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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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ROBERT W. GOLLEDGE, Jr.
Commissioner

August 1, 2006

Secretary Stephen R. Pritchard
Executive Office of Environmental Affairs
Attn: MEPA Office
Deirdre Buckley, EOE No. 12276
100 Cambridge St. Suite 900
Boston MA 02114

ENTERED
Office of Proceedings
AUG 8 - 2006
Part of
Public Record

RE: Wilmington
Eames Street Redevelopment at Olin Chemical Site
EOEA Project No. 12276, STB Docket No. FD 34797

Dear Secretary Pritchard:

I am writing to you because New England Transrail, LLC ("NET") has revised its development proposal for the Olin Corporation site in Wilmington, Massachusetts. The Massachusetts Department of Environmental Protection ("MassDEP") believes that the changes to NET's proposal constitute a material change pursuant to 301 CMR 11.10 and therefore ask you to require NET to file a Notice of Project Change ("NPC") describing the changes to its project. MassDEP believes such NPC will meet the requirements for your office to conclude that an Environmental Impact Report ("EIR") is required pursuant to 301 CMR 11.10(6).

In 2000, an Environmental Notification Form ("ENF") was filed for proposed redevelopment of the Olin Chemical Site in Wilmington, Massachusetts. The ENF described a beverage warehouse and distribution facility involving a building of 353,000 square feet and associated parking. There was no rail component to the project at that time. Then, in 2003, NET filed a NPC with the MEPA office indicating that NET proposed to construct a "rail re-load facility (dependent on long-haul rail transport)". NPC p. 1 (Sept. 18, 2003). The NPC provided a list of commodities that NET expected to be brought to the site but expressly stated that "except for lumber and other building products none of these commodities will be stored,

processed or handled on Site other than the re-load process itself.” NPC p.4. In addition, in a subsequent modification to the NPC, NET stated “if NET does transport ...[waste materials], it will do so in a direct truck to rail-container movement. NET will not have an open tipping floor to store or handle such material....” Modification to NPC (November 7, 2003) p. 2.

Through a proceeding before the Surface Transportation Board (“Board”), which oversees rail transportation, MassDEP has learned that NET has revised its project yet again to now include sorting, grinding and crushing, baling and otherwise processing of municipal solid waste and construction and demolition debris. See Petition of New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railroad Co. – Acquisition, Construction, and Operation Exemption – in Wilmington and Woburn, MA, STB Finance Docket No. 34797, at 2 (Dec. 5, 2005)(“Petition”). In its Petition, NET proposes to construct and operate a rail loading facility and solid waste processing facility on the Olin property. Petition at 7-12.

NET’s prior description of its activity did not contemplate a solid waste processing facility which requires a site assignment and MassDEP permit pursuant to M.G.L. c.111, § 150A and 310 CMR 16.00 and 19.000.¹ The addition of a solid waste processing facility to NET’s rail loading facility is a material change to NET’s proposal that warrants the filing of a new NPC. See 301 CMR 11.10(6). It is also a change that clearly increases the potential environmental consequences of the proposed project. NET proposes to conduct its solid waste activities within a canvas structure insufficient to contain dust, odor, noise and other air pollutants from its operations. Specifically, MassDEP is concerned about the health and environmental impacts from the grinding of construction and demolition debris that may contain asbestos and therefore could release carcinogenic fibers into the ambient air. Furthermore, MassDEP anticipates air pollution impacts from the solid waste processing facility and associated equipment for unloading and loading operations, grinding and shredding activities, and baling operations. Heavy equipment needed for such activity is likely to require air permits in accordance with 310 CMR 7.02 from MassDEP.

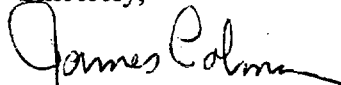
After reviewing a new NPC that adequately describes NET’s proposed solid waste processing facility and how it will sort, grind or crush, bale and otherwise process solid waste, the Secretary can properly determine whether the changes would significantly increase environmental consequences and whether further MEPA review is necessary. 301 CMR 11.10(6). It is noteworthy that although NET has not stated the exact size of its proposed solid waste processing facility, it is clear from NET’s own descriptions that the proposed facility will be larger than the 50 tons per day facility MEPA ENF threshold and will likely be greater than the 150 tons per day facility threshold mandating the preparation of an EIR. See 301 CMR 11.10(6)(e) and 11.03(9).

¹ The Board is reviewing NET’s current Petition seeking an exemption from the prior approval requirements of 49 U.S.C. § 10901 that would otherwise apply to NET’s acquisition, construction and operation of rail lines and terminal facilities. If the Board concludes NET’s proposed solid waste processing facility is part and parcel with NET’s rail loading facility, NET would not be required to obtain a site assignment and permit for its solid waste activities because pursuant to 49 U.S.C. § 10501(b) transportation by rail carriers generally preempts regulation of the same activity by states. MassDEP has argued that the solid waste processing facility which will sort, grind or crush, bale and otherwise process both municipal solid waste and construction and demolition debris *prior* to loading the waste onto rail cars is separate and distinct from NET’s rail activities.

On a related note, MassDEP has been working with Olin Corporation to assess the Olin site pursuant to MassDEP's cleanup program authorized under M.G. L. c.21E. As you may know, the site is listed by MassDEP as a Tier IA Disposal Site (poses an imminent hazard on public drinking water). The United States Environmental Protection Agency ("EPA") recently added the Olin Chemical Site to the National Priorities List, a list of the most contaminated sites in the United States, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") due to the significant contamination found at the site. National Priorities List for Uncontrolled Hazardous Waste Sites, Rule No. 43, 71 Fed. Reg. 20016-22 (April 19, 2006). Pursuant to CERCLA, EPA will oversee the assessment and remediation of the Olin Chemical Site. An NPC must address these changed circumstances and indicate how the construction and operation of NET's proposed rail and solid waste facilities will not interfere with EPA's ongoing site assessment and remediation.

In conclusion, MassDEP requests that you require NET to file a Notice of Project Change ("NPC") describing the changes to its project. MassDEP believes such NPC will demonstrate to your office that an Environmental Impact Report ("EIR") is required pursuant to 301 CMR 11.10(6). Thank you for your time and consideration. Please give me a call if you have further questions about MassDEP's concerns for NET's proposed solid waste processing facility.

Sincerely,

A handwritten signature in black ink, appearing to read "James Colman". The signature is fluid and cursive, with the first name "James" being more prominent than the last name "Colman".

James Colman,
Assistant Commissioner,
Bureau of Waste Prevention

cc. Surface Transportation Board

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2006, I served the foregoing letter to Stephen Pritchard regarding the NET project in Wilmington, Massachusetts by causing a copy thereof to be delivered via first class mail, postage prepaid, to:

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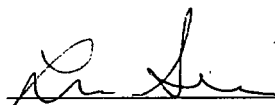
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