hazardous chemical products.
3. Societal impacts to the immediate area appear to be in conflict with the statement "The proposed action will not result in any significant adverse societal impacts". Increased diesel exhaust emissions from railroad and trucking operations alone represent a significant impact.
4. Impacts on public services are misrepresented as insignificant when in my opinion as Fire Chief they would be substantial. Initial delays at the Eames Street crossing of two times per day would surely increase in frequency and duration as activities increase. I also believe that fire department involvement with a previously proposed beverage

warehouse versus the current proposal is also mischaracterized. The current proposal would require increased fire department involvement in areas of emergency planning, training, compliance mitigation capability and response.

5. I also have a concern for increased seismic activity created by railroad operations and their relationship to on site containment of in ground contaminants.
6. Offloading of products may significantly increase ambient noise levels and potential for accidental release of vapors, liquids or solids.
7. Increased trucking in the area will increase the chance for accidents involving hazardous materials and non hazardous materials. Negative impacts may affect nearby neighborhoods and increase demand on public safety services.

In conclusion, I believe that this area of Wilmington has been negatively impacted by many sources for many years. This type of development would undo the progress that we have made to improve the quality of life in Wilmington and contradicts the impacts as submitted in the proposal by New England Trans Rail, LLC.



Chief Daniel R. Stewart

DRS/lkd

cc: Michael A. Caira, Town Manager
File (2)

EXHIBIT D
RESPONSE TO COMMENTS
FROM
TOWN OF WILMINGTON
ON
ENVIRONMENTAL ASSESSMENT FORM

Comments are in italics, responses are in regular type.

1- *As you are aware, the extreme contamination present at Olin Chemical site at 51 Eames Street is of such a nature and degree that it has been classified by the Massachusetts Department of Environmental Protection as a Tier 1A site. However, you have failed to appreciate the extraordinary extent of the contamination.*

The extent of the contamination was discussed in the EAS Section 1. Actions and Alternatives--Site History, which referred to the Orders & Conditions dated July 25, 2000 of the Wilmington Conservation Commission, the Massachusetts Department of Environmental Protection Approvals dated July 27, 2000, and the US Army Corps of Engineers Approvals dated August 1, 2000, all of which are public documents. Together these documents and approvals discuss the site contamination in great detail.

There is a distinction between the "property" and the "site". The "property" is the land being acquired. The property itself has been remediated under the guidance of the Massachusetts Department of Environmental Protection and in accordance with their redevelopment standards for industrial uses. As a result of post remediation confirmatory sampling work, there remains to be removed from the property small quantities (less than 2 truck loads) of oily soils, which Olin is committed to remove. This work is in addition to the air-sparging which Olin is committed to continue at the property.

The "site" is the broader area which has been affected by materials flowing from the Olin property. Olin remains committed to remediate the site as discussed in EAS Section 1.

The proposed use and development plans will not affect Olin's commitments and responsibility vis a viz the property or the site and will not have a material adverse impact on the pre-existing conditions of the property or the site nor will it have a material adverse impact on remediation efforts at the property or the site.

It should be noted that the Mass DEP reviewed the prior proposed development of the property and concurred that those more intense development planned would not pose a material adverse impact remediation of the property or the site.

2- *You have also not considered the site's location vis a vis the Town's well recharge area for the municipality's public water supply.... Any accidental spill, release or discharge of hazardous materials at the site ... Would be disastrous to both the Maple Meadow Brook Aquifer and the current efforts to remediate what has become the Town's most serious environmental threat.*

Based on the findings of GEI Consultants, Inc. set forth in a letter dated June 27, 2000 to the Massachusetts Department of Environmental Protection, which results were accepted by the DEP, that after "extensive investigations... As summarized in documents and reports submitted to MADEP in accordance with the Massachusetts Contingency Plan" it was determined that "recharge to the groundwater at the Property contributes principally to the Aberjona River Drainage Basin, and not the Ipswich River Basin. Therefore, the redevelopment of the Property will not significantly diminish or impact the recharge to the Ipswich River Basin, nor will enhanced recharge of storm water runoff to the groundwater at the Property contribute significantly to the amount of groundwater within the Ipswich River Basin." The Town of Wilmington's water supply is from the Ipswich River Basin and not the Aberjona River Drainage Basin.

It should be noted that the Mass DEP reviewed the prior proposed development of the property and concurred that the similar storm water runoff therefrom would not pose a material adverse impact *on* the Town's well recharge area for the municipality's public water supply.

The proposed use and development plans will not result in a discharge of water or liquids from the transloading operations. Such a discharge could only occur in the event of an accidental spill during transloading. To eliminate the potential impacts from an accidental spill, transloading of any materials which could result in such a discharge to the soil will be conducted on an impervious area with protective curbing to prevent contact or run-off to the soil if a spill were to occur. In addition, NET will develop and coordinate with the appropriate Town agencies an emergency "spill prevention, containment and control plan" which will call for NET to take immediately action if and when such an accident were to occur. Furthermore, NET must conform to the rules and regulations established under the Hazardous Materials Transportation Act and is subject to inspection and enforcement by the Federal Railway Administration.

Furthermore, any construction work performed at the property would have to be reviewed and approved by the Mass DEP to assure that it was in conformity with and did not have an material and adverse impact on the overall remediation plan which has been approved by the Mass DEP.

Finally, a pipeline connecting the Town of Wilmington to the Massachusetts Water Resources Authority has been approved and is expecting to be completed next year which will allow the Town to cease drawing water from its aquifer wells.

3- In our meeting you indicated that hazardous materials would be carried to and from the site on a regular basis, and in fact stored on site for a period of time.

We do not believe we said that hazardous materials will be stored on site. In fact, our operating plan does not call for or allow storage of hazardous materials on site. Hazardous materials will move be moved directly into or out of rail cars which will be scheduled to be interchanged on a daily basis.

4- Planned routes of ingress and egress to the site are woefully inadequate for your stated use, and pose significant traffic and safety concerns.

As discussed in the EAS, Section 3.i. LAND USE, Compatibility, the Massachusetts Environmental Protection Agency issued a Certificate dated August 14, 2000, # 12276 to Eames Street, LLC, finding that the use of the Site as a 353,000 square foot truck based warehouse distribution center which was projected by the applicant therein to receive 385 truck trips per day did not have a material and adverse impact on the environment. Similarly, the Planning and Conservation Department of the Town of Wilmington provided Site Plan Approval (See Certificate of Approval for Site Plan Review #00-11 dated July 25, 2000) and the Board of Appeals of the Town of Wilmington (See Conditional or Limited variance or Special Permit Under General Laws 40A dated July 17, 2000 issued by the Board) reached a similar conclusion based on a similar analysis.

NET's plans calls for about one-half the truck traffic that formed the basis of the aforementioned determinations and approvals, which were not deemed to create concerns or impacts. Therefore, NET's plans would not create the claimed traffic concerns or impacts.

As part of the prior approval for the truck-to-truck warehouse with an estimated 385 additional truck trips (discussed above), the prior proposed developer had agreed to provide a limited amount of funds for the purpose of allowing the Town of Wilmington to acquire a parcel of land at the southwest corner of the intersection of Eames Street and Woburn Avenue (currently occupied by a combination residence/auto repair shop) so as to facilitate the turn between Eames Street and Woburn Avenue (southerly). That developer would receive a large number of long-haul trucks up to the standard 53' trailer length which would have made it difficult to negotiate the aforementioned turn. Although NET is projected to generate about one-half that amount of traffic but will not generate any of the long-haul 53' truck trailers, it will nevertheless agree to place a sum of money in escrow equal to the fair market value of a portion of that property for use by the Town of Wilmington for the purpose of acquiring an appropriate portion of that piece of land.

It should be noted that the most logical truck traffic route from and to the site would be along Eames Street to Woburn Avenue (proceeding south along Woburn Avenue) and there to the I-93 interchange. Truckers tend to and have an interest in following the

quickest route to their destination which this route provides. This routing is through the industrial area--residential areas being to the north and east of the Eames Street/Woburn Avenue intersection, which is away from the logical direction of traffic. NET will take appropriate measures to assure that its customers follow the aforementioned logical truck route and do not travel north of Woburn Avenue.

It should be noted that the Mass DEP reviewed the prior proposed development of the property and concurred that the heavier traffic impacts therefrom would not pose a material adverse impact.

5- These issues [traffic and related safety concerns] have been previously raised by the Town to the current owner, culminating in Fifty-Eight (58) specific Orders of Conditions imposed by the Town of Wilmington Conservation Commission.

The Town of Wilmington Conservation Commission's responsibility is limited to impacts on wetlands and does not extend to traffic issues. The referenced Orders of Conditions dealt with various aspects of remediation work being conducted at and related to the site caused by the contaminated conditions at the site but only as such work related to potential or actual impacts on wetlands on the site and were not related to truck ingress, egress or traffic issues.

6- ...significant threat to the environment posed by the constant diesel exhaust emissions inherent in your proposed operation.

Diesel emissions from the proposed operations would come from two sources: trucks and locomotives. As to trucks, since the Mass DEP determined that the previously proposed use of the site involving a projected 385 trucks per day would not have a materially adverse impact on air quality, NET's proposed use of the site involving about one-half that number of trucks will certainly not have a material adverse impact on air quality.

As to diesel emissions from locomotives, the Boston and Maine Railroad currently runs one train per day to the property immediately North of Eames Street from the site. Before proceeding to then service customers south of the site, the B&M locomotive must back-up to the North to the MBTA track before proceeding south along the MBTA track which eventually leads the locomotive immediately to the East of the site. The proposed use would interchange with the B&M using the same locomotive which could then travel at the site on its way South--with an economy of movement. Consequently, there would be no material adverse impact on air quality from the locomotive operations.

In contrast, the crossing at the aforementioned MBTA by diesel locomotive commuter rail occurs 46 times per day during the daytime and evening hours past midnight...

7- ...not far from a residential area, which could cause serious nighttime noise problems for the residents [due to the times that freight interchanges will occur]

As discussed above, the Boston and Maine Railroad currently runs one train per day to the property immediately North of Eames Street from the site. Before proceeding to then service customers South of the site, the B&M locomotive must back-up to the North to the MBTA track before proceeding South along the MBTA track which eventually leads the locomotive immediately to the East of the site, but which causes the locomotives to pass residential areas closer to the MBTA track as it runs ½ to 1 mile to the northeast of the site. The proposed use would interchange with the B&M using the same locomotive which could then travel at the site on its way South--with an economy of movement which would allow it to avoid its closer proximity to residential areas which occur with its current routing. Consequently, there would be no material adverse noise impact on residences from the locomotive operations.

8- Initial delays at the Eames Street crossing of two times per day would surely increase in frequency and duration as activities increase.

Crossings at Eames Street would occur at nighttime when traffic is de-minimus. Furthermore, because of the economy of movement discussed above it would displace the crossing which now occurs during the same time when B&M trains must run along the nearby (less than 1,000' to the east along Eames Street) MBTA Eames Street crossing. For these reasons and because of its duration, the project will not impose a material adverse impact on traffic delays. In contrast, the crossing at the aforementioned MBTA by commuter rail occurs 46 times per day with frequencies of up to 4 times per hour during the daytime.

9- I also have a concern for increased seismic activity created by railroad operations and their relationship to on site containment of in ground contaminants.

The rail operations will not create seismic activity which will affect on or off site contaminant of in ground contaminants because: locomotive movements will occur away from those portions of the site where there are ground contaminants which pose of threat of migrating to other areas; the slow movement of locomotives and cars at the site (not expected to exceed 10 miles per hour); and the fact that there will be a new and hardened roadbed installed.

10- Offloading of products may significantly increase ambient noise levels and potential for accidental release of vapors, liquids or solids.

Offloading will occur over 2,000 feet from any sensitive receptors. The source of greatest noise would occur from pumps unloading powders or liquids. If noise from these activities affects sensitive receptors (i.e. residences, parks, schools, etc.), NET will take measures to prevent the same in the form of quiet pumps, sound baffles or incorporating other appropriate measures.

Dealing with accidental spills of liquids or solids were discussed above in Item 2.

If there is a threat of accidental releases of vapors from a given type of material, appropriate safeguards will be deployed to capture and/or mitigate any such accidental release which could cause a material adverse health impact. In addition, NET will keep the appropriate local and State agencies advised as to the type and dates that such material may be unloaded and the primary safeguards being deployed to prevent accidents from occurring and then the secondary safeguards to deal with an accident if it occurs.

Exhibit E

LOCAL MEETINGS

NET has met with officials and staff as follows:

1. Informal meeting week of March 24, 2003 at Wilmington Town Hall with Michael Caira, Town Manager and Humphry J. Moynihan, Principal Assessor. Introduction about NET's plans for the Olin Property.
Summary of discussions: NET discussed it plans to acquire the Olin Property and develop a rail reload facility at the property. A question was raised as to what type of materials would be handled and NET responded that a broad range of bulk material as well as intermodal material would be handled but that none would be stored at the site. Mr. Caira said that there formerly had been plans for a construction and demolition debris recycling center at the site and asked if we would be doing that and handling construction and demolition debris. NET responded that it would not be conducting recycling or any material processing at the site, but that construction and demolition debris was material currently being transported by rail and as such it would not preclude itself from reloading and transporting that material. NET was asked if we would meet with others at the Town and responded that it would.
2. Public meeting on May 28, 2003, at Wilmington Town Hall with Michael Caira, Town Manager, Jeffery Hull, Assistant Town Manager, Humphry J. Moynihan, Principal Assessor, Bernard Nally, Police Chief, Susan Sullivan, Selectwoman, Daniel Stewart, Fire Chief, Lynn Duncan, Director of Planning and Conservation, Gregory P. Erickson, Director of Public Health, Daniel W. Paret, Building Inspector, all of whom had offices at the Wilmington Town Hall, and two outside legal counsel and others whose identities were not recorded. Discussion about NET's plans for the Olin Property.
Summary of Discussions:
 - Q. Many of the questions and comments related to the nature of the ongoing clean up and other obligations of Olin Corporation at the site.
 - A. NET responded that its development and operations at the property would not impede or diminish Olin's ongoing clean-up obligations.
 - Q. Why was this property selected.
 - A. Because it was a large enough parcel located in proximity to the major highway networks, I-93 and I-95 and the closest available location to downtown Boston.
 - Q. Whether Olin had any ownership interest in NET.
 - A. Olin had no ownership interest in NET. NET was just acquiring land from Olin.

- Q. How long Olin would take to complete the clean up.
A. NET had no firm knowledge of how long it would take.
- Q. When would Olin would make its next payment to the Wilmington Conservation District.
A. NET was not aware that any payment was due and that that was a matter between the District and Olin.
- Q. How large a building would NET construct at the property.
A. Because of the nature of rail yard activities, its current plans did not call for any permanent structures to be built at the property, but it would install a movable sprung structure for weather protection at certain loading areas, and that currently the structure is planned to be approximately 68,000 square feet and 38 feet high. NET committed that it would submit all appropriate information to the Town Planning Board and Building Department when it was ready to install any such structure.
- Q. Would NET carry nuclear waste since the Environmental Report did not list nuclear waste.
A. It was highly unlikely that NET would handle any nuclear waste since there are no nuclear power plants in the market area projected to be served by the railyard. If the closest nuclear plant in Seabrook, NH were to ship nuclear waste by rail, it would utilize the closer railyards in Portsmouth, NH or Maine.
- Q. How would NET handle contaminated soil and would contaminated soils reloaded at the facility be dumped by truck.
A. NET intends will only receive contaminated soils in intermodal containers specifically designed to carry such soils which would be lifted from the truck to the rail car. NET has no plans to receive contaminated soils by dump truck.
- Q. What types and amounts of hazardous materials would be handled and would NET provide the Town Fire Department with Material Data Sheets on any liquid chemicals which may be hazardous or explosive before reloading them.
A. NET did not know the types and amounts of such materials until it received bills of lading for their shipment, but that it would provide such information and Material Data Sheets to the Town Fire Department before receiving such shipments.
- Q. Concern about noise, particularly when unloading bulk plastic feedstock by pump.
A. Any unloading activity which would utilize noise generating pumps would be conducted at a distant from the property borders so as to avoid excess noise levels impacting non-transient off-site receptors, taking into

account the nature of the areas bordering the site. If that proved insufficient, noise attenuating measures would be deployed.

Q. Storage of salt and other materials on site.

A. Because of the contaminated nature of the property, we would not store salt since it may exacerbate the site conditions and clean up efforts. NET does not plan to store material on site due to the fact that any storage would lessen space for rails and reload activities and the key to success at the property would be a compact and efficient rail operation which maximizes car movements and minimizes car and material storage.

Q. Hours of operation

A. Open up to 2 shifts (16 hours per day) with closure likely occurring during the hours that NET is scheduled to exchange cars with Guilford Rail.

Q. Would NET affect or be traveling over a superfund site and a rail station located about ½ mile south of the property.

A. NET's development will not be near the referenced superfund site and our rail traffic will run north from our property to Guilford's main line in Lowell, MA and will not run to the south since there are no connecting lines to the south.

Q. NET was asked if it would delay filing with the STB until mid-July. NET indicated that it would consider delay in filing with the STB but that mid-July would be too long.

3. Meeting on June 11, 2003, at Textron Headquarters, Rte 129, Wilmington with Joe Dalton, Policy Director for Rep. Edward J. Markey (7th Dist. Mass), Patrick J. Lally, Congressional Aide for Rep. Edward J. Markey (7th Dist. Mass), Gary M Barrett, District Director for Rep. John F. Tierney (6th Dist. Mass), and Carolyn Stewart, Communications Director District Director for Rep. John F. Tierney (6th Dist. Mass).

Summary of Discussions:

Presented relationship of reloading facilities and long hauls and the need for such reloading facilities. Discussed the nature of the public meeting and answered questions similar to those raised at the May 28, 2003 meeting.