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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34797

**New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway—Petition
For An Exemption From 49 U.S.C. § 10901 To Acquire, Construct And Operate As A Rail
Carrier On Tracks and Land In Wilmington and Woburn, Massachusetts**

Expedited Consideration Requested

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TRANSPORTATION BOARD

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Date: December 5, 2005

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**New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway—Petition
For An Exemption From 49 U.S.C. § 10901 To Acquire, Construct And Operate As A Rail
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Expedited Consideration Requested

This is a resubmission of a petition for an exemption previously filed by New England Transrail, LLC (“NET”) pursuant to 49 U.S.C. § 10502. In its previous petition, which was docketed at Finance Docket No. 34391, NET had sought an exemption from the prior approval requirements set forth in 49 U.S.C. § 10901 that would otherwise apply to NET’s acquisition, construction and operation of specified rail lines and terminal facilities in the Towns of Wilmington and Woburn in the Commonwealth of Massachusetts (collectively referred to hereafter as the “NET Facility”).

By decision dated March 2, 2004, the Board found that NET met the standards for an exemption under Section 10502. New England Transrail, LLC, STB Finance Docket No. 34391 (STB served March 2, 2004) (“March 2 decision”). Therefore, the Board conditionally approved NET’s petition for an exemption, subject to completion of an environmental review by the Board’s Section of Environmental Analysis (“SEA”). An Environmental Assessment (“EA”) was prepared by SEA and issued on August 4, 2004.

The Board noted in its March 2 decision that NET planned to handle “construction debris” and “non-hazardous solid waste.”¹ Subsequently, in response to comments raised by the Massachusetts Department of Environmental Protection (“MADEP”), NET explained to SEA how it would grind “loose” construction and demolition debris (“C&D”) before loading it and how it would bale some loose municipal solid waste (“MSW”) before loading it.² NET indicated that these activities were a part of its transloading of these materials from trucks to railcars.

In response to this supplemental information provided by NET and comments filed by interested parties, SEA conducted a Post-Environmental Assessment (“Post-EA”), which was issued on December 22, 2004. In the Post-EA, SEA concluded that the NET Facility would create no significant environmental impacts if the Board imposed and NET complied with a number of environmental mitigation measures addressing a broad range of issues.³

During the spring of 2005, however, SEA concluded that the scope of the NET Facility had expanded beyond what the SEA had originally reviewed. Specifically, SEA determined that (1) there was a three-fold increase in the number of planned rail segments, (2) three of these rail segments would be installed over the Dense Aqueous Phase Liquid (“DAPL”) Containment Area, and (3) a previously undisclosed storage area would be developed over the DAPL Containment Area. SEA was also unaware of the scope of excavation of potentially contaminated soils that would occur.

In response to SEA’s concerns regarding changes in the project, the Board decided on May 3, 2005 to dismiss NET’s petition, without prejudice. New England Transrail, LLC, STB

¹ March 2 decision at 2.

² Letter from J. McHugh to V. Rutson, dated September 29, 2004.

³ Thirty-eight different mitigation measures are listed in Sections 1.1-1.2 of the Post-EA.

Finance Docket No. 34391 (STB served May 3, 2005) ("May 3 decision"). In its opinion, the Board provided specific instructions regarding the additional information it wanted to receive if NET resubmitted its petition. In the Board's words:

[T]o eliminate the current confusion and uncertainty about the specifics of this project, NET should provide information such as the length and location of all trackage to be constructed, the exact types of structures to be built, the degree to which such construction would involve excavation or the movement of any soil, and the locations where specific commodity transloading activities would take place. Moreover, the information provided to the Board should be wholly consistent with the information that NET presents to other agencies.

. . . NET should also describe in detail the proposed grinding, baling and other processes to which construction waste and solid waste could be subjected at the Olin site, as well as NET's basis for asserting that those activities should be considered part of rail transportation.⁴

This resubmitted petition fully complies with the Board's instructions. The information requested by the Board is provided in detail in the attached verified statements of five separate witnesses.⁵ This information is completely consistent with the information about the NET Facility that has been provided to the MADEP. Further, NET hereby commits to inform SEA promptly of any material change in any of this information.

⁴ May 3 decision at 5.

⁵ Statements are provided by Robert W. Jones, III, M. Margret Hanley, Stephen J. Graham, John C. Ryan and Thomas Egan. Messrs. Jones and Graham and Ms. Hanley refer to documents that were attached to NET's Petition for Reconsideration of the Board's May 3 decision. In its July 5, 2005 decision granting NET's request to withdraw that pleading, the Board granted NET's request to refer to those documents in its re-filed petition for exemption. Accordingly, NET hereby incorporates the following documents by reference: (1) the EA dated August 4, 2004, (2) the Post-EA dated December 22, 2004, (3) the Construction Related Release Abatement Measure ("CRAM") dated November 18, 2004, and (4) the Response of NET to the Town of Wilmington Comments, Construction Related RAM dated February 5, 2005.

I. DESCRIPTION OF THE PROJECT

A. Description of Petitioner.

NET is a limited liability company organized under the laws of the State of New Jersey and authorized to do business in Massachusetts. It has been formed for the purpose of acquiring, constructing and operating the NET Facility as described in this petition. NET is 50% minority owned. None of NET's owners controls any other common carrier.⁶

Petitioner is not now a common carrier but hereby seeks authority to operate as a common carrier by rail utilizing the rail lines and terminal facilities that are described below. Doing business under the trade name of the Wilmington & Woburn Terminal Railway ("W&WTR"), NET will operate all of the rail lines and the rail-related facilities that are described. Jones V.S. at ¶ 16. It is anticipated that NET's annual revenues will be less than \$5 million.⁷

B. Description of the Site.

NET has an option to purchase a parcel of industrial land in Wilmington, Massachusetts owned by the Olin Corporation ("Olin") known as 51 Eames Street, and consisting of approximately 53 acres of land (referred to hereafter as the "Olin Property" or "Property").

As the aerial photographs attached to the Jones Verified Statement indicate, the Olin Property is abutted by light industrial and commercial businesses. Jones V.S. at ¶ 6 and Appendix A. The Town of Woburn's former municipal landfill, a portion of which is now used for composting activities, is located directly south of the Property. Id. The Town of

⁶ Jones V.S. at ¶ 1. The four owners of NET are Carl D. Jones, Robert W. Jones, III, Ronald A. Klempner and Jack W. Lyon. Each owns a 25% interest in NET. Id.

⁷ Jones V.S. at ¶ 9. If NET's estimate of projected revenues is anticipated to exceed this amount, NET will promptly comply with the Board's notice requirements at 49 C.F.R. § 1150.32(e). Id.

Wilmington's current municipal landfill is located about 2,000 feet west of the Property. Id. The nearest residence is located at least 800 feet from the western border of the Property. Id.

A portion of the Olin Property was formerly used for the manufacture of a variety of chemicals. Hanley V.S. at ¶ 10. Under the direction of the MADEP, Olin has conducted extensive environmental investigation, analysis, and remediation of the areas which were affected by contamination from those operations. Id. at ¶¶ 11-13. The portion of the Property where the former manufacturing activities occurred is generally referred to as the "Developed Portion" of the Property. Id. at ¶ 8. NET intends to construct the NET Facility on this Developed Portion of the Property (hereinafter referred to as the "NET Development Area"). Graham V.S. at ¶ 9.

The NET Development Area includes a Y-shaped set of tracks that was formerly used to service chemical manufacturing operations. Jones V.S. at ¶ 5. As seen on Figure STB-2, attached to the Graham Verified Statement as Appendix C, the Wilmington-Woburn-West Medford branch line of the Boston & Maine Railroad ("B&M") runs along the west side of the Property. To connect with this branch line, Petitioner intends to enter into an agreement with the B&M, (a subsidiary of the Guilford Rail System of Iron Horse Park, North Billerica, Massachusetts), to reinstall a removed switch at MP 14. Petitioner also intends to enter into an agreement with the Massachusetts Bay Transportation Authority ("MBTA") to connect with the Boston-Concord line directly east of the Property. While the precise locations of these connections are still being investigated, NET currently expects that the locations will be adjacent to the Property and south of the end of the southeasterly proposed tracks shown on Figure STB-2. Jones V.S. at ¶ 7. Petitioner will inform the Board when the precise connection locations are finalized.

C. Description of Petitioner's Construction Activities.

Petitioner's construction activities will consist of (1) demolition and removal of existing facilities, (2) excavation and re-grading, and (3) installation of new facilities.

NET's demolition and removal activities are described in detail in Paragraphs 9-11 of the Graham Verified Statement. NET will demolish the so-called West Warehouse, East Warehouse and Office Building that were formerly part of the chemical manufacturing facilities on the Property.⁸ The existing railroad tracks will also be replaced and realigned. The existing underground utilities (including abandoned in-place chemical process pipelines) will be removed or capped in place, and in the event that contamination is found, they will be dealt with pursuant to the Massachusetts Contingency Plan ("MCP") to avoid potential impacts. Graham V.S. at ¶ 9. Existing asphalt and concrete roadbeds on the Property will be removed or used as the base for new roadways. Id.

In its May 3 decision, the Board instructed NET to provide information about "the degree to which [its] construction [activities] would result in the excavation or movement of any soil." That information is provided in Paragraph 10 of the Graham Verified Statement. First, excavation in connection with the installation of new underground utilities will involve up to 1,500 cubic yards of material. Second, excavation in connection with the construction of new rail lines (involving excavation to a depth of approximately three to four feet below the current surface grade) will involve up to 11,600 cubic yards of material. Third, excavation in connection with the construction of the foundation of the Transloading Structure, a "sprung-type" structure⁹ to be utilized for the transloading of C&D and MSW, will involve up to 1,500 cubic yards of

⁸ All of these facilities are shown on the Figure labeled STB-1 that is attached to the Graham Verified Statement as Appendix A.

⁹ More information about these structures is attached to the Graham Verified Statement as Appendix B.

material. Fourth, excavation in connection with the construction of the storm water management system and the re-grading of the NET Development Area will involve up to 3,000 cubic yards of material. Graham V.S. at ¶ 10.

No excavation is anticipated at a depth greater than eight feet below the current surface grade. Graham V.S. at ¶ 11. Based on NET's consultants' review of the extensive groundwater monitoring data accumulated at the Olin Site, NET expects to avoid encountering groundwater, which has been determined to be located at a depth of approximately six to nine feet below the current surface grade across the NET Development Area. Id.

The Board also directed NET to provide specific information about "the length and location of all trackage to be constructed, [and] the exact type of structures to be built." Again, that information is found in the Graham Verified Statement, in this case at Paragraph 12.

NET will install two siding tracks in the northeastern area of the NET Development Area for transloading pumpable products such as plastic resins and liquids, two siding tracks in the central area for transloading C&D and MSW, three siding tracks in the western area for transloading materials such as sand, gravel, aggregates and wood chips, and one run-through track (located between the two siding tracks in the central area) that will connect the MBTA line on the east side of the Property with the B&M line on the west side. The approximate locations of all of these rail lines are depicted in the site diagram labeled Figure STB-2 that is attached to the Graham Verified Statement as Appendix C.¹⁰

As noted above, a "sprung-type" structure called the Transloading Structure will be installed in the central area of the NET Development Area to handle C&D and MSW. The grade of the concrete floor of the south side of the structure will be raised eight to nine feet above the

¹⁰ The precise locations of the connections with the MBTA and B&M lines are still being investigated. Jones V.S. at ¶ 7.

current surface grade. This will allow the installation of a recessed concrete area called the Transload Equipment Area in which rail car containers and equipment for baling and loading MSW can be located.¹¹ The total depth of the Transload Equipment Area is twelve to thirteen feet. By raising the existing surface grade of the south side of the Transloading Structure, the excavation depth needed for the Transload Equipment Area is no more than five feet below the current surface grade, thus remaining above the level of and avoiding contact with groundwater. See Graham V.S. at ¶ 13. Two pre-manufactured buildings will also be installed directly east of the Transloading Structure to house offices and supplies. Id.

In addition, NET will reinstall underground utilities, construct a storm water management system, re-grade the NET Development Area and install new roadways and gravel ground cover, all as described by Mr. Graham in his Verified Statement. Id. at ¶ 14.

Finally, NET will install an asphalt cap (to be approved by the MADEP) to cover the DAPL Containment Area. The cap will be engineered to support certain aspects of NET's transloading operations, such as the storage of break bulk materials like sand or gravel. Id. at ¶ 15. The cap will be well suited for the vehicular traffic needed to load and unload materials that will be stored in that area. Id.

Two additional points should be noted about the cap. First, NET has modified the CRAM submitted to the MADEP to eliminate the installation of any rail tracks on the cap.¹² No tracks will ever be installed in that area. Second, in the event that NET finds it necessary ever to

¹¹ It was this recessed concrete structure that the Board referred to as the "vault" in its May 3 decision, which was a term used by NET in its September 2004 submittal to the Board that is cited above in footnote 2. While the term "vault" may suggest that storage of waste materials would occur in this area, that is not the case. The recessed area will be used only for housing equipment or containers that will be used in the preparation and loading of MSW into rail cars. Jones V.S. at ¶ 15.

¹² The October 17, 2005 letter presenting this modification to the MADEP is attached to the Graham Verified Statement as Appendix D.

install a storage structure on the cap, it will be installed in accordance with all applicable technical and regulatory standards of Massachusetts.¹³

D. Description of Petitioner's Transloading Operations.

In its May 3 decision, the Board also directed NET to provide information "about the locations where specific commodity transloading activities would take place."¹⁴ As explained in Paragraph 9 of the Jones Verified Statement, NET will be prepared to transload a variety of commodities, depending on the market that develops for its services. These commodities are anticipated to include the same ones that were identified by SEA in the August 2004 EA.¹⁵ However, NET will not receive and transload any shipments of any material that is defined as a hazardous waste by applicable federal and state laws and regulations.¹⁶ Based on expressions of interest from potential shippers, NET currently plans to use three distinct areas of the NET Development Area for transloading the following types of materials.

The northeastern area will be used to handle "pumpable" materials including, but not limited to, (1) liquid commodities (such as corn sweeteners and vegetable oil) that will be heated and pumped using portable equipment, and (2) pumpable dry materials (such as soda ash and plastic pellets) that will be transferred between trucks and rail cars using portable blower equipment. Jones V.S. at ¶ 11.

¹³ A different project was approved for the Olin Property in 2000 by the Town of Wilmington and the Wilmington Conservation Commission. That project would have involved the construction of a permanent warehouse on the cap along with truck driveways and parking. See Hanley V.S. at ¶¶ 14-18; Jones V.S. at ¶ 9.

¹⁴ May 3 decision at 5.

¹⁵ At Section 3.1.3 of the EA, SEA described these commodities to include "aggregates, brick, coal, cement, construction debris, contaminated soils, liquids chemicals (all of which would be non-hazardous and non-explosive), lumber, newsprint, non-hazardous waste, paper products, plastics, propane, recycled paper and plastic, sand, gravel, scrap steel, steel, stone, wood products, and any other products which could be transported in intermodal containers."

¹⁶ Jones V.S. at ¶ 9. As noted in footnotes 17 and 18 below, however, NET may be required to handle isolated items of hazardous waste that may be discovered in shipments of C&D and MSW.

The western area will be used to handle bulk materials including, but not limited to, lumber, salt, sand, gravel, aggregates and woodchips using portable equipment. Some of these materials may be temporarily stored on the permanent asphalt cap either before or after transloading. Jones V.S. at ¶ 12.

As discussed above, NET's use of the asphalt cap for temporary storage will present no environmental risk. Because this area constitutes almost 15% of the entire NET Development Area, NET has planned to make use of this area for storage. Id. Olin is obligated to install the asphalt cap as a part of its remediation activities. Under its contractual arrangements with Olin, NET has agreed to bear the entire cost of the installation and maintenance of the cap, which may exceed \$1 million. Id. In light of the significant costs NET will incur to construct the cap and address the presence of historic contamination at the Site, NET believes it is reasonable to use this area in a manner that is not inconsistent with the engineering design of the cap.

The Transloading Structure, which is located in the central area of the Property, will be used to transload C&D and MSW. C&D will be unloaded from trucks onto the concrete floor of the north side of the Transloading Structure and each shipment will be inspected to ensure that it is consistent with the terms of its bill of lading and contains no hazardous waste.¹⁷ NET will segregate certain metal and wood or other materials that may damage NET's loading equipment and rail cars. Any segregated material will be transported to an appropriate receiving facility by rail or, if rejected, returned to the shipper. Id. C&D will be conveyed to shredders that will reduce it to a maximum size that can be loaded into rail cars with conveyor belts. Id.; see also Ryan V.S. at ¶¶ 5-6.

¹⁷ Jones V.S. at ¶ 13. In the event that an item of hazardous waste is discovered in a shipment of C&D, NET will handle that item in full compliance with applicable requirements of the United States Department of Transportation ("DOT") that govern the handling of such materials. Id.

With respect to MSW, trucks delivering this commodity will enter the south side of the Transloading Structure. Generally speaking, there are two ways in which the MSW will be transloaded. Some MSW will be delivered to the NET Facility already pre-baled. (A photograph of baled MSW is attached to the Ryan Verified Statement as Appendix A.) Such pre-baled MSW will be lifted from trucks within the Transloading Structure and loaded directly onto rail cars. Jones V.S. at ¶ 14.

MSW arriving as a bulk material will be unloaded from trucks onto the concrete floor of the Transloading Structure where it will be inspected to ensure that it contains no hazardous waste or other materials which do not conform to a bill of lading.¹⁸ This MSW will be transloaded onto rail cars in one of the following two ways: (1) it will be loaded into containers positioned in the Transload Equipment Area, which, once loaded, will be covered and lifted onto rail cars; or (2) it will be baled and then loaded onto rail cars. Id. at ¶ 15. Some of the bales may be further wrapped in plastic to allow their shipment in certain types of cars. Id.

All of the C&D and MSW consigned to NET for transport will be shipped to landfills or processing facilities located outside the Commonwealth of Massachusetts. Jones V.S. at ¶ 16. Neither NET nor any of its affiliates will have any ownership interest in any of these materials. Id.

E. Environmental Review.

By letter dated November 2, 2005, Petitioner requested SEA to waive the six month notice requirement of 49 C.F.R. § 1105.10(a)(1). SEA granted that request by letter dated November 10, 2005. Petitioner has also requested SEA to retain the same consultant (ICF, Inc.) that assisted SEA in conducting its environmental review in the previous proceeding in Finance

¹⁸ Jones V.S. at ¶ 15. As with items of hazardous waste discovered in shipments of C&D, NET will handle any item of hazardous waste discovered in a shipment of MSW in full compliance with applicable DOT requirements. Id.

Docket No. 34391. SEA has agreed to that request and the prior Memorandum of Agreement among SEA, NET and ICF, Inc. will be amended accordingly.

In its May 3 decision, the Board discussed the feasibility of allowing SEA to supplement the EA and Post-EA previously prepared by SEA. The Board found that supplementation was not appropriate in the circumstances because of the Board's conclusion that NET had failed to "keep the Board informed of significant changes in the project, and [because] the project appears to be constantly in flux."

However, the Board's direction that it was inappropriate at that time for SEA to simply supplement its earlier assessments does not mean that SEA must begin its environmental review of NET's new petition from scratch. First, NET has now finalized its plans for the project, addressing the Board's previous concern that the project was "constantly in flux." Second, aspects of the original project that could have necessitated new areas of environmental study have been dropped from NET's current proposal.¹⁹ Thus, the current project description is much more much like the description included in NET's original petition, which formed the basis for most of SEA's earlier work.

As the Board noted, this project "has been in the environmental review process for a considerable period of time."²⁰ An extensive amount of environmental fact gathering, study and analysis has already been performed, at a substantial cost to NET. Because the scope of the project described in this new petition is very similar to the project described in NET's original petition, much of SEA's previous review and analysis will be applicable to the project as it is

¹⁹ For example, NET's proposal to install trackage on the asphalt cap has been dropped. See the discussion above at 9-10.

²⁰ May 3 decision at 4.

presently proposed, and it is likely that SEA could save considerable time and staff resources by relying on that previous work.

NET respectfully submits that it is both fair and appropriate for SEA to begin its environmental review by first determining the extent to which the project description set forth in this resubmitted petition is consistent with the project description in NET's original petition. Second, SEA should determine which portions of its prior analysis may be applicable to the new petition. Third, SEA should determine what additional analysis may be necessary to cover any aspects of this resubmitted petition that present issues that are different from those presented in the original petition.²¹ If SEA concludes that there are new issues presented by this petition, then that is where SEA's main focus should be concentrated. Obviously, it would be wasteful to require SEA to redo an exhaustive environmental analysis of facts and issues that have not changed.

Three final points should be noted. First, it is the opinion of NET's Licensed Site Professional Mr. Graham that the construction and operation of the NET Facility will not exacerbate any release of oil or hazardous materials at or from the Property. Graham V.S. at ¶ 17. Second, it is the opinion of Olin's Licensed Site Professional Ms. Hanley that the current environmental conditions at the Property and at the Olin Site do not preclude the development and use of the NET Facility. Hanley V.S. at ¶ 31. It is also Ms. Hanley's opinion that any future

²¹ Of the three modifications identified by the Board in its May 3 decision, two involve the asphalt cap. As explained above, NET has formally withdrawn its proposal to install any rail segments on the cap. Any environmental concerns arising from that withdrawn proposal are therefore moot.

With respect to the overall increase in the number of rail segments, NET made this change to improve the efficiency of the facility. By installing a run-through track from the eastern side to the western side, NET has more flexibility in how it moves traffic. Jones V.S. at ¶ 7

The only environmental impact of the additional segments is the increased soil movement resulting from the excavation for the additional lines. Of the 10,250 cubic yards of material estimated to be involved with the installation of all the rail segments, less than 1,700 yards are attributable to the new run-through track and the two additional stub tracks to be installed in the western area. Graham V.S. at ¶ 10.

listing of the Olin Site on the National Priorities List by the federal Environmental Protection Agency should not prevent the development of the NET Facility at the Property. Id. at ¶ 30.

Third, both the Board and SEA can be assured that NET intends to comply fully with all applicable substantive state health and safety regulations governing NET's construction and operations. Jones V.S. at ¶ 16. More specifically, NET expects to conduct the construction activities described above pursuant to a CRAM plan as specified by the MCP, 310 CMR 40.0000, et seq. Other substantive state health and safety regulations pertaining to NET's operations with which NET expects to comply include the following: (1) MADEP's standards relating to air pollution (310 CMR 7.02(2)) and idling of vehicles (310 CMR 7.11(1) and (2)); (2) MADEP's performance, design, operation and maintenance standards for transfer stations as set forth in 310 CMR 19.205 through 19.212 and 19.216 through 19.219; and (3) MADEP's standards regarding the rejection and appropriate disposition of "hazardous wastes", as defined by 310 CMR 30.00, and "special wastes", as defined by 310 CMR 19.061(2) and (3), including radioactive waste, asbestos-containing material, infectious waste, bio-hazardous waste, or other wastes designated by MADEP as requiring special management to protect public health, safety and the environment based on their physical, biological or chemical properties. Id.

However, consistent with decisions of the Board, NET has informed MADEP that it cannot agree to subject the NET Facility to any state or local "preclearance requirements" established by Massachusetts General Laws chapter 111, Section 150A and the regulations found at 310 CMR 16.00, et seq., more commonly known as the "Site Assignment" requirements, nor can NET agree to take those actions unrelated to transportation that would be necessary to comply with the Massachusetts Waste Control regulations, found at 310 CMR 19.017, commonly referred to as the "Waste Bans", which, as applied to NET's transportation of C&D

and MSW out of the Commonwealth of Massachusetts, accomplish only economic objectives and not the protection of health and safety. Jones V.S. at ¶ 16.

II. DISCUSSION

A. NET's Petition for Exemption from 49 U.S.C. § 10901 Should Be Granted.

NET will operate as a common carrier and thereby provide access to the national railway system for customers in metropolitan Boston who presently have no economically viable access to any form of transportation other than trucks. Jones V.S. at ¶ 19. In its March 2, 2004 conditional approval decision, the Board granted NET's request to exempt its project from the application requirements of 49 U.S.C. § 10901. The Board explained why the exemption was granted in the following language:

Based on the information provided, the Board concludes that, from a transportation perspective, detailed scrutiny of the proposed construction, acquisition, and operation under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. The requested exemption would promote that policy by providing a rail service option to shippers, ensuring the development of a sound rail transportation system with effective competition among rail carriers and with other modes, fostering sound economic conditions in transportation, and reducing regulatory barriers to entry [49 U.S.C. 10101(4), (5), and (7)]. Nothing in the current record indicates that other aspects of the rail transportation policy would be adversely affected.

There is no need to protect shippers from the abuse of market power. Rather, the proposed transaction would enhance competition by providing shippers in the greater Boston area with a new intermodal transportation option. Given the Board's finding regarding the probable effect of the transaction on market power, the Board need not determine whether the transaction is limited in scope.²²

The project described in this resubmitted petition is the same as NET's project that the Board previously found was exempt. The same property is involved; the same operator is

²² March 2 decision at 3.

involved; the same owners of the Petitioner are involved and the same connecting lines are involved.²³ For the reasons set forth in the Board's March 2 decision, and based on the precedent discussed below, NET therefore requests that its petition for exemption from the application requirements of § 10901 be granted.²⁴

²³ See the description of the project set forth above in Section I.B through Section I.D.

²⁴ 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). At 609-10 of that initial decision, the Board evaluated 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 a rail carrier was subject to its licensing authority under 49 U.S.C. § 10901, notwithstanding the small size of its planned operations, for three separate reasons. First, 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. Second, the track would constitute the new carrier's entire line of railroad. Third, the new railroad would interchange traffic with the national rail system.

Those same three factors are present in this case. First, the purpose and effect of this transaction is to create W&WTR, a new railroad that is specifically designed to compete with common carrier truckers for the business of local industries. Second, the track of W&WTR will constitute its entire line of railroad. Third, the W&WTR will be interchanging traffic with the national rail system. This precedent has been followed in similar circumstances; See Bulkmatic R.R. Corp. - Acquisition and Operation Exemption - Bulkmatic Transp. Co., 2002 WL 31556255 (S.T.B.), Finance Docket No. 33414 (S.T.B. served November 19, 2002); Kaw River R.R., Inc. - Acquisition and Operation Exemption - the Kansas City Southern Ry. Co., 2005 WL 1024485 (S.T.B.), Finance Docket No. 34509 (S.T.B. served May 3, 2005) (citing in footnotes 1 and 2 numerous decisions affirming and following Effingham). Several exemptions have also been granted for similar projects without extensive discussions. See e.g., Pennsylvania Southwestern R.R., Inc. - Lease and Operation Exemption - J & L Special Steel, LLC, S.T.B. Finance Docket No. 34328 (April 24, 2003); Penn Jersey Rail Lines, Inc. - Acquisition and Operation Exemption - WMI Prop., Inc., S.T.B. Finance Docket No. 33414 (June 24, 1997).

The only aspect of this petition that differs from those previously approved by the Board is that NET, in addition to acquiring existing track, will be adding track and transloading facilities. 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: "It 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, Ex Parte No. 392 (Sub-No. 2) (S.T.B. served June 13, 1996). Therefore, there is a presumption that a project such as that proposed by NET 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. Bulkmatic Railroad Corp. 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 in order to bring in a larger spectrum of investors. The transaction proposed by NET is consistent with those legislative goals and with the Board's prior decisions.

B. The Waste Handling Activities Proposed by NET Are Part of Rail Transportation.

In its May 3 decision, the Board did not express concern regarding NET's proposal to consolidate, store or transload cargoes. However, it did instruct NET to explain why its shredding of C&D and baling of MSW should be viewed as rail transportation. As explained below, the plain language of the statute and the applicable case law require a broad reading of the term "transportation" to encompass these shredding and baling services because they are an integral part of NET's rail operations.

The ICC Termination Act of 1995 ("ICCTA") vests the Board with exclusive jurisdiction over "transportation by rail carriers" and "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state." 49 U.S.C. § 10501(b). The statute defines "transportation" to include a "warehouse . . . yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property . . . by rail." 49 U.S.C. § 10102(9)(A). The definition of transportation expressly includes "services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange" of the property. 49 U.S.C. § 10102(9)(B). Thus, the plain language of the statute appears to grant the Board broad authority over the transloading and storage facilities proposed by NET in this petition.

Courts have uniformly recognized that the ICCTA is 'among the most pervasive and comprehensive of federal regulatory schemes.'" City of Auburn v. United States, 154 F.3d 1025, 1029 (9th Cir. 1998) (quoting Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 318 (1981); see also CSX Transp., Inc. v. Georgia Pub. Serv. Comm'n, 944 F.Supp. 1573, 1581-84 (N.D. Ga. 1996). "Court and agency precedent . . . have made it clear that, under this

broad preemption regime, state and local regulation cannot be used to veto or unreasonably interfere with railroad operations.” Joint Petition for Declaratory Order -- Boston and Maine Corp. and Town of Ayer, MA, 2001 WL 458685 (S.T.B.) at *5, Finance Docket No. 33971 (S.T.B. served May 1, 2001) (hereinafter “Ayer STB Decision”). More specifically, the Board and courts have held that “state or local permitting or preclearance requirements of any kind that would affect rail operations (including building permits, zoning ordinances, and environmental and land use requirements) are categorically preempted.” City of Creede, CO - Petition for Declaratory Order, 2005 WL 1024483 (STB), *4, STB Finance Docket No. 34376, (STB served May 3, 2005) (citing cases).²⁵

Consequently, cases construing the reach of the Board’s jurisdiction have broadly interpreted the statute to expand the jurisdiction of the Board over a variety of activities of rail carriers that are deemed transportation, because they facilitate the efficient movement of goods.²⁶

²⁵ See also the Board’s discussion in CSX Transp., Inc. - Petition for Declaratory Order, 2005 WL 584026 (S.T.B.), Finance Docket No. 34662 (STB served March 14, 2005) (S.T.B.), at *6 (citing Friberg v. Kansas City S. Ry., 267 F.3d 439, 443 (5th Cir. 2001) (Friberg) (state statute restricting a train from blocking an intersection preempted, even though there is no Board regulation of that matter); City of Auburn v. United States, 154 F.3d 1025, 1029-31 (9th Cir. 1998) (City of Auburn) (state and local environmental and land use regulation preempted); Wisconsin Cent. Ltd. v. City of Marshfield, 160 F. Supp.2d 1009, 1014 (W.D. Wis. 2000) (City of Marshfield) (attempt to use a state’s general eminent domain law to condemn an actively used railroad passing track preempted); Dakota, Minn. & E. R.R. v. State of South Dakota, 236 F. Supp.2d 989, 1005-08 (S. S.D. 2002), aff’d on other grounds, 362 F.3d 512 (8th Cir. 2004) (revisions to state’s eminent domain law preempted where revisions added new burdensome qualifying requirements to the railroad eminent domain power that would have the effect of state “regulation” of railroads); Georgia PSC, 944 F. Supp. at 1573 (state regulation of a railroad’s closing of its railroad agent locations preempted); Soo Line R.R. v. City of Minneapolis, 38 F. Supp.2d 1096 (D. Minn. 1998) (Soo) (local permitting regulation regarding the demolition of railroad buildings preempted); Cedarapids, Inc. v. Chicago, Cent. & Pac. R.R., 265 F. Supp.2d 1005, 1013- 14 (N.D. Iowa 2003) (ICCTA preemption applies broadly to operations on both main line and auxiliary spur and industrial track); Norfolk S. Ry. v. City of Austell, No. 1:97-cv-1018-RLV, 1997 U.S. Dist. LEXIS 17236 (N.D. Ga. 1997) (Austell) (local zoning and land use regulations preempted); Village of Ridgely Park v. New York, Susquehanna & W. Ry., 750 A.2d 57 (N.J. 2000) (Ridgely Park) (complaints about rail operations under local nuisance law preempted).

²⁶ The emphasis that the carrier itself must engage in interstate operations was of particular significance to the Eleventh Circuit in Florida East Coast Ry. v. City of West Palm Beach, 266 F.3d 1324 (11th Cir. 2001). In that case, the court was faced with a situation in which a private entity, Rinker, had leased a piece of property from the carrier and was attempting to invoke the Board’s jurisdiction to prevent local regulation. Rinker was performing services at the property including unloading, stockpiling, organizing, and reloading aggregate material and weighing and dispatching trucks for the delivery of the material. The Eleventh Circuit concluded that, because Rinker was not a carrier and because its use of the facility “merely facilitate[d] Rinker’s operation of a private distribution facility,”

See, e.g., Sec'y of Agric. v. United States, 347 U.S. 645 (1954) (loading and unloading at pier terminals); United States v. Union Stockyard, 226 U.S. 286 (1912) (loading, unloading, movement, and feeding at stockyards); S. Pac. Terminal Co. v. ICC, 219 U.S. 498 (1911) (loading, unloading, and storage at wharfage facilities). The reach of the Board's jurisdiction has even been extended to the operation by non-carriers of operating facilities that receive, interchange, transfer, store, and handle property that was being transported by rail. See United States v. Brooklyn Eastern Distrib. Terminal, 249 U.S. 296, 304 (1919); Ass'n of P&C Dock Longshoremen v. the Pittsburgh and Conneaut Dock Co., et al., 8 I.C.C. 280, 1992 WL 30836 (I.C.C.) (1992). The analyses in these various cases can be distilled to a simple principle: where the construction and operation of a facility and the services provided are an integral part of a carrier's interstate operations, preemption is required to prevent a local body from unduly interfering with interstate commerce. Ayer STB Decision, at *5.

In a more recent case, Green Mountain R.R. Corp. v. Vermont, 404 F.3d 638, 642 (2d Cir. 2005), cert. denied 2005 WL 1669542, the court held that a carrier's construction and operation of a transloading facility for the handling and storage of bulk materials for truck delivery were part of rail transportation and therefore subject to federal preemption. In that case, Green Mountain proposed to construct facilities for the loading, unloading, organizing, moving, and storage of bulk salt, non-bulk goods such as steel pipe, and bulk cement.²⁷

The Green Mountain transload facility is similar in structure and function to the NET Facility at issue here. Because of the relatively small size of NET's Property, extensive handling

preemption was not warranted. In dictum, however, the court suggested that if Rinker had been a carrier or if the facilities had nevertheless been used for the benefit of the shipping public or the railroad companies themselves, the court may have come to a contrary result. Id. at 1336.

²⁷ Id. at 640. As explained in more detail by the Board, the facilities involved in Green Mountain included storage sheds, conveyor pits, rail sidings, truck scales, track additions and modifications, and the installation of utilities. Green Mountain R.R. Corp. - Petition for Declaratory Order, 2002 WL 1058001 (S.T.B.), Finance Docket No. 34052 (S.T.B. served May 28, 2002).

of the cargo by NET will be required in order to maximize the amount of cargo and to facilitate its movement in the most efficient manner.²⁸ Two aspects of NET's handling are the shredding of C&D and the baling of MSW. These services accomplish three separate purposes. All three are directly related to and are an integral part of NET's transporting these materials by rail.

First, by shredding C&D before loading it, NET will greatly reduce (if not completely eliminate) the significant rail car damage that is now commonly experienced in C&D transportation by rail.²⁹ Since NET will own some of the rail cars used to transport C&D from the site, minimizing damage to the cars is obviously an important factor in minimizing NET's costs. The lessors of leased cars have the same interest and some are urging that C&D be shredded. *Jones V.S.* at ¶ 13. Second, by minimizing void spaces in the cars caused by the bridging or tenting of large pieces of such materials, shredding allows operators to load cars to their full rated capacity. *Egan V.S.* at ¶¶ 5-7. This is particularly important for a small facility like this one. Third, shredding C&D minimizes the safety risks associated with unevenly loaded cars, which are more likely to derail than evenly loaded cars. *Id.* at ¶ 8.

With respect to MSW, baling the material eliminates the need to pack it into rail cars or containers forcibly, which again minimizes damage to the cars and containers. *Ryan V.S.* at ¶ 10. Second, baling maximizes the amount of material that can be transported in a single car. *Id.* Third, baling maximizes the types of rail cars that can be used to transport the MSW. *Id.* All

²⁸ NET had originally sought a location for this facility in the Boston area. Because of the scarcity and inadequacy of existing rail terminals, NEC found the current site to be the most suitable, despite its space constraints. *Jones V.S.* at ¶3.

²⁹ *Egan V.S.* at ¶ 6. In another respect, shredding C&D simply allows it to be moved more easily between truck and rail. In this sense, the shredder serves a role similar to that of the heating facility which was considered by the Board in Borough of Riverdale - Petition for Declaratory Order - New York Susquehanna and Western Railway Corporation, Finance Docket No. 33466, 1999 WL 715272 (STB served September 10, 1999). Both the heating of corn syrup and the shredding of C&D facilitate the efficient transfer of cargos between modes of transport.

three of these results relate directly to rail transportation. In addition, baling results in the environmental benefit of reducing fugitive odor and litter. Ryan V.S. at ¶ 11.

NET's shredding and baling activities are not being undertaken to induce a biological, thermal or chemical change in solid waste materials in order to create a new product (e.g., compost) or to provide a separate business service (e.g., recycling). Jones V.S. at ¶ 18. In contrast to those kinds of activities, NET's shredding of C&D and baling of MSW do not change the underlying nature of these cargos. *Id.* Shredded C&D will still be C&D and baled MSW will still be MSW when those products are shipped out of the NET Facility in rail cars.

With respect to both C&D and MSW, NET's handling objectives are the same. First, the shredding and baling will facilitate the transfer of these materials between trucks and rail cars. Second, it will minimize damage to containers and rail cars. Third, it will improve the utilization of the capacity of containers and rail cars. Fourth, in the case of baling MSW, it will increase the number of cars available to ship that product. Finally, with respect to C&D, it will improve the safety of that product's shipment by rail. All of these objectives are integral to NET's rail transportation services and are therefore "part of rail transportation."

III. CONCLUSION

NET is proposing to build a state-of-the-art facility. It has agreed to comply with all applicable state substantive health and safety regulations governing the construction and operation of that facility. None of the activities that NET will engage in constitute a business function separate from rail transportation. The NET facility will provide a competitive alternative for customers in metropolitan Boston who presently have no economically viable access to any form of transportation other than trucks. That is why some of our opponents in the waste industry are as vocal as they are. Jones V.S. at ¶ 19.

It should be emphasized, however, that this facility will not be limited to transporting shipments of waste materials. To the contrary, it has been designed for and will be operated to handle a variety of other commodities.

For the foregoing reasons, NET respectfully requests the Board to grant this resubmitted Petition for Exemption. NET further respectfully requests the Board to conduct its review and evaluation in an expedited manner.

Respectfully submitted,



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Date: December 5, 2005

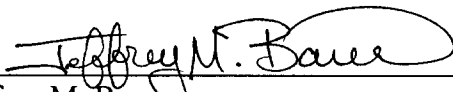
CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December, 2005, a copy of the foregoing
was served on the following persons by first-class mail:

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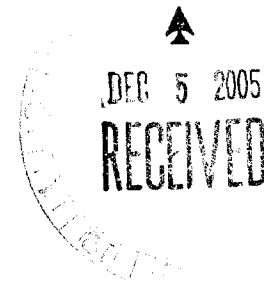
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215289



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34797

**New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway—Petition
For An Exemption From 49 U.S.C. § 10901 To Acquire, Construct And Operate As A Rail
Carrier On Tracks and Land In Wilmington and Woburn, Massachusetts**

Office of the
Secretary of
Transportation
2005
Part of
Public Record

VERIFIED STATEMENTS
(Includes Color Appendices)

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TABLE OF CONTENTS

Robert W. Jones, III Verified Statement Tab No. 1

M. Margret Hanley Verified Statement Tab No. 2

Stephen J. Graham Verified Statement Tab No. 3

John C. Ryan Verified Statement Tab No. 4

Thomas Egan Verified Statement Tab No. 5

**Verified Statement of
Robert W. Jones, III**

1. My name is Robert Jones and my business address is 24 River Road, Suite 19, Clifton, NJ, 07014. I am a managing member of New England Transrail, LLC ("NET"). NET is a New Jersey limited liability company which is authorized to do business in the Commonwealth of Massachusetts. Four individuals equally share the ownership of NET: myself, Ronald Klempner, Jack Lyon and Carl Jones. Two of us are minorities. None of us owns or controls any other common carrier. I have been involved in NET's proposal to build and operate a terminal railroad facility ("NET Facility") on the property at 51 Eames Street, Wilmington, Massachusetts (the "Property") since the project was first conceived. Accordingly, I am familiar with the evolution of the NET Facility and the reasoning behind all aspects of the proposal. The purpose of my verified statement is to discuss the operations that will be undertaken by NET at the NET Facility.

2. It should be noted at the outset that much of the opposition in the prior proceeding in FD 34391 is because the NET Facility will be located on property which has been the center of local controversy for many years. This opposition is exacerbated by the fact that one of the many commodities proposed to be handled at the facility is non-hazardous waste, more specifically construction and demolition debris ("C&D") and municipal solid waste ("MSW"). Some of our opponents have charged that NET is a "garbage facility masquerading as a railroad." To the contrary, NET proposes to operate as a full-service common carrier railroad. NET's rail facilities, which will include its terminal facilities, will be used to transload a variety of different commodities, all of which are discussed in detail below.

3. Nevertheless, it should be understood that C&D and MSW are becoming an increasingly important commodity for railroad traffic and revenues. In contrast to the transportation of coal, which typically originated in rural areas on long established rail routes, C&D and MSW are being transported in tremendous volumes from dense urban areas, particularly in the northeast. Not only do these urban areas lack sufficient local disposal capacity, they have suffered significant reductions in rail capacity in the last half century. Therefore, facilities to handle this flow of traffic by rail are scarce and the space on which to create them is limited. NET had originally sought a location for this facility in the Boston area. Because of the scarcity and inadequacy of existing rail terminals, NET found the current site to be the most suitable, despite its space constraints.

4. The market for rail service is also growing for all types of commodities other than C&D and MSW. It is impossible at this time to provide a precise estimate of how much C&D and MSW NET will transport compared with its other commodities. However, based upon expressions of interest that we have received to date, I anticipate that when the NET Facility is operating at full capacity, approximately 50% of the commodities being shipped will be C&D and MSW.

5. The Property is located in the Town of Wilmington and consists of approximately 53 acres of land. It is owned by Olin Corporation ("Olin") and NET has executed a contract with Olin to purchase the Property. NET's operations will be limited to approximately 30 acres of the Property, which we refer to as the "NET Development Area." This is the area where chemicals were formerly manufactured, as discussed in more detail in the verified statement of Margaret Hanley. The site diagram attached to the Graham Verified Statement as Appendix A,

and which is labeled "Figure STB-1," shows the location of these former manufacturing facilities, including a Y-shaped set of tracks.

6. As can be seen in the aerial photograph attached to my statement as Appendix A to my statement, the Property is surrounded by light industrial and commercial establishments. The Town of Woburn's former municipal landfill, part of which is now used for composting activities, is located directly south of the Property. The Town of Wilmington's current municipal landfill is located less than 2,000 feet west of the Property. The nearest residence is 800 feet west of the Property.

7. As seen on Figure STB-2, which is attached to the Graham Verified Statement as Appendix C, the Wilmington-Woburn-West Medford branch line of the Boston & Maine Railroad ("B&M") runs along the western side of the Property. NET intends to enter into an agreement with the B&M, which is a subsidiary of the Guilford Rail System of Iron Horse Park, North Billerica, Massachusetts, to reinstall a removed switch at MP 14 in order to connect with this branch line. NET also intends to enter into an agreement with the Massachusetts Bay Transportation Authority ("MBTA") to connect with the Boston-Concord line directly east of the Property. While the precise locations of these connections are still being investigated, NET currently expects that the locations will be adjacent to the Property and south of the end of the southeasterly proposed tracks that are shown on Figure STB-2. NET will inform the Board when the final decisions regarding these locations are made. By installing a run-through track from the east side to the west side of the Property, NET has more flexibility in how it moves traffic.

8. A description of the demolition and construction activities proposed to be undertaken by NET is set forth in the verified statement of Stephen Graham. Some of the newly-constructed facilities may be relocated on the NET Development Area as needed to

accommodate the environmental activities being undertaken by Olin. However, any proposal to relocate or add any facility will first be reviewed by NET's Licensed State Professional and environmental engineers.

9. NET expects to receive and transload a wide range of commodities. The total number of trucks entering the NET Facility is estimated to be 400 per day, which is about one-fourth of the traffic that would have been associated with a distribution center that was previously approved for the Property. Other details about that distribution center are discussed in Margret Hanley's Verified Statement. NET will not receive and transload shipments of any material that is defined as a hazardous waste by applicable federal and state laws and regulations. It is currently anticipated that NET's annual revenues will not exceed \$5 million. If that estimate changes and NET's annual revenues are anticipated to exceed this amount, NET will promptly comply with the Board's notice requirements at 49 C.F.R. § 1150.35.

10. NET presently expects to receive and transload different categories of material in three distinct areas of the Property. A single yard engine or locomotive will be used to move rail cars around the Property. Commodities handled irregularly or in volumes which do not justify investment beyond providing car-side access will be handled at team track type facilities with shippers or receivers required to provide any unique equipment needed to transload their cargo.

11. The northeastern area of the Property will be used to handle "pumpable" materials including, but not limited to, liquid commodities (such as corn sweeteners and vegetable oil) that will be heated and pumped using portable equipment; and pumpable dry materials (such as soda ash and plastic pellets) that will be transferred between trucks and rail cars using portable blower equipment.

12. The western area of the Property will be used to handle bulk materials (including, but not limited to, lumber, salt, sand, gravel, soda ash, aggregates and woodchips) that will be transloaded using portable equipment. Certain of these materials may be stored temporarily on the permanent asphalt cap either before or after transloading. As Stephen Graham explains in his verified statement, NET's earlier plan to install three rail siding tracks on the asphalt cap to be installed over the Containment Area has been withdrawn. However, NET does plan to use the cap for the temporary storage of bulk materials. NET needs to use this area for storage because it constitutes almost 15% of the entire NET Development Area. Olin is obligated to install the asphalt cap as a part of its remediation activities. Under its contract with Olin, NET has agreed to bear the entire cost of the installation and maintenance of the cap, which may exceed \$1 million. In light of the significant costs NET will incur to address the presence of historic contamination at the Property, NET should be allowed to use this area in a manner consistent with its design. As explained by Mr. Graham, NET will be able to ensure that the design and construction of the asphalt cap will be sufficient to support any of the storage activities proposed to be undertaken.

13. The Transloading Structure located in the central area of the Property will be used to handle C&D and MSW. C&D will be unloaded from trucks onto the concrete floor of the northern side of the Transloading Structure. Each shipment of C&D will be inspected to ensure that it is consistent with the terms of its bill of lading and contains no hazardous waste. NET will segregate certain metal and wood or other materials that may damage NET's loading equipment and rail cars. Any segregated material will be transported to an appropriate receiving facility by rail or, if rejected, returned to the shipper. In the event that an item of hazardous waste is discovered in a shipment of C&D, NET will handle that item in full compliance with applicable

requirements of the United States Department of Transportation ("DOT") that govern the handling of such materials. As explained in the verified statement of John Ryan, C&D will be conveyed to shredders that will reduce it to a maximum size that can be loaded into rail cars with conveyor belts. It should be noted that some rail car lessors are urging that C&D be shredded to minimize damage to their cars.

14. With respect to MSW, trucks delivering this commodity will enter the southern side of the Transloading Structure. As described in the Graham Verified Statement, the Transloading Structure will have a recessed concrete area called the "Transload Equipment Area." Generally speaking, there are three ways in which the MSW will be transloaded. First, some MSW will be delivered to the NET Facility in intermodal containers which will be lifted from trucks and loaded onto flat rail cars. Second, some MSW will be delivered to the NET Facility already pre-baled. (A photograph of baled MSW is attached to the Graham Verified Statement as Appendix A.) Such pre-baled MSW will be lifted from trucks within the Transloading Structure and loaded directly onto rail cars.

15. Third, some MSW will be arriving as a bulk material, which will be unloaded from trucks onto the concrete floor of the Transloading Structure where it will be inspected to ensure that it contains no hazardous waste or other materials which do not conform to a bill of lading. As with items of hazardous waste discovered in shipments of C&D, NET will handle any item of hazardous waste discovered in a shipment of MSW in full compliance with applicable DOT requirements. This MSW will be transloaded onto rail cars in one of the following two ways: (1) it will be loaded into containers positioned in the Transload Equipment Area, which, once loaded, will be covered and lifted onto rail cars; or (2) it will be baled and then loaded onto rail cars. Some of the bales may be further wrapped in plastic to allow their shipment in

different types of cars. For example, some carriers may allow the shipment of wrapped bales in box cars, which would increase the number of cars available for NET's use. That is important given the shortage of rail cars in the industry generally. It should be emphasized that baling MSW cannot be undertaken without a significant investment and this investment will only be made if the demand for baling MSW actually develops. In the meantime, NET retains the option of loading MSW in containers. I want to make one final point about the Transload Equipment Area. Although it has been referred to as a "vault," no materials are stored in this area. Instead, it will be used to house equipment that in turn will be used to prepare and load MSW.

16. All of the C&D and MSW consigned to NET for transport will be shipped to landfills or processing facilities located outside the Commonwealth of Massachusetts. Neither NET nor any of its owners will have any ownership interest in any of these materials and NET will operate all the rail lines and the rail-related facilities. Further, NET intends to comply fully with all applicable substantive state health and safety regulations governing NET's construction and operations. However, NET has informed MADEP that it cannot agree to subject the NET Facility to any state or local "preclearance requirements" established by Massachusetts General Laws chapter 111, Section 150A and the regulations found at 310 CMR 16.00, et seq., more commonly known as the "Site Assignment" requirements, nor can NET agree to take those actions unrelated to transportation that would be necessary to comply with the Massachusetts Waste Control regulations, found at 310 CMR 19.017, commonly referred to as the "Waste Bans", which, as applied to NET's transportation of C&D and MSW out of the Commonwealth of Massachusetts, accomplish only economic objectives and not the protection of health and safety.

17. As explained above, NET will inspect all cargos received for shipment, including C&D and MSW. Nearly all rail carriers reserve the right to inspect shipments for compliance with the contract of carriage. Most rail carrier waste contracts require the submission of proof, on request, that the consignee listed on the bill of lading has contracted to accept the cargo before the rail carrier will move the car. NET's contracts will be no exception and NET may even inspect containerized waste as well as the shipper's disposal contracts to assure itself and its connecting carriers that loaded cars will not be rejected at the final destination. Non-conforming materials will be removed from shipments and will be disposed of appropriately either by returning them to the shipper, disposing of small items as waste or as unclaimed freight.

18. Opponents of this project in the prior proceeding in FD 34391 argued that the handling of C&D and MSW that I have described above constitutes the "processing of solid waste." That is not the case. Examples of facilities that "process solid waste" are composting facilities, gasification facilities, waste-to-energy facilities, pelletizing facilities, or refuse derived fuel facilities. Each of these facilities is engaged in an activity to produce something different for further use or for resale. NET, in contrast, simply prepares and packages the C&D and MSW for transportation. Unlike solid waste processing facilities, NET will not induce a biological, thermal, or chemical change to the molecular structure of C&D and MSW nor will it produce a different product than the materials originally delivered to it for shipment. In short, shredded C&D will still be C&D when NET loads it onto a rail car. Baled MSW will still be MSW when it is loaded onto a rail car.

19. NET's facility is not at all like the facility in North Bergen, New Jersey that is the subject of the recent petition for a declaratory order filed by the National Solid Wastes Management Association ("NSWMA") and others before the Board. First, NET is proposing to

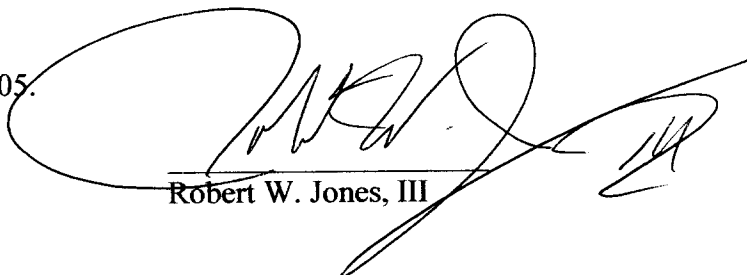
build a state-of-the-art facility. Second, NET has agreed to comply with all applicable state substantive health and safety regulations governing the construction and operation at the NET Facility. As a result, the health and the environment of the local community will be protected. Third, none of the activities that NET will engage in constitute a "business function separate from rail transport." NSWMA Petition at 16. Fourth, as noted above in paragraph 18, NET's shredding of C&D and baling of MSW will not change the nature of those goods "in a manner that is wholly unrelated to and unnecessary for rail transportation." NSWMA Petition at 17. Fifth, NET will not extract or divert materials intended for rail transportation at the Facility for subsequent stockpiling and trucking for resale into local markets. To the contrary, NET's activities are directly related to transportation as explained in the verified statements of Messrs. Egan and Ryan. I listed things that NET will not be doing. What NET will be doing is creating a competitive alternative for customers in metropolitan Boston who presently have no economically viable access to any form of transportation other than trucks. That is why some of our opponents are as vocal as they are.

20. In summary, NET will invest significant resources and funds to install and operate the NET Facility that is described above. NET will operate as a common carrier. All services and facilities will be made accessible to the public as part of the total transportation package and will be billed to the shipper or receiver as such.

VERIFICATION

I, Robert W. Jones, III, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 30, 2005.



Robert W. Jones, III

**Robert W. Jones, III Verified Statement
Appendix A**

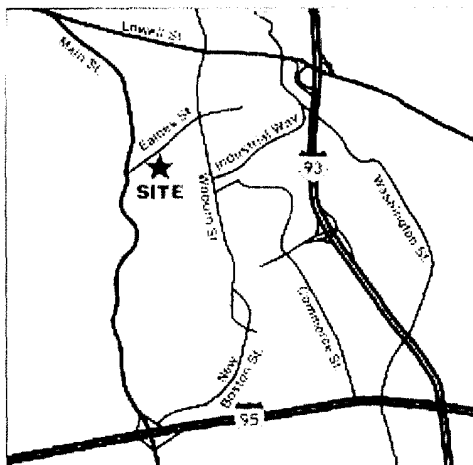
requirements of the United States Department of Transportation ("DOT") that govern the handling of such materials. As explained in the verified statement of John Ryan, C&D will be conveyed to shredders that will reduce it to a maximum size that can be loaded into rail cars with conveyor belts. It should be noted that some rail car lessors are urging that C&D be shredded to minimize damage to their cars.

14. With respect to MSW, trucks delivering this commodity will enter the southern side of the Transloading Structure. As described in the Graham Verified Statement, the Transloading Structure will have a recessed concrete area called the "Transload Equipment Area." Generally speaking, there are three ways in which the MSW will be transloaded. First, some MSW will be delivered to the NET Facility in intermodal containers which will be lifted from trucks and loaded onto flat rail cars. Second, some MSW will be delivered to the NET Facility already pre-baled. (A photograph of baled MSW is attached to the Graham Verified Statement as Appendix A.) Such pre-baled MSW will be lifted from trucks within the Transloading Structure and loaded directly onto rail cars.

15. Third, some MSW will be arriving as a bulk material, which will be unloaded from trucks onto the concrete floor of the Transloading Structure where it will be inspected to ensure that it contains no hazardous waste or other materials which do not conform to a bill of lading. As with items of hazardous waste discovered in shipments of C&D, NET will handle any item of hazardous waste discovered in a shipment of MSW in full compliance with applicable DOT requirements. This MSW will be transloaded onto rail cars in one of the following two ways: (1) it will be loaded into containers positioned in the Transload Equipment Area, which, once loaded, will be covered and lifted onto rail cars; or (2) it will be baled and then loaded onto rail cars. Some of the bales may be further wrapped in plastic to allow their shipment in

Industrial Land Development Site

**51 Eames Street,
Wilmington, MA**



Total Site: 53 acres
Maximum Capacity: 300,000 sq. ft. or 200,000 sq. ft. and 100,000 sq. ft.
Subdivision: To 80,000 sq. ft.
Type of Space: Warehouse / manufacturing
Zoning: industrial
Access: 1.5 miles from I-95, 2.1 miles from I-93, close proximity to Rt. 38, 129, and the new I-93 McKenown interchange
Utilities: Water, sewer, gas, electric, and telephone
Rail: B&M Railroad

THE
STUBBINS
COMPANY

STUBBINS COMPANY is a leading national real estate and construction management firm. We have been in business for over 100 years and have a proven track record of success in the industrial and commercial sectors. Our expertise is in the development and construction of large-scale industrial and commercial projects. We are currently seeking qualified developers and investors for the 51 Eames Street site in Wilmington, MA.

One Crancherry Hill
Lexington, MA
Phone (781) 862 6108
FAX (781) 862 6212



Jones V.S. Appendix A-1

Jones V.S. Appendix A-1

**Verified Statement of
M. Margret Hanley LSP**

1. My name is M. Margret Hanley. I am a Principal of Sleeman Hanley & DiNitto, Inc. (SHD), 50 Congress Street, Suite 642, Boston, Massachusetts 02109. I am a Licensed Site Professional (LSP) as defined at 310 CMR 40.0006, and hold a valid license issued by the Massachusetts Board of Registration of Hazardous Waste Site Cleanup Professionals, pursuant to M.G.L.C.21A, Section 19.

2. As an LSP, I am authorized to render Waste Site Cleanup Activity Opinions regarding the sufficiency of response actions, pursuant to MGL Chapter 21E, and the Massachusetts Contingency Plan (310 CMR 40.0000[MCP]). I have 25 years of experience conducting waste site investigations, and have managed response actions under MGL c.21E for 22 years.

3. Since October 1997, I have been retained by Olin Corporation (Olin) to act as the LSP of Record, as defined at 310 CMR 40.0006, for the 51 Eames Street Site in Wilmington, Massachusetts, a confirmed Disposal Site identified by the Massachusetts Department of Environmental Protection (MADEP) as Release Tracking Number (RTN) 3-0471, referred to, herein, as the Site. Olin owns approximately 53 acres of land located at 51 Eames Street, Wilmington, Massachusetts (the Property), which comprises a portion of the Olin Site.

4. As the LSP of Record, I have managed, supervised or performed, and/or periodically reviewed and evaluated, the assessment of conditions and the implementation of remedial actions at the Site since October 1997. I am sufficiently familiar with the conditions that are understood to exist at the Property and the Site to opine regarding the extent to which

those conditions might constitute a threat to public health, safety, welfare, or the environment, under current and reasonably foreseeable uses.

5. As the LSP of Record, I am familiar with the environmental standards and requirements under the MCP that would be applicable to the construction and operation of the proposed NET Facility, in light of the releases of oil and hazardous materials at the Property.

6. New England Transrail LLC (NET) plans to construct a rail transloading facility (the NET Facility) on approximately 30 acres of industrial-zoned land at the Property.

7. From 1953 until approximately 1971, the Property was occupied by a manufacturing facility owned by National Polychemicals, Inc. (NPI). In 1971, NPI was merged into Stepan Chemical Corporation (Stepan). Stepan continued to own and operate the Property from 1971 until 1980, when it was purchased by Olin. Olin terminated all manufacturing operations at the Property in 1986.

8. The former manufacturing facilities and associated structures used by NPI, Stepan, and Olin, were located on the northern half of the Property, which is generally referred to as the "Developed Portion" of the Property.

9. The NET Facility, as depicted in Figure STB-2 that is attached as Appendix C to the verified statement of Stephen Graham, will be located on the Developed Portion of the Property.

10. Chemical blowing agents, stabilizers, antioxidants, and other specialty chemicals for the rubber and plastics industry were manufactured at the Developed Portion of the Property. The disposal of wastewater generated by the manufacturing operations of NPI and Stepan, into unlined impoundments at the Developed Portion of the Property, in addition to the accidental release of process oils and other raw materials, resulted in the contamination of soil and

groundwater at the Property and at downgradient and adjacent properties. The horizontal extent of the contamination at the Site is depicted in the figure attached as Appendix A.

11. The Site is currently being assessed, and as required, remediated, under my supervision, as the LSP of Record, and as approved by MADEP, in accordance with the MCP and the provisions of a Tier 1A Permit issued to Olin by the MADEP.

12. Response actions performed at the Site have determined the presence of a groundwater divide at the Property, between the Ipswich River Basin and the Boston Harbor Basin. Groundwater at the Developed Portion of the Property, on which the NET Facility will be constructed, flows primarily to the east-southeast, and does not, and will not, when developed as the NET Facility, affect the water resource area to the west which is utilized by the Town of Wilmington. These findings are summarized in a memorandum prepared by Geomega, Inc., dated November 16, 2004, a copy of which is attached to the Construction Related Release Abatement Measure (RAM) Plan for the NET Facility, as is discussed in more detail, below.

13. Remedial actions performed by Olin to date, at the Developed Portion of the Property, include (but are not limited to) the installation and operation of the Plant B Groundwater Extraction and Treatment System, the removal of buried drums, the excavation of contaminated sediments from portions of the ditch system, and the installation of a subsurface containment system that contains approximately 80 percent of the mass of contamination residing in groundwater at the Property. Key remedial actions performed at the Developed Portion of the Property are summarized in the Environmental Assessment (EA), dated August 4, 2004, and the Post Environmental Assessment (Post EA) that were prepared by the United States Surface Transportation Board's Section on Environmental Analysis relating to NET's prior request for approval of this project.

14. The proposed development of the Property by NET is consistent with the zoning of the Property (General Industrial) by the Town of Wilmington, and is less complicated, and less disruptive to the environmental conditions at the Property than previously proposed redevelopment projects at the Property that were approved by the Massachusetts Executive Office of Environmental Affairs (EOEA) and the Town of Wilmington, in 2000.

15. The developed portion of the Property was previously considered for use as a distribution warehouse facility, which would have resulted in the placement of a 350,000 square foot, fully enclosed and occupied warehouse building (a portion of which covered the subsurface containment structure), resulting in an impervious area of approximately 17.5 acres. A review of the environmental effects of the proposed warehouse development, on and off-Property, was conducted by EOEA, and it was determined that the project did not warrant preparation of an Environmental Impact Report (EIR). A Certificate of the Secretary of Environmental Affairs, that states that the project did not require an EIR, was issued by EOEA, on August 14, 2000.

16. The previously considered development was also subject to, and received, Site Plan Approval by the Town of Wilmington, and was subsequently granted an Order of Conditions by the Wilmington Conservation Commission.

17. The construction of the NET Facility, in contrast, will include the installation of a single open, sprung-type structure that covers an area less than 50,000 square feet, with small service buildings, and approximately 7,500 linear feet of track. The total amount of impervious surface over the Developed Portion of the Property will be less than 13.5 acres.

18. NET filed a Notice of Project Change (NPC) with EOEA, to determine whether the significant differences between the initial proposal, described above, and the proposed rail facility, warranted further review under the Massachusetts Environmental Protection Act

(MEPA) regulations (301 CMR 11.00), and/or the filing of an Environmental Impact Report. In a Certificate dated December 8, 2003, the Massachusetts Secretary of Environmental Affairs determined that the changes disclosed in the NPC submitted by NET do not warrant the preparation of an EIR.

19. MADEP guidelines for construction at MCP Disposal Sites are presented in MADEP Policy WSC-00-425, Construction of Buildings in Contaminated Areas, October 29, 1999 (The Construction Policy). The Construction Policy is intended to ensure that such construction activities:

- shall not be implemented without a level of understanding of the disposal site conditions and surrounding receptors sufficient to support the actions taken [310 CMR 40.0442(1)(a)];
- shall not be conducted in a manner that is likely to result in the exposure of surrounding human or ecological receptors to levels of oil and/or hazardous materials that could pose a significant risk.... [310 CMR 40.0442(1)(b)];
- shall not prevent or impede the implementation of likely future response actions [310 CMR 40.0442(1)(c)]; and
- shall not be conducted in a manner inconsistent with the Response Action Performance Standard described in 310 CMR 40.0191. [310 CMR 40.0442(1)(e)].

20. Consistent with the Construction Policy, MADEP generally requires certain activities prior to and/or concurrent with construction at MCP Disposal Sites. These requirements include:

- The conduct of a focused site characterization within, and adjacent to the footprint of proposed buildings and associated subsurface structures, to adequately define the nature and degree of contamination in the vicinity of the footprint;
- The conduct of a focused risk assessment within, and adjacent to the footprint of proposed buildings and associated subsurface structures to adequately characterize the nature of potential risks to construction workers, surrounding populations, and future building or site occupants, and to ensure that such risks are within limits permitted by the MCP;

- The conduct of focused response actions, as necessary, to eliminate unacceptable risks to construction workers, surrounding populations, and/or future building or site occupants; and
- The conduct of a focused feasibility study within, and adjacent to the footprint of any proposed building to determine if it is feasible to reduce soil contaminant levels to concentrations that achieve or approach a background condition, and if so, to ensure that such remediation is conducted before, or during construction of the overlying portions of the building. At those sites where placement of the building structure will preclude further investigative or remedial efforts, sufficient data must be obtained to demonstrate compliance with Response Action Outcome (RAO) performance standards relating to source control within, and adjacent to the footprint of the building structure.

21. A Focused Site Characterization and Focused Risk Assessment (FSC/FRA) Report, dated October 4, 2004, that considers the proposed construction of the NET Facility on the Developed Portion of the Property, by MACTEC Engineering and Consulting (MACTEC), in accordance with the MCP and the Construction Policy. The FSC/FRA Report was submitted to MADEP in October 2004.

22. Additionally, a Focused Feasibility Study (FFS) was prepared by ECS, on behalf of NET, to consider the need to remove, contain, or treat soil and groundwater at locations beneath, and adjacent to key structures of the NET Facility to be constructed at the Property.

23. The findings of the FSC/FRA and the FFS were considered by Environmental Compliance Services, Inc. (ECS) in the preparation of the Construction Related RAM Plan, which identified the response actions that would be taken during, and after the construction of the NET Facility to meet the performance standards for an RAO at the Developed Portion of the Property during, and after the construction of the NET Facility. The Construction Related RAM Plan (to which the FFS is appended) was submitted to MADEP in November 2004. NET has subsequently supplemented, and made minor modifications to the Construction Related RAM Plan, respectively, in the following submittals:

- Response to Town of Wilmington Comments, Construction Related RAM, Former Olin Corporation Facility, 51 Eames Street, Wilmington, MA, ECS, February 3, 2005.
- Modification of Construction Related Release Abatement Measure Plan, 51 Eames Street Property, Wilmington MA, LFR-Levine Fricke, October 21, 2005.

24. The Construction Related RAM Plan and the supporting documentation described above, were prepared to address the health and safety requirements of the Construction Policy. MADEP approval of the Construction Related RAM Plan will demonstrate NET's compliance with the health and safety provisions of the Construction Policy, and the MCP.

25. The SEA's EA for the proposed NET Facility, dated August 4, 2004, indicated that additional actions were required before the NET Facility can be developed (Section 3.8.1.4). These additional actions included the above-cited requirements of the Construction Policy, and the completion of a comprehensive characterization of the nature, and extent of NDMA, hydrazine, and formaldehyde, if present, and the excavation of certain ammonia-impacted soils in the so-called Lake Poly Area. All of these additional actions have been substantially completed since the EA was prepared in August 2004.

26. The characterization and assessment of the nature, and extent of NDMA, hydrazine, and formaldehyde at the Site since August 2004 are summarized in the following documents that were prepared by Olin and Submitted to MADEP:

- Comprehensive Response Action Submittal, Distribution of N-Nitrosodimethylamine (NDMA) in Environmental Media, 51 Eames Street Site, Wilmington, MA. MACTEC, December 14, 2004.
- Status Report No. 4 and Completion Statement, Immediate Response Action (IRA) Related to N-Nitrosodimethylamine (NDMA), 51 Eames Street Site, Wilmington, MA. MACTEC. December 28, 2004. Submitted by GEI, on December 30, 2004.
- Letter to MADEP with attachments, Re: Supplemental Data Submittal, MACTEC, August 4, 2005

- Letter to MADEP with attachments, Re: Request for Supplemental Data, MACTEC, August 5, 2005

27. The excavation of certain ammonia –impacted soils in the so-called Lake Poly Area was performed in the Spring of 2004, and was documented in the RAM Status Report No. 8, dated September 7, 2004, and the Construction RAM Completion Statement dated October 4, 2004. These documents were prepared by GEI Consultants, Inc., on behalf of Olin. The need for further excavation of impacted soils in the vicinity of the so-called Lake Poly Area is being evaluated by MADEP. The following documents summarize this evaluation, to date:

- Letter from Massachusetts Department of Environmental Protection (MADEP) to Olin Corporation (Olin), re: Part 2 Construction RAM Status Report No. 8 and Construction RAM Completion Statement, dated March 29, 2005.
- Phase II Comprehensive Site Assessment Submittal, Response to March 29, 2005 Letter from MADEP Regarding Kempore Material, 51 Eames Street Site, Wilmington, MA. MACTEC, June 23, 2005. Submitted by Sleeman Hanley & DiNitto, Inc. (SHD), on June 28, 2005.

28. It is my opinion that further excavation in the vicinity of the so-called Lake Poly Area, if determined to be necessary by MADEP, could be performed as a RAM before, or during the redevelopment of the NET Facility, without disrupting the NET Facility's operations or jeopardizing public health, safety, welfare or the environment, in accordance with the MCP and the MADEP's Construction Policy.

29. It is my opinion that, pending MADEP's approval of the Construction Related RAM Plan, all of the additional actions required prior to redevelopment, as identified in SEA's EA and Post-EA, will be complete.

30. The MADEP has requested that the United States Environmental Protection Agency (USEPA) designate the Site as a National Priority List (NPL) Site (also referred to as a

Superfund Site). USEPA has determined that groundwater contamination at areas to the west of the Property causes the Site to meet the hazard ranking criteria required for listing on the NPL. As of the date of this Verified Statement, USEPA has not issued a final determination regarding the listing of the Site on the NPL.

31. It is my opinion that the designation of the Site as an NPL Site, if it were to occur, should not prevent the development of the NET Facility at the Property. By meeting the requirements of the MCP through the execution of the Construction Related RAM Plan, NET will substantially meet the requirements that would be imposed by USEPA at the Developed Portion of the Property, if the Site were to be listed on the NPL.

32. It is my opinion that conditions at the Property and the Site do not preclude the development and use of the NET Facility, in a manner that is consistent with the MCP, and in a manner that is protective of human health, safety, welfare, and the environment.

- Response to Town of Wilmington Comments, Construction Related RAM, Former Olin Corporation Facility, 51 Eames Street, Wilmington, MA, ECS, February 3, 2005.
- Modification of Construction Related Release Abatement Measure Plan, 51 Eames Street Property, Wilmington MA, LFR-Levine Fricke, October 21, 2005.

24. The Construction Related RAM Plan and the supporting documentation described above, were prepared to address the health and safety requirements of the Construction Policy. MADEP approval of the Construction Related RAM Plan will demonstrate NET's compliance with the health and safety provisions of the Construction Policy, and the MCP.

25. The SEA's EA for the proposed NET Facility, dated August 4, 2004, indicated that additional actions were required before the NET Facility can be developed (Section 3.8.1.4). These additional actions included the above-cited requirements of the Construction Policy, and the completion of a comprehensive characterization of the nature, and extent of NDMA, hydrazine, and formaldehyde, if present, and the excavation of ammonia-impacted soils in the so-called Lake Poly Area.

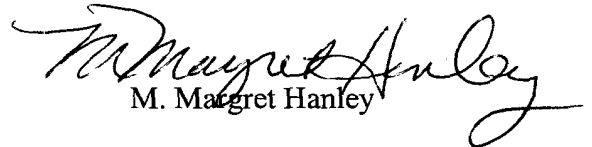
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- Letter to MADEP with attachments, Re: Supplemental Data Submittal, MACTEC, August 4, 2005

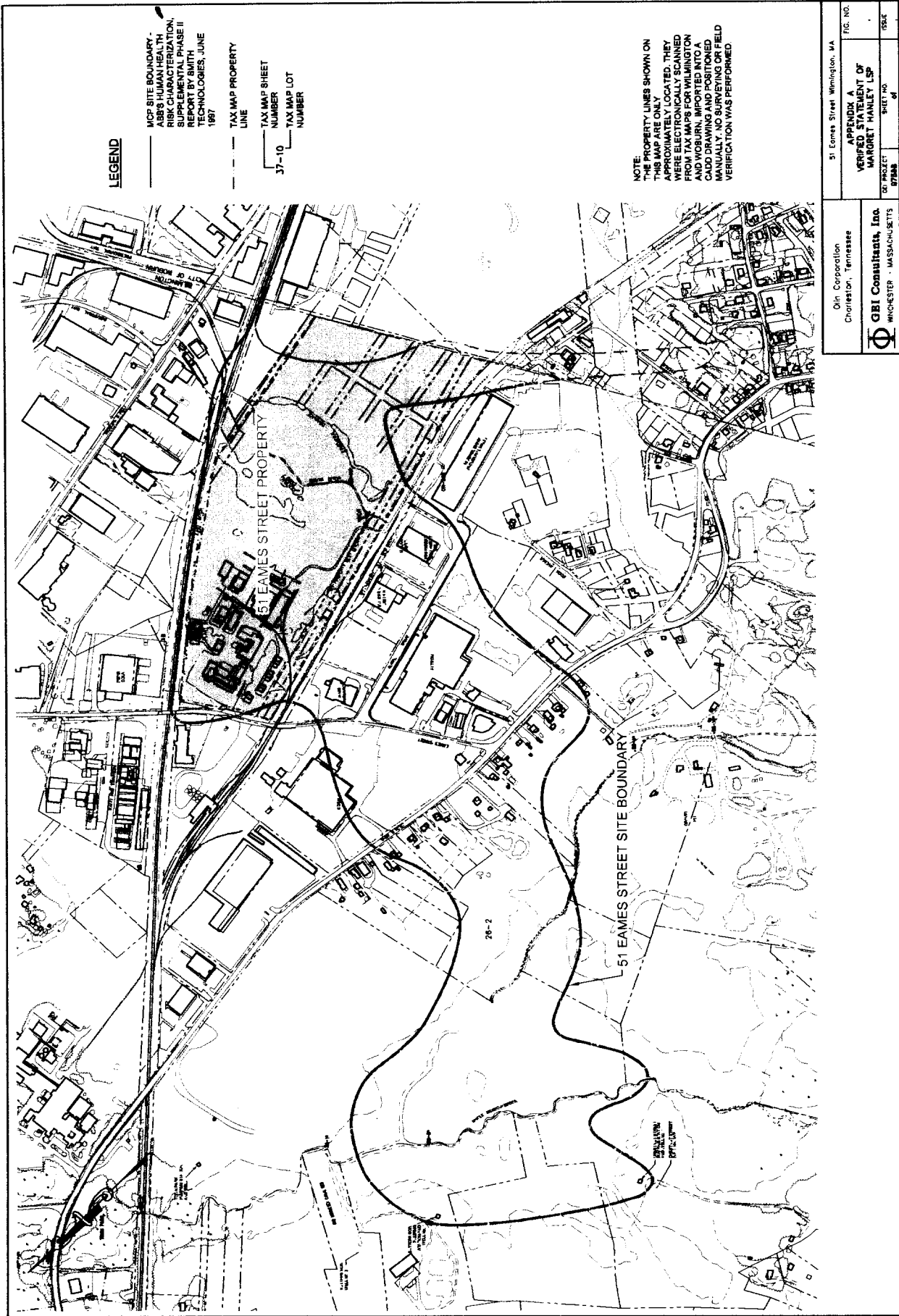
VERIFICATION

I, M. Margret Hanley, verify under penalty of perjury under the laws of the United States, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 14, 2005


M. Margret Hanley

**M. Margret Hanley Verified Statement
Appendix A**



**Verified Statement of
Stephen J. Graham**

1. My name is Stephen J. Graham. I am a licensed engineer with LFR Inc. ("LFR"). My office address is 194 Forbes Road, Braintree MA 02184. I have 25 years experience in the environmental engineering field, and I am a Licensed Site Professional (LSP) in the Commonwealth of Massachusetts. I am also a Registered Professional Engineer in the State of Maine, and meet the criteria for identification of an Environmental Professional, as defined by the United States Environmental Protection Agency ("USEPA") in the proposed regulation, 40 CFR Part 312, Standards and Practices for All Appropriate Inquiries, dated August 26, 2004. I have been engaged by New England Transrail, LLC ("NET") to assist in the site planning and engineering design of the rail and transloading facilities proposed to be developed by NET ("NET Facility") on the property located at 51 Eames Street, Wilmington, Massachusetts (the "Property") and to render opinions as the LSP of Record for the proposed development.

2. As a Project Manager at Environmental Compliance Services, Inc ("ECS"), I conducted a Phase I Environmental Site Assessment ("ESA") of conditions on the northern portion of the Property, commonly referred to as the "Developed Portion of the Property," in accordance with the requirements of the American Society for Testing and Materials Standard Practice for Environmental Site Assessment Phase I Environmental Site Assessment Process, E1527-00. The findings of the Phase I ESA were summarized in a report dated March 16, 2004.

3. As part of the Phase I ESA, I reviewed information regarding the environmental conditions at the Property, as summarized in key submittals prepared on behalf of Olin Corporation ("Olin") between August 2003 and October 2005. In addition, I reviewed selected reports that describe the conditions at adjacent and downgradient properties that comprise the

Olin Site, as listed by the Massachusetts Department of Environmental Protection ("MADEP") as a Disposal Site with Release Tracking Number ("RTN" 3--471.

4. I also managed the performance of a Phase II ESA to further characterize subsurface conditions on the Developed Portion of the Property. The findings of the Phase II ESA are summarized in a report dated March 19, 2004. Excerpts from the Phase II ESA Report were presented as Appendix B to the Construction Related Release Abatement Measure ("RAM") Plan that is discussed in paragraph 5 below.

5. I assisted NET in the design of the proposed NET Facility, and subsequently prepared on behalf of NET a Focused Feasibility Study for the developed portion of the Property, and a Construction Related RAM Plan, consistent with MADEP Policy for construction at contaminated properties, referred to as the Construction Policy (MADEP Policy WSC-00-425, Construction of Buildings In Contaminated Areas, October 29, 1999). As the LSP of Record for the NET Facility, I certified that the Construction Related RAM Plan, which included the FFS as an appendix, met the requirements for such a submittal as set forth at 310 CMR §§40.0444 – 0446. The RAM Plan was submitted to MADEP on November 18, 2004.

6. I have participated in the preparation of two documents that supplement the Construction Related RAM Plan. These documents were submitted to MADEP, with my certification as the LSP of Record for the proposed NET Facility, and include:

- Response to Town of Wilmington Comments, Construction Related RAM, Former Olin Corporation Facility, 51 Eames Street, Wilmington, MA, ECS, February 3, 2005, and
- Modification of Construction Related Release Abatement Measure Plan, 51 Eames Street Property, Wilmington MA, LFR Inc., October 21, 2005.

7. Since the preparation of the Phase I and II ESA Reports, the FFS, and the Construction Related RAM Plan, I have continued to receive and review documents prepared on behalf of Olin that discuss the on-going scope of work and findings of comprehensive response actions performed at the Property.

8. Based on my understanding of conditions at the Property, it is my opinion that the nature and extent of releases of oil and hazardous materials at and from the Property at this time are substantially the same as previously represented in the FFS and the Construction Related RAM Plan. Accordingly, it is my opinion that development of the NET Facility in accordance with the Construction Related RAM Plan, as supplemented and modified, will comply with the MCP and protect public health, safety, welfare and the environment as required by the MCP.

9. Petitioner's construction activities will consist of (1) demolition and removal of existing facilities, (2) excavation and re-grading, and (3) installation of new facilities. These activities will occur in the Developed Portion of the Property. NET will demolish the so-called West Warehouse, East Warehouse and Office Building that were formerly part of the chemical manufacturing facilities on the Property. These facilities are shown on the Figure labeled STB-1 which is attached as Appendix A. The existing railroad tracks will also be replaced and realigned. The existing underground utilities (including abandoned in-place chemical process pipelines) will be removed or capped in place, and in the event that contamination is found, they will be dealt with pursuant to the MCP to avoid potential impacts. Existing asphalt and concrete roadbeds on the Property will be removed or used as the base for new roadways.

10. In its May 3 decision, the Board instructed NET to provide information about "the degree to which [its] construction [activities] would result in the excavation or movement of any soil." That information is hereby provided. First, excavation in connection with the installation

of new underground utilities will involve up to 1,500 cubic yards of material. Second, excavation in connection with the construction of new rail lines (involving excavation to a depth of approximately three to four feet below the current surface grade) will involve up to 11,600 cubic yards of material. Less than 1,700 yards of this amount are attributable to the new run-through track and the additional two stub tracks to be installed in the western area. Third, excavation in connection with the construction of the foundation of the Transloading Structure, a "sprung-type" structure¹ to be utilized for the transloading of C&D and MSW, will involve up to 1,500 cubic yards of material.² Fourth, excavation in connection with the construction of the storm water management system and the re-grading of the NET Development Area will involve up to 3,000 cubic yards of material.

11. No excavation is anticipated at a depth greater than eight feet below the current surface grade. Based on my review of the extensive groundwater monitoring data accumulated at the Property, NET can avoid encountering groundwater, which has been determined to be located at a depth of approximately six to nine feet below the current surface grade across the NET Development Area.³

12. The Board also directed NET to provide specific information about "the length and location of all trackage to be constructed, [and] the exact type of structures to be built." NET will install two siding tracks in the northeastern area of the NET Development Area for transloading pumpable products such as plastic resins and liquids, two siding tracks in the central area for transloading C&D and MSW, three siding tracks in the western area for transloading

¹ Information about these structures is attached to my statement as Appendix B.

² As discussed below in paragraph 13, the Transloading Structure will include a recessed concrete area called the "Tranload Equipment Area" that will be used to house equipment to be used in the preparation and loading of MSW.

³ Although groundwater is not anticipated to be encountered during soil excavation, a contingency for the management of groundwater during excavation is nevertheless presented in the Construction Related RAM Plan.

break bulk materials such as sand, gravel, aggregates and wood chips, and one run-through track (located between the two siding tracks in the central area) that will connect the MBTA line on the eastern side of the Property with the B&M line on the western side. The approximate length of all these lines is 7,500 feet; their locations are depicted in the site diagram labeled Figure STB-2 that is attached as Appendix C.⁴

13. As noted in paragraph 10 above, the Transloading Structure will be installed in the central area of the Property to handle C&D and MSW. Two pre-manufactured buildings will also be installed directly east of the Transloading Structure to house offices and supplies. The grade of the concrete floor of the southern side of the Transloading Structure will be raised eight to nine feet above the current surface grade. This will allow the installation of the recessed Transload Equipment Area in which rail car containers and equipment for baling and loading MSW can be located. The total depth of the Transload Equipment Area is twelve to thirteen feet. By raising the existing surface grade of the southern side of the Transloading Structure eight to nine feet, the excavation depth needed for the Transload Equipment Area is no more than five feet below the current surface grade, thus remaining above the level of and avoiding contact with groundwater.

14. In addition, NET will reinstall underground utilities, construct a storm water management system, re-grade the NET Development Area and install new roadways and gravel ground cover.

15. Finally, NET will install an asphalt cap (to be approved by the MADEP) to cover the DAPL Containment Area. The cap will be engineered to support certain aspects of NET's transloading operations, such as the storage of break bulk materials like sand or gravel. As such,

⁴ As stated in the Jones Verified Statement at ¶7, the precise locations of the connections with the MBTA and B&M lines are still being investigated.

the cap should be well suited for the vehicular traffic needed to load and unload break bulk materials that will be stored there.

16. Three additional points should be noted about the asphalt cap. First, NET has modified the CRAM submitted to the MADEP to eliminate the installation of any rail tracks on the cap.⁵ Second, in the event that NET is ever required to install a storage structure on the cap, it will be installed in accordance with all applicable technical and regulatory standards of Massachusetts. Third, measures that will be taken to prevent or control exposures to or release of contaminants present in soil during excavation are described in the Construction Related RAM Plan.

17. In my opinion, none of the demolition or construction activities discussed above, or the operation of the NET Facility, will exacerbate any release of oil or hazardous material at or from the Property.

18. The floor drains in the Transloading Structure will be installed and connected to an oil water separator so that incidental quantities of liquids that may be released to the floor will be collected and treated in accordance with Massachusetts Water Resources Authority requirements prior to their discharge to the municipal sanitary sewer.

19. Precipitation that falls on and outside of the buildings will be collected by on-site storm sewers that will connect to lined storm water retention basins. These basins will discharge to adjacent wetlands, after first passing through treatment units which will remove oil and other materials in accordance with MADEP requirements.

20. The development plan presented in the Construction Related RAM Plan requires that portions of the Property that will be utilized by NET, regardless of the presence or absence

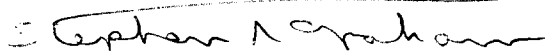
⁵ The October 21, 2005 letter requesting this modification is attached as Appendix D.

of soil contamination, must be effectively capped by pavement, buildings, and /or landscaping. Additionally, access to the Developed Portion of the Property will be restricted by a security fence. All of these measures will prevent future direct contact with shallow soils by workers and visitors at the NET Facility.

VERIFICATION

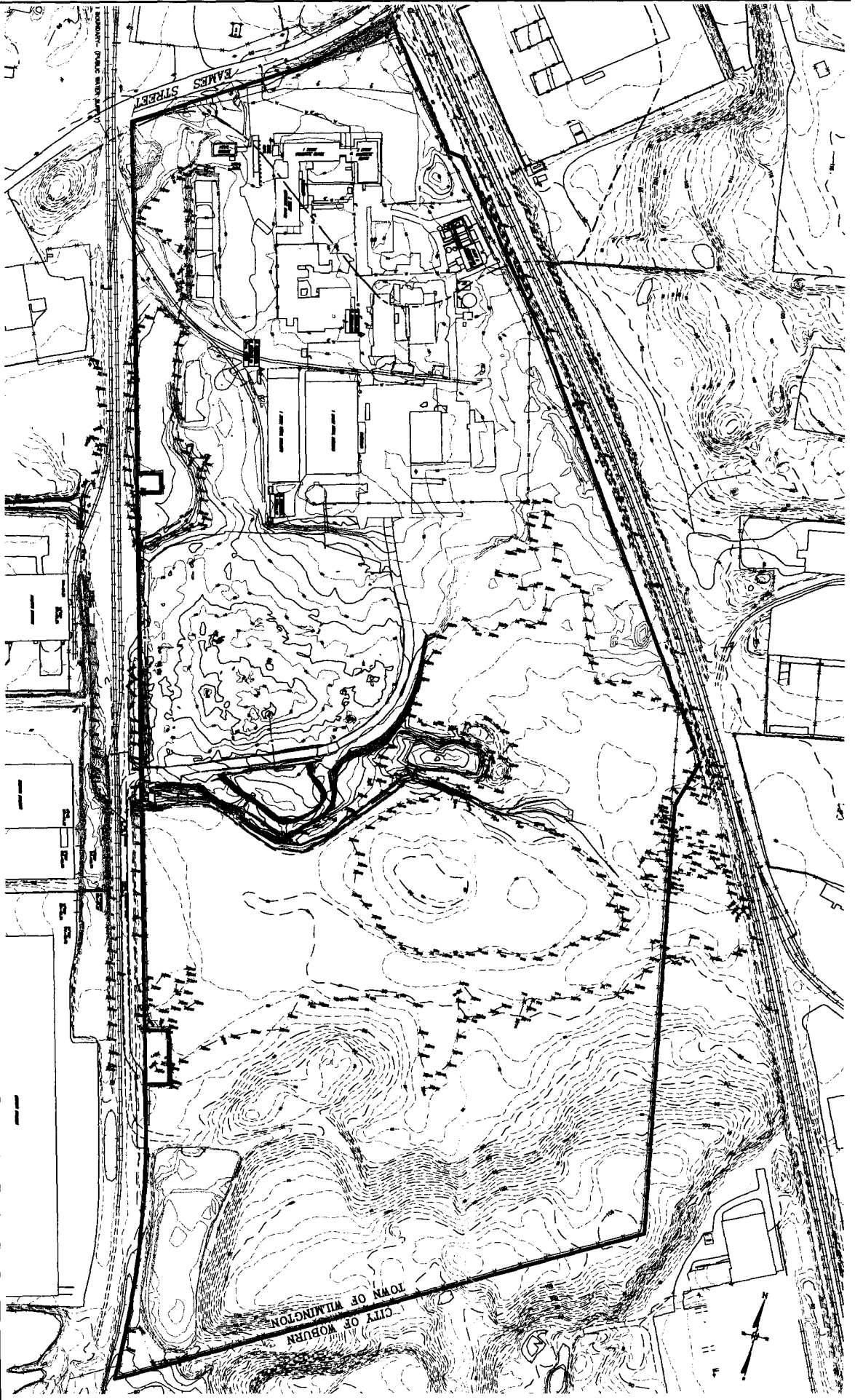
I, Stephen J. Graham, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November _15_, 2005.

A handwritten signature in cursive script, appearing to read "Stephen J. Graham", is written over a horizontal line.

Stephen J. Graham

**Stephen J. Graham Verified Statement
Appendix A**



THIS MAP WAS PREPARED BY THE TOWN ENGINEER, 2003.
 THE TOWN ENGINEER HAS REVIEWED THE MAP AND
 FOUND IT TO BE CORRECT AND ACCURATE.
 LOCATION OF EXISTING UTILITIES ARE APPROXIMATE. CONNECTION TO
 EXISTING UTILITIES, WATER, SEWER, AND GAS, IS NOT
 GUARANTEED BY THE TOWN.

LINE OF OLD ROBERTS ROAD
 (SEE MAP FOR LOCATION)

Graham V.S. Appendix A



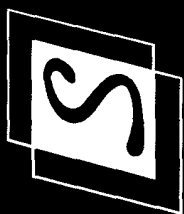
Figure STB-1	EXISTING CONDITIONS PLAN OF LAND OLIN CORPORATION WILMINGTON, MA		DANA F. PERKINS, INC. Consulting Engineers & Land Surveyors 100 STATE STREET WILMINGTON, MA 01897	
	NOT TO SCALE DATE OCTOBER 25, 2003	JOB NO. ME-2003	PREPARED FOR OLIN CORPORATION WILMINGTON, MA 01897	PREPARED BY DANA F. PERKINS, INC.



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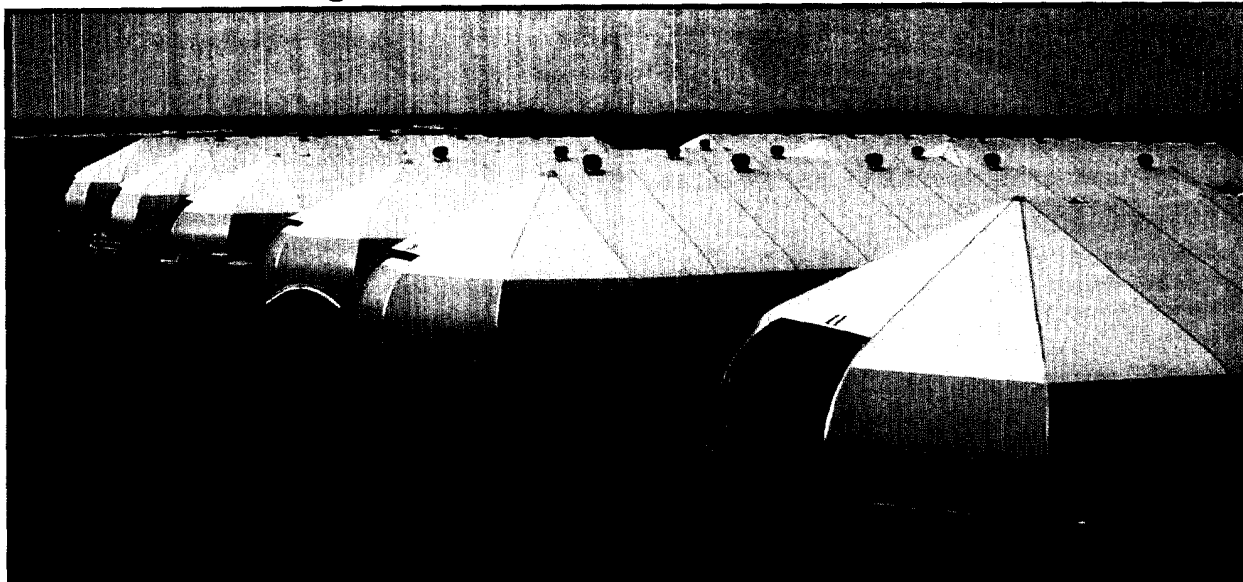
**Stephen J. Graham Verified Statement
Appendix B**

SPRUNG INSTANT STRUCTURES



Stressed Membrane Structure Technology

Add Additional Warehousing Capacity Immediately Utilizing Relocatable Building Technology



The Sprung Advantage

FULLY RELOCATABLE & EXPANDABLE

- Ability to disassemble, move, reconfigure or expand.
- Maximum flexibility for long term growth.
- Modular in design, sections can be added to increase capacity.
- Optional fiberglass insulation packages available.

IMMEDIATE DELIVERY FROM INVENTORY

- Large inventory means faster delivery and project completion.
- Widths 30' to 200' by any length.

FLEXIBLE LEASING WITH PURCHASE OPTION

- A variety of in house leasing alternatives are available.
- Purchase option programs allow customers to apply a significant percentage of lease payments to the purchase price.

NO FOUNDATIONS REQUIRED

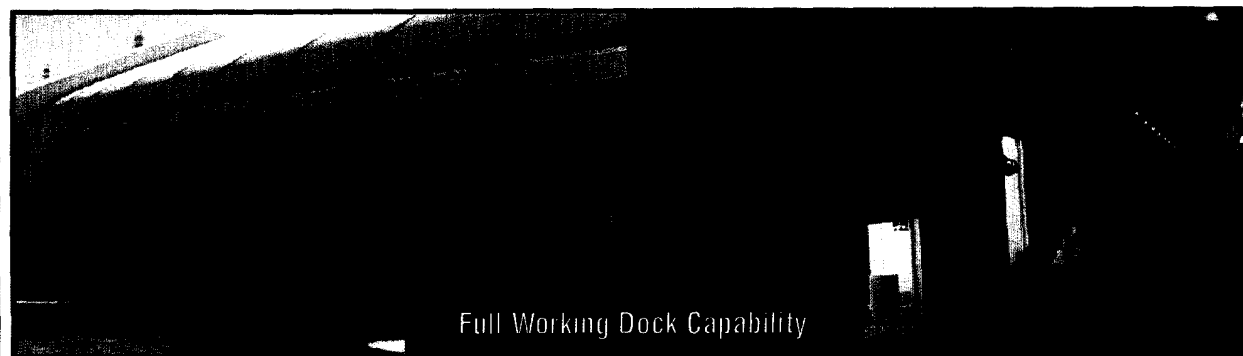
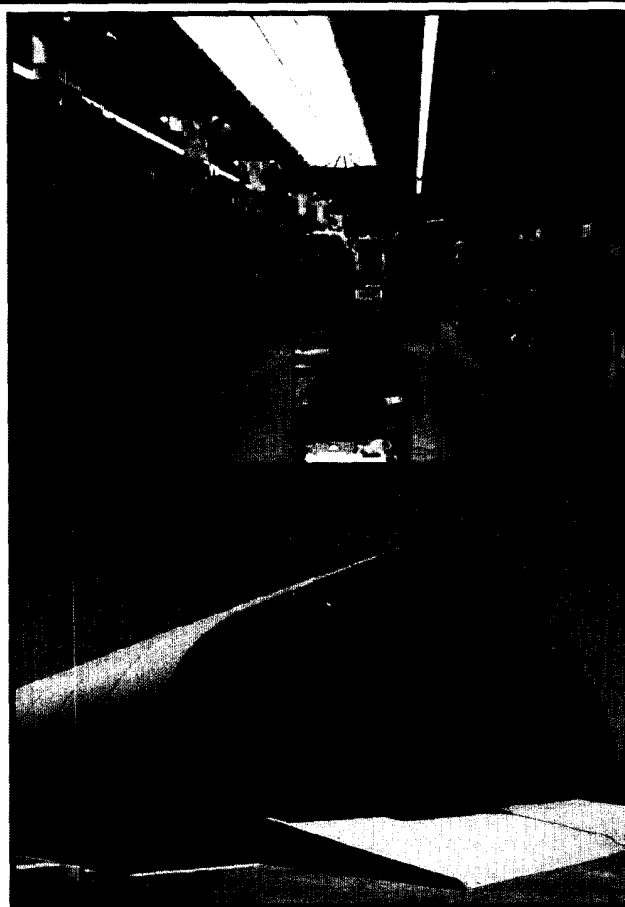
- Provided appropriate soil conditions exist, Sprung structures require no subsurface foundations for structures up to 130 feet wide.

LARGE CARGO DOORS

- A variety of large cargo doors available.

GUARANTEE

- Structures include a conditional pro-rata guarantee of 30 years on the aluminum substructure and up to 20 years on the architectural membrane.

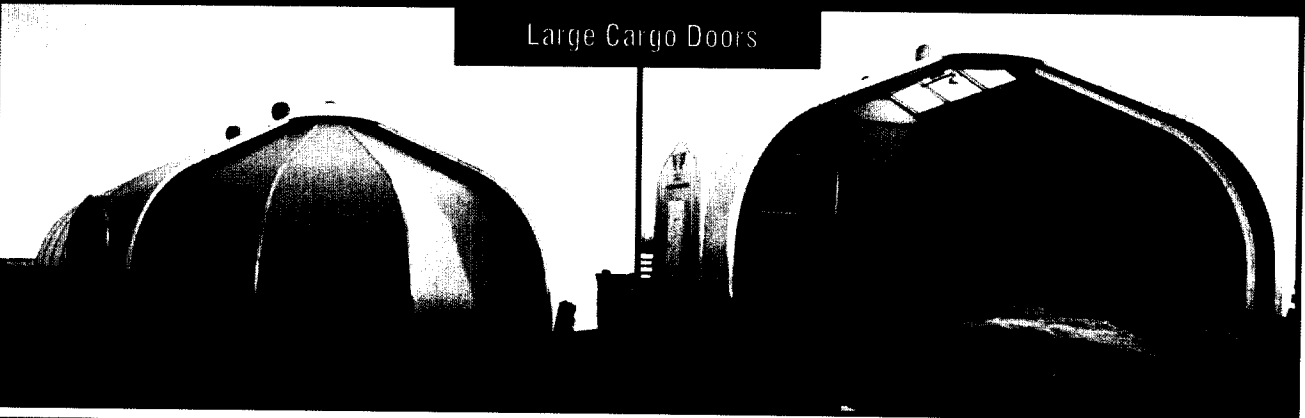


Full Working Dock Capability

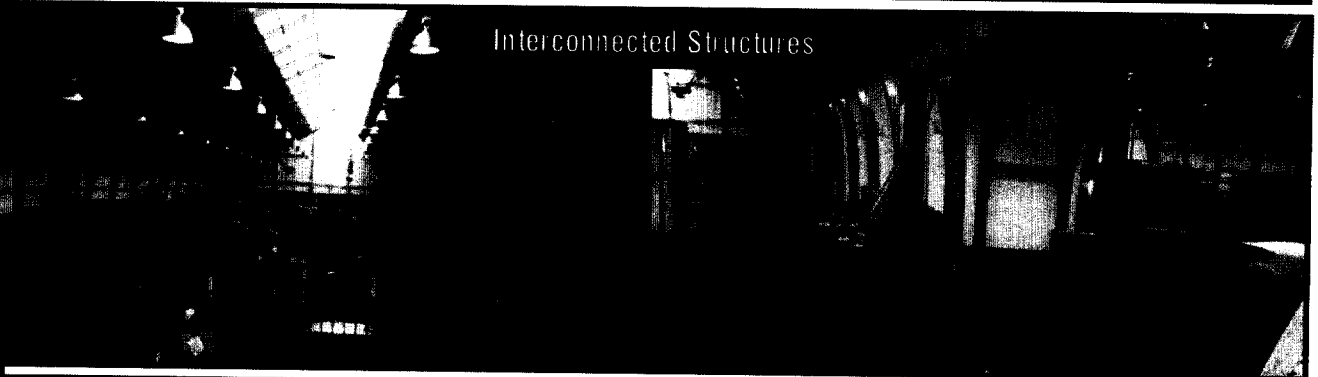
130' x 160' Bulk Storage Facility



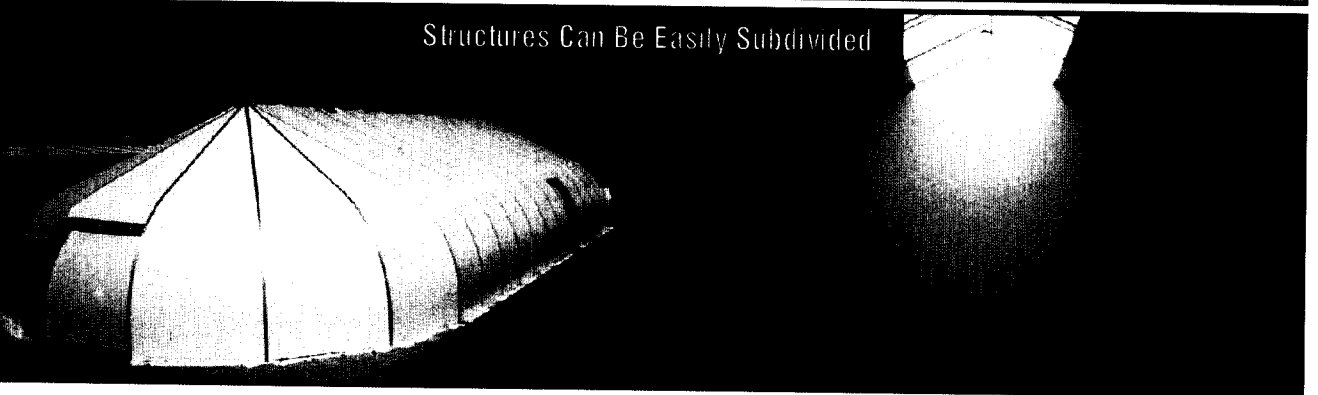
Large Cargo Doors



Interconnected Structures



Structures Can Be Easily Subdivided



Sprung Instant Structures

www.sprung.com

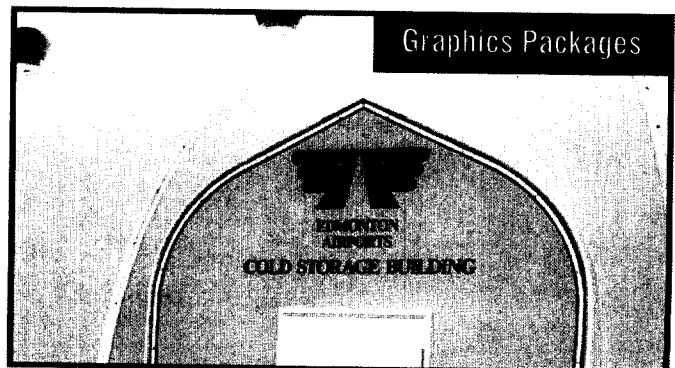
North America Toll Free: 1-800-528-9899

US Direct Dial: 801-280-1555

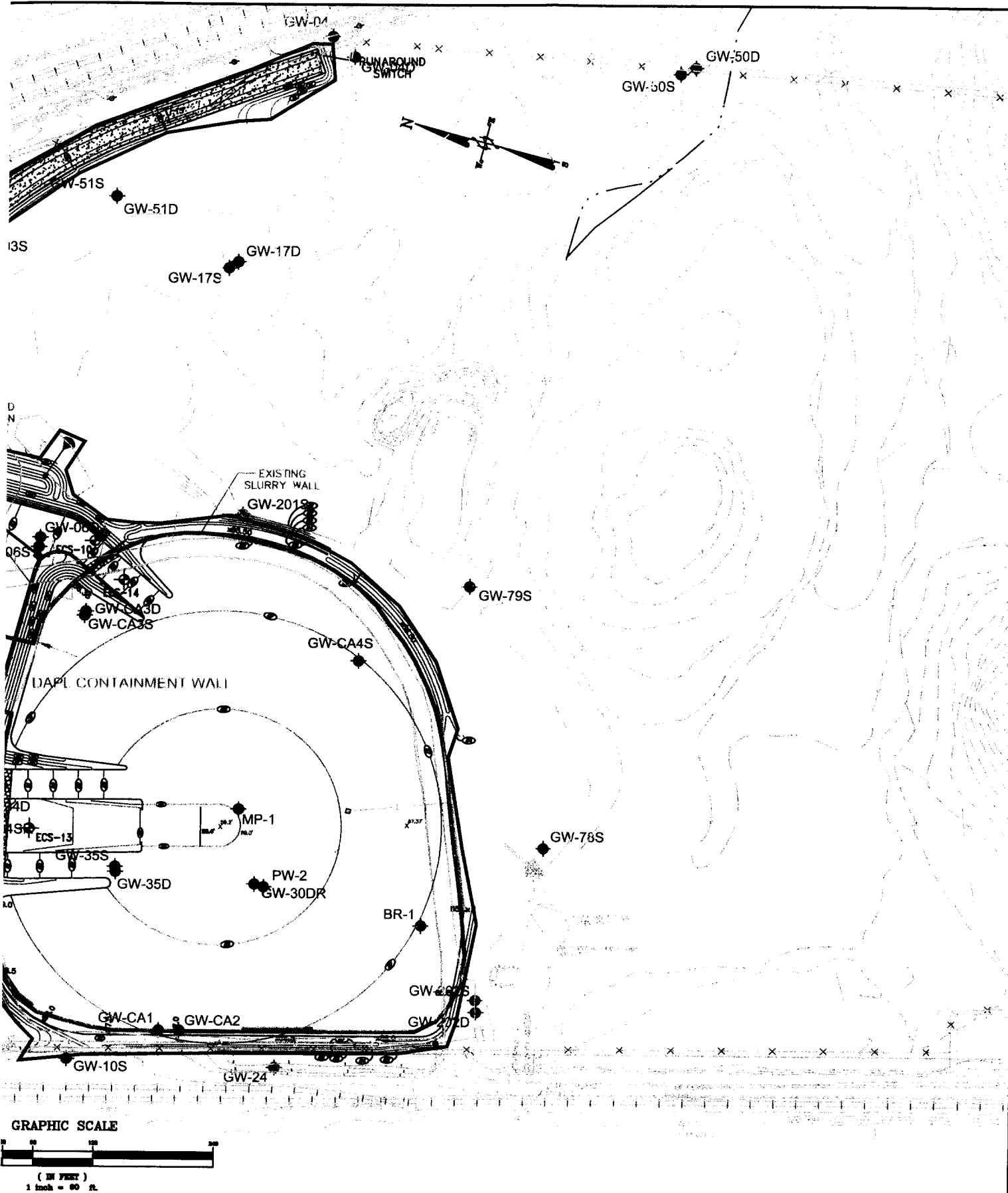
Canada Direct Dial: 403-245-3371

Allentown Atlanta Calgary Houston Indianapolis
Los Angeles Minneapolis Toronto
San Francisco Salt Lake City

Graphics Packages



**Stephen J. Graham Verified Statement
Appendix C**



PROJECT TITLE: NEW ENGLAND TRANSRAIL, LLC 51 Eames Street Wilmington, MA			SHEET TITLE: NET DEVELOPMENT AREA SITE LAYOUT			
FILE NO.	PROJECT NO.	SCALE	APPROVED BY	CHECKED BY	DRAWN BY	DATE
SITE FIGURES.DWG	05-201424	AS SHOWN	ND	ND	MK	11-01-2005


Environmental Compliance Services, Inc.
 607 North Avenue Suite 11
 Wakefield, MA 01880
 Phone: 781-946-8887 Fax: 781-946-8880

Figure
STB-2

Stephen J. Graham Verified Statement
Appendix D

October 17, 2005

Mr. Christopher Pyott, Environmental Analyst
Department of Environmental Protection
Northeast Regional Office
Bureau of Waste Site Cleanup
One Winter Street
Boston, MA 02108

Dear Mr. Pyott:

**Subject: Modification of Construction Related Release Abatement Measure (RAM) Plan
51 Eames Street Property
Wilmington, MA
RTN 3-0471**

The purpose of this letter is to present a modification to the Construction Related Release Abatement Measure (RAM) Plan for the Former Olin Facility, at 51 Eames Street in Wilmington, Massachusetts, which was submitted to the Massachusetts Department of Environmental Protection (MADEP) on November 19, 2004. We respectfully request that MADEP consider the modifications to the development plan, as presented in this letter, in its review and approval of the Construction Related RAM Plan.

In accordance with 310 CMR 40.0444, this RAM Plan modification has been reviewed by the Licensed site Professional (LSP) for the project, and is submitted with a RAM Transmittal Form (BWSC-106), signed by the LSP of Record.

Summary of Modification

The Construction Related RAM Plan, cited above, was prepared on behalf of New England Transrail (NET), LLC, for a proposed redevelopment of a portion of the 51 Eames Street Property. The RAM Plan was supported by a previous submittal, the Focused Site Characterization and Risk Assessment of the 51 Eames Street Property, dated October 2004 that was prepared by MACTEC Consultants and Engineers.

The RAM Plan was supplemented with a submittal to MADEP titled: "Response to Town of Wilmington Comments, and Supplemental Information" dated February 3, 2005. That document presented details regarding the installation of a permanent cap over the subsurface containment structure at the property.

Since the submittal of the above referenced documents, a modification has been made to New England Transrail's development plan. This change involves:

- The elimination of the three proposed rail sidings onto the Dense Aqueous Phase Liquid (DAPL) Containment Area. The sidings will terminate at runaround switches in the vicinity of the soil-bentonite slurry cutoff trench which surrounds the DAPL Containment Area. The two truck access ramps at the north crossing, which when constructed will provide access onto the permanent cap to be installed over the Containment Area, will remain as originally submitted in the RAM Plan dated November 18, 2004.

*Modification of Construction Related Release Abatement Measure (RAM) Plan
51 Eames Street Property, Wilmington, MA
RTN 3-0471
October 17, 2005
Page 2 of 2*



Accordingly, Figures 2 and 3 of the RAM Plan, which depict the key elements of the proposed development, have been modified. Updated Figures 2 and 3, which now reflect the elimination of track over the containment area, are attached to this letter.

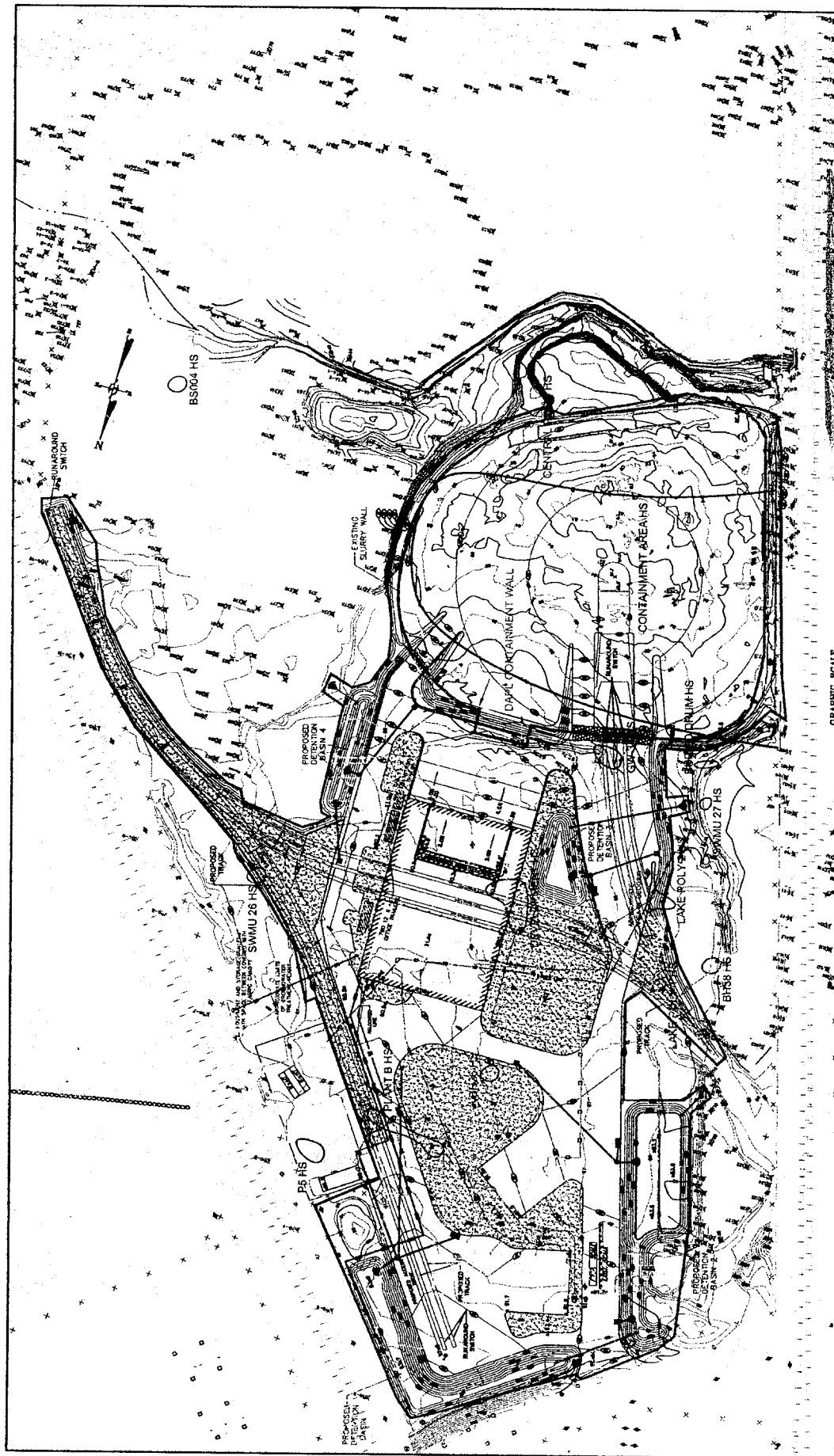
Since the proposed modification eliminates the installation of three rail sidings onto the DAPL Containment Area after the permanent cap is installed, and the proposed operations to be conducted on the cap remains unchanged (Materials Storage Area), it is my opinion as NET's LSP for this Construction RAM Plan, that the above modification to the NET Development Area does not alter the assumptions regarding site conditions presented in the Focused Site Characterization and Focused Risk Assessment for the Olin Property dated October 2004. This surficial modification will not alter surface water, groundwater, or soil management procedures, waste treatment systems, or confirmatory sampling procedures described in the RAM Plan. This modification to the development plan does not require changes in the design of the proposed cap for the containment area, as described in the submittal dated February 3, 2005. No additional permits or approvals will be required as a result of this modification.

If you have any questions regarding the information presented in this letter, please contact Rob Jones of NET at 973-930-8041.

Sincerely,
LFR Inc.

Stephen J. Graham, PE, LSP
Project Manager

Copy: Nicholas C. D'Agostino, PE, ECS, Inc.
Steve Morrow, Olin Corporation
Margret Hanley, LSP, Sleeman Hanley & DiNitto, Inc.
Eric Axelrod, MACTEC
Michael Caira, Wilmington Town Manager
John Curran, Woburn Mayor
Dan Stone, Geomega
Greg Erikson, Wilmington Board of Health
Jack Fralick, Woburn Board of Health
Christine Stewart, Director, Wilmington Memorial Library
Robert Jones III, New England Transrail, LLC
Ronald Klempner, New England Transrail, LLC



PLAN LEGEND:

- PROPOSED DETENTION BASIN
- PROPOSED TRACK
- EXISTING SLURRY WALL
- CONTAINMENT AREA
- PROPOSED STATION
- PROPOSED DETENTION BASIN
- PROPOSED TRACK
- EXISTING SLURRY WALL
- CONTAINMENT AREA
- PROPOSED STATION

NOTES:

1. BASE PLAN PROVIDED BY DATA F. FORD, INC.
2. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

PROPOSED BUILDING LOCATION

AREAS WITHIN NET DEVELOPMENT AREA TO BE COVERED WITH LANDSCAPE GRAVEL OR PAVING MATERIAL

AREAS WITHIN NET DEVELOPMENT AREA TO BE COVERED WITH LANDSCAPE GRAVEL OR PAVING MATERIAL

AREAS WITHIN NET DEVELOPMENT AREA TO BE COVERED WITH LANDSCAPE GRAVEL OR PAVING MATERIAL

GRAPHIC SCALE

1" = 100'

1" = 100'

1" = 100'

PROJECT TITLE: NEW ENGLAND TRANSRAIL LLC 51 Eames Street Wilmington, MA		SHEET TITLE: NET DEVELOPMENT AREA SITE LAYOUT	
DATE 10-15-08	DESIGNED BY ND	CHECKED BY CS	DATE 10-15-08
PROJECT NO. 05-201424		AS SHOWN	
SHEET FIGURES DWG			



Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup

BWSC106

RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

Release Tracking Number

3.0 - 0471

Pursuant to 310 CMR 40.0444 - 0446 (Subpart D)

A. SITE LOCATION:

1. Site Name/Location Aid: Former Olin Corporation Facility

2. Street Address: 51 Eames Street

3. City/Town: Wilmington

4. ZIP Code: 01880-3369

☒ 5. Check here if a Tier Classification Submittal has been provided to DEP for this disposal site.

☒ a. Tier IA ☐ b. Tier IB ☐ c. Tier IC ☐ d. Tier II

6. If a Tier I Permit has been issued, provide Permit Number: 83004

B. THIS FORM IS BEING USED TO: (check all that apply)

1. List Submittal Date of Initial RAM Written Plan (if previously submitted): _____
(mm/dd/yyyy)

☐ 2. Submit an Initial Release Abatement Measure (RAM) Plan.

☐ a. Check here if this RAM Plan received previous oral approval from DEP as a continuation of a Limited Removal Action (LRA).

b. List Date of Oral Approval: _____
(mm/dd/yyyy)

☒ 3. Submit a Modified RAM Plan of a previously submitted written RAM Plan.

☐ 4. Submit a RAM Status Report.

☐ 5. Submit a RAM Completion Statement.

☐ 6. Submit a Revised RAM Completion Statement.

7. Provide Additional RTNs:

☐ a. Check here if this RAM Submittal covers additional Release Tracking Numbers (RTNs). RTNs that have been previously linked to a Primary Tier Classified RTN do not need to be listed here. This section is intended to allow a RAM to cover more than one unclassified RTN and not show permanent linkage to a Primary Tier Classified RTN.

b. Provide the additional Release Tracking Number(s) covered by this RAM Submittal.

☐ - ☐ -

(All sections of this transmittal form must be filled out unless otherwise noted above)



Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup

BWSC106

RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

Release Tracking Number

3.0 - 0471

Pursuant to 310 CMR 40.0444 - 0446 (Subpart D)

C. RELEASE OR THREAT OF RELEASE CONDITIONS THAT WARRANT RAM:

1. Identify Media Impacted and Receptors Affected: (check all that apply)

- ☐ a. Air ☐ b. Basement ☐ c. Critical Exposure Pathway ☒ d. Groundwater ☐ e. Residence
☐ f. Paved Surface ☐ g. Private Well ☐ h. Public Water Supply ☐ i. School ☒ j. Sediments
☒ k. Soil ☐ l. Storm Drain ☒ m. Surface Water ☐ n. Unknown ☒ o. Wetland ☐ p. Zone 2
☐ q. Others Specify: _____

2. Identify all sources of the Release or Threat of Release, if known: (check all that apply)

- ☐ a. Above-ground Storage Tank (AST) ☐ b. Boat/Vessel ☐ c. Drums ☐ d. Fuel Tank
☐ e. Pipe/Hose/Line ☐ f. Tanker Truck ☐ g. Transformer ☐ h. Under-ground Storage Tank (UST)
☐ i. Vehicle ☒ j. Others Specify: Historical operations and on-site waste disposal

3. Identify Oils and Hazardous Materials Released: (check all that apply)

- ☒ a. Oils ☐ b. Chlorinated Solvents ☒ c. Heavy Metals
☒ d. Others Specify: Phthalates, Trimethylpentenes, NDMA

D. DESCRIPTION OF RESPONSE ACTIONS: (check all that apply, for volumes list cumulative amounts)

- | | |
|--|---|
| ☐ 1. Assessment and/or Monitoring Only | ☒ 2. Temporary Covers or Caps |
| ☐ 3. Deployment of Absorbent or Containment Materials | ☐ 4. Temporary Water Supplies |
| ☐ 5. Structure Venting System | ☐ 6. Temporary Evacuation or Relocation of Residents |
| ☐ 7. Product or NAPL Recovery | ☐ 8. Fencing and Sign Posting |
| ☐ 9. Groundwater Treatment Systems | ☐ 10. Soil Vapor Extraction |
| ☐ 11. Bioremediation | ☐ 12. Air Sparging |
| ☒ 13. Excavation of Contaminated Soils | |

☒ a. Re-use, Recycling or Treatment ☒ i. On Site Estimated volume in cubic yards 16,000

☐ ii. Off Site Estimated volume in cubic yards _____

ii. Receiving Facility: _____ Town: _____ State: _____

ii. Receiving Facility: _____ Town: _____ State: _____

iii. Describe: Soil to be used for regrading DAPL containment area prior to perm. cap installatn



Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup

BWSC106

RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

Release Tracking Number

3.0 - 0471

Pursuant to 310 CMR 40.0444 - 0446 (Subpart D)

D. DESCRIPTION OF RESPONSE ACTIONS (cont.): (check all that apply, for volumes list cumulative amounts)

☐ b. Store

☐ i. On Site Estimated volume in cubic yards _____

☐ ii. Off Site Estimated volume in cubic yards _____

 iia. Receiving Facility: _____ Town: _____ State: _____

 iib. Receiving Facility: _____ Town: _____ State: _____

☐ c. Landfill

☐ i. Cover Estimated volume in cubic yards _____

 Receiving Facility: _____ Town: _____ State: _____

☐ ii. Disposal Estimated volume in cubic yards _____

 Receiving Facility: _____ Town: _____ State: _____

☐ 14. Removal of Drums, Tanks or Containers:

 a. Describe Quantity and Amount: _____

 b. Receiving Facility: _____ Town: _____ State: _____

 c. Receiving Facility: _____ Town: _____ State: _____

☐ 15. Removal of Other Contaminated Media:

 a. Specify Type and Volume: _____

 b. Receiving Facility: _____ Town: _____ State: _____

 c. Receiving Facility: _____ Town: _____ State: _____

☐ 16. Other Response Actions:

 Describe: _____

☐ 17. Use of Innovative Technologies:

 Describe: _____



Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup

BWSC106

RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

Release Tracking Number

3.0 - 0471

Pursuant to 310 CMR 40.0444 - 0446 (Subpart D)

E. LSP SIGNATURE AND STAMP :

I attest under the pains and penalties of perjury that I have personally examined and am familiar with this transmittal form, including any and all documents accompanying this submittal. In my professional opinion and judgment based upon application of (i) the standard of care in 309 CMR 4.02(1), (ii) the applicable provisions of 309 CMR 4.02(2) and (3), and 309 CMR 4.03(2), and (iii) the provisions of 309 CMR 4.03(3), to the best of my knowledge, information and belief,

> if Section B of this form indicates that a **Release Abatement Measure Plan** is being submitted, the response action(s) that is (are) the subject of this submittal (i) has (have) been developed in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (iii) comply(ies) with the identified provisions of all orders, permits, and approvals identified in this submittal;

> if Section B of this form indicates that a **Release Abatement Measure Status Report** is being submitted, the response action(s) that is (are) the subject of this submittal (i) is (are) being implemented in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (iii) comply(ies) with the identified provisions of all orders, permits, and approvals identified in this submittal;

> if Section B of this form indicates that a **Release Abatement Measure Completion Statement** is being submitted, the response action(s) that is (are) the subject of this submittal (i) has (have) been developed and implemented in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (iii) comply(ies) with the identified provisions of all orders, permits, and approvals identified in this submittal;

I am aware that significant penalties may result, including, but not limited to, possible fines and imprisonment, if I submit information which I know to be false, inaccurate or materially incomplete.

1. LSP #: 6421

2. First Name: Stephen

3. Last Name: Graham

4. Telephone: (978) 659-0017

5. Ext.: _____

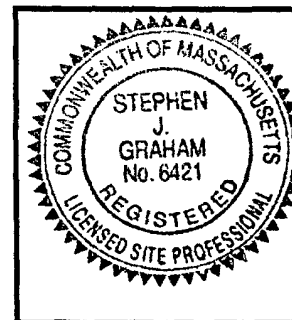
6. FAX: (978) 659-0069

7. Signature: Stephen J. Graham

8. Date: 10/14/2005

(mm/dd/yyyy)

9. LSP Stamp:





Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup

BWSC106

RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

Release Tracking Number

3.0 - 0471

Pursuant to 310 CMR 40.0444 - 0446 (Subpart D)

F. PERSON UNDERTAKING RAM:

1. Check all that apply: ☐ a. change in contact name ☐ b. change of address ☒ c. change in the person undertaking response actions
2. Name of Organization: New England Transrail, LLC
3. Contact First Name: Robert 4. Last Name: Jones, III
5. Street: 24 River Road, Suite 19 6. Title: Managing Principal
7. City/Town: Clifton 8. State: NJ 9. ZIP Code: 07014-0000
10. Telephone: 973-777-4461 11. Ext.: 12. FAX: (973)-470-9234

G. RELATIONSHIP TO RELEASE OR THREAT OF RELEASE OF PERSON UNDERTAKING RAM:

- ☐ 1. RP or PRP ☐ a. Owner ☐ b. Operator ☐ c. Generator ☐ d. Transporter
- ☐ e. Other RP or PRP Specify:
- ☐ 2. Fiduciary, Secured Lender or Municipality with Exempt Status (as defined by M.G.L. c. 21E, s. 2)
- ☐ 3. Agency or Public Utility on a Right of Way (as defined by M.G.L. c. 21E, s. 5(j))
- ☒ 4. Any Other Person Undertaking RAM Specify Relationship: Purchaser of property for redevelopment

H. REQUIRED ATTACHMENT AND SUBMITTALS:

- ☐ 1. Check here if any Remediation Waste, generated as a result of this RAM, will be stored, treated, managed, recycled or reused at the site following submission of the RAM Completion Statement. You must submit a Phase IV Remedy Implementation Plan along with the appropriate transmittal form (BWSC108).
- ☐ 2. Check here if the Response Action(s) on which this opinion is based, if any, are (were) subject to any order(s), permit(s) and/or approval(s) issued by DEP or EPA. If the box is checked, you MUST attach a statement identifying the applicable provisions thereof.
- ☐ 3. Check here to certify that the Chief Municipal Officer and the Local Board of Health have been notified of the implementation of a Release Abatement Measure.
- ☐ 4. Check here if any non-updatable information provided on this form is incorrect, e.g. Release Address/Location Aid. Send corrections to the DEP Regional Office.
- ☐ 5. If a RAM Compliance Fee is required for this RAM, check here to certify that a RAM Compliance Fee was submitted to DEP, P. O. Box 4062, Boston, MA 02211.
- ☒ 6. Check here to certify that the LSP Opinion containing the material facts, data, and other information is attached.



Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup

BWSC106

RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

Release Tracking Number

3.0 - 0471

Pursuant to 310 CMR 40.0444 - 0446 (Subpart D)

I. CERTIFICATION OF PERSON UNDERTAKING RAM:

1. I, Robert Jones, III, attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this transmittal form, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the entity legally responsible for this submittal. I/the person or entity on whose behalf this submittal is made am/is aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information.

2. By: [Signature] 3. Title: Managing Principal
Signature

4. For: New England Transrail, LLC 5. Date: 10-17-2005
(Name of person or entity recorded in Section F) (mm/dd/yyyy)

☐ 6. Check here if the address of the person providing certification is different from address recorded in Section F.

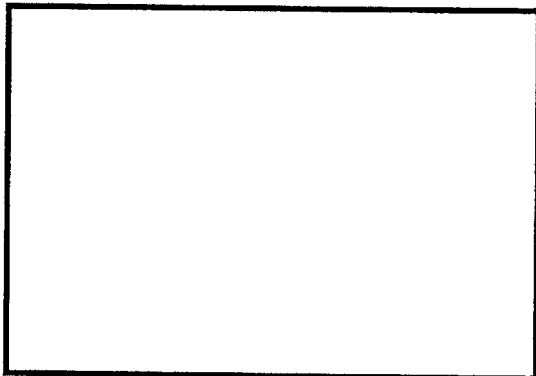
7. Street: SECTION F

8. City/Town: AS 9. State: MA 10. ZIP Code: 01901

11. Telephone: SAME 12. Ext.: AS 13. FAX: AS

YOU MUST LEGIBLY COMPLETE ALL RELEVANT SECTIONS OF THIS FORM OR DEP MAY
RETURN THE DOCUMENT AS INCOMPLETE. IF YOU SUBMIT AN INCOMPLETE FORM, YOU
MAY BE PENALIZED FOR MISSING A REQUIRED DEADLINE.

Date Stamp (DEP USE ONLY:)



October 17, 2005

Mr. Christopher Pyott, Environmental Analyst
Department of Environmental Protection
Northeast Regional Office
Bureau of Waste Site Cleanup
One Winter Street
Boston, MA 02108

Dear Mr. Pyott:

**Subject: Modification of Construction Related Release Abatement Measure (RAM) Plan
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Wilmington, MA
RTN 3-0471**

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*Modification of Construction Related Release Abatement Measure (RAM) Plan
51 Eames Street Property, Wilmington, MA
RTN 3-0471
October 17, 2005
Page 2 of 2*



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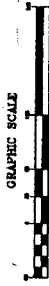
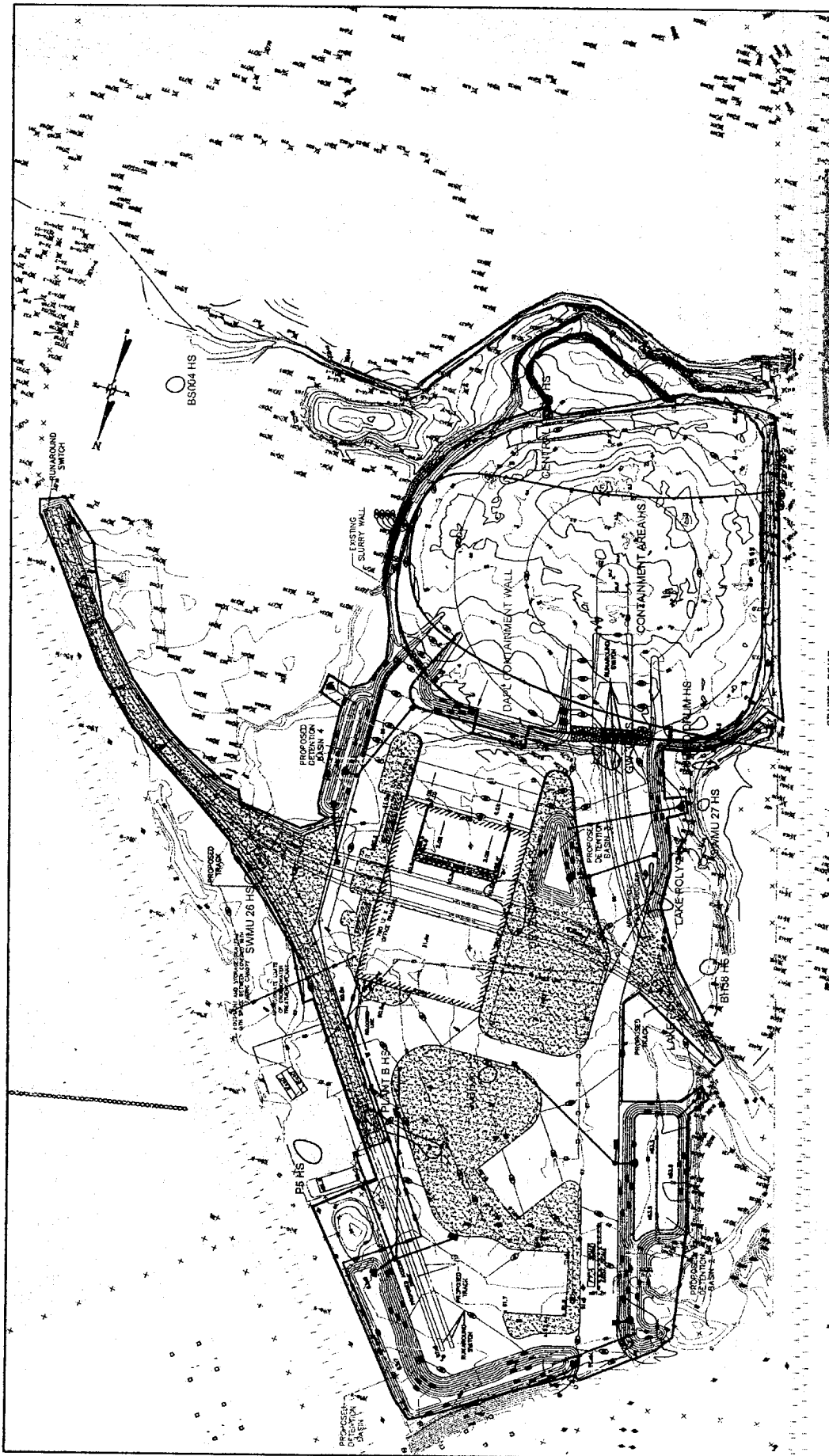
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If you have any questions regarding the information presented in this letter, please contact Rob Jones of NET at 973-930-8041.

Sincerely,
LFR Inc.

Stephen J. Graham, PE, LSP
Project Manager

Copy: Nicholas C. D'Agostino, PE, ECS, Inc.
Steve Morrow, Olin Corporation
Margret Hanley, LSP, Sleeman Hanley & DiNitto, Inc.
Eric Axelrod, MACTEC
Michael Caira, Wilmington Town Manager
John Curran, Woburn Mayor
Dan Stone, Geomega
Greg Erikson, Wilmington Board of Health
Jack Fralick, Woburn Board of Health
Christine Stewart, Director, Wilmington Memorial Library
Robert Jones III, New England Transrail, LLC
Ronald Klempner, New England Transrail, LLC



PROPOSED BELONG LOCATION
 AREA WITHIN NET DEVELOPMENT AREA TO BE COVERED WITH
 LANDSCAPE GRAVEL OR PAVING MATERIAL
 ASPHALT PAVED AREAS WITHIN NET DEVELOPMENT AREA
 LIMITS OF PROPOSED NET DEVELOPMENT AREA

NOTES:
 1. BASE PLAN PROVIDED BY DANA F. PARRISH, INC.
 2. SITE LAYOUTS AND DIMENSIONS PROVIDED BY CORNELIUS BARNETT ASSOCIATES, INC.
 3. NOT SHOWN LOCATIONS THEREIN WERE NOT FIELD VERIFIED SITE CHARACTERIZATION
 DATA FOR THE DEVELOPMENT OF THIS PROJECT PLAN

PLANT LEGEND:
 PROPOSED AND UNDERGROUND PIPING
 PROPOSED AND UNDERGROUND WATER LINE
 PROPOSED AND UNDERGROUND NATURAL GAS LINE
 PROPOSED AND UNDERGROUND SANITARY LINE
 PROPOSED REBAR
 NOT SHOWN IN SOIL LOCATION AND DESCRIPTION
 NOT SHOWN IN UNDERGROUND LOCATION AND DESCRIPTION
 SHOWN COORDINATES (E, N, W, S)
 APPROXIMATE AREA OF EXISTING WETLANDS

PLANT HS
 DWS-34 HS

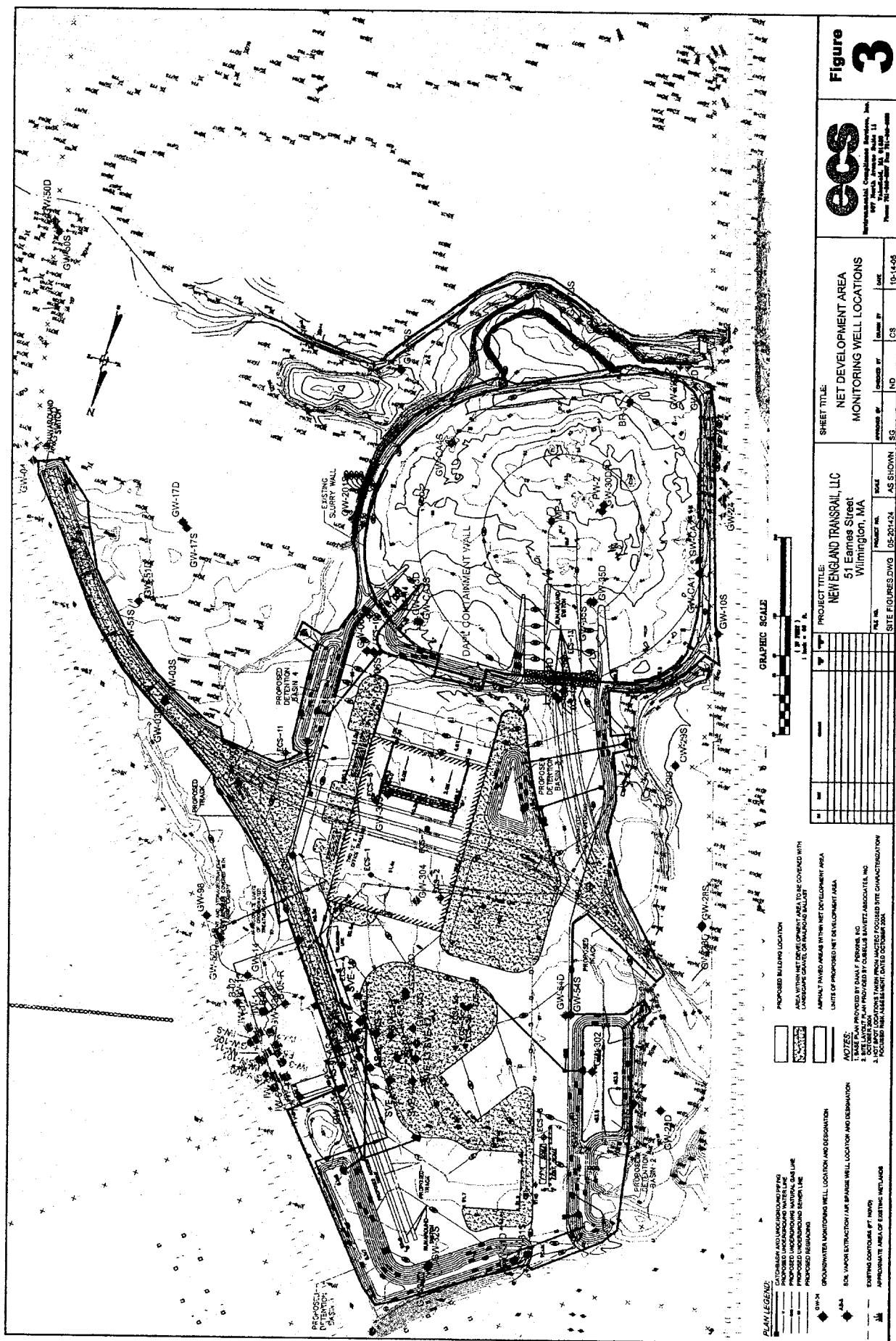
Figure 2



SHEET TITLE:
 NET DEVELOPMENT AREA
 SITE LAYOUT

PROJECT TITLE:
 NEW ENGLAND TRANSPORT, LLC
 51 Eames Street
 Warrington, MA

REV.	DATE	BY	CHKD.	APP'D.	DESCRIPTION
1	10-15-05	CS	NO	SG	SITE FIGURES DWG 05-201-024 AS SHOWN





Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup

BWSC106

RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

Release Tracking Number

3.0 - 0471

Pursuant to 310 CMR 40.0444 - 0446 (Subpart D)

A. SITE LOCATION:

1. Site Name/Location Aid: Former Olin Corporation Facility

2. Street Address: 51 Eames Street

3. City/Town: Wilmington

4. ZIP Code: 01880-3369

☒ 5. Check here if a Tier Classification Submittal has been provided to DEP for this disposal site.

☒ a. Tier IA ☐ b. Tier IB ☐ c. Tier IC ☐ d. Tier II

6. If a Tier I Permit has been issued, provide Permit Number: 83004

B. THIS FORM IS BEING USED TO: (check all that apply)

1. List Submittal Date of Initial RAM Written Plan (if previously submitted): _____
(mm/dd/yyyy)

☐ 2. Submit an Initial Release Abatement Measure (RAM) Plan.

☐ a. Check here if this RAM Plan received previous oral approval from DEP as a continuation of a Limited Removal Action (LRA).

b. List Date of Oral Approval: _____
(mm/dd/yyyy)

☒ 3. Submit a Modified RAM Plan of a previously submitted written RAM Plan.

☐ 4. Submit a RAM Status Report.

☐ 5. Submit a RAM Completion Statement.

☐ 6. Submit a Revised RAM Completion Statement.

7. Provide Additional RTNs:

☐ a. Check here if this RAM Submittal covers additional Release Tracking Numbers (RTNs). RTNs that have been previously linked to a Primary Tier Classified RTN do not need to be listed here. This section is intended to allow a RAM to cover more than one unclassified RTN and not show permanent linkage to a Primary Tier Classified RTN.

b. Provide the additional Release Tracking Number(s) covered by this RAM Submittal.

☐ - ☐ -

(All sections of this transmittal form must be filled out unless otherwise noted above)



Massachusetts Department of Environmental Protection
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RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

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C. RELEASE OR THREAT OF RELEASE CONDITIONS THAT WARRANT RAM:

1. Identify Media Impacted and Receptors Affected: (check all that apply)

- ☐ a. Air ☐ b. Basement ☐ c. Critical Exposure Pathway ☒ d. Groundwater ☐ e. Residence
☐ f. Paved Surface ☐ g. Private Well ☐ h. Public Water Supply ☐ i. School ☒ j. Sediments
☒ k. Soil ☐ l. Storm Drain ☒ m. Surface Water ☐ n. Unknown ☒ o. Wetland ☐ p. Zone 2
☐ q. Others Specify: _____

2. Identify all sources of the Release or Threat of Release, if known: (check all that apply)

- ☐ a. Above-ground Storage Tank (AST) ☐ b. Boat/Vessel ☐ c. Drums ☐ d. Fuel Tank
☐ e. Pipe/Hose/Line ☐ f. Tanker Truck ☐ g. Transformer ☐ h. Under-ground Storage Tank (UST)
☐ i. Vehicle ☒ j. Others Specify: Historical operations and on-site waste disposal

3. Identify Oils and Hazardous Materials Released: (check all that apply)

- ☒ a. Oils ☐ b. Chlorinated Solvents ☒ c. Heavy Metals
☒ d. Others Specify: Phthalates, Trimethylpentenes, NDMA

D. DESCRIPTION OF RESPONSE ACTIONS: (check all that apply, for volumes list cumulative amounts)

- | | |
|--|---|
| ☐ 1. Assessment and/or Monitoring Only | ☒ 2. Temporary Covers or Caps |
| ☐ 3. Deployment of Absorbent or Containment Materials | ☐ 4. Temporary Water Supplies |
| ☐ 5. Structure Venting System | ☐ 6. Temporary Evacuation or Relocation of Residents |
| ☐ 7. Product or NAPL Recovery | ☐ 8. Fencing and Sign Posting |
| ☐ 9. Groundwater Treatment Systems | ☐ 10. Soil Vapor Extraction |
| ☐ 11. Bioremediation | ☐ 12. Air Sparging |
| ☒ 13. Excavation of Contaminated Soils | |

☒ a. Re-use, Recycling or Treatment ☒ i. On Site Estimated volume in cubic yards 16,000

☐ ii. Off Site Estimated volume in cubic yards _____

iiia. Receiving Facility: _____ Town: _____ State: _____

iiib. Receiving Facility: _____ Town: _____ State: _____

iii. Describe: Soil to be used for regrading DAPL containment area prior to perm. cap installatn



Massachusetts Department of Environmental Protection
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BWSC106

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Release Tracking Number

3.0 - 0471

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D. DESCRIPTION OF RESPONSE ACTIONS (cont): (check all that apply, for volumes list cumulative amounts)

- ☐ b. Store ☐ i. On Site Estimated volume in cubic yards _____
☐ ii. Off Site Estimated volume in cubic yards _____

ii. Receiving Facility: _____ Town: _____ State: _____

ii. Receiving Facility: _____ Town: _____ State: _____

☐ c. Landfill

- ☐ i. Cover Estimated volume in cubic yards _____

Receiving Facility: _____ Town: _____ State: _____

- ☐ ii. Disposal Estimated volume in cubic yards _____

Receiving Facility: _____ Town: _____ State: _____

☐ 14. Removal of Drums, Tanks or Containers:

a. Describe Quantity and Amount: _____

b. Receiving Facility: _____ Town: _____ State: _____

c. Receiving Facility: _____ Town: _____ State: _____

☐ 15. Removal of Other Contaminated Media:

a. Specify Type and Volume: _____

b. Receiving Facility: _____ Town: _____ State: _____

c. Receiving Facility: _____ Town: _____ State: _____

☐ 16. Other Response Actions:

Describe: _____

☐ 17. Use of Innovative Technologies:

Describe: _____



Massachusetts Department of Environmental Protection
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BWSC106

RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

Release Tracking Number

3.0 - 0471

Pursuant to 310 CMR 40.0444 - 0446 (Subpart D)

E. LSP SIGNATURE AND STAMP :

I attest under the pains and penalties of perjury that I have personally examined and am familiar with this transmittal form, including any and all documents accompanying this submittal. In my professional opinion and judgment based upon application of (i) the standard of care in 309 CMR 4.02(1), (ii) the applicable provisions of 309 CMR 4.02(2) and (3), and 309 CMR 4.03(2), and (iii) the provisions of 309 CMR 4.03(3), to the best of my knowledge, information and belief,

> if Section B of this form indicates that a **Release Abatement Measure Plan** is being submitted, the response action(s) that is (are) the subject of this submittal (i) has (have) been developed in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (iii) comply(ies) with the identified provisions of all orders, permits, and approvals identified in this submittal;

> if Section B of this form indicates that a **Release Abatement Measure Status Report** is being submitted, the response action(s) that is (are) the subject of this submittal (i) is (are) being implemented in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (iii) comply(ies) with the identified provisions of all orders, permits, and approvals identified in this submittal;

> if Section B of this form indicates that a **Release Abatement Measure Completion Statement** is being submitted, the response action(s) that is (are) the subject of this submittal (i) has (have) been developed and implemented in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (iii) comply(ies) with the identified provisions of all orders, permits, and approvals identified in this submittal:

I am aware that significant penalties may result, including, but not limited to, possible fines and imprisonment, if I submit information which I know to be false, inaccurate or materially incomplete.

1. LSP #: 6421

2. First Name: Stephen

3. Last Name: Graham

4. Telephone: (978) 659-0017

5. Ext.: _____

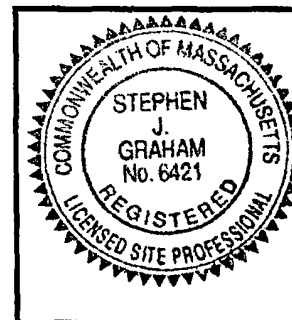
6. FAX: (978) 659-0069

7. Signature: Stephen J. Graham

8. Date: 10/14/2005

(mm/dd/yyyy)

9. LSP Stamp:





Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup

BWSC106

RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

Release Tracking Number

3.0 - 0471

Pursuant to 310 CMR 40.0444 - 0446 (Subpart D)

F. PERSON UNDERTAKING RAM:

1. Check all that apply: ☐ a. change in contact name ☐ b. change of address ☒ c. change in the person undertaking response actions

2. Name of Organization: New England Transrail, LLC

3. Contact First Name: Robert

4. Last Name: Jones, III

5. Street: 24 River Road, Suite 19

6. Title: Managing Principal

7. City/Town: Clifton

8. State: NJ

9. ZIP Code: 07014-0000

10. Telephone: (973) 977-4461

11. Ext.: _____

12. FAX: (973) 470-9234

G. RELATIONSHIP TO RELEASE OR THREAT OF RELEASE OF PERSON UNDERTAKING RAM:

☐ 1. RP or PRP ☐ a. Owner ☐ b. Operator ☐ c. Generator ☐ d. Transporter

☐ e. Other RP or PRP Specify: _____

☐ 2. Fiduciary, Secured Lender or Municipality with Exempt Status (as defined by M.G.L. c. 21E, s. 2)

☐ 3. Agency or Public Utility on a Right of Way (as defined by M.G.L. c. 21E, s. 5(j))

☒ 4. Any Other Person Undertaking RAM Specify Relationship: Purchaser of property for redevelopment

H. REQUIRED ATTACHMENT AND SUBMITTALS:

☐ 1. Check here if any Remediation Waste, generated as a result of this RAM, will be stored, treated, managed, recycled or reused at the site following submission of the RAM Completion Statement. You must submit a Phase IV Remedy Implementation Plan along with the appropriate transmittal form (BWSC108).

☐ 2. Check here if the Response Action(s) on which this opinion is based, if any, are (were) subject to any order(s), permit(s) and/or approval(s) issued by DEP or EPA. If the box is checked, you MUST attach a statement identifying the applicable provisions thereof.

☐ 3. Check here to certify that the Chief Municipal Officer and the Local Board of Health have been notified of the implementation of a Release Abatement Measure.

☐ 4. Check here if any non-updatable information provided on this form is incorrect, e.g. Release Address/Location Aid. Send corrections to the DEP Regional Office.

☐ 5. If a RAM Compliance Fee is required for this RAM, check here to certify that a RAM Compliance Fee was submitted to DEP, P. O. Box 4062, Boston, MA 02211.

☒ 6. Check here to certify that the LSP Opinion containing the material facts, data, and other information is attached.



Massachusetts Department of Environmental Protection
Bureau of Waste Site Cleanup

BWSC106

RELEASE ABATEMENT MEASURE (RAM)
TRANSMITTAL FORM

Release Tracking Number

3.0 - 0471

Pursuant to 310 CMR 40.0444 - 0446 (Subpart D)

I. CERTIFICATION OF PERSON UNDERTAKING RAM:

1. I, Robert Jones, III, attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this transmittal form, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the entity legally responsible for this submittal. I/the person or entity on whose behalf this submittal is made am/is aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information.

2. By: [Signature]

Signature

3. Title: Managing Principal

4. For: New England Transrail, LLC

(Name of person or entity recorded in Section F)

5. Date: 10-17-2005
(mm/dd/yyyy)

☐ 6. Check here if the address of the person providing certification is different from address recorded in Section F.

7. Street: _____

8. City/Town: _____

9. State: _____

10. ZIP Code: _____

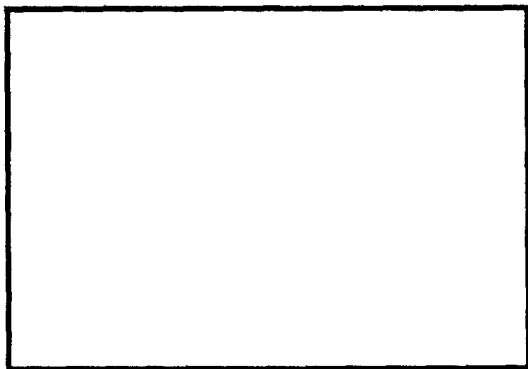
11. Telephone: SAME AS SECTION F

12. Ext.: _____

13. FAX: _____

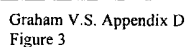
YOU MUST LEGIBLY COMPLETE ALL RELEVANT SECTIONS OF THIS FORM OR DEP MAY
RETURN THE DOCUMENT AS INCOMPLETE. IF YOU SUBMIT AN INCOMPLETE FORM, YOU
MAY BE PENALIZED FOR MISSING A REQUIRED DEADLINE.

Date Stamp (DEP USE ONLY:)



**Stephen J. Graham Verified Statement
Appendix D**

Figures 2 and 3



Verified Statement of
John C. Ryan

1. My name is John Ryan. My office address is 31 Tamarack Road, Mahopac, New York, 10541. I have 30 years experience designing facilities for the handling and transportation of materials for the waste industry. I have participated in the design of the rail and transloading facilities proposed to be installed by NET on the premises known as 51 Eames Street in Wilmington, Massachusetts ("NET's Facility").

2. The facilities proposed by NET are "state of the art" within the railroad transloading industry. NET has taken demonstrated machinery and material handling techniques and applied them to its rail car loading facilities for the purpose of improving the efficiency of its operations.

3. The goal of the design was to provide NET with maximum operational flexibility to allow it to handle a variety of commodities at the same time. By creating an efficient facility, NET can accommodate more customers and handle a greater variety of commodities within a relatively small space.

4. NET's Facility will provide access to rail transportation to customers who are now denied that service because there is either a lack of rail system capacity in the region north of Boston or because such customers may lack their own rail sidings, or both.

5. Among other bulk materials that NET will handle are construction and demolition debris ("C&D") and municipal solid waste ("MSW"). At the outset, it should be understood that all waste handling activities will be conducted in an enclosed structure that NET calls the "Transloading Structure." C&D is the material resulting from construction or demolition of buildings after removal of some of the recyclable materials. It can consist of anything from large

pieces of reinforced concrete to small cedar shingles. There is a tremendous variation in its weight and density. Large dense pieces such as concrete can damage rail equipment if its size is not reduced before loading. Furthermore, loading large pieces of C&D can create large void spaces in a rail car or container. In order to avoid damage to the rail cars, more effectively balance loads, and reduce void spaces in the rail cars, NET will utilize a shredder to reduce large pieces of C&D to a uniform size which can be then loaded into the rail cars via a conveyor belt system.

6. NET's proposal to shred C&D before loading should be contrasted with the operations of other waste handling facilities which use grapples on loading machinery to partially crush C&D during the process of loading it. However, these heavy machines are neither efficient nor effective at size reduction or compaction. When this type of equipment is used to compact materials for transportation in long distance hauling equipment, the force from the blows intended to crush the materials to eliminate the void space ends up being transmitted to the transport vehicle's walls, causing substantial damage. This is in addition to the damage caused by impact from collisions between the loading machinery and the top chord of the rail cars and rail containers. Indeed, railway equipment devoted to moving C&D has a much higher incidence of downtime because it is necessary to repair badly damaged car sides. NET's goal in shredding C&D is to eliminate these damages and delays. Car damage should be nearly eliminated by shredding outside of the railcar as C&D becomes more uniform in size, voids become fewer, and loading becomes more efficient.

7. Shredding also facilitates the delivery of more economical payloads. Shredding will allow NET to load its rail cars to their full design capacity, evenly and with no car damage.

This will maximize the amount of material which can be shipped using the available fleet of cars and will maximize the amount of material that can be loaded at NET's Facility.

8. Another factor encouraging shredding is that rail car lessors are beginning to decline to lease equipment to C&D haulers due to excessive car damage. Shredding ultimately may become a contractual requirement for leasing rail cars to transport C&D.

9. With respect to MSW, the design of NET's Facility incorporates a baler and associated conveyor equipment. Like the shredder for C&D, the goal of the MSW baler is to increase transportation efficiency.

10. Unlike C&D, MSW is generally light in weight. Therefore, transportation equipment is rarely loaded to its full design capacity. In the waste industry, wheeled loading equipment is used to compress this material in the rail car or container. This results in high levels of damage, as the loading equipment strikes the sides of the rail car or container in its attempt to hammer the material down. In contrast, a baler compresses the MSW into small, heavy, tight and easy to handle packages. Simply stated, the baler presses a large volume of loose material into a very small space. (A photograph of baled MSW is attached as Appendix A.) These bales can then be gently placed in any type of rail equipment with a small crane or a forklift. Damage to the rail car is thus eliminated. The compaction also maximizes the use of available transportation capacity. The result is a far more efficient transportation system which requires far fewer rail cars.

11. Two other issues raised by the transport of MSW are addressed by baling. These are odor and litter. Odor is reduced as air has free access only to the outer surface of a bale. Litter is eliminated as the bale is tightly bound, with the result that there is no loose material to

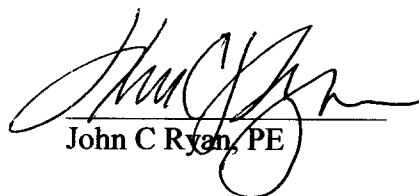
blow out of the car. Thus, with a baled load of MSW, the risk of fugitive litter and odors will be significantly reduced.

12. As stated above, dust will be controlled within the Transloading Structure that will house the C&D and MSW operations. NET will institute odor and dust control measures to prevent any significant impacts beyond the boundaries of its facility. With regard to odors and dust associated with the handling of waste materials, NET's operations shall comply with the technical specifications for the mitigation and control of dust and odors set forth by the Massachusetts Department of Environmental Protection.

VERIFICATION

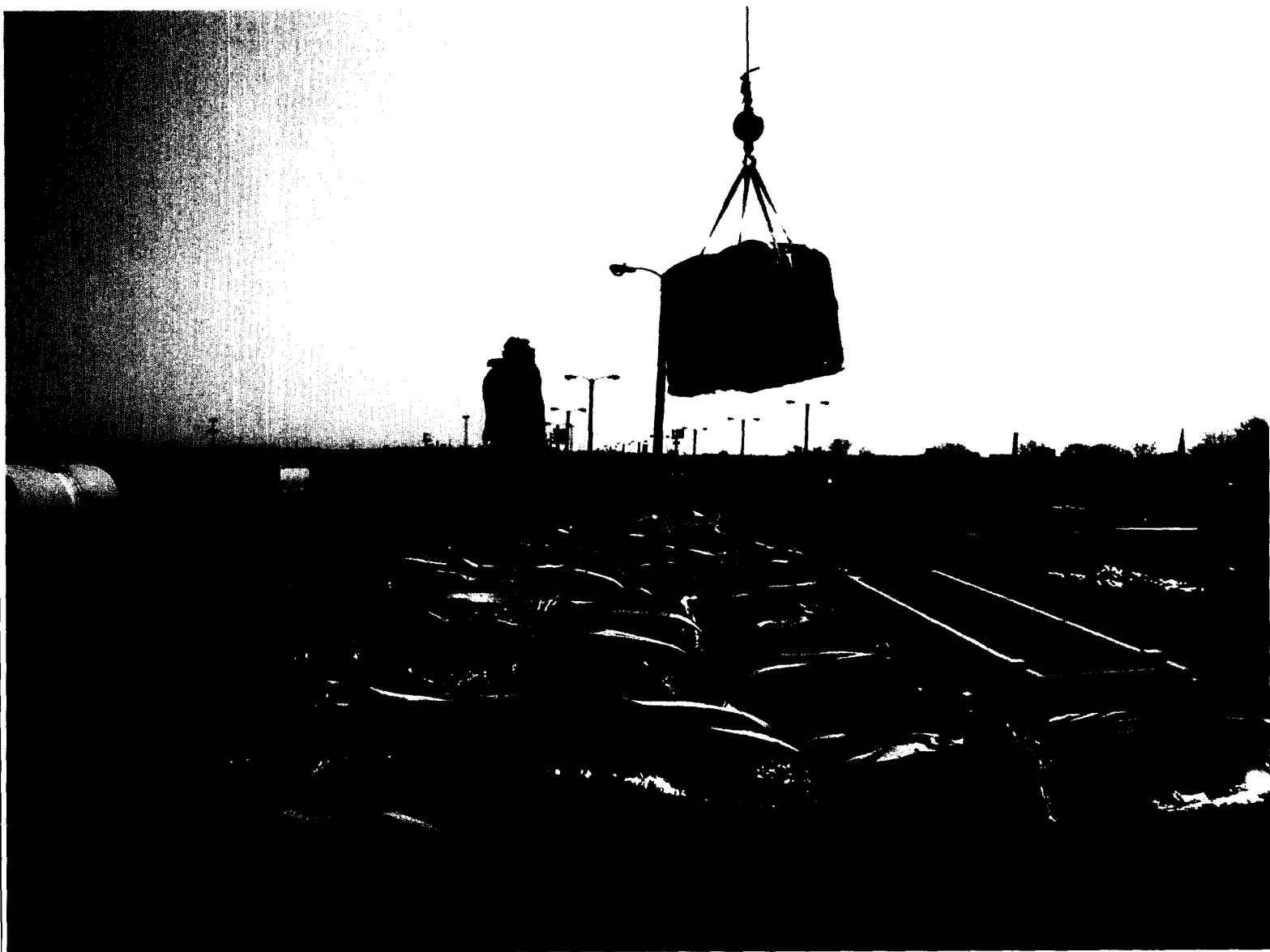
I, John C. Ryan, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 15, 2005.



John C Ryan, PE

**John C. Ryan Verified Statement
Appendix A**



**Verified Statement of
Thomas Egan**

1. My name is Thomas Egan and I am the principal of Egan Consulting Group, an independent consultant to the rail industry and others on transportation related matters. My office address is 227 Hersey Street, Hingham, Massachusetts 02043. I have over forty years of rail industry experience, including experience in Class I railroad mechanical departments, operations departments, inter-carrier agreements, government relations, sales, marketing and service design.

2. The nation is now facing a general shortage of transportation infrastructure. After nearly fifty years of "downsizing" what were deemed surplus lines, yards and facilities, our railway system has insufficient capacity to handle the current increased traffic levels efficiently. The loss of infrastructure has been most severe in urban areas where many rail facilities close to urban centers have been closed and devoted to non-transportation uses. Few industries within the urban areas, such as Boston, are still directly served by railway sidings.

3. To compound the problem caused by lack of capacity, the railroad industry has not been able to achieve adequate levels of return on investment for years. As a result, the industry has a very limited ability to provide new facilities to increase its capacity to meet current or projected needs. Public tracks and terminals where potential customers without rail sidings can access rail services are critically needed if the national goal of reducing dependence on highways is to be achieved.

4. One way to provide efficient service within a small space, such as the site proposed to be developed by New England Transrail, LLC ("NET"), is for the railway operator itself to do as much of the loading and unloading of cargo as possible. In that way, a facility can

serve multiple customers while maximizing through-put. This type of railroad-operated facility is similar to railroad-operated freight stations, stock yards, fruit terminals, warehouses, grain elevators, auto terminals and intermodal facilities. In those facilities, the railway operator consolidates multiple cargos which involves sorting and relocating cargo – often for carriage in a single car. Today, many bulk transloading facilities also consolidate loads for delivery to multiple customers via a single car and through use of a single terminal.

5. I understand that NET will shred construction and demolition debris (“C&D”) as part of its loading process for that commodity. C&D includes broken parts of demolished buildings, and can include rather large and heavy pieces of concrete and other materials. C&D is generally loaded into rail cars using grapples and bucket loaders which drop the material into the car. This process can cause damage to the bottoms and sides of the railway cars. Additionally, loading by this standard method creates voids in the load as the large pieces form bridges or tents. The loading machine, usually a mechanical excavator, is then used to pack down these pieces to collapse the void. This tamping down process often causes additional damage to the sides and bottom of the cars. The resultant incremental car repair cost alone can thus dramatically impact the cost of moving C&D by rail.

6. NET’s proposed loading process will greatly reduce if not completely eliminate the car damage now deemed normal in C&D transportation by rail. It will also eliminate the void spaces in loads caused by bridging or tenting of large pieces of material.

7. The ability to load cars to their full rated capacity, the ability to load cars uniformly with relatively even dense materials, and the ability to eliminate car damage will render the NET operation extremely efficient. That efficiency is needed for the additional reason that it will allow the movement of more cargo through a relatively small terminal facility using a

far smaller fleet of rail cars than would otherwise be required. Obtaining more production out of less space and equipment serves the national interest as it allows more cargo to be moved on the railway system.

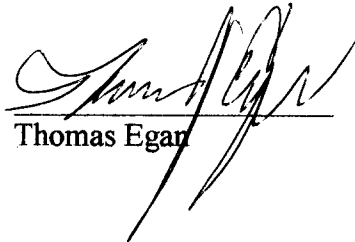
8. The other problem with tenting and bridging in C&D loads is the uneven weight distributions it causes in the rail cars. Voids in loads can collapse in transit, causing cars which were apparently loaded correctly to lean. Further, a car may be loaded unevenly between the ends of the car causing the car on the overloaded end to have difficulty following the track, which increases the potential for derailments. The proposed shredding of the C&D material will address this safety issue as well.

9. The handling of C&D that is contemplated by NET is not unique within the railroad industry. It is integral to achieving the efficiencies needed to render service to the largest number of customers and to render the transportation service more efficiently, safely, and reliably.

VERIFICATION

I, Thomas Egan, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 7, 2005.


Thomas Egan