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Wilmington-Woburn Collaborative
Kathleen M. Barry, Chair
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219078

April 13, 2007

The Honorable Vernon W. Williams, Secretary
Surface Transportation Board
395 E Street, S. W.
Washington, DC 20423-0001

APPEAL of DECISION:

Case Title: NEW ENGLAND TRANSRAIL, LLC D/B/A/ WILMINGTON & WOBURN
TERMINAL RAILWAY -- CONSTRUCTION, AQUITION AND OPERATION
EXEMPTION -- IN WILMINGTON AND WOBURN, MA

STB Finance Docket No. 34797

DECISION PROVIDED THE SCHEDULE OF APPEARANCES AND TIME ALLOTTED FOR
THE ORAL ARGUMENT ON APRIL 19, 2007 IN THIS PROCEEDING.

Dear Secretary Williams:

I am writing to appeal your decision not to allow the Wilmington-Woburn Collaborative time to speak at the oral argument scheduled on this proceeding for April 19, 2007. You have sited that the Collaborative is not a party of record.

The Wilmington-Woburn Collaborative (WWC) is comprised of community members from the Woburn Neighborhood Association, Inc., the Concerned Citizens Network of Wilmington and individual citizens from both the Town of Wilmington and the City of Woburn.

The WWC has been instrumental and has played an integral role in bringing together those with common concerns relating to this project. It is members of this collaborative with the assistance of US Representative John Tierney that initially hosted NET's Mr. Klempner and Mr. Jones in June of 2003 to explain their project and their background. At that time, their project was poorly presented showing little preparation or consideration to our community. Their written proposal wrought with error and insulting in its simplicity, has evolved into an elaborate scheme of a trash transfer station. It was at this meeting that these men vowed to us that they were only railroad entities with no other background consistent with solid waste or trash transfer.

It is with our early efforts in opposition that brought appropriate attention to our Federal and State Representatives regarding this project and hence their efforts to solicit viewpoints from the National Solid Waste Management Assn., the Massachusetts Attorney General, and the Federal Environmental Protection Agency.

Whereas you have accepted comments from the Wilmington-Woburn Collaborative in both written and electronic formats with every comment period since 2003, have served the Collaborative with written notifications, and have listed the Collaborative on the service list, we question how the Collaborative is not a party of record.

Your records will indicate that the Wilmington-Woburn Collaborative has been an active participant in responding to every request for public comment. We have spoken numerous times to Ms. Phyllis Johnson Ball who has assured the Collaborative that all correspondence and comments, past and present, would be before you for proper consideration.

Attached are all of the filings submitted by the Wilmington-Woburn Collaborative regarding Finance Docket No. 34797. One of which I found filed electronically on your website dated 1/27/2006 but posted on 1/30/2006 and our most recent electronic filing on May 11, 2006 serving a copy to each on the service list. I have also included one filing submitted in September, 2004 illustrating our early involvement in this project under Finance Docket No. 34391.

We wish to have all of our comments previously submitted considered at this proceeding and all future proceedings and wish to have the Surface Transportation Board recognize us as a party of record so that we may be given an opportunity to address the Board at this upcoming proceeding on April 19, 2007.

Your prompt decision on this matter is greatly appreciated.

I, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading. Executed on April 13, 2007.

Kathleen M. Barry, Digitally signed by Kathleen M. Barry
DN: CN = Kathleen M. Barry, C = US,
O = Wilmington-Woburn Collaborative
Date: 2007.04.15 15:33:41 -04'00'

Kathleen M. Barry, Chair
Wilmington-Woburn Collaborative

Enclosures:

1. Document to the Surface Transportation Board from the Wilmington Woburn Collaborative, Finance Docket No. 34797 dated March 11, 2006.
2. Document to the Surface Transportation Board from the Wilmington-Woburn Collaborative, Finance Docket No. 34797 dated January 27, 2006.
3. Document to the Surface Transportation Board from the Wilmington-Woburn Collaborative Finance Docket No. 34391, dated September 14, 2004.

CERTIFICATE OF SERVICE : I hereby Certify that on this 16TH day of April, 2007, I served a copy of the foregoing to be sent to the following persons by email and/or first class mail:

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ATTACHMENTS:

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c/o Kathleen M. Barry, Chair
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May 11, 2006

Phillis Johnson-Ball
Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Attention: Finance Docket No. 34797

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

Dear Ms. Johnson-Ball:

Pursuant to your request seeking assistance, comment and specific knowledge of environmental issues and impacts associated with the proposed project submitted to you by New England Transrail, LLC to acquire in part, to construct in part and to operate as a rail common carrier, the Wilmington-Woburn Collaborative (WWC) wishes to express to the Surface Transportation Board (STB) its continued objection of this project on this hazardous site at this time. In addition, the WWC agrees with the Massachusetts Department of Environmental Protection that this operation falls under the jurisdiction and authority of the state and local governers. [1]

The WWC also wishes to support the petition before the Surface Transportation Board filed by Mr. Richmond on behalf of the National Solid Wastes Management Association, et al. We believe that it is essential that the STB immediately rule on the Petition (of the aforementioned parties) for Expedited Consideration of Replies to New England Transrail, LLC's Petition for Exemption from 49 U.S.C. 10901. [2]

A clear decision needs to be rendered on jurisdiction issues prior to proceeding with considerations for a full environmental review under the National Environmental Policy Act (NEPA).

It is the opinion of this collaborative that the Surface Transportation Board and all proceedings thereof be suspended at this time for such a jurisdictional ruling and in order for the STB to comply with comments submitted to you on January 2006, by Mr. Tim Conway of the U.S. Environmental Protection Agency, Region 1. This comment explicitly states that the EPA "cannot consent to any activity at this Site until it makes its own determination that the Site is safe for human health and the environment and that the proposed use will not exacerbate Site conditions or hinder EPA's remaining investigation or cleanup." [3]

Until such time that the EPA can consent to redevelopment activity The Board must abide with its own Congressional Declaration in the National Environmental Policy Act, Section 102 [42 USC #4332] wherein it states 'prior to making any detailed statements, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved". [4]

On April 19, 2006, the 53 acre property in question owned by Olin Chemical Corporation at 51 Eames Street, Wilmington MA was officially listed on the EPA's National Priority List as a Superfund Site. According to the EPA, Region 1, "historical wastewater disposal and general handling of chemicals and waste products at the plant led to significant environmental contamination. Principal contaminants of concern include ammonia, sodium, chromium and NDMA (N-nitrosodimethylamine). Groundwater contamination associated with releases from the site stretches in a plume extending about ¾ of a mile west from the Olin Chemical property, and has forced closure of five municipal water supply wells which served more than 7,000 people."

http://www.epa.gov/epaadmin/ess.nsf/02026b527c93b1a1852570180055b9b9_4e13124b0a2165b885257154006ba096?OpenDocument

The EPA on April 6, 2006 outlined to our community their plan of action to proceed with a Remedial Investigation, a Baseline Risk Assessment and Feasibility Study with anticipatory critical removal activities on the site culminating to a Record of Decision and a Remedial Design and a Remedial Action. The WWC requests that Section of Environmental Assessment (SEA) and the STB defer this environmental review process and that EPA be given unfettered access to the entire 53 acre property so that they may accurately study this property and prepare a remedial solution. We would suggest that the SEA proceeding should go forward only after the EPA has commented on each of the above reports and at such time the SEA choose the most comprehensive analysis, given the breadth and scope of this contaminated site.

We wish to reiterate that the proposed redevelopment is one that is consistent with solid waste transfer activities along with a construction and demolition operation. This project, when first introduced to us in the community, was to operate a truck to rail facility where all commodities would be transported by railway to the property in closed and sealed containers. Only lumber would be exposed and stored on the property. There would be just one sprung structure. This newest proposal details the activities of transferring solid

waste into hoppers and activities on site would consist of grinding and bailing of this waste. The New Jersey Department of Environmental Protection clearly explains to the Surface Transportation Board that the primary principals on this project have a long history in the solid waste industry and cautions the STB in exempting these types of operations set up beside rail lines solely for the exemption it can offer from local and state oversight. [5]

We support our U.S Congressional leaders in their comment that this proposal is nothing more than a trash transfer station with very little to do with rail transportation. [6] We shall go one-step further and state that we believe that this operation is no more than a solid waste transfer station operating under the ruse of a railroad company. This ruse employs them to seek your exemption status that will usurp local and state authority. We ask that you do not let NET use the federal exemption process to contravene our stringent environmental state and local laws designed to protect our health and our welfare.

If it is the pleasure of the Surface Transportation Board to prematurely continue through the environmental review process under the SEA prior to the EPA's consent, and prior to a jurisdictional ruling, the WWC wishes to comment on the havoc this operation will raise on the environment and the community.

The concerns of this community have been previously raised and are brought forward once again in these proceedings. You ask that we comment on potential shortcomings in the prior environmental analysis and provide any new information that would have bearing on this analysis. There are many shortcomings in the prior environmental analysis, not limited only to the indifference New England Transrail has shown to our community, but that their assumptions and conclusions are based on old data provided by the present owner while under the Massachusetts Contingency Plan. The site is now under the Federal EPA jurisdiction and subject to further investigation and discovery.

Regarding shortcomings in previous proceedings:

First, the previous ruling has falsely interpreted Environmental Justice for us in Wilmington and Woburn. The EPA's definition of Environmental Justice is the **"fair treatment and meaningful involvement** of all people regardless of race, color, national origin, or income with respect to development, implementation and enforcement of environmental laws, regulations and policies."

Fair treatment means that no group of people....should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal or commercial operations or the execution of federal, state, local and tribal programs and policies.

The community of Wilmington and Woburn has a disproportionate number of negative environmental impacts and consequences.

Meaningful involvement means that (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their government and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

<http://www.epa.gov/compliance/basics/cj.html>

New England Transrail has not held one open public meeting to detail their plans to our community and answer questions of the concerned citizens. In a private and selective meeting, in Wilmington only, the principals of NET proposed their project as a benign rail to truck transfer operation where every commodity would be contained in sealed containers. A far different project presents in this proposal and this community should be afforded a public hearing on this matter.

Secondly, NET has sparsely evaluated the cumulative air quality issues of the area in South Wilmington and North Woburn. They have ignored recent trends and reports that there is more to the contamination issue on the property and through-out the site than those presented by the applicants and the present property owner. They have not considered the poor infrastructure and roadways. They have ignored with indifference the residents concerns that live in close proximity of this property evoking only that it is a non-residential area exempting them from any mitigation activity to quell noise and traffic.

Under the Congressional Declaration of National Environmental Policy, Section 101 [42 USC #4321], it is the purposes of this act (NEPA) in part, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man... This policy also states that in order to carry out the policy set forth (in NEPA) it must assure for all Americans a safe, healthful, productive and aesthetically and culturally pleasing surrounding. [4] I would submit to you that if a full and comprehensive environmental analysis were conducted, it would conclude that this property has enormous environmental issues that make this site incompatible for this company's proposed operations and that these operations will further exacerbate and imperil the community, its environment and health.

I respectfully thank you for the opportunity to provide useful comment to these proceedings.

Kathleen M. Barry, Chair
Wilmington-Woburn Collaborative

References:

1. Commonwealth of Massachusetts, January 27, 2006. Comment on Finance Docket No. 34797 to the Surface Transportation Board.
2. Richmond, S. April 27, 2006. Before the Surface Transportation Board, Finance Docket No. 34797; Petition of National Solid Wastes Management Association, et al. Beverage and Diamond, PC.
3. Conway, T. January 26, 2006. Comment on New England Transrail, LLC, Finance Docket No. 34797; United States Environmental Protection Agency, Region I.
4. The National Environmental Policy Act of 1969, as amended.
Online Reference retrieved on May 9, 2006 at
<http://ceq.eh.doe.gov/nepa/regs/nepa/nepacqia.htm>
5. New Jersey Department of Environmental Protection. January 27, 2006. Comment on Finance Docket No. 34797 to the Surface Transportation Board.
6. United States Legislators, Kennedy, Kerry, Markey and Tierney. January 27, 2006. Comment on Finance Docket No. 34797 to the Surface Transportation Board.

CERTIFICATE OF SERVICE :

I hereby Certify that on this 11TH day of May, 2006, I served a copy of the foregoing to be sent to the following persons by email and/or first class mail:

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January 27, 2006

Submitted Electronically:

The Honorable Vernon W. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423
ATTN: Ms. Phillis Johnson-Ball

Re: Petition for exemption by New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway (NET) pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to acquire in part, to construct in part, and to operate as a rail common carrier a total of approximately 7,500 feet of trackage located in Wilmington and Woburn, MA. Filed on December 5, 2005

Docket #: FD_34797_0

Dear Ms. Johnson-Ball,

The Wilmington-Woburn Collaborative (WWC) appeals to the Surface Transportation Board to reject this petition for exemption from the formal application procedures of 49 U.S.C. 10901, which requires the completion of a full Environmental Impact Statement. It is NET's intention to operate a trash transfer station at 51 Eames Street in Wilmington, MA.

This project when first introduced to you, was to operate a truck to rail reload facility where all commodities would be transported by railway to the property in closed and sealed containers. Only lumber would be exposed and stored on the property and only one sprung structure would be necessary. This proposal is far different from the original description and far more concerning as well. NET states that, upon commencement of rail operations, it would receive at its facility, and would provide rail transportation for, a variety of commodities, including, among others, sand and gravel, plastic resins and liquids, municipal solid waste, and construction and demolition debris. It has elaborate designs of multiple sprung structures and holding areas.

The present proposal details the proposed solid waste activities. Municipal solid waste will be transferred into hoppers and there will be grinding and bailing of such solid waste. This activity is consistent with a solid waste trash transfer station operation having very

little to do with rail transportation. This facility is nothing more than a trash transfer station including construction and debris operating under the guise of a railroad company. This ruse employs them to seek your exemption status thus allowing them to operate with little or no oversight.

As noted in their petition language, rail acquisition and construction is only "in part" of their operations. They seek this exemption only to usurp local and state authority. We agree with the Massachusetts Department of Environmental Protection's position that this operation should fall under their jurisdiction and authority. We also agree with the National Solid Waste Management Association's position that in granting this exemption, it gives this competing company an unfair advantage and allows them to operate without compliance to the same rules, permits and regulations as others in their industry.

We in the community however wish to be clear and concise in our opposition. We find it offensive that NET continues to re-apply, change their intended operations, disregard federal, local and state expert opinion, and not only ignore the environmental peril that presently exists on this 53-acre property, but seeks to intensify rather than attenuate the existing condition of the property.

This site is now under the Federal Environmental Protection Agency's (EPA) Superfund jurisdiction. Nearly 450 residents have submitted letters to your board opposing this proposal and this exemption. In that petition letter, the community wishes the site be fully characterized, evaluated and investigated by the EPA before any redevelopment project begins. It is in our opinion that the EPA should have unfettered access to source site areas on the property in investigating newly found constituents and that potential usage of this site and remedial alternative selections should fall under the EPA after new risk assessments can be measured.

Other concerns of the community previously raised are enumerated in a letter from this organization to you on September 14, 2004. NET has falsely and haphazardly interpreted Environmental Justice. It has sparsely evaluated the cumulative air quality issues of the region. It has ignored recent trends and reports that there is more to the contamination issue on the property and throughout the site than those presented by the applicant and the present property owner. NET has not considered the poor infrastructure and roadways, which cannot support a project of this magnitude, and it continues to falsely evoke that this is a non-residential area.

I would submit to you that if a full environmental analysis was conducted, it would conclude that this property and site is incompatible for this company and its operation would further exacerbate and imperil the community, its environment and health.

This community cannot be put at any further risk. As it stands right now, the environment in this region and hazards from this property are under investigation as a precipitating factor in our childhood cancer cluster.

Please do not let NET *use* the federal exemption process to contravene local and state laws designed to protect our health and welfare.

Thank you once again for the opportunity to provide comment to this petition. I would also ask that previous comments provided to you from the community, the Concerned Citizens Network, and The Woburn Neighborhood Association be brought forward and considered in your decision.

Sincerely,

Kathleen M. Barry, Chair,
Wilmington-Woburn Collaborative

cc:

The Honorable Edward M. Kennedy, US Senate
The Honorable John F. Kerry, US Senate
The Honorable John Tierney, US House of Representatives
The Honorable Edward Markey, US House of Representatives
The Honorable James Miceli, MA House of Representatives
The Honorable Patrick Natale, MA House of Representatives
The Honorable Charles Murphy, MA House of Representatives
The Honorable Bruce Tarr, MA Senate
The Honorable Robert Havern, MA Senate
Michael Caira, Wilmington Town Manager
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Ellen Roy Herzfelder, Secretary EOE

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September 14, 2004

Case Control Unit
Surface Transportation Board
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ATTN: Ms. Phillis Johnson-Ball

New England Transrail, LLC d/b/a/ Wilmington and Woburn and Woburn Terminal
Railroad Co. Construction, Acquisition and Operation Exemption

RE: Environmental Comments, Finance Docket No. 34391

The Wilmington-Woburn Collaborative (WWC) is an organization with combined memberships of the Concerned Citizens Network of Wilmington, the Woburn Neighborhood Association, Inc. of Woburn, and individuals of both communities who have been concerned and extensively involved in the Olin Chemical Corporation's 51 Eames Street property and its long history of contamination and migratory chemical impacts to two major watersheds, the Ipswich and Aberjona.

We are profoundly disappointed in the Surface Transportation Board (STB) Section of Environmental Analyses (SEA) in their decision to grant a conditional exemption to New England Transrail without a full Environmental Impact Review and investigation.

The WWC wishes that the Surface Transportation Board defer to the environmental experts, the local officials of the Town of Wilmington and the City of Woburn, our State and Federal officials by evoking the "No-Action Alternative" and allow for a thorough and complete investigation of the property/site so that a proper characterization can be determined for the appropriateness of redevelopment in the future.

The concerned citizens of Wilmington and Woburn filed letters last year opposing this project. (see attachment) Many of the detailed concerns were not addressed in the SEA's Environmental Assessment. The EA did little to quell the anxiety of the region. It dismissed the community by

- Falsely and haphazardly interpreting Environmental Justice.
- Sparsely evaluating the cumulative air quality issues of the region,
- Ignoring recent trends and reports that there is more to the contamination and its impact on the community than those presented by the applicant and property owner,

- Not considering the poor infrastructure and roadways which can not support a project of this magnitude, and
- Continuing to evoke that this is a non-residential area.

The fact that these, and many other concerns of the public fell on deaf ears has further ignited a public campaign to oppose this project from every angle and from every level. All of the arguments made by the environmental experts, officials and the public deserve your attention and it is un-excusable that each area of concern was not researched fully. I would submit to you, if such a comprehensive examination and study of this property was done properly, one could only conclude that this property and site is incompatible for this company and its operation would further imperil the community, its environment and health. Formidable arguments have been made regarding the potential exacerbation of the present contamination issues should an accident occur; truck traffic and the inadequate infrastructure which exists presently to accommodate the proposed number of deliveries on and off the property, including the ill-prepared emergency response team mechanisms which are not in place regionally. Area town response teams, including Reading and Stoneham along with Wilmington and Woburn have appropriate concerns when taking into account the existing and problem-some clover leaf (Rt93:Rt95) entrance and exit ramps.

Recent events and ongoing efforts of contamination discovery prove that the property and site has been ineffectually evaluated and determinations and decisions made on submittals by Olin and their investigators and/or via New England Transrail must be considered arbitrary and incomplete. It has been the WWC's contention that the property's owners and their consultants have not adequately characterized the property and site. The Environmental Analysis speaks of groundwater contamination in terms of old data sets and speaks of the DAPL and four or five contaminants of concern. The DEP of Massachusetts has solicited for a full analysis of the characteristics of the aquifer from the US EPA. The EPA laboratory from Nevada has issued an interim report detailing approximately 64 chemicals of concern and over 100 chemical compounds yet to be determined. (see attachment)

The Environmental Analysis speaks of the ongoing relations with the Massachusetts DEP and the cleanup efforts enforced under the Massachusetts Contingency Plan. This relationship however is in transition due to the failure of the present owners to comply effectively with a timely cleanup effort. According, the MADEP, it has notified the US EPA of its desire to list the Olin property with the National Priority Listing for Superfund sites stating that the "listing is the best way to ensure the most effective cleanup technologies available are applied in a timely manner to remediate the Olin site, in light of the complexity, cost and resources that will be necessary to complete the project." (see attachment)

It is the disputation of the members of the WWC that any redevelopment at this time is premature. We feel that this particular site use as determined by New England Transrail and supported by comments within the Environmental Assessment will aggravate present conditions. We echo our federal representatives in their statement that "Any

redevelopment of the Olin site must be deferred until the full extent of the existing contamination has been determined and a comprehensive and timely remediation plan is in place." (see attachment)

This project is offensive to the members of three impacted communities who have strongly evoked Environmental Justice protection. We urge the Surface Transportation board to reject the recommendation of the Section of Environmental Analysis and insist that before any redevelopment project goes forward on this property, all environmental issues be completely and comprehensively analyzed. We suggest that any approvals granted for construction and thus disruption of the present and existing property, prior to EPA's analysis and input would be divergent to their work and investigation.

Sincerely,

Kathleen M. Barry
Chair,
Wilmington-Woburn Collaborative

Enclosures:

Interim Report: Study of Organic Chemical Compounds Present in Water Samples from the Town of Wilmington's Maple Meadow Brook Aquifer Study Area---EPA Nevada (April 2004)

US Congressional Letter to Case Control Unit, STB (September 2004)

MA. DEP Letter to US EPA (Stephen Johnson-Section Chief, Site Management)

CCN letter to Neil Sullivan (Kathleen Barry, President CCN-October 2003)

Cc:

The Honorable Edward M. Kennedy, US Senate

The Honorable John F. Kerry, US Senate

The Honorable John Tierney, US House of Representatives

The Honorable Edward Markey, US House of Representatives

The Honorable James Miceli, MA House of Representatives

The Honorable Carol Donovan, MA House of Representatives

The Honorable Jay Kaufman, MA House of Representatives

The Honorable Charles Murphy, MA House of Representatives

The Honorable Bruce Tarr, MA Senate

The Honorable Robert Havern, MA Senate

Michael Caira, Wilmington Town Manager

John Curran, Woburn Mayor

The Wilmington Board of Selectman

The Woburn City Council

Ellen Roy Herzfelder, Secretary EOEA