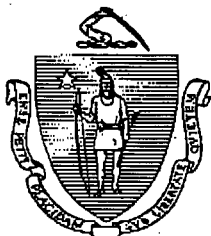


217026



The Commonwealth of Massachusetts

CHAIRMAN
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

JAMES R. MICELI
REPRESENTATIVE
19TH MIDDLESEX DISTRICT
TEWKSBURY • WILMINGTON
TEL (978) 658-8797



House Committee on
Personnel and Administration

ROOM 448, STATE HOUSE
TEL (617) 722-2582
FAX (617) 722-2879

ENTERED
Office of Proceedings

JUL 13 2006

Part of
Public Record

July 11, 2006

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

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
STB Finance Docket No. 34797

Dear Mr. Secretary,

Upon review of the petition filed by New England Transrail it is apparent that they intend to operate a waste processing facility on the Olin site, which happens to include a component that would transfer the waste by rail; therefore, they are not exempt from state and local regulations.

As stated in the Comments filed by the City of Woburn, “49 U.S.C. § 10501(b) vests the Board with exclusive jurisdiction over “transportation by rail carriers” and explicitly preempts state and federal law with respect to regulation of rail transportation. To come within the preemptive scope of 49 U.S.C. §10501 (b), NET activities must be both (1) transportation, and (2) performed under the auspices of a rail carrier.” In its petition NET discloses that it intends to receive loose products (C & D material and Municipal Wastes) and grind and package them onsite to be loaded onto rail cars.

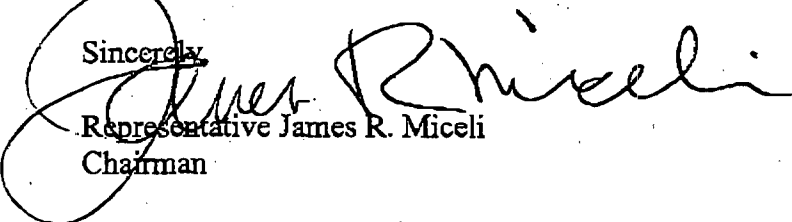
I completely agree with the comments submitted jointly by the Massachusetts Department of Environmental Protection and the Attorney General. In Section II they explain what constitutes a solid waste handling facility in Massachusetts. This description should be given the utmost consideration when deciding this case. Taking into account the terms listed in this petition in conjunction with the two cases that are also referenced, Buffalo Southern RR, Inc. v. Village of Croton-On Hudson, ____ F. Supp.2d ____, ___, 2006 WL 1650675, *1(S.D.N.Y.2006) and State of New Jersey v. J.P. Rail, Inc., Atlantic Superior Court Docket No. C-41-06 (Chancery Div. Jun. 22,2006), it

is clearly demonstrated that the Surface Transportation Board should not grant an exemption to New England Transrail for any of the operations not directly related to transportation.

I strongly encourage you to settle this issue of jurisdiction once and for all and acknowledge that the Surface Transportation Board does not have jurisdiction over issues related to Waste Processing. The Commonwealth of Massachusetts has regulations and policies in place to protect its residents from environmental and public health hazards please do not allow this company to circumvent the proper process designed to safeguard the citizens of the Commonwealth of Massachusetts.

Thank you for your consideration.

Sincerely,



Representative James R. Miceli
Chairman

Certificate of Service

I hereby certify that on July 13, 2006, I served the foregoing Comments of the Commonwealth of Massachusetts Concerning Whether the Surface Transportation Board Has Jurisdiction Over the Proposed Solid Waste Processing Facility of New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal railway by causing a copy thereof to be delivered via first class class mail, postage prepaid to:

Laura Swain, Senior Counsel
Department of Environmental Protection
Office of the General Counsel
One Winter St.
Boston, MA 02108

Siu Tip Lam
Assistant Attorney General
Environmental Protection Division
Office of Attorney General
One Ashburton Place
Boston, MA 02108

Daniel R. Deutsch
Paul R. Derensis
Deutsch Williams Brooks Derensis & Holland, P.C.
99 Summer St.
Boston, MA 02110

J. Patrick Berry
Jeffery M. Bauser
Baker Botts LLP
1299 Pennsylvania Ave., NW
Washington D.C. 20004

Patrick John Crane Mercer
Mercer County Improvement Authority
640 S Broad St.
Trenton, NJ 08650

Stephen M. Richmond
Beveridge & Diamond, P.C.
45 William St., Suite 120
Wellesley, MA 02481

Arthur G. Marsilia
United Tool & Die Co., Inc
Eames St.
Wilmington, MA 01887

M. Barbara Sullivan
27 Gunderson Rd.
Wilmington, MA 01887

Robert A. Rio
A.I.M.
P.O. Box 763
Boston, MA 02117

Thomas E. Dew
Berry Moorman
900 Victors Way, Suite 300
Ann Arbor, MI 48108-2705
Tim Conway
US Dept. Environmental Protection Agency
Region 1
One Congress St., Suite 1100
Boston, MA 02114-2023

Arthur Williams
National Black Agenda Convention, Inc
P.O. Box 366211
Boston, MA 02136-9998

P. Christopher Podgurski
Podgurski Corp
8 Springfield Ave.
Canton, MA 02021

Edward D. Greenberg
Galland Kharasch, Greenberg, Fellman &
Swirsky, P.C.
Canal Square, 1054 31st Street, N.W.
Washington, DC 20007-4492

Honorable Diane Wilkerson
Massachusetts Senate
State House
Boston, MA 02133

Honorable Edward Kennedy
US Senator
2400 John F Kennedy Federal Office Building
Boston, MA 02203

Honorable John F. Tierney
US House of Reps.
17 Peabody Square

Deborah L. Duggan
11 Hillcrest St.
Wilmington, MA 01887

John W. Carrington
Hiram Grand Lodge AF & AM, Inc
98 Talbot Ave.
Dorchester, MA 02124
Nyjah Wyche
Health Ed. And Learning Project for
Black Males Health
University of Massachuettis
100 Morrissey Blvd.
Boston, MA 02125

Frank S. Demasi
26 MacArthur Rd.
Wellesley, MA 02482

Bill Owens
115 Hazelton St
Mattapan, MA 02121

Fred R. Moore
6 Ella St.
Saugus, MA 01906

Linda Raymond
Woburn Neighborhood Ass.
10 North Maple St.
Woburn, MA 01801

Honorable Edward Markey
US House of Reps
Suite 101, 5 High St
Medford, MA 02155

Honorable John F. Kerry
United States Senate
Washington, DC 20510

Bill Phillips
Morristown & Erie Railway Inc.
P.O. Box 2206
Morristown, NJ 07962-2206

Woburn City Council
City Clerk
10 Common St.
Woburn, MA 01801
Wilmington-Woburn Collaborative
c/o Kathleen M. Barry
14 Powderhouse Circle
Wilmington, MA 01887

Paul J. Meaney
Woburn Business Association
P.O. Box 3057
Woburn, MA 01888

Ann L. Yurek
448 Shawsheen Ave.
Wilmington, MA 01887

Stephen R. Sasala, II
Waterbury Regional Chamber
P.O. Box 1469
Waterbury, CT 06721

William Clyburn, Jr.
Clyburn Consulting, LLC
7819 12th St., NW
Washington, DC 20004

Peter J. Shultz
CSX Corporation
500 Water St
Jacksonville, FL 32202

Steven Armbrust
CSX Transportation Inc
500 Water St.
Jacksonville, FL 32202

Woburn Neighborhood Ass
10 North Maple St.
Woburn, MA 01801

Thomas McLaughlin
10 Common Street
Woburn, MA 01801

Honorable Robert Havern
Massachusetts Senate
State House, Rm. 109D
Boston, MA 02133

John V. Edwards
Zuckert Scoutt et al
888 17th St. NW Ste 600
Washington, DC 20006-3939

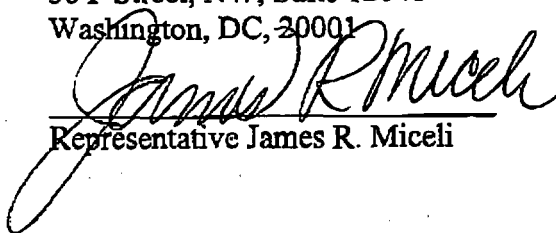
Thomas E. Farrell
1777 Market Tower
10 West Market St
Indianapolis, IN 46204

Marlinda Duncanson
City of Middletown
16 James St.
Middletown, NJ 10940

Susan Clever
109 Coleman Rd.
Goshen, NY 10924

Dean Ehlert
Solid Waste Program Coordinator
Idaho Dept. of Env. Quality
Boston, MA 02110-1109

Louis P. Warchot
Association of American Railroad
50 F Street, NW, Suite 12041
Washington, DC, 20001


Representative James R. Miceli