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April 27, 2006

VIA ELECTRONIC FILING

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

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

Dear Secretary Williams:

Enclosed for electronic filing in the above-captioned matter is a Petition for Expedited Consideration, filed on behalf of National Solid Wastes Management Association, Solid Waste Association of North America (National and Massachusetts chapters), Massachusetts Municipal Association, Construction Materials Recycling Association, Integrated Waste Services Association, and New Bedford Waste Services, LLC.

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen M. Richmond". The signature is written in a cursive, flowing style.

Stephen M. Richmond

SMR/maf
Attachment

cc: Service List for STB Finance Docket No. 34797 (by mail with attachment)

Beveridge & Diamond, P.C.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34797

NEW ENGLAND TRANSRAIL, LLC, D/B/A WILMINGTON AND 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

PETITION OF NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, ET AL.
FOR EXPEDITED CONSIDERATION OF REPLIES TO
NEW ENGLAND TRANSRAIL, LLC'S PETITION FOR EXEMPTION
FROM 49 U.S.C. § 10901

Counsel for National Solid Wastes Management Association, et al.
Stephen M. Richmond, Esq.
Marc J. Goldstein, Esq.
Beveridge & Diamond, P.C.
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Tel: (781) 416-5700 Fax: (781) 416-5799

April 27, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34797

NEW ENGLAND TRANSRAIL, LLC, D/B/A WILMINGTON AND WOBURN
TERMINAL RAILWAY - PETITION FOR AN EXEMPTION FROM 49 U.S.C. § 10901 TO
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NEW ENGLAND TRANSRAIL, LLC'S PETITION FOR EXEMPTION
FROM 49 U.S.C. § 10901

PRELIMINARY STATEMENT

In accordance with 49 CFR § 1117.1, the National Solid Wastes Management Association, the Solid Waste Association of North America and its Massachusetts chapter, the Massachusetts Municipal Association, the Construction Materials Recycling Association, the Integrated Waste Services Association, and New Bedford Waste Services, LLC (collectively, the "Coalition Parties") respectfully file this Petition for Expedited Consideration ("Petition") seeking immediate action by the Surface Transportation Board (the "Board") on New England Transrail, LLC's ("NET") second petition for exemption from 49 U.S.C. § 10901 (the "Petition for Exemption").

ARGUMENT

Good cause exists for the Board to immediately act on the many jurisdictional objections raised to NET's Petition for Exemption, and the Coalition Parties therefore request that the Board postpone the environmental analysis it has commenced on this application until it can act on the critical jurisdictional issues raised by many interested parties. Given the extensive

environmental review necessary for this proposed project, prompt adjudication of the primary jurisdictional issue of whether the Board has any authority over this project is in the public interest and could save the needless expenditure of considerable public and private resources. The Coalition Parties request that such action occur prior to completion of the public comment period for environmental review of the NET project. In support thereof, the Coalition Parties state the following:

1. NET's Petition for Exemption has created a significant amount of concern among many parties, public and private, as evidenced by the large docket of filings before the Board in opposition to the Petition for Exemption. Many of these parties have raised important jurisdictional objections that directly question whether the Petition for Exemption is properly before the Board. Examples are as follows:

a) Reply of the Coalition Parties, dated January 27, 2006, at 14-21 (asserting that NET's proposal is neither transportation by rail carrier under 49 U.S.C. § 10501, nor integrally related to the provision of interstate rail service);

b) Reply of the Commonwealth of Massachusetts, dated January 27, 2006, at 7-12 (asserting that NET's proposal is neither transportation by rail carrier nor integrally related to the provision of interstate rail service);

c) Reply of the Town of Wilmington, dated January 26, 2006, at 13-18 (asserting that NET has not demonstrated that its proposal is entitled to preemption from state and local permitting);

d) Comments of U.S. Senators Kennedy and Kerry and U.S. Congressmen Markey and Tierney, dated January 27, 2006, at 1-3 (asserting that NET's proposal is neither transportation by rail carrier nor integrally related to the provision of interstate rail service;

e) Comments of the New Jersey Department of Environmental Protection and the New Jersey Meadowlands Commission, dated January 27, 2006, at 7-15 (asserting that NET has not demonstrated that it will operate as a rail carrier, and that the proposed processing of solid waste is not transportation by rail; and

f) Comments of the Mercer County Improvement Authority, undated, at 2-7 (asserting that solid waste transfer stations do not fall within a preemption of state and local law

under the Interstate Commerce Commission Termination Act).

2. Several months after the submittal of the above-listed objections to the Board, the Board's Section of Environmental Analysis ("SEA") notified interested parties by letter dated April 7, 2006, that the Board is initiating an environmental review of the NET proposal pursuant to the National Environmental Policy Act. The notice states that the SEA "has not yet determined what level of environmental analysis is appropriate for this proposal." SEA established a deadline of May 12, 2006 for submittal of the requested comments. *See* Attachment 1 to this Petition.

3. The NET proposal, if pursued under Board jurisdiction, raises environmental impact issues of enormous complexity. The site is located in a dense urban area near residential properties and other sensitive receptors. The solid waste management activities proposed at the site trigger myriad state and local permitting requirements, and are subject to numerous environmental performance standards established under state law. The property proposed for use is a former chemical manufacturing site at which the U.S. Environmental Protection Agency ("US EPA") has stated that the management practice prior to 1970 was to disposal of all liquid wastes directly into unlined pits and ponds on the property. US EPA has concluded that on-site waste disposal practices resulted in on-site and off-site subsurface contamination and the closure of municipal drinking water supply wells. On April 18, 2006, US EPA listed the property on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act. *See* Attachment 2 to this Petition.

4. The costs and resources required to meaningfully respond to the SEA's request for comment on environmental impacts are significant and burdensome. Many concerns about the site and the project were raised in the prior NET proposal and never addressed (*See New*

England Transrail, Petition for Exemption, STB Finance Docket No. 34391), and the complexity of the environmental analysis has increased with the recent US EPA listing on the National Priorities List. Furthermore, the history of incomplete and misleading submittals by the applicant have placed a heavy burden on commenting parties to investigate and evaluate facts that should be before the Board on the applicant's own initiative. Indeed, the Board's decision in dismissing NET's first petition stated: "The applicant here has not fulfilled its duty to keep the Board informed of significant changes in the project, and the project appears to be constantly in flux." *See New England Transrail, LLC, Petition for Exemption*, STB Finance Docket No. 34391 (STB served May 3, 2005) at 5.

5. Expedited consideration of the pending jurisdictional objections to the NET Petition for Exemption is necessary to address the appropriateness of NET's petition before there are additional significant expenditures of public and private resources on an environmental evaluation of this proposal. Determining the existence of subject matter jurisdiction at the outset of a matter is clearly the most efficient procedure and will use the fewest agency and private resources. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 587-588 (1999); *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999). If the jurisdictional objections being raised in this matter are sustained, SEA will perform no environmental evaluation, as the NET proposal would not properly be before the Board. Instead, the environmental evaluation would properly occur before the state and local environmental agencies that review and evaluate all similar projects.

6. It would be manifestly unfair to require the many parties interested in this matter to invest the resources and costs necessary to conduct a proper environmental evaluation if such an evaluation were not, in fact, required. In the interest of efficiency and fair process, the Coalition Parties request that the Board delay the environmental comment period established by

SEA until such time as it issues a decision on the jurisdictional issues raised on the NET Petition for Exemption.

CONCLUSION

The Coalition Parties respectfully request that the Board postpone the environmental comment period it has commenced on the NET application until the Board can act on the critical jurisdictional issues raised by many interested parties.

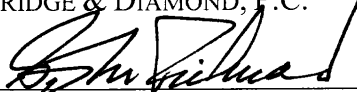
DATED: Wellesley, Massachusetts
April 27, 2006

Respectfully submitted,

NATIONAL SOLID WASTES MANAGEMENT
ASSOCIATION
and
SOLID WASTE ASSOCIATION OF NORTH AMERICA
and
SOLID WASTE ASSOCIATION OF NORTH AMERICA -
MASSACHUSETTS CHAPTER
and
MASSACHUSETTS MUNICIPAL ASSOCIATION
and
CONSTRUCTION MATERIALS RECYCLING
ASSOCIATION
and
INTEGRATED WASTE SERVICES ASSOCIATION
and
NEW BEDFORD WASTE SERVICES, LLC

By their attorneys,

BEVERIDGE & DIAMOND, P.C.

By: 

Stephen M. Richmond, Esq.

Marc J. Goldstein, Esq.

45 William Street. Suite 120

Wellesley, Massachusetts 02481-4004

David Biderman, Esq., General Counsel
NATIONAL SOLID WASTES MANAGEMENT
ASSOCIATION
4301 Connecticut Avenue, Suite 300
Washington, D.C. 20008

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2006, I served the foregoing Petition for Expedited Consideration by causing a copy to be delivered by first class mail, postage prepaid, to:

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Washington, DC 20004

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Massachusetts House of Representatives
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Boston, MA 02133-1054

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State House
Boston, MA 02133-1053

Senator Edward Kennedy
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Boston, MA 02203

Congressman Edward J. Markey
U.S. House Of Representatives
Suite 101, Five High Street
Medford, MA 02155

Senator Robert A. Havern
Massachusetts Senate
4Th Middlesex District, Room 109D State House
Boston, MA 02133-1053

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Woburn, MA 01801

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United States Senate
Washington, DC 20510

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Bill Owens
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Bill Phillips
Morristown & Erie Railway Inc
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Morristown, NJ 07962-2206

Woburn City Council
City Clerk
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Woburn, MA 01801

Wilmington-Woburn Collaborative
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Wilmington, MA 01887

Ann L Yurek
448 Shawsheen Avenue
Wilmington, MA 01887



Stephen M. Richmond

ATTACHMENT 1



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

April 7, 2006

Re: STB Finance Docket 34797, New England Transrail, LLC d/b/a
Wilmington & Woburn Terminal Railway—Construction, Acquisition and
Operation Exemption—In Wilmington and Woburn, MA

Dear Interested Person:

I am writing to let you know that the Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) is initiating an environmental review under the National Environmental Policy Act (NEPA) of the New England Transrail, LLC (NET) proposal to acquire, construct, and operate as a rail carrier approximately 7,500 feet of track on property owned by the Olin Corporation (Olin) in Wilmington and Woburn, Massachusetts. As you may be aware, this is a resubmission of a petition previously filed by NET.¹ In the prior proceeding, the Board determined that new information obtained after the completion of the environmental review indicated that the project NET proposed to construct differed substantially from the one NET presented to SEA. These material differences compromised SEA's environmental review and the Board's ability to adequately consider the potential environmental impacts of the proposed action. Consequently, the Board dismissed that proceeding, without prejudice, thereby permitting NET to file a new petition.

Although you may have submitted comments in the prior proceeding, I am again asking your assistance in providing SEA with any information on potential environmental impacts, resources, or issues concerning this proposal. Also of interest to SEA are comments that address potential shortcomings in the prior environmental analysis, new scientific information that would have a bearing on the analysis, misinformation that could affect the outcome of the analysis, or clarification of any comments that you may have submitted in the prior proceeding. Information on any additional issues or concerns that you consider appropriate would also be appreciated.

¹ See STB Finance Docket No. 34391, New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railroad Co.—Construction, Acquisition, and Operation Exemption—in Wilmington and Woburn, MA. This proceeding generated substantial comment from several members of Congress, a state representative, state and local agencies, consultants, residents, and citizen groups.

SEA has not yet determined what level of environmental analysis is appropriate for this proposal. Before making that decision, we would like to have feedback from you concerning any potential environmental impacts, both beneficial and adverse, that this proposal may generate. Please review the information set forth below. I have also provided contact information below in case you have questions or comments.

Description of the Project

NET intends to acquire 1,300 feet of existing track, construct 6,200 feet of new track, and operate over the entire 7,500 feet of track located on and adjacent to a parcel of land owned by Olin in Wilmington and Woburn, Massachusetts, upon which Olin had in the past operated a chemical plant. In addition, NET proposes to construct an intermodal transloading facility on the site, and to rehabilitate the 1,300 feet of existing track on the property. NET also explains that the demolition of existing structures, the excavation of soil, and the construction and installation of new underground utilities and above-ground structures are also proposed as part of its development plans for the Olin property. The Olin property is located approximately 12 miles from downtown Boston, Massachusetts. The proposed project is illustrated on the enclosed map.

The proposed project would be developed on approximately 30 acres (project site) of the 53 acre Olin property. The remaining 20 acres would remain undeveloped. According to NET, the northern portion of the project site would be used to handle liquid and dry pumpable materials (such as corn sweeteners and vegetable oil, soda ash and plastic pellets) that would be transferred between trucks and rail cars. Two new tracks, approximately 870 feet and 830 feet in length, are proposed to be constructed in the northern area of the property to facilitate this operation. The western area of the project site would be used to handle bulk materials including lumber, sand, salt, gravel, aggregates, and woodchips. NET plans to store some of these bulk materials on the permanent asphalt cap that is proposed to replace the existing temporary cover over the Dense Aqueous Phase Liquid (DAPL)² Containment Area shown on the enclosed map. Three new tracks, approximately 410 feet, 325 feet and 350 feet in length, are proposed to allow trains access to the storage area near the DAPL.

A “sprung-type” transloading structure, would be erected in the central area of the property, and would be used to transload construction and demolition waste and municipal solid waste.³ The proposed three tracks in the central area of the property,

² The DAPL contains liquid organic compounds which are denser than water. Chemical constituents that characterize the DAPL on the Olin property include sulfate, chloride, sodium, ammonia, and chromium. A containment wall currently surrounds the DAPL. It is covered by a temporary plastic cover.

³ The Massachusetts Department of Environmental Protection, in STB Finance Docket No. 34391, New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railroad Co.—Construction, Acquisition, and Operation Exemption—in Wilmington and Woburn, MA, commented that the proposed transload facility is, under Massachusetts solid waste management regulations, a proposed Solid Waste Processing Facility and its

including the new run-through track, would be approximately 1,260 feet, 775 feet and 1,235 feet long. The three new tracks would allow trains to enter and exit the transload structure.

According to NET, part of the transloading operations would include the unloading of construction and demolition waste onto a concrete floor at the north end of the transloading structure and inspected to ensure consistency with the terms of its bill of lading and that it contains no hazardous waste. NET explains that construction and demolition waste would then be shredded to reduce large pieces of debris to a uniform size that would enable it to be loaded into rail cars by conveyor belts. NET states that some shipments of municipal solid waste would arrive pre-baled and would be loaded directly into rail cars. Other shipments of municipal solid waste would arrive as bulk material. These shipments would be inspected and either loaded into containers or baled for loading onto rail cars. NET states that all of the construction and demolition waste and municipal solid waste consigned to NET for transport would be shipped to landfills or processing facilities located outside of Massachusetts. Two pre-fabricated buildings would also be installed directly east of the transloading structure to house offices and supplies.

NET expects that approximately 400 trucks daily would enter and exit the proposed transload facility. NET estimates that the transload facility would generate fifteen rail carloads per day initially. Operations would involve one daily train, up to six days per week, for a total of approximately 300 days per year. Trains would enter the facility from the north via the Boston and Maine Railroad Company (Boston and Maine) tracks on the west of the site and the primary route to exit would be to the south via the Massachusetts Bay Transit Authority tracks to the east of the site. Trains would also be able to exit the site via the Boston and Maine tracks on the west of the site.

Background on the Olin Property/Project Site

As a result of historic waste disposal practices associated with the former chemical manufacturing facility, the Olin property, and land adjacent to the property, were listed by the Massachusetts Department of Environmental Protection as a T1A Disposal Site (poses an imminent hazard on public drinking water). The Olin property has a large groundwater plume that extends from the Olin property into the Maple Meadow Brook Aquifer (MMBA), which supports five water supply wells for the town of Wilmington. The use of the wells has been temporarily suspended pending completion of further characterization of groundwater conditions in the MMBA. The town currently receives a portion of its water through temporary connections to the Massachusetts Water Resource Authority system. Olin has funded extensive studies of the contamination since operations ceased in 1986, and has taken some remedial measures. Recently regulatory oversight has been transferred to the U.S. Environmental Protection Agency. In

associated proposed sorting, grinding, and baling activities are not “a matter related to a rail carrier providing transportation,” and the Board’s jurisdiction or preemption provision at 49 U.S.C. 10501(b).

September 2005, the Olin property was proposed for listing on the National Priorities List as a Superfund site. Remediation of the property is ongoing.

Submitting Your Comments

To assist us in conducting the environmental review required by NEPA, we are consulting with, and soliciting comments from, agencies, organizations, and the public that may have specific knowledge of potential environmental issues and impacts that may be associated with the proposed project. We are seeking your assistance as expeditiously as possible. Therefore, we are requesting your comments by May 12, 2006. Please send your comments to:

Phillis Johnson-Ball
Surface Transportation Board
1925 K Street NW
Washington, DC 20423
Attention: Finance Docket No. 34797

If you have any questions about the Board's environmental review process, please do not hesitate to contact Phillis Johnson-Ball, SEA's Environmental Project Manager, at (202) 565-1530 (email address: johnson-ballp@stb.dot.gov). We appreciate your assistance and look forward to working with you during the environmental review process for the proposed project.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson".

Victoria Rutson
Chief, Section of Environmental Analysis

Enclosure

ATTACHMENT 2



U.S. Environmental Protection Agency Waste Site Cleanup & Reuse in New England

Serving Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont & 9
Tribal Nations

[EPA Home](#) > [EPA New England](#) > [Cleanup](#) > [Find NE Sites](#) > OLIN CHEMICAL

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[Cleanup Home](#)

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Site Type: Long Term/National Priorities List (NPL) ?

OLIN CHEMICAL

Wilmington, Massachusetts

Middlesex County

Street Address: 51 Eames Street

Zip Code: 01887

Congressional

District(s): 05

EPA ID #: MAD001403104

Site ID #:

Site Aliases:

[Superfund Home](#)

[Brownfields Home](#)

[Corrective Action
Home](#)

[Other Cleanups Home](#)

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Site Responsibility: Federal

NPL LISTING HISTORY	
Proposed Date	09/14/2005
Final Date	04/18/2006

Site Description

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The Olin Chemical facility encompasses a 53-acre property located at 51 Eames Street in Wilmington, Massachusetts. The inactive facility is completely fenced and is bounded on the north by Eames Street, on the east by Boston and Maine railroad tracks, on the south by the Woburn/Wilmington town line, and on the west by an inactive Boston and Maine railroad spur. Surrounding the property to the north, east and west are heavy and light industrial facilities, and to the south is a former municipal landfill for the City of Woburn. The closest residential areas are west of the Olin Chemical facility along Main Street and Cooke Avenue.

The Olin Chemical property was used for chemical manufacturing starting in 1953 by National Polychemicals, Inc. (NPI). Between 1953 and 1971, NPI was owned or operated by American Biltrite Rubber Co., Fisons Limited, and Fisons Corporation. In 1968, Stepan Chemical Corporation purchased NPI and operated the facility until it was purchased by Olin Corporation in 1980. Olin Chemical produced chemical blowing agents, stabilizers, antioxidants and

other specialty chemicals for the rubber and plastics industry at the facility. The facility closed in 1986, but the property is still owned by **Olin Corporation**. Historical wastewater disposal practices were a major source of the contamination associated with the **Olin Chemical** facility. Prior to 1970, all liquid wastes were discharged directly into several unlined pits and ponds in the central portion of the property, as well as into a man-made excavation called Lake Poly Liquid Waste Disposal Area (Lake Poly). In 1970, Stepan Chemical installed an acid treatment and neutralization system and new lined lagoons to replace the unlined pits and ponds. Treated wastes were released into the lagoons where calcium sulfate sludge settled out. The lagoons were periodically dredged and the sludge was deposited in a landfill in the southwest corner of the property (now known as the Calcium Sulfate Landfill). Residual liquid wastes were released to an unlined on-property ditch system until 1972. On-site waste disposal practices have resulted in subsurface contamination both on and off the **Olin Chemical** property and the closure of municipal drinking water supply wells.

Threats and Contaminants

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Principal contaminants associated with the site groundwater include: ammonia, chloride, sodium, sulfate, chromium and N-nitrosodimethylamine (NDMA). The contamination in the aquifer extends 0.75 miles west from the **Olin Chemical** property to the drinking water supply wells, and includes a complex mixture of inorganic and about 196 organic chemicals.

Principal contaminants detected in on-site soil include: trimethylpentenes, acetone, bis(2-ethylhexyl)phthalate, N-nitrosodiphenylamine, pesticides (including BHC compounds), aluminum, calcium, chromium, iron, sodium, chloride, ammonia, sulfate and aromatic extractable petroleum hydrocarbon (EPH) fractions. Higher concentrations are generally present only in soils greater than three (3) feet below ground surface (i.e., subsurface soils.)

Principal contaminants detected in site-related surface water and sediment include: trimethylpentenes, bis(2-ethylhexyl)phthalate, chromium and petroleum hydrocarbon compounds (EPH fractions.) Surface water and sediment contamination is associated with an on-site drainage ditch system, which is described as the south ditch, west ditch and east ditch.

Cleanup Approach

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Response Action Status

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Discovery	06/01/1980
Preliminary Assessment	10/01/1980
Site Inspection	10/01/1980
State Removal Action	08/23/32004
Proposal to NPL	09/14/2005
Finalized on NPL	04/18/2006

Environmental Progress

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While extensive work has been completed by Olin Corporation to control and contain wastes onsite, including construction of a slurry wall around the former waste pits, excavation of Lake Poly and other hot spots, operation of a pump and treat system for Plant B, and capping the Calcium Sulfate Landfill, the release of wastes from onsite sources continues. In accordance with the State's program requirements, Olin Corporation has investigated the site and performed response actions onsite, but no efforts have been initiated to address the contaminant plume, which extends 0.75 miles west from the site.

Current Site Status

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Site Photos

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Links to Other Site Information

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Federal Register Notices:

[Proposed NPL Listing](#)

Other Links:

[NPL Site Narrative at Listing:](#)

Site Repositories

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EPA New England Records Center, One Congress Street, Boston,
MA 02114 (617) 918-1440

Contacts

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**EPA Remedial Project
Manager:**

Jim DiLorenzo

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Boston, MA 02114-2023

Phone #:

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E-Mail Address:

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**EPA Community
Involvement Coordinator:**

Jim Murphy

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Boston, MA 02114-2023

Phone #:

(617) 918-1028

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Last updated on Wednesday, April 19th, 2006
URL: <http://www.epa.gov/region1/superfund/sites/olin>