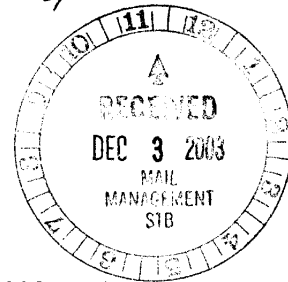


S.D. # 01031203001601 209522

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November 25, 2003

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Mercury Building, Room 700
1925 K Street, N.W.
Washington, D.C. 20423

ull

Re: New England Transrail, LLC, d/b/a Wilmington & Woburn
Terminal Railway-Petition for Exemption-Construction and
Operation as a rail carrier on tracks and lands acquired
from Olin Corporation.
FD 34391

Dear Mr. Williams:

Enclosed please find the original and eleven copies of the captioned
petition and three copies on CD-Rom disks. George H. Lowe, Jr. who will be delivering
this will also deliver the petitioner's check for the filing fee in the sum of \$55,600.
Please stamp and return one of the copies to Mr. Lowe.

Thank you for your attention to this matter.

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Very truly yours,

John F. McHugh

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TRANSPORTATION BOARD

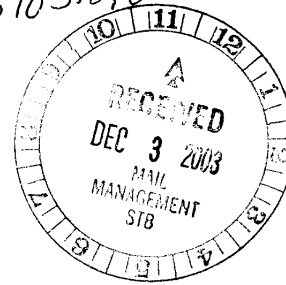
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D.B. # 01031203 001001

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34391



**NEW ENGLAND TRANSRAIL, LLC, d/b/a WILMINGTON & WOBURN
TERMINAL RAILWAY-PETITION FOR EXEMPTION FROM 49 U.S.C. §10901-
TO CONSTRUCT AND OPERATION AS A RAIL CARRIER ON TRACKS AND
LANDS ACQUIRED FROM OLIN CORPORATION**

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(two pages in addendum A are in color)

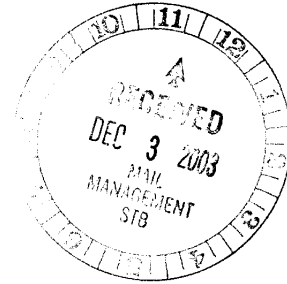
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SURFACE
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34391



**NEW ENGLAND TRANSRAIL, LLC, d/b/a WILMINGTON & WOBURN
TERMINAL RAILWAY-PETITION FOR EXEMPTION-CONSTRUCTION AND
OPERATION AS A RAIL CARRIER ON TRACKS AND LANDS ACQUIRED FROM
OLIN CORPORATION**

This application is filed by New England Transrail, LLC (NET) d/b/a the Wilmington and Woburn Terminal Railroad (W&WTR), pursuant to 49 U.S.C. §10502 for an exemption of its application to acquire, construct and operate rail lines and facilities in Wilmington, and Woburn Massachusetts from the requirements of 49 U.S.C. §10901 as this is a minor transaction involving the reconstruction and construction of about 4,000 feet of track on formerly industrial lands and will result in a carrier operated reload center interchanging with the Boston and Maine Railroad (hereinafter "B&M"). The applicant will have annual revenues of less than \$5 million. Regulation of this project is not necessary to carry out the transportation policy set forth in 49 U.S.C. §10101, the transaction is of limited scope and regulation is not necessary to protect shippers from abuse of market power. The applicant has been granted an exemption from the requirements of 49 CFR §1105¹. The Section of Environmental Analysis is in the process of completing an environmental review and this petition is filed in anticipation of the completion of that process. Applicant requests that this petition be granted but that its effect be delayed until the environmental review is completed and approved by the Board.

¹ Applicant initially proceeded by Notice of Exemption which was withdrawn.

The Board fully reviewed the issues related to the development of a common carrier by rail within a small area on tracks formerly used only to switch railroad customers in Effingham RR Co. - Pet. For Declaratory Order, 2 S.T.B. 606 (1997, Effingham Railroad Company - Petition for Declaratory Order - Construction at Effingham, IL, STB Docket No. 41986, et al. (STB served Sept. 18, 1998) (Effingham), aff'd sub nom. United Transp. Union v. Surface Transp. Board, 183 F.3d 606 (7th Cir. 1999) (UTU). At 609-10 of that initial decision, the Board developed the criteria upon which to determine whether the creation of a Class III railroad to serve an industrial park, i.e., spur, industrial, team, switching or side tracks was subject to its exclusive jurisdiction. The Board found that such a rail operator was subject to its licensing authority under 49 U.S.C. 10901, notwithstanding the small size of its planned operations, because: (1) the larger purpose and effect of the transaction were to create a new railroad that would be competing with other carriers in territory that the new carrier had not previously served; (2) the track would constitute the new carrier's entire line of railroad; and (3) the new railroad would interchange traffic with the national rail system.

In the case at bar, as in Effingham: (1) the larger purpose and effect of the transaction is to create WWTR, a new railroad that is specifically designed to compete with common carrier truckers for the business of industries tributary to the facility; (2) the track of W&WTR will constitute its entire line of railroad; and (3) the W&WTR will be interchanging traffic with the national rail system. This precedent has been followed in similar circumstances: Bulkmatic Railroad Corporation-Acquisition and Operation Exemption-Bulkmatic Transportation Company, FD-33414 (November 19, 2002), Southwind Short line Railroad Company—Acquisition And Operation Exemption--Indiana Port Commission FD-32114, decided with Indiana Ports Railroad Holding Corporation--

Continuance In Control Exemption--Clark Short line Railroad Company and Southwind Short line Railroad Company FD- 32114 (May 5, 1998). Several exemptions have also been granted for similar projects without extensive discussion, See, ex.: Pennsylvania Southwestern Railroad Inc.-Lease and Operation Exemption-J&L Special Steel, LLC FD-34145 (April 24, 2003; Penn Jersey Rail Lines, Inc.-Acquisition and Operation Exemption-WMI Properties, Inc. FD 32104 (June 24, 1997).

Therefore, this petition is not unique except that the applicant, in addition to acquiring existing track, will be adding track and reload facilities including a proposed new junction if an agreement can be achieved with the Massachusetts Bay Transportation Authority (MBTA). Referring to the exemption provisions of the Staggers Act of 1980 as they applied to petitions for new construction, Pub. L. No. 96-446, 94 Stat. 1897 (1980) the Interstate Commerce Commission stated: “[i]t is our aim to eliminate the barriers to entry through new construction to the greatest extent possible to facilitate investment initiatives and expanded rail service.” Class Exemption for Rail Construction Under 49 U.S.C. 10901, Ex Parte No. 392(Sub-No. 3), Slip Op. (I.C.C. served May 29, 1987). The Board has stated that “[t]he creation of additional rail service and additional competition via rail line construction benefits the public”: Class Exemption for the Construction of Connecting Tracks under 49 U.S.C. 10901, 1 S.T.B. 75, 79 (1996). Therefore there is a presumption that a project such as that proposed here is in the public interest.

The Board has rejected the argument that creation of a small railroad on former industrial tracks by a petitioner which is a non-rail operator for the purpose of obtaining the legal benefits of rail carrier status is a sham transaction, See: Bulkmatic Railroad Corp. supra. The goal of the legislation of the last twenty three years has been to open the industry

to new entries and in doing so to reduce all regulation so as to bring in a larger spectrum of investors. The proposed transaction is consistent with those legislative goals and with the Board's decisions.

49 C.F.R. §1150.3

a. Applicant is represented by John F. McHugh of 6 Water Street, New York, N.Y. 10004, 212-483-0875; Fax 212-483-0876, JFMcHughPC@AOL.COM.

b. Applicant is not now a common carrier but seeks authority to operate as a common carrier utilizing the rail lines and facilities as proposed herein and connecting with the national railway system. The applicant will operate only rail facilities and rail related facilities which transfer cargos between modes integral to their on-carriage in a rail-highway intermodal movement.

c. The Applicant under the trade name Wilmington & Woburn Terminal Railway (W&WTR) will operate all of the rail lines and facilities proposed.

d. The applicant is not affiliated with any shipper or receiver located on the line.

e. The Applicant is a limited liability company organized under the laws of the State of New Jersey authorized to do business in Massachusetts and has the authority to institute this proceeding to obtain authority to operate railway terminals as a common carrier as an integral part of rail transportation of bulk and other carload commodities.

f. The Applicant is 50% minority owned and its members and their interests are:

Robert W. Jones III, Managing Member 25%
24 River Road, Suite 19
Clifton, N.J. 07014

Ronald A. Klempner, Managing Member, 25% interest
843 Red Road,
Teaneck, New Jersey 07666,

Jack Lyons, member 25%

Carl Jones, member 25%

None of the owners of the applicant control any other common carrier.

49 C.F.R. §1150.4

a. The applicant has entered into an option agreement ("Option") to purchase a certain parcel of industrial land in Wilmington, Massachusetts from Olin, Corp. The parcel is known as 51 Eames Street and consists of 53 + acres of brown field land formerly occupied by a chemical plant. The land includes a Y shaped set of tracks formerly used to service the chemical operation. The switch which connected these tracks to the B&M, Wilmington-Woburn-West Medford Branch at MP 14, has been removed. A summary of the option, is Addendum B hereto.

Applicant, intends to enter into an agreement with the B&M, a subsidiary of Gilford Rail System of Iron Horse Park, North Billerica, Massachusetts, to reinstall the removed switch and the spur onto the premises and then to build and rebuild approximately four thousand feet (4,000') of track on and adjacent to the parcel and to build facilities on the parcel to facilitate the transload of various commodities between the highway and rail modes.

b. The cargos anticipated include aggregates, sand & gravel, stone, lumber, plastics, steel, scrap steel, recycled paper and plastic, newsprint, paper products, clay, construction debris, brick, non-hazardous solid wastes, liquids and dry chemicals. The ratios of these commodities cannot be estimated at this time. The facility will not handle hazardous waste or other hazardous materials. The applicant will transload and consolidate outbound loads,

including non-hazardous waste, but will provide transload and transportation services only and will not take title to any products handled. It is anticipated that the applicant will handle about twenty cars per day initially.

c. 1. **The Proposal:** The parcel and the facilities proposed will be 1.8 miles by road from an interchange with Interstate 93, a major highway between Manchester, N.H. and downtown Boston. Via I-93 trucks travel 1.5 miles to an interchange with Rt. 128-Interstate 95, the inner belt highway around Boston or about 8 miles to an interchange with I-495 the outer belt around Boston. Access from I-93 reaches the parcel through predominantly industrial areas. The details related to this road traffic are to be a subject of the report of the Section of Environmental Analysis which may contain suggested practicable mitigation if any is needed which suggestions will be incorporated into its plans.

The facility is about eleven miles from the Fleet Center, Downtown Boston. The Greater Boston area has a shortage of rail-highway transload facilities and as the result the rail market share is about 14%² in contrast to 59.6%³ nationally. The former Boston-Concord B&M main line, which abuts the easterly side of the parcel, is a heavily used two track commuter line the relevant portion of which is now owned and operated by the MBTA. B&M retains freight trackage rights on the line but all such operations are confined to a four hour window in the early morning time period. The B&M retains ownership of the remains of the former Wilmington-Woburn-West Medford Branch of the B&M which leaves the MBTA line in Wilmington and now terminates near the Woburn town line. This stub of a

² See Addendum A Table 1.

³ Referring to the over 500 mile haul market. Transportation Invest in America, Freight-Rail, Bottom Line Report, American Association of State Highway and Transportation Officials, pg 55. See also Rail Freight's Potential to Reduce Traffic Congestion, Wendell Cox, Texas Public Policy Forum, (<http://www.texaspolicy.com/pdf/2001-10-30-transportation-freight.pdf>) pg 42 (Cox), Table 9 which states that the rail market share is 57.3%

former branch serves a cement plant north of Eames St. crosses that street at grade and abuts the Western side of the parcel. The project contemplates re-installing a switch in the branch at approximately MP 14, south of Eames Street, rehabilitation of an existing track, which extends about 1300 feet easterly across the parcel and extending that track eastward and southward. Eventually, if an easement can be obtained from MBTA, that track will be extended to a connection with the MBTA line either via a new switch at the Southeastern corner of the parcel or in Woburn, using a currently unused industrial switch, rights which have been discussed but not acquired. The connection will be in the vicinity of MP 14 on the MBTA line. A second track will be built parallel to this track for transloading operations and for interchange with the B&M. Four team tracks each will be built, two on the easterly side of the property and two on the westerly side the westerly using the second leg of the existing Y which will be rehabilitated and doubled. If an agreement can be reached with the B&M to do so, its present trackage south of Eames Street will be upgraded and a run around track installed on that right of way for additional car storage and flexibility. Applicant's crews will set cars out for receivers and for shippers at transload facilities to be built, will shift those cars in and out of facilities as needed during the work day and will place those cars on the interchange when ready for outbound movement.

Applicant's operation will be confined to the parcel and perhaps to the B&M owned branch. The project will facilitate efficient service to shippers which is now hampered by the access restrictions imposed by MBTA on the existing B&M service. Further, applicants transload and team track operations will allow numerous customers access to rail transportation now denied by both lack of system capacity in the region and by their lack of a siding.

While the Applicant has had discussions with the B&M which included both the use of the branch line track as a switching lead for the facility and the possibility of also servicing B&M customers on that line, no such agreement is in place nor has an interchange agreement with the B&M been achieved.

Applicant will invest sufficient funds to install the needed tracks and switches and to rehabilitate former industrial sidings for re-use. It will provide covered facilities, sprung structures, to allow transload cargos which are weather sensitive. Other commodities will be handled at team track type facilities with shippers or receivers required to provide any equipment needed to transload their cargo other than paved car side access. Applicant will lease or purchase rail cars and will lease or purchase a locomotive. Applicant will not own any entity which owns cargoes in transit but will engage only in reload, services integral to transportation by rail.

2. The Public Convenience and Necessity:

- **aa.** Current effects: The facility serves the public convenience and necessity as it will be operated as a common carrier, accepting cargos for transload in intermodal transport and on carriage from any customer for a reasonable fee. It will provide access to the railway system for commodities which now have no practical access to any form of transport other than truck. These facilities will be provided through investments by non railroad financial sources and therefore will provide traffic to the railway system it would otherwise not have access to without diversion of scarce rail industry capital or borrowing power to the development of a similar small facility. Every railcar handled by the applicant's facilities will take approximately five heavy, long distance trucks off the highways traveling to and/or from the west⁴. "... (T)ruck-based freight movement generates more pollutants per ton-mile of freight hauled than current, unregulated rail-based forms of freight movement. Estimates quantifying the difference indicate that locomotives are on the order of three to five times cleaner than trucks on an emissions per ton-mile basis." Locomotive Emission Standards, Regulatory Support Document, United States Environmental Protection Agency, Office of Mobil Sources, April 1998 pg. 10, <http://www.epa.gov/otaq/regs/nonroad/locomotv/frm/locorsd.pdf>

⁴ Rail service is competitive at distances over 500 miles. Current configuration of the national rail system renders rail service from Massachusetts most efficient to the west, See Addendum A.

The current B&M drill must serve the customer on the branch, as well as all those located from Lowell to Boston on the MBTA line within the limited operating window allowed by the MBTA. Currently the B&M must serve the branch only from the north, requiring the drill to enter the branch forward, finish switching and then to exit backward, reversing direction on the main track, to continue into Boston. Logistical constraints and the limited window afforded by the MBTA impede B&M's ability to serve more customers in an economically viable manner. If the proposed MBTA easement is obtained, the new through tracks will be installed will allow B&M trains to drop off and pick up cars efficiently arriving via the branch and continuing through the line to be built back onto the MBTA line without a back up and reverse operation as is the present operating pattern. This will substantially reduce the time needed to service the existing B&M customer as well as the Applicant's proposed interchange. This will facilitate B&M service to additional customers further down the main line within the time constraints imposed by the MBTA.

The facility, directly, and due to its effect on B&M operations, not only removes trucks from the public roads to the west of the facility, but by providing transload services within eleven miles of downtown Boston, within about two miles of major highways to all points in the region, the facility reduces vehicle miles traveled (VMT) within the urban area and thus, has a direct positive effect on congestion and resulting levels of emissions.

While the Section for Environmental Analysis will review the specific factors relating to local environmental effects of the facilities proposed here, it is submitted that any facility which takes freight off the highway and places it on the railway system for transport is environmentally preferable as a matter of general policy. The bases for this general statement is that the taxpayer costs of trucking are high. While it is recognized that

externality costs of any mode of transportation vary according to economic and locationial conditions, externality costs based upon national averages, adjusted slightly for the much greater population density of the Boston area compared to the rest of the nation, indicate that each car loaded or unloaded by the Applicant will translate directly into public benefits which can be measured. The following table summarizes these costs on the basis of \$'s per ton mile of travel assuming trucks move an average of 20 tons of cargo⁵ by each truck and 100 tons per railcar.

	Cost per Ton-Mile of Vehicle Travel (Loaded) ⁶	
	RAIL CAR	TRUCK
Pavement Wear & Tear	\$0.00	\$0.0090
Excess User Costs	\$0.00	\$0.0043
Congestion Costs	\$0.00	\$0.0025
Air Pollution	\$0.00056	\$0.0025
Noise Impacts	\$0.00111	\$0.0043
Accident Costs	\$0.00044	\$0.0138
Total	\$0.0021	\$0.0364

Two public costs stand out. The cost of accidents per ton mile for trucks is more than 6 times that for rail transport. The cost of air pollution for trucks is nearly 5 times that for rail. Moving 20 tons 750 miles costs the public \$546 by truck and \$31.50 by rail, a savings of \$514. Assuming 20 cars per day moving an average of 750 miles, the proposed facility generates \$51,450.00 in public benefits per day of operation.

- Pavement Wear and Damage. Pavement wear and damage to roadway surfaces is caused by the repeated passage of heavy vehicles. Wear and damage to pavement depends upon the axle loads imposed by the vehicle, the frequency at which heavy loads are imposed, the strength of the pavement, and the length of time damage goes un-repaired. Heavy trucks have a much greater impact than lighter vehicles because pavement wear increases exponentially with increasing axle weights, 1997 Federal Highway Cost Allocation Study, U.S. Department of Transportation,

⁵ When referring to a 20 ton truck in this petition Applicant is referring to average capacity. This loaded truck is 80,000 Lbs. or 40 tons.

⁶ These costs are determined from various studies pursuant to the methodology explained in Transportation Cost and Benefit Analysis, Techniques, Estimates and Implications, Todd Alexander Litman, Victoria Transport Policy Institute, 27 May 2003, <http://www.vtpi.org/tca/tca01.pdf> ("VTP"), extrapolation performed by Konheim & Ketchum, New York, N.Y. Rev. 4/18/03.

(FHCA) Table ES-6 pg. ES-11 and pgs. V-24-29 (<http://ntl.bts.gov/data/final.pdf>). Rail transport does not contribute to pavement wear and damage.

Costs Imposed on Other Road Users. Reduced pavement quality increases costs to all highway users by increasing vehicle wear, operating costs, accidents and discomfort. Because the pavement repair generally occurs months, if not years, after the time of damage, user costs accumulate quickly over time. Again, rail transport does not contribute to increased highway user costs, FHCA, Supra, III-12.

Congestion. Congestion results from the demand for space by individual users operating on roads with limited capacity. Costs of congestion quantified by the Federal Highway Administration occur in the form of excess travel time, additional vehicle operating costs and increased damage and injury from accidents among vehicles. The average estimated cost per person for one hour's delay is \$12.40, Cox, Supra, pg 42. Rail transport does not contribute to the increased costs associated with highway congestion and each 100 ton rail car removes at least five trucks from the highways, that is the equivalent of 3.8 automobiles per truck, Cox, supra Pg. 2, or the space occupied by 19 automobiles at the minimum.

Accidents. Highway and railway accidents cause personal injury and property damage and result in significant cost to individuals and to society. The societal costs of accidents take the form of increased costs for health insurance and contribute to financially unstable hospitals due to incomplete reimbursements and the cost of supporting the medical infrastructure. Other societal costs often overlooked are productivity and property losses. The overwhelming majority of roadway accidents occurring each year do not result in personal injury, but do result in property damage. Costs associated with personal injury and productivity loss account for the majority of total roadway accident costs. See: VTP Pgs. 2-4, 2-6, 2-10. FHCA, pg. III-17-18.

Pollution. Air and water pollution are costs to society resulting from vehicle use, even though dollar amounts are not apparent in public budgets. Prevention or control costs sometimes appear as expenditures, but these are only weakly related to damage costs.

- Air Pollution. The Federal Highway Administration has estimated damage to human health (mortality and morbidity), to materials (soiling and physical deterioration), and to vegetation from vehicle-related air pollution. Health impact costs include medical bills and loss of earnings due to illness or premature death⁷. Damage to materials is based on deterioration of properties and aggregate damage estimates for different kinds of materials. Total costs are allocated to the different pollutants.⁸ Trucks emit between six and twelve times the air pollutants per ton-mile than do railways depending upon the pollutant in question, Transportation Invest in America, Freight-Rail, Bottom Line Report, American Association of State Highway and Transportation Officials Pg 29.(AASHTO) (please note that various studies have reached different conclusions on this point, each finding railroads significantly more efficient but reaching various

⁷ Diesel exhaust gases are a direct cause of short term and chronic respiratory malfunction including asthma, United States Environmental Protection Agency (EPA) Health Assessment Document for Diesel Engine Exhaust EPA/600/8-90/057F, May 2002, pg.s xiv-xv, 1-4 through 1-6, 5-100-101.

⁸ Nationally, railroads contribute 0.1% of all carbon monoxide, 3.9 % of Nox, 0.3%. of VOC, 0.1% of PM-10 and 0.4% of PM-2.5, Transportation Energy Data Book: Edition 22-2002 United States Department of Energy (2002), (TEDB) Table 4.1 pg. 4-2. Heavy trucks contribute 1.24% of CO, 14.78% of NOx, 1.59% of VOC, .5% of PM-10, and 1.93% of PM-2.5. TEBD compare Table 4.1 with tables 4.2 through 4.11 calculating the heavy truck contribution to the highway vehicle portion of national emissions using the % listed in each table.

determinations of precisely how much so, see ex.: Locomotive Emission Standards, Regulatory Support Document, USEPA, *supra*.

- Water Pollution. Asbestos, particulates, road salts and petroleum residuals are among the water pollutants with highway usage origins, FHCA III-19. Non-point source run-off is regarded as the major uncontrolled contributor to water pollution. Rail operations are assumed to produce little water pollution impact as then do not use asbestos and they use sand and not salt for traction in slippery conditions. Water pollution costs are not estimated for this analysis for either mode.

bb. Future Effects:

All entities engaged in the review of freight transportation patterns agree that the nation will see a 50%+ gain in freight traffic by 2020. See Ex. Cox, Supra, pg. 17 (“Cox”); AASHTO, Supra, pg 2. Freight Transportation Profile – Massachusetts, Federal Highway Administration, Office of Freight Management and Operations, <http://www.ops.fhwa.dot.gov/freight/>. (Addendum A hereto).

All commentators seem to agree that the nation’s railway infrastructure is now at or near capacity. If the railroad industry does not maintain its market share or indeed significantly increase its market share within that period, this increasing freight traffic will be forced onto the highways and the highway system will become increasingly congested causing major economic losses particularly in urban areas such as Boston, See generally Cox Supra, Pg. 43 and Addendum A. The current owners of the nation’s railway system do not have the resources to provide the vast additional facilities needed to accommodate that traffic, particularly terminals in or near urban areas⁹. Also see: AASHTO, Supra, Generally,

⁹ AASHTO, supra at page 35-36 analyses the problem as follows:

The recent gains in productivity and service quality have slowed the precipitous decline of rail market share. Figure 26 shows the change since 1950 in market share (measured in ton-miles) for rail, truck, inland waterway carriers, air carriers, and pipelines. The figure accounts only for intercity freight-rail ton-miles (e.g., including freight-rail traffic between major city-pairs but excluding local, agricultural, etc., ton-miles). The railroads’ full share of the freight market, measured as a percentage of ton-miles over the nation’s freight system, has also stabilized at about 28 percent. However, productivity gains and lower rail rates have not been sufficient to bring about substantial gains in market share, and shares measured in tonnage and revenue terms have continued to drop.

Pgs. 3, 80, 88. In the face of this national crisis third party investment in rail facilities, absent a national program of public re-investment in railway infrastructure, is the only means to prevent the industry from losing market share with drastic national environmental and economic consequences. Congress, in enacting the Interstate Commerce Commission Termination Act, cited the need to encourage increasing rail use and specifically exempted railway operations, without regard to ownership from any local regulation which could be used to frustrate achievement of that clearly stated national goal.¹⁰ Clearly Congress did not intend the definition of rail carrier to be confined to the few remaining Class I carriers or

Competitive pricing by the railroads has been a critical factor in rail's ability to stabilize and maintain its market share. The result has been a steady decline in rail revenues on a ton-mile basis. Figure 27 shows freight-rail revenues per ton-mile from 1970 to 2000. Revenue, whether measured in constant or current dollars, has dropped significantly. This has been offset to some extent by productivity gains, disinvestment in underperforming assets, and other business strategies. Overall, the railroad return on investment has actually improved somewhat, from around four percent in 1980 to around six percent in year 2000. Nevertheless, railroad return on investment has been well below the cost of capital (10 percent or more). Figure 28 shows the Class I railroads' return on investment since 1981 compared to the cost of capital. This gap indicates that most of the benefits of railroad reorganization and productivity improvements have accrued to the shipping community in the form of rate cuts, rather than to railroads and their investors.

This is a major problem for the railroad industry because it is an extraordinarily capital-intensive industry. In 1996, capital expenditures by the railroads amounted to 18.7 percent of revenues. Figure 29 lists capital expenditures as a percentage of revenue for various U.S. industries. In year 2000, Class I railroads invested 17.8 percent of their revenues in capital improvements, compared to an average of 3.7 percent for all manufacturing industries. Between 1991 and 2000, it is estimated that the railroads invested \$54 billion in their systems: 67 percent for roadway and structures, and 33 percent for equipment.

Wary of the gap between railroad capital needs and net operating income (\$54 billion versus \$31 billion between 1991 and 2000) investors have backed away from railroad stocks. Rail's stock market value compared to the S&P 500 is one-fifth of its 1980 size. Figure 30 shows the value of railroad stocks as a percentage of the Standard & Poor's 500. The percentage has dropped from over two percent in 1980 to under one-half percent in 2000.

This has reduced the amount of capital available for the railroads to invest, forcing them to borrow money to maintain and expand infrastructure, or to defer maintenance and improvements. The AAR estimates that the funds shortfall — the difference between capital expenditures and the amount the railroads can invest from their own revenues — is about \$2 billion annually.

¹⁰ See: letter from Representative Jerrold Nadler to Hon. Roger Noyer, submitted in Hi Tech Trans-Petition for Declaratory Order-Rail Transload Facility at Oak Island Yard, Newark, N.J., FD-34192 (August 22, 2003) and Representative Nick J. Rahall II to Hon Roger Noyer herein, (September 9, 2003), both Addendum C hereto.

even to regional carriers but recognized the role of entrepreneurs in obtaining the potential public benefits the rail mode of carriage can achieve.

The parcel in issue here is a brownfield with a long and unfortunate environmental history. It is located at a strategic point near the junction of I-93 and I-95 on the inner highway loop serving the Boston area and a few miles via I-93 of I-495, the outer beltway. The project is located where the Rt. 93 insignia is to be found on Addendum A, Figure 4, the map of expected traffic in 2020.

The significance of the environmental history of this property, if any and whether this proposal will have a significant environmental effect is to be the subject of the report by the Section of Environmental Analysis. However, on general policy grounds, this project intends to utilize a brownfield site to add a rail-truck transload facility to the transportation infrastructure of the Greater Boston area precisely where it will be needed to reduce the coming wave of highway traffic. The supply of property available for additional rail terminal infrastructure within urban areas consists predominantly of such brownfield sites. Their redevelopment as rail facilities is environmentally benign. If the rail industry's contribution to a workable national transportation system is to be preserved or broadened, means must be found to facilitate the use of these lands within the bounds imposed by the capacity of private non-rail-industry financial resources. In all such cases opposition will arise from "not in my back yard" interests as, in most cases, such sites are in or near populated areas. In this case the prior owner's past history has generated pent up rage in the community creating distrust of any entity, governmental or otherwise, which would seek to do anything with this site. Investors in rail terminal projects need guidelines that if followed will result in obtaining the franchises needed with sufficient certainty to encourage investment.

It is respectfully submitted that the use proposed is environmentally desirable particularly in view of the projections contained in Addendum A as well as those reached by Mr. Cox and by AASHTO. The proposal re-uses a brown field in a manner consistent with existing remediation operations. Therefore, on the numerous bases explained above, the facilities and operations proposed are consistent with the public convenience and necessity.

d. The facility is depicted on the following page:

e. The facility will be in Wilmington Massachusetts with a possible interchange extension into Woburn. Interchange will be on tracks to be built and or repaired lying between the B&M branch and the MBTA main line. The line will interchange with the B&M. It is anticipated that approximately 20 cars per day will be interchanged full to and/or from the B&M. There are no present agreements with the B&M with regard to rates, divisions, and interchange or trackage rights.

f. Consummation of the purchase transaction will be upon approval by the Board, and commencement of operation will be upon completion of construction and upon reaching agreements with B&M.

e. 1. The new line will be entirely within Wilmington with the possibility of an extension into Woburn, Massachusetts, however as the facility will reload cargoes between modes, the area served will include the entire Boston Metropolitan Area.

g. 1. The new lines will be limited to the parcel in Wilmington, Massachusetts with the possible extension of the proposed MBTA connecting track into Woburn. As this is a rail-truck reload facility located close to Downtown Boston, it is expected to serve the entire Greater Boston area as well as the industrial area adjacent to the facility within Wilmington and Woburn Massachusetts.

2. The region is largely hi-tech firms with light manufacturing, construction supply firms and warehousing.

3. The line to be built will not cross an existing rail line.

49 C.F.R. §1150.5

The applicant will interchange with the B&M. Applicant will maintain a locomotive and crew to switch cars as needed. Applicant will purchase or lease such other railway

equipment as may be needed for operations as they develop. The rail and terminal operations will be managed by experienced personnel. While the B&M is in the area it is anticipated that the facility will not effect its services which are at or near the capacity of its present single train based upon the length of the windows available to it at this time. Thus, while the B&M service is available it is not now serving the customers which the applicant will seek to serve.

49 C.F.R. §1150.6

Applicant will provide all financing necessary to acquire the premises, to construct the tracks and improvements needed to facilitate the operations projected and to provide such mitigation as is deemed necessary by the Section of Environmental Analysis. All track and roadway construction on site will be completed within one year of approval. Off site construction and mitigation will be funded immediately but construction schedules may be beyond the control of the applicant. Jack Lyons and Carl Jones are the sources of all financing and they each directly or through family entities hold a 25% interest in the applicant. No other securities have been or will be issued at this time.

The company is not yet operating and does not have a balance sheet.

49 C.F.R. §1150.7

Approval of this petition should be conditioned upon approval of the report of The Section for Environmental Analysis.

EXEMPTION

Granting of authority to construct and operate this line, subject to completion of the environmental review in process by the Section for Environmental Analysis is in accord with applicable law. See: Illinois Commerce Comm'n v. I.C.C., 848 F. 2d 1246, 1259 (D.C. Cir. 1988) cert denied, 488 U.S. 1004 (1989), (as the agency has the ability to stay the proceeding should an unresolved environmental issue be raised an approval prior to completion of the environmental review approval prior to completion of the review was lawful). The Board has ruled similarly, "Granting the requested conditional exemption will not diminish our capacity to consider environmental matters when we issue a final decision addressing the environmental issues and making the exemption effective at that time, if appropriate. Ellis County Rural Rail Transportation District-Construction and Operation-Ellis County, Texas, FD No. 33731 February 8, 2000, Service Date: February 15, 2000.

The instant proposal is not new or news to the community in question. Applicant previously filed a Notice of Exemption for the acquisition in issue FD-34365, but withdrew that notice. In that proceeding the applicant gave all Federal, State and Local governmental authorities notice of this proposal and solicited their comments. This resulted in official comments from the agencies and local governmental authorities involved as well as an extensive letter campaign. After withdrawing its notice, the applicant contacted the Section of Environmental Analysis and proceeded with a full environmental review of this proposal. That review has been facilitated by the long environmental history of this land which has generated extensive environmental information and by the approval by State authorities of a prior non-rail development proposal which would have placed a permanent distribution warehouse structure on the land and generated truck traffic on local streets far in excess of

that expected by this applicant. With regard to the prior proposal, the Massachusetts Executive Office of Environmental Affairs found that neither the truck traffic in issue at that time nor the re-use of the parcel constituted a significant environmental effect. Objections to use, then as now, focus on interference with the previous owner's remediation work which is ongoing. The proposed warehouse building, then approved, was both significantly larger and was built on a permanent foundation as opposed to the smaller, relatively portable sprung structures proposed here. The remediation activity on the lands remains the obligation of Olin Corp. and Applicant is bound by contract not to impede that work in any way. As added incentive not to interfere or add to the environmental problems of this land is the fact that if Applicant were to do so it could be joined with Olin as responsible for the costs of remediation.

The Section of Environmental Analysis has been the recipient of a volley of letters from local citizens and their elected representatives. To date these letters have not identified any issue which has not been fully addressed in the extensive prior environmental record generated by this site nor have the letters identified any significant issue related to this project, other than handling of hazardous material, which this project specifically will not handle.

The applicant is a new entity formed with private funds to develop this project. Should the approval process extend beyond three months from the date of the Option the applicant will be subject to a non-refundable payment to Olin on the Option. Further, the longer this process takes the higher the costs. It is therefore critical that the applicant have a decision expeditiously the costs of this project within workable limits. For this reason the applicant respectfully requests that the Board set an expedited schedule for consideration of

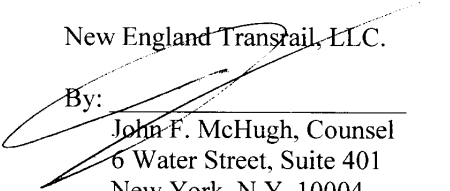
the petition once the report of the Section of Environmental Analysis is completed reducing the period for comments from 35 days to 20 days and the period in which a decision is rendered from nine months to coincide with the date on which the report from the Section of Environmental Analysis is approved.

49 C.F.R. §1150.8

The carrier to be created is not projected to have revenues which exceed \$5 million per year. The applicant will be the operator of all services proposed.

. Dated, New York, N.Y.
November 20, 2003.

New England Transrail, LLC.

By: 

John F. McHugh, Counsel
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875

ADDENDUM A

FREIGHT NEWS

Freight Transportation Profile—Massachusetts Freight Analysis Framework

Understanding future freight activity is important for matching infrastructure supply to demand and for assessing potential investment and operational strategies. To help decisionmakers identify areas in need of capacity improvements, the U.S. Department of Transportation developed the Freight Analysis Framework (FAF), a comprehensive national data and analysis tool, including county-to-county freight flows for the truck, rail, water, and air modes. FAF also forecasts freight activity in 2010 and 2020 for each of these modes. Information about the methodology used in developing FAF is available on the Office of Freight Management and Operations' website www.ops.fhwa.dot.gov/freight.

The U.S. freight transportation network moves a staggering volume of goods each year. Over 15 billion tons of goods, worth over \$9 trillion, were moved in 1998. The movement of bulk goods, such as grains, coal, and ores, still comprises a large share of the tonnage moved on the U.S. freight network. However, lighter and more valuable goods, such as computers and office equipment, now make up an increasing proportion of what is moved. FAF estimates that trucks carried about 71 percent of the total tonnage and 80 percent of the total value of U.S. shipments in 1998. By 2020, the U.S. transportation system is expected to handle about 23 billion tons of cargo valued at nearly \$30 trillion.

Massachusetts

Table 1 presents information on freight shipments that have either an origin or a destination in Massachusetts. As shown in the table, trucks moved a large percentage of the tonnage and value of shipments, followed by rail and water tonnage and air value. Figures 1 and 2 show freight flows on the highway and rail modes.

Truck traffic is expected to grow throughout the state over the next 20 years. Much of the growth will occur in urban areas and on the Interstate highway system (Figures 3 and 4). Truck traffic moving to and from Massachusetts accounted for 6 percent of the average annual daily truck traffic (AADTT) on the FAF road network. Approximately 7 percent of truck traffic involved in-state shipments, and 7 percent involved trucks traveling across the state to other markets. About 80 of the AADTT were not identified with a route-specific origin or destination.

Table 2 shows the top five commodity groups shipped to, from, and within Massachusetts by all modes. The top commodities by weight are non-metallic minerals and petroleum or coal products. By value, the top commodities are instruments, photographic equipment, and optical equipment and machinery.

Table 1. Freight Shipments To, From, and Within Massachusetts: 1998, 2010, and 2020

MASSACHUSETTS	Tons (millions)			Value (billions \$)		
	1998	2010	2020	1998	2010	2020
State Total	199	274	332	161	307	499
By Mode						
Air	<1	<1	1	28	66	114
Highway	162	222	268	122	222	355
Other ^a	8	11	14	1	3	5
Rail	14	20	25	8	12	19
Water	14	21	24	2	4	7
By Destination/Market						
Domestic	179	245	293	138	255	403
International	20	30	39	23	53	96

Note: Modal numbers may not add to totals due to rounding.

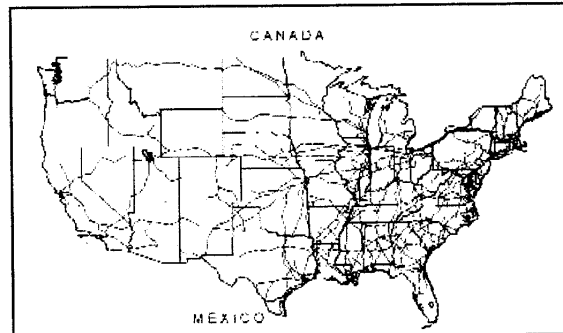
^a The "Other" category includes international shipments that moved via pipeline or by an unspecified mode.

Figure 1. Freight Flows To, From, and Within Massachusetts by Truck: 1998 (tons)



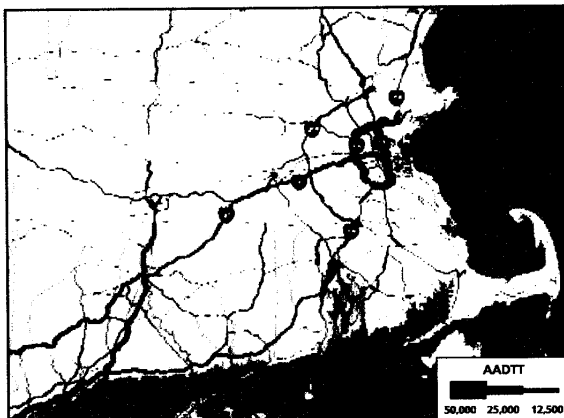
Federal Highway Administration

Figure 2. Freight Flows To, From, and Within Massachusetts by Rail: 1998 (tons)



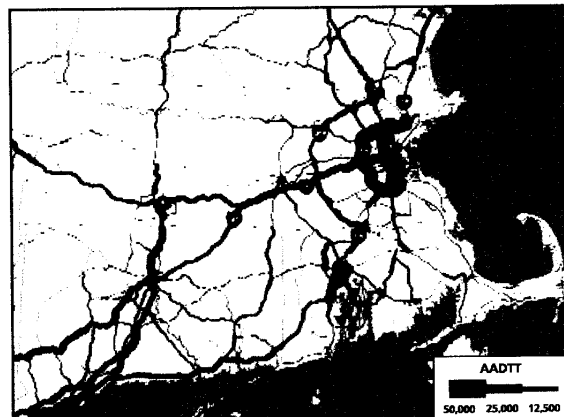
Federal Railroad Administration

Figure 3. Estimated Average Annual Daily Truck Traffic: 1998



Federal Highway Administration

Figure 4. Estimated Average Annual Daily Truck Traffic: 2020



Federal Highway Administration

Table 2. Top Five Commodities Shipped To, From, and Within Massachusetts by All Modes: 1998 and 2020

Commodity	Tons (millions)		Commodity	Value (billions \$)	
	1998	2020		1998	2020
Nonmetallic Minerals	52	60	Instr./Photo Equip./Optical Equip.	18	70
Petroleum/Coal Products	43	67	Machinery	16	52
Clay/Concrete/Glass/Stone	19	46	Transportation Equipment	15	29
Food/Kinetic Products	13	31	Food/Kinetic Products	12	47
Secondary Traffic ^a	12	29	Chemicals/Allic Products	12	32

^a Secondary traffic is defined as freight flows to and from distribution centers or through intermodal facilities. No commodities are assigned to this intermediate step in the transportation process.

For More Information, Please Contact
Bruce Lambert
Office of Freight Management and Operations
Federal Highway Administration
202-366-4241
bruce.lambert@fhwa.dot.gov

November 2002
FHWA-OP-03-058
EDL 13746

A series of FAF products are available on the website noted below. FAF outputs include freight flow maps for states, modes, and gateways; detailed databases on traffic flows and commodity movements; information on the methodologies used to develop FAF; and forecast assumptions.

The U.S. Department of Transportation, Bureau of Transportation Statistics (BTS) is also developing a series of state transportation profiles. For more information and to obtain a copy of the BTS reports, please call 202-366-DATA.



U.S. Department
of Transportation

**Federal Highway
Administration**

Office of Freight Management and Operations, 400 7th Street, SW, Room 3401, Washington, D.C. 20590
<http://www.ops.fhwa.dot.gov/freight/>, Toll-free help-line 866-367-7487

ADDENDUM B

SUMMARY
Of
OPTION and PURCHASE AGREEMENT
Between
OLIN CORPORATION and NEW ENGLAND TRANSRAIL, LLC

Olin Corporation (Olin), as seller, grants an exclusive option to New England Transrail, LLC (NET) to purchase the land located at 51 Eames Street, Wilmington, Massachusetts (the "Property") for a period of ninety days ("Option Period") after the later to occur of execution of the Agreement or completion of certain Pre-Closing Tasks (defined below) by Olin.

Upon execution of the Agreement, NET shall be granted an option to purchase the Property for an agreed upon amount (the "Purchase Price"). Upon exercise of the option, NET shall be required to make a payment towards the Purchase Price. The Option Period may be extended for up to four additional periods of thirty days each upon payment of an additional option price, which additional option price shall be non-refundable and not applied to the Purchase Price.

NET shall take title subject to: easements to permit Olin access to the Property to meet its remediation obligations ("Remediation Obligations"); activity and use limitations so as to allow Olin to meet its Remediation Obligations; and a conservation restriction.

Olin shall deliver to NET copies of all environmental studies regarding the Property to facilitate NET's analysis of the Property and the environmental conditions thereon. Olin makes no representations or warranties as to the contents of said studies. NET may perform independent studies of the Property.

Olin shall at its cost and expense undertake Remediation Obligations in respect of the Property as required under the Massachusetts Contingency Plan (MCP) and/or by the Massachusetts Department of Environmental Protection (MADEP) with respect to Hazardous Substances on or released from the Property as of the closing date ("Response Actions"), said Response Actions to ultimately achieve, to the extent feasible, a Permanent Solution as defined in the M.G.L. c.21E ("Chapter 21E") and the MCP with respect to such Hazardous Substances, and all other actions required to achieve and maintain compliance with applicable environmental laws with respect to such Hazardous Substances.

NET proposes to develop and/or rehabilitate the existing railroad equipment or facilities for use of the Property as a railroad transloading facility. NET shall be responsible for obtaining all permits in connection therewith, including a construction release abatement measure ("RAM"). Olin shall have an opportunity to review any NET plans in connection with such development. In no event shall NET's construction and operation at the Property increase the nature, extent or cost of Olin's Remediation Obligations or compliance with environmental laws. NET shall cooperate with Olin's Remediation Obligations and shall notify Olin of any condition which it discovers before or after

closing that may require remediation. NET shall construct a cap over the DNPL area within twenty four months after the closing. NET will comply with the terms and conditions of any AUL, RAO and ROS and conservation restriction pertaining to NET for the southern portion of the property which sets aside that portion of the property for open space, and NET may not use the Property for any activities which are inconsistent with Olin's interim AUL Agreement relating to the Property and the surrounding site.

The foregoing summary is for convenience only and nothing herein may change, affect or be used as an interpretation of any of the terms and conditions of the Agreement.

ADDENDUM C

JUDICIARY COMMITTEE
SUBCOMMITTEES:
RANKING MEMBER
CONSTITUTION
COMMERCIAL AND
ADMINISTRATIVE LAW
TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE
SUBCOMMITTEES:
HIGHWAYS AND TRANSIT
RAILROADS
REGIONAL WHIP



Congress of the United States
House of Representatives
Washington, DC 20515

JERROLD NADLER
8TH DISTRICT, NEW YORK

REPLY TO:

- ☐ WASHINGTON OFFICE:
2334 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5836
 - ☐ DISTRICT OFFICE:
201 VARICK STREET
SUITE 660
NEW YORK, NY 10014
(212) 367-7350
 - ☐ DISTRICT OFFICE:
445 NEPTUNE AVENUE
COMMUNITY ROOM 2C
BROOKLYN, NY 11224
(718) 373-3188
- E-mail: jerrold.nadler@mail.house.gov
Web: <http://www.house.gov/nadler/>

August 22, 2003

Hon. Roger Nober
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Dear Chairman Nober:

While I do not like to attempt to influence specific matters before the Board, I make an exception when I believe a dangerous precedent is being set. The decision of the Office of Proceedings in the case of Hi Tech Trans v. the Hudson County Improvement Authority, et al is such a matter.

Let me begin by saying that when Congress was considering the Interstate Commerce Commission Termination Act, I opposed the broad exemption from all State and Federal law contained in that Act. I argued that such an exemption would allow abuses, particularly allowing the railroad industry to excuse itself from its obligations to the public and to labor. But my position did not carry the day. My colleagues deemed it better policy to give the railroad industry the ability to take action expeditiously to build and operate facilities as needed to increase the rail industry's market share. Environmental review was to be by the Board following the requirements of NEPA, and such review was to be needed only for construction of new lines. As Congress realized that the railroad industry is not particularly attractive to capital, it defined rail carrier to include any rail-related activity, whether performed by the carrier itself or by a contractor or a shipper. Congress believed that only by giving the industry such an extensive exemption could capital be encouraged to invest in rail facilities. Thus, the act defines a rail carrier broadly to include even rail contractor and shipper facilities that are used to move cargo onto and off of the railway system.

I fully understand the alarm bells that go off when the commodity in issue is waste. However, there is no exception in the ICCTA for State and local regulations relating to waste. Instead, hazardous materials are covered in the Hazardous Materials Transportation Act. That act allows consideration of local problems upon petition to the Secretary of Transportation. This legislative structure allows protection of local interests within the framework of national regulation of a national transportation system.

In my region of the Nation, nearly all existing facilities for handling waste were designed and built when disposal facilities were also local. Thus, almost all such transfer facilities are designed solely to move waste by truck to the disposal facilities from the point at which it is transferred from collection vehicles. Now, with the growing shortage of landfill capacity,

particularly in the Northeast, waste must be moved longer distances each year. Rail is by far the more desirable tool to move this commodity economically and, most importantly, environmentally. Existing local and State laws, almost all enacted after the truck to truck facilities were on line and grand-fathered, make the cost of any new facility high and the risk of having an application denied substantial, precisely the factors which caused my colleagues to reject my suggested modifications of this exemption, as these local laws and regulations discourage investment in these needed rail related facilities.

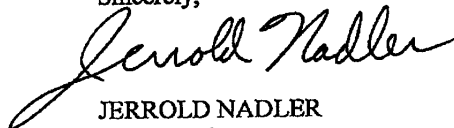
The decision of the Office of Proceedings holding that the exemption does not reach a terminal operator which loads construction and demolition waste on rail cars for shipment on its landlord's railroad, flies in the face of the language of 49 U.S.C. § 10501 (b) which specifically preempts State and local law as it relates to "transportation by rail carrier" as defined in §10102 which includes within the definition of a railroad under subpart (6)(c) "...a switch, spur, track, terminal, terminal facility...used or necessary for transportation..." and in subsection (9)(A) includes a "...yard, property, facility, instrumentality or equipment or any kind related to the movement of passengers or property by rail **regardless of ownership or an agreement concerning use**; and (B) services related to that movement, including **receipt, delivery, elevation, transfer in transit...handling and interchange** of passengers and property" within the definition of "transportation" (emphasis added).

In addition, if the decision is sustained, it will have serious consequences for the industry and for all of urban America. The railroad industry is stretched for capital. Generally, railroads will not invest in small terminals. These facilities are generally provided by third parties. Until this decision, creation of these facilities has not needed Board approval and has been exempt from local regulations which could slow their development. If this decision is not reversed, the ability of the railroad industry to serve large numbers of smaller customers will be crippled by their inability to attract third party entrepreneurs to provide needed terminal facilities. The need to attract such entrepreneurs to develop terminal facilities is precisely the reason why Congress deemed such facilities to be within the definition of transportation "...regardless of ownership or an agreement concerning use." Indeed, even shipper owned facilities used solely to load or unload railway cars should be deemed to be within the Act's intentionally broad sweep.

We need the most efficient transportation system possible, consistent with environmental safety. In most cases, that is the railroad. Congress's intent to encourage development of that mode should not be frustrated, particularly when the cargo is waste. Of all commodities, waste does not need to occupy valuable space on our highways, particularly because of actions taken at all levels of government with the best of intentions which have the effect of barring the railroads from this trade.

I thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, reading "Jerrold Nadler". The signature is fluid and cursive, with the first name "Jerrold" being more prominent and the last name "Nadler" following in a similar style.

JERROLD NADLER
Member of Congress

Oct 07 03 03:38p

P. 1

Sep. 10. 2003, 10:21AM

No. 0162 P. 2 002

NICK J. RAHALL II
3d DISTRICT, WEST VIRGINIA

COMMITTEE ON RESOURCES
DEMOCRATIC LEADER
ENERGY AND MINERAL RESOURCES

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
HIGHWAYS AND TRANSIT
RAILROADS
AVIATION

Email: nrahall@mail.house.gov
Internet: http://www.house.gov/rahall

Congress of the United States
House of Representatives
Washington, DC 20515-4803

September 9, 2003

2507 RAYBURN BUILDING, WASHINGTON, DC 20515-4803
(202) 225-3452

106 MAIN ST., BECKLEY, WV 26001-4698
(304) 252-5000

845 FIFTH AVE., ROOM 152
HUNTINGTON, WV 25701-2085
(304) 522-NICK

601 FEDERAL ST., ROOM 1005
BLUVERD, WV 24701-3033
(304) 325-6222

R K BUILDING, 45 WASHINGTON AVE.
LOGAN, WV 25901-3800
(304) 752-4804

101 NORTH COUNTY ST., P.O. BOX 5
LEWISBURG, WV 24801-0005
(304) 647-3228

The Honorable Roger Nober, Chairman
Surface Transportation Board
1925 K Street
Washington, DC 20423

Dear Roger:

The rail industry's lack of sufficient capital to maintain the Nation's nearly two centuries of private and public investment in our railway system is a matter of grave national concern. Larger railroads have abandoned most of their branch and industrial lines, ending direct access to their services for many potential shippers. New sources of capital must be attracted to the rail industry to establish transload, reload, and break-bulk facilities for a wide variety of materials and products that could be more efficiently transported by rail. Central terminals must be developed to replace the direct access to rail services lost by the wave of abandonments over the last quarter century.

Because the Class I railroads now lack local orientation and direct access to rail services, the development of rail access facilities therefore falls to smaller, entrepreneurial, local rail firms. Only these entrepreneurial local firms prevent the rail system from being further underutilized despite the environmental advantages that rail offers.

As you may recall due to your excellent work on the legislation, by enacting the Interstate Commerce Commission Termination Act (ICCTA), Congress intended to facilitate the redevelopment of a competitive rail industry while achieving broad environmental goals among other purposes. In so doing, Congress placed all authority over the licensing of rail-related operations in your agency, subject to national environmental standards. To achieve national goals, Congress provided the rail industry with a broad exemption from State and local law. Further, in order to attract entrepreneurs, their money, and their ideas to the rail industry, Congress intended to include within that exemption shippers and terminal facility operators without regard to facility ownership.

As an example of the kind of private investment to which I am referring, I am aware of a rail line and reload terminal development proposed by New England Transrail in the Boston area. I see this as a means to a healthy rail industry, a source for jobs, and an environmentally safe transportation opportunity in a densely populated urban area where environmental stewardship is of paramount importance to local health and safety. The New England Transrail investors present precisely the sort of capital investment source that Congress intended to bring to the rail industry in order to develop such critical facilities when we enacted the ICCTA.

I urge you to encourage the development of rail access infrastructure by recognizing the development of such facilities as an integral aspect of rail transportation. While I am certain it is not as a result of your excellent work, recent Board decisions have caused confusion over the

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P. 2

29 Sep 10 2003 10:21AM

No. 0162 P. 3003

The Honorable Roger Nober, Chairman
September 9, 2003
Page # 2

Board's willingness to follow Congress' mandate and to encourage investment. These decisions have a chilling effect on efforts to attract capital to rail terminal operations. A clear signal from the Board is needed.

I request that you please keep me advised of the Board's efforts to deal with the terminal development issue on a national basis.

With warm regard, I am

Sincerely,



NICK J. RAHALL, II
Member of Congress

NJR/tpl

*Roger,
I'd really appreciate your
counsel and know it can help on this.
Warmest personal regards on
deeps appreciation,
Nick*