

217020



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
122 South Front Street
Columbus, OH 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

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 Wilimington & 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, MA
Finance Docket No. 34797

Dear Secretary Williams:

Enclosed for electronic filing in the above-captioned matter are comments of the Ohio
Environmental Protection Agency addressing the jurisdictional question described in the
decision issued by the Board on June 13, 2006.

Thank you for your attention to this matter.

Sincerely,

Bill Fischbein
Deputy Director for Legal Affairs
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34797

NEW ENGLAND TRANSRAIL , LLC d/b/a WILIMINGTON & 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, MA,

COMMENTS OF THE STATE OF OHIO, ENVIRONMENTAL PROTECTION AGENCY,
REGARDING THE JURISDICTIONAL QUESTION DESCRIBED IN THE BOARD'S
DECISION RENDERED JUNE 13, 2006

OHIO ENVIRONMENTAL
PROTECTION AGENCY

Bill Fischbein
Deputy Director for Legal Affairs
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET No. 34797

NEW ENGLAND TRANSRAIL, LLC d/b/a WILIMINGTON & 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, MA,

COMMENTS OF THE STATE OF OHIO, ENVIRONMENTAL PROTECTION AGENCY,
REGARDING THE JURISDICTIONAL QUESTION DESCRIBED IN THE SURFACE
TRANSPORTION BOARD'S DECISION RENDERED JUNE 13, 2006

Preliminary Statement

In accordance with the decision of the Board served June 13, 2006, the Ohio Environmental Protection Agency (Ohio EPA) submits its comments regarding the jurisdictional questions identified in that decision. Specifically, that decision stated "... parties are asked to comment on what activities would normally be associated with transloading and thus would be part of rail transportation. Parties are also invited to discuss what activities would normally be associated with MSW and C&D processing and would occur even absent rail transportation."

Statement of Interest

The Ohio EPA is an administrative agency of the State of Ohio that was established pursuant to Ohio Revised Code Section 3745.01. Ohio EPA is responsible for protecting the environment and public health by ensuring compliance with environmental laws. Ohio EPA establishes and enforces standards for air, water, waste management, and hazardous substances.

The Ohio EPA, consistent with its statutory authority, has promulgated and enforces regulations governing the location, design, construction, and operation of facilities that manage municipal solid waste and construction and demolition debris. These include regulations governing waste disposal, waste transfer, and what could be categorized as waste processing. Having regulated waste management in Ohio for many years, Ohio EPA is very familiar with the typical methods utilized to manage and dispose of construction and demolition debris (C&D) and municipal solid waste (MSW). Ohio EPA is also very familiar with the potential human health and environmental hazards associated with the processing and transporting of solid waste and construction demolition debris, including the significant potential for air, water, and ground pollution that can occur.

MSW and C&D Processing Activities

The Board's decision states that "NET proposes to subject all of the C&D and some of the MSW it receives to sorting, grinding, crushing, aggregating, segregating, and/or bailing before being loaded into rail cars or containers for rail shipment." NET's petition provides additional information on these activities.

The Board's decision states that "Parties are also invited to discuss what activities would normally be associated with MSW and C&D processing and would occur even absent rail transportation." Ohio EPA's comments will focus on this question.

From Ohio EPA's perspective, there are two issues that influence all types of long-distance waste transportation, regardless of the transportation method used: disposal restrictions and the economics of long-haul transportation.

Although disposal regulations vary from state to state, states typically have requirements for different types or classes of disposal facilities for different types of waste. In Ohio, for example, there are separate and distinct regulations governing the development and operation of facilities for the disposal of MSW and C&D waste. Accordingly, states typically restrict the types of waste that are permitted to be disposed of in a given type of facility. At the very least, as the result of federal regulations, hazardous waste must be segregated from and managed and disposed separately from MSW.

In addition, transportation economics dictate that when transporting any material long distances, it is more cost-effective to send material via a small number of large loads, rather than a large number of small loads.

As a result of these two issues, the long-distance transportation of waste, regardless of the transportation method used, necessarily involves processing activities to aggregate small loads into large loads, segregate and/or sort the waste materials into different waste types so that it can be disposed of in appropriate facilities, and to reject or salvage certain materials that are either not permitted for disposal or are valuable as recyclable commodities. These processing activities are normal and necessary regardless of whether the waste is shipped via truck, train, ship, or even air. Needless to say, these processing activities would occur even absent rail as the form of transportation.

As several other parties have noted, most of the waste handling activities described in the NET petition are in no way unique to rail transportation and happen regularly at truck transfer stations throughout the country. In fact, all of those activities described could happen prior to being transported to the proposed NET facility for loading into the rail cars. While it is true that the NET petition indicates that other commodities may be handled through the facility, the portion of the NET petition describing the C&D and MSW waste handling operations essentially describes a traditional transfer facility.

In addition, the bailing activities involved are also in no way unique to rail transport and sometimes occur prior to truck transport. Again, this is a traditional processing method and there is nothing inherent to rail transport that would require this activity to occur on-site. The NET proposal acknowledges that some waste may come to the facility already

baled, thus reinforcing the fact that the baling process is not integral or necessary as part of the transload process or rail transportation.

Finally, the act of grinding and crushing C&D is clearly a processing activity. In fact, this type of processing may significantly change how the material is regulated in Ohio. NET's proposal states that "... NET's shredding of C&D and baling of MSW do not change the underlying nature of these cargos. Shredded C&D will still be C&D. ... when. ... [it is] shipped out of the NET Facility in rail cars." C&D material that has been rendered unrecognizable as C&D through a shredding or grinding process is regulated in Ohio equivalent to MSW, and must be managed and disposed of as such. In contrast, materials that remain recognizable as C&D can be managed as such and disposed in C&D landfills. Thus, this type of processing has a significant impact on how this material will be regulated and managed in Ohio. This is significant because landfill facilities located in Ohio receive a significant amount of C&D and MSW that has been transported via rail from numerous eastern states, including Massachusetts. Furthermore, Ohio, as well as many other states, has correlated the receipt of shredded or pulverized C&D to the production of hydrogen sulfide, a noxious and potentially dangerous gas, in the landfills that receive the material. As a result, contrary to statement in the NET petition, the shredding of C&D can in fact change the underlying nature of the cargo, both from a regulatory standpoint and an environmental one.

Summary

In summary, Ohio EPA considers the act of tipping MSW or C&D on a tipping floor, sorting, segregating, and aggregating the material a normal part of processing that would (and does) occur even absent rail transportation. Ohio EPA also considers baling activities a processing activity that occurs absent rail transportation. Finally, Ohio EPA considers the shredding or grinding of C&D a processing activity that has the potential to fundamentally change how the material will be regulated in Ohio, and increasing the risk for adverse environmental impacts from the material.

The NET petition states that some material may be received pre-baled for loading onto rail cars. Ohio EPA considers this type of activity a normal part of the transload process and part of rail transportation. Furthermore, although not described as a potential management method in the NET petition, Ohio EPA would consider the direct transfer of MSW or C&D from trucks to train cars, without a sorting/separation/aggregation process, a part of the transload process and therefore a part of rail transportation.

Respectfully Submitted,

Bill Fischbein
Deputy Director for Legal Affairs
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049

Dated July 13, 2006